



# Development Agreement Application

Prior to submitting this application please schedule a pre-development meeting with the Planning Staff.

Pre-Development Meeting Date: \_\_\_\_\_

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

## Contact Information

Property Owner Name		Applicant Name*	
Property Owner Mailing Address		Applicant Mailing Address	
Property Owner Phone Number(s)		Applicant Phone Number(s)	
Property Owner Email		Applicant Email	

Surveyor/Engineer/Contractor	
Mailing Address	
Phone Number(s)	
Email	

## Property Information:

Lots: \_\_\_\_\_ Block: \_\_\_\_\_ Subdivision: \_\_\_\_\_

## Description of Request:

Current Zoning District: \_\_\_\_\_ Proposed Zoning District: \_\_\_\_\_

Current Use: \_\_\_\_\_ Proposed Use: \_\_\_\_\_

Purpose of Request: \_\_\_\_\_

Office Use Only
Staff Initials _____
Date Received _____

### The applicant will submit the following with this application:

- A. All required documents listed on the Checklist
- B. Application Fee: (All checks payable to City of Marble Falls)
 

Less Than 5 acres	\$ 2,000.00	Number of Acres: _____
5-10 acres	\$ 2,500.00	Fee: \$ _____
11-15acres	\$ 3,500.00	GIS: \$15.00
16- 20 acres	\$ 4,500.00	Total: \$ _____
Over 20 acres	\$ 6,000.00	
Amendment	\$ 2,000.00	

**All information/items on the checklist of this application must be supplied at the time of submittal. If all information/items are not submitted the application will not be accepted.**

I certify that the information on this application is complete and accurate. I understand the fees and the process for this application. I understand my responsibility, as the applicant, to be present at meetings regarding this request.

\_\_\_\_\_  
Applicant's Signature Date

**\*If the owner is not the applicant, the owner statement must be submitted along with this application.**



# Development Agreement Application

If there are multiple property owners participating in the application, please use the "Multiple Owners" supplemental sheet and attach all owner information and signatures.

## Owner Statement (if applicant is not owner):

**I HEREBY CERTIFY THAT THE APPLICANT LISTED IS AN AUTHORIZED AGENT FOR ME IN MATTERS PERTAINING TO THE FILING OF THIS DEVELOPMENT AGREEMENT APPLICATION.**

\_\_\_\_\_  
Owner's Signature (notarized)

\_\_\_\_\_  
Date

**STATE OF TEXAS:  
COUNTY OF BURNET:**

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, Owner, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and considerations therein expressed.

Given under my hand and seal of office, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

\_\_\_\_\_  
My Commission Expires On



## Development Agreement Application

	Checklist Items	City Staff Initials
	Completed Application	
	Owner Authorization if owner is not applicant	
	Application filing fee	
	Executed Consultant Agreement and Deposit	
	Additional Supporting Documents that have been discussed at the Pre-Application Meeting with City Staff	

***All information/items on the checklist of this application must be supplied at the time of submittal. If all information/items are not submitted the application will not be accepted.***

**Additional information other than what is listed on this checklist may be required for the evaluation of the request. The planning staff will notify you if any other information is required once a preliminary review has been completed.**

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this “**Agreement**”), effective as of the \_\_\_\_ day of \_\_\_\_\_, 2020, (the “**Effective Date**”), is made and entered into by and between the City of Marble Falls, Texas, a home rule municipality incorporated under the laws of the State of Texas (the “**City**”), and \_\_\_\_\_, a Texas \_\_\_\_\_ (the “**Developer**”), regarding certain Property described below and located entirely within the corporate limits of the City.

