

ORDINANCE NO. 2005- 5

An ordinance authorizing the City Manager to execute a Developer Participation Contract between the City of Victoria and Robert L. Denison, Jr., d/b/a Denison Construction for Funding part of the Developer's Cost of Complying with the City's Adopted Street Standards in the Development of Phase I of Highland Hills Subdivision, Section III, in an amount not to exceed \$79,296.87 payable to said developer; and declaring an effective date.

In accordance with Resolution 2002-44R, approved by the City Council on March 19, 2002, (which will expire on February 19th, 2005), the City Council adopted a Three-Year Policy, subject to adequate funding and developers' execution of Developer Participation Contracts, of funding part of the cost of complying with the City's adopted Street Standards to persuade Developers to develop property in the territorial limits of the City of Victoria, authorizing the City Manager to execute Developer Participation Contracts in amounts not to exceed \$25,000 apiece, and specifying other methods for reducing subdivision cost that may be utilized; and

Robert L. Denison, Jr., d/b/a Denison Construction has submitted a request for a Developer's participation Contract.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City Manager is authorized to execute the Developer Participation Contract between the City of Victoria and Robert L. Denison, Jr. d/b/a Denison Construction for Funding part of the Developer's Cost of Complying with the City's Adopted Street Standards in the Development of Phase I of Highland Hills Subdivision, Section III, which is attached as **Exhibit "A"** and incorporated herein (minus selected exhibits thereto), in an amount not to exceed \$79,296.87 payable to said developer, with such changes to form as are approved by the City Attorney.

2.

The provisions of this ordinance shall become effective on **MARCH 1**, 2005.

PASSED FIRST READING, this the **15TH** day of **FEBRUARY**, 2005.

AYES: **6**
NAYS: **0**
ABSTENTIONS: **0**

PASSED SECOND READING, this the **1ST** day of **MARCH**, 2005.

AYES: **7**
NAYS: **0**
ABSTENTIONS: **0**

PASSED THIRD READING, this the **1ST** day of **MARCH**, 2005.

AYES: **7**
NAYS: **0**
ABSTENTIONS: **0**

APPROVED AND ADOPTED, this the **1ST** day of **MARCH**, 2005.



ATTEST:

Scarlet Swoboda
SCARLET SWOBODA, City Secretary

Will Armstrong
WILL ARMSTRONG, Mayor of the City of Victoria, Texas
David Atmar Smith
APPROVED AS TO LEGAL FORM:
DAVID ATMAR SMITH, City Attorney

Distribution: Legal Department
Public Works Department
Finance Department

Copies Sent: **MARCH 9, 2005**

**Developer Participation Contract between the City of Victoria and Robert L. Denison, Jr. d/b/a Denison Construction for Funding Part of the Developer's Cost of Complying with the City's Adopted Street Standards in the Development of Phase I of Highland Hills Subdivision, Section III
(to be approved by City ordinance)**

This contract is entered into by and between the City of Victoria, a municipal corporation in the County of Victoria, Texas, hereinafter referred to as the "City", and Robert L. Denison, Jr. d/b/a Denison Construction, hereinafter referred to as "Developer" for the purpose of funding part of the developer's cost of complying with the City's current Local and Collector Street Standards and Standard Specifications in the development of Phase I of Highland Hills Subdivision, Section III, which shall be hereinafter referred to as the "Project".

Tex. Local Gov't Code § 252.021(a) provides:

(a) Before a municipality may enter into a contract that requires an expenditure of more than \$25,000 from one or more municipal funds, the municipality must:

- (1) comply with the procedure prescribed by this subchapter and Subchapter C for competitive sealed bidding or competitive sealed proposals;
- (2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing; or
- (3) comply with a method described by Subchapter H, Chapter 271.

Tex. Local Gov't Code § 212.071, "Developer Participation Contract," provides:

Without complying with the competitive sealed bidding procedure of Chapter 252, a municipality with 5,000 or more inhabitants may make a contract with a developer of a subdivision or land in the municipality to construct public improvements, not including a building, related to the development. If the contract does not meet the requirements of this subchapter, Chapter 252 applies to the contract if the contract would otherwise be governed by that chapter.

