

**CHAPTER 16.24
DEVELOPER'S AGREEMENT, FINANCIAL ASSURANCE
AND CONSTRUCTION CONTRACTS FOR PUBLIC IMPROVEMENTS**

16.24.005 PROCEDURES

A. CONTRACT REQUIRED

The Developer shall be required to execute a Developer's Agreement as a condition of plat approval whenever the installation of community facilities or public improvements is required. The City shall prepare the Developer's Agreement after the final engineering plans and cost estimates have been approved. Samples of Developer's Agreements and Bond Instruments are available upon request.

B. APPROVAL OF CONTRACT

1. After the contract has been signed by the developer and the required performance bond, payment bond, surety, or irrevocable letters of credit, and maintenance bonds meeting the requirements of Texas Government Code, Chapter 2753, Title 10, Section F have been posted with the City, the City Planner may forward the Developer's Agreement to the City Attorney for review and approval.
2. The City Manager shall review and sign the contract on behalf of the City after receiving comments of the City Planner and City Attorney.
3. If any special provisions or deviations from established policies are included in the contract, specific approval of the special provisions or deviations by the City Manager is required.
4. No construction work shall begin on the subdivision before the Developer's Agreement is approved and signed by the City Manager.
5. The City will use its best effort to expedite all necessary instruments and documents within the City administration.

C. CHANGES IN CONTRACT

Any subsequent changes in the plans and specifications of the approved project proposed by the developer shall necessitate an amendment to the Developer's Agreement and amendments to all required financial assurance instruments. An increase in the project scope shall also require an increase in the Inspection Fee, as authorized in paragraph 6.3.A below. The Developer shall bear the full cost of any additional work required by the City Attorney and/or City Engineer in revising and/or reviewing the revised documents and approval shall not be granted until such additional fees are paid.

16.24.010 PERFORMANCE BONDS, PAYMENT BONDS AND MAINTENANCE BONDS

- A. Performance bonds, sureties or irrevocable letters of credit in forms provided by the City Attorney meeting the requirements of Texas Government Code, Chapter 2753, Title 10, Section F shall be required for any required public improvements or community facilities prior to the filing of the Final Plat and issuing of any building permits. Bonds, irrevocable letters of credit, certificates of deposit or cash deposits will be for 100% of the value, as determined by the City Engineer, of the construction costs of all facilities to be constructed by the developer.

1. A cash deposit may be made with the City in lieu of the performance bond. The cash deposit shall be held by the City in a regular insured savings account and shall accrue interest at the current regular savings account rate of interest. Interest shall accrue in the account to the benefit of the subdivider and shall be returned to the developer with the cash deposit upon satisfactory completion of the facilities and acceptance by the City.
 2. A certificate of deposit issued by any financial institution, which is insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation, shall be held in the City depository in lieu of the performance bond. When this option is exercised the subdivider shall execute four copies of a letter (approved by the City) assigning the deposit to the City and providing for the City to withdraw the deposit if necessary to complete construction. Such letter of assignment must be accepted in writing by the financial institution. Upon satisfactory completion of the facilities for which the deposit is made as security, the City of Benbrook shall reassign the deposit to the developer including accrued interest or dividends thereon.
 3. When the option is exercised to provide an irrevocable letter of credit from a financial institution, the form of the letter shall be approved by the City Attorney. The international letter of credit form used by banks is normally acceptable.
- B. The developer shall provide a payment bond meeting the requirements of Texas Government Code, Chapter 2753, Title 10, Section F guaranteeing the full and proper protection of all claimants supplying labor and material in the prosecution of the work provided in the contract in an amount equal to 100 percent of the value of the construction costs of all facilities to be constructed by the developer. The same conditions shall prevail as under paragraph 6.2.A(1), (2), or (3) above when certificates of deposit, irrevocable letters of credit or cash deposits are used instead of surety company bonds.
- C. The developer shall provide a maintenance bond meeting the requirements of Texas Government Code, Chapter 2753, Title 10, Section F guaranteeing and agreeing to pay any necessary maintenance for a period of two (2) years in an amount equal to 100 percent of the value of the construction costs of all facilities to be constructed by the developer. The same conditions shall prevail as under paragraph 6.2.A(1), (2), or (3) above when certificates of deposit, irrevocable letters of credit or cash deposits are used instead of surety company bonds.

