

## INFRASTRUCTURE DEVELOPMENT CONTRACT

THIS INFRASTRUCTURE DEVELOPMENT CONTRACT ("Contract") is made and entered into this 9 th day of April, 2018 between JCM DEVELOPMENT, LLC ("Developer") and Earthworks Excavation and Associates LLC ("Contractor").

WITNESSETH:

WHEREAS, Developer is engaged in the residential lot development business in Lee's Summit, Missouri; and

WHEREAS, Contractor is engaged in the construction business and performs, on a contract basis, certain construction services and/or provides certain materials in connection with such construction, specifically including but not limited to the following scope of work.

**Earthworks Excavating shall furnish and provide all labor, material, taxes and insurance required to complete in full all excavation, dirtwork, rough / final grading, road base prep and fully ready for asphalt install (Concrete Curbs & Asphalt by others), tree removal / burning / haul-off, erosion control, off site / on site sewer work, Storm Water Piping, Detention Pond Work, all Water Piping work Complete, Fire Hydrants, Man Holes, Catch Basins, All work Complete per Plans / Specs provided by HG Consultant Inc dated March 27, 2019 and City of Lee's Summit Requirements. JCM Development to pay for City Permits and Bonding required by the City.**

WHEREAS, Developer and Contractor desire to set forth the terms and conditions upon which Contractor will provide these certain services and/or materials in connection with the construction of the infrastructure for a specific phase I of Cobey Creek subdivision (the "Project");

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Contract, the parties agree as follows:

1. Services of Contractor. Contractor shall provide certain services and/or materials and/or other work (collectively sometimes called the "work") in connection with the construction of the Project, as set forth on plans / specs provided by HG Consultant dated March 27, 2019 and required by the City of Lee's Summit. The work of Contractor shall be provided at the reasonable direction and upon the reasonable timetable and schedule provided by Earthworks Excavating within 15 days of the Contract Signing and approved by JCM Development shall be performed and completed by Contractor strictly in accordance with the applicable plans and specifications provided by **HG Consultant** and approved by any applicable governmental authority or utility (ie. City of Lee's Summit / Mo Dot / EPA / Corp of Engineers )(as the same may be amended by change orders approved by Developer), and in accordance with all applicable laws, regulations and codes, including, without limitation, those regarding storage and use of hazardous substances. Contractor shall not be bound by any change order from Developer until an agreement (if appropriate) has been reached between Developer and Contractor with respect to any necessary adjustment in a contract amount. Contractor agrees to

cooperate with Developer to schedule the work and to cooperate with other contractors and suppliers of Developer in scheduling and completing the work. All work of Contractor shall be performed, at Contractor's sole risk and expense, in a first class, skillful and workmanlike manner, free from defect. Contractor shall not subcontract any or all of the work without the prior written consent of Developer. Contractor shall be liable and responsible for all work and activities of its subcontractors and suppliers related to the Project. All work to be performed by any subcontractor or supplier of Contractor shall be subject to all of the provisions and requirements of this Contract, including without limitation, insurance requirements. Contractor shall immediately inform Developer if (i) there are any conflicts or discrepancies known to or discovered by Contractor between any applicable plans and specifications provided by Developer and any applicable laws, regulations, codes or manufacturer's specifications and recommendations or (ii) there are any conditions of the work site that may interfere or conflict with Contractor's work under this Contract.

2. Pricing and Payment. The pricing for Contractor's work shall be as set based on **Earthworks Excavating Proposal** See Attached Proposal signed and agreed to by Developer. Contractor shall provide Developer with requests for payment and invoices for all services and/or materials rendered to Developer, which, where customary and approved by the Project engineer, may include partial services/progress billings. Such requests for payment and invoices shall be in accordance with all plans and Specs and all work that has been completed or material delivered on site. Invoices received by Developer by the 15th day of the month shall be paid on or before the 15<sup>th</sup> day of the following month, subject to Developer's right to withhold payment as provided herein. All invoices from Contractor shall be deemed to include, whether separately stated or not, all sales and other taxes applicable to the work. Contractor shall promptly remit and pay over all such taxes to the applicable governmental authority and shall indemnify Developer with respect to the same. Builder also agrees to pay for material on site in full with no retainage on material. All Material paid for by Developer shall become property of the Developer.

Developer may withhold a 10% retainage from each progress payment until Contractor has fully completed its work.

