

SECTION II: PROCEDURES FOR OBTAINING A CONTRACT FOR THE INSTALLATION OF COMMUNITY FACILITIES

1. Contracts for the Installation of Community Facilities Required:

A contract for the installation of community facilities is required when community facilities are needed and whenever any new construction is planned. The life of a standard Community Facilities Agreement (CFA) shall be two (2) years. The City's obligation to participate (exclusive of front foot charges) in the cost of the community facilities shall terminate if the facilities are not completed within two (2) years; provided, however, if construction of the community facilities has started within the two year period, the developer may request that the CFA be extended for one year. If the community facilities are not completed within such extension period, there will be no further obligation of the City to participate.

City participation in a CFA shall be subject to the availability of City funds and approval by the Fort Worth City Council.

2. Information Regarding Proposed Contracts:

Information concerning proposed contracts for installation of community facilities can be obtained from the Transportation and Public Works, Water or Development Departments.

3. Requests for Preparation of Community Facilities Agreements:

A. The developer shall request in writing a formal CFA with the City providing for the installation of all streets, storm drainage, street lights, electronic traffic signals, water and/or wastewater facilities within the development along with all required approach facilities and provide the appropriate department with plans and specifications for the proposed community facilities.

B. The plans and specifications in a format acceptable to the City for the construction of the community facilities shall be prepared by an engineer licensed to practice in the State of Texas. For water or sewer extension projects of less than 600 feet using pipe sizes of 12 inches or smaller, the developer may request the City to design the project at a cost of 10% of the total construction cost. If the plans and specifications meet the applicable policies, regulations and design criteria, they shall be approved by the City. The determination as to compliance of the plans and specifications with applicable policies, regulations and design criteria shall be the sole responsibility of the Director.

1. Approval by the City of the plans and specifications shall not constitute or be deemed to be a release of the responsibility and liability of the developer and its engineer, their officers, agents, employees and subcontractors, for the accuracy and competency of the plans and specifications, including but not limited to surveys, location of subsurface investigations, design, working drawings and specifications and other engineering documents.
 2. Such approval shall not be deemed to be an assumption of such responsibility and liability by the City for any negligent act, error or omission in the conduct or preparation of the subsurface investigation, surveys, designs, working drawings and specifications and other engineering documents by the developer and its engineer, their officers, agents, employees and subcontractors, it being the intent of the parties that approval by the City signifies the city's approval of only the format of the plans and specifications and the general design concept of the improvements to the constructed.
- C. Before a developer may award a contract for the construction of community facilities:
1. For water and wastewater facilities, the contractor must be prequalified in accordance with the requirements of the Water Department.
 2. For street and storm drainage facilities, the contractor must be licensed and bonded to do work in the public streets in accordance with the City Code.
4. Early Construction of Water and Sewer Facilities:

If the developer desires that work be started on water and/or sanitary sewer facilities in advance of execution of the contract covering installation of all facilities, such work may be initiated in the following manner:

- A. Submit a written request to the Water Department that construction work on water and/or sewer facilities be initiated at the earliest possible time, even if before the requested contract providing for these and other facilities is executed, and stating his understanding that such facilities will not be connected and placed in service until the contract is executed.
- B. As determined below, deposit funds for the developer's share of the cost of such water and/or sewer facilities prior to award of a construction contract, if work is to be done by a private construction firm, or prior to issuance of a project authorization, if construction is to be done by City forces.
- C. It is necessary that the subdivision plats be recorded prior to water and sewer facilities construction and that street profiles and storm sewer design grades be established before the water and sanitary sewer facilities are designed.

5. Approval of Community Facilities Agreements With City Participation:

After the CFA has been signed by the developer and returned to the appropriate City department, together with the financial guaranty, it will be submitted to the City Manager for review. If the provisions of the CFA conform with, or exceed minimum requirements of City Council policies for the installation of community facilities, the City Manager will submit the CFA to the City Council for authorization to execute it. If any special provisions or deviations from established policies are included in the CFA, specific approval of those provisions by the City Council is required. Approximately three weeks are normally required before the CFA can be scheduled on the agenda of the City Council meeting.

