

## APPENDIX 3-E – IMPROVEMENT AGREEMENT & SECURITY PROCEDURES

**PURPOSE:** Outline the requirements and administrative procedures for an Improvements Agreement (IA) and security submittal for improvements required of a Subdivision, Subdivision Exemption, or Townhome Development as a condition for granting approval of the townhome declaration, amended plat, or final plat.

**APPLICABILITY:** City Engineering and Public Works Infrastructure and Mobility Staff, or any other staff assigned.

**DISCUSSION:** These procedures shall govern the requirements for submission, extension, reduction, and release of a security to guarantee subdivision improvements, subdivision exemption and/or townhome exemption development improvements, and the process for collection of funds by drawing against a security.

### 1. Improvements Agreement & Estimate of Probable Cost Required

City Engineering requires that an [estimate of probable cost](#), in City Engineering required format, be submitted for review and approval. Once the estimate of probable cost is approved and stamped by City Engineering, a security in the form of a letter of credit (LOC), surety bond, cash, cashier's check, or a certificate of deposit (CD) is to be submitted to the Engineering Project Coordinator by the financial institution, which guarantees infrastructure improvements not completed prior to approval of the townhome declaration, amended plat, or final plat. The security must guarantee the amount listed in the approved estimate of probable cost.

Once the security is received an Improvements Agreement is generated by the Engineering Project Coordinator and sent directly to the developer/landowner or developer's representative. The Improvements Agreement must be dated, signed, notarized by the developer/landowner and returned to the Engineering Project Coordinator for filing with the County Clerk. Failure to have the developer's/landowner's name, title, company name and company registration (LLC, Inc., etc.) and proper notarization may cause delays in filing with County Clerk.

The Engineering Project Coordinator monitors all improvements and security agreement dates for expiration. As applicable, reminders of the maturing Improvements Agreement and security expiration will be sent to the developer/landowner or developer's representative, approximately 2-3 months prior to expiration.

Electronic files or scans of the approved estimate of probable cost and the executed Improvements Agreement will be maintained on the City network by the Engineering Project Coordinator.

The estimate of probable cost is valid for one (1) year from approval. The EPC must include an exhibit(s) showing the infrastructure being secured, and the status of the infrastructure (full vs. reduced).

## **2. Acceptable Forms of Securities**

The following are acceptable forms of securities. Any costs incurred obtaining a security from a financial institution must be paid by the developer / landowner.

### **A. Irrevocable Letter of Credit(LOC):**

1. Irrevocable Letter of Credit (LOC) is the preferred method.
2. The LOC shall be issued for a maximum period of 2 years. The LOC must indicate an expiration date and shall expire no sooner than one month after the expiration of the Improvements Agreement.
3. The LOC must be provided on the letterhead of a financial institution, in good standing, be dated and signed by an authorized representative of the financial institution from which it's drawn, include the financial institution's reference number, be drawn under the account of the developer, indicate that it is "irrevocable," be made payable to the City of Missoula only, and be signed by a representative of the financial institution. The LOC must also contain the developer's company name and the name of the subdivision or physical address of the Subdivision Exemption or Townhome Exemption. The financial institution will dictate how the City shall draw against the LOC.
4. Only electronic versions of LOCs are accepted. The LOC will include a statement that an electronic scan of the LOC will be accepted upon a request for a draw against the security, the draw of the security in its entirety, or in the event of default. If the LOC does not include this statement, a separate letter will be required on the financial institution's letterhead to the Engineering Project Coordinator that an electronic scan of the LOC will be accepted upon a request for a draw against the security, the draw of the security in its entirety, or in the event of default. The letter must be signed by an authorized representative of the financial institution issuing the irrevocable LOC.
5. The LOC will remain in effect until all subdivision, subdivision exemptions or townhome exemption improvements are completed by the developer / landowner and accepted by City Engineering, at which time the LOC will be released.

### **B. Cash, Certificate of Deposit, or other Assignable Security (Surety):**

1. The Surety shall be issued for a maximum period of 2 years The Surety must indicate an expiration date and shall expire no sooner than one month after the expiration of the Improvements Agreement.

2. The Surety must be drawn on a financial institution, in good standing, and be made payable to the City of Missoula only. If it is not possible for the Surety to be made payable to the City only, developer must contact Engineering Project Coordinator for further instruction.
3. If the financial institution only issues hardcopy version of the Surety, the developer must notify Engineering Project Coordinator for further instruction.
4. Sureties must also, at a minimum, indicate the name of the issuer/financial institution, the developer's account number upon which the Surety was drawn, the expiration date or maturity date, whether or not the Surety will automatically renew at maturity, and be signed by a representative of the financial institution.
5. The Surety will remain in effect until all subdivision, subdivision exemption or townhome exemption improvements are completed by the developer/landowner and accepted by City Engineering, at which time the Surety will be released.

**C. Performance or Property Bonds (Bond):**

1. The Bond shall be issued for a maximum period of 2 years. The Bond must indicate an expiration date and shall expire no sooner than one month after the expiration of the Improvements Agreement.
2. The Bond is subject to any requirements of the bonding company.
3. The Bond must be drawn by a bonding company, or local insurance company, in good standing, and be made payable to the City of Missoula only.
4. Bonds must also, at a minimum, indicate the name of the issuer/bonding/insurance company, the name of the developer / landowner, the bond number, the expiration date, and be signed by the developer / landowner and a representative of the bonding/insurance company.
5. The Bond will remain in effect until all subdivision, subdivision exemption, or townhome exemption improvements are completed by the developer / landowner and accepted by City Engineering, at which time the Bond will be released.

