

CHAPTER II

MODEL SUBDIVISION RULES

DIVISION 1. GENERAL AND ADMINISTRATIVE PROVISIONS

II – 1.1 Authority and Scope of Model Rules. These rules are adopted by Nueces County, Texas under the authority of the Local Government Code, Chapter 232 and Water Code, §16.350. Notwithstanding any provision to the contrary, the rules under this chapter apply only to a subdivision which creates two (2) or more lots of five (5) acres or less intended for residential purposes. Lots of five (5) acres or less are presumed to be for residential purposes unless the land is restricted to nonresidential uses on the final plat and in all deeds and contracts for deeds.

II – 1.2 Purpose. It is the purpose of the rules under this chapter to promote the public health of the county residents, to ensure that adequate water and wastewater facilities are provided in subdivisions within the jurisdiction of Nueces County, and to apply the minimum state standards for water and wastewater facilities to these subdivisions.

II – 1.3 Plat Required.

1.3.1 The owner of a tract of land located outside the corporate limits of a municipality that divides the tract in any manner that creates two (2) or more lots of five (5) acres or less intended for residential purposes must have a plat of the subdivision prepared. Lots of five (5) acres or less are presumed to be for residential purposes unless the land is restricted to nonresidential uses on the final plat and all deeds and contracts for deeds.

1.3.2 No subdivided land in Nueces County shall be sold or conveyed until the subdivider:

(a) has received approval of a final plat of the tract of land; and,

(b) has filed and recorded a legally approved plat with the County Clerk of Nueces County

1.3.3 A division of a tract is defined as including a metes and bounds description, or any description of less than a whole parcel, in a deed of conveyance or in a contract for a deed, using a contract of sale or other executory contract, lease/purchase agreement, or using any other method to convey property.

II – 1.4 Definitions. Certain words and terms associated with the Rules are outlined and defined in Appendix A, and shall have said meaning, unless the context of the Rules clearly indicates otherwise.

DIVISION 2. MINIMUM STANDARDS

II – 2.1 Scope of Standards. The establishment of a residential development with two (2) or more lots of five (5) acres or less where the water supply and sewer services do not meet the minimum standards of this Chapter is prohibited. A subdivision with lots of five (5) acres or less is presumed to be a residential development unless the land is restricted to nonresidential use on the final plat and all deeds and contracts for deeds.

II – 2.2 Water Facilities Development. The following provides minimum standards for the development of water facilities.

2.2.1 Public Water Systems.

- (a) Subdividers who propose to supply drinking water by connecting to any existing public water system must provide a written agreement with the retail public utility in substantially the form attached in Appendix D. The agreement must provide that the retail public utility has or will have the ability to supply the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of thirty (30) years. The agreement must reflect that the Subdivider has paid the cost of water meters and other necessary connection equipment, membership fees, water rights acquisition costs, or other fees associated with connection to the public water system so that service is available to each lot upon completion of construction of the water facilities described on the final plat.
- (b) Where there is no existing retail public utility to construct and maintain the proposed water facilities, the Subdivider shall establish a retail public utility and obtain a Certificate of Convenience and Necessity (CCN) from the Texas Commission on Environmental Quality. The public water system, the water quality and system design, construction and operation shall meet the minimum criteria set forth in 30 TAC §§290.38-290.51 and §§290.101-290.120. If groundwater is to be the source of the water supply, the Subdivider shall have prepared and provide a copy of a groundwater availability study which shall include an analysis of the long term (30 years) quantity and quality of the available groundwater supplies relative to the ultimate needs of the subdivision. If surface water is the source of supply, the Subdivider shall provide evidence that sufficient water rights have been obtained and dedicated, either through acquisition or wholesale water supply agreement that will provide a sufficient supply to serve the needs of the subdivision for a term of not less than thirty (30) years.

2.2.2 Non-Public Water Systems. Where individual wells or other non-public water systems are proposed for the supply of drinking water to residential establishments, a test well or wells located so as to be representative of the quantity and quality of water generally available from the supplying aquifer shall be drilled by the Subdivider and the produced waters sampled and submitted to a private laboratory for a complete chemical and bacteriological analysis of the parameters on which there are drinking water standards. The Subdivider shall have prepared and provide a copy of a groundwater availability study which shall include an analysis of the long term (30 years) quantity of the available groundwater supplies relative to the ultimate needs of the subdivision. The water quality of the water produced from the test well must meet the standards of water quality required for community water systems as set forth in 30 TAC §290.103, 290.105, 290.106 and 290.110, either:

- (1) without any treatment to the water; or
- (2) with treatment by an identified and commercially available water treatment system.

2.2.3 Transportation of Potable Water. The conveyance of potable water by transport truck or other mobile device to supply the domestic needs of the subdivision is not an acceptable method,

except on an emergency basis. Absence of a water system meeting the standards of these rules due to the negligence of the Subdivider does not constitute an emergency.

II – 2.3 Wastewater Disposal. The following provides minimum standards for the development of wastewater disposal.

2.3.1 Organized Sewerage Facilities.

- (a) Subdividers who propose the development of an organized wastewater collection and treatment system must obtain a permit to dispose of wastes from the Texas Commission on Environmental Quality in accordance with 30 TAC Chapter 305 and obtain approval of engineering planning materials for such systems under 30 TAC Chapter 317 from the Texas Commission on Environmental Quality.
- (b) Subdividers who propose to dispose of wastewater by connecting to an existing permitted facility must provide a written agreement in substantially the form attached in Appendix D with the retail public utility. The agreement must provide that the retail public utility has or will have the ability to treat the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of 30 years. The agreement must reflect that the Subdivider has paid the cost of all fees associated with connection to the wastewater collection and treatment system have been paid so that service is available to each lot upon completion of construction of the wastewater facilities described on the final plat. Engineering plans, signed and sealed by a professional engineer registered in the State of Texas, for the proposed wastewater collection lines must comply with 30 TAC Chapter 317.

2.3.2 On-site Sewerage Facilities.

- (a) On-site sewerage facilities, which serve single family or multi-family residential dwellings with anticipated wastewater generations of no greater than five thousand (5,000) gallons per day, must comply with 30 TAC Chapter 285.
- (b) Proposals for sewerage facilities for the disposal of sewage in the amount of five thousand (5,000) gallons per day or greater must comply with 30 TAC Chapter 317.
- (c) The Texas Commission on Environmental Quality or its authorized agent shall review proposals for on-site sewage disposal systems and make inspections of such systems as necessary to assure that the system is in compliance with the Texas Health and Safety Code, Chapter 366 and rules in 30 TAC Chapter 285, and in particular §§285.4, 285.5 and 285.30-285.39 and the County OSSF Order. In addition to the unsatisfactory on-site disposal systems listed in 30 TAC §285.3(b), pit privies and portable toilets are not acceptable waste disposal systems for lots platted under these rules.

2.3.3 Greywater Systems for Reuse of Treated Wastewater.

- (a) **Organized or municipal sewerage systems.** Any proposal for sewage collection, treatment and disposal, which includes greywater reuse, shall meet minimum criteria of

30 TAC Chapter 210 promulgated and administered by the Texas Commission on Environmental Quality.

- (b) **On-site sewerage facilities.** Any proposal for on-site sewage disposal, which includes provisions for greywater use, shall meet the minimum criteria of 30 TAC Chapter 285.

2.3.4 Sludge Disposal. The disposal of sludge from water treatment and sewerage facilities shall meet the criteria of 30 TAC Chapter 312 and Chapter 317.

II – 2.4 Other Standards.

2.4.1 Setbacks. In areas that lack a nationally recognized fire code as listed in Local Government Code, §235.00(b)(2) and lack water lines sized for fire protection, setbacks from roads and rights-of-way shall be a minimum of ten (10) feet, setbacks from adjacent property lines shall be a minimum of five (5) feet, and shall not conflict with separation or setback distances required by rules governing public utilities, on-site sewerage facilities, or drinking water supplies. Setback lines required elsewhere in the Order or Rules of the County shall control to the extent greater setbacks are therein required.

2.4.2 Number of Dwellings Per Lot. No more than one (1) single family detached dwelling shall be located on each lot. A notation of this restriction shall be placed on the face of the final plat. This restriction shall be placed in all deeds and contracts for deeds for real estate sold within the subdivision. Proposals, which include multi-family residential, shall include adequate, detailed planning materials as required for determination of proper water and wastewater utility type and design.

DIVISION 3. PLAT APPROVAL

II – 3.1 Applications for Plat Approval.

- (a) **Owner Representation.** An application for approval of a plat shall be filed with the County by the record owner of the property to be subdivided or the duly authorized agent of the record owner.

- (b) **Standards.** Every plat creating two (2) or more lots of five (5) acres or less for residential use shall comply with the standards of **Division 2** and the requirements of **Division 3** of this Chapter.

II – 3.2 Final Engineering Report. The final plat shall be accompanied by an engineering report bearing the signed and dated seal of a professional engineer registered in the State of Texas. The engineering report shall discuss the availability and methodology of providing water facilities and wastewater treatment to individual lots within the subdivision. A detailed cost estimate per lot acceptable to the County shall be provided for those unconstructed water supply and distribution facilities and wastewater collection and treatment facilities which are necessary to serve each lot of the subdivision. The plan shall include a construction schedule for each significant element needed to provide adequate water or wastewater facilities. If financial guarantees are to be provided under of this Chapter, the schedule shall include the start dates and completion dates.

3.2.1 Public Water Systems.

- (a) *Where water supplies are to be provided by an existing public water system*, the Subdivider shall furnish an executed contractual agreement between the Subdivider and the retail public utility in substantially the form attached in Appendix D and referenced in 30 TAC §364.32(a)(1). Before final plat approval, plans and specifications for the proposed water facilities shall have been approved by all entities having jurisdiction over the proposed subdivision which may include, in addition to the Nueces County Department of Public Works, the Texas Commission on Environmental Quality and the city or county health department. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study which shall include comments regarding the long term (30 years) quantity and quality of the available groundwater supplies relative to the ultimate needs of the subdivision.

- (b) Where there is no existing retail public utility to construct and maintain the proposed water facilities, the Subdivider shall establish a retail public utility and obtain a Certificate of Convenience and Necessity (CCN) from the TNRCC and include evidence of the CCN issuance with the plat. Before the final plat approval, plans and specifications for the proposed water facilities shall have been approved by all entities having jurisdiction over the proposed project. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study which shall include an analysis of the long term (30 years) quantity and quality of the available groundwater supplies relative to the ultimate needs of the subdivision. If surface water is the source of supply then the final engineering report shall include evidence that sufficient water rights have been obtained and dedicated, either through acquisition or wholesale water supply agreement, that will provide a sufficient supply to serve the needs of the subdivision for a term of not less than thirty (30) years.

