

## **SECTION 4 ASSURANCE FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS**

### **4.1 Required Improvements and Public Improvement Agreement**

#### **A. Completion of Improvements.**

1. Except as provided below, before the issuance of a building permit, all applicants shall be required to complete, to the satisfaction of the City Engineer, all street, sanitary, and other public improvements, as well as lot improvements on the individual residential lots of the subdivision or addition as required in these regulations. The required improvements shall be those specified and approved by the Council in the final plat. Where required by the provisions of this ordinance, said final plat shall dedicate those public improvements to the City. As used in this Section, "lot improvements" refers to grading and installation of improvements required for proper drainage and prevention of soil erosion.
2. As a condition of a final plat, the Council may require the property owner to deposit in escrow a sufficient deed describing by metes and bounds street rights-of-way and necessary easements required by these regulations, conveying such rights-of-way and easements to the City, pending acceptance of improvements by the City and recordation of the final plat. In the event the property owner is unable to complete said improvements, and such improvements are deemed necessary for the preservation of the public health and safety, the City may compel the delivery of the deed in order to complete the improvements as required.

#### **B. Public Improvement Agreement and Guarantee of Completion of Public Improvements**

1. Public Improvement Agreement. The Council, upon recommendation of the Planning and Zoning Administrator, may waive the requirement of Section 4.1(A) and may permit the property owner to enter into a public improvement agreement by which the property owner covenants to complete all required public improvements no later than two (2) years following the date upon which the final plat is signed. The Council may also require the property owner to complete and dedicate some required public improvements prior to approval of the final plat and to enter into a public improvement agreement for completion of the remainder of the required improvements during such two-year period. The owner shall covenant to maintain the required public improvements for a period of two (2) years following acceptance by the City of all required public improvements and shall provide a maintenance bond in the amount of 100% of the costs of the improvements for such period as required in Section 4.4. The Public Improvement Agreement shall contain such other terms and conditions as are agreed to by the property owner and

City. The agreements relative to any subdivision or development shall not be considered as complete until three (3) sets of record drawings, one (1) set of mylars, and an electronic (CAD) copy for such drawings for all streets and utilities including street lighting in the subdivision, certified by the developer's engineer, are filed with the Planning and Zoning Administrator. Nothing in this section shall nullify the City's obligation to participate in the construction of oversize facilities in accordance with Article 6.

2. Covenants to Run with the Land. The Public Improvement Agreement shall provide that the covenants contained in the agreement shall run with the land and bind all successors, heirs and assignees of the property owner. The Public Improvement Agreement shall be recorded in the Land Records of the appropriate County. All existing lien holders shall be required to subordinate their liens to the covenants contained in the Public Improvement Agreement. However, the City shall deliver a release to bona fide third party purchasers of individual lots once all required public improvements have been completed to the City's satisfaction.
3. Public Improvement Agreement and Security to Include Lot Improvements For residential subdivisions, the public improvement agreement shall include security sufficient to guarantee completion of all lot improvement requirements including, but not limited to, soil preservation, removal of debris and waste, and all other lot improvements required for the subdivision. Whether or not a building permit or certificate of occupancy has been issued, the City may enforce the provisions of the public improvement agreement where the provisions of this section or any other applicable law, ordinance, or regulation have not been met.
4. Security. Whenever the City permits a property owner to enter into a public improvement agreement, it shall require the owner to provide sufficient security, to ensure completion of the required public improvements. The security shall be in the form of one of the following:
  - a. a cash escrow, or
  - b. a letter of credit drawn upon a state or national bank. Said letter of credit shall be 1) irrevocable, 2) be of a term sufficient to cover the completion, maintenance and warranty periods, but not less than two years and, 3) require only that the City present the issuer with a sight draft and a certificate signed by an authorized representative of the City certifying to the City's right to draw funds under the letter of credit, or
  - c. a first and prior lien on the property.

Said securities shall be issued in the amount of 110% of the funds estimated by the City Engineer to be necessary to pay for all promises and conditions contained in the Public Improvement Agreement. In addition to all other security, for completion of those public improvements where the City participates in the cost, the owner shall provide a performance bond from the contractor, with the City as a co-obligee. The issuer of any surety bond and letter of credit shall be subject to the approval of the Planning and Zoning Administrator and the City Attorney.

5. As portions of the public improvements are completed in accordance with the Standard Specifications for Public Works Construction, as published by the North Central Texas Council of Governments (NCTCOG), and the approved construction plans, the owner may make application to the Planning and Zoning Administrator to reduce the amount of the original letter of credit or cash escrow. If the Administrator, with the concurrence of the City Engineer, is satisfied that such portion of the improvements has been completed in accordance with City standards, he may cause the amount of the letter of credit or cash escrow to be reduced by such amount that s/he deems appropriate, so that the remaining amount of the letter of credit or cash escrow adequately insures the completion of the remaining public improvements.
- C. Temporary Improvements. The property owner shall build and pay for all costs of temporary improvements required by the Council and shall maintain those temporary improvements for the period specified by the Council. Prior to construction of any temporary facility or improvement, the owner shall file with the City a separate public improvement agreement and escrow, or, where authorized, letter of credit, in an appropriate amount for temporary facilities, which agreement and escrow or letter of credit shall ensure that the temporary facilities will be properly constructed, maintained, and removed.
- D. Governmental Units. Governmental units to which these contract and security provisions apply may file, in lieu of the contract and security, a certified resolution or ordinance from officers or agencies authorized to act in their behalf, agreeing to comply with the provisions of this Article.
- E. Failure to Complete Improvements. For plats for which no public improvement agreement has been executed and no security has been posted, if the public improvements are not completed within the period specified by the City, the preliminary plat approval shall be deemed to have expired. In those cases where a public improvement agreement has been executed and security has been posted and required public improvements have not been installed within the terms of the agreement, the City may:

1. Declare the agreement to be in default and require that all the public improvements be installed regardless of the extent of completion of the development at the time the agreement is declared to be in default;
  2. Suspend issuance of a building permit until the public improvements are completed and record a document to that effect for the purpose of public notice;
  3. Obtain funds under the security and complete the public improvements itself or through a third party;
  4. Assign its right to receive funds under the security to any third party, including a subsequent owner of the subdivision or development for which public improvements were not constructed, in whole or in part, in exchange for that subsequent owner's promise to complete the public improvements on the tract;
  5. Exercise any other rights available under the law.
- F. Acceptance of Dedication Offers. Acceptance of formal offers of dedication of street, public areas, easements, and parks shall be by authorization and written notification to the City Engineer. The approval by the Council of a plat, whether preliminary or final, shall not of itself be deemed to constitute or imply the acceptance by the City of any street, easement, or park shown on the plat. The Council may require the plat to be endorsed with appropriate notes to this effect.

#### 4.2 Construction Procedures

- A. Construction of all public works projects shall be in accordance with the most recent version of Standard Specifications for Public Works Construction issued by the North Central Texas Council of Governments, as may be amended in the City of Ladonia Addendum to the NCTCOG Standard Specifications for Public Works Construction.
- B. Preconstruction Conference. The City Engineer may require that all contractors participating in the construction shall meet for a preconstruction conference to discuss the project prior to beginning work.
- C. Conditions Prior to Authorization. Prior to authorizing construction, the City Engineer shall be satisfied that the following conditions have been met:
  1. The final plat shall be completed to the requirements of the Council at the time of approval.
  2. All required plans and contract documents shall be completed and filed with the Planning and Zoning Administrator.

3. All necessary off-site easements or dedications required for City maintained facilities, not shown on the final plat must be conveyed solely to the City, with proper signatures affixed. The original of the documents, and filing fees as determined by the Planning and Zoning Administrator, shall be returned to the Planning and Zoning Administrator prior to approval and release of the engineering plans.
4. All contractors participating in the construction shall be presented with a set of approved plans bearing the stamp of release of the City Engineer. These plans shall remain on the job site at all times.
5. A complete list of the contractors, their representatives on the site, and telephone numbers where a responsible party may be reached at all times must be submitted to the Planning and Zoning Administrator or City Engineer.
6. All applicable fees must be paid to the City.

#### 4.3 Inspection of Public Improvements

- A. General Procedure. Construction inspection shall be supervised by the City Engineer. Construction shall be in accordance with the approved Plans, Standard Specifications and Standard Details of the City of Ladonia. Any change in design required during construction should be made by the engineer whose seal and signature are shown on the plans. Another engineer may make revisions to the original engineering plans if so authorized by the owner of the plans and if those revisions are noted on the plans or documents. All revisions shall be approved by the City Engineer. If the City Engineer finds upon inspection that any of the required public improvements have not been constructed in accordance with the City's construction standards and specifications, the property owner shall be responsible for completing and/or correcting the public improvements.
- B. Certificate of Satisfactory Completion. The City will not accept dedication of required public improvements until the applicant's engineer has certified to the City Engineer, through submission of a detailed "as-built" survey plat of the property, the location, dimensions, materials, and other information required by the Council or City Engineer. The "as-builts" shall also include a complete set of drawings of the paving, drainage, water, sanitary sewer, or other public improvements, showing that the layout of the line and grade of all public improvements is in accordance with construction plans for the plat. Each as-built sheet shall show all changes made in the plans during construction and on each sheet there will be an as-built stamp bearing the signature of the engineer and date.

The Engineer shall provide to the City one reproducible drawing of each of the utility plan sheets containing the as-built information. When such requirements have been



met the City Engineer, on behalf of the City, shall thereafter accept the public improvements for dedication in accordance with the established procedure. Acceptance of the development shall mean that the developer has transferred all rights to all the public improvements to the City for use and maintenance. The City Engineer may, at his or her discretion, accept dedication of a portion of the required public improvements, provided adequate surety has been given for the completion of all of the required public improvements. Upon acceptance of the required public improvements, the City Engineer shall submit a certificate to the Developer stating that all required public improvements have been satisfactorily completed.

“As-built” drawings shall be submitted in the following formats:

- a. Mylar reproducible drawings - 1 set
- b. Full size prints - 3 sets
- c. Electronic drawings in AutoCAD, or other format acceptable to the City Engineer - 1 set

#### 4.4 Maintenance of Improvements

- A. The owner shall maintain all required public improvements during construction of the development including all drainage and erosion control facilities. All development and construction activities shall be conducted in a manner to prevent damage to adjacent property. The owner shall construct and maintain all facilities required damage to the adjacent property throughout the construction of the project and for two years after final acceptance of the project but the City.
- B. The owner shall covenant to maintain the required public improvements for a period of two (2) years following acceptance by the City of all required public improvements and shall provide a maintenance bond in the amount of 100% of the costs of the improvements for such period. All improvements located within an easement or right-of-way shall be bonded.

#### 4.5 Issuance of Building Permits and Certificates of Occupancy

- A. No building permit shall be issued for a lot or building site unless the lot or site has been officially recorded by a final plat approved by the City and all public improvements as required by the Council have been completed, as attested to by the City Engineer through the issuance of a Certificate of Completion, except as permitted below.
  1. Building permits may be issued for non-residential and multi family development provided that a final plat is approved by the City and construction plans have been released by the City Engineer. Building construction will not be allowed to surpass the construction of fire protection improvements.

2. The City Engineer may authorize the Planning and Zoning Administrator to issue residential building permits for a portion of a subdivision, provided that all public improvements have been completed and accepted for that portion of the development, including but not limited to those required for fire and emergency protection, and a development agreement has been approved by the City for completion of all remaining public improvements.
- B. No certificate of occupancy shall be issued for a building or the use of property unless all public improvements have been completed for the phase of the subdivision or development in which the property is located and accepted and a final plat approved by the City has been recorded.