
California Special Districts Association

SAMPLE POLICY HANDBOOK

POLICY TITLE: Development Agreements

POLICY NUMBER: 6050

6050.1 Prior to the Board of Directors considering a private development project for approval, a development agreement specifying the terms and conditions of said approval, prepared by the General Manager and/or Legal Counsel, shall be executed by the project's developer(s) and property owner(s) (see Policy #6040).

6050.2 The development agreement shall contain the following information:

6050.2.1 Name(s) of developer and/or project sponsor(s), and owner(s) of subject property;

6050.2.2 Assessor's parcel number of subject property;

6050.2.3 Type and purpose of project (e.g., residential, commercial, industrial, etc.); and,

6050.2.4 A graphic description of the project attached to the agreement as "Exhibit A."

6050.3 The following shall be used as standard terms and conditions of the development agreement:

6050.3.1 STANDARDS FOR [service(s) provided] SYSTEM: Plans have, at no cost to District, been designed and prepared for the on-site and off-site [service(s) provided] system which include Developer's obligation to accomplish the following:

6050.3.1.1 Construct the [service(s) provided] system in conformance with the approved plans therefore; and,

6050.3.1.2 Obtain an encroachment permit from the Department of Public Works [or other appropriate department] of the [name of city or county] and comply with all requirements thereof, including trench restoration and street resurfacing requirements for any portion of the project situated within existing or proposed future [city or county] right of way.

6050.3.2 ACCEPTANCE OF PLANS AND SPECIFICATIONS: The completed plans as described above for the [service(s) provided] system have been prepared in conformance with District Improvement Standards and the requirements of the District Engineer [General Manager, Consulting Engineer, etc.], and are in a form acceptable to same.

6050.3.3 REVISION OF PLANS: Any changes in such accepted plans shall require written approval of Developer and the District Engineer [*General Manager, Consulting Engineer, etc.*].

6050.3.4 RIGHTS OF WAY: Owners will provide to District, at no cost to District and in a form acceptable to the District Engineer [*General Manager, Consulting Engineer, Legal Counsel, etc.*], appropriate easements and rights of way for the maintenance, repair, and replacement of all [*service(s) provided*] system facilities not within existing public rights of way, public utility easements, and/or [*service(s) provided; e.g., sewer*] easements.

6050.3.5 CONSTRUCTION: Developer shall, without expense to District, construct the [*service(s) provided*] system pursuant to the accepted plans or any approved modification thereof. Developer shall provide in any contract for construction of the [*service(s) provided*] system that any contractor's materials supplier's guarantees thereunder, including a one-year warranty on the completed improvements, shall inure to the benefit of District after the works constructed thereunder have been conveyed to District as provided for in 6050.3.9, below. Developer shall also provide in any contract for construction of the [*service(s) provided*] system that the contractor's public liability and property damage insurance shall be extended to cover Developer and District and their agents, officers and employees as additional insured with: liability and bodily injury limits of not less than \$1,000,000 for each occurrence and \$2,000,000 aggregate; and, property damage coverage of not less than \$100,000,000 each occurrence and \$1,000,000 aggregate. General liability insurance policies having combined single limits damage combined of liability shall carry limits for bodily injury and property damage combined at \$1,000,000 each occurrence and \$1,000,000 aggregate. [*Consult with your legal counsel for appropriate limits for your district*].

6050.3.6 PAYMENT OF PREVAILING WAGES: Developer has been advised that the State of California (State) Attorney General has opined that, in certain circumstances, construction of facilities for provision of public utility service, with the understanding and agreement that said facilities will be turned over to District for ownership, operation and maintenance at the conclusion of construction, may be subject to the prevailing wage laws of the State. Developer has determined that, at this time, said opinion of the Attorney General does not affect the wages paid by Developer to laborers employed on said facilities constructed pursuant to this agreement. Developer agrees, however, that should it be determined that the prevailing wage laws of the State (Labor Code §1770, et seq.) apply to the work performed in accordance with this agreement, then Developer shall defend and hold District harmless from any liability, claims, damages, or costs in any way associated with said determination by the State and Developer shall, as further consideration of District entering into this agreement, take all necessary and appropriate action, including payment of back wages, and any associated penalties which may be required, due to enforcement of the prevailing wage laws in connection with construction of the [*service(s) provided*] system. Developer agrees that District has not represented or in any way advised Developer in connection with this matter except to advise Developer of his potential liability and Developer does not in any way rely upon any opinion or information of District in making his determination in connection with the payment or nonpayment of such wages for the work performed under this agreement. The obligation of Developer to, if required, pay prevailing wages for the work performed in accordance with this agreement shall be a continuing obligation and shall bind the heirs, successors and assigns of Developer and District's obligation to provide operation and maintenance on the facilities to be turned over to District, and to provide [*service(s) provided*] therein, shall be dependent upon Developer's continuing compliance with this provision.

6050.3.7 INSPECTION OF CONSTRUCTION: The District Engineer [*General Manager, Consulting Engineer, etc.*] or his/her agent(s) shall inspect the construction of the [*service(s) provided*] system to assure that the works are installed in accordance with the accepted plans. Said inspection shall be funded by an inspection fee paid by Developer as specified in District's Improvement Standards. Construction of the [*service(s) provided*] system shall not commence until said inspection fee is paid. The District Engineer [*General Manager, Consulting Engineer, etc.*] shall notify Developer as to any deviation or failure to construct pursuant to the accepted plans as soon as such deviation or failure is brought to his/her attention, and Developer shall correct such deviation or failure.