3.2.2 Non-Public Water Systems. Where individual wells are proposed for the supply of drinking water to residences, the final engineering report shall include the quantitative and qualitative results of sampling the test wells in accordance with 30 TAC §364.32. The results of such analyses shall be made available to the prospective property owners. If the water quality of the test well required pursuant to 30 TAC §364.32(b) does not meet the water quality standards as set forth in that section without treatment by an identified and commercially available water treatment system, then the final report must state the type of treatment system that will treat the water produced from the well to the specified water quality standards, the location of at least one (1) commercial establishment within the County at which the system is available for purchase, and the cost of such system, the cost of installation of the system, and the estimated monthly maintenance cost of the treatment system. The engineer shall issue a statement concerning the availability of groundwater supplies to serve the fully developed subdivision over the next thirty (30) years. Such statement may be based on information available from the Texas Water Development Board's Office of Planning. The description of the required sanitary control easement shall be included.

3.2.3 Organized Sewerage Facilities.

- (a) *Where wastewater treatment is to be provided by an existing retail public utility*, the Subdivider shall furnish evidence of a contractual agreement between the Subdivider and the retail public utility in substantially the form attached in Appendix D and referenced in 30 TAC §§364.33(a)(2). Before final plat approval, an appropriate permit to dispose of wastes shall have been obtained from the Texas Commission on Environmental Quality and plans and specifications for the proposed wastewater collection and treatment facilities shall have been approved by all entities having jurisdiction over the subdivision.

- (b) *Where there is no existing retail public utility to construct and maintain the proposed sewerage facilities*, the Subdivider shall establish a retail public utility and obtain a CCN from the Texas Commission on Environmental Quality. Before final plat approval, a wastewater treatment permit authorizing the treatment of the wastewater for the ultimate build-out population of the subdivision shall have been obtained from the Texas Commission on Environmental Quality and plans and specification for the proposed sewerage facilities shall have been approved by all entities having jurisdiction over the subdivision.

3.2.4 On-Site Sewerage Facilities (OSSF). Where private on-site sewerage facilities are proposed, the final engineering report shall include planning materials required by 30 TAC §§285.4(c), including the site evaluation described in 30 TAC §§285.30 and all other information required by the County's OSSF regulations.

3.2.5 Additional Information. Additional information to be included in the final engineering report, in order to determine the adequacy of proposed water and wastewater improvements as part of the plat approval process, shall include, but is not limited to:

- (1) layout of proposed street and drainage work;
- (2) legal description of the property;
- (3) existing area features;
- (4) topography;
- (5) floodplains;
- (6) description of existing easements;
- (7) layout of other utilities;
- (8) notation of deed restrictions
- (9) public use areas; and
- (10) proposed area features.

II – 3.3 Financial Guarantees for Improvements. If an adequate public or non-public water system or sewerage facility is not available from a retail public utility, or are not constructed by the Subdivider, to serve lots intended for residential purposes of five (5) acres or less at the time final plat approval is sought, then the Nueces County Department of Public Works shall require the owner of the subdivided tract to execute an agreement with Nueces County utilizing the form attached in Appendix D secured by a bond, irrevocable letter of credit or other alternative financial guarantee such as a cash deposit which meet the requirements set forth below.

3.3.1 Bonds. If a bond is submitted as a financial guarantee, it shall meet the following requirements:

- (a) The bond or financial guarantee shall be payable to the Nueces County Judge, in his official capacity, or the Judge's successor in office.
- (b) The bond or financial guarantee shall be in an amount determined by the Commissioners Court to be adequate to ensure proper construction or installation of the public or non-public water facilities, and wastewater facilities to service the subdivision, including reasonable contingencies, but in no event shall the amount of the bond be less than the total amount needed to serve the subdivision as established by the engineer who certifies the plat.
- (c) The bond shall be executed with sureties as may be approved by the Commissioners Court. The criteria for acceptability of the surety companies issuing bond includes the following:
 - (1) Registration with the Secretary of State and be authorized to do business in Texas;
 - (2) Authorization to issue bonds in the amount required by the Commissioners Court;
 - (3) Rating of at least B from Best's Key Rating Guide; or if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570. Such bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury.
- (d) The bond shall be conditional upon construction or installation of water and wastewater facilities meeting the criteria established under this Chapter and upon construction of facilities within the time stated in the final engineering report, or within any extension of time granted by the Commissioners Court.

3.3.2 Letter of Credit. If a letter of credit is submitted as a financial guarantee, it shall meet the following requirements:

(a) Any letter of credit submitted as a financial guarantee *for combined amounts greater than \$10,000 and less than \$250,000* must be from financial institutions that meets the following qualifications:

- (1) Bank Qualifications – Must be federally insured; Sheshunoff rating must be 10 or better and primary capital must be at least 6% of total assets; and, total assets must be at least \$25 million.
- (2) Savings and Loan Associations Qualifications – Must be federally insured; tangible capital must be at least 1.5% of total assets and total assets must be greater than \$25 million or tangible capital must be a least 3% of total assets if total assets are less than \$25 million; and, Sheshunoff rating must be 30 or better.
- (3) Other Financial Institutions Qualifications – The letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a Nueces County investment; and, the investment instrument must be registered in Nueces County's name and Nueces County must receive safekeeping receipts for all collateral before the letter of credit is accepted.

(b) Any letter of credit submitted as a financial guarantee *for combined amounts greater than \$250,000* must be from financial institutions which meet the following qualifications:

- (1) Bank Qualifications – Must be federally insured; Sheshunoff rating must be 30 or better and primary capital must be at least 7% of total assets; and, total assets must be at least \$75 million.
- (2) Savings and Loan Associations Qualifications – Must be federally insured; tangible capital must be at least 3% of total assets and total assets must be greater than \$75 million or tangible capital must be a least 5% of total assets if total assets are less than \$75 million; and, Sheshunoff rating must be 30 or better.
- (3) Other Financial Institutions Qualifications – The letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a Nueces County investment; and, the investment instrument must be registered in Nueces County's name and Nueces County must receive safekeeping receipts for all collateral before the letter of credit is accepted.

(c) The letter of credit shall list as sole beneficiary the Nueces County Judge, in his official capacity, or the Judge's successor in office, and must be approved by the Nueces County Judge. The form of the letter of credit shall be in the format found in Appendix D.

- (d) The letter of credit shall be conditioned upon installation or construction of water and wastewater facilities meeting the criteria established under the Rules within this Chapter and upon construction of facilities within the time stated in the final engineering report or within any extension of time granted by the Commissioners Court.

3.3.3 Amount of Financial Guarantee. Nueces County will determine the amount of the bond, letter of credit, or cash deposit required to ensure proper construction of adequate water and wastewater facilities for the subdivision.

3.3.4 Alternative to Financial Guarantee. Nueces County may approve a final plat without receiving a financial guarantee in the name of the County if:

- (1) The property being subdivided lies wholly within the jurisdiction of the County;
- (2) The property being subdivided lies wholly within the extra-territorial jurisdiction of a municipality; and
- (3) The municipality has executed an interlocal agreement with the County that imposes the obligation on the municipality to accept the bonds, letters of credit, or other financial guarantees that meet the requirements as stated above; execute the construction agreement with the Subdivider; and, assume the obligations to enforce the terms of the financial guarantee under the conditions set forth therein and complete construction of the facilities identified in the construction agreement.

II – 3.4 Review and Approval of Final Plats. The review procedures for plats under this Chapter shall be in accordance with those submission and review procedures outlined in **Chapter I** of these Rules. Special review requirements, applicable to plats under the Model Subdivision Regulations, are as follows:

3.4.1 Final Plat Approval. Final plat approval shall not be granted unless the Subdivider has accomplished the following:

- (a) Dedicated the sites for the adequate water and sewerage facilities identified in the final plat to the appropriate retail public utility responsible for operation and maintenance of the facilities; and
- (b) Provided evidence that the water facilities and sewerage facilities have been constructed and installed in accordance with the criteria established within these Rules and the approvals from the Texas Commission on Environmental Quality of the plans and specifications for such construction, including any change orders filed with these agencies; or
- (c) Obtained all necessary permits for the proposed water facilities and sewerage facilities (other than for OSSF permits on individual lots within the proposed subdivision) and has

entered into a financial agreement with Nueces County secured by a bond or other alternative financial guarantee such as a cash deposit or letter of credit for the provision of water and sewerage facilities with the bond or financial guarantee meeting the criteria established in this Chapter.

II – 3.5 Time Extension for Providing Facilities.

3.5.1 Reasonableness. The Commissioners Court may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the required water and sewer service facilities must be fully operable if:

- (1) any financial guarantees provided with the final plat as originally submitted are effective for the time of the requested extension or new financial guarantees that comply with §364.54 are submitted which will be effective for the period of the extension; and
- (2) the Court finds the extension is reasonable and not contrary to the public interest.

3.5.2 Timeliness. If the facilities are fully operable before the expiration of the extension period, the facilities are considered to have been made fully operable in a timely manner.

3.5.3 Unreasonableness. An extension is not reasonable if it would allow a residence in the subdivision to be inhabited without water or sewer services that meet the standards of this Chapter.

II – 3.6 Criteria for Subdivisions that Occurred Prior to September 1, 1989

This section shall apply only to tracts of land that were divided into two or more parts to lay out a subdivision before September 1, 1989 and have not been platted or recorded. This section is in addition to the authority of the County to grant a delay or variance pursuant to Local Government Code §232.043 or a rule of the County adopted pursuant to such provision.

3.6.1 Purpose. It is the purpose of this section to promote the public health of the County residents, to ensure that adequate water and sewerage facilities are provided in subdivisions within the jurisdiction of this County, and to establish the minimum standards for pre-1989 subdivisions for which no plat has been filed or recorded in the records of the County.

3.6.2 Required Plat. In the event that the owner of tract of land located outside the limits of a municipality who subdivided the tract into two or more parts to lay out a subdivision of the tract prior to September 1, 1989, including an addition, or to lay out suburban lots or building lots, and to lay out streets, alleys, squares, parks or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts, was legally obligated to, but has failed to have a plat of the subdivision prepared, approved by the Commissioners Court, and filed, the owner of a residential lot which was created by the subdivision may have a plat of the individual lot prepared and approved by the Commissioners Court as provided in this section in lieu of the filing of a plat of the subdivision.

