

AGREEMENT FOR PROPOSED DEVELOPMENT WATER / WASTEWATER

This DEVELOPMENT AGREEMENT (the “**Agreement**”) is entered into on this _____ day of _____, 20____, by and between South Blount County Utility District, a utility district incorporated under the laws of the State of Tennessee, with its office and principal place of business at 320 Partnership Parkway, Maryville, Tennessee 37801 (hereinafter called “**District**”), and _____ whose office and principal place of business is located at _____ (hereinafter referred to as the “**Developer**”).

WITNESSETH

WHEREAS, Developer desires to develop a subdivision or other projects within the boundary of the District, known and/or to be known as _____ and located at _____ (the “**Development**”);and

WHEREAS, in order that said Development may receive water and/or wastewater service from the District and in order for the Development's water and/or wastewater line system and improvements (hereinafter referred to as the “**Facilities**”) to be properly integrated into the District's system and to function in a satisfactory manner, the District and Developer do contract and agree as follows:

1. This Agreement covers (check all that apply): ____ **Water Service** ____ **Wastewater Service**.

2. **Submission of Plans and Approval.** Upon completion by the Developer and the District's approval and determination that all the District's requirements including those set forth herein have been met, the District will agree to and will permit the Developer to connect onto the District's lines and to install the lines and other Facilities necessary for proper installation. The Developer is to install the Facilities for the utility service strictly in accordance with the District's requirements and the approved drawings, plans, and specifications (hereinafter collectively referred to as the “**Plans**”) as drawn by or on behalf of the Developer by an engineer, licensed to practice in the State of Tennessee and identified on a list of approved engineers provided by the District (the “**Engineer**”). A copy of these Plans are attached to this Agreement as **Exhibit A** and made a part hereof. The Developer shall make any revisions required by the District and resubmit the revised Plans for approval by the District as the same may be necessary. Once the Plans are deemed acceptable by the District, an authorized representative of the District must sign the Plans and the Developer shall then submit the Plans to the Tennessee Department of Environment and Conservation (“**TDEC**”) for approval. Construction shall not begin until the Plans are approved by the District and TDEC. Any field changes or change orders required after the Plans have been approved must be approved by the District and TDEC before being implemented.

3. **Duties of Developer.** Developer shall be responsible for all duties identified in this Agreement and for satisfactory completion of the project. The District assumes no responsibility for any construction defects, injuries, or any other cause of action that may arise during the construction process undertaken by or at the direction of the Developer.

4. **District Rules and Regulations.** A copy of the most recent District Rules and Regulations, which the District may modify from time to time, (“**District Rules and Regulations**”) is attached to this Agreement as **Exhibit B** and made a part of this Agreement, and in the event of any discrepancies between the terms of this Agreement and the District's Rules and Regulations, the latter shall control. The Developer agrees to comply with the District Rules and Regulations and all applicable federal, state, and local statutes or governmental agency regulations in performing its construction and obligations under this Agreement.

5. **Contractor Approval.** The Developer must submit to the District, for review and approval, the Developer's choice of utility contractor and subcontractors. The Facilities must be installed by a contractor, currently licensed by the State of Tennessee to install municipal utilities. Acceptance of the contractor by the District will be based upon such factors as verification of municipal utility license, adequate liability insurance, appropriate workers' compensation insurance, and contractor's prior performance. Developer shall provide evidence of the referenced policies of insurance to the District in the form of copies of certificates of insurance.

6. **Contractor Bond.** The Developer agrees that it shall require any contractor or contractors who perform work to install the Facilities to furnish the Developer bonds covering faithful performance of work and the payment of obligations arising from work on the Facilities.

7. **Developer's Provision of Agreement to Contractor or Lender.** The Developer agrees that it shall provide a copy of this Agreement to any lender or contractor who performs work on the installation of these Facilities before entering into any contract with such lender or contractor.

