

# DEVELOPER'S AGREEMENT

(Addition/Subdivision)

## TO THE CITY OF BURLINGTON COFFEY COUNTY, KANSAS

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, hereinafter referred to as "DEVELOPER" AND THE CITY OF BURLINGTON, KANSAS, hereinafter referred to as "City."

WHEREAS, the City has approved the plat of \_\_\_\_\_ (Addition/Subdivision) (to/in) the City of Burlington, Coffey County, Kansas, in accordance with the recommendations of the Burlington City Planning Commission;

NOW, THEREFORE, the parties hereto do hereby agree as follows:

**Section I Required Improvements:** As a condition to final plat approval, the developer of a proposed subdivision shall be responsible to install or, in cooperation with governmental bodies and utility companies, cause to be installed the following: all roadways, alleys, curbs, gutters and street drainage; sidewalks, sanitary sewer systems; water supply systems; fire hydrants; storm drainage system; electrical services (overhead or underground), street lights and telephone service; landscaping of public areas; street sign; property survey monuments; relocation of existing facilities; minimizing soil erosion and sedimentation. (Reference: City Subdivision Regulations Article 7-102A-L)

**Section II. Public Improvement Financial Commitment:** The City will facilitate new development for the installation of public improvements (rights of way or easements, streets, curb, gutter, electrical services (overhead or underground), street lights, storm sewer, and sanitary sewer mains and laterals, etc.) upon submission of a valid petition of the property owners and the required financial commitment. Said commitment is considered to be provided whenever the City has been furnished with:

**A. Fiscal sureties:**

1. Upon final approval of plans and specifications for required improvements by the Planning Commission, the developer shall enter into an agreement with the applicable Governing Body in which the developer agrees to install such required improvements. Such agreement shall be conditioned upon the approval of the final plat by the Governing Body. (Reference: City Subdivision Regulations Article 7-104A1)
2. Said commitment is considered to be provided whenever the City has been furnished with: (a) funding (cash, cashiers check or escrow account) equal to 15% of the estimated principal cost of the project; or (b) financial guarantee (irrevocable letter of credit, corporate completion bond) equal to 15% of the estimated principal cost of the project.

Project cost shall include engineering design, construction, inspection, temporary note interest, fiscal, legal and administration. Cash funding will be used to reduce the amount of project costs covered by special assessment bond financing. The financial guarantee will be applied annually to satisfy the principal and interest costs of bonded public improvements, should any applicable special assessments not be paid when due.

3. The developer shall furnish a cashier's check, escrow account or irrevocable letter of credit in favor of the Governing Body, 15% of the amount of guarantees shall be returned by, or held as a deposit in escrow after, the final completion of such deposit in escrow may be held by the Governing Body for a period of 18 months after such improvements are completed for the purpose of:

- a. Guaranteeing and securing the correction of any defect in material or workmanship furnished for such improvements, latent in character, and not discernible at the time of final inspection or acceptance by the Governing Body; and
  - b. Guarantee against any damage to such improvements by reason of the settling of the ground, base, or foundation thereof. Such escrow agreement shall provide that, as such defects have so developed, that the deposit may be applied by the Governing Body for any amounts incurred correcting such defects; and that the balance of such deposit, if any, held at the end of such 18-month period shall be returned by the Governing Body to the depositor, or paid to the order of the depositor without payment of interest by the Governing Body. (Reference: City Subdivision Regulations Article 7-104A3a-b)
- B. Petitions to the Governing Body may be submitted as a means of guaranteeing to such Governing Body the authority to install improvements. Petitions may be submitted only when the following conditions exist:
- 1. *The petition must be a valid petition as provided for under Kansas law.*
  - 2. *The petitions must be approved by the Governing Body concurrent with the approval and/or acceptance of the final plat.*
  - 3. *The initiating resolution for such improvement must be adopted by the Governing Body concurrently with the petition approval or as soon thereafter as may be provided by law. The cost of the publication of said resolution shall be borne by the developer.*
  - 4. *The initiating resolution must be recorded with the County Register of Deeds after it has been adopted by the Governing Body showing that the land described in the resolution will be liable in the future for special assessments for the improvements authorized. (Reference: City Subdivision Regulations Article 7-104B1-4)*
- C. No public funds will be used for business or private use.
- D. For streets and related drainage only in rural type subdivisions, pre-construction of improvements may be used if approved by the applicable Governing Body. The developer may request such Governing Body to hold the final plat acceptance until such time as an inspection certified that the required improvements have been properly constructed. Construction of streets and related drainage as outlined in the subdivision regulations must commence within three (3) years of acceptance of the final plat. (Reference: City Subdivision Regulations Article 7-104C)
- E. The developer shall, prior to the approval of the final plat, submit a letter from the utility(ies) involved stating that satisfactory arrangements have been made by the developer guaranteeing the installation of their respective services. (Reference: City Subdivision Regulations Article 7-104D)
- F. Property survey monuments and bench marks shall be installed by the developer before the final plat is recorded with the County Register of Deeds at the expense of the developer. (Reference: City Subdivision Regulations Article 7-104E)
- G. **Off-site Improvements.** The applicable Governing Body may, upon making a finding of necessity, require the developer to install or upgrade off-site improvements located outside the perimeter of a subdivision if such need is substantially created by a proposed subdivision. Such off-site improvements should be within dedicated rights of way or easements and serve a public purpose. The financing and guaranteeing of such improvements shall be administered as if they were the same as on-site improvements under Section 7-104. The applicable Governing Body may require such subdivision to participate in the following facilities and improvements, or any other off-site improvements as recommended by the Planning Commission, if the need is created by a proposed subdivision: Drainage improvements; Pedestrian ways and sidewalks; Screening; Special grading requirements; Street improvements; or Traffic control devices.

**Section III: Delinquent Special Assessments:** Special assessment financing may not be approved if the petitioner has a financial interest in an existing development that has delinquent special assessment taxes. All petitioners for new development under this policy will be required to certify, under oath, that they have no financial interest in any property with delinquent special assessments anywhere within the City, State, or United States.

**Section IV: Cost and Standards for Public Improvements:** All street, sewer and drainage grades shall be in accordance with design plans and specifications prepared by a licensed professional engineer in the State of Kansas and by the appropriate City departments, the Kansas Department of Health and Environment (KDHE), and any other State or Federal agencies from which permits are required by law.

**A. Sanitary Sewers:**

1. In residential areas, the cost of mains, manholes, and pump stations for eight (8) inch sewer mains shall be assessed 100% to the benefit district. If the city desires to place a larger sewer main to or through the area to benefit the overall system, the benefit district shall pay the cost equivalent of an eight (8) inch line and the city's sewer utility fund shall pay the remainder.
2. In a commercial or industrial area, the benefited property owner or owners shall pay 100% of the cost of the collection system necessary to satisfy their requirements.
3. The cost of service lines shall be paid by the benefited property.
4. If the residential, commercial or industrial area is not located within the city limits of Burlington the developer must petition to be annexed into the city of Burlington.
5. Designs for sanitary sewers must be approved by the City of Burlington's engineer and KDHE. All engineering, inspections costs, and KDHE fees shall be paid by the developer.

**B. Water System**

1. In residential areas, the cost of valves, hydrants, and water mains up to twelve inches in diameter shall be charged 100% against the benefit district. If the city desires to place a larger water main to or through the area to benefit the overall system, the benefit district shall pay the cost equivalent to a twelve inch line and the city's water utility fund shall pay the remainder.
2. In a commercial or industrial area, the benefited property owner or owners shall pay 100% of the cost of the water system necessary to satisfy their requirements.
3. The cost of service lines from the main to each house shall be paid by the benefited property. The city of Burlington does not install service lines between the water meter and the house.
4. All water mains must be set up in a looped system with no dead ends.
5. If the residential, commercial, or industrial area is not located within the city limits of Burlington the developer must sign Burlington's waiver of annexation and this waiver must be recorded with Coffey County Registrar of Deeds at the expense of the Developer.
6. Designs for water lines must be approved by the City of Burlington's engineer and KDHE. All engineering, inspections costs, and KDHE fees shall be paid by the developer

