

Repealed by  
Ord #110  
~~Ord #99~~  
Aug. 99

**AN ORDINANCE OF THE CITY OF LOWRY CROSSING, TEXAS**

**ORDINANCE NO. 99**

AN ORDINANCE OF THE CITY OF LOWRY CROSSING, TEXAS, AMENDING THE SUBDIVISION ORDINANCE OF THE CITY, ORDINANCE 26A, TO PROVIDE REGULATIONS AND BONDS FOR THE DEVELOPMENT AND CONSTRUCTION OF ROADS, STREETS, PUBLIC IMPROVEMENTS, OR IMPROVEMENTS WITHIN OR WITHOUT A SUBDIVISION, THAT WILL BE DEDICATED TO THE CITY; PROVIDING FOR A CONTRACT BETWEEN THE CITY AND ANY DEVELOPER OR CONTRACTOR; PROVIDING FOR PERFORMANCE, PAYMENT AND MAINTENANCE BONDS; PROVIDING THAT SUCH REGULATIONS SHALL APPLY TO ALL SUCH CONSTRUCTION WITHIN THE CITY OR ITS EXTRATERRITORIAL JURISDICTION WHERE SUCH IMPROVEMENT IS INTENDED TO BE DEDICATED TO THE PUBLIC INCLUDING SUCH CONSTRUCTION BOTH WITHIN OR WITHOUT EXISTING OR PROPOSED SUBDIVISIONS; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING PENALTIES FOR VIOLATION OF THIS ORDINANCE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE; PROVIDING THAT EACH AND EVERY DAY AN OFFENSE IS CONTINUED SHALL CONSTITUTE A NEW AND SEPARATE OFFENSE; AND DECLARING AN EFFECTIVE DATE.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOWRY CROSSING, TEXAS:**

**SECTION 1. AMENDMENT TO SUBDIVISION ORDINANCE**

That the Subdivision Ordinance of the City of Lowry Crossing, Ordinance 26A, is here by amended to read as follows:

That the last paragraph of SECTION 4 is hereby deleted and the following new SECTION 4A is added in its place:

**"SECTION 4A. Development & Construction of Roads and Public Improvements.**

**1. IN GENERAL**

**a. Authority of the City.**

All construction work within the City of Lowry Crossing or its extraterritorial jurisdiction on any road, street, or public improvement, within or without a subdivision, that will be dedicated to the City of Lowry Crossing, shall be done in accordance with the requirements, rules, regulations and specifications of the laws of this state and the ordinances and codes of the City of Lowry Crossing. All such construction work shall be set out in a contract with plans, and specifications, and shall be completed in accordance with such contract. Such regulations shall apply to all such construction within the city or its extraterritorial jurisdiction when such improvement is to be dedicated to the public, including road and other improvement to be constructed both within or without existing or proposed subdivisions.

**b. Plans.**

The plans and specifications of such construction work shall show in detail the work to be accomplished under the contract. Where supplementary bridge plans, shop drawings, and detail drawings are necessary, they shall be furnished by the Developer or Contractor and approved by the City prior to the beginning of the work involved. All plans shall contain the seal of a Registered Professional Engineer, licensed to practice in the State of Texas, and experienced in road and storm sewer design. Approval by the City of the Developer's drawings will not relieve the Contractor of any responsibility under the contract.

**c. Use of Terms Contractor, Developer and Subdivider**

The provisions of this chapter shall apply to any person, corporation, or other business entity, doing or causing such construction work to be done within the City or the extraterritorial jurisdiction of the City. The singular use in this chapter of the terms Developer, Contractor, or Subdivider, shall not be limited to that single classification, and the use of each such term shall also mean any person, corporation, or other entity doing such work.

**d. Construction Stakes.**

The Developer or Contractor will furnish and set construction stakes establishing lines and grades in roadway work and centerlines and bench marks for bridge work and will furnish the Contractor with all necessary information relating to lines and grades.

**e. Control of Materials, Testing and Final Inspection.**

The Developer shall employ a Registered Professional Engineer or a qualified Laboratory Testing Agent for each project. Such Engineer or Agent shall ensure that construction will be in accordance with the approved plans and specifications. Duties of the Engineer or Agent will include, but will not be limited to, inspection, testing compaction, moisture content, and lime application rate of the subgrade, inspection and testing Plasticity Index (PI) and lime application rate of the foundation course, and testing application rates, thickness, density, and inspection of the installation of the roadway surface course. The City and Contractor will receive reports of all items and those not in compliance with the specifications shall have recommendations for corrective action. The City will have full authority to ensure that the corrective action required will be made. The Developer will bear the cost of the Engineer or Agent and any required testing. Samples and testing results shall be furnished to the City. Material testing shall meet the Texas Department of Highways and Public Transportation (TDHPT) requirements, Standard Specifications for Roads and Bridges Construction.

All items refer to item numbers in TDHPT Standard Specifications, Items 110 and 132, Roadway Excavation and Embankment, provide requirements for the construction within which the Contractor shall work so as to conform to lines and grades as shown on the plans.