If in the inspection of the work Developer or any governmental entity or utility reasonably determines that Contractor has not performed the work in a satisfactory manner in accordance with this Contract, Developer may withhold a portion of the payment due to Contractor which fairly represents up to 110% of the cost necessary to bring the work up to satisfactory standards, until such time as Contractor has performed such work in a satisfactory manner in accordance with this Contract. Developer shall provide Contractor with notice of any applicable back charges due to Contractor's failure to perform any call back or warranty work or to complete any work or to perform any other work required to be provided by Contractor. Developer shall have the right to set off and apply amounts due from Developer to Contractor against any unpaid back charges due from Contractor to Developer.

Contractor represents and warrants that all of its employees, laborers, suppliers and contractors will be paid in full on a timely basis, and that mechanic's lien releases will be procured and delivered to Developer in connection with such payments as and when requested by Developer. Unless waived by Developer, lien waivers (which may be conditioned upon

payment by Developer) shall be delivered with each request for payment submitted by Contractor and all subcontractors and suppliers for whom payment is requested and unconditional lien waivers with respect to all prior requests for payment. If at any time Developer has a reasonable basis to believe that Contractor has not paid its suppliers, employees, laborers, contractors or other third parties in a timely manner or has refused or failed to comply with any provision of this Contract, Developer shall have the right to make payment directly to Contractor's suppliers, employees, laborers, contractors and other third parties (and provide notice thereof to Contractor) or to withhold payment until such third parties have been paid and/or Contractor has complied with this Contract.

3. Status of Contractor. Contractor is an independent contractor of Developer and is not an employee, agent, partner or co-venturer of Developer. Contractor shall be responsible for all federal, state and local income and similar taxes associated with receipt of payment for the work and Contractor warrants and represents that all such taxes will be promptly paid by Contractor when due.

4. Materials and Storage. Contractor shall furnish new, first class, undamaged materials and supplies, as applicable to the work, in strict accordance with this Contract. Developer shall have no obligation to receive, unload, move, secure, transfer or handle any materials, supplies or equipment delivered to the job site by or for Contractor, but Developer shall cooperate with Contractor in connection therewith. All materials, supplies and equipment that are brought by the Contractor to the job site and stored at the job site by Contractor during the performance of its work at the job site shall be at the sole risk of Contractor, except that Owner shall provide Contractor with a suitable site for storage of materials.

5. Inspection, Warranty and Correction. All materials furnished and other work performed by Contractor shall be subject to inspection, tests and approval by Developer and government inspectors. Failure to inspect, test or discover any defective workmanship or materials shall not prejudice any rights of Developer. If any work is covered up by Contractor contrary to the instructions of Developer or any governmental inspector, such work must, if required by Developer or the governmental inspector, be uncovered for examination and then recovered, all at Contractor's expense. Contractor warrants and guarantees all of the materials, labor and other work furnished by Contractor for Developer against all defects and against failure under ordinary usage from the date of installation through the expiration of one (1) year after the date Developer has substantially completed its infrastructure development work on the Project and all work has been approved and signed off by the City of Lee's Summit with a Final Approval or, if applicable, such longer periods required by the applicable governmental entities. If a defect or failure occurs during such period, Contractor, at its expense, shall promptly repair or replace the defects or deficiencies in its work. After consultation with Contractor, the choice between repair or replacement shall be made by Developer in Developer's reasonable judgment. Contractor shall also be responsible for the costs of repairing or replacing the work of any other Contractor or supplier that is destroyed or damaged by or in connection with a defect, failure, repair or replacement of Contractor's work. In connection with all defects and deficiencies in Contractor's work (other than in the case of an emergency), Developer shall give Contractor written notice thereof and a reasonable period of time to inspect, document and correct the defect/deficiency. Contractor shall fully cooperate with Developer in the scheduling of all warranty and "punch list" work. Contractor shall assign over to Developer any warranties given

to Contractor by suppliers of appliances, machinery, or materials incorporated into the Project. Contractor is not responsible for engineering or staking mistakes.

6. Permits, Laws and Regulations. All licenses and approvals necessary for Contractor to perform its work and customarily obtained by Contractor shall be secured and paid for by Contractor. Developer will pay for all Permits and Bonds required by the City of Lee's Summit. All other necessary permits, licenses and approvals shall be secured and paid for by Developer or other third parties. Contractor shall comply with all federal, state and local laws, ordinances, codes, rules and regulations applicable to the work. Contractor acknowledges and agrees that it has assumed exclusive control and responsibility to protect the safety of its personnel and to fully comply with and implement all safety-related laws and regulations, including, without limitation, the Occupational Safety and Health Act of 1970, as amended, in connection with the performance of Contractor's work.

Contractor shall fully comply with all requirements of the Immigration Reform and Control Act (including, but not limited to, proper completion of Employment Eligibility Verification, Form I-9) for any and all of its employees or individuals who perform work or services of any kind whatsoever on its behalf on the Project. Contractor shall not allow any employee or individual to perform work for it on any part of the Project without first fulfilling all such requirements, and shall not allow any employee or individual who is not authorized to work in the United States to perform any such work or services.