8. **Pre-Construction Review of Material Specifications and Data Sheets by the District.** Before beginning construction, the Developer shall submit to the District, for review and approval, four copies of material specifications and data sheets for all materials to be used in the construction of the Facilities. The District will return two copies of the reviewed specification submittals to the Developer. Material data approved for use in construction shall be stamped “Approved.” Material data not approved for use in construction shall be stamped “Not Approved.” Material data stamped “Not Approved” shall be resubmitted and approved before beginning construction.

9. **Pre-Construction Requirements and Developer's Duty to Inspect During Construction.** No construction shall occur until regulatory approval from TDEC is obtained by the Developer's Engineer. Developer's Engineer will be responsible for providing notification of “start” to the local office of TDEC and for scheduling a pre-construction meeting to include the Developer, contractor, Engineer and the District's representative. The District will notify the Developer's Engineer if the District is aware of any deviations from the approved practice or Plans. If disagreements concerning methods or materials used occur, the District may issue a stop-work order until the disagreements are resolved. During construction, the Developer's Engineer shall perform on-site inspections to insure that all work is being performed in accordance with the District's specifications. The Developer shall be responsible for developing a Storm Water Pollution Prevention Plan (“**SWPPP**”) and for payment of all TDEC and or other fees for submission and approval of the site plan. The contractor for the project must adhere to the SWPPP and be responsible for any and all violations and fines which may be associated with its violation.

10. **District Inspections During Construction.** The District will conduct regular on-site inspections to determine whether the District will accept Developer's dedication of the constructed utilities to the existing utility system.

11. **District Tests and Additional Inspections Upon Completion of Construction.** When construction of the Facilities is complete, tests and observations shall be performed per the District's specifications. All testing shall be witnessed by the District's inspector. When tests are successfully completed, the District shall furnish, at Developer's request, a letter of verification reflecting the results of the tests. The District shall also test for the continuity of tracer wire. The District will also inspect the Development to determine the overall conformity of the system installation to the District's requirements.

12. **Payment Obligations of Developer to the District.** The District will submit a monthly (or as costs occur) invoice to the Developer for payment of any and all fees disclosed in this Agreement. Developer shall immediately remit payment to the address listed for the District on page 1 of this Agreement or at such other location as the District may deem appropriate. Should Developer fail to pay such invoices, Developer acknowledges and agrees that the District shall have the right to institute appropriate legal proceedings against the Developer to secure collection of the referenced payments.

13. **Costs to be Borne by Developer.** The Developer will pay for all material and labor necessary to design, install and complete the Facilities in accordance with the Plans, Specifications, and this Agreement. The Developer shall be responsible for all costs associated with the improvements. Further, Developer shall be responsible for any costs of establishing connection to or with existing District utility lines at a location other than the Property where Developer's project is being constructed. The Developer shall be responsible for the costs of any upgrades as required by the District. Should the existing infrastructure be upgraded, the Developer is responsible for 100% of the costs.

14. **Development Fees to be Paid to the District.** At the time of execution of this Agreement, the Developer will pay to the District a Total Plan Review Fee of \$1,500.00 plus an additional \$10.00 per lot or other potential meter or service connection (water service and wastewater connections are counted as separate connections).

Plan Review Fees For Water/Wastewater:

Base Fee	\$ 1,500.00
Plus _____ water service connection @ \$10.00 each =	\$ _____
Plus _____ wastewater connections @ \$10.00 each =	\$ _____
Equals the Total Plan Review Fee =	\$ _____.

15. **Final Payment of Fees to the District and Termination of Project.** In the event the Developer fails to install the Facilities in accordance with the terms of this Agreement or the approved Plans and the project is terminated, all fees due and then owing to the District by the Developer at the time of termination are deemed due and payable to the District and such fees are nonrefundable. Moreover, Developer acknowledges and agrees that the District shall have the right to institute appropriate legal proceedings against the Developer to secure collection of the referenced amounts and collect from Developer reasonable attorney fees and costs in recovering said amounts.

16. **Surety Bond or Letters of Credit to be Provided to the District.** At the time of the execution of this Agreement, the Developer will provide a surety bond or letter of credit for one hundred percent (100%) of the construction costs as estimated by the Engineer employed by the Developer in

accordance with the requirements of the District's policies. Reductions in surety bonds and letters of credit will be granted upon mutual agreement of the District and Developer.

