

## CHAPTER 364. MODEL SUBDIVISION RULES

### SUBCHAPTER A. GENERAL PROVISIONS

**§364.1. Scope of Chapter.** This chapter contains model rules which the Texas Water Development Board (board) is required to adopt in accordance with Texas Water Code, §16.343. Before an application for financial assistance from Economically Distressed Areas Program as specified in Chapter 355, Subchapter B of this title or Chapter 363, Subchapter E of this title may be considered by the board, the applicant shall provide documentation satisfactory in form and in substance that the municipality, if applicable, and county in which the applicant is located has adopted the necessary orders, ordinances, or other rules that meet the requirements of the Model Subdivision Rules contained in Subchapter B of this chapter.

**§364.2. Purpose.** The model rules provide the criteria for assuring that an adequate supply of safe drinking water and adequate safe sewer facilities are available to residential areas in accordance with state standards established by the Texas Department of Health and the Texas Natural Resource Conservation Commission. The model rules prohibit the establishment of residential developments with lots of five acres or less without adequate water supply and sewer services, prohibit more than one single-family, detached dwelling to be located on each subdivision lot, and establish minimum setbacks to ensure proper operation of water supply and sewer services and to reduce the risk of fire hazards.

### SUBCHAPTER B. MODEL RULES

#### Division 1. General and Administrative Provisions

**§364.11. Authority and Scope of Rules.** These rules are adopted by \_\_\_\_\_ County, Texas, under the authority of the Local Government Code, Chapter 232 and Water Code, §16.350. Notwithstanding any provision to the contrary, these rules apply only to a subdivision which creates two or more lots of five acres or less intended for residential purposes. Lots of five acres or less are presumed to be for residential purposes unless the land is restricted to nonresidential uses on the final plat and in all deeds and contracts for deeds.

**§364.12. Purpose.** It is the purpose of these rules to promote the public health of the county residents, to ensure that adequate water and wastewater facilities are provided in subdivisions within the jurisdiction of this county, and to apply the minimum state standards for water and wastewater facilities to these subdivisions.

**§364.13. Effective Date.** These rules become effective on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**§364.14. Repealer.** Provisions of Order(s) Number \_\_\_\_, adopted on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, are hereby repealed, except as to such sections which are retained herein.

**§364.15. Plat Required.**

- (a) The owner of a tract of land located outside the corporate limits of a municipality that divides the tract in any manner that creates two or more lots of five acres or less intended for residential purposes must have a plat of the subdivision prepared. Lots of five acres or less are presumed to be for residential purposes unless the land is restricted to nonresidential uses on the final plat and all deeds and contracts for deeds.
- (b) No subdivided land shall be sold or conveyed until the subdivider:
  - (1) has received approval of a final plat of the tract; and
  - (2) has filed and recorded with the county clerk of the county in which the tract is located a legally approved plat.
- (c) A division of a tract is defined as including a metes and bounds description, or any description of less than a whole parcel, in a deed of conveyance or in a contract for a deed, using a contract of sale or other executory contract, lease/purchase agreement, or using any other method to convey property.

**§364.16. Supersession.** These rules supersede any conflicting regulations of the county.

**§364.17. Severability.** If any part or provision of these regulations, or application thereof, to any person or circumstance is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of these regulations or the application thereof to other persons or circumstances. The commissioners court hereby declares that it would have enacted the remainder of these regulations without any such part, provision or application.

**§364.18. Definitions.** The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) **Commissioners court (or court)** - The commissioners court of \_\_\_\_\_ County, Texas.
- (2) **County** - \_\_\_\_\_ County, Texas.
- (3) **Drinking water** - All water distributed by any agency or individual, public or private, for the purpose of human consumption, use in the preparation of foods or beverages, cleaning any utensil or article used in the course of preparation or consumption of food or beverages for human beings, human bathing, or clothes washing.
- (4) **Engineer** - A person licensed and authorized to practice engineering in the State of Texas under the Texas Engineering Practice Act.
- (5) **Final plat** - A map or drawing and any accompanying material of a proposed subdivision prepared in a manner suitable for recording in the county records and prepared as described in these regulations.
- (6) **Lot** - An undivided tract or parcel of land.
- (7) **Non-public water system** - Any water system supplying water for domestic purposes which is not a public water system.
- (8) **OSSF** - On-site sewage facilities as that term is defined in rules and/or regulations adopted by TNRCC, including, but not limited to, 30 TAC Chapter 285.
- (9) **Platted** - Recorded with the county in an official plat record.

- (10) **Public water system** - A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or more at least 60 days out of the year. Without excluding other meanings of the terms “individual” or “served,” an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.
- (11) **Purchaser** - Shall include purchasers under executory contracts for conveyance of real property.
- (12) **Retail public utility** - Any entity meeting the definition of a retail public utility as defined in Water Code §13.002.
- (13) **Sewerage facilities** - The devices and systems which transport domestic wastewater from residential property, treat the wastewater, and dispose of the treated water in accordance with the minimum state standards contained or referenced in these rules.
- (14) **Subdivider** - Any owner of land or authorized agent thereof proposing to divide or dividing land so as to constitute a subdivision.
- (15) **Subdivision** - Any tract of land divided into two or more parts that results in the creation of two or more lots of five acres or less intended for residential purposes. A subdivision includes re-subdivision (replat) of land which was previously divided.
- (16) **TAC** - Texas Administrative Code, as compiled by the Texas Secretary of State.
- (17) **TNRCC** - Texas Natural Resource Conservation Commission.
- (18) **Water facilities** - Any devices and systems which are used in the supply, collection, development, protection, storage, transmission, treatment, and/or retail distribution of water for safe human use and consumption.

## **Division 2. Minimum Standards**

**§364.31. Scope of Standards.** The establishment of a residential development with two or more lots of five acres or less where the water supply and sewer services do not meet the minimum standards of this division is prohibited. A subdivision with lots of five acres or less is presumed to be a residential development unless the land is restricted to nonresidential use on the final plat and all deeds and contracts for deeds.

### **§364.32. Water Facilities Development.**

(a) **Public water systems.**

- (1) Subdividers who propose to supply drinking water by connecting to an existing public water system must provide a written agreement with the retail public utility in substantially the form attached in Appendix 1A. The agreement must provide that the retail public utility has or will have the ability to supply the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of 30 years. The agreement must reflect that the subdivider has paid the cost of water meters and other necessary connection equipment, membership fees, water rights acquisition costs, or other fees associated with connection to the public water system so that service is available to each lot upon completion of construction of the water facilities described on the final plat. Figure: 31 TAC §364.32(a)(1)
- (2) Where there is no existing retail public utility to construct and maintain the proposed water facilities, the subdivider shall establish a retail public utility and obtain a Certificate of Convenience and Necessity (CCN) from the TNRCC. The public water system, the water quality and system design, construction and operation shall meet the minimum criteria set forth in 30 TAC §§290.38- 290.51 and §§290.101-290.120. If groundwater is to be the source of the water supply, the subdivider shall have prepared and provide a copy of a groundwater availability study which shall include an analysis of the long term (30 years) quantity and quality of the available groundwater supplies relative to the ultimate needs of the subdivision. If surface water is the source of supply, the subdivider shall provide evidence that sufficient water rights have been obtained and dedicated, either through acquisition or wholesale water supply agreement, that will provide a sufficient supply to serve the needs of the subdivision for a term of not less than 30 years.

