

ARTICLE XVI SECURITY AND AGREEMENTS.

Section 16.0 Security Guarantees and Agreements.

A. Applicability.

1. The provisions of this section apply to all proposed developments in the City of Fellsmere including private road subdivisions.
2. Nothing in this section shall be construed as relieving a developer of any requirement relating to concurrency in section 17.24 of this Code.
3. This section does not modify existing agreements between a developer and the City of Fellsmere for subdivisions platted and final development orders granted prior to the effective date of these Land Development Regulations, providing such agreements are current and in good standing as to all conditions and terms thereof.

B. Improvement Agreements Required.

When following the issuance of a development order that requires the construction of certain infrastructure improvements, including but not limited to roadways, water and sewer, drainage, and like type facilities, the developer shall, at the discretion of the City, at or prior to final plat buffers approval or site construction authorizations approval, execute a Improvements Agreement with the City of Fellsmere, and post with the City sufficient security in an amount equal to one hundred twenty-five (125) percent of the estimated total cost of improvements to be constructed. The following information shall be provided as part of any improvement agreement:

1. A contract for the construction of all required improvements, which contract shall state that all site improvements, whether required by this Code or constructed at the developer's option, shall be constructed in accordance with the standards and provisions of this Code or as may be required by any condition of approval imposed by the City Council.
2. The term of the contract for construction of required improvements shall indicate that all required improvements shall be satisfactorily constructed within the period stipulated. The term shall not exceed one (1) year from the recording of the plat, unless otherwise specifically authorized by the City Council.
3. The projected total cost for each improvement.
Cost for construction shall be determined by either of the following, subject to review and approval by the City:
 - a) Estimate prepared and provided by the applicant's engineer; including survey, engineering and construction costs;
 - b) A copy of the executed construction contract provided.
4. Specifications of the public improvements to be made and dedicated together with the timetable for making those improvements.
5. Agreement that upon failure of the applicant to make required improvements (or to cause them to be made) according to the schedule for making those improvements, the city shall utilize the security provided to complete the construction of the required improvements.
6. A provision of the amount and type of security provided to ensure performance according to the provisions of subsection C. below.
7. A provision that the amount of the security may be reduced once during the life (term) of the agreement, subsequent to the completion, inspection and acceptance of improvements by the city. Any reduction in the amount of required security, other than the final draw or reduction, may only be authorized by the City Manager, or designee, after the completion of any distinct and separable phase or portion of

the required improvements. The amount of any given reduction shall not exceed eighty (80) percent of the cost of the completed work, as determined by the City Manager, or designee following review of a cost estimate for said work prepared and certified by the developer's engineer. A reduction in construction security shall not be construed as acceptance of the improvements. Formal acceptance shall occur as provided elsewhere in this Section, and only upon establishment of proper maintenance security, where required.

8. A provision that no certificate of occupancy, or other final use authorization, for any portion of the area of the proposed development that may be effected by, or dependent on, the required improvements, shall be issued until the required improvement have been completed, inspected and approved by the City of Fellsmere, or other appropriate regulating authority and a certificate of completion has been issued by the City.
9. A provision that, for good cause shown, the City Council may in its discretion grant one (1) extension of time for performance of any contract for required improvements, provided the security supporting such contract remains valid for the required ninety-day period following the newly extended time for performance. The City Council may charge fees to process requests to extend, modify, or substitute security and contracts for construction. Said fees shall be established by resolution of the City Council.

C. Amount and Type of Security.

1. The amount of the security listed in the improvement agreement shall be approved for adequacy by the City Manager or designee.
2. The security posted to guarantee performance of the contract shall expire, if at all, no less than ninety (90) days beyond the last date for performance established by the contract, or any extension thereof. The security shall run in favor of the City Council, and must be in a form acceptable to the City Attorney, and may be either:
 - a. Cash deposit with the City of Fellsmere, and escrow agreement governing control and use thereof; or
 - b. Irrevocable letter of credit, issued by a financial institution authorized to conduct business in the State of Florida.
3. Standard contract for construction of required improvements forms and escrow agreements are available from the City Attorney and approved by the City Council.

D. Completion of Improvements.

1. When improvements are completed, final inspection shall be conducted and corrections, if any, shall be completed before a certificate of completion is issued. Upon completion of all required improvements to the satisfaction of the City and the receipt of one (1) copy of all test results and three (3) copies of record drawings prepared and certified by the engineer of record, showing the actual installation of such improvements a certificate of completion will be issued, subject to the provision of subsection E1, 2 and 3 below. The engineer of record shall also supply one set of digital drawings of all record drawings.

E. Maintenance of Improvements.

1. Prior to issuance of the certificate of completion for all required improvements, the developer shall execute an agreement and developer and/or its contractor shall provide security guaranteeing the required road, drainage, and sidewalk improvements against all defects in workmanship or materials, for the period of three (3) years from the date of issuance of the certificate of completion. The three (3) year maintenance period begins at the time the certificate of completion is issued.
2. The warranty and maintenance agreement shall be on a form provided by the City

Attorney and shall be secured by an amount equal to twenty-five (25) percent of the total actual cost of the improvements covered. The security shall be either:

- a) A cash deposit and escrow agreement governing control and use thereof; or
 - b) An irrevocable letter of credit issued by a financial institution authorized to conduct business within the state; or
 - c) A maintenance bond underwritten by a security insurer with an A.M. Best's rating of A+ XI or greater and authorized to transact such business in this state.
3. The posted security shall expire, if at all, no earlier than ninety (90) days following the end of the three-year guarantee period. Security for the required improvements shall run to the benefit of City of Fellsmere.
 4. At the end of the three-year period, the City Manager, or designee, may release the security under the terms of the warranty and maintenance agreement, which shall require certified inspection reports under seal from the developer's engineer and a determination from the City Engineer that the required improvements meet applicable City performance standards.
 5. Whenever a proposed development provides for the creation of facilities or improvements which are not proposed for dedication to the city, legal entity shall be created to be responsible for the ownership and maintenance of such facilities and/or improvements.
 - a) When the proposed development is to be organized as a condominium under the provisions of Chapter 718, Florida Statutes, common facilities and property shall be conveyed to the condominium's association pursuant to that law.
 - b) When no condominium association is to be organized, an owners' association shall be created, and all common facilities and property shall be conveyed to that association.
 - c) No development order shall be issued for a development for which an owners' association is required until the documents establishing such association have been reviewed and approved by the City Attorney.
 6. An organization established for the purpose of owning and maintaining common facilities shall be created by covenants running with the land. Such covenants shall be included with the final plat. Such organization shall not be dissolved nor shall it dispose of any common facilities or open space by sale or otherwise without first offering to dedicate, without compensation the same to the city.

F. Failure to Perform.

In the event a developer and/or its contractor fails to perform the obligations for construction or maintenance required under the above referenced agreements, the City may call upon the surety provided, or any portion thereof, to be used for completion of the necessary remaining work. If the surety is exhausted prior to completion of the work necessary to complete the required improvements, the developer shall remain liable to the City for any resulting deficiency. The City is not responsible to complete any subdivision with City funds.

G. Final Release or Reduction of Security.

No Final Release or reduction of construction security shall be done until a Certificate of Completion has been received, reviewed, and approved by the City Manager or designee, and security for maintenance has been established as required above.