

4.18 Subdivision Improvements and Development Agreements

- A. Development Agreements and Improvements.** A Development Agreement, stating the developer agrees to construct any required infrastructure improvements shown in the final plat documents, including any required PUD or other final development plan approved by the City, together with collateral which is sufficient, in the judgment of the City Engineer as provided in subsection B, to make reasonable provision for the completion of said improvements by the City in accordance with design and time specifications, will be required. No subdivision plat shall be signed by the City or recorded at the Office of the Fremont County Clerk and Recorder, and no building permit shall be issued for development until a Development Agreement between the City and the developer has been executed unless all infrastructure improvements required for the subdivision, PUD or other approved project have been designed, installed, inspected and approved by the City and a sufficient guarantee securing the developer's warranty of such improvements has been delivered to the City. Such agreement shall include a list of all improvements required by City Council in its approval of the subdivision, PUD or other project, an estimate of the cost of such improvements, the required collateral and any other provisions or conditions deemed necessary by the City Engineer to ensure that all improvements will be completed in a timely, quality and cost-effective manner. A Development Agreement shall run with, and be a burden upon, the land described in the agreement.
- B. Form of Collateral.** The collateral required to secure a developer's performance of a development agreement shall be a letter of credit issued by a local bank approved by the City in an amount equal to the estimated cost of all work and improvements covered in the development agreement, plus 15% to cover design, engineering and administrative costs. The City Engineer, in his/her sole discretion, may accept cash or certified funds payable to the City as collateral to secure the developer's performance as an alternative to a letter of credit.

- C. Release of Collateral.** All improvements required by the City Council shall be constructed by the developer. As improvements are completed, the developer shall apply to the City Engineer for inspection of improvements. Upon inspection and approval of all required improvements, the City Engineer shall notify the developer in writing that the warranty period has begun. If the City Engineer determines that any of the required improvements are not constructed in compliance with applicable specifications and standards, he/she shall furnish the developer a list of specific deficiencies and shall be entitled to withhold collateral sufficient to ensure such compliance. If the City Engineer determines that the developer will not construct any or all of the improvements or remedy the deficiencies in accordance with all the specifications and standards, the City Engineer may withdraw and employ from the available collateral such funds as may be necessary to construct the improvements or remedy deficiencies in accordance with the applicable specifications and standards.
- D. Identification of Required Improvements.** All improvements required by the City Council in its approval of the subdivision, PUD or other project shall be constructed by the developer and shall be itemized or otherwise mentioned in the development agreement, unless installed by the developer and approved by the City prior to the execution of the development agreement.
- E. Time for Completion.** The required time for the completion of all required improvements shall be two (2) years from the recording date of the final map or plat. However, the City Council may extend such time for completion upon request from the developer. Upon completion of such improvements within the required time and approval thereof by the City Engineer, the City shall cause the collateral, minus any amount to be held as a guarantee during the applicable warranty period (pursuant to subsection F) below, to be released within thirty (30) days of the City's acceptance of such improvements and receipt of the required as-built drawings. When such improvements are not completed within the required time or as-built drawings are not received, the City may cause the proceeds of the collateral to be used to complete the required improvements and/or as-built drawings.

- F. Warranty and Guarantee.** All workmanship and materials for all improvements and infrastructure required by City Council in its final subdivision or PUD approval or other final development plan approval shall be guaranteed by the developer for a period of two (2) years following acceptance or approval by the City Engineer and the developer's submission of as-built drawings, without regard to whether such improvements were covered by a Development Agreement. During such warranty period, the City Engineer may require a warranty guarantee, in the form of cash or a letter or credit, in an amount equal to ten (10) percent of the value of such improvements to secure the developer's performance of its warranty with respect to public infrastructure dedicated, or to be dedicated, to the City. The City's acceptance of such public infrastructure shall not be final until the warranty period has ended. The City shall not release the warranty guarantee until the City has granted final acceptance of the improvements. Neither the inspection, nor the acceptance, of any required improvement by the City shall relieve the developer of its warranty obligations.