**WHEREAS**, the Developer intends to purchase and develop an approximate \_\_\_\_ -acre tract of land, described and attached as **Exhibit A**, incorporated herein; and

**WHEREAS**, the City and Developer acknowledge that the development will require the City to retain consultants to provide a wide variety of professional services including, but not limited to, engineering services, and legal services determined by the City in its sole judgment (collectively, the “**Professional Services**”), which will be needed to (i) assess the City’s current ordinances, and potentially draft new ordinances, review plans and specifications, oversee construction and conduct inspections, (ii) assess infrastructure needs and demands, traffic needs and demands, City services needs and demands, and water and wastewater infrastructure needs and demands, and (iii) assess legal issues that will be associated with or necessitated by the development of the Property; and

**WHEREAS**, the Developer hereby agrees to pay for Professional Services provided in **Exhibit B** attached hereto and incorporated herein, and additional consultants approved in writing by the Developer (collectively, the “**Consultants**”); and

**WHEREAS**, it is stipulated and agreed by the Parties that the terms of Local Government Code Sections 212.901 and 212.904 have been satisfied; and

**WHEREAS**, the City Council of the City, by and through this Agreement, shall maintain sufficient controls to ensure that the public purpose and best interests of the City are carried out.

**NOW THEREFORE**, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer (collectively “**Parties**” and each individually a “**Party**”) agree as follows:

1. Recitals. That the representations, covenants, and recitations set forth in the foregoing are material to this Agreement and are incorporated into and made a part of this Agreement.
  
2. Exhibits. All Exhibits referenced in this Agreement, and listed below, are incorporated herein for all purposes; specifically:

**Exhibit A – Property Description and Map**

**Exhibit B – Approved Rates for Consultant**

3. Payment for Professional Services. Subject to the terms and provisions of this Agreement, the Developer shall be responsible for payment of all invoices for Professional Services relating to the City’s review of the Property’s impact on the City's subdivision and zoning plans, infrastructure needs and demands, ordinance creation and revisions, and other on-site and off-site matters necessitated by the proposed development of the Property and the service and assessment plan regarding financing of the development of the Property as follows:

- (a) The Consultants will invoice the City approximately every thirty (30) days with a detailed billing statement of all Professional Services rendered in accordance with this Agreement, excluding invoices for Professional Services rendered prior to the Effective Date.
- (b) Deposits – Initial Payment and Replenishment. Within thirty (30) days after the execution of this Agreement, the Developer shall deliver to the City funds in the amount of FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00) (“**Initial Payment**”) to be used as a deposit towards the payment of total costs incurred for Professional Services for Consultants (“**Initial Payment**”). Developer shall pay and subsequently replenish such Initial Payment by delivering the required funds in FIVE THOUSAND AND NO/100 DOLLAR (\$5,000.00) increments to City within ten (10) business days of written notice from City that the balance in the deposit has decreased to less than \$2,000. The parties understand and agree that if the Developer fails to pay and/or make replenishment payment(s) in accordance with the requirements of this **Section 3**, all work by Consultants shall cease until such time as Developer deposits funds sufficient to comply with its obligations under this Section. The Initial Payment and all other funds delivered to the City by the Developer pursuant to this **Section 3(b)** shall be used by the City solely to pay for Professional Services as described in this Agreement.

4. Effect of Agreement. This Agreement shall not: (a) confer upon the Developer any vested rights or development rights with respect to the Property; (b) bind or obligate the City to approve any documents or agreements related to the development of the Property; or (c) be considered an impact fee.

5. **RELEASES AND INDEMNIFICATION.**

- (A) **NOTHING IN THIS AGREEMENT, THE AGREEMENT ITSELF, AND THE DEALING BETWEEN THE PARTIES SHALL BE CONSIDERED AN IMPACT FEE. THE DEVELOPER AND ITS RELATED ENTITIES FULLY**

**AND FOREVER RELEASE AND DISCHARGE THE CITY, ITS PAST AND PRESENT EMPLOYEES, OFFICERS, COUNCIL MEMBERS, APPOINTED OFFICIALS, ATTORNEYS AND OTHER CITY REPRESENTATIVES, INCLUDING THE CONSULTANTS, FROM ANY AND ALL CLAIMS, DEMANDS, CONTROVERSIES, AND CAUSES OF ACTION OF EVERY CONCEIVABLE CHARACTER, PAST AND CURRENT, WITHOUT LIMITATION, ARISING FROM THIS AGREEMENT (COLLECTIVELY "CLAIMS").**

