

McCLOUD COMMUNITY SERVICES DISTRICT
Policy and Procedure Manual

POLICY TITLE: **Development Agreements**
POLICY NUMBER: **6050**
ADOPTED: **October 28, 2002**
REVIEWED: **August 12, 2020**
REVISED: **04/28/14, 09/14/20**

6050.10 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).

6050.20 The development agreement shall contain the following information:

6050.21 Name(s) of developer and/or project sponsor(s), and owner(s) of subject property.

6050.22 Assessor's parcel number of subject property.

6050.23 Type and purpose of project (e.g., residential, commercial, industrial, etc.).

6050.24 A graphic description of the project attached to the agreement as "Exhibit A."

6050.30 The following shall be used as minimum standard terms and conditions of the development agreement:

6050.31 Standards for Water, Sewer System, Refuse Collection and Other Required Facilities

Plans have, at no cost to District, been designed and prepared for the on-site and off-site water and sewer system, refuse collection and other required facilities which include the Developer's obligation to accomplish the following:

6050.311 Construct the water, sewer system and refuse collection and other required facilities in conformance with the approved plans therefore (See Policy 6010.20).

6050.312 Obtain an encroachment permit from the Department of Public Works of the County of Siskiyou 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 County right of way.

6050.32 Acceptance of Plans and Specifications

The completed plans as described above for the water, sewer system, refuse collection and other required facilities have been prepared in conformance with District Improvement Standards and the requirements of the District Consulting Engineer and/or General Manager, and are in a form acceptable to same.

6050.33 Revision of Plans

Any changes in such accepted plans shall require written approval of Developer and the District General Manager.

6050.34 Rights of Way

Owners will provide to District, at no cost to District and in a form acceptable to the District General Manager, appropriate easements and rights of way for the maintenance, repair, and replacement of all water, sewer system, refuse collection and other required facilities not within existing public rights of way, public utility easements, and/or water, sewer easements.

6050.35 Performance and Completion Bonding

Prior to commencement of construction of any of the water and/or sewer infrastructure improvements to be constructed by Developer under this Agreement, the construction of which is determined to possibly affect the operation and maintenance requirements of the existing water and/or sewer system, Developer or its contractor shall furnish bonds covering the faithful performance of the construction or installation activities required under this Agreement, and the payment of all obligations arising thereunder as specifically required by this policy.

6050.351 The premiums for the bonds shall be paid by Developer or its contractor.

6050.352 The Developer shall deliver the required bonds to the District not later than the date of commencement of the work.

6050.352 Said bonds shall be issued by a surety company acceptable to the District, and shall be in the amount of 100% of the estimated construction costs, as determined by the engineer for the District, for the construction to be then undertaken by Developer for faithful performance, and 100% of estimated cost of labor and materials, for the construction for payment of labor and materials.

6050.36 Construction

Developer shall, without expense to District, construct the water, sewer system, refuse collection and other required facilities pursuant to the accepted plans or any approved modification thereof. Developer shall provide in any contract for construction of the water, sewer system, refuse collection and other required facilities that any contractor's materials supplier's guarantees thereunder, including a two-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 6050.39, below. Developer shall also provide in any contract for construction of the water, sewer system, refuse collection or other required facilities 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, and property damage coverage of not less than \$1,000,000.

6050.37 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 water, sewer system and refuse collection facilities. 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 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 water, sewer and refuse collection services therein, shall be dependent upon Developer's continuing compliance with this provision.

6050.38 Inspection of Construction

The District General Manager or his/her agent(s) shall inspect the construction of the water, sewer system, refuse collection and other required facilities 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 ordinances and current fee schedule. Construction of the water, sewer system, refuse collection and other required facilities shall not commence until said inspection fee is paid. The District General Manager or his/her designated agent 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.

6050.39 Hold Harmless

District is not, by inspection of the construction or installation of the water, sewer system, refuse collection and other required facilities, 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.

6050.40 The following shall additionally be used as minimum standard terms and conditions of the development agreement:

6050.41 Conveyance

6050.411 Within ninety (90) days after completion of construction of the water, sewer system, refuse collection and other required facilities in accordance with the accepted plans therefore and District's Improvement Standards:

6050.412 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 General Manager.

6050.413 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).

6050.414 Owners shall provide easements as specified in 6050.34 above.

6050.415 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% of the cost of the water and sewer 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 (1) year after acceptance of the water and sewer system by the District's Board of Directors. Said bond or irrevocable letter of credit shall name Developer as Principal and District as Obligee.

6050.416 District shall accept conveyance of title of the completed water and sewer system by resolution and include it as part of its system and shall thereafter operate and maintain said system.

6050.42 Developer's Responsibilities After Conveyance

After District's acceptance of the water and sewer 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.

6050.43 Application for Water and Sewer Service

The water and sewer 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 6050.39, above, and proper applications for service having been filed with District accepted.

6050.44 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.

6050.45 Rates and Charges for Service

6050.451 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.

6050.452 Standby and capacity charges or an alternate fee structure per the Miscellaneous Fee Scheduled, Policy 1060, shall be levied against all parcels in any subdivision created. (Also see Ordinance 27 Rules and Regulations Relating to Water Service and Ordinance 15 Rules and Regulations Relating to Sewers and Sewage Disposal).

6050.453 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:

McCloud Community Services District
P.O. Box 640
McCloud, CA 96057
Attention: _____, District General Manager

Developer's Name
Address
City, State, Zip

6050.46 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.

6050.47 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.

6050.48 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.

6050.49 Termination

This Agreement shall terminate and be of no further force and effect at District's discretion if the project is not completed within eighteen (18) months of the date of this Agreement, or in the event that the District determines that construction of the water, sewer system, refuse collection and other required facilities has not commenced within twelve (12) months from the date of this agreement, and Developer has not submitted the plans and specifications for reacceptance as provided for in 6050.33, above.

6050.50 Any inapplicable portions of the foregoing standard terms and conditions may be deleted by, or upon approval of the General Manager, 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, 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.