- (b) **Non-public water systems.** Where individual wells or other non-public water systems are proposed for the supply of drinking water to residential establishments, a test well or wells located so as to be representative of the quantity and quality of water generally available from the supplying aquifer shall be drilled by the subdivider and the produced waters sampled and submitted to a private laboratory for a complete chemical and bacteriological analysis of the parameters on which there are drinking water standards. The subdivider shall have prepared and provide a copy of a groundwater availability study which shall include an analysis of the long term (30 years) quantity of the available groundwater supplies relative to the ultimate needs of the subdivision. The water quality of the water produced from the test well must meet the standards of water quality required for community water systems as set forth in 30 TAC §§290.103, 290.105, 290.106 and 290.110, either:

- (1) without any treatment to the water; or
- (2) with treatment by an identified and commercially available water treatment system.

- (c) **Transportation of potable water.** The conveyance of potable water by transport truck or other mobile device to supply the domestic needs of the subdivision is not an acceptable method, except on an emergency basis. Absence of a water system meeting the standards of these rules due to the negligence of the subdivider does not constitute an emergency.

**§364.33. Wastewater Disposal.**

(a) **Organized sewerage facilities.**

- (1) Subdividers who propose the development of an organized wastewater collection and treatment system must obtain a permit to dispose of wastes from the TNRCC in accordance with 30 TAC Chapter 305 and obtain approval of engineering planning materials for such systems under 30 TAC Chapter 317 from the TNRCC.
- (2) Subdividers who propose to dispose of wastewater by connecting to an existing permitted facility must provide a written agreement in substantially the form attached in Appendix 1B with the retail public utility. The agreement must provide that the retail public utility has or will have the ability to treat the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of 30 years. The agreement must reflect that the subdivider has paid the cost of all fees associated with connection to the wastewater collection and treatment system have been paid so that service is available to each lot upon completion of construction of the wastewater facilities described on the final plat. Engineering plans for the proposed wastewater collection lines must comply with 30 TAC Chapter 317. Figure: 31 TAC §364.33(a)(2)

(b) **On-site sewerage facilities.**

- (1) On-site facilities which serve single family or multi-family residential dwellings with anticipated wastewater generations of no greater than 5,000 gallons per day must comply with 30 TAC Chapter 285.
- (2) Proposals for sewerage facilities for the disposal of sewage in the amount of 5,000 gallons per day or greater must comply with 30 TAC Chapter 317.
- (3) The TNRCC or its authorized agent shall review proposals for on-site sewage disposal systems and make inspections of such systems as necessary to assure that the system is in compliance with the Texas Health and Safety Code, Chapter 366 and rules in 30 TAC Chapter 285, and in particular §§285.4, 285.5 and 285.30-285.39. In addition to the unsatisfactory on-site disposal systems listed in 30 TAC §285.3(b), pit privies and portable toilets are not acceptable waste disposal systems for lots platted under these rules.

**§364.34. Greywater Systems for Reuse of Treated Wastewater.**

- (a) Organized or municipal sewerage systems. Any proposal for sewage collection, treatment and disposal which includes greywater reuse shall meet minimum criteria of 30 TAC Chapter 210 promulgated and administered by the TNRCC.
- (b) On-site sewerage facilities. Any proposal for on-site sewage disposal which includes provisions for greywater use shall meet the minimum criteria of 30 TAC Chapter 285.

**§364.35. Sludge Disposal.** The disposal of sludge from water treatment and sewerage facilities shall meet the criteria of 30 TAC Chapter 312 and Chapter 317.

**§364.36. Setbacks.** In areas that lack a nationally recognized fire code as listed in Local Government Code, §235.002(b)(2) and lack water lines sized for fire protection, setbacks from roads and right-of-ways shall be a minimum of 10 feet, setbacks from adjacent property lines shall be a minimum of five feet, and shall not conflict with separation or setback distances required by rules governing public utilities, on-site sewerage facilities, or drinking water

supplies. Setback lines required elsewhere in the orders or rules of the county shall control to the extent greater setbacks are therein required.

**§364.37. Number of Dwellings Per Lot.** No more than one single family detached dwelling shall be located on each lot. A notation of this restriction shall be placed on the face of the final plat. This restriction shall be placed in all deeds and contracts for deeds for real estate sold within the subdivision. Proposals which include multi-family residential shall include adequate, detailed planning materials as required for determination of proper water and wastewater utility type and design.

### **Division 3. Plat Approval**

#### **§364.51. Applications for Plat Approval.**

- (a) Owner representation. An application for approval of a plat shall be filed with the county by the record owner of the property to be subdivided or the duly authorized agent of the record owner.
- (b) Standards. Every plat creating two or more lots of five acres or less for residential use shall comply with the standards of Division 2 and the requirements of Division 3 of this subchapter.

**§364.52. Final Engineering Report.** The final plat shall be accompanied by an engineering report bearing the signed and dated seal of a professional engineer registered in the State of Texas. The engineering report shall discuss the availability and methodology of providing water facilities and wastewater treatment to individual lots within the subdivision. A detailed cost estimate per lot acceptable to the county shall be provided for those unconstructed water supply and distribution facilities and wastewater collection and treatment facilities which are necessary to serve each lot of the subdivision. The plan shall include a construction schedule for each significant element needed to provide adequate water or wastewater facilities. If financial guarantees are to be provided under §364.54 of this title, the schedule shall include the start dates and completion dates.

#### **(1) Public water systems.**

- (A) Where water supplies are to be provided by an existing public water system, the subdivider shall furnish an executed contractual agreement between the subdivider and the retail public utility in substantially the form attached in Appendix 1A and referenced in §364.32(a)(1) of this title. Before final plat approval, plans and specifications for the proposed water facilities shall have been approved by all entities having jurisdiction over the proposed project which may include in addition to the county the TNRCC and the county health department. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study which shall include comments regarding the long term (30 years) quantity and quality of the available groundwater supplies relative to the ultimate needs of the subdivision.
- (B) Where there is no existing retail public utility to construct and maintain the proposed water facilities, the subdivider shall establish a retail public utility and obtain a Certificate of Convenience and Necessity (CCN) from the TNRCC and include evidence of the CCN issuance with the plat. Before final plat approval, plans and specifications for the proposed water facilities shall have been approved

by all entities having jurisdiction over the proposed project. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study which shall include an analysis of the long term (30 years) quantity and quality of the available groundwater supplies relative to the ultimate needs of the subdivision. If surface water is the source of supply then the final engineering report shall include evidence that sufficient water rights have been obtained and dedicated, either through acquisition or wholesale water supply agreement, that will provide a sufficient supply to serve the needs of the subdivision for a term of not less than 30 years.