Contractor, at Developer's expense for the premium, shall provide all bonds required by the governmental entities with respect to the work to be performed by Contractor.

7. Clean Up. Contractor shall be responsible for maintaining a clean work site relating to its work. Upon completion of the work by Contractor and at any other reasonable time requested by Developer, Contractor will perform a clean-up with respect to areas of the property in which Contractor has performed its work. Contractor shall cause all food and food and drink containers from its personnel to be disposed of in trash containers provided by Developer or in a location specified by Developer.

8. Sanitary Facilities; No Smoking. Contractor shall provide the job site with portable sanitary facilities for use by Contractor's personnel. Contractor shall cause its personnel to use such facilities. There shall be no smoking in or around any building or any flammable materials.

9. Insurance. Contractor and its subcontractors and suppliers shall maintain the following insurance in effect at all times: workers' compensation insurance (whether required by statute or not and with no exclusions of owners of Contractor or any otherwise excludable personnel who, in either case, may visit or work at the job site); liability insurance and completed operations coverage, each in an amount of at least \$1,000,000 combined single limit per occurrence and \$2,000,000 general aggregate providing coverage for completed operations, products liability and contractual liability; and automobile insurance for all vehicles (owned or non-owned) which enter Developer's premises at the direction of or for Contractor in relation to Contractor's work. The insurance policies (other than worker' compensation) shall name Developer as an additional insured and certificate holder using an endorsement form providing

premises/operations and completed operations coverage for Developer as an additional insured. All insurance policies shall be with an insurer(s) rated "A-" or better by A. M. Best Rating Service and shall state that they may not be cancelled or amended, in any respect adverse to Developer, without at least thirty (30) days prior written notice to Developer. Blasting and explosion coverage shall be included if Contractor's work includes blasting or explosion activities. Collapse and underground property damage hazard coverage shall be included if Contractor's work includes grading, paving, excavating, subsurface or other earth-moving operations. Contractor shall provide Developer from time to time, prior to starting work and thereafter as and when reasonably requested by Developer (and in all events information regarding replacement coverage not less than two weeks prior to any expiration, cancellation or termination of the existing coverage), a current original certificate(s) of insurance issued by the insurer or its agent evidencing that Contractor has such insurance in effect, with the actual form of the additional insured endorsement required above attached to the certificate. Contractor agrees to maintain the products and completed operations coverage, as required above, in effect for such period of time as may be necessary to provide insurance coverage for Contractor and Developer for the entire period of the applicable statute(s) of limitations and/or repose which pertain to all possible claims relating to Contractor's work for the Project and Developer's obligations with respect thereto. To the fullest extent permitted by law, Contractor shall indemnify and hold Developer harmless against any loss, damage or expense incurred by Developer arising from the willful acts or negligence of Contractor or its employees, laborers, agents or contractors, as well as any injury, loss or damage suffered by any employees, laborers, agents or sub-subcontractors of Contractor.

10. Indemnity. The work of Contractor shall be at the risk of Contractor exclusively. To the fullest extent permitted by law, Contractor shall indemnify, defend (at Contractor's sole expense) and hold harmless Developer, its officers, directors, managers, members, owners, employees and agents (collectively, the "**Indemnified Parties**"), from and against any and all claims and causes of actions ("**claims**"), and all losses, damages, judgments, settlements, costs and expenses of every kind and description whatsoever, including, without limitation, reasonable attorneys fees, investigative and consultant costs, court costs and appeal fees from such claims, arising out of or connected with Contractor's work, or resulting from or arising out of Contractor's breach of any provisions of this Contract, including, but not limited to, breach of Contractor's warranties hereunder. The foregoing indemnity and defense provisions shall apply to any and all acts and omissions (whether or not constituting a warranty item, breach of contract, negligence, willful misconduct or other actionable conduct and whether or not active or passive) of Contractor and its officers, directors, owners, employees, agents and subcontractors.

11. Vehicle Parking, Silt Fencing and Mud. Vehicles of Contractor and its employees, laborers, agents or subcontractors shall be parked in areas approved by Developer. No vehicles shall be left on or near the job site overnight without the prior written consent of Developer. Contractor shall preserve all silt fencing, hay bales and other erosion control devices installed for the Project and shall, at its expense, repair and replace any such devices that are disturbed by Contractor or its employees, laborers, agents, subcontractors, or suppliers. Contractor, at its expense, shall remove all mud that its vehicles place on the streets. If Contractor or its employees, laborers, agents or subcontractors violate any of such prohibitions, Contractor shall be responsible and pay for all towing, clean-up, repairs, replacements and fines.