Tex. Local Gov't Code § 212.072, "Duties of Parties Under Contract," provides:

- (a) Under the contract, the developer shall construct the improvements and the municipality shall participate in their cost.
- (b) The contract must establish the limit of participation by the municipality at a level not to exceed 30 percent of the total contract price. In addition, the contract may also allow participation by the municipality at a level not to exceed 100 percent of the total cost for any oversizing of improvements required by the municipality, including but not limited to increased capacity of improvements to anticipate other future development in the area. The municipality is liable only for the agreed payment of its share, which shall be determined in advance either as a lump sum or as a factor or percentage of the total actual cost as determined by municipal ordinance.

Tex. Local Gov't Code § 212.073, "Performance Bond," provides:

The developer must execute a performance bond for the construction of the improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Government Code.

Tex. Local Gov't Code § 212.074, "Additional Safeguards; Inspection of Records," provides:

- (a) In the ordinance adopted by the municipality under Section 212.072(b), the municipality may include additional safeguards against undue loading of cost, collusion, or fraud.
- (b) All of the developer's books and other records related to the project shall be available for inspection by the municipality.

With the intent of complying with the aforementioned provisions of Texas law, the City and Developer agree as follows:

1. Core Obligations

In accordance with Resolution 2002-44R, approved by the City Council on March 19, 2002, (which will expire on February 19th, 2005), to persuade the Developer to develop and dedicate public improvements related to the Project, the City agrees to fund the developer for part of the developer's cost of complying with the City's adopted Street Standards in the development of Phase I of Highland Hills Subdivision, Section III (copy of plat attached as **Exhibit A**) by placement of concrete street thereon in accordance with the City's Local and Collector Street Standards (copy attached as **Exhibit B**) in the following amount:

Concrete Option---If the developer chooses to develop its streets using the concrete option, the City will subsidize the developer at 29% of the developer's actual street construction cost, excluding curbs and gutters, in an amount not to exceed \$10.65 per square yard.

The City calculates that the developer's estimated street construction cost is \$273,437.50 for placement of 8,750 square yards of concrete for the residential streets for the aforementioned subdivision phase. This results in a calculation as follows in accordance with the aforementioned resolution:

$$29\% \times \$273,437.50 \text{ street construction cost} = \$79,296.87$$

$$\$10.65 \times 8,750 \text{ square yards of concrete} = \$93,187.50.$$

\$79,296.87 is the lower amount. Therefore, the City will pay the developer the sum of \$79,296.87 to construct and dedicate the streets in the aforementioned subdivision phase. The amount will be paid to the developer only after the City's inspection of any constructed improvements has determined that the constructed improvements are in accordance with the City's Standard Specifications and comply with the City's approved construction drawings for said subdivision phase.

The developer agrees that the streets for the aforementioned subdivision will be constructed from concrete, in accordance with the City's current Local and Collector Street Standards and Standard Specifications attached as Exhibit C, and that the streets therein will be dedicated to the public. The Developer shall furnish all labor, materials, equipment and services required to construct these subdivision improvements pursuant to this contract, and the City shall not be obligated to provide any duties other than as described herein.

2. Release and Indemnity

The Developer agrees to release the City from any and all liability related to the development of Phase I of Highland Hills Subdivision, Section III. The Developer shall defend, indemnify and hold harmless the City of Victoria and its officers, agents, and employees from all suits, actions or claims of any character, name and description including attorneys' fees and expenses brought for any injuries to persons or damages to property in connection with the performance or attempted performance of this contract. So much of the money due the Developer under this contract, as shall be considered necessary by the City, may be retained for the use of the City, or in case no money is due, the sureties shall be held until all suits, actions, and claims shall have been settled and satisfactory evidence to that effect furnished to the City. The Developer and its sureties expressly agree to defend, indemnify and hold harmless the City, its officers, agents, and employees in accordance with this clause regardless of whether the injury or damage is caused in whole or in part by the acts, or omissions, including negligence, of the City of its officers, agents or employees.