3.6.3 Special Criteria. The Commissioners Court may approve the plat of a residential lot which does not comply with the provisions under this Chapter as applied to an individual subdivided lot if such approval is in harmony with the general purpose and intent of these Rules so that the public health, safety, and welfare may be secured and substantial justice done.

- (a) Owners of individual lots in a single un-platted subdivision may file a joint request for approval of their respective individual residential lots.

- (b) An application for approval of the plat of an individual lot shall be made in writing. The application shall state specifically the chapter, section, or subsection with which the plat does not comply and from which a waiver is being requested. The application shall contain available information and documentation, which supports the requested approval. The applicant shall also provide such additional documentation as the Commissioners Court may request to support the application, including:
 - (1) a copy of a dated plat, sales contract, utility records, or other acceptable documentation that the subdivision occurred prior to September 1, 1989;
 - (2) the name and address of the original Subdivider or the Subdivider's authorized agent, if known;
 - (3) a survey and plat of the lot for which approval is requested, showing existing residences, roads, and utilities; and
 - (4) a deed, an affidavit of ownership or other evidence of ownership of the lot for which approval is requested.

- (c) Approval of plats of individual lots shall be granted subject to the limitations of state law, and based on written findings by the Commissioners Court that:
 - (1) the lot for which approval is requested is within a tract that was subdivided prior to September 1, 1989, and is not owned by the original Subdivider;
 - (2) a plat was required for the subdivision, but has not been filed with the County by the Subdivider legally obligated to file it;
 - (3) an existing, currently occupied residential dwelling is located on the lot;
 - (4) existing water and sewer services which comply with the minimum standards set forth herein are available to the lot; and
 - (5) the request is reasonable, compliance with specified sections of these rules is impractical, and a waiver is not contrary to the public health and safety.

3.6.4 Final Determination. The Commissioners Court shall make the final decision on an application for a waiver, following review and recommendation by the Nueces County Department of Public Works. The applicant may withdraw a request for a waiver at any

point in the process. If the requested waiver application is approved by the Commissioners Court, the County shall issue a certificate stating that a plat of the residential lot has been reviewed and approved.

DIVISION 4. ENFORCEMENT

II – 4.1 Oversight. The Owner, by submitting a plat, acknowledges the authority of the County and state agencies to lawfully enter and inspect property for purposes of execution of their statutory duties. Such inspection will not release the Owner from any obligation to comply with the requirements of these Rules.

II – 4.2 General Enforcement Authority of County. The provisions of this Chapter are enforceable pursuant to the specific provisions hereof related to enforcement and state law including Water Code, Chapter 7 and §§16.352, 16.353, 16.3535, 16.354, and 16.3545, and Local Government Code, §232.037. Pursuant to Section 232.037 of the Local Government Code:

- (a) The Attorney General, the District Attorney, or County Attorney may take any action necessary in a court of competent jurisdiction on behalf of the state or on behalf of residents to:
 - (1) enjoin the violation or threatened violation of the Model Subdivision Rules adopted under Section 16.343, Water Code;
 - (2) enjoin the violation or threatened violation of a requirement of rules adopted by the Commissioners Court;
 - (3) recover civil or criminal penalties, attorney's fees, litigation costs, and investigation costs, and;
 - (4) require platting or replatting under Section 232.040 of the Local Government Code.
- (b) The Attorney General, at the request of the District or County Attorney with jurisdiction, may conduct a criminal prosecution under Section 232.033(h) or 232.036 of the Local Government Code.
- (c) Criminal penalties begin as Class A Misdemeanors. Civil penalties include fines of not less the \$500.00 or more than \$1000.00 for each violation for each day of a continuing violation.

APPENDIX A

DEFINITIONS OF ACRONYMS & TERMS

Acronyms

A2LA

- American Association for Laboratory Accreditation.

AASHTO

- American Association of State Highway and Transportation Officials.

ACI

- American Concrete Institute.

ACPA

- American Concrete Pipe Association.

ADT

- average daily traffic.

AI

- Asphalt Institute.

AMRL

- AASHTO Materials Reference Library.

ANSI

- American National Standards Institute.

APWA

- American Public Works Association.

ASCE

- American Society of Civil Engineers.

ASTM

- American Society for Testing and Materials.

AWWA

- American Water Works Association.

BFE

- base flood elevation.

APPENDIX A – DEFINITIONS OF ACRONYMS & TERMS

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BMP

- best management practices.

CAFRA

- Coastal Area Facility Review Act.

CFR

- Code of Federal Regulations.

CMP

- corrugated metal pipe.

COE (also USACE)

- United States Army Corps of Engineers.

DOT

- United States Department of Transportation.

EPA

- United States Environmental Protection Agency.

ETJ

- extraterritorial jurisdiction.

FEMA

- United States Federal Emergency Management Agency.

FHWA

- Federal Highway Administration, United States Department of Transportation.

FIRM

- Federal Insurance Rate Map.

FIS

- Flood Insurance Study.

GIS

- Geographic Information System.

GPD

- gallons per day.

GPS

- Global Positioning System.

HGL

- hydraulic grade line.

IEEE

- Institute of Electrical and Electronics Engineers.

IESNA

- Illuminating Engineering Society of North America.

ITE

- Institute of Transportation Engineers.

MLUL

- Municipal Land Use Law.

MUTCD

- Manual on Uniform Traffic Control Devices.

NEC

- National Electric Code.

NEMA

- National Electrical Manufacturers Association.

NEPA

- National Environmental Policy Act.

NFIP

- National Flood Insurance Program.

NRMCA

- National Ready Mixed Concrete Association.

OSSF

- On-site Sewage Facilities

PE

- Professional Engineer.

PCA

- Portland Concrete Association.

PPI

- Plastics Pipe Institute.

PS&E

- plans, specifications, and estimate.

PSI

- pounds per square inch.

PUD

- planned unit development;

PVC

- polyvinyl chloride;

RCP

- reinforced concrete pipe.

ROW

- right-of-way.

RPLS

- Registered Professional Land Surveyor.

SCS

- Soil Conservation Service;

SDR

- standard dimensional ratio.

SFHA

- Special Flood Hazard Areas.

SI

- International System of Units.

TAC

- Texas Administrative Code.

TCEQ

- Texas Commission on Environmental Quality.

TDLR

- Texas Department of Licensing and Regulation.

TMUTCD

- Texas Manual on Uniform Traffic Control Devices.

TNRCC

- Texas Natural Resources Conservation Commission.

TXDOT

- Texas Department of Transportation.

ULI

- Urban Land Institute.

USACE

- United States Army Corps of Engineers.

USC

- United States Code.

USCGS (also USC&G and USC&GS)

- United States Coast and Geodetic Survey.

TERMS

A

ACCREDITED LABORATORY - A laboratory, which is accredited by the American Association for Laboratory Accreditation (A2LA), or American Association of State Highway and Transportation Officials (AASHTO) in the field of construction materials testing.

AGGRESSIVE SOILS - Soils that may be corrosive to metallic pipe or tubing.

AISLE - The traveled way by which cars enter and depart parking spaces.

ALLEY - A joint use access which is used only for secondary access to individual properties which otherwise have primary access from an adjacent public street or approved common open space or courtyard which is adjacent to a common street.

APPLICANT - A Developer submitting an application for development.

APPLICATION FOR DEVELOPMENT - The application form and all accompanying documents required for approval of a subdivision plat, site plan, planned development, or the issuance of a permit pursuant to County Order and/or Texas Law.

ARCHITECT OF RECORD - A person registered as an architect or licensed as a landscape architect, in accordance with State law, exercising overall responsibility for an architectural design.

AREA OF SPECIAL FLOOD HAZARD – The land in a floodplain within a community subject to a one percent or greater chance of flooding in any given year.

ARTERIAL ROAD OR STREET – A principal traffic artery, carrying higher volumes of traffic, more or less continuously, which is intended to connect remote parts of the area adjacent thereto and to act as a principal connecting street with State highways.

AVERAGE DAILY TRAFFIC - The number of vehicles per day that pass over a given point, which has been factored to account for the day of the week and the time of the year.

B

BARRIER CURB - Curb specially designed to separate opposing traffic on roads or highways.

BASE FLOOD - The flood having a one percent chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION (BFE) - The calculated elevation or level above mean sea level that floodwaters may reach during the base flood.

BEDDING – Required material to be placed under pipes.

APPENDIX A – DEFINITIONS OF ACRONYMS & TERMS

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BERM - A mound of soil, either natural or constructed, used for one or more of the following purposes: screen, buffer, separator, landscape feature, noise attenuator, dam, or storm water control.

BLOCK – A tract of land identified within a subdivision which is surrounded by streets and may be further subdivided.

BUILDING LINE OR SET-BACK LINE – A line established, in general, parallel to the front street line. No building or structure may be permitted in the area between the building line and the street, road, or highway right-of-way.

BUSINESS DAY - A day other than a Saturday, Sunday, or holiday recognized by the County.

C

CENTERLINE OFFSET OF ADJACENT INTERSECTIONS - The gap between the centerline of roads intersecting a common road, as measured along the centerline of the intersected road.

CHANNEL - Any natural or man-made waterway or course through which to convey the constant or intermittent flow of water.

CHANNELIZATION - The straightening and deepening of channels, and/or the surfacing thereof, to permit water to move more rapidly or to redirect the flow of surface water.

COASTAL AREAS - Areas that border on bays or estuaries or other waterways subject to tidal action which are subject to possible flooding or increased flood levels because of tidal action, hurricane surge or rising water due to storms, hurricanes or tsunamis.

COLLECTOR ROAD OR STREET – A street or road providing for travel between local streets and the arterial street network, or serving multi-family development or neighborhood centers or services such as schools, parks or fire stations.

COLONIA – A geographic area that:

(A) is an economically distressed area as defined by Section 17.921, Water Code; and

(B) is:

(i) located in a county any part of which is within 50 miles of an international border; or

(ii) located in a county:

(a) any part of which is within 100 miles of an international border; and

(b) that contains the majority of the area of a municipality with a population of more than 250,000.

COMMISSIONERS COURT – The Commissioners Court of Nueces County, Texas.

APPENDIX A – DEFINITIONS OF ACRONYMS & TERMS

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COMMON CARRIER - A person who owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or from the public for hire, or engages in the business of transporting crude petroleum by pipeline. A common carrier may transport oil, oil products, gas, salt brine, fuller's earth, sand, clay, liquefied minerals, or other mineral solutions.

COMMON LATERAL (WATER / SEWER) - A lateral serving more than one (1) dwelling unit.

COMMON OPEN SPACE - An open space area within or related to a site designated as a development, and designed and intended for the use or enjoyment of residents and owners of the development. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the use of residents and owners of the development.