- (2) **Non-public water systems.** Where individual wells are proposed for the supply of drinking water to residences, the final engineering report shall include the quantitative and qualitative results of sampling the test wells in accordance with §364.32 of this title. The results of such analyses shall be made available to the prospective property owners. If the water quality of the test well required pursuant to §364.32(b) of this title does not meet the water quality standards as set forth in that section without treatment by an identified and commercially available water treatment system, then the final report must state the type of treatment system that will treat the water produced from the well to the specified water quality standards, the location of at least one commercial establishment within the county at which the system is available for purchase, and the cost of such system, the cost of installation of the system, and the estimated monthly maintenance cost of the treatment system. The engineer shall issue a statement concerning the availability of groundwater supplies to serve the fully developed subdivision over the next 30 years. Such statement may be based on information available from the Texas Water Development Board's Office of Planning. The description of the required sanitary control easement shall be included.
- (3) **Organized sewerage facilities.**
- (A) Where wastewater treatment is to be provided by an existing retail public utility, the subdivider shall furnish evidence of a contractual agreement between the subdivider and the retail public utility in substantially the form attached in Appendix 1B and referenced in §364.33(a)(2) of this title. Before final plat approval, an appropriate permit to dispose of wastes shall have been obtained from the TNRCC and plans and specifications for the proposed wastewater collection and treatment facilities shall have been approved by all entities having jurisdiction over the proposed project.
- (B) Where there is no existing retail public utility to construct and maintain the proposed sewerage facilities, the subdivider shall establish a retail public utility and obtain a CCN from the TNRCC. Before final plat approval, a wastewater treatment permit authorizing the treatment of the wastewater for the ultimate build-out population of the subdivision shall have been obtained from the TNRCC and plans and specifications for the proposed sewerage facilities shall have been approved by all entities having jurisdiction over the proposed project.
- (4) **On-site sewerage facilities.** Where private on-site sewerage facilities are proposed, the final engineering report shall include planning materials required by 30 TAC §285.4(c), including the site evaluation described by 30 TAC §285.30 and all other information required by the county's OSSF order.

**§364.53. Additional Information.** The county may, at its option, require additional information necessary to determine the adequacy of proposed water and wastewater improvements as part of the plat approval process. Such information may include, but not be limited to:

- (1) layout of proposed street and drainage work;
- (2) legal description of the property;
- (3) existing area features;
- (4) topography;
- (5) flood plains;
- (6) description of existing easements;
- (7) layout of other utilities;
- (8) notation of deed restrictions;
- (9) public use areas; or
- (10) proposed area features.

**§364.54. Financial Guarantees for Improvements.**

- (a) **Applicability.** If an adequate public or non-public water system or sewerage facility is not available from a retail public utility, or are not constructed by the subdivider, to serve lots intended for residential purposes of five acres or less at the time final plat approval is sought, then the commissioners court shall require the owner of the subdivided tract to execute an agreement with the county in substantially the form attached in Appendix 2A secured by a bond, irrevocable letter of credit, or other alternative financial guarantee such as a cash deposit which meet the requirements set forth below. Figure: 31 TAC §364.54(a)
- (b) **Bonds.** A bond that is submitted in compliance with paragraph (a) of this section shall meet the following requirements.
  - (1) The bond or financial guarantee shall be payable to the county judge of the county, in his official capacity, or the judge's successor in office.
  - (2) The bond or financial guarantee shall be in an amount determined by the commissioners court to be adequate to ensure proper construction or installation of the public or non-public water facilities, and wastewater facilities to service the subdivision, including reasonable contingencies, but in no event shall the amount of the bond be less than the total amount needed to serve the subdivision as established by the engineer who certifies the plat.
  - (3) The bond shall be executed with sureties as may be approved by the commissioners court. The county shall establish criteria for acceptability of the surety companies issuing bonds that include but are not limited to:
    - (A) registration with the Secretary of State and be authorized to do business in Texas;
    - (B) authorization to issue bonds in the amount required by the commissioners court; and
    - (C) rating of at least B from Best's Key Rating Guide; or if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570. Such bonds shall meet the



criteria contained in the rules and regulations promulgated by the United States Department of Treasury.

- (4) The bond shall be conditioned upon construction or installation of water and wastewater facilities meeting the criteria established by Division 2 of this subchapter and upon construction of facilities within the time stated on the plat, or on the document attached to the plat for the subdivision, or within any extension of time granted by the commissioners court.
- (c) **Letter of credit.** A letter of credit that is submitted in compliance with paragraph (a) of this section shall meet the following requirements.
  - (1) Any letter of credit submitted as a financial guarantee for combined amounts greater than \$10,000 and less than \$250,000 must be from financial institutions which meet the following qualifications.
    - (A) Bank qualifications:
      - (I) must be federally insured;
      - (ii) Sheshunoff rating must be 10 or better and primary capital must be at least 6.0% of total assets; and
      - (iii) total assets must be at least \$25 million.
    - (B) Savings and loan association qualifications:
      - (I) must be federally insured;
      - (ii) tangible capital must be at least 1.5% of total assets and total assets must be greater than \$25 million or tangible capital must be at least 3.0% of total assets if total assets are less than \$25 million; and
      - (iii) Sheshunoff rating must be 30 or better.
    - (C) Other financial institutions qualifications:
      - (I) the letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a county investment; and
      - (ii) the investment instrument must be registered in the county's name and the county must receive safekeeping receipts for all collateral before the letter of credit is accepted.
  - (2) Any letter of credit submitted as a financial guarantee for combined amounts greater than \$250,000 must be from financial institutions which meet the following qualifications.
    - (A) Bank qualifications:
      - (I) must be federally insured;
      - (ii) Sheshunoff rating must be thirty or better and primary capital must be at least 7.0% of total assets; and
      - (iii) total assets must be at least \$75 million.
    - (B) Savings and loan association qualifications:
      - (I) must be federally insured;
      - (ii) tangible capital must be at least 3.0% of total assets and total assets must be greater than \$75 million, or tangible capital must be at least 5.0% of total assets if total assets are less than \$75 million; and
      - (iii) Sheshunoff rating must be 30 or better.
    - (C) Other financial institutions qualifications:

- (I) the letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a county investment; and
  - (ii) the investment instrument must be registered in the county's name and the county must receive safekeeping receipts for all collateral before the letter of credit is accepted.
- (3) The letter of credit shall list as sole beneficiary the county judge of the county, in his official capacity, or the judge's successor in office, and must be approved by the county judge of the county. The form of the letter of credit shall be modeled after the form attached in Appendix 2B. Figure: 31 TAC §364.54(c)(3)
- (4) The letter of credit shall be conditioned upon installation or construction of water and wastewater facilities meeting the criteria established under Division 2 of this subchapter and upon construction of facilities within the time stated on the plat, or on the document attached to the plat for the subdivision, or within any extension of time granted by the commissioners court.
- (d) **Financial guarantee.** The county will determine the amount of the bond, letter of credit, or cash deposit required to ensure proper construction of adequate water and wastewater facilities in the subdivision.
- (e) **Alternative to county accepting a financial guarantee.** The county may approve a final plat under this section without receiving a financial guarantee in the name of the county if:
  - (1) the property being subdivided lies wholly within the jurisdiction of the county;
  - (2) the property being subdivided lies wholly within the extra-territorial jurisdiction of a municipality; and
  - (3) the municipality has executed an interlocal agreement with the county that imposes the obligation on the municipality to:
    - (A) accept the bonds, letters of credit, or other financial guarantees, that meet the requirements of this section;
    - (B) execute the construction agreement with the subdivider; and
    - (C) assume the obligations to enforce the terms of the financial guarantee under the conditions set forth therein and complete construction of the facilities identified in the construction agreement.