**D. Cashier's Check or Check drawn directly from a financial institution (Check):**

1. The developer / landowner must receive prior approval from Engineering Project Coordinator before a Check will be accepted as collateral for outstanding subdivision, subdivision exemption or townhome exemption improvements.
2. The Check must be made payable to the City of Missoula only.
3. The Check cannot be drawn on a personal account or business account; it must be drawn upon a financial institution, in good standing, in order to be insured.
4. The Check must not expire.
5. The Check must remain in effect until all subdivision, subdivision exemption or townhome exemption improvements are completed by the developer/landowner and accepted by City Engineering, at which time the Check will be released.
6. The City Clerk's office is to receive all physical checks.

**E. Special Improvement Districts (Subdivisions only):**

1. To establish this type of guarantee, the developers and owners of the property to be subdivided (if other than the developer) must submit a petition to the City Council. The City's SID policy does require that developers submit additional security to guarantee the payment of from three to five years of annual SID assessments. The City Finance Director has copies of the resolution establishing the City's SID policy.
2. The SID petition or agreement must specify that no property will be sold, rented, or leased until a special improvement district is formed and that the developers and owners will allow the City Council to create a SID for the property without protest. This waiver of the right to protest formation of a SID expires 20 years after the date the final subdivision plat is recorded with the County Clerk and Recorder.

- F. City Engineering may agree to an incremental payment or guarantee plan. The improvements incurred in a prior increment must be satisfied before the development of future increments is approved.

**3. Extension of a Security**

- A. If the Improvements Agreement and security are about to expire and all of the improvements being secured have not been completed, developer, or developer's representative or landowner, may request an extension of the existing Improvements Agreement and security.
- B. An updated estimate of probable cost must be submitted one month prior to the expiration date of the IA.
- C. An extension of the existing Improvements Agreement and security may be granted by the City Engineer.
- D. Developer / landowner will be required to fill out an Improvements Agreement Amendment (Improvements Agreement Amendment) noting the new date that the improvements will be completed (the new expiration date of the Improvements Agreement Amendment), and the new expiration date of the amended security (which will be one month after the improvements are required to be constructed) per the Improvements Agreement Amendment.
- E. An amended security will be granted for a minimum of one year unless a shorter timeline is agreed to by the City Engineer and communicated to Engineering Project Coordinator
- F. The adjusted or revised estimate of probable cost, after City Engineering approval, will be retained by City Engineering in the project file.

**4. Reduction of a Security**

- A. If some of the improvements, noted in the Improvements Agreement, or amendment, and the initial or subsequent estimate of probable cost, have been

completed, the developer/landowner or developer's representative may request a reduction (of the security, or amended security, and submit a new estimate of probable cost listing the items that have not been completed.

- B. A reduction of a security, or amended security, may be granted by the City Engineer under the following two conditions only:
  - 1. A 100% reduction for all quantities of installed and tested infrastructure that has been fully accepted by the City of Missoula.
  - 2. A 90% reduction for all quantities of installed infrastructure that has passed all necessary testing (but has yet to be accepted by the City).

## **5. Releasing a Security**

- A. The Developer or developer's representative or landowner may send an email request to Engineering Project Coordinator to release the security or amended security.
- B. Engineering Project Coordinator will review the request and verify that all subdivision improvements have been installed and accepted by City Engineering.
- C. Engineering Project Coordinator will formally notify financial institution to release security.
- D. If security is in the form of a check that is filed with City Clerk for safeguarding, an email notification from Engineering Project Coordinator to City Clerk is transmitted requesting the City Clerk to release the check and mail to developer/landowner.

## **6. Default**

- A. If City Engineering determines that the developer / landowner will not construct any or all the improvements in accordance with the subdivision / development conditions and approved construction plans and specifications as listed in the Improvements Agreement, or has documented reason to believe that the developer cannot complete the improvements, City Engineering may withdraw such funds from the security, or amended security, as may be necessary to complete construction of the outstanding improvements.
- B. The general default period is the expiration date of the original, subsequent, or amended Improvements Agreement.

## **7. Drawing Against a Security**

- A. Two weeks and one week before the Improvements Agreement, or any amendments, are set to expire, the Engineering Project Coordinator shall notify via email the financial institution/bonding company/insurance company, through which the security was issued, of the City's intention to draw against the security, or amended security. This notification email will be sent to the developer, the developer's representative, landowner, the City Clerk, and the City Attorney.

- B. If the financial institution is in the City of Missoula, Engineering Project Coordinator may need to present the original security, or amended security, to the financial institution/bonding company/insurance company, in person, to notify the financial institution of the default of the developer. The financial institution may be able to give a check to the City immediately, or it may be mailed to the City.
- C. If the financial institution is outside the City of Missoula, then City Engineering shall contact the office listed on the security, or amended security, and obtain a fax number so that City Engineering can forward the default letter on the expiration date of the Improvement's Agreement, or amendment, in order to notify the financial institution of the default of the developer.
- D. Once the funds securing the subdivision improvements are received by City Engineering, they will be deposited in a special account for the subdivision / development in question with the City Finance Office. The City Engineer will decide when to have the outstanding improvements completed.

## **8. Warranty of Improvements**

- A. The developer shall provide a two-year warranty as per the Maintenance Bond requirements in [Chapter 2, Section 2.4.2 \(Construction Within Right-of-Way\)](#) for all improvements required by the subdivision/development acceptance in conformance with Article 9 of the City Subdivision Regulations. The warranty shall commence at the time the subdivision/development improvements are accepted by City Engineering.