- (B) THE CITY REPRESENTS AND WARRANTS TO THE DEVELOPER THAT IT HAS NO KNOWLEDGE OF ANY CLAIMS, DEMANDS, CONTROVERSIES OR CAUSES OF ACTION AGAINST THE DEVELOPER ARISING THROUGH THE EFFECTIVE DATE. THE DEVELOPER REPRESENTS AND WARRANTS TO THE CITY THAT IT HAS NO KNOWLEDGE OF ANY CLAIMS, DEMANDS, CONTROVERSIES, OR CAUSES OF ACTION AGAINST THE CITY, ITS PAST AND PRESENT EMPLOYEES, OFFICERS, ATTORNEYS AND OTHER REPRESENTATIVES, ARISING THROUGH THE EFFECTIVE DATE. THE DEVELOPER REPRESENTS AND WARRANTS THAT NO PRIOR OWNERS, DEVELOPERS, OR ENTITIES HAVE ASSIGNED, TRANSFERRED OR CONVEYED ANY CLAIM OR CAUSE OF ACTION TO THE DEVELOPER INVOLVING THE CITY.**
- (c) THE DEVELOPER AND ITS RELATED ENTITIES ASSUME THE ENTIRE RESPONSIBILITY AND LIABILITY FOR, AND AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, OFFICERS, COUNCIL MEMBERS, APPOINTED OFFICIALS, ATTORNEYS, CONSULTANTS, AND OTHER CITY REPRESENTATIVES (ALL OF THE FOREGOING ARE COLLECTIVELY REFERRED TO AS THE "CITY PARTIES"), FROM ANY AND ALL "CLAIMS" (AS DEFINED IN SECTION 5(A) OF THIS AGREEMENT) ASSERTED BY THE DEVELOPER AGAINST ANY OF THE CITY PARTIES AND ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, AS AMENDED, INCLUDING ARISING FROM OR IN CONNECTION WITH THE PROFESSIONAL SERVICES, BUT EXCLUDING ONLY CLAIMS FOR, OR IN CONNECTION WITH, A DEFAULT BY THE CITY OR THE CITY PARTIES UNDER THIS AGREEMENT (THE "EXCLUDED CLAIMS"). THIS INDEMNITY WITH RESPECT TO "CLAIMS" IS TO BE CONSTRUED AS BROADLY AS POSSIBLE TO INCLUDE ANY AND ALL LIABILITIES, CLAIMS, COSTS, EXPENSES, JUDGMENTS, CAUSES OF ACTION, DEMANDS, LOSSES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY AND ALL CLAIMS, CAUSES OF ACTION, OR DEMANDS WHEREBY ANY LOSS IS SOUGHT AND/ OR INCURRED AND/ OR PAYABLE BY CITY, ITS AGENTS, EMPLOYEES, REPRESENTATIVES AND/ OR INSURERS OR**

**RISK POOLS, BUT SHALL NOT APPLY TO OR INCLUDE ANY EXCLUDED CLAIMS. THIS PROVISION IS TO BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS, AND IT IS EXPRESSLY RECOGNIZED BY ALL PARTIES THAT IT COMPLIES WITH THE CONSPICUOUSNESS REQUIREMENT AND THE EXPRESS NEGLIGENCE TEST AND IS VALID AND ENFORCEABLE AGAINST THE DEVELOPER. THE DEVELOPER HAS CAREFULLY READ, FULLY UNDERSTANDS, AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS PROVISION.**

6. Termination. Either Party may terminate this Agreement by providing at least five (5) days written notice of termination. Termination of this Agreement shall be the sole and exclusive remedy of the City or the Developer, as the case may be, for any claim by either Party of any breach of this Agreement by the other Party. The City shall be entitled to pay Consultants for all Professional Services incurred through the date of termination; however, any excess funds remaining after such payments have been made shall be promptly refunded to the Developer. Notwithstanding any other provision of this Agreement, the obligation to repay such excess funds to the Developer in the event of a termination shall survive any termination of this Agreement, and the Developer does not release or discharge its right to such excess funds.
7. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the provision of Professional Services in connection with the development of the Property.
8. Amendment. This Agreement may only be amended by written instrument signed by the Developer and the City.
9. Successors and Assigns. Neither the City nor the Developer may assign or transfer their interest in the Agreement without prior written consent of the other Party.
10. Notice. Any notice and/or statement required and permitted to be delivered shall be deemed delivered upon the earlier of receipt by hand delivery or email (with confirmation of delivery) or upon deposit of same in the United States Mail, Certified, with Return Receipt Requested, postage prepaid, addressed to the appropriate Party at the following addresses, or at such other addresses provided by the Parties in writing.