**§364.55. Review and Approval of Final Plats.**

- (a) **Scope of review.** The county will review the final plat to determine whether it meets the standards of Division 2 and the requirements of Division 3 of this subchapter.
- (b) **Disapproval authority.** The commissioners court shall refuse to approve a plat if it does not meet the requirements prescribed by or under these rules.
- (c) **Prerequisites to approval.** Final plat approval shall not be granted unless the subdivider has accomplished the following:
  - (1) dedicated the sites for the adequate water and sewerage facilities identified in the final plat to the appropriate retail public utility responsible for operation and maintenance of the facilities; and
  - (2) provided evidence that the water facilities and sewerage facilities have been constructed and installed in accordance with the criteria established within these rules and the approvals from TNRCC of the plans and specifications for such construction, including any change orders filed with these agencies; or

- (3) obtained all necessary permits for the proposed water facilities and sewerage facilities (other than for OSSF permits on individual lots within the proposed subdivision) and has entered into a financial agreement with the county secured by a bond or other alternative financial guarantee such as a cash deposit or letter of credit for the provision of water and sewerage facilities with the bond or financial guarantee meeting the criteria established in Division 3 of this subchapter.

**§364.56. Time Extensions for Providing Facilities.**

- (a) Reasonableness. The commissioners court may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the required water and sewer service facilities must be fully operable if:
  - (1) any financial guarantees provided with the final plat as originally submitted are effective for the time of the requested extension or new financial guarantees that comply with §364.54 are submitted which will be effective for the period of the extension; and
  - (2) the court finds the extension is reasonable and not contrary to the public interest.
- (b) Timeliness. If the facilities are fully operable before the expiration of the extension period, the facilities are considered to have been made fully operable in a timely manner.
- (c) Unreasonableness. An extension is not reasonable if it would allow a residence in the subdivision to be inhabited without water or sewer services that meet the standards of Division 2 of this subchapter.

**§364.57. Criteria for Subdivisions that Occurred Prior to September 1, 1989.**

- (a) Authority and scope. This section shall apply only to tracts of land that were divided into two or more parts to lay out a subdivision before September 1, 1989 and have not been platted or recorded. This section is in addition to the authority of the county to grant a delay or variance pursuant to Local Government Code §232.043 or a rule of the county adopted pursuant to such provision.
- (b) Purpose. It is the purpose of this section to promote the public health of the county residents, to ensure that adequate water and sewerage facilities are provided in subdivisions within the jurisdiction of this county, and to establish the minimum standards for pre-1989 subdivisions for which no plat has been filed or recorded in the records of the county.
- (c) Required plat. In the event that the owner of tract of land located outside the limits of a municipality who subdivided the tract into two or more parts to lay out a subdivision of the tract prior to September 1, 1989, including an addition, or to lay out suburban lots or building lots, and to lay out streets, alleys, squares, parks or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts, was legally obligated to, but has failed to have a plat of the subdivision prepared, approved by the commissioners court, and filed, the owner of a residential lot which was created by the subdivision may have a plat of the individual lot prepared and approved by the commissioners court as provided in this section in lieu of the filing of a plat of the subdivision.
- (d) Special criteria. The commissioners court may approve the plat of a residential lot which does not comply with the provisions of §§364.15(b) of this title (sale restrictions), 364.36

of this title (Setbacks), 364.37 of this title (Number of Dwellings per Lot), 364.52 of this title (Final Engineering Report), and 364.54 of this title (Financial Guarantees for Improvements) as applied to an individual subdivided lot if such approval is in harmony with the general purpose and intent of these rules so that the public health, safety, and welfare may be secured and substantial justice done.

- (1) Owners of individual lots in a single unplatted subdivision may file a joint request for approval of their respective individual residential lots.
- (2) An application for approval of the plat of an individual lot shall be made in writing. The application shall state specifically the chapter, section, or subsection with which the plat does not comply and from which a waiver is being requested. The application shall contain available information and documentation which supports the requested approval. The applicant shall also provide such additional documentation as the commissioners court may request to support the application, including:
  - (A) a copy of a dated plat, sales contract, utility records, or other acceptable documentation that the subdivision occurred prior to September 1, 1989;
  - (B) the name and address of the original subdivider or the subdivider's authorized agent, if known;
  - (C) a survey and plat of the lot for which approval is requested, showing existing residences, roads, and utilities; and
  - (D) a deed, an affidavit of ownership or other evidence of ownership of the lot for which approval is requested.
- (3) Approval of plats of individual lots shall be granted subject to the limitations of state law, and based on written findings by the commissioners court that:
  - (A) the lot for which approval is requested is within a tract that was subdivided prior to September 1, 1989, and is not owned by the original subdivider;
  - (B) a plat was required for the subdivision, but has not been filed with the county by the subdivider legally obligated to file it;
  - (C) an existing, currently occupied residential dwelling is located on the lot;
  - (D) existing water and sewer services which comply with the minimum standards set forth herein are available to the lot; and
  - (E) the request is reasonable, compliance with specified sections of these rules is impractical, and a waiver is not contrary to the public health and safety.
- (e) Final determination. The commissioners court shall make the final decision on an application for a waiver, following review and recommendation by the county planning commission or department, if any. The applicant may withdraw a request for a waiver at any point in the process. If the requested waiver application is approved by the commissioners court, the county shall issue a certificate stating that a plat of the residential lot has been reviewed and approved.

#### **Division 4. Enforcement.**

**§364.71. Oversight.** The owner, by submitting a plat, acknowledges the authority of the county and state agencies to lawfully enter and inspect property for purposes of execution of their statutory duties. Such inspection will not release the owner from any obligation to comply with the requirements of these rules.

**§364.72. General Enforcement Authority of County.** The provisions of this chapter are enforceable pursuant to the specific provisions hereof related to enforcement and state law including Water Code, Chapter 7 and §§16.352, 16.353, 16.3535, 16.354, and 16.3545, and Local Government Code, §232.037 and §232.080.

## **SUBCHAPTER C. MODEL RULES (MUNICIPALITY)**

### **Division 1. Municipalities with no other subdivision ordinances.**

**§364.80. Rules to be Adopted.** Municipalities that have not adopted nor have in effect other comprehensive subdivision ordinances shall adopt the necessary ordinances to implement the requirements of the model rules set out in Subchapter B of this chapter with appropriate modifications to assure their applicability to developments within the municipality.

**§364.81. Modifications.** Municipalities adopting these model rules shall modify the provisions of Subchapter B of this chapter to change all references to "County" or county authority to be consistent with the identity and authority of the adopting entity. In particular, the following provisions shall be modified as indicated:

- (1) §364.11 (Authority) shall reflect the municipality authority contained in the Local Government Code, Chapter 212;
- (2) §364.15 (Plat Required) shall reflect application of the rules to the subdivision of a tract of land located within the corporate boundaries and the extraterritorial jurisdiction of the municipality;
- (3) §364.18 (Definitions) shall identify the municipality and its governing body; and
- (4) §364.72 (Enforcement Authority) shall reflect the enforcement authority of the municipality contained in the Local Government Code, §212.0175 and §212.018.