6. Developer's Financial Guaranty:

A. Time for Providing Financial Guaranty

At the time a CFA is executed, the developer shall provide the City with adequate financial security to guaranty the developer's obligations under the CFA, which include but are not limited to the developer's obligations to construct all the community facilities contemplated by the CFA and the payment by the developer to all contractors with whom the developer has a contract. No construction work shall ever begin until the financial guaranty has been accepted and approved by the City.

B. Form and Amount of Financial Guaranty

1. The developer shall provide its financial guaranty in one of the following forms:

a. Developer Bond

A developer bond in the total amount of the developer's share of each or all contracts for the construction of the community facilities contemplated by the CFA shall be provided to the City. The developer and a surety company acceptable to the City on forms provided by the City shall execute the bonds. The bond must meet the requirements of Chapter 2253, Texas Government Code and must be executed by a corporate surety in accordance with Article 7.19-1, Vernon's Texas Insurance Code, as same may be amended from time to time.

b. Escrow Pledge Agreement

An Escrow Pledge Agreement in the amount of 125% of the developer's share of each or all contracts for the construction of the community facilities contemplated by the community facilities agreement shall be provided to the City. The Escrow Pledge Agreement shall be forms provided by the City. The additional 25% above the actual the developer's share shall be considered the developer's change order fund.

c. Completion Agreement

A Completion Agreement in the amount of 100% of the developer's share of each or all contracts for the construction of the community facilities contemplated by the CFA shall be provided to the City. The Completion Agreement shall be on forms provided by the City.

If a Completion Agreement is used to guaranty the developer's obligations under the CFA, the plat shall not be filed until the community facilities are accepted by the City and all Hard Costs (as defined in the Completion Agreement) contractors have been paid, less retainage.

d. Letter of Credit

A letter of credit in the amount of 125% of the total amount of the of the developer's share of each or all contracts for the construction of the community facilities contemplated by the CFA shall be provided to the City. The letter of credit shall be issued by a financial institution having a net worth of at least \$500,000,000.00 and shall otherwise be acceptable to the City in its sole discretion. The financial institution shall be located in Tarrant County, Texas and the letter of credit shall be presentable and drawable at such location. The additional 25% above the actual developer's share shall be considered the developer's change order fund.

e. Cash Deposit

A cash deposit in the amount of 125% of the total amount of each or all contracts for the construction of the community facilities contemplated by the CFA shall be provided to the City. The additional 25% above the developer's share shall be considered the developer's change order fund.

2. Estimate of financial guaranty

In the event the financial guaranty provided by the developer is based upon estimates of construction that are less than the actual amount of the construction contract(s), additional financial security shall be provided to equal the total amount of the construction contract(s).

7. Award of Contracts for the Construction of Community Facilities:

- A. If the City is not to participate in the cost of the community facilities, the developer, at its sole option, may either negotiate its contract for the construction of the community facilities or competitively bid the contract.

- B. Except as provided for herein, where there is City participation, the developer may either negotiate or competitively bid contracts for the construction of community facilities contemplated by the CFA.

1. Negotiation of Construction Contracts

If the developer elects to negotiate the construction contract(s), City participation shall be made in accordance with unit prices contained in ordinances adopted by the City Council in the manner provided for herein.

2. Competitive Bids

If the developer elects to competitively bid the construction contract(s), the process shall be in accordance with state law. The contract shall be awarded to the lowest responsible bidder. An award of contract to any bidder other than the lowest responsible bidder shall waive the developer's right to City participation. City participation, if any, shall be determined from the actual construction costs based upon the unit prices contained within the bid proposal of the construction contract awarded for the community facilities contemplated by the CFA.

3. Time for Making Election

At the time of the execution of the CFA, the developer shall advise the City in writing the manner in which it will award a contract for the construction of the community facilities contemplated by the agreement. If the developer elects to competitively bid the construction contract(s), the bid process shall be in accordance Section II, Paragraph 7.D. Upon the advertisement for the solicitation for competitive bids, the developer's election to competitively bid the construction contract(s) shall become final and irrevocable.