6050.3.8 HOLD HARMLESS: District is not, by inspection of the construction or installation of the [*service(s) provided*] system, representing Developer or providing a substitute for inspection and control of the work by Developer. Any inspections and observations of the work by District are for the sole purpose of providing notice of stage and character of the work. Any failure of District to note variances in the work from the plans does not excuse or exempt Developer from complying with all terms of the plans. The fact that District inspects the construction of work and notifies Developer of deviations or failures to construct them pursuant to the accepted plans shall not be deemed to constitute a guarantee by District that the works have been built in accordance with the accepted plans. During construction and prior to conveyance thereof to and acceptance thereof by District, Developer shall hold District harmless against any and all claims, demands and charges by third parties arising out of alleged deviations or failures to construct pursuant to the accepted plans.

6050.3.9 CONVEYANCE: Within 90 days after completion of construction of the [*service(s) provided*] system in accordance with the accepted plans therefore and District's Improvement Standards:

6050.3.9.1 Developer and Owners shall convey title of the completed works to District without cost and free and clear of all liens and encumbrances, by appropriate conveying documents, acceptable in form to the District Engineer [*General Manager, Consulting Engineer, Legal Counsel, etc.*];

6050.3.9.2 Developer shall provide District with one set of 24"x 36" reproducible "as built" drawings of the completed project on matte mylar (5 mil minimum);

6050.3.9.3 Owners shall provide easements as specified in 6050.3.4, above;

6050.3.9.4 Developer shall furnish to District a bond, irrevocable letter of credit, cash deposit, or other form of surety meeting District's approval in the amount of \$_____, being ___% [*25% (recommended), 50%, 100% or other appropriate amount*] of the cost of the [*service(s) provided*] system, as estimated by the Project Engineer, [*name and address of developer's engineer*], protecting District against any failure of the work due to natural phenomenon or catastrophe, faulty materials, poor workmanship, or defective equipment within a period of one year after acceptance of the [*service(s) provided*] system by the District's Board of Directors. Said bond or irrevocable letter of credit shall name Developer as Principal and District as Obligee; and,

6050.3.9.5 District shall accept conveyance of title of the completed [*service(s) provided*] system by resolution and include it as part of its system, and shall thereafter operate and maintain said system.

6050.4 DEVELOPER'S RESPONSIBILITIES AFTER CONVEYANCE: After District's acceptance of the [service(s) provided] system, Developer and Owners shall have no obligation for the operation, maintenance, repair or replacement thereof, except that to the extent Developer and/or Owners retain ownership of any parcel to which service from such works is available, they shall pay the same rates and charges levied by District from time to time as any other property owner.

6050.4.1 APPLICATION FOR SERVICE: The [service(s) provided] system shall not be operated, other than for testing purposes, until the said system is conveyed to District and formally accepted by District as specified in 6050.3.9, above, and proper applications for service having been filed with District accepted.

6050.4.2 OBLIGATION FOR PIPELINE AND/OR FACILITIES: District shall be under no obligation to provide additional facilities in order to serve the Project. Upon acceptance of the facilities by District, it shall become the sole property of District and shall be used and operated as District's sole discretion.

6050.4.3 RATES AND CHARGES FOR SERVICE: All service made available by District to users within the Project shall be at the established rates and charges as fixed by District's Board of Directors from time to time.

6050.4.4 NOTICES: Notices or requests from any party to this agreement to the remaining parties thereof shall be in writing and delivered or mailed, postage prepaid, to the following addresses:

[DISTRICT NAME]

[ADDRESS]

[CITY, STATE ZIP]

Attention: _____, District Engineer [General Manager, etc.]

[DEVELOPER'S NAME]

[ADDRESS]

[CITY, STATE ZIP]

6050.4.5 SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon and inure to the benefit of the successors and assigns of all parties. Developer and Owners shall not assign any of their rights, duties or obligations under this Agreement without the prior written consent of District, which consent shall not be unreasonably withheld.

6050.4.6 DISTRICT POWERS: Nothing herein contained shall be deemed to limit, restrict, or modify any right, duty, or obligation given, granted, or imposed upon District by the laws of the State of California now in effect, or hereafter adopted, not to limit or restrict the power or authority of District, including the enactment of any rules, regulations, policies, resolutions or ordinances, and in the event that any part of provisions herein contained in this agreement or incorporated herein, be found to be illegal or unconstitutional by a court of competent jurisdiction, such findings shall not affect the remaining parts, portions, or provisions hereof.

6050.4.7 ATTORNEY FEES: Should any party have to be required to institute legal action to either compel performance of this agreement or recover damages for nonperformance, the prevailing party(s)

shall be entitled to reasonable attorney's fees, cost of suit, and all other expenses of litigation incurred in connection therewith.

6050.4.8 TERMINATION: This Agreement shall terminate and be of no further force and effect at District's discretion if District determines that construction of the [service(s) provided] system has not commenced within 12 months from the date of this agreement, and Developer has not submitted the plans and specifications for reacceptance as provided for in 6050.3.3, above.

6050.5 Any inapplicable portions of the foregoing standard terms and conditions may be deleted by, or upon approval of the General Manager [or Legal Counsel], to accommodate project-specific situations. When warranted, additional conditions and requirements may be added to the standard terms and conditions by, or upon approval of, the General Manager [or Legal Counsel], to accommodate project-specific situations. The project developer and/or property owner may appeal to the Board of Directors any agreement terms or conditions or requirements proposed by District staff [or specify responsible managing employee].