



**SITE IMPROVEMENT PERFORMANCE AGREEMENT**

File No. \_\_\_\_\_

**AGREEMENT**

This Agreement is entered into by \_\_\_\_\_, hereinafter called "Developer", and the City of Blaine, a Municipal Corporation under the laws of the State of Minnesota, hereinafter called "City".

Development plans, hereinafter called the "Plans", have been approved by the City, pursuant to City Ordinances on \_\_\_\_\_, 20\_\_\_\_. In consideration of such approval, the Developer, his successors, and assigns, does covenant and agree to perform the improvements as set forth in the Plans upon the real estate described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**THE WORK**

The Work shall consist of the improvements described in the approved Plans and shall be in compliance with all applicable statutes, codes and ordinances of the City. The Work includes all onsite exterior amenities as shown on the approved Plans such as, but not limited to: landscaping, private driveways, parking areas, storm drainage systems, water mains, sanitary sewers, hydrants, curbing, lighting, fences, fire lanes, sidewalks, trails, and outside trash disposal enclosures.

The Developer may be required to provide the City with written estimates of the costs itemized in this Agreement. This will only be required when an itemized cost appears to be unusually low and will not financially cover the described improvement.

The following is the approved estimated cost of the work:

<b>ITEM</b>	<b>UNIT PRICE</b>	<b>ESTIMATED COST</b>
1. Lighting (number of pole fixtures ____)	\$ _____	\$ _____
2. Fences, screen structures (____ lineal feet)	_____	_____
3. Trash and recycling enclosures	_____	_____
4. Concrete curb and gutter (lineal feet)	_____	_____
5. Storm drainage system, sewers, catch basins, culverts, swales.	_____	_____
6. Public trail and/or sidewalk construction (____ square feet)	_____	_____
7. Private trail and/or sidewalk construction (____ square feet)	_____	_____
8. Driveway and curb cut improvements	_____	_____
9. Bituminous paving (____ square feet)	_____	_____
10. Fire hydrant(s)	_____	_____
11. Landscaping		
a) Sod and seed (____ square yards sod/____ square yards seed)	_____	_____
b) Trees (completed landscape bid sheet to be attached)	_____	_____
c) Other plantings and materials (completed landscape bid sheet to be attached)	_____	_____
d) Underground irrigation	_____	_____
12. _____	_____	_____
<b>TOTAL ESTIMATED COST</b>	<b>\$ _____</b>	<b>\$ _____</b>

**FINANCIAL GUARANTEE**

The Developer agrees to furnish the City with an acceptable financial guarantee (Guarantee) that the Work will be performed. The Guarantee may be in the form of a cash escrow, a performance bond issued by an approved corporate surety licensed to do business in the State of Minnesota, and executed by the Developer as principal, an irrevocable letter of credit provided by a Minnesota financial institution, or other financial instruments which provide equivalent assurance to the City.

A cash deposit or a 10% cash escrow, with the balance in the form of an irrevocable letter of credit or surety bond shall be in the amount of one hundred percent (100%) of the estimated cost of the work. The amount of any other approved financial instrument shall be determined by the City.

The Developer shall furnish the City with a Guarantee in the amount of:

\$ \_\_\_\_\_  
(Cash Deposit)

**OR**

\$ \_\_\_\_\_ **AND** \$ \_\_\_\_\_  
(10% Cash Escrow) (Surety Bond or Irrevocable Letter of Credit)

The cash escrow portion will be the last portion of the financial guarantee released by the City.

Such Guarantee shall continue in full force and effect for one (1) complete year or until the City approves and accepts all of the completed Work.

The Guarantee shall be conditioned upon the full and faithful performance of all elements of this Agreement, according to the approved Plans, and upon compliance with applicable statutes, codes, and ordinances of the City, and shall further be subject to the following provisions which shall be deemed to be incorporated in such Guarantee and made a part thereof.

When a Guarantee instrument such as an irrevocable letter of credit, provides for an expiration date, after which the instrument may not be drawn upon, notwithstanding the status of the Work, the following requirements shall apply: In the case of a need to extend the Guarantee, an acceptable new Guarantee shall be submitted to the City at least thirty (30) days prior to expiration of the initial instrument, to guarantee the completion of remaining Work. Failure to submit such new Guarantee shall automatically extend the expiration of the initial instrument until a new Guarantee is submitted.