**C. Electric Service**

1. CONNECTION PERMITS. When an application in proper form has been made, the city clerk shall issue an order to connect the premises with the municipal electric system. Where it is necessary in commencing service that new or additional lines, poles, transformers, meters or other equipment be constructed or installed, the governing body by contract, motion or otherwise, may provide a fee or charge suitable to the circumstances of the particular case. (Code 1985, 23-330 (Reference: City Code of Burlington Article 15-309, page 15-16)
2. FEES ASSOCIATED WITH ELECTRICAL SERVICE: The City of Burlington will provide overhead electric service at no charge, unless the area to be developed has been designated for underground construction. If the developer/property owner chooses to have underground electricity in an area that is not in an area designated by the Governing Body to be underground the cost of underground electricity will be as follows. The total cost of the

material, labor, and trench, minus the cost of overhead construction materials and labor.

3. **FIRST SERVICE CONNECTIONS AND AUTHORITY TO DISCONTINUE SERVICE TO PROTECT LIFE, PROPERTY, ETC.** Upon the granting of any application for the extension of the electric service to any premises, the superintendent is authorized to refuse electric service to any such premises until he or she shall have satisfied himself or herself that all electrical wiring to the breaker box has been installed in conformity with the electrical regulations of the city. The superintendent may discontinue service and disconnect the same from the city lines when he or she deems it necessary to protect lives or property by reason of improper or defective electrical wiring on the premises served. (Code 1985, 23-34) (Reference: City Code of Burlington Article 15-310 page 15-16)
4. Electric service will be disconnected as soon as the City of Burlington becomes aware of a situation that will cause damage to life and/or property.
5. **CONNECTION RULES.** All house connections in the city, lead-in wires and meter installations or repairs or changes therein shall be made and constructed by the employees of the electric department under the direction of the superintendent at the expense of the city. (Code 1985, 23-35) (Reference: City Code of Burlington Article 15-311 pages 15-16)

**D. Streets**

1. All streets and drainage grades shall be in accordance with design plans and specifications prepared by a licensed professional engineer in the State of Kansas and shall be approved by the City of Burlington's engineer for Streets, the Kansas Department of Health and Environment, and any other State or Federal agencies from which permits or approval are required by law. Streets are required improvements. Streets and related drainage must be constructed in accordance to the City's Subdivision regulations. (Reference: Subdivision Regulations Article 6.107 & 108, Article 7.102A)
2. No construction of any type shall be permitted other than the required core drilling or soil sampling within the proposed street route until all required external agencies (i.e. FEMA, Division of Water Resources, etc.) have submitted their approval and the City of Burlington's engineer for Streets has reviewed and accepted any required design or specification changes.
3. The cost of construction of local streets, including two curbs and the related storm drains, shall be assessed 100% to the property within the benefit district. The benefit district shall include those properties as provided by statute.
4. All streets within the benefit district shall be a minimum of 30 feet (inside of curb to inside of curb) and shall be built to city specifications.
5. Any non-through streets shall have a minimum unobstructed turning radius of 120 feet.
6. The cost of all improvements of direct benefit to adjacent property such as curb cuts, driveways, frontage roads, special turn lanes, etc., shall be assessed 100% to the benefitted property.
7. Any cost incurred by the City associated with design and specification review shall be the direct responsibility of the developer and shall be paid prior to commencing construction.

**E. Sidewalks:**

1. Sidewalks shall be installed where indicated on the plat before occupancy of a dwelling and shall be constructed to City specifications (Reference: Subdivision Regulations Article 7.102C and City Code Chapter 13, Article 2)

**F. Stormwater:**

1. All stormwater runoff from the development shall be managed in a manner to minimize the potential for flooding, ponding, silting, or erosion impacts to downstream development and receiving waters, as set forth in the City Zoning Regulations, Subdivision Regulations, and all local, state and federal agencies. Developers shall comply with the Kansas Department of Health and Environment stormwater discharge permit requirements and procedures.

