

MUNICIPAL ORDER 27-2019

A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH CEDARHURST OF OWENSBORO REAL ESTATE, LLC, PROVIDING FOR THE CONSENSUAL ANNEXATION OF UNINCORPORATED PROPERTY LOCATED IN DAVIESS COUNTY LOCATED AT 1900 PLEASANT VALLEY ROAD AND HIGHWAY 603, CONTAINING SEVEN (7) ACRES, MORE OR LESS; AND FURTHER PROVIDING THAT THE CITY SHALL REIMBURSE CEDARHURST FOR THE COST OF CONSTRUCTION OF VARIOUS PUBLIC FACILITIES DEDICATED TO PUBLIC USE FOR SAID PROPERTY AND MAINTENANCE WITHIN OR FOR THE DIRECT BENEFIT OF SAID TRACT IN AN AMOUNT NOT TO EXCEED THE TOTAL COST OF THE PUBLIC FACILITIES OR THE TOTAL AD VALOREM, NET PROFITS, AND OCCUPATIONAL TAX REVENUES DERIVED FROM THE PROPERTY, WHICHEVER IS LESS, OVER A DESIGNATED EIGHT (8) YEAR PERIOD.

WHEREAS, Cedarhurst of Owensboro Real Estate, LLC (“Cedarhurst”) is the owner of real property consisting of seven (7) acres, more or less, which is located at 1900 Pleasant Valley Road and Highway 603 in Daviess County, Kentucky; and

WHEREAS, the Subject Property is currently zoned as B-4 General Business Zone with CUP for Assisted Living; and

WHEREAS, the Subject Property, is presently located in an unincorporated area of Daviess County that is contiguous to the corporate boundaries of the City, when annexed, developed, and/or sold, will utilize and benefit from, various municipal services, including public safety, sanitary sewer, water, and electric utilities; and

WHEREAS, the social and economic well-being of the City is directly related to, and in many respects dependent upon, the substantial growth of the city and its tax revenue base through annexation of contiguous territories. In order to meet various capital needs, especially in the area of public safety, provide and maintain infrastructure and other public facilities, promote economic development, and continue to provide affordable, quality municipal services to taxpayers, the City deems it to be in its best interest to encourage and induce contiguous industrial, commercial, and/or residential developments to become citizens of Owensboro through consensual annexation, with all services, rights, privileges, and other amenities appertaining thereto; and

WHEREAS, Cedarhurst has consented to its consensual annexation by the City; and

WHEREAS, as an incentive to Developer to incorporate the entirety of the Subject Property into the City through consensual annexation in order to make all municipal services available to said property and to facilitate overall municipal growth, the City desires to reimburse Developer for the cost of the construction of various public facilities and improvements dedicated to public use and maintenance within or for the direct benefit of the Subject Property, in an amount not to exceed the total cost of the public facilities or the total unrestricted ad valorem (excluding school tax), net profits, and occupational tax revenues derived from any property located therein, whichever is less, over a designated eight (8) year period.

**NOW, THEREFORE, BE IT ORDERED BY THE CITY OF
OWENSBORO, KENTUCKY, AS FOLLOWS:**

Section 1. That the Mayor be, and he hereby is authorized and directed to execute a Memorandum of Agreement with Cedarhurst of Owensboro Real Estate, LLC, setting forth the terms and conditions by which the seven (7) acre tract of land, more or less, located at 1900 Pleasant Valley Road and Highway 603 in Daviess County, Kentucky will be consensually annexed into the City of Owensboro in consideration for the City agreeing to reimburse Cedarhurst for the cost of the construction of various public facilities and improvements dedicated to public use within said seven (7) acre tract of land. A copy of said Memorandum of Agreement is attached hereto and incorporated by reference herein.

**INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE
READING,** this the 15th day of October, 2019.

Thomas H. Watson, Mayor

ATTEST:

Beth Cecil, City Clerk

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made and entered into this ____ day of _____, 2019, by and between the CITY OF OWENSBORO, KENTUCKY, a municipal corporation of the home rule class, 101 East Fourth Street, P. O. Box 10003, Owensboro, Kentucky 42302-9003, (hereafter referred to as "City"), and CEDARHURST OF OWENSBORO REAL ESTATE, LLC, 300 Hunter Avenue, Suite 200, St. Louis, MO 63124 (hereafter referred to as "Cedarhurst").

