

RECORDING REQUESTED BY

City of Carpinteria

AND WHEN RECORDED MAIL TO

City of Carpinteria  
5775 Carpinteria Avenue  
Carpinteria, CA 93013

No Fee Per Government Code 6103

Revised Form 09/05/01

APN \_\_\_\_\_

CITY OF CARPINTERIA

County of Santa Barbara, California

AGREEMENT FOR LAND DEVELOPMENT IMPROVEMENTS

PROJECT IDENTIFICATION: \_\_\_\_\_  
\_\_\_\_\_

THIS AGREEMENT, is between the City of Carpinteria, a municipal corporation, hereinafter referred to as "City", and \_\_\_\_\_ hereinafter referred to as "Developer".

Developer is the owner of land situated in the City, generally known and described in Exhibit A, attached hereto. Developer proposes to do and perform certain work of improvement thereon as hereinafter set forth; and

City desires to assure that said proposed improvements will be done in good workmanlike manner and in accordance with all ordinances and laws now in force and effect in the City, the terms and conditions of which are incorporated herein by reference. Developer declares that he is familiar with the regulations contained in said laws and agrees to comply therewith.

WHEREAS, improvement plans have been prepared in accordance with the provisions of the City Municipal Code and have been filed by Developer with the City and reviewed by the City, said plans are identified as: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, in consideration of the approval and acceptance by the City of said improvement plans, bond estimates and the covenants herein contained, the parties hereto mutually covenant and agree that this Agreement for Land Development Improvements shall include the following numbered paragraphs: All paragraphs 1 through 23

1. General Requirements

Developer shall, at his own cost and expense, complete all of the improvements hereinafter referred to in a good and workmanlike manner in accordance with all adopted City standards and all applicable laws, rules and regulations, to the satisfaction of the City Engineer at an estimated cost of: \_\_\_\_\_ for improvements, including any cost of checking and inspection which is the estimate of the City Engineer. The time for completion may be extended by the City Engineer in writing for good cause shown by the Developer. The estimated cost of said improvements shall be for bonding purposes only and shall not limit Developer's obligation and promise to complete said improvements, as herein provided. Said improvements shall be those required by all the terms, provisions, conditions, plans and approvals set forth by the Planning Commission and/or the City Council (collectively "approvals").

2. Definition and Ownership of Improvements

The term "improvements" means and includes all grading, paving, curbs and gutters, pathway, bikeway, water system, storm and sanitary sewers, utilities, street lights, traffic safety devices and ornamental "street trees", landscaping and landscaping maintenance that are shown upon said plans, which Developer agrees to complete in accordance with City standards. The cost of checking and construction inspection shall be paid by Developer. All public improvements constructed or installed pursuant to this Agreement shall become the sole exclusive property of the City, without payment thereof, upon acceptance of said improvements by the City.

3. Time of Completion

All of said improvements shall be completed within one year of recordation of the map or prior to final occupancy clearance, whichever is sooner. In the event that Developer fails to complete the improvements within the time specified herein or to maintain the same as provided in the approvals, the City may complete said work and Developer promises to pay the City the full cost and expenses thereof or City may recover the same from Developer's surety as hereinafter provided, including reasonable attorneys' fees. The City may require Developer, or its surety, to pay the City in advance, sufficient monies to cover City's cost in completing construction of said improvements.

4. Surety Bonds

Prior to the recordation of this Agreement, Developer shall file with City an instrument of credit from one or more financial institutions subject to regulations by the State or federal government, or a letter of credit issued by such a financial institution pledging that the funds necessary to carry out this Agreement are on deposit and guaranteed for payment; a cash bond or corporate surety bonds executed by a surety company authorized to transact business in the State of California, one (1) of which shall provide for the faithful performance of this Agreement and, if required by the nature of the improvement, a bond which shall provide for payment of laborers and materialmen. The amount of the total of each of the bonds or letter of credit shall be as specified in Section 1. In the event cash shall be deposited, the amount shall be as specified in Section 1 and only one (1) such amount shall be required to be deposited. Developer agrees to perform and shall guarantee the faithful performance of this Agreement, and said performance shall include but not be limited to the following items: a) the performance required by this Agreement; and b) the guarantee and warranty of the work, for a period of one (1) year following completion and acceptance thereof, against any defective work or labor done or defective materials furnished, in the performance of this Agreement; and c) costs and reasonable expenses and fees, including reasonable attorneys' fees incurred by City in successfully enforcing

this obligation. The bonds or instruments of credit shall continue in full force and effect for a period of not less than one (1) year after acceptance of the work by the City Council.