## **COMPLETION**

The Work shall be completed in accordance with the approved "Plans" approximately on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

It shall be the duty of the Developer to notify the City in writing when the Work has been completed. Upon receipt of this letter, the City will conduct a final site inspection of the Work. Considering all Work has been completed according to the approved "Plans" the City will release the Guarantee.

In the case where conditions do not allow certain improvements (i.e., landscaping, building painting) to be completed subsequent to occupancy, a temporary occupancy permit may be issued. All temporary occupancy permits shall be valid for no more than six (6) months.

## **REDUCTION OF FINANCIAL GUARANTEE**

The Developer may request a one-time reduction to the Guarantee at the time a substantial amount of improvements have been completed (i.e. bituminous or landscaping).

## **REMEDIES FOR BREACH**

The City shall give prior notice to the Developer or the corporate surety of any default hereunder before proceeding to enforce such Guarantee or before the city undertakes any Work for which the City will be reimbursed through the Guarantee. If within ten (10) days after such notice, the Developer or the surety has not notified the City in writing of the time and manner in which the default will be cured, the City will proceed with the remedy it deems appropriate.

At any time after the completion date and any extensions thereof, if any of the Work is deemed incomplete, the City may proceed in any one or more of the following ways to enforce the undertakings herein set forth, and to collect any an all expenses incurred by the City in connection therewith, including, but not limited to, engineering, legal, planning and litigation costs and expense. The enumeration of the remedies hereunder shall be in addition to any other remedies available to the City.

1. Specific Performance. The City may proceed to bring an action for specific performance to require the Work to be completed.
2. Completion by the City. The City, after notice, may enter the premises and proceed to have the Work done either by contract, by day labor or by regular City forces. Neither the Developer nor the corporate surety may question the manner of doing such Work or the letting and doing of any

such contracts for the doing of the Work. Upon completion of the Work, the surety and/or the Developer shall promptly pay the City the full cost thereof. In the event that the Guarantee is in the form of a performance bond, it shall be no defense by the surety that the City has not first made demand upon the Developer, nor pursued its rights against the Developer.

3. Deposit of Financial Guarantee. In the event that the Guarantee has been submitted in the form of a performance bond, the City may demand that the surety deposit with the City a sum equal to the estimated cost of completing the Work, plus the City's estimated expenses as defined herein, including any other costs, expenses, and damages for which the surety may be liable, but not exceeding the amount set forth on the face of the performance bond. This money shall be deemed to be held by the City for the purpose of reimbursing the City for any costs incurred in completing the Work and the balance shall be returned to the surety. This money shall be deposited with the City within ten (10) days after written demand therefore, and if the surety fails to make the required deposit within ten (10) days, the City shall have the right to proceed against the surety with whatever legal action is required to obtain the deposit of such sum.
4. Funds on Deposit. In the event that the Guarantee is in the form of cash, certified check, irrevocable letter of credit, or other liquid instrument, the City may, after notice to the Developer, liquidate and deposit the Guarantee in its general account. The City may proceed to complete the Work, reimburse itself for the cost of completion, and return the balance to the Developer.

## **PROCEDURES**

A copy of this Agreement shall be attached to the Guarantee, and reference to this Agreement shall be made in the Guarantee, but no corporate surety shall assert as a defense to performance hereunder, any lack of reference in the bond to this Agreement.

The original of this Agreement, properly executed, together with the appropriate Guarantee, shall be submitted to the City. Upon the City's execution of this Agreement a copy will be returned to the Developer.

**CITY OF BLAINE:**

**DEVELOPER:**

\_\_\_\_\_  
Bryan K. Schafer, Director  
Planning & Community Development

\_\_\_\_\_  
(Company or Partnership Name)

\_\_\_\_\_  
(Name)

Its: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Company or Partnership Name)

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(Name)

Its: \_\_\_\_\_  
(Title)

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(Signature)

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(Company or Partnership Name)

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(Title)

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(Signature)