CONCEPT OR CONCEPTUAL PLAN - A preliminary presentation and attendant documentation of a proposed subdivision or site plan of sufficient accuracy to be used for the purpose of discussion and classification during a concept conference prior to the Preliminary Plat.

CONDUIT - Any open or closed device for conveying flowing water.

COUNTY – Nueces County, Texas

COUNTY ENGINEER - The holder of the statutory office of the County Engineer for Nueces County or the employee designated by the County Engineer to perform a task required by these Rules. The County Engineer is the Director of the Nueces County Department of Public Works.

COUNTY ROAD – A roadway under the control and maintenance of the County.

CUL-DE-SAC - A short public street having only one opening or access to another public street and which is terminated by a permanent vehicular turnaround.

CULVERT - A closed or open conduit designed for the purpose of conveying an open channel watercourse under a road, highway, pedestrian walk, railroad embankment, or other type of overhead structure.

CURB - A stone, concrete, or other improved elevated boundary marking the edge of a roadway or paved area.

CURB AND GUTTER SECTION - A "Curb and Gutter Section" is a full width concrete pavement with curb, either doweled on six-inch (6") curbs or monolithic or doweled four-inch (4") by twelve-inch (12") curb or monolithic curb and gutter sections for asphalt concrete pavement.

D

DAM - Any barrier, including one for flood detention, designed to impound liquid volumes and which has a height of dam greater than six feet. This does not include highway, railroad, or other roadway embankments.

DAY - Calendar day.

DEAD-END-STREET (ROAD) - That portion of a public street which initially has only one opening or access to another public street, but which will be extended at a later date.

DEDICATION - The appropriation of land, or an easement therein, by the owner, for the use of the public.

DESIGN FLOOD - The magnitude of a flooding event that a facility is designed to accommodate. This event can also be used as the basis of a water surface elevation, or the delineation of a floodway and flood hazard area.

DESIGN STANDARDS - Standards that set forth specific requirements for design.

DESIGN STORM EVENT - The rainfall intensity upon which a drainage facility will be sized. References to rainfall conditions in these specifications shall apply to "Technical Paper No. 40, U.S. Weather Bureau", published by the U.S. Department of Agriculture, Soil Conservation Service.

DESIGN VEHICLE LOAD (HS-20) - A design load designation used for bridge design analysis representing a three-axle truck loaded with four tons on the front axle and 16 tons on each of the other two axles. The HS-20 designation is one of many established by AASHTO for use in the structural design and analysis of bridges.

DETENTION BASIN - A storm water management basin or alternative structure designed to temporarily detain storm water runoff.

DEVELOPER - (see subdivider)

DIVIDED STREET - A street, road or highway having an island or other barrier separating opposing moving lanes.

DRAINAGE - The removal of surface water or ground water from land by drains, grading, or other means and includes control of runoff during and after construction or development to minimize erosion and sedimentation, to assure the adequacy of existing and proposed culverts and bridges, to induce water recharge into the ground where practical, to lessen non-point pollution, to maintain the integrity of stream channels for their biological functions as well as for drainage, and the means necessary for water supply preservation or prevention or alleviation of flooding.

DRAINAGE AREA MAP - A map of a watershed which is delineated to show the area serviced by each drainage subsystem.

DRAINAGE FACILITY - Any component of the drainage system.

DRAINAGE SYSTEM - The natural and man-made components that contain, convey, absorb, store, treat, or dispose of surface water runoff or ground water.

DRINKING WATER - All water distributed by any agency or individual, public or private, for the purpose of human consumption, use in the preparation of foods or beverages, cleaning any utensil or article used in the course of preparation or consumption of food or beverages for human beings, human bathing, or clothes washing.

DRIVEWAY - A defined paved or unpaved surface providing vehicular access between a street, road, or highway and private property.

DWELLING DENSITY - The permitted number of dwelling units under gross area of land to be developed.

E

EASEMENT – A right given by the owner of a parcel of land to another person, public agency, or private corporation for specific and limited use of that parcel. A privilege or right of use or enjoyment granted on above, under or across a particular tract of land by one owner to another.

ELEVATION – The height above mean sea level. The vertical control system (benchmarks) referenced in the most current Flood Insurance Study shall be used except in coastal areas where subsidence has occurred. Any future studies changing the Flood Insurance Rate Map (FIRM), which is referenced to a later re-leveling of the vertical control system shall be used whenever a revised FIRM becomes effective.

EMERGENCY SPILLWAY – A supplemental spillway whose function is to pass the design storm flows in the event the principal spillway fails to operate as designed or is blocked.

ENGINEER - A person licensed and authorized to practice engineering in the State of Texas under the Texas Engineering Practice Act.

EROSION - The detachment and the movement of soil or rock fragments by water, wind, ice, or gravity.

ESCROW - A deed, bond, money, or piece of property delivered to a third person, to be delivered by him to the grantee only upon fulfillment of a condition.

EXTRATERRITORIAL JURISDICTION (ETJ) – The unincorporated area, not a part of any city, which is contiguous to the corporate limits of a city. The extraterritorial jurisdiction of the various population classes of cities (as defined in Chapter 42 of the Texas Local Government Code) is as follows:

(1) The extraterritorial jurisdiction of any city having a population of less than five thousand (5,000) inhabitants shall consist of all the contiguous unincorporated area, not a part of any other city, within one-half mile (1/2 mi) of the corporate limits of such city.

(2) The extraterritorial jurisdiction of any city having a population of five thousand (5,000) or more inhabitants, but less than twenty-five thousand (25,000) inhabitants shall consist of all the contiguous unincorporated area, not a part of any other city, within one mile (1 mi) of the corporate limits of such city.

(3) The extraterritorial jurisdiction of any city having a population of twenty-five thousand (25,000) or more inhabitants, but less than fifty thousand (50,000) inhabitants, shall consist of all the contiguous unincorporated area, not a part of any other city within two miles (2 mi) of the corporate limits of such city.

(4) The extraterritorial jurisdiction of any city having a population of fifty thousand (50,000) or more inhabitants, but less than one hundred thousand (100,000) inhabitants shall consist of all the contiguous unincorporated area, not a part of any other city, within three and one-half miles (3.5 mi) of the corporate limits of such city.

(5) The extraterritorial jurisdiction of any city having a population of one hundred thousand (100,000) or more inhabitants shall consist of all the contiguous unincorporated area, not a part of any other city, within five miles (5 mi) of the corporate limits of such city.

EXTREME EVENT - A rainfall event which exceeds the Design Storm Event up-to and including the 100-year frequency resulting in surcharge of the drainage channels and systems.

F

FINAL APPROVAL - The official action of the Commissioners Court taken on a subdivision or site plan after all conditions, engineering plans, and other requirements have been completed or fulfilled and the required improvements have been installed, or guarantees properly posted for their completion, or approval conditioned upon the posting of such guarantees.

FINAL PLAT – A map or drawing and any accompanying material of a proposed subdivision prepared in a manner suitable for recording in the County records and prepared as described in these Rules.

FLOOD INSURANCE RATE MAP (FIRM) – An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOODPLAIN – Any land area susceptible to being inundated by water from any source and as identified in the Flood Insurance Rate Map (FIRM) for Nueces County.

FLOODWAY – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation by more than a designated height.

FLUSHING - The cleaning out of debris and sediment from pipes by force of moving liquid, usually water.

G

GATED COMMUNITY – A residential subdivision or housing development with a vehicular or pedestrian gate that contains two or more dwellings not under common ownership. (The term does not include a multi-unit housing project.)

GEOTECHNICAL ENGINEER - A Texas-registered Professional Engineer who works for a company registered in the State of Texas that has been accredited by the American Association for Laboratory Accreditation (A2LA) in geotechnical testing.

GOVERNING BODY - The chief legislative body of the county.

GRADE - The inclination of a sloping surface, usually expressed in terms of percentage.

GROUNDWATER – Subsurface water that occurs beneath the water table in soils and geologic formations that are fully saturated either year-round or on a seasonal or intermittent basis.

GUTTER - A shallow channel, usually set along a curb or the pavement edge of a road, for purposes of collecting and carrying off runoff water.

H

HYDRAULIC GRADE LINE - The line representing the pressure head available at any given point within a drainage system.

I

IMPERVIOUS SURFACE - A surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water.

IMPOUNDMENT - A body of water, such as a pond, confined by a dam, dike, floodgate, or other barrier.

INDIVIDUAL SEWAGE DISPOSAL SYSTEM - A septic tank, seepage tile sewage disposal system, or any other approved sewage treatment device serving a single unit.

INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEM - A system for disposal of sanitary sewage into the ground which is designed and constructed to treat sanitary sewage in a manner that will retain most of the settleable solids in a septic tank, and to discharge the liquid effluent to a disposal field.

ISLAND - In street, road or highway design, a raised area, usually curbed, placed to guide traffic and separate lanes, or used for landscaping, signing or lighting.

L

LAND - Real property including improvements and fixtures on, above, or below the surface.

LATERALS (DRAINAGE) – Channels or pipes conducting storm water to primary channels.

LOCAL ROAD OR STREET – A street or road used primarily for access and circulation to abutting residential properties and which is intended to serve traffic within a limited area.

LOT – An undivided tract or parcel of land.

M

MAIN - In any system of continuous channels and/or piping, the principal artery of the system to which branches may be connected.

MANHOLE - An inspection chamber located at changes in horizontal and vertical directions for storm sewer and underground utility conduits whose dimensions allow entry, exit, and working room.

MANUFACTURED HOME RENTAL COMMUNITY - A plot or tract of land that is separated into two or more spaces or lots that are rented, leased, or offered for rent or lease, for a term of less than sixty (60) months without a purchase option, exclusively for the installation of manufactured homes for use and occupancy as residences.

MARGINAL ACCESS STREET - A service street that runs parallel to a higher-order street which provides access to abutting properties and separation from through traffic. It may be designed as a residential access street or minor collector as anticipated daily traffic dictates.

MASTER PLAN - A composite of one or more written or graphic proposals for planned development regarding roads, utilities, or other infrastructure, as set forth and adopted by a government entity.

MAY – A permissive condition. No requirement for design or application is intended.

MEAN SEA LEVEL - The average height of the surface of the sea for all states of the tide as was established by the United State Coastal and Geodetic Survey USCGS in 1929.

MEDIAN - That portion of a divided street, road, or highway separating the traveled ways of traffic proceeding in opposite directions.

MIXED USE - Two or more different uses of a subdivision, one of which is residential.

MOUNTABLE CURB - A low curb with a slope designed to be easily traversable by a vehicle.