3. Project Guarantee:

The Developer warrants that all the work under this contract will be free from faulty materials in every particular, and free from improper workmanship, except from proper and usual wear, and agrees to replace or to re-execute, without cost to the City, all work found to be improper or imperfect, and to make good all damage caused to the other work or materials due to such required replacement or re-execution. The warranty shall cover a period of One Year from the date of the issuance of the Owners "Certificate of Acceptance".

4. Bonding and Monitoring

Prior to the receipt of any funds pursuant to this contract, the Developer shall provide the City a performance bond for the construction of the improvements to ensure completion of the project. The bond shall be in a minimum amount of the \$273,437.50 street construction cost, which is also known as the contract price for purposes of Chapter 212 of the Texas Local Government Code. The bond must be executed by a corporate surety in accordance with Chapter 2253 of the Texas Government Code. The bond shall guarantee the Developer's performance of the Project Guarantee described herein. This bond shall also meet the requirements of the Maintenance Bond required by Section 21-69 of the Victoria City Code and shall guarantee the public improvements of the aforementioned phase of the subdivision for one year after the City's acceptance of the public improvements provide by the Developer to the City.

All of Developer's books and other records related to this project shall be available for inspection by the municipality for a period of at least three years following completion of this project. The books and records shall indicate the amounts paid for all labor, equipment, and supplies purchased or utilized in the construction of the project. If the City requests Developer supply copies of any books, records or invoices proving such amounts, Developer shall supply copies of such records and invoices to the City within 30 days of such request.

5. General Conditions

- a. The Developer shall at all times observe and comply with all federal, state, and local laws, ordinances, and regulations

which in any manner affect the Contract or the Project, and shall hold harmless, defend and indemnify the City and the City against any claims arising from the violation of any such laws, ordinances and regulations in the performance of this contract, whether by the Developer or its employees, except where the violations are called for by the provisions of the Contract Documents.

b. This agreement is performable and is to be governed by the law applicable in Victoria County, Texas. Venue for any action arising under this agreement shall be in Victoria County, Texas.

c. In performing any duties pursuant to agreement, the relationship between the City and Developer is that of independent contractor, and the execution of this agreement does not change the independent contractor status of Developer. No term or provision of this agreement or act of Developer in the performance of this agreement shall be construed as making Developer or any agent, servant or employee of Developer an agent, servant or employee of the City. Neither party to this contract intends to create a partnership, joint venture or joint enterprise between Developer and the City. To the extent any provision of this contract is determined by a court to create a partnership, joint venture or joint enterprise between Developer and the City, that provision shall be considered void.

d. Any notices or invoices issued pursuant to this contract shall be personally delivered or sent certified mail to the following:

City of Victoria
City Manager
City of Victoria
P.O. Box 1758
Victoria, Tx. 77902

Developer
Robert L. Denison, Jr. d/b/a Denison Construction
1549 Verhelle Road
Cuero, Texas 77954

e. Nothing herein shall be construed to give any rights or benefits to any entity other than Owner and Developer, and this agreement is not intended to have any third-party beneficiaries.

EXECUTED in duplicate original copies, this the _____ day of _____ 2005.

City of Victoria

Robert L. Denison, Jr. d/b/a Denison Construction

Denny Arnold, City Manager

Robert L. Denison, Jr.

(seal)

(seal)

ATTEST:

ATTEST:

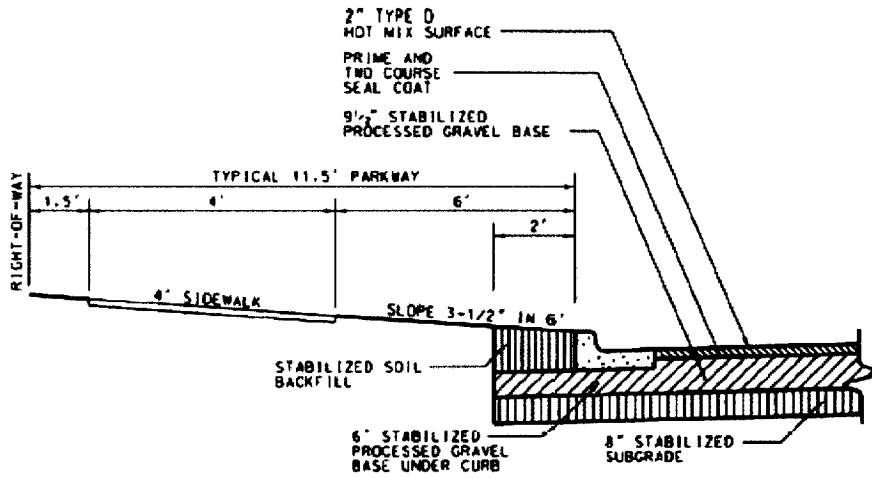
Scarlet Swoboda, City Secretary

APPROVED AS TO LEGAL FORM

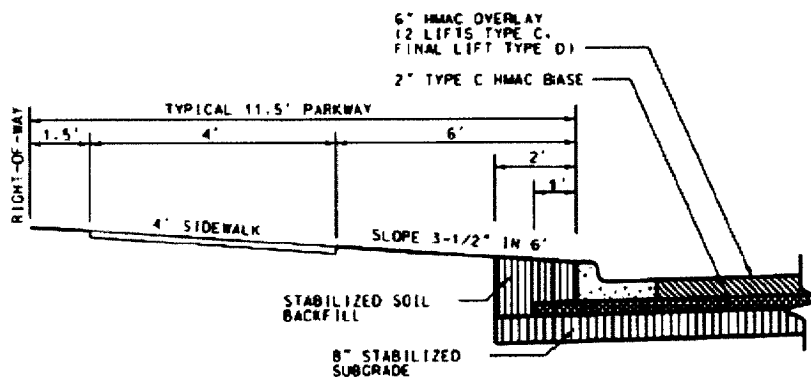
David Smith, City Attorney

Exhibits: **Exhibit A—the plat for Phase I of Highland Hills Subdivision, Section III**
 Exhibit B—City of Victoria’s Local and Collector Street Standards
 Exhibit C—City of Victoria’s Local and Collector Street Standards and Standard Specifications
 for Public Works Construction adopted via Ordinance 2002-1 on February 19, 2002 by the City
 Council of the City of Victoria (attached as CD-ROM Disk)

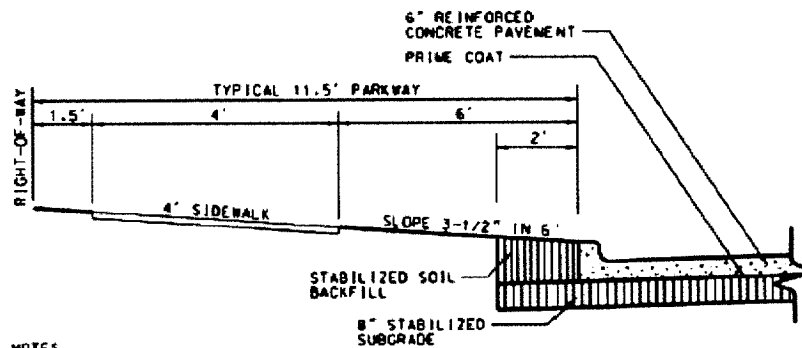
**Exhibit B
LOCAL STREET AND COLLECTOR STREET SECTIONS**



PROCESSED GRAVEL BASE PAVEMENT SECTION



FULL DEPTH HOT MIX SECTION



- NOTES**
 REINFORCEMENT SHALL CONSIST OF:
 #4 REBAR @ 24" O.C. TRANSVERSE
 #4 REBAR @ 8" O.C. LONGITUDINAL
 #3 "U" REBARS IN PAVEMENT FOR CURB, 12" LONG x 4" HIGH @ 30" O.C.
 #3 REBAR LONGITUDINAL IN CURB.
 EXPANSION JOINTS SHALL BE PLACED ALONG C OF STREET AND TRANSVERSELY EVERY 40 L.F.

CONCRETE SECTION

Exhibit B

Exhibit "A"