17. Status of Facilities Upon Failure to Complete Construction by Developer. In the event the Developer fails to install the Facilities in accordance with the terms of this Agreement, the District, at its sole discretion, may elect to not accept the Facilities, or accept all or any portion of the Facilities installed. In such case, should the District choose to accept all or a portion of these Facilities, the District shall become the sole owner of the accepted Facilities upon giving the Developer written notice of its acceptance without the necessity of any further writing, contract, or deed. The District's election to accept such Facilities under this paragraph shall not be construed as an assumption of any obligation related to these Facilities of the Developer or of any third party.

18. Third-party Tapping Prohibited. The Developer understands and agrees that no third-party shall obtain any benefits or rights under this Agreement with respect to water or wastewater tapping privileges, and no connection shall be made to any residence or other customer site until all necessary arrangements have been made in accordance with the District's Rules and Regulations.

19. Facilities Design by Developer. Design of the Facilities within the Development shall be done by the Developer's Engineer. The design shall be pre-approved by the District and must conform to the State of Tennessee design criteria for construction of water and/or wastewater systems. The specifications for systems installed in the service area shall be those of the District, approved by TDEC. The District shall, to the best of its ability, provide all information about existing water lines that connect to or with the Development. Developer is responsible for all fees including TDEC's fee required for project approval.

20. Separation of Utilities Requirements to be Observed by Developer. A minimum of ten (10) feet horizontal separation shall be maintained between water and wastewater lines and any other underground utility. Other underground utilities may cross water or wastewater lines only at a perpendicular angle or as close to perpendicular as possible. Water and wastewater lines are to be vertically separated by a minimum of eighteen (18) inches measured between the bottom of the water line and the top of the sewer line. Water shall be on top or be separated ten (10) feet horizontally if less than eighteen (18) inches.

21. Telemetry and Variable Frequency Drive Requirements to be Observed by Developer. All water and/or wastewater pumping stations shall be equipped with radio telemetry and variable frequency drive or "VFD" systems as specified by the District.

22. Warranty by Developer to the District Regarding Facilities. The Developer hereby warrants all Facilities installed pursuant to the provisions of this Agreement against defects in workmanship and material for a period of one (1) year from the date of acceptance thereof in writing by the District. Further, the Developer shall immediately repair, at its own cost and expense, all breaks, leaks, or defects of any type whatsoever arising from any cause whatsoever occurring within one (1) year from the date the Facilities are accepted in writing by the District. Upon the failure of the Developer, after reasonable notice, to take immediate steps to make such repairs, the District is hereby authorized by the Developer to make such repairs at the reasonable cost and expense of the Developer, or to have such repairs made by a third-party at the reasonable cost and expense of the Developer hereunder.

In the event the District must make such repairs and issue an invoice to the Developer for such repairs, Developer agrees to immediately pay said invoice in full to the District. If the Developer should

fail to remit payment and the District must initiate legal proceedings to collect such payment, Developer shall be responsible for all costs the District incurred including, but not limited to, deposits in court, damage awards, attorney fees, court costs, and survey and engineering expenses.

23. Easements and Real Property to be Conveyed to the District. Easements and real property for all construction and location of the Facilities shall be obtained by the Developer and conveyed to the District. It is understood and agreed that any existing encumbrance or mortgage on any easement transferred to the District shall be subordinated to the easement interest of the District. In the event the District must institute eminent domain proceedings to acquire from third parties easements or access to easements to which water and/or wastewater lines are to be installed, the Developer shall reimburse the District, on demand, all costs it incurred including, but not limited to, deposits in court, damage awards, attorney fees, court costs, and survey and engineering expenses. Easements and real property shall be delivered to the District prior to construction. **Ownership by the District applies only to the transmission main, valves, and improvements on the Right-of-Way side of the meter assembly located at property lines. Ownership outside of the Right-of-Way is limited to control panels, pumps, tanks, real property and facilities.**

24. Final Plat Map to be Provided to the District. Developer shall provide to the District a copy of the final plat of the Development that has been recorded with the appropriate county or municipality. All plat maps, which are issued for sales purposes are recorded with the corresponding governing county or municipality, shall carry the following statement:

A fifteen (15) foot utility easement exists (71/2) feet on each side of all water lines and or wastewater lines installed. Water and or wastewater lines that are not located on public rights-of-way shall be depicted on the plat maps as easements.

