

CHAPTER TWO

PROCEDURES

2.19 DEVELOPMENT IMPROVEMENTS AGREEMENTS (DIAs)

- A. **Development Improvements Agreement Authorized.** The Director may defer the requirement for the completion of required improvements if the applicant enters into a Development Improvements Agreement (DIA) by which the applicant agrees to complete all required public improvements in accordance with an agreed schedule. The Director may require the Applicant to complete and dedicate some required public improvements prior to approval of the final plat and to enter into a DIA for completion of the remainder of the required improvements. The City Attorney shall approve any DIA as to form.
- B. **Agreement to Run with the Land.** The Development Improvements Agreement shall provide that the requirements contained therein shall run with the land and bind all successors, heirs, and assignees of the Applicant. The DIA for subdivisions shall be recorded with the Mesa County Clerk and Recorder. All other DIA's may, at the Director's discretion, be recorded or deposited with the City Clerk. All existing lienholders shall be required to subordinate their liens to the guarantees contained in the DIA.
- C. **Performance Security.**
 - 1. Whenever the Director permits an applicant to enter into a Development Improvements Agreement, the applicant shall be required to provide sufficient security to ensure completion of the required public improvements. The security shall be in the form of a cash deposit made to the City, a letter of credit or disbursement agreement from an authorized financial institution, a subdivision bond, or a completed, unrecorded plat. The letter of credit, disbursement agreement, or subdivision bond shall be in a form approved by the City Attorney.
 - 2. The guarantee shall be in an amount estimated by the Director of Public Works as reflecting 120 percent (120%) of the cost of the improvements in the approved construction plan and shall be sufficient to cover all promises and conditions contained in the DIA.
 - 3. In addition to all other security, when the City participates in the cost of an improvement, the applicant shall provide a performance bond from the contractor, with the City as a co-obligee.
 - 4. The issuer of any guarantee shall be subject to the approval of the City in accordance with adopted policies.
- D. **Maintenance Bond for DIA.**
 - 1. The applicant shall guarantee the improvements against defects in workmanship and materials for a period of one (1) year from the date of City acceptance of such improvements. The maintenance guarantee shall be secured by a letter of credit, cash escrow, maintenance bond, or other form acceptable to the Director.
 - a. If the security is a letter of credit or cash escrow, then it shall be in

an amount reflecting twenty percent (20%) of the cost of the completed improvements.

b. If the form of security is a maintenance bond, it must be in a form acceptable to the City Attorney, in the principal amount of twenty percent (20%) of the value of the project's public improvements, for a period of one (1) year from the date of final acceptance by the City of all improvements in the project, or as applicable, the phase or filing of a project for which improvements are constructed and accepted.

c. If repairs, replacement or modifications to the project's public improvements are made by the applicant(s) or are required to be made by the City during the one (1) year maintenance period, then the City, at its sole option and discretion, may require an extension of the security in an amount equal to the actual or estimated repair, replacement or modification costs plus twenty percent (20%). If the Public Works Director has reason to believe that the security will be extended beyond the one (1) year initial term, then the Public Works Director shall notify the applicant(s) in writing no later than thirty (30) days before expiration of the security. Mailing of an extension notice shall cause the applicant(s) to extend the security (bond, cash or letter of credit) for an additional twelve (12) months. The extension shall be on the same terms as the security being extended. The security may be extended for (1) additional year as may be necessary for the bond to be called or for the improvements to be repaired, modified or replaced in a manner that satisfies the City. If the Public Works Director has reason to believe that the type or extent of the repair, replacement or modification does not warrant extension of the maintenance security, then the security may be released after the initial one (1) year period. In making the decision to extend the security the Public Works Director may consider any facts or information deemed relevant, which may include but is not limited to, whether the failed improvements are above or below grade, whether the failed improvements may reasonably be found to constitute life, health and/or imminent safety hazard(s); whether other phase(s) or filing(s) depend on the improvements and/or the degree of failure(s) of the improvements.

2. If the applicant has not warranted and guaranteed required improvements pursuant to a DIA, the applicant shall give the City security equal to at least fifty percent (50%) of the cost of the required improvements.

E. **Offers to Dedicate Streets, Roads, and other Lands.**

1. **Acceptance of Dedication.** The City Council, or its designees, may accept, accept with conditions, or reject any offer to dedicate any land or facility. Any offer to dedicate made pursuant to or as a condition of a review or approval pursuant to this Code constitutes the owner(s)

irrevocable warranty that such owner has the right, title and interest to convey to the City and that no hazardous or other regulated substance are present on, under or in the property.

2. **Acceptance of Maintenance.** Approval of a subdivision does not mean the City will accept any road, street or public site for maintenance. The City shall not be obligated to maintain any land(s) unless it explicitly agrees to do so in writing.

F. **Temporary Improvements.** The Developer shall construct and pay for all costs of temporary improvements required by the City to protect the public, neighborhood or another person. The applicant shall maintain said temporary improvements for the period specified.

G. **Completion of Improvements.**

1. **Construction of Required Improvements.**

- a. Before construction begins, the developer must be familiar with the submittal, construction, plans and inspection requirements of each utility or agency.

- b. After the City and/or other utility providers has inspected and approved all or a portion of the required improvements, the Developer may request, in writing, that the approved portion be accepted for maintenance by the appropriate agency. The City shall establish the Developer's limits of responsibility for the improvements. The City may condition its acceptance and may require additional guarantees and assurances for at least one (1) year following acceptance.

- c. Even if the City does not accept all or a portion of the required improvements, or delays any acceptance, the City may require the Developer to correct such defects or deficiencies identified by the City, in which case, final acceptance may be extended for one (1) additional year.

2. **Release of Improvements Agreement and Guarantee.**

- a. The Developer shall submit a written request for a release from the Development Improvements Agreement for the improvements that have been accepted for maintenance by the appropriate agency proof of acceptance for maintenance and proof that there are no outstanding judgments or liens against the property shall accompany this request.

- b. The City Council, or its authorized representative, shall review the request. If the requirements of the DIA concerning that portion requested for release have been complied with, the appropriate document of release shall be recorded with the Mesa County Clerk and Recorder's Office.

- c. Release of the DIA does not constitute a Certificate of Completion and Release of Responsibility.

3. **Certificate of Completion and Release of Responsibility.** Upon expiration of the limits of responsibility established in this Code, the

Developer may request a Certificate of Completion and Release of Responsibility from the appropriate agency.

H. Extension of Development Improvements Agreement and Security.

1. If the applicant is unable to complete all required improvements contained in an executed Development Improvements Agreement within the time stated therein, he shall provide written notice of same to the Director at least thirty (30) calendar days prior to the deadline of the milestones he will be unable to meet. The applicant shall make a formal written request for an extension of the completion date for performance in the DIA and security and provide a revised development schedule, which shall be reviewed by the Director. The Director shall approve, approve with conditions or deny the request for an extension. Based on the Director's decision the existing DIA may be amended, a new DIA drawn up and executed, or the Director may exercise any default provisions contained in the approved DIA. Any amendments or new agreements shall be recorded in the same manner as the original DIA, if required by the Director.
2. If the DIA is to be extended or a new DIA is to be executed, the applicant shall provide sufficient security which may be the same as or greater than the original security, up to 120 percent (120%), as was required with the original guarantee. No amendment or replacement DIA shall be executed, recorded or effective until security acceptable to the Director is provided.