16.24.015 INSPECTIONS AND APPROVAL OF PUBLIC IMPROVEMENTS

- A. The City Council shall establish fees for the inspection of public improvements as part of the Fee Schedule. No person shall be granted notice to proceed to construct, reconstruct, cut or repair any street, drainage or sanitary sewer facility without paying the fees for the inspection of such work.
- B. The Developer's contractor shall give at least twenty-four (24) hours notice in writing to the City of intent to commence actual construction of the facilities in order for inspection personnel to be made available.
- C. The Subdivider shall delay connection of buildings to service lines of sewer and water mains until said sewer and water mains and service lines have been completed and accepted by the City and the Benbrook Water Authority.

- D. It shall be the duty of the Subdivider to notify all contractors and sub-contractors working for him that all of their work is subject to inspection by the City Inspector at any time. Certification of materials being used may be required by the City Inspector.
- E. Laboratory tests required by the City Inspector shall be performed by approved independent testing laboratories and will be at the discretion of the City Inspector. Approved laboratories are laboratories that are members of the American Council of Independent Laboratories and shall comply with standard recommended practice for inspection and testing agencies for concrete, steel, and bituminous materials as used in construction, ASTM Designation E 329. All costs for laboratory tests shall be borne by the Subdivider or his Contractor.
- F. Should any point not be covered in the plans, or Developer's Agreement, the Subdivider shall be required to contact the City Engineer for a determination as to the City's requirements.
- G. Any work, which in the opinion of the City Inspector does not meet the City requirements or has not had proper City inspection, shall be corrected. The Inspector shall notify the contractor and subdivider in writing, of the reasons for requiring the contractor to cease all operations until the defect has been corrected in order to comply with City requirements and receive proper inspection.

16.24.020 DEFERRAL OR WAIVER OF REQUIRED IMPROVEMENTS

- A. The Planning and Zoning Commission may defer, reduce, or waive at the time of plat approval, subject to appropriate conditions, the provision of any or all design requirements or improvements as, in its judgment, are not necessarily in the interest of the public health, safety, and general welfare.
- B. Whenever it is deemed necessary by the Planning and Zoning Commission to defer the construction of any improvements required herein because of incompatible grades, future planning, inadequate or lack of connecting facilities, or for other reasons, the subdivider shall pay his share of the costs of the future improvements prior to approval and recording of the Final Plat. In lieu of a cash payment, the subdivider may use one of the other improvement guarantees set forth in this ordinance.

16.24.025 PUBLIC CONSTRUCTION CONTRACTS

For projects where the City of Benbrook will act as developer, plans and specifications shall be prepared for approval by the City Engineer and projects bid according to requirements of the Texas Local Government Code. Contractors will be required to provide performance bonds, payment bonds, insurance and a two-year maintenance bond in accordance with city requirements. The developer shall be required to pay a cash deposit to cover the work in accordance with the terms of the Developers Agreement.

16.24.030 PRIVATE DEVELOPER CONSTRUCTION CONTRACT REQUIREMENTS

For private development projects, the developer may enter a private contract to complete the required public improvements. The developer/contractor will be required to provide the City the following sureties:

- A. Since the developer is providing a financial assurance surety to cover performance under Section 16.24.010.A, a separate performance and payment bond is not required from the contractor. However, it may be in the developer's best interests to require those from his/her contractors since the City will not release the financial assurance until work is complete and a release of lien is provided by subcontractors.

B. MAINTENANCE BOND

The contractor will be required to make a Maintenance Bond of not less than one hundred percent (100%) of the contract price conditioned upon the maintenance of and the repairs to the construction under the Developer's Agreement for a period of two (2) years from the date of City acceptance of the project. All contractors employed by the subdivider shall furnish the City a good and sufficient two (2)-year maintenance bond, in an amount equal to one hundred (100%) percent of the costs of the improvements, executed by a reputable and solvent corporate surety, holding a license to do business in the State of Texas, in favor of the City to indemnify the City against any repairs which may become necessary to any part of the construction work performed in connection with the subdivision, arising from defective workmanship or materials used therein, for a full period of two (2) years from the date of final acceptance of the entire project. Final acceptance will be withheld until said maintenance bond is furnished to the City. Such Bond to be approved as to form and legality by the City Attorney.