The instrument depositing said cash with the financial institution shall be satisfactory in form and in substance to the City Attorney of the City of Carpinteria and shall provide for the following:

a. That in the event that the City determines that there has been a default in this Agreement, the cash so deposited with the financial institution may be withdrawn by the City without the consent of any other person, firm or corporation and used by the City to perform the Agreement and/or to pay laborers and materialmen.

5. Effective Date of Agreement

This Agreement shall not become effective unless and until it is approved by the City and all fees and deposits paid and bonds or instruments of credit posted.

6. Liability for Non-Performance

Neither the City nor any of its elected or appointed officials, employees, or volunteers and MNS Engineers, Inc. nor its employees as individuals shall be liable to Developer or its contractors for any error or omission arising out of or in connection with any work to be performed under this Agreement.

7. Liability for Personal Injuries

The City shall not be liable to the Developer or to any other person, firm, or corporation whatsoever, for any injury or damage that may result to any person or property by or from any cause whatsoever in, on, or about the development of said land covered by this Agreement, or any part thereof.

8. Release and Indemnification

The Developer hereby releases and agrees to indemnify and save the City and MNS Engineers, Inc. and its employees as individuals harmless from and against any and all damages, injuries and deaths to persons and property, and any and all claims, demands, costs, losses, damages, injuries or liability, howsoever caused, resulting directly or indirectly from the performance or non-performance of any and all work done or to be done pursuant to this Agreement, in connection with said development, or in, upon or under the streets in said development including without limitation, any made or suffered by the Developer or the Developer's agents, employees, contractors or subcontractors.

9. Insurance

Prior to the commencement of any work pursuant to this contract, Developer's contractors, without cost to the City, shall furnish to City satisfactory evidence of insurance as provided in Exhibit "B" attached hereto and incorporated herein by this reference.

10. Developer's Expenses

Without limiting Developer's obligations, Developer agrees to pay for the following expenses:

a. The Developer and Developer's contractors and subcontractors shall pay for any and all materials, provisions, supplies, equipment, labor and materials used in, upon, for, or about the performance of the work contracted to be done for the improvements and for any labor or work done thereon of any kind or nature and for the payment of the bond with respect to such work or labor.

b. All required improvements shall be constructed under the inspection of and subject to the approval of the City. The cost of inspections shall be paid by Developer.

11. Review by City Engineer

It is agreed that the City shall have the right to reject any or all of the work to be performed under this Agreement if such work does not conform with the plans mentioned herein or the ordinances or adopted standards of the City. Developer agrees to pay for any and all damage to the sewer system, utilities, concrete work, or street paving that occurs after installation and agrees to completely repair the same to the satisfaction of the City Engineer before release of bond or final acceptance of completed work.

12. Obligations of Developer

Notwithstanding the fact that Developer's plans and specifications, completion of the work, and other acts are subject to approval of the City, it is understood and agreed that any approval by the City thereof shall not relieve Developer from satisfactorily performing said work or his obligations hereunder. The construction shall be done strictly in accordance with the plans approved by the City in accordance with law and the Standard Specifications. Developer hereby warrants that its plans will comply with all of the City Standard Specifications and all applicable laws and ordinances and that the work done pursuant thereto shall be in conformity with the City Standard Specifications and ordinances and that they are adequate to accomplish the work in a good workmanlike manner and in accordance with sound construction practices. This warranty shall survive any investigation by the City and any City employees. The sufficiency and the compliance of the plans and specifications with City Standards and all applicable laws, rules and regulations shall be the sole responsibility of the Developer.

