

POLICIES FOR CONTRACTS WITH DEVELOPERS FOR REIMBURSEMENT FOR WATER AND/OR SEWER FACILITIES AND LINES BUILT SOLELY BY THE DEVELOPER

1. Term.

The term of such Agreements shall be no greater than twenty (20) years.

2. Procedure.

- (a) The Developer shall present projects which are consistent with CFPUA's CIP and/or are needed for expansion of the system to serve the public.
- (b) The proposing third-party Developer shall first submit a preliminary engineering report to the Chief Executive Officer with estimated costs for conceptual review.
- (c) The Chief Executive Officer shall review all concept plans and prepare a report and recommendation to present to the CFPUA Board. The Board shall consider and approve a concept plan upon a determination that the concept plan is advisable.
- (d) Upon approval of the concept plan, a utility extension Agreement shall be negotiated to document the rights, duties, responsibilities, and obligations of the parties, including all cost-sharing arrangements and other applicable terms and conditions of the extension approval.

3. Design, Permitting, Construction Administration, and Primary Inspections.

The Developer shall design, prepare construction plans, obtain easements and rights-of-way, obtain all required permits, administer construction contract, and provide primary construction inspections of the proposed facilities. All approved plans will be in accordance with CFPUA Engineering Technical Specifications and Standards.

4. Bids.

Once project plans have final approval, the Developer will obtain at least three (3) competitive bids and will select the lowest responsible bidder

5. Time Table for Construction.

The contract shall be executed within six (6) months after Authority Board approval and construction shall begin within 24 months of the execution of the contract. This provision may be extended by mutual consent of both parties, should reasonable, unanticipated delays occur.

6. CFPUA Inspections.

The Developer shall allow CFPUA to inspect at any time, with or without prior notice, the facilities for compliance with the Agreement and applicable CFPUA specifications

and plans. The Developer shall remain responsible for ensuring the facilities are properly constructed, and CFPUA's inspection or lack of inspection shall not relieve Developer from any of its obligations set forth in the Agreement.

7. Financing of Cost of the Project.

The Developer shall pay the total cost of the project and shall be reimbursed over the term of the Agreement from collected Developer Capacity Fees (DCF) from third parties deemed to be surplus funds as defined by CFPUA's Bond Revenue Indenture, who obtain capacity as a result of the Project. . $DCF = [\text{gallons requested}] \times [\$ / \text{gallon}]$ where the cost factor $[\$ / \text{gallon}]$ is calculated as explained below.

The cost-sharing for the facilities shall be as follows:

- (a) At the time construction is completed and the project is accepted by CFPUA, the final costs of construction of the common project shall be determined for the project based on construction contract payment documents.
- (b) Costs for facilities that will serve only the Developer's development will be subtracted from the total final project costs, resulting in a project cost of those facilities that can serve other developments (hereinafter called common project).
- (c) The cost per unit of peak capacity in the common project will be calculated by CFPUA staff based upon submitted verifiable project costs and will be defined as a cost per gallon $[\$ / \text{Gallon}]$ number.
- (d) Said reimbursements shall be paid semi-annually (September 15 and March 15) from any CFPUA funds collected from Developer Capacity Fees in the prior fiscal year. Should CFPUA not have sufficient Developer Capacity Fee funds in any fiscal year, the reimbursements shall be paid at the end of the following fiscal year. Notwithstanding the foregoing, no Developer Capacity Fee shall be paid unless qualified as "Surplus Fund," as defined by Section 5.2 of the General Trust Indenture.

8. Eligible Reimbursement Costs.

The following categories of costs are eligible to be considered as reimbursable costs of the Project if they fall within the percentage limitations set forth below, and if they are documented as provided below:

- (a) Construction. Engineer-certified costs of labor and materials for constructing the Project.
- (b) Engineering and Design. Engineer-certified costs of engineering and design work, including permitting, for the Project, provided said costs are reasonable and consistent with the size and complexity of the project.
- (c) Project Administration. Costs of administering the Project, including administration of construction contracts and oversight of work performed under such contracts.

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- (d) Bonds. Performance and payment bond expenses for the utility improvements as required by CFPUA.
- (e) Testing. Expenses for conducting necessary testing of the improvements, or their location, including, but not limited to, geotechnical expenses.
- (f) Legal Fees. Costs of legal work on contracts, claims, litigation, property, and title research and examination for the Project, where such work occurs **after** execution of the Contract. Said fees shall be reasonable and consistent with the size and complexity of the project. Property Acquisition. Fair-Market Value or reasonable costs of acquiring any off-site easements.

