

**Chapter 17.21**  
**SUBDIVISION AND DEVELOPMENT IMPROVEMENTS AGREEMENTS**

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**17.21.010 GENERAL REQUIREMENTS.** The City Council shall not approve a major or minor subdivision application or a Planned Unit Development application until a subdivision improvements agreement or development improvements agreement and related documents, setting forth financial arrangements to secure the actual construction of subdivision or development improvements required by the City, has been executed between the applicant or developer and the City Council. The subdivision improvements agreement or development improvements agreement shall include a guarantee to construct all required subdivision or development improvements together with collateral which shall be sufficient to ensure the completion of the improvements in accordance with the approved subdivision or Planned Unit Development engineering and design standards and the development schedule.

The City Council, on a case by case basis, may also require that an applicant for a conditional use permit or for a planning clearance for a building permit enter into a development improvements agreement which shall include a guarantee to construct all required development improvements together with collateral which shall be sufficient to ensure the completion of the improvements in accordance with the approved engineering and design standards and the development schedule.

**17.21.020 CONSTRUCTION OF IMPROVEMENTS.** Every subdivision improvements agreement or development improvements agreement shall provide that the applicant or developer, at its sole cost and expense, shall design, purchase, construct and install all elements of all public

and other required subdivision or development improvements, whether such improvements are located within the subdivision or development property (on-site) or outside of the subdivision or development (off-site). The public and other necessary subdivision or development improvements shall be designed and built in conformance with this Title and other applicable City ordinances, building codes and regulations in effect as of the effective date of the subdivision improvements agreement or development improvements agreement, unless otherwise provided in the approved plans and specifications. All such required subdivision or development improvements shall be designed and approved by a registered professional engineer retained by the developer or applicant. All drawings and plans for such improvements shall be stamped by the engineer. Prior to the commencement of construction of the subdivision or development improvements, the City Engineer shall review and approve all drawings and plans.

**17.21.030 SCHEDULE OF IMPROVEMENTS TO BE CONSTRUCTED.** Every subdivision improvements agreement or development improvements agreement shall include a schedule of improvements showing in detail the public and other required subdivision or development improvements, including shallow utilities, landscaping, revegetation, that the developer or applicant is responsible for constructing, and the costs therefor. No work shall be commenced on such improvements by the developer or applicant until such time as the schedule of improvements has been approved by the City and the required performance guarantee has been delivered to the City. The schedule of improvements shall at a minimum include the following improvements, as applicable, and the associated construction costs necessary to provide the improvements for the subdivision, or Planned Unit Development; or a conditional use or planning clearance when a development improvements agreement is required by the City Council.

- A. Water distribution system including water mains, lateral service lines to the lot lines, valves, fire hydrants, and all other appurtenant facilities necessary to provide treated domestic water service;
- B. Wastewater collection system to fully service the subdivision or development, including collection lines, service lines to the lot lines, manholes, and all other appurtenant facilities necessary to provide municipal wastewater service;
- C. Street improvements necessary to fully service the subdivision or development, including grading, road base and sub-base, asphalt, curbs and gutters, sidewalks, handicap ramps, drainage facilities, and all other appurtenant facilities necessary to provide vehicular and pedestrian access;
- D. Storm drainage facilities, erosion control facilities and appurtenances, as required;
- E. Utilities, including telecommunications, cable television, electrical service, and natural gas service;

- F. Street lighting, signs and other traffic control devices;
- G. Soil stabilization and revegetation measures;
- H. Visual screening facilities;
- I. Non-potable water irrigation system;
- J. A description of the terms and stipulations relative to the transfer of water rights necessary for the non-potable irrigation system;
- K. Landscaping improvements;
- L. Pedestrian and bicycle paths or trails;
- M. Public or private park, open space and recreation facilities;
- N. Parking areas or lots;
- O. Permanent reference monuments and monument boxes; and
- P. Any other subdivision or development improvements required by the City Council as a condition of approval of the subdivision, Planned Unit Development, conditional use permit or planning clearance.

**17.21.040 TIMETABLE FOR CONSTRUCTION OF REQUIRED IMPROVEMENTS.** Every subdivision improvements agreement or development improvements agreement shall include a time schedule for the construction and completion of the public and other required subdivision improvements or development improvements. Said schedule shall provide for a commencement date as well as a date when such improvements will be substantially completed. Under such schedule, all required subdivision or development improvements shall be completed no later than one (1) year following the start of development, unless otherwise agreed by the City Council. Such schedule shall be reviewed and approved by the City Council prior to the commencement of construction of any such improvements.

Where a developer or applicant is prevented from commencing or completing any of the required improvements within the time periods set forth in the construction timetable or otherwise set forth in the subdivision improvements agreement or development improvements agreement due to an unforeseeable cause or delay beyond the control and without the fault or negligence of the developer or applicant, the times for commencement and/or completion of such improvements may be extended by the City Council in an amount equal to the time lost due to such delay if a request is

made in writing to the City by a developer or applicant. Delays beyond the control of a developer or applicant shall include, but are not be limited to, acts of neglect by the City, fires, floods, epidemics, abnormal weather conditions, strikes, freight embargos or acts of God. Time extensions, however, will not be granted for rain, snow, wind or other natural phenomena at normal intensity within Mesa County. Delays attributable to and within the control of a developer's or applicant's contractors, subcontractors or suppliers shall be deemed to be delays within the control of the developer or applicant.