### **Division 2. Municipalities with existing subdivision ordinances.**

**§364.90. Rules to be Adopted.** Municipalities that have adopted and have in effect other subdivision ordinances shall adopt and incorporate those requirements of the model rules set out in Subchapter B of this chapter which are necessary to make the existing ordinances consistent with the goal and intent of the model rules to provide minimum standards that assure adequate water supply and wastewater services to subdivisions within the municipality.

**§364.91. Minimum Requirements.** Subdivision ordinances adopted by a municipality must be reviewed and modified as necessary to incorporate the minimum standards contained in the model rules set out in Subchapter B of this chapter, including the following:

- (1) application of the ordinances to the subdivision of a tract of land within the corporate limits of the municipality into two or more lots of five acres or less intended for residential purposes;
- (2) preparation of a subdivision plat to be approved by the municipality and filed for record with the county clerk after approval;
- (3) water supply standards consistent with the standards developed by the commission and set out in 30 TAC Chapter 290.

- (4) prohibition of individual water wells or non-public water systems that do not meet the water quality standards developed by TNRCC and set out in 30 TAC §§290.103, 290.105, 290.106 and 290.110;
- (5) wastewater collection and disposal system standards consistent with the standards developed by TNRCC and set out in 30 TAC Chapters 305 and 317 and in Health and Safety Code, Chapter 366;
- (6) prohibition of pit privies, portable toilets, and on-site sewerage facilities that do not meet the wastewater treatment standards developed by TNRCC and set out in 30 TAC Chapter 285;
- (7) setback limitations consistent with local fire code requirements;
- (8) prohibition of more than one single family detached dwelling per subdivision lot;
- (9) preparation of an engineer's report consistent with §364.52 of this title; and
- (10) requirements for posting of a financial guarantee to assure completion of water supply and sewer service facilities required by the approved plat and consistent with this chapter.

## APPENDICES

### Figure: 31 TAC §364.32(a)(1)

#### APPENDIX 1A. SAMPLE FORM FOR WATER SERVICE AGREEMENT

##### AGREEMENT REGARDING WATER SERVICE FOR THE PROPOSED \_\_\_\_\_ SUBDIVISION

**PARTIES:** This Agreement is by and between the Utility and the Subdivider, to wit:  
The Utility is the governing board or owner of a retail public utility which supplies of drinking water known as \_\_\_\_\_.

The Subdivider is \_\_\_\_\_,  
who is the owner, or the authorized agent of the owner, of a tract of land in \_\_\_\_\_  
County, Texas, that has been proposed to be divided into a subdivision (the Subdivision) known  
as \_\_\_\_\_.

**TERMS:** This Agreement is entered into in partial satisfaction of requirements under the Texas Water Development Board's Economically Distressed Areas Program Model Subdivision Rules. The Subdivider has prepared a plat of the Subdivision for submission to \_\_\_\_\_ County for its approval. The Subdivider plans to construct for the Subdivision a drinking water distribution system to be connected to the Utility's public water system. The Utility has reviewed the plans for the Subdivision (the Plans) and has estimated the drinking water flow anticipated to be needed by the Subdivision under fully built-out conditions (the anticipated water flow) to be approximately \_\_\_\_\_ gallons daily.

The Utility covenants that it has or will have the ability to provide the anticipated water flow for at least thirty years, and that it will provide that water flow. These covenants will be in effect until thirty years after the plat of the Subdivision has been recorded and the Subdivision's water distribution system has been connected to the Utility's water supply system.

The Subdivider covenants that the water distribution system will be constructed as shown in the Plans and as provided for through the plat-approval process so that the residents of the lots of the Subdivision may receive drinking water service from the Utility. Upon completion of the water distribution system and upon its approval and acceptance by the Utility, the Subdivider will convey to the Utility all right and title to the water distribution system.

The Subdivider has paid the Utility the sum of \$ \_\_\_\_\_ which sum represents the total costs of water meters, water rights acquisition fees, and all membership or other fees associated with connecting the individual lots in the Subdivision to the Utility's water supply system.

The above provisions notwithstanding, this Agreement shall no longer be in effect if the plat of the Subdivision is not approved by \_\_\_\_\_ County or by a municipality whose approval is required.

By affixing his or her signature to this Agreement, the person signing for the Utility warrants that he or she is authorized to sign this Agreement on behalf of the Utility. By affixing his or her signature to this Agreement, the person signing for the Subdivider warrants that he or she is authorized to sign this Agreement on behalf of the Subdivider.

This Agreement is effective on \_\_\_\_\_, 19\_\_\_\_.

The Utility

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Office or Position: \_\_\_\_\_  
Date: \_\_\_\_\_

The Subdivider

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Office or Position: \_\_\_\_\_  
Date: \_\_\_\_\_

**Figure: 31 TAC §364.33(a)(2)**

**APPENDIX 1B. SAMPLE FORM FOR WASTEWATER SERVICE AGREEMENT**

**AGREEMENT REGARDING WASTEWATER SERVICE FOR THE PROPOSED  
\_\_\_\_\_ SUBDIVISION**

**PARTIES:** This Agreement is by and between the Utility and the Subdivider, to wit:  
The Utility is the governing board or owner of a retail public utility which provides wastewater treatment and is known as \_\_\_\_\_.

The Subdivider is \_\_\_\_\_,  
who is the owner, or the authorized agent of the owner, of a tract of land in \_\_\_\_\_  
County, Texas, that has been proposed to be divided into a subdivision (the Subdivision) known  
as \_\_\_\_\_.

**TERMS:** This Agreement is entered into in partial satisfaction of requirements under the Texas Water Development Board's Economically Distressed Areas Program Model Subdivision Rules. The Subdivider has prepared a plat of the Subdivision for submission to \_\_\_\_\_ County for its approval. The Subdivider plans to construct for the Subdivision a wastewater collection system to be connected to the Utility's wastewater treatment system. Such wastewater will consist of domestic sewage, i.e., waterborne human waste and waste from domestic activities such as bathing, washing, and food preparation. The Utility has reviewed the plans for the Subdivision (the Plans) and has estimated the wastewater flow projected from the Subdivision under fully built-out conditions (the projected wastewater flow) to be approximately \_\_\_\_\_ gallons daily.

The Utility covenants that it has or will have the capacity to treat the projected wastewater flow, and that it will treat that wastewater flow for at least thirty years. These covenants will be in effect until thirty years after the plat of the Subdivision has been recorded and the Subdivision's wastewater collection system has been connected to the Utility's wastewater treatment plant.

The Subdivider covenants that the wastewater collection system will be constructed as shown in the Plans and as provided for through the plat approval process so that the residents of the lots of the Subdivision may receive wastewater treatment service from the Utility. Upon completion of the wastewater collection system and upon its approval and acceptance by the Utility, the Subdivider will convey to the Utility all right and title to the wastewater collection system.