MULTI-UNIT HOUSING PROJECT – An apartment, condominium, or townhome project that contains two or more dwelling units.

MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD) (see TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES)

N

NON-PUBLIC WATER SYSTEM – Any water system supplying water for domestic purposes which is not a public water system.

NONSTRUCTURAL BEST MANAGEMENT PRACTICES - Those controls of storm water runoff and non-point source pollution that are not structural in nature, such as landscaping techniques, source controls, zoning, setbacks, buffers, or clustering.

O

OFF-STREET PARKING SPACE - A storage area for a motor vehicle that is directly accessible to an access aisle and that is not located within a dedicated street right-of-way.

ON-SITE SEWAGE FACILITIES (OSSF) – On-site sewage facilities as that term is defined in rules and/or regulations adopted by the Texas Commission on Environmental Quality, including, but not limited to, 30 TAC Chapter 285.

ON-STREET PARKING SPACE - A storage area for a motor vehicle that is located within a dedicated street right-of-way.

OPEN SPACE - Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated, or reserved for public or private use or enjoyment, or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space, provided that such areas may be improved with only those buildings, structures, streets, and off-street parking and other improvements that are designed to be incidental to the natural openness of the land.

OUTFALL CHANNEL – The receiving channel of any drainage associated with the subdivision improvements.

OWNER – The persons, corporations, organizations, government or governmental agency, estates, trust, partnerships, associates, incorporations or other entities that have clear title to a Lot.

P

PARKING LANE - A lane usually set on the sides of streets, designed to provide on-street parking.

PARKING LOT - A ground-level, generally open area that provides storage for motor vehicles that may provide access to dwelling units and which has aisles that carry traffic with destination or origin in the lot itself.

PARKING SPACE - A storage area provided for the parking of a motor vehicle.

PAVEMENT - A surface created to facilitate passage of people and/or vehicles, and usually constructed of brick, stone, concrete, or asphalt.

PAVEMENT STRUCTURE - The combination of the surface (see **PAVEMENT**), base course, subbase, and subgrade material, which supports the traffic load and distributes it to the roadbed.

PEDESTRIAN GENERATOR - A development that will realize high facility usage by persons arriving on foot.

PERVIOUS SURFACE - Any surface that permits a significant portion of surface water to be absorbed.

PLAT – A map depicting the division or subdivision of land into lots, blocks, parcels, tracts, or other portions.

PLAT, FINAL (see **FINAL PLAT**)

PLAT, PRELIMINARY (see **PRELIMINARY PLAT**)

PLATTED – Recorded with Nueces County in an official plat record.

POTABLE WATER SUPPLY – see Definition for Drinking Water

PRELIMINARY APPROVAL - The conferral of certain rights prior to final approval after specific elements of a development plan have been agreed upon by the Nueces County Department of Public Works.

PRELIMINARY PLANS AND ELEVATIONS - Drawings prepared during early and introductory stages of the design of a project illustrating in a schematic form its scope, scale, and relationship to its site and immediate environs.

PRELIMINARY PLAT – One or more drawings showing the physical conditions of a tract and the surrounding area intended to be subdivided. This plat shall show the Developer’s intended development program in order to assure that all Rules are complied with.

PROFESSIONAL ENGINEER (see **ENGINEER**)

R

RAINFALL FREQUENCY - the probability of a rainfall event of defined characteristics occurring in any given year. Information on rainfall frequency is published by the National Weather Service. For the purpose of drainage design, the following frequencies are applicable:

- (1) 2-year frequency – a rainfall intensity having a 50% probability of occurrence in any given year or nominally likely to occur once every two years.
- (2) 3-year frequency – a rainfall intensity having a 33% probability of occurrence in any given year or nominally likely to occur once every three years.
- (3) 5-year frequency – a rainfall intensity having a 20% probability of occurrence in any given year or nominally likely to occur once every five years.
- (4) 10-year frequency – a rainfall intensity having a 10% probability of occurrence in any given year or nominally likely to occur once every ten years.
- (5) 25-year frequency – a rainfall intensity having a 4% probability of occurrence in any given year or nominally likely to occur once every twenty-five years.
- (6) 100-year frequency – a rainfall intensity having a 1% probability of occurrence in any given year or nominally likely to occur once every one hundred years.

REGISTERED PROFESSIONAL LAND SURVEYOR (RPLS) – Any person licensed to practice surveying by the Texas Board of Professional Land Surveying.

RESIDENTIAL CLUSTER - An area to be developed as a single entity according to a plan containing residential housing units which have a common or public open space area as an appurtenance.

RESIDENTIAL DENSITY - The number of dwelling units per gross acre of residential land area including streets, easements, and open space portions of a development.

RESUBDIVISION - The further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law; or the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, but does not include conveyances so as to combine existing lots by deed or other instrument.

RETAIL PUBLIC UTILITY – Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing portable water service or sewer service, or both, for compensation.

RETAINING WALL - A structure that is designed and constructed to stabilize two generally horizontal surfaces which are vertically displaced.

RETENTION BASIN - A storm water management basin designed to retain storm water on a permanent basis.

RIGHT-OF-WAY (ROW) - A strip of land owned by a government entity, and occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, gas pipeline, water main, sanitary or storm sewer main, or for another special use.

ROADSIDE DITCH SECTIONS – A street, road or highway cross-section with an adjacent / parallel open channel. (This is often referred to as a rural roadway section.) The cross-sectional elements include pavement width, front-slopes, distance from roadway to edge / center of ditch, ditch side-slopes, bottom of ditch dimension, and right-of-way width.

ROADWAY - The portion of a road that is improved, designed, or ordinarily used for vehicular traffic.

SANITARY SEWER - Any pipe conduit used to collect and carry away sewage from the generating source to treatment plants.

SEDIMENTATION - The deposition of soil that has been transported from its site of origin by water, ice, wind, gravity, or other natural means as a product of erosion.

SEPTIC SYSTEM - An underground system with a septic tank used for the decomposition of domestic wastes.

SEPTIC TANK - A watertight receptacle which receives the discharge of sanitary sewage from a building sewer or part thereof, and is designed and constructed so as to permit settling of settleable solids from the liquid, partial digestion of the organic matter, and discharge of the liquid portion into a disposal field.

SEWER - Any pipe conduit used to collect and carry away sewage (see **SANITARY SEWER**) or storm water runoff (see **STORM SEWER**) from the generating source to treatment plants or receiving streams.

SEWERAGE FACILITIES - The devices and systems which transport domestic wastewater from residential property, treat the wastewater, and dispose of the treated water in accordance with the minimum state standards contained or referenced in these Rules.

SHALL - A mandatory condition.

SHEET FLOW - The overland storm water runoff that is not conveyed in a defined conduit and where a clearly defined channel does not exist.

SHOULD - An advisory condition, recommended but not mandatory.

SHOULDER - The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

SIDEWALK - An improved path for pedestrian use.

SIGHT TRIANGLE - A triangular-shaped portion of land established at street intersections in which nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection.

SITE IMPROVEMENTS - Any construction work on, or improvement in connection with, residential development limited to streets, roads, parking facilities, sidewalks, drainage structures, and utilities.

SOIL - The arable layers of unmodified sediments beneath the surface material and above bedrock.

SOIL CEMENT - A mixture of portland cement and soil.

SOIL EROSION - The gradual alteration of soil by crustal movement or by processes of weathering, transportation, and sedimentation.

STABILIZATION - As it pertains to streets, roads, highways, the ability of a surface to resist deformation from imposed loads. Stabilization can be accomplished by adequate thicknesses of asphalt base and surface course, dense graded aggregates, cement-treated soil aggregates, or concrete or precast masonry units set on a base course.

STORM SEWER - Any pipe conduit used to collect and carry storm water runoff from the generating source to receiving streams.

STORMWATER DETENTION - A provision for temporary storage of storm water runoff, and the controlled release of such runoff during and after a flood or storm (see **DETENTION**).

STORMWATER MANAGEMENT MEASURES - A broad term for structural and nonstructural control of storm water runoff and non-point pollution.

STORMWATER RETENTION - A provision for the permanent storage of a fixed volume of water (see **RETENTION**).

STREET - Any street, avenue, boulevard, road, parkway, viaduct, drive, or other way, which is an existing State, County, or municipal roadway, or which is shown upon a plat heretofore approved pursuant to law, or which is approved by official action, or which is shown on a plat duly filed and recorded in the office of the county recording officer; and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas, and other areas within the street lines.

STREET KNUCKLE – A bulbous widening of the pavement where the road makes an approximate 90 degree turn.

STATE PLANE COORDINATE SYSTEM – A coordinate system used by surveyors to locate special information with a high degree of accuracy.

SUBDIVIDER – Any owner of land or authorized agent thereof proposing to divide or dividing land so as to constitute a subdivision.

SUBDIVISION – An area of land that has been subdivided into lots for sale or lease.

SUBGRADE - The prepared surface upon which pavements and shoulders are constructed.

SURFACE COURSE - The placement of an asphalt concrete material on a previously prepared base course.

SURVEYOR (see **REGISTERED PROFESSIONAL LAND SURVEYOR**)

SWALE - A low-lying or depressed land area commonly wet or moist, which can function as an intermittent drainage way.

T

TEXAS ADMINISTRATIVE CODE (TAC) – As compiled, indexed and published by the Texas Secretary of State.

TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (TMUTCD) - The most recent edition, including any additions or corrections, of the Texas Manual on Uniform Traffic Control Devices for Streets and Highways.

TOPSOIL - Means (1) the natural, undisturbed surface layer of soil having more organic matter than subsequent layers, a pH of 5.0 to 7.5 and suitable for satisfactory growth and maintenance of permanent, locally adapted vegetation. (2) Where the original surface layer has been removed, the reapplication of soil material used to cover an area so as to improve soil conditions for establishment and maintenance of adapted vegetation. The reapplied material must be friable, loamy soil reasonably free of debris, objectionable weeds and stones; have a natural pH of 5.0 to 7.5; have an organic matter content greater than 2.00 percent; and contain no toxic substances which may be harmful to plant growth.

TRAVEL WAY – That portion of the roadway used for vehicular travel.

TRIP - A single or one-way vehicle movement to or from a property or study area.

U

UNINCORPORATED AREA - The area in Nueces County, Texas, which is not within an incorporated area of a city or town.

UTILITY AREA - A space within the right-of-way designated for the installation of utility lines and facilities.

V

VARIANCE – A grant of relief to a person from the requirement of these Rules when specific enforcement would result in undue hardship.

W

WATER FACILITIES – Any device and/or system which is used in the supply, collection, development, protection, storage, transmission, treatment, and/or retail distribution of water for safe human use and consumption.