Developer shall comply with stormwater quality related procedures, rules, regulations, and requirements in connection with the City's compliance with the Environmental Protection Agency's (EPA) Phase II stormwater quality regulations, as they currently exist or as they may be modified in the future.

2. The property owner shall maintain the stormwater detention facilities within the easement(s) provided therefore, as designed in the final approved construction plans referred to above in item F1, and for future detention facilities and easements should the initial detention facilities be relocated. If the property owner fails to maintain the stormwater detention facilities within the easement(s), the City or the City's contractor(s) may perform maintenance as considered necessary by the City and assess the costs of such maintenance, with the individual property owners being jointly and severally liable for all such costs. All such property owners and/or the property owner's association hereby waive protest of any such assessments.

**G. Fire Hydrant:**

1. Fire Hydrant specifications and fire-flow requirements shall meet the specification set forth in the current Uniform Fire Code (Reference: Subdivision Regulations Article 7-102F).

**Section V:** The Developer does hereby agree to indemnify the City harmless for any liability for damages for injuries to persons on the premises that may occur during construction of improvements in the Addition/Subdivision. All contractors shall provide proof of coverage for builder's risk, public liability, and property damage insurance satisfactory to the City prior to starting construction.

**Section VI:** All lots in the area will be kept clean and mowed to a height not exceeding twelve (12) inches at all times, subject to farm lease on undeveloped land. Maintenance of all temporary streets (if any) shall be provided by the Developer as directed by the City until permanent street improvements are made.

**Section VII:** Other infrastructure utilities shall be installed by the appropriate supplier under separate contract or agreement with the developer. Such "other infrastructure" agreements shall include water and electricity (City of Burlington), natural gas, telephone, cable television, and any other holders of valid franchise agreements with the City of Burlington.

**Section VIII:** All temporary construction units must be removed when building in the immediate vicinity is completed.

**Section IX:** The Developer assumes responsibility to see that all original purchasers of lots in the Addition/Subdivision receive a copy of the Developer's Agreement at the time of purchase.

**Section X:** No construction will be allowed on any portion of the Addition/Subdivision unless the Developer or a designated contractor has first obtained from the City Zoning Clerk the proper building and zoning permits. No zoning or building permits shall be issued until all requirements have been met as set forth in the City's Subdivision Regulations. (Reference: Subdivision Regulations, Article 3.106)

**Section XI:** The Developer will file this Developer's Agreement, as executed on behalf of the City, with Coffey County Register of Deeds. A copy of this Developer's Agreement showing said recording, along with a copy of the recoded plat, shall be furnished to the City before building/zoning permit(s) is/are issued.

**Section XII:** The terms and conditions, as set forth herein, shall be binding upon the heirs, personal representatives, trustees, successors, and assigns of the parties hereto.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ .

\_\_\_\_\_  
(Corporate name of Applicant)

\_\_\_\_\_  
(Signature of Applicant)

\_\_\_\_\_  
(Print Applicant's Name & Title)

STATE OF KANSAS )  
 ) SS  
COUNTY OF COFFEY )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ by

\_\_\_\_\_  
(Insert name, title and type of business here; i.e., Joe Smith, President, ACME Corporations, A Kansas corporation.)

(SEAL)

\_\_\_\_\_  
Notary Public

Appointment Expires: \_\_\_\_\_

CITY OF BURLINGTON

\_\_\_\_\_  
Mayor, Robert S. Like

(SEAL)

ATTEST

\_\_\_\_\_  
City Clerk, Anne Brown

APPROVED AS TO FORM

\_\_\_\_\_  
Philip Wright, City Attorney

\_\_\_\_\_  
City of Burlington

STATE OF KANSAS )  
 ) SS  
COUNTY OF COFFEY )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ by

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(Insert name, title and type of business here; i.e., Joe Smith, President, ACME Corporations, A Kansas corporation.)

(SEAL)

\_\_\_\_\_  
Notary Public

Appointment Expires: \_\_\_\_\_