Whenever the work provided for in, and contemplated under, the contract, has been completed and the final clean up performed, the Developer will notify the City. The City will conduct the "Final Review" which will be made within ten (10) days after such notification or as soon thereafter as practicable. After such final review, if the work is found to be satisfactory, the Developer will be notified. If not satisfactory, the Developer will be notified in writing of the corrective action required for approval.

Where the work consists of concrete pavements of concrete base, the final acceptance will not relieve the Developer from responsibility for the thickness of the concrete, which will be determined by means of taking cores from pavement. The coring of the pavement will be done within thirty (30) days from the completion of the pavement. The Developer will bear the expense of having the pavement cored.

## 2. DEVELOPMENT CONSTRUCTION

### a. Contract Required / Bonding Requirements

Each Subdivision Developer and/or Contractor, before starting construction of any road, street, alley, curb, gutter, drainage, sidewalk, driveway approach, storm sewer, water main or system, sanitary sewer, utility service, street lighting, or other public improvement or improvement intended to be dedicated to the City, shall enter into a contract with the City of Lowry Crossing to be executed by the Developer and his Contractor or Contractors for such construction projects. Said contract to contain, but not be limited to the following provisions and follow generally the form of the following Exhibit "A":

- (1) Identification of the contractor that will construct the streets, alleys, curbs, gutters, drainage facilities, water mains, or sanitary sewers by name, address and individual authorized or entitled to contract on behalf of said contractor.
- (2) A summary description of the improvements to be constructed and incorporating into said contract by reference all special provisions, plans, working drawings, and plats approved by the City Council.
- (3) A covenant that the work to be performed will be performed pursuant to the standard specifications as found in the Ordinances of the City of Lowry Crossing; and an acknowledgment that a copy of all such provisions have been acquired by and are in the personal possession of each party to the contract.
- (4) The total consideration to be paid for the work to be performed including the contract price for preparation and construction of the streets, drainage improvements, utilities, extension and/or installation of any water and sanitary sewer systems, permanent corner markers, and the seeding of all roadsides and right of ways.
- (5) The date that work to be performed will be completed.
- (6) A statement sufficiently identifying the subdivision involved.
- (7) Proof or adequate evidence of the execution and filing of good and sufficient Performance and Payment bonds or other acceptable surety to secure the Contractor's performance of the work in accordance with the plans, specifications, and contract conditions, and the payment of

obligations for labor or materials. A Cash Bond may, under special circumstances, be approved by the City Council as security in lieu of the Performance, Payment and Maintenance Bonds when the contract amount is less than \$25,000.00. Such cash bond shall be prepared pursuant to a separate written agreement approved by the City Attorney.

- (8) An agreement that upon completion of the work and prior to acceptance by the City, Contractor will deliver to the City a Maintenance Bond providing that said contractor shall maintain said work and keep the same in good repair for the maintenance period of one (1) years from the date of written acceptance by the City of Lowry Crossing, Texas.

### 3. Performance and Payment Bonds

- a. Unless other acceptable surety is approved by the City Council the following bonds shall be required:

**A Performance Bond** for the protection of the City, payable to the City of Lowry Crossing, Texas, in the full amount of the contract price. Said bond shall be conditioned on faithful performance of the work in accordance with the plans, specifications, and contract conditions, and shall be executed by a corporate surety authorized to business in this state and in accordance with Article 7.19-1, Vernon's Texas Insurance Code and having a "Best Rating of A." The City Engineer or other competent authority acting in that capacity shall approve the amount of such surety and the bond shall be approved as to form by the City Attorney.

**A Payment Bond** which shall be for the use and payment of bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply the work labor or material. The payment bond shall be in the amount of the contract, executed to the City of Lowry Crossing by a corporate surety authorized to business in this state in accordance with Article 7.19-1, Vernon's Texas Insurance Code, having a "Best Rating of A" and approved as to form by the City Attorney.

- b. The Performance bond or other surety for performance may be released to the proper party upon completion of the following:
  - (1) The City Engineer or other officer appointed by the City Council certifies to the Mayor that the streets and other improvements have been completed as required by and to the specifications contained in the regulations of the City; and

- (2) A Maintenance Bond or other acceptable surety bond has been executed and delivered to the City and approved as to form by City Attorney.

**c. The Maintenance Bond.**

After the work to be performed pursuant to the contract has been completed but before said work is accepted in writing by the City of Lowry Crossing, a **Maintenance Bond** shall be delivered to the City. Said bond shall be in the amount of the contract, executed by a corporate surety authorized to business in this state in accordance with Article 7.19-1, Vernon's Texas Insurance Code, having a "Best Rating of A" and approved as to form by the City Attorney. The Maintenance Bond shall provide that the contractor (Principal) and the Surety shall be firmly bound unto the City of Lowry Crossing, Texas, on condition that said contractor shall maintain said work and keep the same in good repair for the maintenance period of one (1) years from the date of written acceptance by the City of Lowry Crossing, Texas.