APPENDIX B CHECKLISTS

These checklists are to be used in conjunction with the Nueces County Subdivision Rules and Platting Requirements, and State statutes, to help keep track of whether a preliminary or final plat and its associated information and documents meet legal requirements.

PRELIMINARY PLAT CHECKLIST

Subdivision Name:

Letter from Nueces County Health Department stating Preliminary Plat has been reviewed.

Submittal date

1. SUBMISSION REQUIREMENT:

Four (4) 22" X 34" blue-line copies folded with title of plat appearing on outside, Schematic plans for water, wastewater, paving and drainage plus preliminary drainage calculations. A check payable to the Nueces County: _____ dollars (\$)

A location map.

2. INFORMATION SHOWN ON PLAT:

Title of the subdivision; title must include the word "Replat," if vacated and changed after recordation North arrow Scale: 1" = 100' min. The following information shall appear on the **first** sheet:

OWNERS: (if corporation, name of responsible individual) ACREAGE: SURVEY: (Legal Description) DATE: (revision dates, if any) SURVEYOR: ENGINEER: BENCHMARK DESCRIPTION & ELEVATION:

Vicinity Map Boundary survey with bearings and distances Point of beginning labeled on plat and described in field notes Field notes; tie to corner of original survey; survey tie across adjacent streets to determine right-of-way width Monumentation as prescribed in the Rules

Topographic and planimetric features Ownership boundaries in heavy lines Lot and block lines Numbers on all proposed lots and letters on blocks Dimensions for front _____ rear _____ side _____ lot lines Depiction of the 100 year flood plain, if the tract is not in the 100 year flood, a plat note stating such must be shown Street, alleys, drainageways, parks and other public areas

Location, dimension, name and description of each existing or recorded street, alley, reservation, easement, or other right-of-way

Location, dimension, description, and name of any existing watercourse or drainage structure within 150' of the boundary of the subdivision. Certification by owner of conformance to the requirements of the school district, gas, electricity, water, telephone and cable television and US Post Office review.

Certificate note stating approval from the City-County Health Department.

Certificate note stating ownership in fee of all land embraced in the subdivision. .

Certificate note approval by the County Engineer and the Commissioners Court.

Plat note stating building setbacks will be in accordance with the Nueces County Subdivision Regulations And Platting Requirements. Plat note of existing or proposed restrictive covenants

Certificate dedicating all streets, public highways, utility easements, parks, drainage easements, and all other land intended for public use.

FINAL PLAT CHECKLIST

Subdivision Name:

NOTE: ALL ITEMS, EXCEPT THE MYLAR, MUST BE SUBMITTED TO THE NUECES COUNTY DEPARTMENT OF PUBLIC WORKS IN A LARGE CLASP ENVELOPE. PLEASE ROLL THE MYLAR. FINAL PLAT WILL NOT BE CONSIDERED "FILED" UNLESS ALL SUBMISSION REQUIREMENTS ARE MET.

_____ Submittal date

1. SUBMISSION REQUIREMENTS:

_____ One (1) Mylar reproducible - 22" x 34", complete with all required signatures, volume and page information, etc.

_____ Four (4) blue-line copies folded with title of plat appearing on outside

_____ The developer must submit with the final plat one of the following:

_____ A statement stating that schematic plans and preliminary drainage calculations were submitted with the preliminary plat and no changes have occurred

_____ New schematic plans and outline specifications for water, wastewater, paving, and drainage plus calculations for drainage

_____ Four (4) sets of construction plans and specifications for water, wastewater, paving and drainage prepared by a registered professional engineer

_____ Letter of Intent for Utilities to explain how the tract will be served by electric, cable, water and wastewater, including commitments for oversize line construction and/or off-site requirements, if applicable. (A copy of the letter submitted with the preliminary plat must be submitted if no changes have occurred)

_____ Tax Certificates from the school district, county and other taxing districts.

_____ Copy of deed to show proof of ownership

_____ Check payable to Nueces County: _____ dollars (\$)

_____ The final plat or replat shall be accompanied by an abstractor's certificate which shall state the names and addresses of any and all current owners and current lien holders of the property described in the final plat. The abstractor's certificate shall be dated no sooner than ten (10) days prior to the submission of the final plat. The final plat shall not be reviewed or approved until the abstractor's certificate is received.

_____ **After plat approval and prior to recording:** Tax Certificates showing City, School, and County taxes have been paid

APPENDIX C
SAMPLE PLAT NOTES

If any subdivision or addition is located outside of the city limits of any incorporated city or town, but lies within the extraterritorial limits, the form of dedication, etc., must be secured from the city or town and said plat must be first approved by the appropriate governing body before the same will be approved by the Commissioners Court of Nueces County, Texas.

Any person dedicating such a map is to use such portion of the form as herein listed, which is the approval form for the Commissioners Court.

STATE OF TEXAS }
COUNTY OF NUECES }
BEFORE ME, the undersigned authority, on this day personally appeared _____,
President, and _____ Secretary of (Name of Company) known to me to
be the persons whose names are subscribed to the foregoing instrument, and
acknowledged to me that they executed the same for the purposes and considerations
therein expressed, and in the capacity stated, and as the act and deed of said corporation.

Given under my hand and seal of office at _____ this _____ day of _____, A.D. _____.

Notary Public in and for Nueces County, Texas

STATE OF TEXAS }
COUNTY OF NUECES }
I hereby certify that the foregoing map of _____ complies with all the
regulations and requirements of the Commissioners Court of Nueces County, Texas,
effective this date.

Dated this _____ day of _____, A.D. _____.

County Engineer
STATE OF TEXAS }
COUNTY OF NUECES }
I, _____, Clerk of the Commissioners Court of Nueces County, Texas
hereby certify that the foregoing map was approved and accepted by said Court on the
_____ day of _____, _____ as shown by order of record in the minutes of said
Court in Volume _____, Page _____. Witness my hand and seal of said Court
at office in Corpus Christi, Texas, this the _____ day of _____, _____.

By: _____ Deputy

STATE OF TEXAS }
COUNTY OF NUECES }

I, _____, Clerk of the County Court, in and for Nueces County, Texas hereby certify that the foregoing map of _____ dated the _____ day of _____, _____ with its certification of authentication was filed for record in my office this _____ day of _____, _____ at _____ o'clock _____ m and duly recorded in Volume _____, Page _____. Witness my hand and seal of office in Corpus Christi, Texas, this the _____ day of _____, _____.

By: _____ Deputy

STATE OF TEXAS }
COUNTY OF NUECES }

I, _____, Registered Professional Land Surveyor, hereby certify that this plat is true and correct, to the best of my knowledge and ability, and that it was prepared from a survey made on the ground in _____, _____.

Registration Seal Date License No.

STATE OF TEXAS }
COUNTY OF NUECES }

I, _____ hereby certify that I am the owner of all the lands embraced within the bounds of _____ Nueces County, Texas subject to a lien held by _____; that I have had said land surveyed and subdivided as here shown, that all streets and alleys shown are dedicated to the use of the public; that all utility easements shown hereon are dedicated to the public for the installation, operation and use of the public utilities; that this map is made for the purposes of description and dedication, this the _____ day of _____, _____.

STATE OF TEXAS }
COUNTY OF NUECES COUNTY }

Before me, the undersigned authority, on this day personally appeared _____, known to me to be the person whose is subscribed to the foregoing instrument of writing, and he acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity stated. Given under my hand and seal of office at _____ this _____ day of _____, _____.

Notary Public in and for Nueces County, Texas

STATE OF TEXAS }
COUNTY OF NUECES COUNTY }

We, _____, hereby certify that we are the holders of a lien against the lands embraced within the bounds of _____, Nueces County, Texas, and that we approve the subdivision and dedications of same for the purpose therein expressed. This the _____ day of _____, _____.

STATE OF TEXAS }
COUNTY OF NUECES COUNTY }

This final plat of _____, Nueces County, Texas, approved by the Corpus Christi-Nueces County Health Unit. Any private water supply and/or sewage system shall be approved by the Corpus Christi-Nueces County Health Department prior to installation. Dated the _____ day of _____, _____.

Public Health Officer

APPENDIX D SAMPLE AGREEMENT FORMS

WATER SERVICE AGREEMENT AGREEMENT REGARDING WATER SERVICE FOR THE PROPOSED

SUBDIVISION

PARTIES: This Agreement is by and between the Utility and the Subdivider, to wit:
The Utility is the governing board or owner of a retail public utility which supplies drinking water known as

The Subdivider is

_____ who is the owner, or the authorized agent of the owner, of a tract of land in Nueces County, Texas, that has been proposed to be divided into a subdivision (the Subdivision) known as

TERMS: This Agreement is entered into in partial satisfaction of requirements under Texas Water Development Board's Economically Distressed Area Program Model Subdivision Rules. The Subdivider has prepared a plat of the Subdivision for submission to Nueces County for its approval. The Subdivider plans to construct for the Subdivision a drinking water distribution system to be connected to the Utility's public water system. The Utility has reviewed the plans for the Subdivision (the Plans) and has estimated the drinking water flow anticipated to be needed by the Subdivision under fully built-out conditions (the anticipated water flow) to be approximately _____ gallons daily. The Utility covenants that it has or will have the ability to provide the anticipated water flow for at least thirty years, and that it will provide that water flow. These covenants will be in effect until thirty years after the plat of the Subdivision has been recorded and the Subdivision's water distribution system has been connected to the Utility's water supply system.

The Subdivision covenants that the water distribution system will be constructed as shown in the Plans and as provided for through the plat-approval process so that the residents of the lots of the Subdivision may receive drinking water service from the Utility. Upon completion of the water distribution system and upon its approval and acceptance by the Utility, the Subdivider will convey to the Utility all right and title to the water distribution system.

The Subdivider has paid the Utility the sum of \$_____ which sum represents the total costs of water meters, water rights acquisition fees, and all membership or other fees associated with connecting the individual lots in the Subdivision to the Utility's water supply system.

The above provisions notwithstanding, this Agreement shall no longer be in effect if the plat of the Subdivision is not approved by Nueces County or by a municipality whose approval is required.

By affixing his or her signature to this Agreement, the person signing for the Utility warrants that he or she is authorized to sign this Agreement on behalf of the Utility. By affixing his or her signature to this Agreement, the person signing for the Subdivider warrants that he or she is authorized to sign this Agreement on behalf of the Subdivider.

This Agreement is effective on _____, 20____.

The Utility

By: _____

Printed Name: _____

Office or Position: _____

Date: _____

The Subdivider:

By: _____

Printed Name: _____

Office or Position: _____

Date: _____

WASTEWATER SERVICE AGREEMENT

AGREEMENT REGARDING WASTERWATER SERVICE FOR THE PROPOSED

SUBDIVISION

PARTIES: This Agreement is by and between the Utility and the Subdivider, to wit: The Utility is the governing board or owner of a retail public utility which provides wastewater treatment and is known as

The Subdivider is

_____, who is the owner, or the authorized agent of the owner, of a tract of land in Nueces County, Texas, that has been proposed to be divided into a subdivision (the Subdivision) known as

TERMS: This Agreement is entered into in partial satisfaction of requirements under Texas Water Development Board’s Economically Distressed Area Program Model Subdivision Rules. The Subdivider has prepared a plat of the Subdivision for submission to Nueces County for its approval. The Subdivider plans to construct for the Subdivision a wastewater collection system to be connected to the Utility’s wastewater treatment system. Such wastewater will consist of domestic sewage, i.e., waterborne human waste and waste from domestic activities such as bathing, washing, and food preparation. The Utility has reviewed the plans for the Subdivision (the Plans) and has estimated the wastewater flow projected from the Subdivision under fully built-out conditions (the projected wastewater flow) to be approximately _____ gallons daily.

The Utility covenants that it has or will have the capacity to treat the projected wastewater flow, and that it will treat that wastewater flow for at least thirty years. These covenants will be in effect until thirty years after the plat of the Subdivision has been recorded and the Subdivision’s wastewater collection system has been connected to the Utility’s wastewater treatment plant.

The Subdivision covenants that the wastewater collection system will be constructed as shown in the Plans and as provided for through the plat approval process so that the residents of the lots of the Subdivision may receive wastewater treatment service from the Utility. Upon completion of the wastewater collection system and upon its approval and acceptance by the Utility, the Subdivider will convey to the Utility all right and title to the wastewater collection system.

Insert the following paragraph if the Utility imposes any fees for connection of individual lots to the Utility’s wastewater collection and treatment system:

The Subdivider has paid the Utility the sum of \$_____ which sum represents the total costs of tap fees, capital recovery charges, and other fees associated with connecting the individual lots of the Subdivision to the Utility’s wastewater collection and treatment system.

The above provisions notwithstanding, this agreement shall no longer be in effect if the plat of the Subdivision is not approved by Nueces County or by a municipality whose approval is required.

By affixing his or her signature to this Agreement, the person signing for the Utility warrants that he or she is authorized to sign this Agreement on behalf of the Utility. By affixing his or her signature to this Agreement, the person signing for the Subdivider warrants that he or she is authorized to sign this Agreement on behalf of the Subdivider.

This Agreement is effective on _____, 20_____.

The Utility

By: _____

Printed Name: _____

Office or Position: _____

Date: _____

The Subdivider:

By: _____

Printed Name: _____

Office or Position: _____

Date: _____

SUBDIVISION CONSTRUCTION AGREEMENT

1. **Parties.** This Subdivision Construction Agreement (the Agreement) is by and between the County and the Subdivider. The County is Nueces County, Texas, acting by and through its Commissioners Court, or authorized representative as designated by the Commissioners Court. The Subdivider is

_____, who is the owner, or the authorized agent of owner, of a tract of land located within the geographic area and jurisdiction of the County.

2. **Effective Date.** This Agreement is effective on the date the County approves the final plat for the subdivision described in Paragraph 3 of this agreement (the Effective Date).

Recitals

3. Subdivider is the owner of the land included in the proposed final subdivision plat of the _____ subdivision, (the Subdivision) and more particularly described by the metes and bounds description attached and incorporated into this Agreement as Exhibit A (the Property); and

4. Subdivider seeks authorization from the County to subdivide the Property in accordance with the requirements imposed by Texas statute and the County's orders, regulations, and other requirements; and

5. County orders require the completion of various improvements in connection with the development of the Subdivision to protect the health, safety, and general welfare of the community and to limit the harmful effects of substandard subdivisions; and

6. The purpose of this Agreement is to protect the County from the expense of completing subdivision improvements requirements to be installed by the Subdivider; and

7. This agreement is authorized by and consistent with state law and the County's orders, regulations, and other requirements governing development of a subdivision.

IN CONSIDERATION of the foregoing recitals and the mutual covenants, promises, and obligations by the parties set forth in this Agreement, the parties agree as follows:

Subdivider's Obligation

8. **Improvements.** The Subdivider agrees to construct and install, at Subdivider's expense, all subdivision improvements required to comply with County orders, regulations, and policies governing subdivision approval, specifically including without limitation those improvements listed on Exhibit B attached and incorporated by reference into this Agreement (collectively, the Improvements, any one of which is an Improvement). All Improvements shall be constructed in conformity to the County's requirement, procedures, and specifications, pursuant to construction plans, permits, and specifications approved by the County prior to commencement of construction, and subject to inspection, certification, and acceptance by the County.

9. Completion. Unless a different time period is specified for a particular Improvement in Exhibit B, construction of all the Improvements shall be completed no later than three (3) years after the Effective Date (the Completion Date); provided, however, that if the Subdivider or the Issuer delivers to the County no later than the Completion Date a substitute Letter of Credit satisfying the criteria established by Paragraph 11 and which has an expiration date no earlier than one year from the Completion Date, then the Completion Date shall be extended to the expiration date of that substitute Letter of Credit or any subsequent substitute Letter of Credit provided in accordance with this Paragraph. Upon completion of each of the Improvements, the Subdivider agrees to provide to the County a Complete set of construction plans for the Improvements, certified “as built” by the engineer responsible for preparing the approved construction plans and specifications.

10. Warranty. The Subdivider warrants the Improvements constructed by Subdivider or Subdivider’s agents, contractors, employees, tenants, or licensees will be free from defects for a period of one (1) year from the date the County accepts the dedication of a completed Improvement or group of Improvements (the Warranty Period), as such Improvement or group of Improvements is separately identified and listed on Exhibit B, except the Subdivider does not warrant the Improvements for defects caused by events outside the control of the Subdivider or the Subdividers’s agents, contractors, employees, tenants, or licensees. The Subdivider agrees to repair any damage to the Improvements before and during the Warranty Period due to private construction-related activities. As a condition of the County’s acceptance of dedication of any of the Improvements, the County may require the Subdivider to post a maintenance bond or other financial security acceptable to the County to secure the warranty established by this Agreement. If the Improvements have been completed but not accepted, and neither the Subdivider nor Issuer is then in default under this Agreement or the Letter of Credit, at the written request of the Subdivider or the Issuer the County shall complete, execute, and deliver to the Issuer a reduction letter documenting that the Stated Amount has been reduced to an amount equal to the face amount of the maintenance bond or other financial security acceptable to the County.

11. Security. To secure the performance of Subdivider’s obligation under this Agreement, Subdivider agrees to provide adequate financial guarantees of performance in the form of a surety bond acceptable to the County, a cash deposit to be held by the County in escrow, or an irrevocable letter of credit in the amount of

_____ Dollars (\$_____) (the Stated Amount), which amount is the estimated total cost of constructing each of the Improvements as shown on Exhibit B. If a letter of credit is provided pursuant to this Agreement, it shall be in a standard form acceptable to the County, shall have an expiration date no earlier than one year from the date of its issuance, and shall be issued by a financial institution having a rating equivalent to the minimum acceptable rating established under the County’s financial institution rating system in effect at the time the initial letter of credit is issued pursuant to this Agreement (the Issuer). During the term of this Agreement and subject to the terms of Paragraph 22 of this Agreement, the County may revise the standard form letter of credit it reasonably considers acceptable and necessary to secure the performance

of Subdivider's obligations under this Agreement. A letter of credit satisfying the criteria of this Paragraph (and any substitute or confirming letter of credit) is referenced to in this Agreement as the "Letter of Credit."

12. Reduction in Letter of Credit. After the acceptance of any Improvement, the amount which the County is entitled to draw on the Letter of Credit shall be reduced by an amount equal to ninety percent (90%) of the Quoted cost of the accepted Improvement, as shown on Exhibit B. Upon completion of an Improvement, at the written request of Subdivider or Issuer, and if neither the Subdivider nor Issuer is then in default under this Agreement or the Letter of Credit, the County shall complete, execute, and deliver to the Issuer a reduction letter verifying the acceptance of the Improvement and documenting that the Stated Amount has been reduced by stating the balance of the Stated Amount remaining after the reduction required by the first sentence of this Paragraph. No later than sixty (60) days after its receipt of a written request to reduce the Stated Amount submitted by the Subdivider or the Issuer, the County shall determine the Estimated Remaining Cost and shall complete, execute, and deliver to the Issuer a reduction letter documenting that the Stated Amount has been reduced to the Estimated Remaining Cost if the County determines the Stated Amount exceeds the Estimated Remaining Cost. Notwithstanding the preceding sentence, the County shall not be required to authorize reductions in the Stated Amount more frequently than every ninety (90) days. As used in this Paragraph, "Estimated Remaining Cost" means the amount the County estimates to be the cost of completing all Improvements which are incomplete as of the time of such estimate.

County's Obligations

13. Inspection and Certificate. The County agrees to inspect Improvements during and at the completion of construction and, if completed in accordance with the standards and specifications for such Improvements, to certify the Improvements as being in compliance with County standards and specifications. The inspections and certifications will be conducted in accordance with standard County policies and requirements. The Subdivider grants the County, its agents, employees, officers, and contractors an easement and license to enter the property to perform such inspections as it deems appropriate.

14. Notice of Defect. The County will provide timely notice to the Subdivider whenever inspection reveals that an Improvement is not constructed or completed in accordance with the standards and specifications for health or safety, and if the notice of defect includes a statement explaining why the defect creates such immediate and substantial harm, the cure period may be shortened to no less than five (5) days and the County may declare a default under this Agreement if not satisfied that the defect is cured after the cure period. Any cure period should be reasonable in relation to the nature of the default.

15. Use of Proceeds. The County will disburse funds drawn under the Letter of Credit only for the purposes of completing the Improvements in conformance with the County's requirements and specifications for the Improvements, or to correct defects in or failures of the Improvements. The Subdivider has no claim or rights under this Agreement to

funds drawn under the Letter of Credit or any accrued interest earned on the funds. All funds obtained by the County pursuant to one or more draws under the Letter of Credit shall be maintained by the County in an interest bearing account until such funds, together with accrued interest thereon (the Escrowed Funds), are disbursed by the County. The County may disperse all or portions of the Escrowed Funds as Improvements are completed and accepted by the County, or in accordance with the terms of a written construction contract between the County and a third party for the construction of Improvements. Escrowed Funds not used or held by the County for the purpose of completing an Improvement or correcting defects in or failures of an Improvement, together with interest accrued thereon, shall be paid by the County to the Issuer of the Letter of Credit no later than sixty (60) days following the County's acceptance of the Improvement or its decision not to complete the Improvement using Escrowed Funds, whichever date is earlier.