**17.21.050 CITY INSPECTIONS OF IMPROVEMENTS.** Every subdivision improvements agreement or development improvements agreement shall provide that the City shall have the right to make engineering inspections and require testing during construction of the public and other required improvements in such reasonable intervals as the City Engineer or Public Works Director may request. Inspection, acquiescence and approval of any engineering inspector of the construction of physical facilities, at any particular time, shall not constitute an approval by the City of any phase of the construction of such improvements. Such approval shall be made by the City only after completion of construction of all improvements in the manner set forth in Section 17.21.060.

**17.21.060 FINAL APPROVAL OF IMPROVEMENTS BY CITY STAFF.** Every subdivision improvements agreement or development improvements agreement shall provide that upon completion of construction by the applicant or developer of all public and other required subdivision or development improvements, the City Engineer or Public Works Director shall perform a final inspection of the improvements and certify with specificity their conformity or lack thereof to the approved plans and specifications. The subdivision improvements agreement or development improvements agreement shall further provide that the applicant or developer will make all corrections necessary to bring the system or improvements into conformity with applicable City standards and the construction plans, as approved. The City shall be under no obligation to provide any wastewater collection service, street maintenance or issue any further planning clearances for building permits or certificates of occupancy, until all such facilities are brought into conformance with the applicable standards, plans and specifications and approved by the City Engineer or Public Works Director.

**17.21.070 CONVEYANCE OF PUBLIC IMPROVEMENTS.** A subdivision improvements agreement or development improvements agreement shall provide that all public improvements constructed by the applicant or developer in accordance with the subdivision improvements agreement or development improvements agreement, including all wastewater collection mains, laterals and related improvements; public street improvements including required pavement, curbs, gutters and sidewalks; and public park, trail and recreation facilities shall be conveyed to the City. Upon completion of construction in conformity with the applicable plans, standards, specifications and any properly approved changes, and final approval by the City Engineer or Public Works Director, the applicant or developer shall convey to the City, by bill of sale, all physical facilities constructed by the applicant or developer necessary for the extension, maintenance and repair of municipal utility

services and other public facilities. Acceptance of said conveyance shall be made by the City by majority vote of the City Council. Following such conveyance, the City shall be solely responsible for the maintenance of such public improvements, unless otherwise provided for by the agreement, except for any correction work required during the warranty period.

**17.21.080 WARRANTY FOR PUBLIC AND OTHER REQUIRED IMPROVEMENTS.**

- A. The applicant or developer shall warrant in the subdivision improvements agreement or development improvements agreement all public improvements constructed by the applicant or developer and conveyed to the City for a period of twelve (12) months from the date the City Council accepts such improvements. Specifically, but not by way of limitation, the applicant or developer shall warrant the following:
1. That the title conveyed shall be good and its transfer rightful;
  2. Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
  3. Any and all facilities so conveyed shall be free of any and all defects in materials or workmanship.
- B. In addition, all other required subdivision or development improvements such as private park or recreation improvements and shallow utility installations shall be warranted for a period of twelve(12) months following completion and approval as provided in subsection (A) above.

**17.21.090 REVEGETATION OF DISTURBED AREAS REQUIRED.** Every subdivision improvements agreement or development improvements agreement shall provide that all areas disturbed by construction shall be promptly revegetated with native vegetation following completion of such work unless a building permit application has been requested for a particular lot. The applicant or developer shall comply with all City regulations concerning dust suppression. In addition, the applicant or developer shall control all noxious weeds and rodents within such areas to the reasonable satisfaction of the City until conveyed to individual lot owners.

**17.21.100 PERFORMANCE GUARANTEE REQUIRED.**

- A. Every subdivision improvements agreement or development improvements agreement shall provide that in order to secure the construction and installation of the public and other required improvements itemized in the schedule of improvements, whether on-site or off-site, for which the applicant or developer is responsible, the applicant or developer shall furnish the City with: (1) cash to be deposited in an escrow account that is acceptable to the