9. Documentation of Eligible Costs.

Prior to acceptance of the Improvements and prior to CFPUA's determination of the Reimbursable Costs for the Project, the Utility Developer shall submit the information described below. The information shall be submitted in such form and detail as may be requested by CFPUA, along with any such additional information (such as contracts or invoices) that CFPUA may request:

- the certified statement of an engineer licensed in North Carolina, regarding the construction costs of the Project, with a breakdown of unit and quantity costs, and such other expenses and descriptions of the Project as CFPUA may request.
- a verified statement from a responsible officer of Utility Developer identifying the individual(s) or firm(s) that performed the engineering, design, and administrative work for the Project, the portions of the Project for which they were responsible, and the amounts paid to such individual(s) and/or firm(s).
- for legal work, one or more signed statements from a responsible attorney with the firm(s) doing such work summarizing the costs paid by Utility Developer for legal work on the Project after execution of the contract;
- for property acquisition, 1) a verified statement from a responsible officer of Utility Developer of amounts paid in connection with acquisition of off-site property interests; 2) the deeds for such property interests; 3) a signed statement by a licensed North Carolina attorney on a list of approved attorneys for a title insurance company authorized to sell title insurance in North Carolina identifying the individuals having ownership interests in Utility Developer and certifying that none of the identified individuals had any ownership interest in the acquired properties at the time of, or within five years prior to, their acquisition.

10. Determination of Reimbursable Costs.

Upon receipt of proof (receipts and invoices) of the eligible costs and any other information CFPUA may request, CFPUA shall determine the Reimbursable Costs for the Project within 30 days of complete and final submissions, in a letter to be signed by the CFPUA Chief Executive Officer or Designee. The Reimbursable Costs shall be those

defined in Section 9 of these Policies. If CFPUA questions the reasonableness of the project costs, CFPUA shall first notify the Developer and shall consider all information provided by the Developer. In the event that CFPUA determines that the costs are substantially higher than customary amounts charged for construction work of a similar nature in the Wilmington-New Hanover County area, CFPUA may limit the costs to no less than ninety percent (90%) of the costs that have been submitted. The Developer or the authority may request mediation or arbitration of the basis for the submittal.

11. Determination and Calculation of Financing Costs (Interest) to be Included in Eligible Reimbursable Costs.

The interest paid by the Developer on the actual water and sewer infrastructure shall be a reimbursable cost, which shall be verified and appropriate based on current financial market conditions

12. Compliance with Regulations.

The Developer shall comply with all CFPUA Ordinances, standards, and regulations and all State and Federal regulations.

13. Assignment.

The Development Agreement (contract) can only be assigned with the prior consent of CFPUA, such consent not to be unreasonably withheld. Notwithstanding the foregoing, the Developer Agreement shall be freely assignable to any affiliate or subsidiary of the Developer.

14. Interest on Development Capacity Fees Received by CFPUA.

CFPUA shall pay the initial Developer any interest which CFPUA earns on capacity fees collected on the Project, less an administrative fee of two percent (2%).

15. Property Acquisition.

The Agreement shall be subject to the normal policy for projects which serve the public. The Developer shall make three (3) attempts to acquire easements required from other property owners for the project. Said offers for purchase must be at fair market value. If these offers are unsuccessful, CFPUA shall consider using the power of eminent domain as allowed by law and for projects that serve the public.

16. Approval by Local Government Commission.

Any Agreement, if required, shall be approved by the Local Government Commission, as long as this remains a requirement.

17. Payment of Capacity Fees.

Subsequent Developers that connect to the Common Facilities shall pay Development Capacity Fees at the time of approval of plans and specifications.

18. Release and Indemnification.

Any contract shall provide a release and indemnification for CFPUA.

19. Public Dedication of Utilities.

Upon completion of the installation of the facilities constructed in accordance with CFPUA standards and under the provisions of the Agreement, the Developer will offer in writing these facilities for public dedication, along with the needed rights-of-way/easement, to CFPUA to be owned, operated and maintained by CFPUA.

The Developer is not eligible to receive any reimbursement from CFPUA until all work is complete, certified and legally conveyed to CFPUA.

20. Interlocal Agreement.

The Agreement will be subject to any provisions of the Interlocal Agreement between the City of Wilmington, New Hanover County, and CFPUA, dated January 30, 2008, and any annexation agreements between CFPUA and the City of Wilmington.

21. CFPUA Ownership and Control of Improvements.

Upon CFPUA’s acceptance of the improvements, CFPUA shall use the improvements to provide utility service. CFPUA shall have sole ownership, control over, and use of the Improvements and associated property interests. Among other things, CFPUA may make extensions from, connections to, and alterations to, any of the Utility Improvements, and/or make any other decisions regarding the Improvements without consent of Developer.

22. Suspension and Termination of Agreement.

The CFPUA shall have the right to suspend any Development Agreement with cause at any time upon written notice to the Developer.

23. Warranty.

The Developer shall warrant and guarantee to CFPUA that all work will be in accordance with the plans approved by CFPUA.

24. Default.

Should the Developer fail to carry out the provisions of the Agreement, any installed infrastructure or easements acquired for the Project shall become the property of CFPUA.

25. Variance.

The CFPUA Board may vary the terms of these Policies, should it find that reasonable grounds exists for said variance.