12. Other Rules and Regulations. Developer shall have the right to establish and amend from time to time other rules and regulations relating to the job site, including, without limitation, a fine system for violation of this Contract or such rules and regulations. All such rules and regulations shall be in writing and delivered to Contractor and shall become effective and be automatically incorporated into this Contract upon delivery to Contractor. The initial set of rules and regulations (if any) is attached to this Contract and is incorporated herein by reference.

13. Completion. The work under this Contract shall be substantially completed by not later than **October 31,\_\_\_\_, 2019**, subject to any adjustment for times set forth in any change orders. Contractor to provide Developer with an approved Schedule signed off and agreed to by the Developer.

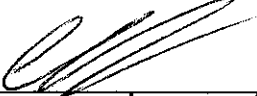
14. Miscellaneous. This Contract shall be governed by and interpreted in accordance with the laws of the State of Missouri and shall, in all events, be interpreted, and modified where necessary, to comply with Sections 436.300 through 436.336 of the Missouri Revised Statutes, as amended. This Contract may be amended only in writing signed by both parties and may not be assigned without the written consent of both parties. This Contract shall be binding upon the parties hereto, their respective successors, heirs and permitted assigns. No act or omission or failure of a party to insist upon the strict performance of the terms and conditions of this Contract shall be deemed or construed as a waiver or relinquishment by such party of its right at any time to insist upon the full and complete performance by the other party of each and all of the terms and conditions hereof.

15. Severability. If for any reason any one or more terms, provisions, or conditions of this Contract are determined by a court of competent jurisdiction to be invalid or unenforceable, the validity, effectiveness and enforceability of the remaining portions of this Contract shall not be affected thereby but shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first above written.

**DEVELOPER:**

JCM DEVELOPMENT, LLC

By:   
Name: JCM Development  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_


Telecopier: \_\_\_\_\_

Mobile: \_\_\_\_\_

Email: \_\_\_\_\_

**CONTRACTOR:**

Earthworks Excavation and Associates LLC

By:   
Name: Scott Rasa  
Title: Owner

Address: \_\_\_\_\_  
\_\_\_\_\_

19495 Bell Road

Higginsville, MO 64037

Telephone: (660)584-5020

Telecopier: \_\_\_\_\_

Mobile: (816)217-4020

Email: estimating.ewex@wedigmo.com

Federal Tax No.: 27-0136753

Name, Address and Telephone Number of  
Contractor's Insurance Agent:

GM Peters Insurance

11 N Water

Liberty, MO 64068

Kim Beckman

(816)781-4922

Agent Name

Phone No.

# Earthworks Excavation & Associates LLC

19495 Bell Road

Higginsville, MO 64037

Phone: 660-584-5020 Fax: 660-584-3786 [Estimating.ewex@wedigmo.com](mailto:Estimating.ewex@wedigmo.com)

## Off Site Sanitary Sewer Unit Price

NO	Item Description	Unit	Unit Price	Quantity	Extension
1	18" DIP with Restrain Joint	L.F	132.00	180	23,760.00
2	12" DIP with Restrain Joint	L.F	41.00	100	\$4,100.00
3	15" PVC SDR-26	L.F	31.00	938	\$29,078.00
4	12" PVC SDR-26	L.F	27.00	1246	\$33,642.00
5	4"DIA Sanitary Manhole(1'-10' deep)	EA	3260.00	1	\$3,260.00
6	4"DIA Sanitary Manhole(10'-15')	EA	4160.00	8	\$33,280.00
7	Concrete Encasement_ Sanitary	L.F	61.00	50	\$3,050.00
8	Connection to Existing Manhole	EA	450.00	1	\$450.00
9	Silt Fence	L.F	2.25	2382	\$5,359.50
TOTAL					\$135,979.50

## On Site Sanitary Sewer

NO	Item Description	Unit	Unit Price	Quantity	Extension
1	12" PVC SDR-26	L.F	31.00	882	\$27,342.00
2	8" PVC SDR-26	L.F	21.50	3206	\$68,929.00
3	4" PVC SDR-26	L.F	19.75	1764	\$34,839.00
4	4"DIA Sanitary Manhole(1'-10' deep)	EA	3260.00	2	\$6,520.00
5	4"DIA Sanitary Manhole(10'-15')	EA	4250.00	15	\$63,750.00
6	8"x4" Service Wye	EA	112.00	54	\$6,048.00
7	Service Line Checks	EA	125.00	54	\$6,750.00
8	Service Locators	EA	68.00	54	\$3,672.00
9	10" PVC SDR-26	L.F	26.40	140	\$3696.00
TOTAL					\$221,546.00