

COMMUNITY FACILITIES CONTRACT
CITY OF BURLESON

STATE OF TEXAS § PROJECT NAME: _____
COUNTIES OF TARRANT §
AND JOHNSON § CONTRACT NO.: _____

This Contract is entered into on the ____ day of _____, 200__ by and between the CITY OF BURLESON, TEXAS, (hereinafter referred to as the "City"), _____, a _____ corporation (hereinafter referred to as the "Developer"), and _____, a _____ corporation (hereinafter referred to as the "Contractor").

WHEREAS, the Developer is the owner of land which has been platted as _____ Addition to the City of Burleson, Johnson County, or Tarrant County (whichever is applicable) Texas (hereinafter referred to as the "Subdivision"); and

WHEREAS, the Developer is required to install certain public improvements as required in this Contract (hereinafter referred to as the "Community Facilities") to serve the lots in the Subdivision; and

WHEREAS, the Developer elects to make the Community Facilities at the Developer's cost, without City participation in the cost, by entering a separate construction contract with the Contractor; and

WHEREAS, the Developer and the Contractor recognize that the City has an interest in ensuring that the Community Facilities are properly constructed in accordance with City specifications and are paid for by the Developer, because they will become public property upon completion and acceptance by the City; and

WHEREAS, this Contract shall operate as a covenant running with the land and shall be binding upon the Developer, the Contractor, and their successors, heirs, representatives, grantees, trustees, officers, agents, servants, employees and assigns;

NOW, THEREFORE, the City, the Developer and the Contractor, in consideration of the mutual covenants and agreements contained herein, do mutually agree as follows:

1. Covenants of the Developer and Contractor.

- a. The Developer shall install the Community Facilities for the Subdivision at no cost to the City. The Community Facilities shall include the items shown on the construction plans and specifications as released for construction by the City.
- b. The Developer shall employ the Developer's own engineer to prepare the plans and specifications for the Community Facilities, and all engineering work shall comply with the requirements of the City's Subdivision Ordinance and Design Standards Manual. The Developer's engineer shall be a civil engineer licensed to practice in Texas. All plans and specifications prepared by the Developer's engineer must be released for construction in writing by the Public Works Director of the City before the construction contract for the Community Facilities is entered.
- c. The Contractor shall construct and install the Community Facilities in accordance with the plans and specifications prepared by the Developer's engineer and released for construction by the Public Works Director, and the procedures, specifications and standards contained in the Subdivision Ordinance and Design Standards Manual of the City. In general, the construction shall follow provisions of the "Standard Specifications for Public Works Construction, North Central Texas," as amended, published by the North Central Texas Council of Governments, except however, when specific circumstances dictate additional requirements, it shall be the responsibility of the Developer's engineer to provide the necessary details for construction acceptable to the Public Works Director. The "Standard Specifications for Public Works Construction, North Central Texas," as amended, are incorporated in this Contract by reference and made a part hereof, and the Contractor may obtain a copy from the North Central Texas Council of Governments. The Contractor shall perform all work in a good and workmanlike manner and to the satisfaction of the Public Works Director.
- d. The Contractor shall meet the City's requirements for being licensed and bonded and shall have a financial statement, experience and equipment acceptable to the City.
- e. The Developer and the Contractor shall make this Contract, and the plans and specifications released for construction of the Community Facilities, an integral part of the construction contract between the Developer and the Contractor. The provisions of this Contract shall control over any conflicting provision of the construction contract between the Developer and the Contractor. Before commencing construction, the Developer shall deliver to the Public Works Director a signed copy of the construction contract between the Developer and the Contractor. The Developer shall pay the Contractor for construction of the Community Facilities in accordance with provisions of the construction contract. It is agreed that

the City has an interest in the proper performance of the construction contract and may bring suit for failure to comply with the plans and specifications. The Developer and Contractor shall provide the City with access to the project for the purpose of inspection of the installation of the Community Facilities.

- f. Prior to initiating any construction of the Community Facilities, the Developer shall require that the Contractor provide the City with one original and one copy of the following construction bonds, which shall name the City and the Developer as beneficiaries:
 - 1) Contractor's Performance Bond. If the contract between the Developer and the Contractor for construction of the Community Facilities is for an amount in excess of Twenty-Five Thousand Dollars (\$25,000), a good and sufficient Performance Bond in an amount equal to 100 percent of the total contract price, guaranteeing the full and faithful execution of the work and performance of the contract and for the protection of the City and the Developer against any improper execution of the work or the use of inferior materials. The Performance Bond be made in favor of the City and the Developer and shall guarantee completion of the Community Facilities within two years of execution of this Contract.
 - 2) Contractor's Payment Bond. If the construction contract between the Developer and the Contractor for construction of the Community Facilities is for an amount in excess of Twenty-Five Thousand Dollars (\$25,000), a good and sufficient Payment Bond in an amount equal to one hundred percent of the total contract price (between the Developer and the Contractor), guaranteeing payment for all labor, materials and equipment used in construction of the Community Facilities. The Payment Bond shall be made in favor of the City and the Developer and all persons, firms or corporations who may furnish materials for or perform labor upon the Community Facilities hereunder.
 - 3) Contractor's Maintenance Bond. A good and sufficient Maintenance Bond in an amount equal to 100 percent of the total cost of the Community Facilities (including all change orders) guaranteeing the maintenance in good condition of the Community Facilities for a period of two years from and after the date that a Letter of Acceptance is issued by the City indicating that the Community Facilities have been completed by the Developer and accepted by the City. The Maintenance Bond shall be made in favor of the City and the Developer.

In the alternative, the Developer may furnish a cash deposit, or certificate of deposit as security. Such forms of security shall be held

by the City for a period of two years or until any deficiencies identified at the expiration of the two-year maintenance period are corrected, whichever occurs last.

Each bond shall be in a form acceptable to the City and shall be written by a surety company duly authorized to do business in the State of Texas, provided that the Mayor shall have the right to reject any surety company for any work under this Contract.

- g. **The Developer and the Contractor covenant and agree to, and by these presents do hereby, fully indemnify, hold harmless, and defend the City, its officers, agents and employees, from all suits, actions or claims of any character, whether real or asserted, brought for or on account of any injuries or damages sustained by any persons (including death) or to any property, resulting from or in connection with the construction, design, performance or completion of any work to be performed by the Developer and Contractor, their contractors, subcontractors, officers, agents or employees, or in consequence of any failure to properly safeguard the work, on account of any act, intentional or otherwise, neglect or misconduct of said Developer and Contractor, their contractors, subcontractors, officers, agents, or employees, whether or not such injuries, death or damages are caused, in whole or in part, by the alleged negligence of the City of Burleson, its officers, agents, servants or employees.**
- h. **Release of the plans and specifications for construction by the Public Works Director or other City employee(s) of any plans, designs or specifications submitted by the Developer pursuant to this Contract shall not constitute or be deemed to be an assumption of the responsibility and liability of the Developer for the competency of the Developer's design and specifications for the Community Facilities, it being the intent of the parties that release of the plans and specifications by the Public Works Director or other City employee(s) signifies the City's acceptance of only the general design concept of the Community Facilities to be constructed. In this connection, the Developer shall indemnify and hold harmless the City, its officers, agents, servants and employees from any loss, damage, liability claim, obligation, penalty, charge, cost or expense including property damage, personal injury or death, to any and all persons, which may arise out of any defect, deficiency or negligence of the Engineer's design and specifications incorporated into any of the Community Facilities constructed in accordance therewith, whether or not such loss, damage, liability, claim, obligation, penalty, charge, cost or expense is caused in whole or in part by the alleged negligence of the City, its officers, agents, servants or employees,**

and the Developer shall defend at its own expense any suits or other proceedings brought against the City, its officers agents, servants or employees or any of them, on account thereof, and shall pay all expenses (including without limitation reasonable fees and expenses of attorneys, expert witnesses and consultants) and satisfy all judgments which may be incurred by or rendered against them in connection therewith.

- i. The Contractor shall, at his own expense, purchase, maintain and keep in force during the term of this Contract the insurance set forth below. The Contractor shall not commence work on the Community Facilities until the Contractor has obtained all the insurance required under this Contract and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance of the subcontractor has been obtained and approved. All insurance policies provided under this Contract shall be written on an "occurrence" basis.

Compensation Insurance

Workers Compensation	Statutory Limit
Employers Liability	\$100,000 Each Occurrence
	\$500,000Disease-Each Employee

Liability Insurance

Commercial General Liability (No standard coverages are to be excluded by endorsement)	\$500,000 Combined Single Limit
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Automobile Liability Insurance

Commercial Auto Liability Policy (including coverage for owned, hired and non-owned autos)	\$500,000 Combined Single Limit
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Umbrella Liability

(Following Form and Drop Down \$1,000,000 Each Occurrence Provisions included)

It is agreed by all parties to this Contract that the insurance required under this Contract shall:

- 1) Be written with the City of Burleson as an additional insured.
- 2) Provide for thirty (30) days written notice to the City of cancellation or material change in coverage.

- 3) Be written through companies duly authorized to write the particular class of insurance in the State of Texas.
- 4) Waive subrogation rights for loss or damage so that insureds have no right to recovery or subrogation against the City of Burleson, it being the intention of this Contract that the required insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies.
- 5) Provide a certificate of insurance evidencing the required coverages to:

City of Burleson
Public Works Department/Engineering/Development
141 W. Renfro Street
Burleson, Texas 76028.

- j. During construction of the Subdivision and after the streets have been installed, the Developer agrees to keep the streets free from collection of soil. The Developer agrees to use soil control measures such as hay bales, silt screening, hydromulch, or other applicable measures to prevent soil erosion. It will be the Developer's responsibility to present to the Public Works Director a storm water pollution prevention plan that will be implemented for the Subdivision. When, in the opinion of the Public Works Director, there is sufficient soil collected on the streets or other drainage areas and notification has been given to the Developer, the Developer will have 24 hours to clear the soil from the streets or affected areas. If the Developer does not remove the soil from the streets or other areas within 24 hours, the City may cause the soil to be removed either by contract or City forces and place the soil within the subdivision at the developer's expense. All expenses must be paid to the City prior to the issuance of a Letter of Acceptance for the Community Facilities.
- k. The Community Facilities shall be completed within two (2) years from the effective date of this contract.
- l. Upon completion of the Community Facilities and issuance of a Letter of Acceptance by the City, the Community Facilities shall become the property of the City free and clear of all liens, claims, charges or encumbrances of any kind.
- m. The parties understand and agree that the City has no obligation to participate or contribute to the cost of designing or constructing the Community Facilities, nor shall the City be liable for any portion of the costs incurred by the Developer, or the Developer's officers, agents, employees, contractors or subcontractors for the design and construction

of the Community Facilities, unless a separate agreement is executed by the City and the Developer concerning such participation by the City.

2. Covenants of the City

Upon proper completion of the Community Facilities, the City agrees to accept the Community Facilities by a written Letter of Acceptance. It is understood and agreed that the City shall have no liability or responsibility for the Community Facilities until a Letter of Acceptance is issued.

3. Miscellaneous

a. Compliance with Laws.

The Developer and Contractor hereby agree to comply with all federal, state and local laws and ordinances that are applicable to development of the Subdivision.

b. Venue and Governing Law

Venue of any action brought hereunder shall be in Johnson County, Texas. The terms and provisions of this Contract shall be construed in accordance with the laws of the State of Texas.

c. Assignment

Neither this Contract nor any part hereof or any interest herein shall be assigned by the Developer or the Contractor without the express written consent of the City Manager of the City, which consent shall not be unreasonably withheld.

d. Waiver

The Developer and the Contractor expressly acknowledge that by entering into this Contract, the Developer and the Contractor, their successors, heirs, assigns, vendors, grantees, trustees, and/or representatives shall never construe this Contract as waiving any of the requirements of the Zoning Ordinance, Subdivision Ordinance, Design Standards Manual, the Standard Specifications or any other ordinance of the City.

e. Amendments

This Contract may be amended only by a written instrument signed by the Developer, the Contractor and the City.

f. Liens and Assessments

If the Developer fails to comply with any of the provisions of this Contract, the City shall be authorized to cease issuance of any certificates of occupancy or building permits on property in the Subdivision owned by the Developer. Should the Developer fail to complete construction of the Community Facilities, in addition to any other remedy authorized by this Contract or by law, the City shall be authorized to complete such

construction and file a mechanic's lien against the Developer's property in the Subdivision, or in the alternative, to levy an assessment against the Developer's property for public improvements in accordance with state law.

g. Continuity

This Contract shall be a covenant running with the land and shall be binding upon the Developer, its successors in title, heirs, assigns, grantees, trustees, and/or representatives.

h. Severability

If any of the terms, sections subsections, sentences, clauses, phrases, provisions, covenants or conditions of this Contract are held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the Contract shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

IN WITNESS WHEREOF, each of the parties has executed this Contract by its undersigned duly authorized representative as of the date first written above.

DEVELOPER:

CONTRACTOR:

BY: _____

BY: _____

TITLE: _____

TITLE: _____

ADDRESS: _____

ADDRESS: _____

THE CITY OF BURLESON:

BY: _____
MAYOR

141 West Renfro Street
Burleson, Texas 76028

STATE OF TEXAS §
 §
COUNTY OF JOHNSON §

CITY

This instrument was acknowledged before me on the _____ day of _____, 200__, by _____, Mayor of the City of Burleson, Texas, a municipality, on behalf of said municipality.

[SEAL]

Notary Public in and for the State of Texas

Type or Print Notary's Name

My Commission Expires: _____

THE STATE OF TEXAS §
 §
COUNTY OF JOHNSON §

DEVELOPER

Before me _____, on this day personally appeared _____, known to me [or proved to me on the oath of _____, or through _____ (description of identity card or other document)] to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this ____ day of _____, 200 __.

[SEAL]

Notary Public in and for the State of Texas

Type or Print Notary's Name

My Commission Expires: _____

THE STATE OF TEXAS §
 §
COUNTY OF JOHNSON §

CONTRACTOR

Before me _____, on this day personally appeared _____, known to me [or proved to me on the oath of _____, or through _____ (description of identity card or other document)] to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this ____ day of _____, 200 ____.

[SEAL]

Notary Public in and for the State of Texas

Type or Print Notary's Name

My Commission Expires: _____

THE STATE OF TEXAS §
COUNTY OF _____ §

Maintenance Bond

KNOW ALL MEN BY THESE PRESENTS:

THAT _____ of _____ County, Texas, hereinafter referred to as "CONTRACTOR", and _____, a corporation organized under the laws of the State of _____ and authorized to do business in the State of Texas, hereinafter referred to as "SURETY", are held and firmly bound unto _____ and the CITY OF BURLESON, TEXAS, a municipal corporation located in Johnson County, Texas, hereinafter referred to as "CITY", in the penal sum of _____ DOLLARS(\$ _____), lawful money of the United States, to be paid in Burleson, Johnson County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally; and firmly by these presents, the condition of this obligation is such that,
WHEREAS, CONTRACTOR entered into a certain contract with _____, dated the _____ day of _____, 20____. in the proper performance of which the CITY OF BURLESON has an interest, a copy of which is attached hereto and made a part hereof, for the construction of:

_____; NOW THEREFORE,

If CONTRACTOR will maintain and keep in good repair the work herein contracted to be done and performed for a period of two (2) years from the date of acceptance and do all necessary backfilling that may arise on account of sunken conditions in ditches, or otherwise, and do and perform all necessary work and repair any defective condition growing out of or arising from the improper joining of same, or on account of any breaking of same caused by said CONTRACTOR in laying or building same, or on account of any defect arising in any of said work laid or constructed by said CONTRACTOR, or on account of improper excavation or backfilling, it being understood that the purpose of this section is to cover all defective conditions arising by reason of defective materials, work or labor performed by said CONTRACTOR, then this obligation shall be void, otherwise to remain in full force and effect; and in case said CONTRACTOR shall fail to do so, it is agreed that CITY may do said work and supply such materials and charge the same against said CONTRACTOR and SURETY on this obligation, and said CONTRACTOR and SURETY herein shall be subject to the liquidated damages mentioned in said contract for each days' failure on its part to comply with the terms of said provisions of said contract.

Provided, further, that if any legal action is filed on this Bond, venue shall lie in Johnson County, Texas.

And, that said SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work performed thereunder, or the plans, specifications, drawings, etc. accompanying same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder.

The Undersigned and designated agent is hereby designated by SURETY herein as the resident agent in either Johnson or Tarrant Counties to whom any requisite notice may be delivered and on whom service of process may be had in matters arising out of such suretyship.

IN WITNESS WHEREOF, this instrument is executed on this the _____ day of _____, 20____.

WITNESS

CONTRACTOR

Signature

Signature

Typed/Printed Name

Typed/Printed Name

Address

Address

WITNESS

SURETY

Signature

Signature

Typed/Printed Name

Typed/Printed Name

Address

Address

The Resident Agent of the SURETY in either Johnson or Tarrant County, Texas, for delivery of notice and service of process is:

NAME _____

ADDRESS _____

NOTE: Date of Bond must NOT be prior to date of contract.

THE STATE OF TEXAS S

Performance Bond

COUNTY OF _____ S

KNOW ALL MEN BY THESE PRESENTS:

THAT _____ of _____ County, Texas, hereinafter referred to as "CONTRACTOR", and _____, a corporation organized under the laws of the State of _____ and authorized to do business in the State of Texas, hereinafter referred to as "SURETY", are held and firmly bound unto _____ and the CITY OF BURLESON, TEXAS, a municipal corporation located in Johnson County, Texas, hereinafter referred to as "CITY", in the penal sum of _____ DOLLARS (\$ _____) lawful money of the United States, to be paid in Burleson, Johnson County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally; and firmly by these presents, the condition of this obligation is such that,

WHEREAS, CONTRACTOR entered into a certain contract with _____, dated the _____ day of _____, 20____. in the proper performance of which the CITY OF BURLESON has an interest, a copy of which is attached hereto and made a part hereof, for the construction of:

_____; NOW THEREFORE,

If CONTRACTOR shall well, truly and faithfully perform and fulfill all of the undertakings, covenants, terms, conditions and agreements of said contract in accordance with the plans, specifications and contract documents during the original term thereof, and any extension thereof which may be granted with or without notice to SURETY, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the covenants, terms, conditions and agreements of any and all authorized modifications of said contract that may hereafter be made, notice of which modifications to SURETY being hereby waived, then this obligation shall be void, otherwise to remain in full force and effect; and in case said CONTRACTOR shall fail to do so, it is agreed that CITY may do said work and supply such materials and charge the same against said CONTRACTOR and SURETY on this obligation, and said CONTRACTOR and SURETY hereon shall be subject to the liquidated damages mentioned in said contract for each days' failure on its part to comply with the terms of said provisions of said contract.

Provided, further, that if any legal action is filed on this Bond, venue shall lie in Johnson County, Texas.

This Bond is executed pursuant to the provisions of Chapter 2253 of the Government Code, as the same may be amended from time to time, and all liabilities on this Bond shall be determined in accordance with the provisions of said Chapter to the same extent as if they were fully copied at length herein.

Surety, for value received, stipulates and agrees that the Bond shall automatically be increased by the amount of any change order or supplemental agreement which increases the contract price with or without notice to the Surety and that no change, extension of time, alternation or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder.

The undersigned and designated agent is hereby designated by SURETY herein as the resident agent in either Johnson or Tarrant Counties to whom any requisite notice may be delivered and on whom service of process may be had in matters arising out of such suretyship.

IN WITNESS WHEREOF, this instrument is executed on this the _____ day of _____, 20_____.

WITNESS

CONTRACTOR

Signature

Typed/Printed Name

Address

Signature

Typed/Printed Name

Address

WITNESS

SURETY

Signature

Typed/Printed Name

Address

Signature

Typed/Printed Name

Address

The Resident Agent of the SURETY in either Johnson or Tarrant County, Texas, for delivery of notice and service of process is:

NAME _____

ADDRESS _____

NOTE: Date of Bond must NOT be prior to date of contract.

THE STATE OF TEXAS S

Payment Bond

COUNTY OF _____ S

KNOW ALL MEN BY THESE PRESENTS:

THAT _____ of _____ County, Texas, hereinafter referred to as "CONTRACTOR", and _____, a corporation organized under the laws of the State of _____ and authorized to do business in the State of Texas, hereinafter referred to as "SURETY", are held and firmly bound unto _____ and the CITY OF BURLESON, TEXAS, a municipal corporation located in Johnson County, Texas, hereinafter referred to as "CITY", in the penal sum of _____ DOLLARS (\$ _____), lawful money of the United States, to be paid in Burleson, Johnson County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally; and firmly by these presents, the condition of this obligation is such that,

WHEREAS, CONTRACTOR entered into a certain contract with _____, dated the _____ day of _____, 20____. in the proper performance of which the CITY OF BURLESON has an interest, a copy of which is attached hereto and made a part hereof, for the construction of:

_____; NOW THEREFORE,

If CONTRACTOR shall well, truly and faithfully perform its duties and make prompt payment to all persons, firms, subcontractors, corporations and claimants supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to SURETY being hereby waived, then this obligation shall be void, otherwise to remain n full force and effect.

Provided, further that if any legal action be filed on this Bond, venue shall lie in Johnson County, Texas.

This Bond is executed pursuant to the provisions of Chapter 2253 of the Government Code, as the same may be amended from time to time, and all liabilities on this Bond shall be determined in accordance with the provisions of said Chapter to the same extent as if they were fully copied at length herein.

Surety, for value received, stipulates and agrees that the Bond shall automatically be increased by the amount of any change order or supplemental agreement which increases the contract price with or without notice to the Surety and that no change, extension of time, alternation or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same shall in any way affect its obligation

on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder.

The Undersigned and designated agent is hereby designated by SURETY herein as the resident agent in either Johnson or Tarrant Counties to whom any requisite notice may be delivered and on whom service of process may be had in matters arising out of such suretyship.

IN WITNESS WHEREOF, this instrument is executed on this the _____ day of _____, 20____.

WITNESS

Signature

Typed/Printed Name

Address

CONTRACTOR

Signature

Typed/Printed Name

Address

WITNESS

Signature

Typed/Printed Name

Address

SURETY

Signature

Typed/Printed Name

Address

The Resident Agent of the SURETY in either Johnson or Tarrant County, Texas, for delivery of notice and service of process is:

NAME _____

ADDRESS _____

NOTE: Date of Bond must NOT be prior to date of contract.

Date: _____

**SWPPP POST-CONSTRUCTION
MAINTENANCE PLAN**

Upon completion and final acceptance of a project, the Contractor responsible for inlet protection will be required to maintain all necessary devices installed until such time as devices are no longer needed.

City personnel will notify the Contractor when the inlet protection is no longer required. It will be the Contractor's responsibility to remove and discard any unnecessary devices in a satisfactory method.

PROJECT: _____

CONTRACTOR: _____
(Name printed)

By: _____
(Signature)

(Signer's name printed)