

**INFORMAL DEVELOPER AGREEMENT  
TO BE EXECUTED BY  
DEVELOPERS WISHING TO LET THEIR OWN CONTRACTS  
FOR CONSTRUCTION OF WATER AND/OR  
WASTEWATER FACILITIES FOR  
PMP# \_\_\_\_\_**

(Project Name and Legal  
Description) \_\_\_\_\_

The undersigned DEVELOPER has familiarized himself with the City of Fort Worth's "Policy for the Installation of Community Facilities" governing water and/or wastewater facility installations and fully understands all the provisions, terms and conditions of that policy, and wishes to exercise the option contained in that policy permitting a DEVELOPER to let his own contracts for construction of such water or wastewater facilities.

In addition to all other requirements of the City's Policy for the Installation of Community Facilities, the DEVELOPER specifically agrees to follow the procedures set forth below:

1. To employ a construction contractor who is approved by the Director of the Water Department. The requirements for such approval shall include, but not be limited to:
  - a. The Contractor proposed to perform the work hereunder shall be prequalified as a bidder in the same manner that the City Water Department prequalifies bidders for City let contracts. The prequalification requirements for City let Water and Wastewater contracts are as follows:

A current financial statement, and acceptable experience record, and an acceptable equipment schedule must be filed with the Director of the Water department at least two weeks prior to the hour for opening bids. The financial statement required shall have been prepared by an independent certified public accountant or an independent public accountant holding a valid permit issued by an appropriate state licensing agency, and shall have been so prepared as to reflect the current financial status. This statement must be current and not more than one (1) year old. In the case that a bidding date falls within the time a new statement is being prepared, the previous statement shall be updated by proper verification. Proposals submitted by a prospective bidder who has not fulfilled the above requirements shall be returned unopened. Liquid Assets in the amount of ten (10%) percent of the estimated project cost will be required.

For an experience record to be considered to be acceptable for a given project, it must reflect the experience of the firm seeking qualifications in work of both the same nature and magnitude as that of the project for which bids are to be received, and such experience must have been on projects completed not more than five (5) years prior to the date on which bids are to be received. The Director of the Water Department shall be the sole judge as to the acceptability of experience for qualification to bid on any Fort Worth Water Department projects.

The prospective bidder shall schedule the equipment he has available for the project and state that he will rent such additional equipment as may be required to complete the project on which he submits a bid.

- b. The Contractor shall meet the City's requirements for being licensed and bonded to do work in public streets.
2. To require the Contractor to furnish the Water Department performance bond and payment bond in the name of the City and the Developer, and a maintenance bond in the name of the City on forms provided by the City, for 100% of the contract price of the facility, said performance, payment, and maintenance bonds to be furnished to the City before work is commenced.
3. To deposit with the Water Department an amount equal to 10% of the contract price for all facilities to be constructed by the Contractor employed by the DEVELOPER, prior to commencing of any construction work. Said amount shall be for the engineering services to be performed by the DOE Department Inhouse Design Section, if the Water Department has approved the plans and specifications for the work to be done. In this regard, if the DEVELOPER wishes to employ his own engineers to prepare plans and specifications, he may

do so, subject to the requirements of City's Policy for the Installation of Community Facilities (including waiver of all engineering charges) and to the further requirement that:

- a. Written approval by the Director of the Water Department of the plans and specifications so prepared shall be obtained prior to the employment of any contractor to perform the work contemplated.
  - b. Approved plans and specifications shall be furnished to the Engineering Division of the Water Department prior to a Confirmation of Award of Contract being issued by the Department of Engineering Plan Review Division.
4. To require the Contractor to attend a Pre-Construction Meeting set up by the DOE Head Inspector prior to commencing construction of the facility or facilities so that inspection personnel will be available.
  5. To make this agreement, as well as the General Specifications of the Fort Worth Water Department (except as they are modified by the plans and specifications approved by the Director of the Water Department to govern construction of the work) an integral part of any contract with a contractor to construct any or all of the facilities involved.
  6. To require the Contractor to allow the construction to be subject to inspection at any and all times by Department of Engineering Construction Inspection forces and not to install any Wastewater or water facility unless an inspector designated by the Director of the DOE is present and gives his consent to proceed.
  7. To require the Contractor to pay for such laboratory tests made as the City may require.
  8. To secure approval by the Director of the Water Department of any final payments, or if there is City Participation, all partial payments to the Contractor, such approval to pertain only to satisfactory completion of the work for which payment is made and not to constitute approval of the quantities on which payment is based.
  9. To delay connection of any buildings to service lines of wastewater and water mains until such wastewater, water mains, and services have been completed to the satisfaction of the Water Department.
  10. To furnish simultaneously with the execution of the construction contract let by the Developer, performance and payment (developer) bond in the name of the City of one hundred percent (100%) of the estimated contract cost of the related water and/or wastewater construction, as stated in the construction contract, to guarantee timely payments to the Contractor for completed work and/or to guarantee satisfactory performance of this agreement and substantial completion of the water and sewer facilities to be installed. If the deposit is in the form of cash, the deposit shall be for one hundred twenty five percent (125%) of the estimated developer's share of the cost of the Water and Wastewater facilities. In addition, developer shall pay to the City in cash for the construction inspection fee equal to two percent (2%) and a lab testing fee of two percent (2% for those started after December 14, 2005) of the developer's share of the construction cost of related water and/or wastewater facilities as stated in the construction contract.
  11. Work hereunder shall be completed within two (2) years from date hereof, and it is understood that any obligation on the part of the City to make any refunds with respect to water and/or wastewater facilities shall cease upon the expiration of two (2) years from date hereof, except for refunds due from "front foot charges" on water and wastewater mains, which refunds may continue to be made for a period of ten (10) years commencing on the date that approach mains are accepted by the Director. If less than 70% of the eligible collections due to the developer have been collected, the Developer may request in writing an extension of up to an additional 10 years for collection of front charges.

The DEVELOPER further covenants and agrees to, and by these presents does 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 said DEVELOPER, his contractors, subcontractors, officers, agents or employees, or in consequence of any failure to properly safeguard the work, or on account of any act, intentional or otherwise, neglect or misconduct of said DEVELOPER, his contractors, sub-contractors, 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 Fort Worth, its officers, servants, or employees.**

It is expressly understood and agreed by the parties hereto that execution of this agreement does not bind the City of Fort Worth to participate in or contribute to the cost of any of the improvements described herein; nor shall the City of Fort Worth be responsible or liable for any portion of the costs incurred by the developer, its officers, agents, employees, contractors or sub-contractors for the design and construction of the improvements described herein, unless and until the parties hereto execute a Formal Community Facilities Agreement, duly authorized by the City Council at a regular meeting, signed by the City Manager, and providing for the City's participation in the costs of said improvements.

This agreement pertains to water and/or wastewater facilities required to serve the following described property and project:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ACCEPTED FOR FORT WORTH  
WATER DEPARTMENT:

DEVELOPER:

By: \_\_\_\_\_  
DATE: \_\_\_\_\_

ACCEPTED AS TO FORM  
FORT WORTH LEGAL DEPT.

\_\_\_\_\_

\_\_\_\_\_  
(print name and title)

MARC A. OTT, ASSISTANT CITY MANAGER  
DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Water Project # P \_\_\_\_ - \_\_\_\_\_ Contract Amount for Water Improvement \$ \_\_\_\_\_  
(See Attached Exhibit "A" for Water Layout and Cost Estimate)

Sewer Project # P \_\_\_\_ - \_\_\_\_\_ Contract Amount for Sewer Improvement \$ \_\_\_\_\_  
(See Attached Exhibit "B" for Sewer Layout and Cost Estimate)

PMP # \_\_\_\_\_

DOE# \_\_\_\_\_

Related Plat Case # \_\_\_\_\_  
(If Applicable)

Related Building Permit # \_\_\_\_\_  
(If Applicable)

**(Need 3 copies with original signature on each.)**

Mail to: Peggy Chaney  
Water Engineering  
1000 Throckmorton  
Fort Worth, TX 76102

## Please follow Signature Authority rules included:

Any documents that do not meet the criteria will be returned unapproved.

Per LEGAL DEPARTMENT:

**IF THE DEVELOPER SIGNATURES ON FORMAL & INFORMAL CFAs (COMMUNITY FACILITY AGREEMENT), BONDS, ESCROW PLEDGES, LETTERS OF CREDIT AND COMPLETION AGREEMENTS DO NOT FALL IN THE FOLLOWING CATEGORIES, THEY MUST HAVE A CORPORATE OR COMPANY BOARD AUTHORIZATION TO SIGN:**

1. Corporations(**Corp.**): Only the **president** and **vice presidents** of a corporation have apparent authority to bind the corporation to the agreement. A contract document executed by the president or any vice president **is** acceptable. If the document is executed by any other person, the same **is not** acceptable, **unless** the City has on file a corporate resolution of the board of directors authorizing the individual to execute the documents.

2. General Partnerships(**GP**): Contract documents may be executed by **any partner** of general partnership. The signature must be accompanied by the word "Partner".

3. Limited Partnerships(**LP**): Contract documents may be executed **only** by the **General Partner**. The signatures must be accompanied by the words "General Partner".

BB of Texas L. P.

By Beautiful Buy Homes, Inc.  
Its General Partner

By: \_\_\_\_\_  
John Doe, President

(NOTICE THAT THE PRESIDENT IS PRESIDENT OF THE GENERAL PARTNER. HE CANNOT BE PRESIDENT OF A PARTNERSHIP) SEE THE LEGAL REPRESENTATIVE FOR THE DEVELOPER IF THERE IS ANY QUESTION.

4. Limited Liability Partnerships(**LLP**): Contract document may be executed by **any Director/Managing Partner**. The signature must be accompanied by the words "Managing Partner" or "Director":

5. **Sole Proprietorships**: Contract Documents must be executed **by the Owner** of the sole proprietorship. The signature must be accompanied by the word "Owner".

6. Limited Liability Company or Corporation (**LLC**): Contract document may be executed by **any President, Vice President, or Manager**.

7. **Joint Venture**: Must have a **Managing Agent** sign.

The signature name should be spelled under the signature and the title placed beside or below it. The documents will be returned until they are done according to legal standard. All persons submitting these types of documents may refer to Peggy Chaney 817-392-8428, Caroline Jones 817-392-7905, for general questions, or to Gary Steinberger 817-392-7615 for authorization questions. Facsimile: 817-392-8359

## FINANCIAL GUARANTEES FOR COMMUNITY FACILITIES

### ESCROW CASH 125%

\*\*Escrow accounts are for the money funds which the City of Fort Worth Water Department will hold until all Contractors and Suppliers are paid by the Developer and work accepted. Upon verification of final green sheet Inspector's Estimate, the escrow money will be refunded, minus any fees due.

### DEVELOPER'S BOND: 100%

1. Check the Surety Company on [www.fms.treas.gov/c570/c570.html](http://www.fms.treas.gov/c570/c570.html) to see if they are an accepted company to grant bonds in Texas, incorporation state is correct, amount does not exceed limit.
2. Check the engineer's estimate for all included parts(water, sewer, paving, storm drain, etc. minus inspection fees) to see if it exceeds bond amount.
3. The stamped bond sheet should be on the back. Developer must be on State Entity List.
4. The power of attorney should be a principal. Developer's Signer should be able to bind developer to contract.

### COMPLETION AGREEMENT: (Plat held hostage to end after all proof signed. Developer steps 1,2)

1. Check the engineer's estimate for all included parts (water, sewer, paving, storm drain, etc. minus inspection fees) to see if it exceeds bond amount. Must have 4 copies (City, TPW, developer, bank).
2. Check if there is an FP-or FS- plat number on the front to back up the financial guarantee. Costs of all portions are attached to the back. One set of 8 ½ x11" exhibits must be included.
3. All the copies must be signed by the Assistant Attorney, Legal, and Marc Ott, Asst.City Mgr. (Allow up to 10 working days each, for signatures) .
4. When the project is complete the plat can be released\* because it is no longer needed as security.  
\*With an inspector's fully signed final estimate which includes an **affidavit of payment to subcontractors and suppliers from the contractor, a surety release, a contractor's lien waver (on contractor 's letterhead, reference project name & number and state, "{contractor's name} has been paid in full for this project."** Water Dept. allows the plat release with a Letter of Acceptance from the Chief Inspector attached to the affidavit, lien waiver, & surety release, but no refund. No partial release of funds will be done during progress of project per M&C G-14988.
5. Same as Escrow Agreement. Refund letter will be processed when green sheet final Inspector's Estimate comes through signed.

### ESCROW PLEDGE AGREEMENT 125% steps 1&2, get form from Water website )

1. Can only be used when there is City Participation.
2. Check the engineer's estimate for all included parts(water, sewer, paving, storm drain, etc. minus inspection fees) to see if it exceeds bond amount. Must have 4 copies (City, TPW, developer, bank).
3. Check if there are proper signatures from the bank and developer.
4. Check against Escrow Pledge form on website to compare for any changes the bank or developer may have made.
5. Must have 4 copies (City, TPW, developer, bank).
6. Check if there is an FP-or FS- plat number on the front to back up the financial guarantee. Costs of all portions are attached to the back. One set of 8 ½ x11" exhibits should also be included.
7. Give TPW a copy if there is TPW info concerning paving, drainage, signs or lighting.
8. Release plat comments after all the copies are signed by the Assistant Attorney, Legal, and Marc Ott, Asst.City Mgr. (Allow up to 10 working days each, for signatures)

### LETTER OF CREDIT- 125%

Revised Per Legal Memo &details added 4/06/2006

1. Must be from a bank system with branch in Tarrant County or drawable here by fax drawn on a system with a \$100 million in assets. Get format of letter or make sure it mentions project name and developer. Must be for at least one year, preferably 2 years. There shall be no reduction in the amount of the letter of credit during the construction of the community facilities. The City shall notify the issuer of the letter of credit in writing that the letter of credit is released when the project is finished.