

WATER RESOURCES DEVELOPMENT AGREEMENT

THIS WATER RESOURCES DEVELOPMENT AGREEMENT (“Agreement”) by and between the City of Murfreesboro, a Tennessee municipal corporation (the “City”), acting by and through its Water Resources Department (the “Department”), and

(the “Developer”) is entered into as of the last signature date to appear below.

Recitals

- A. Developer is improving property that is located at _____ (Project Name), which are designated as tax parcel number(s) _____ (the “Property”).
- B. Developer desires that the Murfreesboro Water Resources Department (the “Department”) provide some or all of water, sanitary sewer and/or repurified water service (“Services”) to the Property.
- C. The Department desires to provide Services to the Property upon its review and acceptance of properly designed and installed infrastructure that the City in its sole discretion determines is adequate and appropriate to properly handle the Services without detrimental impact to other Department customers or to the financial condition of the Department.

Agreement

For and in consideration of the mutual benefits accruing to each party hereinafter set forth, the parties hereto agree as follows:

- 1. **Project Engineering.** Developer will retain the services of a qualified civil engineering consultant licensed in the State of Tennessee to design the water, sanitary sewer or repurified water mainlines and all related facilities (the “Project”) for the Development.
 - 1.1 Plans and specifications prepared by Developer’s engineer must conform to all applicable statutes, codes, regulations, and criteria, including, but not limited to, the latest edition of: the Department’s Standard Specifications for Construction; the Department’s Policies, Procedures & General Design Requirements; the State of Tennessee Community Public Water Systems Design Criteria; the State of Tennessee Design Criteria for Sewage Works; and any other requirement applicable to the Project as determined by the City or the State (“Project Standards”).
 - 1.2 Developer must coordinate all designs with the Department Engineer and submit the design for review and approval to the Department Engineer for not less than a two-week period for review; provided however, the Department’s work load may require additional review time. ***No work may begin on any portion of the Project that pertains to the Services prior to Department review and approval of Developer’s required submissions.***

- 1.3 Submissions for review must be complete and contain at a minimum:
- a. All materials specifically requested by the Department;
 - b. Master plans;
 - c. Engineering reports;
 - d. Preliminary surveys;
 - e. Water, sewer and/or repurified water line plans;
 - f. Detailed site plans, road plans and profiles, storm water facilities and other utilities, including existing or planned water, sewer and/or repurified water infrastructure;
 - g. Sewer line profiles and a detailed survey layout of the water, sewer and repurified water lines which includes the field location of an appropriate benchmark(s), location of sewer manholes, preparation of sewer line cut sheets and water line location alignments;
 - h. Detail sheets;
 - i. Project specifications;
 - j. Hydraulic calculations; and
 - h. Full cost estimates/take-offs.
- 1.4 Developer must timely inform the Department of any material changes to the plans after approval and any field changes which would materially affect the design.
- 1.5 The cost estimates submitted by Developer's engineer, if found to be reasonable by the Department and based on fully completed water, sewer and/or repurified water plans, plus any Department costs, will establish the construction cost portion of the letter of credit, bond, or cash deposit required by Department Policy and Procedures.

2. Construction.

- 2.1 The Department must approve all materials submitted for review including the lay-out, cut sheets and line locations before a Notice to Proceed for Construction begins.
- 2.2 Developer is solely responsible for construction of water, sanitary sewer and/or repurified water lines in conformity with the Standards, the plans and specifications submitted to and approved by the Department; the Department will not accept or connect water, sewer and/or repurified water lines that do not comply with all requirements.
- a. Connections of the new construction to existing water, sanitary sewer and/or repurified water lines may be performed by the Department at the Department's option, the cost of which will be paid by Developer to the Department.
 - b. The Department may require prepayment of estimated costs for labor and materials performed or provided by the Department.

- 2.3 Developer must maintain erosion barriers and take other steps to prevent the erosion and tracking of materials from the site onto adjoining parcels, streams, and public right-of-way.
- 2.4 Additionally, Developer is solely responsible for:
- a. Obtaining all permits from other governmental agencies and utilities; no charge or fee set forth herein incorporates any permit or other fees required by other governmental agencies, utilities, or departments of the City other than the Department;
 - b. Obtaining bids and award of contracts for construction of the accepted design;
 - c. Preparation, verification, approval, and payment of periodic payment requests made by Developer's contractor; and
 - d. Obtaining any off-site easements that may be required.
- 2.5 Developer may be required as a condition for the provision of Services to transfer or provide certain rights to the City, as determined by the Department in its sole discretion, to or over certain portions of the Property.
- a. A portion of the Property may require dedication to the City for public benefit with attendant rights and duties allocated between the parties. The Developer will, at Developer's expense, provide the Department with legal descriptions, exhibits or other title information for any required documents, and such legal documents will be prepared by the City Attorney.
 - b. In addition, the Department will determine the need for easements over portions of the Property. If outside of public right of way, the Developer will, at Developer's expense, provide the Department with legal descriptions, exhibits or other title information for any required easement documents, and such legal documents will be prepared by the City Attorney.
- 2.6 Coordination.
- a. If the Property is located within the service area of Consolidated Utility District ("CUD"), Developer must coordinate all water line design, hydraulics and installation with CUD and submit to the Department acceptable water line designs and hydraulics on an approved scale, with State of Tennessee approvals, prior to this Department accepting any sewer line designs.
 - b. Developer is solely responsible for coordination of its construction activities with other utilities, including other departments of the City, and with any entity that maintains a right to be located within the City's right-of-way.
 - c. Developer is solely responsible for securing approval of the City, County, or State, as appropriate, for any construction activity that

may affect a roadway or right of way, and Developer agrees at all times to properly mark the construction area with barriers, barricades, fences, guards and flagmen as required by the *Manual on Uniform Traffic Control Devices*, Part 6 (“MUTCD”) and undertake any other measure necessary, prudent, or recommended to minimize the danger to the public, all of which are incorporated into and considered by the parties to be part of the Project Standards.

- (1) Developer agrees that on streets which are not barricaded to block all traffic, to place and maintain a drum type barricade as described in MUTCD, stabilized with sand bags, on each manhole cover and/or casting which extends more than two inches above the existing street surface.
- (2) Without limiting Developer’s obligation to conform with all provisions of MUTCD, Developer agrees to place and maintain signs as provided in Part 6 of the MUTCD.

2.7 Statement of Costs. Upon completion of construction and prior to final acceptance by the Department for the purpose of the provision of the Services, the Developer will submit a sworn statement, the form for which will be provided by the Department, of actual costs of labor and materials required for construction, excluding sums previously billed through the Department.

2.8 Warranty.

- a. Construction Warranty. Developer warrants that all water, sewer, and/or re-purified water lines associated with the Project have been designed and constructed in accordance with all applicable Project Standards and that all such lines are free of structural defects and fit for their intended purpose. This warranty shall remain in effect for a period of three years following the date of acceptance by the Department. In the event Developer fails to properly construct the improvements required by the plans approved by the Department and the City or another developer is required to complete the work, Developer’s construction warranty set forth herein will remain effective and joint and several with any subsequent warranties.
- b. Repair Obligation. Developer acknowledges and agrees that, during the three-year Warranty Period, Developer is responsible for any maintenance and repair, regardless of cause, of the water, sewer, and/or re-purified water lines constructed.
 - (1) Developer’s repair warranty does not preclude Developer from seeking indemnification or contribution from any third party that might have damaged the facilities covered by the warranty.

- (2) In the event of a problem requiring correction during the warranty period, or any extension thereof, the Developer's warranty period for the correction may be extended for up to three years from re-inspection approval by the Department following correction.

3. Charges and Fees.

- 3.1 Developer will pay to the Department a fee for the review of the required submittal and any additional submittals in accordance with the fee schedule, attached hereto as Exhibit "A", which is same as TDEC plans review fees.
- 3.2 Developer will pay to the Department all costs in association with the installation of the water service lines and mainline taps that are installed by the Department in accordance with standard charges for similar work customarily charged by the Department.
- 3.3 The Department will inspect the project for compliance with the final plans and specifications and the verification of the quantity of materials installed, and Developer will pay to the Department a fee to cover the costs of the inspection. The inspection fee will be based on actual footage of water, sewer and/or repurified water main installed at a unit charge as established in Exhibit "A".

- 4. Surety.** When required, surety will be in the form of an irrevocable letter of credit that may be drawn by presentation to a bank located in Rutherford County or in one of the immediately surrounding counties, a bond issued by an insurance company licensed to do business in Tennessee, or a cash deposit. The form, issuing entity, and all terms of letters of credit and bonds must be acceptable to the City Attorney.

4.1. Performance Surety. If the Developer desires that the final plat be approved and executed prior to the completion and final acceptance of the Project, Developer must provide to the City surety in an amount set by the Department based upon the construction cost estimate prepared by the Developer's Engineer for the Project as approved by the Department. The surety shall remain in force through the completion of the work and shall extend for a period of 36 months after the completion of the work, except that the City may release a portion of the surety during the 36-month warranty period established herein; provided however, that the surety retained for such warranty period will not be less than as follows:

1.) If improvements are within a private street or development, where easements will be dedicated, or if the sewer mains are greater than 12 feet deep the surety shall be no less than 25% of the total estimated construction costs if providing a letter of credit or cash, and 35% if providing a bond;

2.) If improvements are within a public street or right of way, the surety shall be no less than 15% of the total estimated construction costs if providing a letter of credit or cash, and 25% if providing a bond; and

3.) In any event, surety shall be no less than \$10,000.

- 4.2 Critical Construction Surety.** At times there will be critical construction performed where surety will be required prior to commencement of construction regardless of whether execution of a final plat is requested. Critical construction items include but are not limited to, highway, railway or stream utility crossings, highway, railway or streamside utility parallelisms, offsite utility improvements through properties not owned by the Developer or through publicly owned right-of-way, offsite and onsite erosion prevention and sediment control best management practices, and offsite and onsite property restoration to the pre-existing condition prior to any construction or disturbing activities. Such surety shall be provided to the City prior to the Department issuing a Notice to Proceed to start utility construction on the Development. The surety will be 100% of the construction cost estimate prepared by the Developer's Engineer for the Project as approved by the Department for those improvements within the critical construction areas.
5. **Insurance.** Developer agrees to provide liability insurance or require the Contractor to provide liability insurance in the minimum amount of \$1,000,000 per occurrence, which will endorse "the City of Murfreesboro and the Murfreesboro Water Resources Department" as additional insureds and require 30-day notice be provided to the City prior to any change in terms or coverage and prior to cancellation for any reason. Developer must deliver proof of insurance with proper endorsement to the City before initiating any construction activity. In the event Developer fails to provide proof of insurance or endorsement of the City as an additional insured, the City may purchase the necessary insurance and charge the cost thereof to the Developer together with an interest at LIBOR + 3% and an administrative fee of 20% of the premium per annum.
6. **Indemnification.** Developer will indemnify, defend, and hold the City, its officials, employees, and contractors harmless for any and all claims arising from or associated with Developer's acts and omissions or those of Developer's engineers, contractors, partners, officers, employees, consultants, agents, invitees, or other affiliates, associates, or permitted or non-permitted parties.
7. **Notice.** Notifications required under this agreement must be sent first class mail or hand delivered to the following addresses and will be deemed to have been delivered upon receipt:

If to the City:

Murfreesboro Water Resources Department
Engineering Annex
220 N.W. Broad Street
P.O. Box 1477
Murfreesboro, TN 37133-1477

If to the Developer (please print):

Contact: _____

Address: _____

Phone: _____

Email: _____

8. Miscellaneous. In the event Developer breaches the terms of this Agreement, Developer agrees to pay reasonable attorney’s fees and court costs associated with enforcement of the Agreement. This instrument constitutes the entire agreement of the parties notwithstanding any prior statements, understanding, or agreements, and it may be amended only in writing acknowledged by authorized agents of each of the parties. This Agreement may not be assigned by either party without the express consent of the other and is binding upon the parties hereto, their heirs, successors, and assigns. This Agreement may only be interpreted under and subject to the laws of the State of Tennessee. The venue for resolution of any dispute is solely Rutherford County, Tennessee and the parties hereby waive all rights to a trial by jury. IN WITNESS WHEREOF, the parties sign this Agreement on the day and year last written below.

DEVELOPER

CITY OF MURFREESBORO

By: _____
Signature

By: _____
Signature

Print Name

Print Name

Its: _____

Its: _____

Date: _____

Date: _____

Approved as to form:

Adam F. Tucker, City Attorney

EXHIBIT A

1. Plan Review Fees shall apply to new facilities as well as the expansion or modification of existing facilities. If the submittal includes more than one listed category, the fee will be the sum of the fees listed for each individual category. Review of plans documents will not commence until all fees required by these rules are paid in full. Plan Review Fees shall be as follows:

Sewage Collection Systems:

Collection Lines - \$25.00 per 250 feet or portion thereof of sewage collection line excluding service laterals. Total fee not to exceed \$1,500.

Pumping Stations:

- (i) Design capacity equal to or greater than 5 MGD \$ 300
- (ii) Design capacity equal to or greater than 1 MGD and less than 5 MGD \$ 200
- (iii) Design capacity equal to or greater than 0.075 MGD and less than 1 MGD \$ 100
- (iv) Design capacity less than 0.075 MGD \$ 50

Water Distribution Systems:

Distribution Lines

- (i) 1000 feet or less \$100
- (ii) Greater than 1000 feet \$ 100 + \$.01* ft over 1000

2. The Department will charge the Developer a resident inspection fee of \$1.00 per linear foot based on actual footage of potable and repurified water and/or sewer lines installed. The Department will typically inspect the sewer lines twelve (12) to eighteen (18) months after acceptance into the warranty period. The Department may conduct such reinspections as it, in its sole discretion, determines to be reasonably necessary before releasing the warranty surety.

3. The Department will charge the Developer a CCTV video fee of \$1.00 per linear foot based on the actual footage of sewer lines installed.