13. Warranty and Maintenance of Work

Without limiting the foregoing, Developer warrants and guarantees materials used and workmanship performed on said work for a period of one (1) year after completion and acceptance thereof by the City Council.

Unless the plans are for maintenance only, the Developer shall maintain the work: a) for a period of one (1) year after acceptance of the work by the City; or b) until all deficiencies in the work are corrected to conform to the plans and the City's Standards and Specifications for the work, whichever is later.

14. Relationship of Contractors

It is hereby mutually covenanted and agreed by the parties hereto that the Developer and the Developer's contractors are not partners, employees, joint ventures nor agents of the City, and that the Developer's and the Developer's contractors' relations to the City, if any, are those of independent contractors.

15. Assignment

This Agreement shall not be assignable by Developer without the written consent of the City.

16. Supplying Record Drawings

Upon completion of the improvements and subsequent to the acceptance of the improvements by the City, the Developer shall supply the City, at no cost to the City, one (1) mylar (4 mils) set of record drawings. These drawings shall be certified as being record drawings and shall reflect the improvements as actually constructed, with all changes incorporated therein.

17. Survival of Representations

All promises, representations, and warranties made by Developer pursuant to this Agreement shall survive the consummation of the transactions contemplated by this Agreement, the acceptance of the work by the City, and any investigations or inspections made by or on behalf of the City.

18. Binding on Successors

All covenants, agreements, promises, representations and warranties of the Developer shall be binding upon the Developer and his heirs, successors, legal representatives and assigns.

19. Modification

This Agreement supersedes all prior Agreements, understandings, negotiations and discussions, whether oral or written, of the parties in connection with the subject matter hereof. No supplement, modification, discharge, waiver or termination of this Agreement or any provisions hereof shall be binding unless executed in writing by the parties to be bound thereby. No waiver of any of the provisions of this Agreement shall constitute a continuing waiver unless otherwise expressly provided.

20. Headings Not For Construction

Section, paragraph, and subparagraph headings, if any, are not to be considered part of this Agreement and are included solely for convenience and are not intended to be full or accurate descriptions of the contents thereof.

21. No Waivers

No course of dealing between the Developer and the City, or any delay on the part of the City in exercising any rights hereunder shall operate as a waiver of any rights by the City, except to the extent expressly waived in writing by the City.

22. Attorneys Fees

In the event that any action is brought by either the City or Developer seeking to enforce or interpret any of the terms and provisions of this Agreement, or in connection with the improvements described in the project plans, specifications and permits, the prevailing party in such action or actions shall be entitled to an award, in addition to taxable costs, damages, injunctive or other relief, of its actual costs and expenses incurred in said action or actions, including, but not limited to, attorneys' fees.

City of Carpinteria

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Mayor

Developer

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Attach Notary Statements

STATE OF CALIFORNIA            )  
  )  
COUNTY OF SANTA BARBARA    )

On \_\_\_\_\_, before me \_\_\_\_\_, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

STATE OF CALIFORNIA            )  
  )  
COUNTY OF SANTA BARBARA    )

On \_\_\_\_\_, before me \_\_\_\_\_, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

On \_\_\_\_\_, before me \_\_\_\_\_, personally appeared Gary Nielsen, Mayor of Carpinteria, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
City Clerk

EXHIBIT "A"

## Exhibit B

### Insurance Specifications for Construction Contracts

Prior to the beginning of and throughout the duration of the Work, Contractor will maintain insurance in conformance with the requirements set forth below. Contractor will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, it will be amended to do so. Contractor acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.

Contractor shall provide the following types and amounts of insurance:

1. **Commercial General Liability Insurance** using Insurance Services Office “Commercial General Liability” policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

Contractor’s policy shall contain no endorsements limiting coverage beyond the basic policy coverage grant for any of the following:

- Explosion, collapse or underground hazard (XCU)
- Products and completed operations
- Pollution liability
- Contractual liability

Coverage shall be applicable to City for injury to employees of contractors, subcontractors or others involved in the project. Policy shall be endorsed to provide a separate limit applicable to this project.

