

## ARTICLE III

### ASSURANCE FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS

#### **SECTIONS**

- 3-101 The Development Agreement
- 3-102 Bond Standards and Requirements
- 3-103 Completion of Improvements
- 3-104 Inspection of improvements
- 3-105 Release or Reduction of Reclamation or Performance Bond
- 3-106 Acceptance of Dedication Offers
- 3-107 Deferral or Waiver of Required Improvements

#### **3-101 THE DEVELOPMENT AGREEMENT**

A completed "Development Agreement" shall have been prepared and executed prior to initiation of any "land development activity" within any "major subdivision" to which these regulations are applicable. A draft development agreement shall be prepared following approval of the Construction Plans. The draft agreement shall reference the design incorporated within the approved Construction Plans and shall be sufficient in form to assure that proposed construction methods and materials meet or exceed minimum established standards. The draft development agreement shall be sent to the applicant for approval. Development activity may begin upon acceptance of the development agreement by the applicant and establishment of any required bond.

#### **3-102 BOND STANDARDS AND REQUIREMENTS**

##### **3-102.1 Types of Bond**

Subject to the standards and requirements of this Article and acceptance by the Planning Commission, the following types of bond may be accepted for purposes of guaranteeing completion of improvements required by the regulations:

- Irrevocable Standby Letter of Credit.
- Cash Escrow or bank assignment of certificates of deposit with a federally insured bank having assets of at least \$100 million.
- Surety or performance bond.

##### **3-102.2 Irrevocable Standby Letters of Credit**

An irrevocable standby letter of credit may be utilized as the means of providing bond for improvements required under the various provisions of these Regulations. Any letter of credit shall be drafted so as to represent an obligation of the financial institution to the City and not an obligation to the permittee. All Letters of Credit, and each provision thereof, shall be governed and construed in accordance with the Uniform Customs and

Practice for Documentary Credits (1983 Revision and subsequent revisions), International Chamber of Commerce, Publication 400 and Sections 47-5-101 through 47-5-118, Tennessee Code. Such letters shall be for one (1) year and shall be automatically renewable for successive one (1) year periods without any effort on the part of the City. They shall be renewed until released by the City. However, said letters may be revoked after giving the City written notice with ninety (90) days opportunity to cash the letter. Such notice shall be by certified mail, return receipt requested.

**3-102.3 Escrow Deposits for Improvements**

a. Acceptance of Escrow Funds

The term "Cash Escrow" as used in these regulations refers to two types of performance guarantees, cash escrows and bank assignment of funds. In the case of either cash or other near cash (i.e., certificates of deposit) guarantees, all funds shall be maintained in accounts that are beyond the reach of the developer and subject to an escrow agreement.

b. Procedures on Escrow Fund

All escrows shall be held by the City, kept in its bank accounts, and totally under control of the City. A detailed "Escrow Agreement" shall be prepared and appropriately endorsed by all parties to such agreement at the time of creation of any escrow account. The developer's tax identification shall be used for the escrow and the developer shall be responsible for paying tax on any interest credited to the escrow account.

**3-102.4 Performance Bonds**

A performance bond may be used as the means of providing bond for improvements required under the various provisions of these Regulations. In no instance shall any performance bond be accepted as a guarantee unless a "Development Agreement" required by the provisions of Section 3-101, DEVELOPMENT AGREEMENT, accompanies such bond. Such agreement shall detail the specific nature and estimated cost of all improvements. All performance bonds shall provide a location within Bedford County or a county adjoining Bedford County where such bond(s) may be drawn upon. All performance bonds shall be drafted so that the only requirement for the City to draw upon such bond is to notify the financial institution (grantor) that:

"We have incurred liability by reason of the failure of the applicant/developer/ owner to complete the construction of their project \_\_\_\_\_ [insert name of subdivision and plans] in accordance with the definitive subdivision plans and development agreement and the rules and regulations governing the subdivision of land within Shelbyville, Tennessee." The amount drawn, which may be more than required to complete the project, will be held in a segregated bank account until the work can be bid competitively and the bid awarded and paid for or until the contract for the work is, otherwise, let and the work paid for. Any excess over the cost of completing the work will be returned to the grantor."

**3-103 COMPLETION OF IMPROVEMENTS**

Generally, the final paving course shall not be applied until all of the houses in the subdivision, or phase thereof, fronting along a street are completed. Where maintenance, safety or an

unforeseen problem is created by the absence of the final paving course, paving may be allowed of a street prior to construction of all of the houses fronting along a street. The City may permit final paving to occur and the City Engineer may require establishment of a maintenance bond to an amount sufficient to guarantee maintenance of the streets. The City Engineer may permit the maintenance bond to be renewed if additional time is needed to complete further build-out of the subdivision.

### **3-104 INSPECTION OF IMPROVEMENTS**

The City may provide for inspection of required improvements during construction. If the appropriate governmental representative finds upon inspection that any of the required improvements have not been constructed in accordance with the accepting body's construction standards and specifications, the applicant shall be responsible for completing such improvements to the required standards. The fact that the City inspects the facilities in no way relieves the developer from designing or installing such facilities in accordance with the provisions of these regulations and the established development agreement.

### **3-105 RELEASE OR REDUCTION OF BOND**

Prior to release of any performance surety the engineer in charge of construction of such improvements shall be required to certify that such improvements have been installed in accordance with provisions of these regulations, the completed development agreement and the approved Construction Plans and specifications. Upon receipt of such certification and "as-built drawings" required by Section 2-109.7, As-Built Drawings Required, the governing body may accept the dedicated improvements in accordance with the procedures set forth in Section 3-105, ACCEPTANCE OF DEDICATION OFFERS, of these regulations.

### **3-106 ACCEPTANCE OF DEDICATION OFFERS**

Acceptance of offers of dedication of improvements for public maintenance shall be by action of the governing body. Such action shall be in the form of a resolution recommended by the Planning Commission to the accepting body. Approval by the Planning Commission of a subdivision plan shall not be deemed to constitute or imply an acceptance by the local government or other agency ultimately responsible for acceptance of the facilities of any public way, easement, or other ground shown on the plan. The Planning Commission may require the plan to be endorsed with appropriate notes to this effect.

### **3-107 DEFERRAL OR WAIVER OF REQUIRED IMPROVEMENTS**

The Planning Commission may defer or waive at the time of Final Plan approval, subject to appropriate conditions, the provision of any or all such improvements as, in its judgment, are not requisite in the interest of the public health, safety, and general welfare, or which are inappropriate, because of inadequacy or lack of connecting facilities. Whenever it is deemed necessary by the Planning Commission to defer construction of any improvement required herein because of incompatible grades, future planning, inadequate or lack of connecting facilities, or other reasons, the developer shall either pay his share of the costs of the future improvements to the governing body prior to signing of the Final Subdivision Plat or post a bond ensuring completion of said improvements.