16. Return of Excess Escrowed Funds. No later than sixty (60) days after its receipt of a written request from the Subdivider or the Issuer to return Excess Escrowed Funds to the Issuer, the County shall disburse to the Issuer from the Escrowed Funds all Excess Escrowed Funds. For purpose of this Paragraph, "Excess Escrowed Funds" means the amount of Escrowed Funds exceeding one hundred ten percent (110%) of the estimated cost of constructing Improvements the County intends to construct but which have not been accepted, as such cost is shown on Exhibit B. Notwithstanding the first sentence in this Paragraph, the County shall not be required to disburse Excess Escrowed Funds more frequently than every ninety (90) days.

17. Cost Participation by County. If the County and Subdivider agree the County will participate in the expense of installing any of the Improvements, the respective benefits and obligations of the parties shall be governed by the terms of a Community Facilities Construction Agreement executed by the parties thereto, and the terms of that Agreement shall control to the extent of any inconsistency with this Agreement.

18. Conditions of Draw on Security. The County may draw upon any financial guarantee posted in accordance with Paragraph 11 upon the occurrence of one or more of the following events:

- (a) Subdivider's failure to construct the Improvements in accordance with Paragraph 8 of this Agreement;
- (b) Subdivider's failure to renew or replace the Letter of Credit at least forty-five (45) days prior to the expiration date of the Letter of Credit;
- (c) Subdivider's failure to replace or confirm the Letter of Credit if the Issuer fails to maintain the minimum rating acceptable to the County, in Accordance with Paragraph 11 of this Agreement; or
- (d) Issuer's acquisition of the Property or a portion of the Property, through foreclosure or an assignment or conveyance in lieu of foreclosure.

The County shall provide written notice of the occurrence of one or more of the above events to the Subdivider, with a copy provided to the Issuer. Where a Letter of Credit has been provided as the financial guarantee, with respect to an event described by

subparagraph (a), the County shall provide notice to the Subdivider and the Issuer of the specific default and the notice shall include a statement that the County intends to perform some or all of Subdivider's obligations under Paragraph 8 for specified Improvements if the failure is not cured. The notice with respect to a default under subparagraph (a) shall be given no less than twenty (20) days before presentation of a draft on the Letter of Credit, unless, in the reasonable opinion of the County, the failure creates an immediate and substantial harm to the public health or safety, in which case the notice shall state why the failure creates an immediate and substantial harm to the public health or safety, and shall be given no less than five (5) days before presentation of a draft on the Letter of Credit. In the event of a draw based on subparagraph (a), the County shall be entitled to draw in the amount it considers necessary to perform Subdivider's obligations under Paragraph 8, up to the amount allocated according to Exhibit B for any Improvement it states its intent to construct or complete in accordance with the standards and specifications for such improvement. The Subdivider hereby grants the County, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, maintaining, and repairing such Improvements. Where a Letter of Credit has been provided as the financial guarantee, with respect to an event described by subparagraphs (b), (c), or (d), the notice shall be given no less than twenty (20) days before presentation of a draft on the Letter of Credit. In lieu of honoring a draft based on an event described in subparagraph (b) or (c), the Issuer or the Subdivider may deliver to the County a substitute Letter of Credit if the event is described by subparagraph (b) or a substitute or confirming Letter of Credit if the event is described by subparagraph (c). If the Issuer has acquired all or a portion of the Property through foreclosure or an assignment or conveyance in lieu of foreclosure, in lieu of honoring a draft based on an event described in subparagraph (d), the Issuer may deliver to the County a substitute or confirming Letter of Credit.

19. Procedures for Drawing on the Letter of Credit. The County may draw upon the Letter of Credit in accordance with Paragraph 18 by submitting a draft to the Issuer in compliance with the terms of the Letter of Credit governing such draft. The Letter of Credit must be surrendered upon presentation of any draft which exhausts the Stated Amount of such Letter of Credit. The County may not draft under a Letter of Credit unless it has substantially complied with all its obligations to the Issuer under this Agreement and has properly completed and executed the draft in strict accordance with the terms of the Letter of Credit.

20. Measure of Damages. The measure of damages for breach of this Agreement by the Subdivider is the reasonable cost of completing the Improvements in conformance with the County's requirements, procedures, and specifications. For improvements upon which construction has not begun, the estimated cost of the Improvements shown on Exhibit B will be prima facie evidence of the minimum cost of completion; however, neither that amount or the amount of the Letter of Credit establishes the maximum amount of the Subdivider's liability.

21. **Remedies.** The remedies available to the County, the Subdivider, and Issuer under this Agreement and the laws of Texas are cumulative in nature.
22. **Provisions for the Benefit of Issuer.** The provisions of Paragraphs 9, 10, 11, 12, 15, 16, 18, 19, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32, and 36 of this Agreement for the benefit of the Issuer may not be modified, released, diminished, or impaired by the parties without the prior written consent of the Issuer.
23. **Third Party Rights.** No person or entity who or which is not a party to this Agreement shall have any right of action under this Agreement, nor shall any such person or entity other than the County (including without limitation a trustee in bankruptcy) have any interest in or claim to funds drawn on the Letter of Credit and held in escrow by the County in accordance with this Agreement. Notwithstanding the preceding sentence, the Issuer shall have a right of action to enforce any provision of this Agreement where the Issuer is specifically named as a beneficiary of such provision pursuant to Paragraph 22.
24. **Indemnification.** The Subdivider hereby expressly agrees to indemnify and hold the County harmless from and against all claims, demands, costs, and liability of every kind and nature, including reasonable attorney's fees for the defense of such claims and demands, arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act or negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements. The Subdivider further agrees to aid and defend the County if the County is named as a defendant in an action arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act of negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements, except where such suit is brought by the Subdivider. The Subdivider is not an employee or agent of the County. Notwithstanding anything to the contrary contained in this agreement, the Subdivider does not agree to indemnify and hold the County harmless from any claims, demands, costs, or liabilities arising from any act or negligence of the County, its agents, contractors, employees, tenants, or licensees.
25. **No Waiver.** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute continuing waiver unless expressly provided for by a written amendment to this Agreement; nor will the waiver of any default under this agreement be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement or covenant by the County, the Subdivider, or the Issuer, their heirs, successors or assigns, whether any violations thereof are known or not, shall not constitute a waiver or estoppel of the right to do so.
26. **Attorney's Fees.** Should either party or Issuer, to the extent Issuer is named as specific beneficiary, be required to resort to litigation to enforce the terms of this agreement, the prevailing party, plaintiff or defendant, shall be entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the

other party. If the court awards relief to both parties, each will bear its own costs in their entirety.

27. **Assignability.** The benefit and burdens of this Agreement are personal obligations of the Subdivider and also are binding on the heirs, successors, and assigns of the Subdivider. The Subdivider's obligations under this Agreement may not be assigned without the express written approval of the County. The County's written approval may not be withheld if the Subdivider's assignee explicitly assumes all obligations of the Subdivider under this Agreement and has posted the required security. The County agrees to release or reduce, as appropriate, the Letter of Credit provided by the Subdivider if it accepts substitute security for all or any portion of the Improvements. The County, in its sole discretion, may assign some or all of its rights under this Agreement, and any such assignment shall be effective upon notice to the Subdivider and the Issuer.

28. **Expiration.** This Agreement shall terminate upon the expiration of the approval of the proposed final plat of the Subdivision or if the Subdivision is vacated by the Subdivider.

29. **Notice.** Any notice required or permitted by this Agreement is effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Subdivider:

Attn: _____

Printed Name: _____

Office or Position: _____

Address: _____

if to County:

Attn: _____

Printed Name: _____

Office or Position: _____

Address: _____

if to the Issuer: at Issuer's address shown on the Letter of Credit.

The parties may, from time to time, change their respective addresses listed above to any other location in the United States for the purpose of notice under this Agreement. A party's change of address shall be effective when notice of the change is provided to the other party in accordance with the provisions of this Paragraph.

30. **Severability.** If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or enforceability shall not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.

31. Personal Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement or the Issuer, whether arising out of or relating to the Agreement or the Letter of Credit, will be deemed to be proper only if such action is commenced in District Court for Nueces County, Texas, or the United States District Court for the Southern District of Texas, Corpus Christi Division. The Subdivider expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal. The Issuer, by providing a Letter of Credit pursuant to the terms of this Agreement, expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal.

32. Release Upon Completion. Upon acceptance of all Improvements, the County agrees: (a) to complete, execute and deliver to the Subdivider and the Issuer a release in recordable form releasing the Subdivider and Subdivider's heirs, successors and assigns, and the Property from all provisions of this Agreement except those contained in Paragraph 10, and (b) to return to the Issuer the Letter of Credit and any Escrowed Funds not expended or obligated by the County for the completion of the Improvements.

33. Captions Immaterial. The numbering, order, and captions or headings of the paragraphs of this Agreement are for convenience only and shall not be considered in construing this agreement.

34. Entire Agreement. This Agreement contains the entire agreement between the parties and correctly sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent written modification executed by both parties.

35. Authorization to Complete Blanks. By signing and delivering this agreement to the appropriate official of the County, the Subdivider authorizes completion of this Agreement by filling in the Effective Date below.

36. Binding Agreement. The execution and delivery of this agreement and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate and governmental action of the County. This Agreement has been duly executed and delivered by each party, and constitutes a legal, valid, and binding obligation of each party enforceable in accordance with the terms as of the Effective Date. These representations and agreements are for the benefit of the Issuer, and have been relied on by the Issuer in issuing the Letter of Credit.

EXECUTED by the parties to be effective as of the _____ day of _____, 20__.

County Official Subdivider

[SIGNATURES OF THE PARTIES TO BE ACKNOWLEDGED]

EXHIBIT A: METES AND BOUNDS DESCRIPTION OF PROPERTY

EXHIBIT B: SUBDIVISION IMPROVEMENTS

Subdivision Improvements. Subdivider and County agree the following improvements are required in connection with the approval and development of the Subdivision (collectively, the Subdivision Improvements). Subdivider agrees to deliver a financial guarantee acceptable in form and substance to the County in an amount equal to the Estimated Cost of Completion listed below, as follows:

Description of Improvement(s) Estimated Cost of Completion

- a)
- b)
- c)