RECITALS

WHEREAS, Cedarhurst is the owner of real property consisting of seven (7) acres, more or less, which is located at the Southwest corner of Pleasant Valley Road and Highway 603, in Daviess County, Kentucky, of which the legal description is attached hereto as Attachment 1 and is hereinafter referred to as the "Subject Property"); and

WHEREAS, Cedarhurst's property, which is presently located in an unincorporated area of Daviess County that is contiguous to the corporate boundaries of the City, when annexed, developed, and/or sold, will utilize and benefit from, various municipal services, including public safety, sanitary sewer, water, and electric utilities; and

WHEREAS, the social and economic well-being of the City is directly related to, and in many respects dependent upon, the substantial growth of the City and its tax revenue base through annexation of contiguous territories. In order to meet various capital needs, especially in the area of public safety, provide and maintain infrastructure and other public facilities, promote economic development, and

continue to provide affordable, quality municipal services to taxpayers, the City deems it to be in its best interest to encourage and induce contiguous industrial, commercial, and/or residential developments to become citizens of Owensboro through consensual annexation, with all services, rights, privileges, and other amenities appertaining thereto; and

WHEREAS, as an incentive to Cedarhurst to incorporate the entirety of the Subject Property into the City through consensual annexation in order to make all municipal services available to said property and to facilitate overall municipal growth, the City desires to reimburse Cedarhurst for the cost of the construction of various public facilities and improvements dedicated to public use and maintenance within or for the direct benefit of the Subject Property, in an amount not to exceed the total cost of the public facilities or the total unrestricted ad valorem (excluding school tax), net profits, and occupational tax revenues derived from any property located therein, whichever is less, over a designated eight (8) year period.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions contained herein, the parties agree as follows:

SECTION 1. ANNEXATION: Upon the approval and execution of this Agreement by the parties, Cedarhurst shall proceed without unreasonable delay with formal application for consensual annexation by the City of the Subject Property consisting of seven (7) acres, more or less, which is located at the Southwest corner of Pleasant Valley Road and Highway 603, in Daviess County, Kentucky and further identified in Attachment 1, and shall give its consent to, and in all

other respects, support an annexation ordinance proposed to the Owensboro Board of Commissioners for adoption, pursuant to KRS 81A.412.

In consideration of the foregoing, the City or its designated agency, shall accept and assume maintenance of, all public facilities approved by the City Engineer and constructed by or for Cedarhurst within or proximate to the property to be annexed, including streets (both City and State maintained), alleys, curbs, gutters, parks, bicycle/pedestrian trails, and public infrastructure (including sanitary sewers, water main and service lines and other public utilities, storm water drains and inlets, but excluding common areas and retention basins which shall be identified on the final development plan and final subdivision plat as to be maintained by others/Cedarhurst) or other public improvements or right-of-way dedicated to public use and maintenance on the final development plan and the final subdivision plat which are accepted by the City of Owensboro and approved by the Owensboro Metropolitan Planning Commission and filed of record in the Office of the Daviess County Clerk, hereafter referred to as "Public Facilities." Once fully completed to the approved specifications, all maintenance of the Public Facilities required hereunder shall be performed by the City according to its approved maintenance schedule, as may be changed from time to time.

SECTION 2. REZONING PROHIBITED: The parties hereto acknowledge, understand and agree that the incentives herein provided by the City are based on the zoning classification of B-4 and Cedarhurst shall not rezone any unit, tract, lot or individual parcel within the Subject Property which it holds legal title to or has a vested or controlling ownership interest in, to anything other than B-4 without the

approval of the City and shall, in any conveyance to another person or entity, ensure that this restriction runs with the land as to subsequent owners. This restriction shall only run with the land and be in effect for the period of time that Cedarhurst receives any reimbursement under this Agreement.

SECTION 3. INCENTIVES; REIMBURSEMENT FOR COST OF PUBLIC FACILITIES; CALCULATION OF TAX REVENUES; LIMITATIONS:

(A) Incentives: In consideration of the consensual annexation of the aforementioned Subject Property, the City hereby agrees to reimburse Cedarhurst for the verified cost of the Public Facilities required to be constructed or improved by Cedarhurst, its employees, agents or contractors, within or for the direct benefit of the property annexed herein, subject to the terms, conditions, and limitations set forth herein.