25. As-Built Drawings to be Provided by Developer to the District Upon Completion of Construction. When the Facilities are complete, the Developer shall instruct the Developer's Engineer to prepare and submit to the District as-built drawings of the Facilities. Final written notice of acceptance by the District will not be granted until as-built drawings are submitted and approved by the District. As-built drawings shall consist of two (2) blue-line copies, (1) IBM compatible computer disk formatted in AUTOCAD (DWG) with state plane coordinates. As-built drawing requirements are as follows:

a. Water and/or Wastewater:

- i. As-built drawings shall show location of mains, blowoffs, manholes, reducers, tees, any field changes, change orders, etc.
- ii. All valves and blowoffs shall be located by measurements taken from two separate, easily identifiable, stationary points. These points shall not include P.I., P.C. (as these acronyms are given their usual meaning in surveying parlance), or other similar, minute, not easily found points of reference. Property pins may be used if no other reference point is available. All measurements should be taken from manholes, power poles, electric vaults, telephone pedestals, buildings, etc. Reference points should not include trees, shrubs, or other living organisms or other objects, which are subject to change in size or shape. Any deviation from this concept will result in rejection of as-built drawings unless a variance has been obtained, in writing, from the District. GPS coordinates to submeter accuracy may be submitted for each item instead of measurements.

- iii. If a main is dead ended, there should be a blow-off with its location shown by measurement from easily identifiable points.
- iv. The District will not accept as-built maps showing complete and incomplete portions of the Development on the same sheet unless the incomplete portions are labeled as such and a separate as-built is submitted at the time that portion is completed.
- v. Lot numbers and block letters must be shown.

* Note: Road names are not to be recorded as Road A, Road B, etc.
As built drawings are to be submitted no later than 15 days from
the date of acceptance of the construction letter.

26. Transfer of Ownership of Facilities to the District Upon Completion of Construction.

Upon satisfactory completion by Developer of all tasks and requirements hereunder, and upon completion of construction by Developer, and upon approval by the District, the District may issue a letter of acceptance to Developer and immediately thereupon all Facilities accepted by the District shall become the sole property of the District without any payment to the Developer whatsoever. The Developer shall furnish to the District a tabulation of all costs for the design and construction for the Facilities. The District, in its sole judgment and for any reason, may accept all Facilities, a certain portion of the Facilities designated by the District, or none of the Facilities. The District will only provide water or wastewater services to the portion of the Facilities it accepts and owns, if any. Upon acceptance of Facilities by the District, the District from that point forward assumes responsibility for maintenance of all Facilities and appurtenances installed pursuant to this Agreement and shall be and become the sole owner of the Facilities free and clear of the claims of any person or entity without the necessity of any further writing, contract, or deed. The parties intend that this Agreement shall operate as a conveyance of the Facilities when the same are installed, accepted and approved by the District. The Developer hereby warrants that the Facilities shall be paid for in full and that no liens or encumbrances shall remain in regard to the Facilities at the time Developer seeks the approval and acceptance of said Facilities by the District. Developer's one-year warranty begins on the date the District accepts the Facilities.

27. Requirements for Service to the Development by the District. It is agreed by the Developer that, until all conditions and tests set forth herein have been successfully completed and until all documents referred to herein (e.g. signed Development Agreement, final plat, as-built drawings and transfer of ownership) have been delivered to the District, in a form satisfactory to the District, the District shall not set water meters, wastewater taps, locate wastewater services, inspect service lines, perform maintenance or otherwise provide any services to the Development.

The District is responsible to furnish and install meter boxes, lids, Y branches and yokes.

Included in the scope of work, all work and materials provided by Developer shall be maintained by Developer and remain in good condition until dedicated to and accepted by the District.