C. STATE SALES TAX

The Developer's Agreement is usually for the improvement of streets, storm sewers, or utilities in right-of-way which will be dedicated to the Public and the City of Benbrook, an organization which qualifies for exemption pursuant to the provisions of Article 20.04(F) of the Texas Limited Sales, Excise and Use Tax Act. The Contractor performing this construction can probably purchase, rent or lease all material, supplies, and equipment used or consumed in the performance of the Developer's Agreement by issuing to his supplier an exemption certificate in lieu of the tax, said exemption certificate complying with State Comptroller's ruling #95-0.07. Any such exemption certificate issued by the Contractor in lieu of the tax shall be subject to the provisions of the State Comptroller's ruling #95-0.09 as amended to be effective October 2, 1976.

D. INSURANCE

Prior to commencing the work, the Contractor shall furnish to the City of Benbrook and/or Owner proof of satisfactory carriage of insurance in accordance with the standard requirements of Contractors doing work of the nature herein proposed. The amount of insurance shall conform to the requirements in the Standard Specifications.

E. INDEMNIFICATION

The Contractor must agree to fully indemnify and save whole and harmless, the City from all costs or damages arising out of any real or asserted claim or cause of action against it of whatsoever kind of character and in addition from any and all costs or damages arising out of any wrongs, injuries, demands or suits for damages, either real or asserted, claimed against it that may be occasioned by any act, omission, neglect or misconduct of the said Contractor, his agents, servants, and employees. The Contractor must further agree to comply with all applicable laws, regulations, ordinances, buildings and construction codes of the City of Benbrook and the State of Texas, and with any regulations for the protection of workers which may be promulgated by the government, and shall protect such work with all necessary lights, barriers, safeguards, and warnings as are provided for in said specifications and in the ordinances and regulations of the City.

16.24.035 GENERAL CONSTRUCTION REQUIREMENTS

Prior to initiating any construction work, the contractor and all subcontractors shall conduct a preconstruction conference with the City, City Engineer, City Inspector, and all affected

franchised utilities. Prior to the Preconstruction Conference, the contractor shall provide a proposed construction sequence and schedule and a traffic safety plan, if required, for review and approval by the City Engineer. As a general rule, the following construction sequence shall be employed:

- Step 1. Install temporary erosion/sedimentation controls
- Step 2. Excavate detention ponds
- Step 3. Rough grading of streets, lots, building pads, etc.
- Step 4. Install utilities and storm drain facilities
- Step 5. Final grading
- Step 6. Paving
- Step 7. Finish detention ponds
- Step 8. Hydromulch, final clean-up.

16.24.040 APPROVAL OF WORK

All work performed in construction, reconstruction, cutting and repairing of streets, storm sewer and other public improvements shall be subject to the approval of the City Engineer, whose decision shall be final. Approval by the City Inspector, City Engineer or other designated representative shall not relieve the developer or his/her contractor or design engineer from their responsibilities regarding the design and construction of the improvements.

The City shall not release the obligations of any financial assurance, including performance bonds, until the improvements have been approved and accepted by the City. The Developer is strongly urged to withhold final payment to the Contractor until such acceptance occurs, since the City shall hold the Developer responsible for completion of the project. The City shall not approve or arbitrate quantities for which payment is to be based.

16.24.045 OWNERSHIP AND MAINTENANCE OF COMPLETED PUBLIC FACILITIES

Upon acceptance by the City of completed construction, all street improvements including construction of streets, alleys, thoroughfares, curbs, gutters, sidewalks, storm sewers, and drainage channels within dedicated right-of-way and easements shall be and remain the property of the City of Benbrook. The Contractor shall be responsible for maintenance of the completed public improvement for a two (2) year period, following acceptance by the City. After expiration of the two-year maintenance period, the improvements shall be maintained by the City.

16.24.046 OWNERSHIP AND MAINTENANCE OF PRIVATE AND COMMON AREA FACILITIES

Except as may be otherwise provided by City ordinance or city policy, it shall be the responsibility of the applicable homeowners association, property owners association or individual property owner to maintain any facilities or infrastructure located on private property or within privately-held common areas.