(B) Public Facilities: In addition to those stated above, and for purposes of this section, Public Facilities include those items listed as "Recoverable Costs" on Attachment 2 and streets (both City and State maintained), curbs, gutters, public street medians, and infrastructure (including water pipes, sanitary sewers, storm drains), inlets, shown and dedicated to the City on any final subdivision plat approved by the City Engineer and by the Owensboro Metropolitan Planning Commission and filed of record in the office of the Daviess County Court Clerk both within or for the direct benefit of the property being annexed.

(C) Reimbursement for Public Facilities; Source of Funding:

1. The City shall reimburse Cedarhurst for the actual costs incurred in connection with the construction of Public Facilities within, or for the

direct benefit of, the Subject Property upon the release of any public improvement bond or other surety and submission of an itemized invoice properly documenting the same. Cedarhurst shall submit invoices to the City's Finance Department on a quarterly basis. Upon verification and approval by the City Engineer, the Finance Director shall process the invoice(s) for payment. Payments for verified and approved invoices are paid in the months of February, May, August, and November provided Cedarhurst submitted the applicable invoices at least thirty (30) days prior to the first day of each payment month.

2. Expenses to be reimbursed by City to Cedarhurst under this Agreement shall be paid solely from all real and personal property, occupational, and net profits tax/fee revenues (excluding school taxes/fees, franchise bank deposit taxes, any and all in lieu of present or future taxes/fees, and any taxes levied and restricted to a specific purpose) derived by the City from the Subject Property, hereafter referred to as "Tax Revenues", over a maximum period of eight (8) years (the "Reimbursement Term"). The eight (8) year Reimbursement Term shall commence upon receipt of a written request for same by Cedarhurst to the City, or, automatically on January 1, 2021, whichever first occurs. The City's obligation to reimburse Cedarhurst for the cost of Public Facilities shall commence on the first day of the next fiscal quarter after the reimbursement term begins.

It is understood that all reimbursements provided in this Agreement shall be

made solely to Cedarhurst and not to any subsequent developer, purchasers, tenants, or other interests present or future.

(D) Accounting: The Director of Finance and Support Services is authorized and directed to collect and deposit all refundable Tax Revenues derived by the City from the Subject Property annexed hereby, in a separate, dedicated account established for the Subject Property incorporated by the City through consensual annexation, for the eight (8) year period designated herein. To assist the Finance Department in tracking Tax Revenues derived from the development, sale, and/or lease of real and personal property within the Subject Property, Cedarhurst shall, at its own expense, promptly provide the City with a copy of any and all final subdivision plat(s) as approved by the Owensboro Metropolitan Planning Commission and filed in the Office of the Daviess County Clerk, any deeds of conveyance, and the names and mailing addresses of any person, firm or corporation with a leasehold interest in any portion of the Subject Property. During the term of this Agreement, Cedarhurst shall also notify the City's Director of Finance and Support Services of the sale, transfer, and/or lease of any portion of Subject Property to any other person or entity for commercial development or other use by providing a copy of the deed of conveyance or the name and mailing address of any person, firm or corporation with a leasehold interest in any portion of the Subject property.

It is agreed that in the event Cedarhurst sells, transfers and/or leases any part of the Subject Property, Cedarhurst shall continue to receive the incentive payments as defined in this Agreement. It is understood that the incentive payments are to be

paid directly to Cedarhurst regardless as to who owns and/or leases the Subject Property provided Cedarhurst is in compliance with all terms of this Agreement.

Additionally, payment under this Agreement is contingent upon those entities or persons from whom such Tax Revenues were derived, properly reporting such to the City of Owensboro. In the event that an entity or person does not properly report such Tax Revenues in a sufficient format to enable the City to attribute those Tax Revenues to the Subject Property, the payment will be withheld until a proper reporting has been received and processed. City and Cedarhurst agree that both shall immediately utilize any and all available means or authority to require those entities or persons to immediately and properly report such Tax Revenues so as not to delay further payment to Cedarhurst.

(E) Limitation on Reimbursement of Expenses The City's maximum liability to Cedarhurst for reimbursement of the cost of qualified Public Facilities shall not exceed the total verified cost of the Public Facilities or the total sum of all Tax Revenues collected by the City from the Subject Property, whichever is less, over the designated eight (8) year period. Additionally, Cedarhurst shall not be eligible for additional reimbursement based upon an existing business relocating to a new property located in an unincorporated area of Daviess County being annexed pursuant to this agreement. Tax Revenues collected by the City from the Subject Property prior to the commencement of the Reimbursement Term are not eligible for payment to Cedarhurst under this Agreement. The City shall reimburse Cedarhurst for qualified expenses upon receipt of sufficient dedicated Tax Revenues under Section 3(C)(2) of this Agreement. Cedarhurst may submit the cost of qualified Public Facilities

throughout the Subject Property as a reimbursable.

SECTION 4. TERM: This Agreement shall commence upon its execution by both parties and in the absence of a default by either party, shall remain in full force and effect for the duration of the last designated eight (8) year period, or until such time as all terms and conditions set forth herein have been satisfied, whichever first occurs.

SECTION 5. DEFAULT; REMEDIES: This Agreement may be terminated by the City, by written notice, in the event Cedarhurst breaches any one or more of the terms and conditions set forth herein, including failure to timely complete all public improvements as per applicable ordinances, Planning and Zoning requirements, and the City's Private Development Policy which is incorporated herein by reference as Attachment 3, and fails to cure said breach within a reasonable time after written notice thereof. This Agreement may be terminated by Cedarhurst in the event the City fails to reimburse Cedarhurst for qualified Public Facility expenses on the terms and conditions set forth herein, and fails to cure said breach within a reasonable time after written notice thereof by Cedarhurst.

Upon a material breach of this Agreement by either party, the non-breaching party shall be entitled to all remedies at law or equity, including but not limited to, specific performance or mandatory injunctive relief, rescission, or compensatory and consequential damages arising therefrom; provided, however, a material breach by the City notwithstanding, under no circumstances shall the City be required to de-annex property annexed

pursuant to this Agreement, which process is a discretionary and non-negotiable legislative function, nor shall the City's total liability ever exceed the total verified cost of the Public Facilities or the total sum of all Tax Revenues collected by the City from the Subject Property, whichever is less.

SECTION 6. NOTICES: Any written notices or requests required under the terms of this Agreement shall be given to the following:

CITY: City of Owensboro
 Attention: Nate Pagan, City Manager
 101 East Fourth Street
 P. O. Box 10003
 Owensboro, KY 42302-9003

CEDARHURST: Cedarhurst of Owensboro Real Estate, LLC
 Attention: Jordan Dorsey, Senior Vice President
 300 Hunter, Suite 200
 St. Louis, MO 63124

SECTION 7. AGREEMENT NULL AND VOID: This Agreement shall terminate, and otherwise become null and void, and neither party shall have any further liability to the other, if the real property described herein is not incorporated into the City by the Owensboro Board of Commissioners or Commonwealth of Kentucky, through consensual annexation.

SECTION 8. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements, promises, communications, representations, whether oral or written, by any employee, officer, or representative of either party hereto. There are no promises, representations, covenants, undertakings, restrictions or conditions other than those expressly set forth herein. Any subsequent amendment hereto shall be in writing and

executed by authorized representatives of both parties.

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, provided, however, that this Agreement shall not be transferred or assigned at any time by Cedarhurst without the express written consent of the City.

SECTION 9. SEVERABILITY: The provisions of this Agreement are independent of and severable from each other, and no provision shall be effected or rendered invalid or unenforceable by virtue of the fact that for any reason, other provisions herein may be invalid or unenforceable, in whole or in part. If a court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable as written, a court may interpret, construe, rewrite or revise such provision, to the fullest extent allowed by law, so as to make it valid and enforceable consistent with the intent of the parties. In the event a court of competent jurisdiction finally determines that any portion of this Agreement is invalid or unenforceable as written, neither party shall have any liability to the other as a result thereof.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first hereinabove written.

FIRST PARTY:

CITY OF OWENSBORO, KENTUCKY

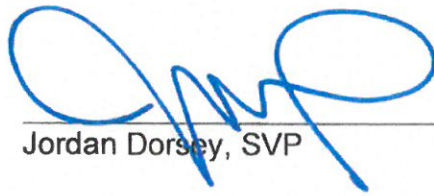
Thomas H. Watson, Mayor

ATTEST:

Beth Cecil, City Clerk

SECOND PARTY:
ESTATE, LLC

CEDARHURST OF OWENSBORO REAL

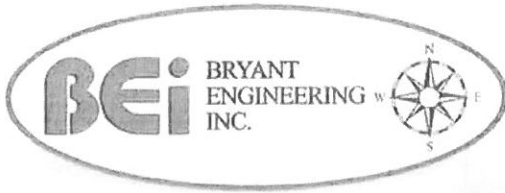


Jordan Dorsey, SVP

9-11-19

Attachment 1

"Subject Property"



1535 Frederica Street
Owensboro, KY 42301
P.O. Box 21382
www.bryant-eng.com
Phone: (270) 685-2811
Fax: (270) 683-4991

PROPERTY DESCRIPTION
7.000 ACRES

A certain tract of land being located at the west intersection of Kentucky Highway 603 and the Wendell Ford Expressway and being more particularly described as follows:

Tract 1 of the Angus Hills Farm, LLC Property Survey and Division as shown on a Plat recorded in Plat Book 48, at Page 65 in the office of the Daviess County Clerk, said Plat is a representation of a physical survey conducted under the direction of J. William Weikel, Jr., KY PLS no. 2813, of Bryant Engineering, Inc., on February 19, 2019. The property described herein above is subject to all legal easements and rights-of-way that may or may not be of record.

J. William Weikel, Jr., KY PLS No. 2813 Date

F:\Data\2018\18-5942\survey\Description For 7.000 acres

Attachment 2

Recoverable Costs

Recoverable Costs must be within the Subject Property unless otherwise indicated herein:

- Construction of all on and offsite public utilities including sanitary sewer, storm water drainage, waterline, electricity, natural gas, and phone/cable/internet;
- Roads;
- Curbs, gutter, sidewalk, greenbelt, public promenades, and approved pedways that connect two public spaces;
- Medians and irrigation within and to public right-of-way;
- Street lighting;
- Public spaces, parks such as a bike park in the public right-of-way;
- Existing utility or service line relocation from within an approved right-of-way
- Approved amenities such as fountains, benches, monuments, decorative boundary fencing separating a public right-of-way, and sculptures within a public right-of-way (each of these items shall be maintained, in all aspects, by the Developer); and
- Outside consulting cost for planning and design of those Public Facilities as defined in this Agreement.

Attachment 3

Private Development Policy City Engineer's Office

February 26, 2009

Effective Date: March 18, 2009

Revision Date February 9, 2010

The following is the City Engineer's policy on the review of plans, the release of bonds, and the acceptance of maintenance of public improvements for private development:

Plan Review:

The City Engineer's office recognizes that any delay in the review of plans could result in costly expenses to any developer. However, the City Engineer's office also needs a sufficient amount of time to review plans properly. Due to this, the City Engineer's office will commit to performing the review of most plans in a timely manner as stated below. If there is any exception to this timeline, the City Engineer's office will notify the developer's engineer as soon as possible.

The City Engineer will only review a complete set of development plans. This includes a complete plan set, the erosion control plans, and the completed drainage calculations with its drainage summary in a drainage folder. Any partial submittal will be logged and placed in the file without review until the entire set is submitted. Once a complete set of development plans has been received, the plan review process will begin. The City Engineer will attempt to complete the initial plan review process in two (2) weeks (10 working days.) The mark-up plans and comments will be returned to the developer's engineer. The City Engineer will attempt to complete any subsequent review in one (1) week (5 working days) unless a complete redesign has been done.

It has been brought to our attention that the developer would like to have one (1) week to look over our comments in case he wishes to make changes. This is understandable; however the schedule will have to be set up by the developer's engineer in order to allow for the time schedule set out above.

All plan and drainage folder review is for completeness and compliance only. The review does not include a check of the design calculations, the field survey, the engineering accuracy nor the accuracy of the field survey. The sign off of the plans by the City Engineer's office does not relieve the developer's engineer of any liability for sound engineering judgment and/or accuracy.

Additional Permits:

A Cut and Fill permit will be required prior to the start of any dirt work on any project. The Cut and Fill permit can be obtained through the Owensboro Metropolitan Planning Commission. The Cut and Fill permit will not be signed off on until the Notice of Intent (NOI) is submitted to the Kentucky Division of Water

(DOW), and the NOI, the Storm Water Pollution Prevention Plan (SWPPP), and all required Corps of Engineers (COE) and DOW permits have been submitted to the City Engineer's office.

Performance Bond Review:

All development in the City of Owensboro will require a performance bond of some form to be submitted to the City Engineer. The Unit Prices as established by the Public Improvement (PI) Spec Committee will be used to set all bond amounts, as well as to perform bond updates. However, the Performance Bond shall be considered as a Lump Sum Bond, not as a unit specific bond.

The City Engineer's office recognizes that any delay in the review of performance bonds may also result in costly expenses to any developer. However, the City Engineer's office needs a sufficient amount oftentimes to review plans in order to become properly familiar with the project. Due to this, the City Engineer's office will commit to performing the review of most performance bonds in a timely manner as stated below. If there is any exception to this timeline, the City Engineer's office will notify the developer's engineer as soon as possible.

The City Engineer will complete the review of most performance bonds in a one week (5 working days) period. This includes the start-up of any bond, or the full release of any bond. The exception will be for larger developments that will require extensive field work and review. The comments will be returned to the developer or his engineer. Any subsequent reviews will be performed in three (3) working days.

Performance Bond Format:

Any form of bond currently acceptable by the Owensboro Metropolitan Planning Commission is also acceptable by the City Engineer's office.

Performance Bond Update Schedule:

All bonds shall be renewed and updated every two years after the initial date of the bond. Any time a bond is renewed, it shall be updated to the current unit price rates as specified by OMPC on the recommendation of the PI Spec Committee.

Any bond currently active as of the effective date of this policy shall be given extra time. These bonds shall be completed and closed or updated within 2 years of the effective date of this policy.

Maintenance Bond:

A MAINTENANCE BOND will be required for all public improvements, including sidewalks. This will be a lump sum bond that is equal to 5% (minimum of \$5,000.00 per unit) of the total for public improvements as calculated by the unit prices as established by the PI Spec. Committee. It is the intent of the City

Engineer's office to release the maintenance bond after 100% of the public improvements have been completed (excluding sidewalk) of the unit being bonded and that unit being accepted by the City Engineer's office. Sidewalks shall not be required to be completed for the release of 100% of the lump sum maintenance bond. However, individual performance bonds shall remain on incomplete sidewalks. Also, if any items in the bonded unit are being used as a Best Management Practice (BMP) in the SWPPP of non-completed units, then the maintenance bond will be maintained intact until those items are no longer BMP's, and the subject area is stabilized, or the maintenance bond can be replaced by a new maintenance bond that addresses only the erosion control. The release of the maintenance bond will be decided on a case by case basis to determine if other issues exist that may also deem the holding of the maintenance bond necessary.

On single lot developments that include minor public improvements, the City Engineer, at his discretion, may reduce the Maintenance Bond down to \$1,000.00. The property owner shall hire a bonded contractor to perform the work; however the contractor's bond he currently holds with the City of Owensboro will not be sufficient for this bond.

Bond Release Minimum:

Minimum amount for a partial bond release will be \$2,500.00.

Street DGA:

Once all Street DGA has been placed to the satisfaction of the City Engineer's Office, the developer may request 100% release of the amount for the DGA bond. The developer is still responsible for the maintenance of the DGA, including cleaning of mud and other normal construction means and methods until the lump sum Maintenance bonds are released.

Curb and Gutter:

Once all Curb and Gutter has been placed to the satisfaction of the City Engineer's Office, the developer may request 100% release of the amount for the Curb and Gutter bond. The developer is still responsible for the maintenance of the Curb and Gutter until the lump sum Maintenance bonds are released. This release does not relieve the developer of keeping mud and other debris out of the Curb and Gutter.

Street Base Asphalt:

Once all Street Base Asphalt has been placed to the satisfaction of the City Engineer's Office, the developer may request 100% release of the amount for the Street Base Asphalt bond. The developer is still responsible for the maintenance of the Street Base Asphalt until the lump sum Maintenance bonds are released. This release does not relieve the developer of keeping mud and other debris out of the Base Asphalt.

Street Surface:

Street Surface will not be allowed to be placed until the installed asphalt base has been exposed to a minimum of two (2) winter seasons for Local and Collector streets and three (3) winter seasons for Arterial streets.

Under no circumstances will the installed base asphalt be allowed to be exposed to more than four (4) winters without being covered with surface asphalt. If the developer does not apply the surface asphalt by October prior to the 5th winter, the City of Owensboro will cash in the performance and maintenance bonds and complete the placement of the surface.

Once all Street Surface has been placed to the satisfaction of the City Engineer's Office, the developer may request 100% release of the amount for the Street Surface bond. The developer is still responsible for the maintenance of the Street Surface until the release of the lump sum Maintenance bond.

Sidewalk:

Once all Sidewalk has been placed to the satisfaction of the City Engineer's Office, and the development is complete on any particular lot, the developer may request the release of 100% of the bond for the Sidewalk across that lot as long as the total requested bond release meets or exceeds the bond release minimum stated above. If the developer chooses to place sidewalk on any lot prior to construction on that lot, the sidewalk shall be 6" thick across the entire lot width.

Private Storm Sewer Systems of all types, including Basins:

Private Storm Sewer Systems will not be bonded with the City of Owensboro with the exceptions mentioned below. However, if the Private Storm Sewer System is not installed per plan, enforcement will fall under the City of Owensboro Storm Water Ordinance, Article VII. Some Private Storm Sewer Systems, such as underground detention basins or systems used as a BMP in the SWPPP, may require a Maintenance Bond at the discretion of the City Engineer. All private basins shall be certified by a Licensed Professional Engineer as stated below.

Storm Sewer Systems of all types, Excluding Basins:

Once Storm Sewer System has been installed UNDER THE DIRECT INSPECTION of the City Engineer's office, and once the unit of the development that drains through a particular section of a storm sewer system is 100% complete and stabilized per KYR10, then an inspection will be done of the system at the City's expense. Any debris, silt mud etc. found in the system shall be removed by the developer to the City Engineer's satisfaction. Any spot repairs of the system will also be done at the developer's expense. At this time, the developer may request a full release of 100% the bond for each individual item. However, if any items in the bonded unit are being used for BMP or SWPPP the developer may provide a replacement maintenance bond to release the lump sum Maintenance

bond.

If the developer fails to notify the City Engineer's office prior to the installation of any storm sewer system, the developer shall prove to the City Engineer's office the system was installed per the PI Specification at the developer's expense. This could include, but is not limited to:

- (1) TV-ing of system;
- (2) Pothole;
- (3) Complete uncovering;

Detention/Retention/Mitigation Basins:

The following items shall be completed prior to the developer requesting full release of the bonds on any basins:

(1) If the basin is to be used as a BMP in the SWPPP, then 100% of the area draining into the basin shall be completed and stabilized per KYRIO prior to the request for the full release of bond. The silt must be cleaned out of the basin, and the basin restored to the plan dimensions. All banks and side slopes shall be stabilized per the plan, and sufficient ground cover established. The developer shall hire a Professional Engineer licensed in Kentucky to certify the basin was constructed to plan dimensions and slopes, was constructed to achieve the designed capacity, and that it is no longer a BMP in the SWPPP. (See sample language and detail below.) The certification shall coincide with the full release request.

(2) If the basin is not to be used as a BMP in the SWPPP, then the developer may request a full release of the bonds upon the completion of the following items:

- (a) The silt must be cleaned out of the basin.
- (b) The basin must be restored to the plan dimensions.
- (c) All other BMP's in the SWPPP upstream of the basin shall be in place and maintained at all times.
- (d) The developer shall hire a Professional Engineer licensed in Kentucky to certify the basin was constructed to plan dimensions and slopes, was constructed to achieve the designed capacity, and that it is not a BMP in the SWPPP. (See sample language and detail below.)

At this point, the developer may request a full release of the bond. The release of the bond of the basin does not release the developer from the liability should any silt deposit in the basin due to a failed BMP upstream.

Sample Language:

"I certify the subject basin was constructed per plan dimensions. The maximum slopes dimensioned in the plans are _____. The in-place slopes are _____. The drainage report specified a capacity of _____ acre-feet of storage in the basin. The as-built storage of the basin is _____ acre-feet. The basin (is no longer/has never been) used as a BMP in the SWPPP."

Detail of Required Elevation Points:**Traffic Control:**

The developer is responsible for all traffic control through the development until final surface is placed and all bonds have been released. This includes, but is not limited to the control of traffic around manholes and inlets that are higher than the existing grade of the driving surface.

Storage of Material:

Storage of building materials shall not be allowed in the Right of Way during the construction of any improvements.