

## SEWER AND WATER IMPROVEMENTS

### Agreement No.: 071404

This agreement (hereinafter the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2004 by and between, **Developer Inc.** (hereinafter the "Developer") and the City of Philadelphia acting through its Water Department (hereinafter the "City").

**WHEREAS**, the City, to facilitate the development of property, has agreed to certain changes in the City's water and sewer systems (hereinafter referred to as "Improvements"); and

**WHEREAS**, the Developer, **as the owner of a property at 123 through 456 South Any Street, which shall be developed as the Good Place Housing Development** has agreed to construct and/or to pay for the construction of the Improvements; and

**WHEREAS**, the City agrees to assume ownership and maintenance of the Improvements within two years after their successful completion in accordance with City standards and regulations.

**THEREFORE**, in consideration of the foregoing premises and the mutual covenants, terms and conditions set forth herein, the Developer and the City intending to be legally bound agree as follows:

1. Developer, its agents, or contractors shall perform the Improvements in strict accordance with the Plans and Specifications entitled: **WORK NO. S-40XXX-A - CONSTRUCTION OF 18-INCH DIAMETER REINFORCED CONCRETE PIPE SEWER IN ANY STREET FROM FIRST STREET TO ANOTHER STREET AND ALL APPURTENANT WORK.** Said Plans and Specifications were prepared for Developer by **ENGINEER ASSOCIATES, INC., ONE PLAZA, 1 MARKET ST, PHILADELPHIA, PA 19107** and consist of **1** sheets, namely **Sheet No. S-1 of 1**, which were delivered to the City of Philadelphia by cover letter, dated **DECEMBER 25, 2004.**

2. Developer shall be solely and exclusively responsible for and shall pay all costs for the work required by Paragraph 1 and under no circumstance shall Developer, its agents or contractors make any claim or demand from the City for any portion of these costs.

3. Developer shall comply with all City ordinances, regulations and policies that affect the construction of the Improvements.

4. Developer shall file a bond with the City, in the amount of **\$XX,000.00**, as fixed by the Law Department, conditioned upon compliance with the Water Department's regulations and specifications. The City shall release the bond at the time of the completion of the constructed sewer.

5. Ownership of the Improvements shall not vest in the City unless and until the following conditions are satisfied :

- a) The Improvements have been approved and accepted in writing by the City's Water Commissioner or his authorized representative; and
- b) the Public Streets in which the Improvements are placed are confirmed on City Plan;
- c) in lieu of placement of City Streets on the City Plan, Improvement right-of-ways are granted to the City at no cost and with free and clear titles. Such grants shall allow the placement of the right-of-ways on the City Plan.

6. Developer and or its contractor shall be solely responsible for the costs and for obtaining all permits required from the City of Philadelphia, its boards and agencies, and any permits required by the Commonwealth of Pennsylvania, its departments, or agencies.

7. Developer shall, at a minimum, provide general supervision of the construction of the Improvements including the review and periodic inspection of all work performed for and material furnished for the Improvements so as to ascertain and determine, without full-time inspection, whether the contractors and others engaged in the Improvements are properly performing their duties, whether all work is being performed in conformity with the Plans and Specifications and whether proper materials are being used in the construction of water and sewer improvements.

8. Developer shall indemnify, defend and hold harmless the City, its agents, employees and officers from and against any and all losses, costs, including litigation costs, settlement costs and counsel fees, claims, suits, actions, damages, liability and expenses, including but not limited to those in connection with the loss of life, bodily and personal injury or damages to property occasioned by Developer's acts or omissions or the acts or omissions of Developer's agents, contractors, employees or servants arising from or related to the Improvements, regardless of whether such claim, damage, loss or expense is caused in whole or in part by the negligence of City, its officers, employees, or agents.

9. Throughout the entire period of work on the Improvements, Developer shall, or shall require its contractor(s) to procure and maintain, or cause to be procured and maintained, the types and minimum limits of insurance specified below. All insurance shall be procured from reputable insurers authorized to do direct business in the Commonwealth of Pennsylvania and acceptable to the City. All insurance required herein shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall work be performed until the required evidence of insurance has been furnished. If Developer or Developer's contractor(s) fails to obtain or maintain the required insurance, the City shall have the right to treat such failure as a breach of this Agreement and to exercise all appropriate rights and remedies. The insurance shall provide for at

least thirty (30) days prior written notice to the City in the event coverage is materially changed, canceled or non-renewed.

The City of Philadelphia, its officers, employees and agents are to be named as additional insured on the General Liability Insurance Policy. Also, an endorsement is required stating that the coverage afforded the City and its officers, employees, and agents as additional insured will be primary to any coverage available to them.

(a) WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

- (1) Workers' Compensation: Statutory Limits
- (2) Employers' Liability: \$500,000 each Accident-Bodily Injury by Accident; \$500,000 Each Employee – Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.
- (3) Other States coverage and Pennsylvania Endorsement.

(b) GENERAL LIABILITY INSURANCE

- (1) Limit of Liability: \$2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; 1,000,000 personal and advertising injury; \$2,000,000 general aggregate; and \$1,000,000 aggregate for products and completed operations.
- (2) Coverage: Premises operations; blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors; employees and volunteers as additional insurers; cross liability (insured vs. insured); and broad form property (including completed operations).

(c) AUTOMOBILE LIABILITY

- (1) Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- (2) Coverage: Owned, non-owned and hired vehicles.

Certificates of insurance evidencing the required coverage must specifically reference the Agreement Number for which they are being submitted and shall be submitted to the Water Department and the City's Risk Manager at One Parkway, 1515 Arch Street, Philadelphia, Pennsylvania 19102 at least ten (10) days before work is begun and at least ten (10) days before each renewal date. The ten (10) days requirement for advance documentation of coverage may be waived in situations where such waiver will benefit the City, but under no circumstances shall Developer or Developer's contractor(s) actually begin work (or continue work in the case of

renewal) for the water and sewer modifications without providing evidence of insurance. The City reserves the right to require Developer to furnish certified copies of the original policies of all insurance required under this Agreement at any time upon ten (10) days prior written notice to Developer. The insurance requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnification made in this Agreement by Developer to the City or limit Developer's liability under this Agreement to the limits of the policies of insurance required to be maintained hereunder.

10. This Agreement is entered into under the terms of the Philadelphia Home Rule Charter, and in performance of this Agreement, Developer shall not discriminate nor permit discrimination against any person because of race, color, religion, sex or national origin and will comply with The Philadelphia Code, Section 17-104. In the event of such discrimination, the City may terminate this Agreement forthwith.

11. Notifications to the City shall be made in writing to:

**Brian Mohl  
Manager, Capital Programs  
City of Philadelphia Water Department  
2nd Floor  
1101 Market Street  
Philadelphia, PA 19107**

12. Notification to Developer shall be made in writing to :

**John Smith, Esquire  
Developer Inc.  
1 North Street  
Philadelphia, PA 19107**

13. The responsibilities and duties set forth in this Agreement shall not be assigned by the Developer except for those items specifically set forth in this Agreement or by prior written approval by the Water Commissioner or his authorized representative.

14. This Agreement represents the entire agreement between the parties hereto and shall not be modified in any manner except by written instrument executed by the parties and attached hereto.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, the City of Philadelphia by its General Manager of Planning and Engineering and Developer have caused this Agreement to be duly executed as the of date first above written.

“APPROVED AS TO FORM”

**FOR THE CITY OF PHILADELPHIA**

\_\_\_\_\_

Deputy City Solicitor

By: \_\_\_\_\_

General Manager,  
Planning and Engineering

**FOR DEVELOPER INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_