- City pursuant to an escrow and disbursement agreement approved by the City Attorney; or (2) an irrevocable letter of credit that is acceptable to the City Attorney, or (3) a performance bond issued by a surety approved by the City Attorney, in an amount equal to one hundred ten percent (110%) of the estimated cost of all required improvements.
- B. The developer or applicant shall deliver to the City the performance guarantee required by subsection (A) above prior to the recording of a subdivision final plat, or prior to recording of a P.U.D. final development plan, or prior to the issuance of a conditional use permit or planning clearance, as applicable. Unless expressly authorized by the City Engineer and the Community Development Department Director, a developer or applicant shall not commence any work within the development until the approved security is furnished to the City. The applicant or developer shall not convey any lot within the subdivision or Planned Unit Development to any third party until the approved security is delivered to the City and the final plat or final development plan, as applicable, has been recorded in the records of the Mesa County Clerk and Recorder.
- C. Upon completion of a certain class of improvements by the developer or applicant, such as wastewater facilities by way of example, evidenced by a detailed cost breakdown of the completed improvements, the amount of any security tendered may be reduced by up to one hundred percent (100%) of the approved cost for the installation of such class of improvements, upon application by the developer or applicant, and upon approval by the City Engineer and Community Development Department Director. Upon completion of all of the on-site and off-site improvements required by the subdivision improvements agreement or development improvements agreement, and upon final inspection and approval by the City Engineer, Public Works Director and Community Development Department Director of all such improvements, the City Council shall further authorize a reduction of the amount of the security guaranteeing the public and other required subdivision or development improvements to ten percent (10%) of the total actual cost of the improvements.
- D. Any performance guarantee tendered to the City shall be fully released and discharged by action of the City Council upon expiration of the twelve (12) month warranty period described in Section 17.21.080 and the correction of any defects discovered during such warranty period. In the event that the correction of defects are not satisfactorily completed upon the expiration of the twelve (12) month warranty period, the City may require a new performance guarantee and withhold further planning clearances for building permits and certificates of occupancy within the subdivision or development until the new performance guarantee is tendered to the City.
- E. Every subdivision improvements agreement or a development improvements agreement shall provide that upon the developer's or applicant's failure to perform its obligations under such agreement and all other applicable plans, drawings, specifications and documents submitted

by the developer or the applicant to the City, as approved, within the time periods set forth in the agreement, the City may give written notice to the developer or applicant of the nature of the default and an opportunity to be heard before the City Council concerning such default. If the default has not been remedied within thirty (30) days of receipt of the notice or of the date of any hearing before the City Council, whichever is later (or such reasonable time period as is necessary to cure the default provided that the developer or the applicant has commenced in good faith to cure the default), the City may then give written notice to the developer or applicant and any surety on a performance bond, issuer of a letter of credit, or escrow agent that the City, as agent for the developer or applicant, is proceeding with the task of installing and completing the remaining public and other required development improvements in whole or in part.

- F. Every subdivision improvements agreement or development improvements agreement must contain a power of attorney whereby the developer or applicant designates and irrevocably appoints the City Manager of the City of Fruita, Colorado as its attorney in fact and agent for the purpose of completing all necessary improvements required by the subdivision improvements agreement or development improvements agreement in the event of a default by the developer or applicant. The agreement shall be recorded in the office of the Clerk and Recorder of Mesa County, Colorado, and shall constitute constructive notice of the agreement and the power of attorney contained therein. The agreement and power of attorney contained therein may be enforced by the City pursuant to all legal and equitable remedies available, including an action for specific performance in a court of competent jurisdiction.
- G. If a substantial amount of time elapses between the time of delivery of the security and actual construction of the improvements, the City may require a reasonable increase in the amount of the applicable security, if necessary because of estimated increased costs of construction.

**17.21.110 INDEMNIFICATION AND INSURANCE.** Every subdivision improvements agreement or development improvements agreement shall require the developer, applicant and any contractor or subcontractor employed by the developer or applicant who performs work within public rights-of-way, easements dedicated to the City, or within other property owned by the City to indemnify and hold harmless the City of Fruita, its officers, employees, insurers, and self insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with work performed by the developer or applicant, its contractors and subcontractors, within City rights-of-way, easements or other property, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, an act, omission, error, professional error, mistake, negligence, or other fault of the developer, applicant, or contractor, and any subcontractor.

The City may also require in a subdivision improvements agreement or development improvements agreement that any contractor employed by the developer or applicant to perform work within public rights-of-way, easements dedicated to the City, or within any other property owned by the City to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by contractors and subcontractors pursuant to this Section.

**17.21.120 DEFAULT; NOTICE; AND TERMINATION OF SUBDIVISION AND DEVELOPMENT IMPROVEMENTS AGREEMENTS.** In the event of any default or breach by a developer or applicant of a covenant, term, condition or obligation contained in a subdivision improvements agreement or development improvements agreement, and if such default or breach continues after notice thereof and an opportunity of a hearing as set forth in this Chapter, the agreement may be forthwith terminated, at the option of the City. Any declaration of termination of an agreement shall be effective only after and upon a resolution to that effect adopted by the City Council. In the event a developer or applicant fails to construct any public or other required on-site and off-site development improvements in accordance with the terms of a subdivision improvements agreement or development improvements agreement, the City may suspend approval of the subdivision, Planned Unit Development, conditional use permit or planning clearance, as applicable, during which time the developer or applicant shall have no right to sell, transfer or otherwise convey tracts or lots within the development or property without the express written approval of the City.

**17.21.130 ISSUANCE OF CERTIFICATE OF COMPLIANCE.** Upon satisfactory completion of all improvements which are the subject of a subdivision improvements agreement or development improvements agreement, expiration of the applicable warranty period, and compliance with all of the terms of the subdivision improvements agreement or development improvements agreement, the City shall, upon request, execute a resolution or certificate stating that all improvements have been constructed in compliance with the subdivision or development improvements agreement.