**4. Council Discretion**

All provisions of this Section notwithstanding, the City Council shall have full discretion to waive or alter the requirements of this section, and limit or totally eliminate the bond requirements of this section, where the contract is less than \$15,000.00.

**EXHIBIT A -  
CONTRACT BETWEEN DEVELOPER/CONTRACTOR AND CITY**

**CONTRACT**

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

WHEREAS, a developer of property located within the corporate limits of the City of Lowry Crossing, Texas, must develop such property in compliance with applicable ordinances and regulations of the City of Lowry Crossing; and

WHEREAS, there are special regulations and specifications that are applicable to construction that involve work projects which, upon completion, will be dedicated to the City as streets, alleys, curbs, gutters, and drainage facilities, water mains and sewer facilities; and

WHEREAS, the developer may elect to make such improvements himself or through a private contractor, as provided by the Ordinances of the City of Lowry Crossing; and

WHEREAS, \_\_\_\_\_, hereinafter called Owner, is the owner of the subdivision or property described herein; and

WHEREAS, Owner has elected, and has entered into an agreement with \_\_\_\_\_, hereinafter called Contractor, to perform such work projects, hereinafter called "the Work," for a total consideration of (\$\_\_\_\_\_) Dollars; and

WHEREAS, the Ordinances of the City require such parties to enter into a contract with the City, as set out in the Code or Ordinances of the City of Lowry Crossing.

NOW, THEREFORE, the undersigned Owner and Contractor, in consideration of the issuance of permits for "the Work," agree as follows:

**WITNESSETH:**

1.

Owner and Contractor, undertake, covenant and agree to perform or cause "the Work" to be performed, in accordance with, and conforming to, the standards and specifications of the City of Lowry Crossing, Texas, as provided for in the Ordinances of the City of Lowry Crossing, including any other special provision, plan, or working drawing approved by the City Council of the City of Lowry Crossing, Texas.

Owner and Contractor agree that all "the Work" shall be completed on or before the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and that time is of the essence.

The Property or Subdivision is described as follows:

"The Work" to be performed is described as follows:

(The full contract between Developer and Contractor incorporated by reference and attached as an Exhibit. It shall contain provisions for the Performance Bond, Payment Bond and Maintenance Bond required by City's Ordinances and an agreement to furnish the Maintenance Bond as required.)

2.

Owner and Contractor each acknowledge that they have obtained copies of the City of Lowry Crossing standards and specifications governing the type of improvements to be made.

3.

The Owner and Contractor agree that upon completion of "the work," but before acceptance of the improvements by the City of Lowry Crossing, Contractor shall deliver to the City of Lowry Crossing a properly executed Maintenance Bond as required by the Ordinances of the City of Lowry Crossing.

Owner and Contractor hereby bind themselves, their heirs, successors, assigns, and representatives, for the faithful and full performance of the terms and provisions of this contract, individually, jointly, and severally.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Contractor

Approved for City of Lowry Crossing: Approved as to form:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Attorney

Attest:

\_\_\_\_\_  
City Secretary

**SECTION 2. REPEALING CLAUSE**

All parts of ordinances, inconsistent or in conflict with the provisions of this ordinance are hereby repealed.

**SECTION 3. SEVERABILITY CLAUSE**

If any article, paragraph or subdivision, clause or provision of this ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so decided to be invalid or unconstitutional.

**SECTION 4. SAVINGS CLAUSE**

An offense committed before the effective date of this ordinance is governed by the prior law and ordinances, as amended, in effect when the offense was committed and the former law is continued for this purpose.

**SECTION 5. PENALTY CLAUSE**

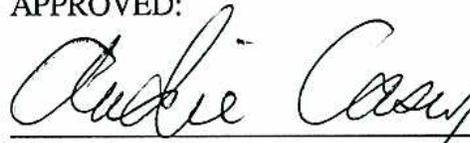
Any person firm or corporation violating any provision of this ordinance shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed the sum of Five Hundred Dollars (\$500.00) for each offense, and each day that a violation occurs or continues constitutes a separate offense.

**SECTION 6. EFFECTIVE DATE**

This ordinance shall take effect immediately after its passage and publication of the caption, as the law in such cases provides.

**DULY ADOPTED** by the City Council of the City of Lowry Crossing, Texas, on the 3rd day of February, 19 98.

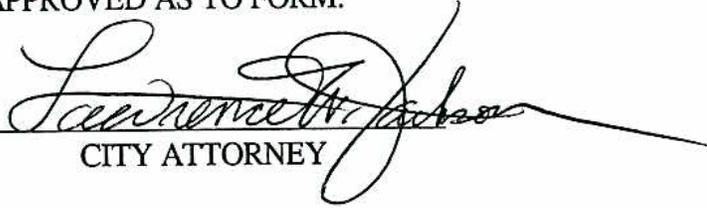
APPROVED:

  
MAYOR

ATTEST:

  
CITY SECRETARY

APPROVED AS TO FORM:

  
CITY ATTORNEY