

Chapter 17.21
SUBDIVISION AND DEVELOPMENT IMPROVEMENTS AGREEMENTS

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17.21.010 GENERAL REQUIREMENTS. An approval of a land development application which requires a subdivision improvements agreement or development improvements agreement does not become effective until a subdivision or development improvements agreement and related documents, setting forth financial arrangements to secure the actual construction of required public or semi-public (shared) improvements required by the city, has been executed between the property owner and the City Council. The subdivision improvements agreement or development improvements agreement shall include a guarantee to construct all required improvements together with collateral which shall be sufficient to ensure the completion of the required improvements. With the property owner's written consent, the City Council may enter into a subdivision improvements agreement or development improvements agreement with a developer or applicant who is not the property owner, provided that the agreement(s) shall be binding on the subject property and shall run with the land.

17.21.020 CONSTRUCTION OF IMPROVEMENTS. Every subdivision improvements agreement or development improvements agreement shall provide that the applicant, at its sole cost and expense, shall design, purchase, construct and install all elements of all improvements, whether such improvements are located within the subdivision or development property (on-site) or outside of the subdivision or development (off-site). The 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, and the approved for construction drawings. Prior to the commencement of construction of the subdivision or development improvements, the city shall review and approve all drawings and plans.

17.15.270 RELATED COSTS - PUBLIC AND OTHER REQUIRED SUBDIVISION IMPROVEMENTS. A subdivider shall provide, at its sole cost, all necessary engineering designs, surveys, field surveys, as-built drawings and incidental services, including the cost of updating city mapping related to the construction of the public and other required subdivision improvements.

17.21.030 SCHEDULE OF IMPROVEMENTS TO BE CONSTRUCTED. Every subdivision improvements agreement or development improvements agreement shall include a schedule of the required improvements showing in detail the required improvements, the costs thereof, and make reasonable provision for the completion of said improvements in accordance with design and time specifications. No work shall be commenced on such improvements 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.

17.21.040 TIMETABLE FOR CONSTRUCTION OF REQUIRED IMPROVEMENTS. Every improvement identified in the subdivision improvements agreement or development improvements agreement shall include a time schedule for the construction and completion of the required 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.

Where a developer or property owner is prevented from commencing or completing any of the required improvements within the time periods set forth in the subdivision improvements agreement or development improvements agreement, the times for commencement and/or completion of such improvements may be extended by the City Manager in accordance with Section 17.05.040.

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 inspections and require testing during construction of the required improvements in such reasonable intervals as the responsible city officials may request. Inspection, acquiescence and approval of any 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. The city also reserves the right to perform or contract for independent quality assurance tests to confirm compliance with city requirements.

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 of all required improvements, the responsible city officials shall perform final inspections of the improvements and certify with specificity their conformity or lack thereof to the approved plans, specifications and design standards. The subdivision improvements agreement or development improvements agreement shall further provide that the property owner or developer shall make all corrections necessary to bring the improvements into conformity with applicable city standards, approved for construction drawings, and the utility, drainage and street improvements plans and requirements of other agencies, 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 responsible city officials.

17.21.070 CONVEYANCE OF PUBLIC IMPROVEMENTS. A subdivision improvements agreement or development improvements agreement shall provide that all public improvements shall be conveyed to the city or other public entity, as applicable. Upon completion of construction in conformity with the applicable plans, standards, specifications and any properly approved changes, and final approval by the responsible city official, all public improvements shall be conveyed to the city or Colorado Department of Transportation or other public entity, as applicable. Acceptance of said conveyance to the city shall be made 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.

The property owner or developer shall warrant in the subdivision improvements agreement or development improvements agreement all required improvements for a period of twenty-four (24) months from the date the City Council accepts such improvements. Specifically, but not by way of limitation, the property owner or developer shall warrant the following:

- A. That the title conveyed shall be good and its transfer rightful;
- B. Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance;
and
- C. Any and all facilities so conveyed shall be free of any and all defects in materials or workmanship.

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, in which case revegetation shall be provided prior to legal occupancy of such lot. The property owner or developer shall comply with all city regulations concerning dust suppression, drainage and the control of other nuisances. 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 required improvements listed in the schedule of improvements, whether on-site or off-site, including tasks not specifically itemized within the schedule of improvements but which can be reasonably considered necessary for the development and for which the property owner or developer is responsible, the property owner 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; or (2) an irrevocable letter of credit that is acceptable to the city, or (3) a performance bond issued by a surety approved by the city, in an amount equal to one hundred ten (110) percent of the estimated cost of all required improvements.
- B. The developer or property owner 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 PUD final development plan, or prior to the issuance of a conditional use permit or planning clearance, as applicable. Unless expressly authorized by the city, work shall not be commenced within the development until the approved security is furnished to the city. No lot within a subdivision shall be conveyed to any third party until the approved security is delivered to the city and the final plat has been recorded in the records of the Mesa County Clerk and Recorder.
- C. Upon completion of a certain class of improvements, 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 (100) percent of the approved cost for the installation of such class of improvements, upon approval by the city. Upon completion of all of the improvements required by the subdivision improvements agreement or development improvements agreement, and upon final inspection and approval by the city of all such improvements, the City Council shall further authorize a reduction of the amount of the security guaranteeing the required subdivision or development improvements to ten (10) percent of the total

actual cost of the improvements.

- D. Any performance guarantee tendered to the city shall be fully released and discharged only by express action of the City Council upon expiration of the twenty-four (24) 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 twenty-four (24) month warranty period, the city will retain the existing performance guarantee and 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 property owner's failure to perform its obligations under such agreement and all other applicable plans, drawings, specifications and documents, as approved, within the time periods set forth in the agreement, the city may give written notice to the developer or property owner 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 property owner has commenced in good faith to cure the default), the city may then give written notice to the developer or property owner 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 property owner, is proceeding with the task of installing and completing the remaining required 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 property owner 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 property owner. 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, property owner and any contractor or subcontractor employed by the developer or property owner 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 property owner, 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, property owner, 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 property owner 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 property owner or developer 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 property owner or developer fails to construct any required improvements in accordance with the terms of a subdivision improvements agreement or development improvements agreement, the city may suspend approval of the development during which time the property owner or developer 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 required improvements, 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.