28. Indemnification. The Developer covenants and agrees to hold the District harmless from the claim of any person, firm, corporation or entity, and to defend any action at law or equity brought against the District, and arising from the Facilities constructed or installed by or at the express direction of Developer whether the same occurs on private or public property.

29. **Breach of Contract.** In the event the Developer breaches this Agreement, the Developer shall bear the cost of the District's reasonable expenses, including attorney's fees and other expenses incurred in any efforts to enforce this Agreement whether by negotiation, litigation, or otherwise.

30. **Governing Law/Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, without giving effect to the conflict of law principles thereof. Developer further agrees that it submits to the jurisdiction and venue of the Courts of Blount County, Tennessee to the extent the District institutes litigation to enforce its rights and pursue all remedies available to it by virtue of the terms of this Agreement.

31. **Attorney Fees.** In the event litigation arises between the parties hereto with respect to the terms and provisions of this Agreement, and the District prevails, the District shall be entitled to recover from the losing party or parties all attorney fees and expenses incurred by the District in connection with the prosecution or defense (as the case may be) of the litigation, including attorney fees and expenses incurred in the trial or appellate courts.

32. **Right to Counsel; Further Information.** The parties acknowledge that they have consulted with and have been advised by, or had the opportunity to consult with and be advised by, legal counsel of their own choosing with respect to the terms and provisions of this Agreement. The parties further understand and agree that they may hereafter come into possession of information, currently unknown to them, which, had it been presently known, might have affected their willingness to enter into this Agreement, and the parties expressly assume that risk, agreeing they will not attempt to nullify or modify any provision of this Agreement on the basis of such information.

33. **Entire Agreement.** This Agreement states the entire agreement and understanding between the parties hereto with respect to the transactions contemplated by this Agreement and the subject matter stated herein, and supersedes all prior written or unwritten arrangements or understandings with respect thereto. All parties represent that they are not relying on any representation, statement or action by any other party which does not appear herein. The descriptive headings of this Agreement are for convenience only. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument. This Agreement may not be modified, amended or revoked, except in a writing signed by all parties. This provision may not be orally waived.

34. **Severability.** If any provision of this Agreement is found to be void or unenforceable, the remaining provisions shall remain in full force and effect.

35. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties' successors, assigns, legal representatives, affiliates, subsidiaries, members, governors, officers, directors, managers, agents, representatives, and legal representatives.

36. **Notices.** Any and all notices permitted or required under this Agreement shall be deemed delivered if hand-delivered or mailed by United States registered or certified mail, postage prepaid, return receipt requested to the addresses listed on page 1 of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by persons properly authorized to do so on or as of the day and year first above given.

[Signature Pages to follow]

District:

South Blount County Utility District

By: _____
Name: _____
Title: _____

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, a Notary Public for _____ County, Tennessee, personally appeared _____ with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself/herself to be the _____ (or other officer or chief manager authorized to execute the instrument) of **South Blount County Utility District** the within named bargainer, and that he/she as such officer, executed the foregoing instrument for the purpose therein contained, by signing the name of the company, by himself/herself as such officer.

Witness my hand and seal, this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

DEVELOPER:

_____ [Developer]

By: _____
Name: _____
Title: _____

STATE OF _____

COUNTY OF _____

[ENTITY ACKNOWLEDGEMENT]

Before me, the undersigned authority, a Notary Public for _____ County, Tennessee, personally appeared _____ with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself/herself to be _____ (or other officer or chief manager authorized to execute the instrument) of _____ the within named bargainer, a _____ and that he/she as such officer, executed the foregoing instrument for the purpose therein contained, by signing the name of the company, by himself/herself as such officer.

[INDIVIDUAL ACKNOWLEDGEMENT]

Personally appeared before me, Notary Public for _____ County, Tennessee, _____, the within named bargainer, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he/she executed the foregoing instrument for the purposes therein contained.

Witness my hand and seal, this _____ day of _____, 200____.

Notary Public

My Commission Expires: _____

Meeting also attended by:

By: _____ By: _____

Title: _____ Title: _____

By: _____ By: _____

Title: _____ Title: _____

By: _____ By: _____

Title: _____ Title: _____