2. **Workers Compensation** on a state-approved policy form providing statutory benefits as required by law with employer’s liability limits no less than \$1,000,000 per accident for all covered losses.
3. **Business Auto Coverage** on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto) or the exact equivalent. Limits shall be no less than \$1,000,000 per accident, combined single limit. If Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Contractor or Contractor’s employees will use personal autos in any way on this project, Contractor shall provide evidence of personal auto liability coverage for each such person.
4. **Excess or Umbrella Liability Insurance** (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Contractor, subcontractors or others involved in the Work. The scope of coverage

provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$5,000,000 per occurrence and aggregate.

Contractor and City agree as follows:

1. Contractor agrees to endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition date of 1985. Contractor also agrees to require all contractors, subcontractors, and any one else involved in any way with the project contemplated by this agreement to comply with these provisions.
2. Any waiver of subrogation express or implied on the part of City to any party involved in this agreement or related documents applies only to the extent of insurance proceeds actually paid. City, having required that it be named as an additional insured to all insurance coverage required herein, expressly retains the right to subrogate against any parts for sums not paid by insurance. For its part, Contractor agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with the project(s) contemplated by this agreement, to do likewise.
3. All insurance coverage maintained or procured by Contractor or required of others by Contractor pursuant to this agreement shall be endorsed to delete the subrogation condition as to City, or to specifically allow Contractor or others providing insurance herein to waive subrogation prior to a loss. This endorsement shall be obtained regardless of existing policy wording that may appear to allow such waivers.
4. Insurance provided pursuant to these requirements is not intended by any party to be limited to providing coverage for the vicarious liability of City, or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this or any other agreement (express or implied) in any way relating to City is intended to apply to the full extent of the policies involved. Nothing referred to here or contained in any agreement involving City in relation to the project(s) contemplated by this agreement is intended to be construed to limit the application of insurance coverage in any way.
5. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of this kind that has not been first submitted to City and approved of in writing.
6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) which may affect City's protection without City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of binders of coverage, or endorsements, or certificates of insurance, unless waived by the City, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Contractor or deducted from sums due Contractor, at City option.

8. Contractor agrees to endorse, and to require others to endorse, the insurance provided pursuant to these requirements, to require 30 days notice to City and the appropriate tender prior to cancellation of such liability coverage and notice of any material alteration or non-renewal of any such coverage, and to require contractors, subcontractors and any other party in any way involved with the project contemplated by this agreement to do likewise.
9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Contractor or any subcontractor, is intended to apply first and on a primary non-contributing basis in relation to any other insurance or self insurance available to City.
10. Contractor agrees to ensure that subcontractors, and an other party involved with the project who is brought onto or involved in the project by contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with subcontractors and other engaged in the project will be submitted to the City for review.
11. Contractor agrees that all layers of third party liability coverage required herein, primary, umbrella and excess, will have the same starting and expiration date. Contractor agrees further that all other third party coverages required herein will likewise have concurrent starting and ending dates.
12. Contractor agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If contractor's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Contractor, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
13. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate additional compensation proportional to the increased benefit to City.
14. For purposes of applying insurance coverage only, all contracts pertaining to the project will be deemed to be executed when finalized and any activity commences in furtherance of performance under this agreement.
15. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.
16. Contractor will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. The insurance shall include but not be limited to products and completed operations and discontinued operations, where applicable. Termination of this obligation is not effective until City executes a written statement to that effect.

17. Contractor agrees to waive its statutory immunity under any workers' compensation statute or similar statute, in relation to the city, and to require all subcontractors and any other person or entity involved in the project contemplated by this agreement to do likewise.
18. Requirements of specific coverage features are not intended as limitations on other requirements or as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be all-inclusive.
19. Any provision in any of the construction documents dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
20. All liability coverage provided according to these requirements must be endorsed to provide a separate aggregate limit for the project that is the subject of this agreement and evidencing products and completed operations coverage for not less than two years after issuance of a final certificate of occupancy by all appropriate government agencies or acceptance of the completed work by City.
21. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to change City or Contractor for the cost additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.