C. Competitive Bidding Required for the Construction of Certain Community Facilities

Competitive bidding shall be required in the following instances:

1. Construction of water mains greater than sixteen (16) inches.
2. Construction of wastewater mains greater than twenty-four (24) inches.
3. Construction of pump stations, lift stations and storage tanks.
4. All community facilities contemplated by an Enhanced Community Facilities Agreement.
5. All other community facilities for which unit prices are not included in City ordinances adopted for the purpose of calculating City participation.

D. Where competitive bidding is required herein or where the developer elects to competitively bid the project, in order to be entitled to City participation, the following is required:

1. Compliance with State Law and City Ordinances.

The developer shall comply with all competitive bid requirements, both state and local.

2. Notice to City.

The Director shall be informed not less than seven (7) days prior to bid opening and will be provided two copies of the bid documents.

3. Bid Opening.

All bids shall be opened in City Hall at a time and location therein to be designated by the City. The developer or his representative shall provide a list of all prospective bidders to the Director at least 24 hours prior to the bid opening.

4. Prequalification.

All prospective bidders must be prequalified to bid on the project in the same manner as prospective bidders must be prequalified for City awarded water and wastewater.

5. Award to Lowest Prequalified Bidder.

The developer shall let the contract for the project to the lowest responsible prequalified bidder on the work to be done. If the developer elects to award the contract to any contractor other than the lowest responsible prequalified bidder, the developer waives its right to City participation. In the event the developer wishes to award one contract for all community facilities, City participation will be limited to the amount the City would pay if separate contracts were awarded to the lowest possible combination of bidders.

6. Confirmation of Award of Contract.

Before the Department issues a confirmation of award of contract, the following items are required to be submitted or deposited with the Department:

- a. The executed CFA must show the estimated amount of City participation. For water and sewer projects, the developer may start work in advance of the execution of the CFA by complying with Section II, Paragraph 4 of this Policy, provided that the water and/or sewer portion of the CFA showing the estimated City participation has been approved by the Director.

- b. A bid tabulation showing the bid proposals of all the prospective bidders.
 - c. Publisher's affidavit from the official newspaper of the City.
 - d. A letter of recommendation from the developer for contract award to the lowest responsible prequalified bidder.
 - e. A breakdown of developer cost and City participation based upon the bid items contained in the lowest responsible prequalified bid.
- E. If the City is to award the construction contract:
- 1. Prior to the award of the contract, the developer shall deposit in cash with the City 125% of the developer's share of the total construction cost as calculated herein above, plus ten percent (10%) for engineering and miscellaneous cost, if the City prepares the plans, together with construction inspection and material testing fees, and all required fees and charges in accordance with City ordinances and policies.
 - 2. Within a reasonable time after receipt of one hundred percent (100%) of the developer's cost, the Director may release all or a portion of the initial developer's financial guaranty.
8. Administration of the Construction Contract:
- A. The developer shall be responsible for the construction of all community facilities required to provide facilities or service to the development.
 - B. No facilities shall be installed in a public right-of-way or easement until such right-of-way or easement has been excavated to the appropriate subgrade elevation.
 - C. Prior to the issuance a notice to proceed allowing construction to start, the following are required:
 - 1. The CFA between the developer and the City shall be completed and executed. The developer may elect to use an Informal Developer's Agreement in accordance with Section II, Paragraph 4, "Early Construction of Water and Wastewater Facilities".
 - 2. Signed easement instruments or recorded final plat(s) showing all required easements for water and/or wastewater facilities which are not to be installed in proposed rights-of-way, or existing utility easements and executed railroad, state, county or such other permits as may be required.
 - 3. Adequate financial security to guaranty the developer's obligations as required by paragraph 5, Form and Amount of Financial Guaranty, above.

4. Payment to the City in cash for the construction inspection fee equal to four percent (4%) of the developer's share of the construction cost of street and storm drainage facilities and two (2%) percent of the developer's share of water and sewer facilities as stated in the construction contract; the materials testing fee equal to an annually published schedule of fees; and all other applicable fees for City services, materials, and labor including, but not limited to, street lights, street name signs, and traffic signals.

At the same time that City participation is due to the developer, the construction inspection fee will be recalculated using the actual construction contract cost based upon the actual quantities as reflected in the final payment estimate. In the event the difference in the construction inspection fee paid to the Department and the recalculated construction fee based upon the final payment estimate of the construction contract varies by more than \$25.00, the developer shall pay the City under any underpayment which the adjustment might indicate as being due, and the City shall pay the developer any overpayment.