Insert the following paragraph if the Utility imposes any fees for connection of individual lots to the Utility's wastewater collection and treatment system:

The Subdivider has paid the Utility the sum of \$ \_\_\_\_\_ which sum represents the total costs of tap fees, capital recovery charges, and other fees associated with connecting the individual lots in the Subdivision to the Utility's wastewater collection and treatment system.

The above provisions notwithstanding, this Agreement shall no longer be in effect if the plat of the Subdivision is not approved by \_\_\_\_\_ County or by a municipality whose approval is required.



By affixing his or her signature to this Agreement, the person signing for the Utility warrants that he or she is authorized to sign this Agreement on behalf of the Utility. By affixing his or her signature to this Agreement, the person signing for the Subdivider warrants that he or she is authorized to sign this Agreement on behalf of the Subdivider.

This Agreement is effective on \_\_\_\_\_, 19\_\_\_\_.

The Utility

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

Printed Name:\_\_\_\_\_

Office or Position:\_\_\_\_\_

Date:\_\_\_\_\_

The Subdivider

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

Printed Name:\_\_\_\_\_

Office or Position:\_\_\_\_\_

Date:\_\_\_\_\_

**Figure: 31 TAC §364.54(a)**

**APPENDIX 2A: SUBDIVISION CONSTRUCTION AGREEMENT SAMPLE FORM**

1. **Parties.** This Subdivision Construction Agreement (the Agreement) is by and between the County and the Subdivider. The County is \_\_\_\_\_ County, Texas, acting by and through its Commissioners Court, or authorized representative as designated by the Commissioners Court. The Subdivider is \_\_\_\_\_, who is the owner, or the authorized agent of owner, of a tract of land located within the geographic area and jurisdiction of the County.

2. **Effective Date.** This Agreement is effective on the date the County approves the final plat for the subdivision described in Paragraph 3 of this agreement (the Effective Date).

**Recitals**

3. Subdivider is the owner of the land included in the proposed final subdivision plat of the subdivision, as shown in County's File Number (the Subdivision) and more particularly described by the metes and bounds description attached and incorporated into this Agreement as Exhibit A (the Property); and

4. Subdivider seeks authorization from the County to subdivide the Property in accordance with the requirements imposed by Texas statute and the County's ordinances, regulations, and other requirements; and

5. County ordinances require the completion of various improvements in connection with the development of the Subdivision to protect the health, safety, and general welfare of the community and to limit the harmful effects of substandard subdivisions; and

6. The purpose of this Agreement is to protect the County from the expense of completing subdivision improvements required to be installed by the Subdivider; and

7. This agreement is authorized by and consistent with state law and the County's ordinances, regulations, and other requirements governing development of a subdivision.

IN CONSIDERATION of the foregoing recitals and the mutual covenants, promises, and obligations by the parties set forth in this Agreement, the parties agree as follows:

**Subdivider's Obligations**

8. **Improvements.** The Subdivider agrees to construct and install, at Subdivider's expense, all subdivision improvements required to comply with County orders, ordinances, regulations, and policies governing subdivision approval, specifically including without limitation those improvements listed on Exhibit B attached and incorporated by reference into this Agreement (collectively, the Improvements, any one of which is an Improvement). All Improvements shall be constructed in conformity to the County's requirements, procedures, and specifications, pursuant to construction plans, permits, and specifications approved by the County prior to commencement of construction, and subject to inspection, certification, and acceptance by the County.

9. **Completion.** Unless a different time period is specified for a particular Improvement in Exhibit B, construction of all the Improvements shall be completed no later than three (3) years after the Effective Date (the Completion Date); provided, however, that if the Subdivider or the Issuer delivers to the County no later than the Completion Date a substitute Letter of Credit satisfying the criteria established by Paragraph 11 and which has an expiration date no earlier than one year from the Completion Date, then the Completion Date shall be extended to the expiration date of that substitute Letter of Credit or any subsequent substitute Letter of Credit provided in accordance with this Paragraph. Upon completion of each of the Improvements, the Subdivider agrees to provide to the County a complete set of construction plans for the Improvements, certified “as built” by the engineer responsible for preparing the approved construction plans and specifications.

10. **Warranty.** The Subdivider warrants the Improvements constructed by Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees will be free from defects for a period of one (1) year from the date the County accepts the dedication of a completed Improvement or group of Improvements (the Warranty Period), as such Improvement or group of Improvements is separately identified and listed on Exhibit B, except the Subdivider does not warrant the Improvements for defects caused by events outside the control of the Subdivider or the Subdividers's agents, contractors, employees, tenants, or licensees. The Subdivider agrees to repair any damage to the Improvements before and during the Warranty Period due to private construction-related activities. As a condition of the County's acceptance of dedication of any of the Improvements, the County may require the Subdivider to post a maintenance bond or other financial security acceptable to the County to secure the warranty established by this Agreement. If the Improvements have been completed but not accepted, and neither the Subdivider nor Issuer is then in default under this Agreement or the Letter of Credit, at the written request of the Subdivider or the Issuer the County shall complete, execute, and deliver to the Issuer a reduction letter documenting that the Stated Amount has been reduced to an amount equal to the face amount of the maintenance bond or other financial security acceptable to the County.

11. **Security.** To secure the performance of Subdivider's obligations under this Agreement, Subdivider agrees to provide adequate financial guarantees of performance in the form of a surety bond acceptable to the County, a cash deposit to be held by the County in escrow, or an irrevocable letter of credit in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) (the Stated Amount), which amount is the estimated total cost of constructing each of the Improvements as shown on Exhibit B. If a letter of credit is provided pursuant to this Agreement, it shall be in a standard form acceptable to the County, shall have an expiration date no earlier than one year from the date of its issuance, and shall be issued by a financial institution having a rating equivalent to the minimum acceptable rating established under the County's financial institution rating system in effect at the time the initial letter of credit is issued pursuant to this Agreement (the Issuer). During the term of this Agreement and subject to the terms of Paragraph 22 of this Agreement, the County may revise the standard form letter of credit it reasonably considers acceptable and necessary to secure the performance of Subdivider's obligations under this agreement. A letter of credit satisfying the criteria of this Paragraph (and any substitute or confirming letter of credit) is referenced to in this agreement as the “Letter of Credit.”

**12. Reduction In Letter of Credit.** After the acceptance of any Improvement, the amount which the County is entitled to draw on the Letter of Credit shall be reduced by an amount equal to ninety percent (90%) of the Quoted cost of the accepted Improvement, as shown on Exhibit B. Upon completion of an Improvement, at the written request of Subdivider or Issuer, and if neither the Subdivider nor Issuer is then in default under this agreement or the Letter of Credit, the County shall complete, execute, and deliver to the Issuer a reduction letter verifying the acceptance of the Improvement and documenting that the Stated Amount has been reduced by stating the balance of the Stated Amount remaining after the reduction required by the first sentence of this Paragraph. No later than sixty (60) days after its receipt of a written request to reduce the Stated Amount submitted by the Subdivider or the Issuer, the County shall determine the Estimated Remaining Cost and shall complete, execute, and deliver to the Issuer a reduction letter documenting that the Stated Amount has been reduced to the Estimated Remaining Cost if the County determines the Stated Amount exceeds the Estimated Remaining Cost. Notwithstanding the preceding sentence, the County shall not be required to authorize reductions in the Stated Amount more frequently than every ninety (90) days. As used in this Paragraph, "Estimated Remaining Cost" means the amount the County estimates to be the cost of completing all Improvements which are incomplete as of the time of such estimate.