**DEVELOPER:**

**With a copy to:**

**CITY:**

City of Marble Falls, Texas

Attn:

Telephone:

Fax:

**With a copy to:**

Messer, Fort & McDonald

13625 Pond Springs Rd., Suite 204, Austin, Texas 78729

Attn: Patty L. Akers

Telephone: 512-600-2305

11. Non-Recordation. This Agreement shall not be recorded. If the City or its Consultants file this Agreement of record, this Agreement shall automatically terminate as of the date of recordation, and no notice of termination shall be required by the Developer. If the Developer files this Agreement of record, the Agreement shall automatically terminate five (5) days following receipt by the City of a filed-stamped copy of the recorded Agreement. Each Party shall deliver a file-stamped copy of the recorded Agreement within one (1) business day of recordation.

12. No Rule of Construction. The Parties acknowledge that this Agreement was prepared by the City solely as a convenience and that all Parties hereto, and their counsel, have read and fully negotiated all the language used in this Agreement. The Parties acknowledges that no rule of construction shall apply to this Agreement which constructs ambiguous or unclear language in favor or against any Party because such Party drafted this Agreement.

13. Applicable Law. This Agreement is made and shall be construed in accordance with the laws of the State of Texas and venue shall lie in Burnet County, Texas.

14. Severability. In the event any portion or provision of this Agreement is illegal, invalid, or unenforceable under present or future law, then and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid and

enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

16. Authority for Execution. The City hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized, and the City Manager has full authority to execute this Agreement and bind the City to the same. The Developer hereby certifies, represents, and warrants that the individual executing this Agreement on behalf of the Developer is duly authorized and has full authority to execute this Agreement and bind the Developer to the same.

**[THE BALANCE OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, this Professional Services Agreement has the Effective Date as of the day and year first written above.

**CITY:**

**CITY OF MARBLE FALLS, TEXAS**

By: \_\_\_\_\_  
Mike Hodge, City Manager

**ATTEST:**

\_\_\_\_\_  
Christina McDonald, City Secretary

**STATE OF TEXAS                   §**  
**§**  
**COUNTY OF BURNET           §**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ 2020, by Mike Hodge, City Manager of the City of Marble Falls, on behalf of the City.

\_\_\_\_\_  
Notary Public, State of Texas

**DEVELOPER:**

\_\_\_\_\_  
a Texas \_\_\_\_\_

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

**STATE OF TEXAS**       §  
                                  §  
**COUNTY OF**           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ 2020, by  
\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ a Texas \_\_\_\_\_,  
on behalf of the Developer.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT A**  
**PROPERTY DESCRIPTION AND MAP**

**EXHIBIT B**  
**APPROVED CONSULTANTS**

City's Attorney: Billing Rate \$185 per hour. Opinion letters for bonds will be separate flat fee of \$20,000.00 paid at closing.

Engineering Consultant:

Principal/Sr. Engineer	\$150 - \$180
Project Manager/Engineer	\$105 - \$145
Engineering Staff (EIT)	\$90 - \$110
Sr. CAD Designer	\$95 - \$120
CAD Designer	\$85 - \$100
CAD Technician	\$75 - \$95
Administrative	\$50 - \$85

Reimbursables/Reproductions

Miscellaneous expenses including printing, courier, etc. will be invoiced at cost to MG plus a 10% administrative and handling charge. Mileage will be invoiced at the federal standard mileage rate for the current period.

Subconsultants

All subconsultant services will be invoiced at cost plus a 10% management, administrative and handling charge.

Planning Consultant Billing rate of \$75.00 per hour. Mileage will be invoiced at the federal standard mileage rate for the current period.

City Bond Counsel: Hourly rate of \$300 per hour for work performed by Bond Counsel.  
Hourly rate of \$180 per hour for work performed by legal assistants.  
Bond issuance costs will be separate and based upon the par amount of bonds issued.