5. Payment of required fees and charges in accordance with the City Code.
6. Delivery to the City and contractor of the required number of street, storm plans and executed construction contracts between the developer and its contractor, which shall include the following:
 - a. A performance and payment bond in the amount of the construction contract executed by the developer's contractor and a surety acceptable to the City in the name of the developer and the City covering the construction of the community facilities.
 - b. Regardless of the amount of the contract, a maintenance bond in the amount of the construction contract executed by a surety acceptable to the City in the name of the City covering the community facilities to be constructed against defects in materials and/or workmanship for a period of one year after completion and acceptance of the facility by the City.
 - c. Insurance certificates in the amounts required by the contract documents. The City shall be added as an additional insured under all insurance policies.
7. The developer shall require its contractor to give at least 48 hours notice to the Department of Engineering prior to work beginning in order for City inspection personnel to be available.

- D. All construction of community facilities shall be subject to inspection at any and all times by the City inspection personnel, and in no case shall any community facilities be installed unless the responsible City of Fort Worth inspector is present or gives consent to proceed. The developer shall be responsible for all laboratory tests of materials being used as may be required by City inspectors, such tests to be performed by an independent laboratory.
- E. The developer shall be responsible for all surveying, including but not limited to control points, and centerline stakes, together with cut stakes in accordance with City surveying guidelines.
- F. All estimates for partial and final payments shall be approved by the Director prior to payment by the developer to the contractor. The approval of any partial payment shall in no way constitute acceptance of the work, nor in any way affect the obligations of the developer under this Policy or the community facilities agreement.
 - 1. If the contract cost is \$400,000 or greater, such release from the financial guaranty shall equal the percentage of work completed for that period multiplied by ninety-five percent (95%). This percentage shall be applied to the actual current total contract cost to determine the amount that may be reduced upon request of developer.
 - 2. If the contract cost is less than \$400,000, such release from the financial guaranty shall equal the percentage of work completed for that period multiplied by ninety percent (90%). This percentage shall then be applied to the actual current total contract cost to determine the amount of security that may be reduced upon request of developer.
 - 3. The remaining security, five percent (5%) for projects of \$400,000 or greater and ten percent (10%) for projects less than \$400,000 together with the remaining funds from the Developer's Change Order Fund, if any, will be released to the developer after the project has been accepted by the City. Partial release of funds shall be limited to once per month. There shall be no partial release of funds for projects of less than \$25,000. Proof that the developer has paid the contractor shall be required for partial releases.
- G. If a change order is required during construction that increases City participation by more than \$15,000 or would otherwise deviate from this Policy, a change order must be approved in writing by the developer and the contractor and then submitted to the City Council for approval. The additional City participation is contingent upon the approval of the City Council.

9. MODIFICATION OF REQUIREMENTS:

Developers shall be required to dedicate right-of-way and construct community facilities only to the extent that the requirements are roughly proportionate to the impact of the proposed development. If the City determines that the requirements for dedication of land or construction of community facilities under the “Policy for Installation of Community Facilities is not roughly proportionate to the projected impact of a proposed development, the City shall modify the requirements.

10. NEED FOR A CFA FOR CITY PARTICIPATION:

No City participation shall be paid for work performed prior to the CFA being executed by the developer and the executed CFA being delivered to the City. It is the developer’s sole responsibility to obtain a receipt from an appropriate employee of the department receiving the executed CFA. Such receipt shall be evidence that the City received the CFA.

11. LIMIT OF CITY PARTICIPATION:

State law provides that the maximum City participation shall not exceed thirty percent (30%) of the total community facilities contract price, exclusive of cost for any oversizing of community facilities required by the City. At no time shall the City reimburse the developer more than thirty percent (30%) of the actual cost of the actual work completed, even if the city has a greater than thirty percent (30%) share in a particular portion of the project.

12. COMPLETE POLICIES AVAILABLE:

Complete sets of standard “Policies for Installation of Community Facilities” as adopted by the City Council are available to all interested persons from the Department of Development.