### **County's Obligations**

**13. Inspection and Certificate.** The County agrees to inspect Improvements during and at the completion of construction and, if completed in accordance with the standards and specifications for such Improvements, to certify the Improvements as being in compliance with County standards and specifications. The inspections and certifications will be conducted in accordance with standard County policies and requirements. The Subdivider grants the County, its agents, employees, officers, and contractors an easement and license to enter the Property to perform such inspections as it deems appropriate.

**14. Notice of Defect.** The County will provide timely notice to the Subdivider whenever inspection reveals that an Improvement is not constructed or completed in accordance with the standards and specifications for health or safety, and the notice of defect includes a statement explaining why the defect creates such immediate and substantial harm, the cure period may be shortened to no less than five (5) days and the County may declare a default under this Agreement if not satisfied that the defect is cured after the cure period. Any cure period should be reasonable in relation to the nature of the default.

**15. Use of Proceeds.** The County will disburse funds drawn under the Letter of Credit only for the purposes of completing the Improvements in conformance with the County's requirements and specifications for the Improvements, or to correct defects in or failures of the Improvements. The Subdivider has no claim or rights under this Agreement to funds drawn under the Letter of Credit or any accrued interest earned on the funds. All funds obtained by the County pursuant to one or more draws under the Letter of Credit shall be maintained by the County in an interest bearing account or accounts until such funds, together with accrued interest thereon (the Escrowed Funds), are disbursed by the County. The County may disperse all or portions of the Escrowed Funds as Improvements are completed and accepted by the County, or in accordance with the terms of a written construction contract between the County and a third party for the construction of Improvements. Escrowed Funds not used or held by the County for the purpose of completing an Improvement or correcting defects in or failures of an Improvement, together

with interest accrued thereon, shall be paid by the County to the Issuer of the Letter of Credit no later than sixty (60) days following the County's acceptance of the Improvement or its decision not to complete the Improvement using Escrowed Funds, whichever date is earlier.

**16. Return of Excess Escrowed Funds.** No later than sixty (60) days after its receipt of a written request from the Subdivider or the Issuer to return Excess Escrowed Funds to the Issuer, the County shall disburse to the Issuer from the Escrowed Funds all Excess Escrowed Funds. For purposes of this Paragraph, "Excess Escrowed Funds" means the amount of Escrowed Funds exceeding one hundred ten percent (110%) of the estimated cost of constructing Improvements the County intends to construct but which have not been accepted, as such cost is shown on Exhibit B. Notwithstanding the first sentence in this Paragraph, the County shall not be required to disburse Excess Escrowed Funds more frequently than every ninety (90) days.

**17. Cost Participation by County.** If the County and Subdivider agree the County will participate in the expense of installing any of the Improvements, the respective benefits and obligations of the parties shall be governed by the terms of a Community Facilities Construction Agreement executed by the parties thereto, and the terms of that agreement shall control to the extent of any inconsistency with this Agreement.

**18. Conditions of Draw on Security** The County may draw upon any financial guarantee posted in accordance with Paragraph 11 upon the occurrence of one or more of the following events:

- (a) Subdivider's failure to construct the Improvements in accordance with Paragraph 8 of this Agreement;
- (b) Subdivider's failure to renew or replace the Letter of Credit at least forty-five (45) days prior to the expiration date of the Letter of Credit;
- (c) Subdivider's failure to replace or confirm the Letter of Credit if the Issuer fails to maintain the minimum rating acceptable to the County, in accordance with Paragraph 11 of this Agreement; or
- (d) Issuer's acquisition of the Property or a portion of the Property, through foreclosure or an assignment or conveyance in lieu of foreclosure.

The County shall provide written notice of the occurrence of one or more of the above events to the Subdivider, with a copy provided to the Issuer. Where a Letter of Credit has been provided as the financial guarantee, with respect to an event described by subparagraph (a), the County shall provide notice to the Subdivider and the Issuer of the specific default and the notice shall include a statement that the County intends to perform some or all of Subdivider's obligations under Paragraph 8 for specified Improvements if the failure is not cured. The notice with respect to a default under subparagraph (a) shall be given no less than twenty (20) days before presentation of a draft on the Letter of Credit, unless, in the reasonable opinion of the County, the failure creates an immediate and substantial harm to the public health or safety, in which case the notice shall state why the failure creates an immediate and substantial harm to the public health or safety, and shall be given no less than five (5) days before presentation of a draft on the Letter of Credit. In the event of a draw based on subparagraph (a), the County shall be entitled to draw in the amount it considers necessary to perform Subdivider's obligations under Paragraph 8, up to the amount allocated according to Exhibit B for any Improvement it states its intent to construct or complete in accordance with the standards and specifications for such improvement. The

subdivider hereby grants to the County, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, maintaining, and repairing such Improvements. Where a Letter of Credit has been provided as the financial guarantee, with respect to an event described by subparagraphs (b), (c), or (d), the notice shall be given no less than twenty (20) days before presentation of a draft on the Letter of Credit. In lieu of honoring a draft based on an event described in subparagraphs (b) or (c), the Issuer or the Subdivider may deliver to the County a substitute Letter of Credit if the event is described by subparagraph (b) or a substitute or confirming Letter of Credit if the event is described by subparagraph (c). If the Issuer has acquired all or a portion of the Property through foreclosure or an assignment or conveyance in lieu of foreclosure, in lieu of honoring a draft based on an event described in subparagraph (d), the Issuer may deliver to the County a substitute or confirming Letter of Credit.

**19. Procedures for Drawing on the Letter of Credit.** The County may draw upon the Letter of Credit in accordance with Paragraph 18 by submitting a draft to the Issuer in compliance with the terms of the Letter of Credit governing such draft. The Letter of Credit must be surrendered upon presentation of any draft which exhausts the Stated Amount of such Letter of Credit. The County may not draft under a Letter of Credit unless it has substantially complied with all its obligations to the Issuer under this Agreement and has properly completed and executed the draft in strict accordance with the terms of the Letter of Credit.

**20. Measure of Damages.** The measure of damages for breach of this Agreement by the Subdivider is the reasonable cost of completing the Improvements in conformance with the County's requirements, procedures, and specifications. For Improvements upon which construction has not begun, the estimated cost of the Improvements shown on Exhibit B will be prima facie evidence of the minimum cost of completion; however, neither that amount or the amount of the Letter of Credit establishes the maximum amount of the Subdivider's liability.

**21. Remedies.** The remedies available to the County, the Subdivider, and Issuer under this Agreement and the laws of Texas are cumulative in nature.

**22. Provisions for the Benefit of Issuer.** The provisions of Paragraphs 9, 10, 11, 12, 15, 16, 18, 19, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32, and 36 of this Agreement for the benefit of the Issuer may not be modified, released, diminished, or impaired by the parties without the prior written consent of the Issuer.

**23. Third Party Rights.** No person or entity who or which is not a party to this Agreement shall have any right of action under this Agreement, nor shall any such person or entity other than the County (including without limitation a trustee in bankruptcy) have any interest in or claim to funds drawn on the Letter of Credit and held in escrow by the County in accordance with this Agreement. Notwithstanding the preceding sentence, the Issuer shall have a right of action to enforce any provision of this Agreement where the Issuer is specifically named as a beneficiary of such provision pursuant to Paragraph 22.

24. **Indemnification.** The Subdivider hereby expressly agrees to indemnify and hold the County harmless from and against all claims, demands, costs, and liability of every kind and nature, including reasonable attorney's fees for the defense of such claims and demands, arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act or negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements. The Subdivider further agrees to aid and defend the County if the County is named as a defendant in an action arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act of negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements, except where such suit is brought by the Subdivider. The Subdivider is not an employee or agent of the County. Notwithstanding anything to the contrary contained in this agreement, the Subdivider does not agree to indemnify and hold the County harmless from any claims, demands, costs, or liabilities arising from any act or negligence of the County, its agents, contractors, employees, tenants, or licensees.

25. **No Waiver.** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute continuing waiver unless expressly provided for by a written amendment to this Agreement; nor will the waiver of any default under this agreement be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement or covenant by the County, the Subdivider, or the Issuer, their heirs, successors or assigns, whether any violations thereof are known or not, shall not constitute a waiver or estoppel of the right to do so.

26. **Attorney's Fees.** Should either party or the Issuer, to the extent Issuer is named as specific beneficiary, be required to resort to litigation to enforce the terms of this agreement, the prevailing party, plaintiff or defendant, shall be entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other party. If the court awards relief to both parties, each will bear its own costs in their entirety.

27. **Assignability.** The benefits and burdens of this Agreement are personal obligations of the Subdivider and also are binding on the heirs, successors, and assigns of the Subdivider. The Subdivider's obligations under this Agreement may not be assigned without the express written approval of the County. The County's written approval may not be withheld if the Subdivider's assignee explicitly assumes all obligations of the Subdivider under this Agreement and has posted the required security. The County agrees to release or reduce, as appropriate, the Letter of Credit provided by the Subdivider if it accepts substitute security for all or any portion of the Improvements. The County, in its sole discretion, may assign some or all of its rights under this Agreement, and any such assignment shall be effective upon notice to the Subdivider and the Issuer.

28. **Expiration.** This Agreement shall terminate upon the expiration of the approval of the proposed final plat of the Subdivision or if the Subdivision is vacated by the Subdivider.

29. **Notice.** Any notice required or permitted by this Agreement is effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Subdivider:

Attn: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Office or Position: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

if to County:

Attn: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Office or Position: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

if to the Issuer: \_\_\_\_\_ at Issuer's address shown on the Letter of Credit.

The parties may, from time to time, change their respective addresses listed above to any other location in the United States for the purpose of notice under this Agreement. A party's change of address shall be effective when notice of the change is provided to the other party in accordance with the provisions of this Paragraph.

**30. Severability.** If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or enforceability shall not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.

**31. Personal Jurisdiction and Venue.** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement or the Issuer, whether arising out of or relating to the Agreement or the Letter of Credit, will be deemed to be proper only if such action is commenced in District Court for \_\_\_\_\_ County, Texas, or the United States District Court for the \_\_\_\_\_ District of Texas, \_\_\_\_\_ Division. The Subdivider expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal. The Issuer, by providing a Letter of Credit pursuant to the terms of this Agreement, expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal.

**32. Release Upon Completion.** Upon acceptance of all Improvements, the County agrees: (a) to complete, execute and deliver to the Subdivider and the Issuer a release in recordable form releasing the Subdivider and Subdivider's heirs, successors and assigns, and the Property from all provisions of this Agreement except those contained in Paragraph 10, and (b) to return to the Issuer the Letter of Credit and any Escrowed Funds not expended or obligated by the County for the completion of the Improvements.

**33. Captions Immaterial.** The numbering, order, and captions or headings of the paragraphs of this agreement are for convenience only and shall not be considered in construing this agreement.



34. **Entire Agreement.** This Agreement contains the entire agreement between the parties and correctly sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent written modification executed by both parties.

35. **Authorization to Complete Blanks.** By signing and delivering this agreement to the appropriate official of the County, the Subdivider authorizes completion of this Agreement by filling in the Effective Date below.

36. **Binding Agreement.** The execution and delivery of this agreement and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate and governmental action of the County. This Agreement has been duly executed and delivered by each party, and constitutes a legal, valid, and binding obligation of each party enforceable in accordance with the terms as of the effective Date. These representations and agreements are for the benefit of the Issuer, and have been relied on by the Issuer in issuing the Letter of Credit.

EXECUTED by the parties to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
County Official

\_\_\_\_\_  
Subdivider

[SIGNATURES OF THE PARTIES TO BE ACKNOWLEDGED]

**EXHIBIT A: METES AND BOUNDS DESCRIPTION OF PROPERTY**

**EXHIBIT B: SUBDIVISION IMPROVEMENTS**

Subdivision Improvements. Subdivider and County agree the following improvements are required in connection with the approval and development of the Subdivision (collectively, the Subdivision Improvements). Subdivider agrees to deliver a financial guarantee acceptable in form and substance to the County in an amount equal to the Estimated Cost of Completion listed below, as follows:

Description of Improvement(s)	Estimated Cost of Completion
a)	
b)	
c)	

**Figure: 31 TAC §364.54(c)(3)**

**APPENDIX 2B. IRREVOCABLE LETTER OF CREDIT SAMPLE FORM**

IRREVOCABLE LETTER OF CREDIT NO.

TO: \_\_\_\_\_, Texas

DATE: \_\_\_\_\_, 19

We hereby authorize you to draw at sight on [NAME AND LOCATION OF BANK], for the account of [NAME OF CUSTOMER] (the Customer), up to the aggregate amount of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) (the Stated Amount) available by our draft, accompanied by a certification by the county judge, any county commissioner, or the county treasurer that the following condition exists:

“A Condition of Draw exists under Subdivision Construction Agreement dated \_\_\_\_\_, 199\_, by and between Subdivider and the County of \_\_\_\_\_ (the Agreement). County is in substantial compliance with the terms of said Agreement and has calculated the amount of this draft in accordance with the terms of the Agreement.”

Drafts must be drawn and presented by or on [EXPIRATION DATE] by the close of business of the Issuer of this credit and must specify the date and number of this credit. Drafts will be honored within five calendar days of presentment. We hereby engage all drawers that drafts drawn and presented in accordance with this credit shall be duly honored. Partial draws are permitted and the letter of credit shall be reduced by the amount of such partial draws as well as by any reduction letters authorized by the County. The sum of such partial draws shall on no account exceed the Stated Amount of this credit, and upon any draw or reduction letter which exhausts this credit, the original of this credit will be surrendered to us.

Except as expressly stated, this credit shall be subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce (Publication No. 400).

This credit is irrevocable prior to its expiration date unless both parties consent to revocation in writing.

Address of Issuer:

Signature of Issuer’s Authorized Officer

Printed Name:

Title: