

§ 281-22. Contract; guarantees; survey monumentation.

A. **Contract.** The subdivider shall be required to enter into a contract with the Village for land division improvements agreeing to install improvements as herein provided before final approval of any plat, certified survey or land division. The contract form shall be provided by the Village and may provide for a phasing of public improvements construction, provided that such phasing is approved by the Village Board. The Village reserves the right to control the phasing through limits, sequence, and/or additional surety so as to provide for continuity of streets, sewers, water mains, and other necessary public improvements within and between the phases.

B. **Financial guarantees.**

(1) The subdivider shall file with said contract, subject to the approval of the Village Attorney, one of the following forms of guarantees: 1. a certified check in an amount equal to 125% of the estimate of the cost of the improvements, as determined by the Village Engineer; 2. A letter of Credit; 3. A bond; said filing of surety shall guarantee that such improvements will be completed by the subdivider or his contractors ~~not later than 18 months~~ per the developers agreement from the date of recording the final plat or certified survey map. When a certified check is posted as security, the instrument must be negotiable by the Village. When the security is furnished to insure the construction of required improvements within the extraterritorial jurisdiction of the Village, it may name the town and the county, or either of them, as additional obligees, payees or beneficiaries.¹

~~(2) When the land is situated within the extraterritorial jurisdiction of the Village, the subdivider shall, at the time the contract is entered, furnish a certified check to the Village in an amount equal to 125% of the estimated cost of all required improvements as determined by the Village Engineer, except the costs to be paid through special assessments or by the Village.²~~

(3) However, the subdivider may elect, with the approval of the Village, to install the improvements in construction phases, provided that:

(a) The phases are specified in the contract for land division improvements;

(b) The developer submits surety in an amount equal to 125% of the estimated costs of improvements next required by the installation and construction schedules as determined by the Village Engineer; improvements constructed during the first stage and each successive stage of construction shall not be accepted nor shall any building permit be issued for construction within the completed area of the subdivision or comprehensive development until the security required for the next stage of construction has been posted with the Village;³

(c) The developer records deed restrictions approved by the Village Attorney which specify that the lots which are included in future construction phases of the land

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

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division will not be transferred or sold unless the Village's approval is obtained;

- (d) The subdivider minimizes grading and other disturbances to lands included in future construction phases in order to prevent erosion; and
 - (e) Erosion control plans and measures submitted and approved herein shall address the individual phases of construction.
- (4) The time limit for completion of a phased improvement program shall take into account the needs and desires of the Village and adjacent property owners for street and other improvements to serve lands adjacent to and within the land division.
- (5) As work progresses on installation of improvements constructed as part of the contract, the Village Engineer, upon written request from the subdivider from time to time, is authorized to recommend to the Village Clerk-Treasurer a reduction in the amount of surety as hereinafter provided. When portions of construction (water, sanitary sewer, street, sidewalk, greenway or other improvements) are completed by the subdivider and determined acceptable by the Village Engineer, the Village Clerk-Treasurer is authorized, in his sole discretion, upon submission of lien waivers by the subdivider's contractors, to reduce the amount of surety. The amount of surety remaining shall be equal to 125% of the estimate of the Village Engineer of costs of work remaining to be completed and accepted and to insure performance of the one-year guarantee as specified in Subsection D below against defects in workmanship and materials on work accepted. When the work on the major components of construction has been substantially completed, except for work which cannot be completed because of weather conditions or other reasons which, in the judgment of the Village Engineer, are valid for noncompletion, the Village Clerk-Treasurer is authorized, in his sole discretion, to accept a reduction in the amount of surety to an amount, in the estimate of the Village Engineer, sufficient to cover the work remaining to be completed, including performance of the one-year guarantee period against defects in workmanship and materials. As a further guarantee that all obligations under contract for work on the development are satisfied, the contractor and subcontractors who are to be engaged in the construction of utilities or street improvements on the street right-of-way to be dedicated shall be approved for such work by the Village Engineer prior to commencing construction. The Village Board, at its option, may extend the bond period for additional periods not to exceed one year each.
- (6) Governmental units to which these bond and guarantee provisions apply may, in lieu of said contract or instrument of guarantee, file a resolution or letter from officers authorized to act in their behalf, agreeing to comply with the provisions of this section.
- (7) The subdivider shall agree in the development contract to pay all Village legal fees, Village engineering fees, Village administrative fees, and street and sidewalk assessments, specifically all area charges for sanitary sewer mains and all water main and electric utility assessments, including where the land division abuts existing streets which are not improved within the Village standard street improvements (including but not limited to curb and gutter, local storm sewer, sidewalks and a

bituminous pavement).⁴

- C. Waiver of special assessment notice and hearing. The subdivider shall file with said contract, subject to the approval of the Village Attorney, a waiver of special assessment notices and hearings such that the subdivider, his heirs and assigns (including purchasers of property from the subdivider) waive notice and hearing for and authorize the assessment for any and all of the required public improvements in phases of the land division intended for future development in accordance with § 66.0703(7)(b), Wis. Stats.
- D. Improvement guarantee. The subdivider shall include in said contract an instrument of public improvement guarantee by certified check or cash escrow deposit that guarantees maintenance, repair, and replacement by the developer of said public improvements which deteriorate or fail to meet performance or operating standards during the term, or any penalties which may be incurred as a result thereof, equal to 25% of the Village Engineer's estimate of the cost of the public improvements. If within one year after the date of final acceptance of any public improvement by the Village Board (or such longer period of time as may be prescribed by laws or regulations or by the terms of any special guarantee required by the terms of said contract as may be necessary due to the phasing of the construction of public improvements) any work on any public improvement is found to be defective, the subdivider shall remove it and replace it with nondefective work in accordance with written instructions given by the Village Engineer. If the subdivider does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the Village may cause the removal and replacement of said defective work and charge all direct, indirect and consequential costs of such removal and replacement to the improvement guarantee instrument.⁵
- E. Survey monumentation. Before final approval of any plat or certified survey within the corporate limits of the Village, the subdivider shall install monuments placed in accordance with the requirements of Ch. 236, Wis. Stats., or as may be required by the Village Engineer. All survey monumentation located adjacent to street or public rights-of-way, but not located within street pavement, shall be protected with steel fence posts erected near the survey monumentation. The Village Engineer may waive the placing of monuments for a reasonable time during public improvement construction on the condition that the subdivider executes a surety to insure the placing of such monuments within the time required. On behalf of the Village, the Village Clerk-Treasurer is authorized to accept such surety bonds and contracts for monumentation in an amount approved by the Village Engineer. Building permits shall not be issued until all survey monumentation for the block(s) of lots in which the lot(s) for which building permits are being applied for within the phase of the land division under development has been installed. When the land division includes an established one-half, one-quarter, one-quarter-one-quarter, or other such section monument, the established monument shall be preserved and/or fully restored by the subdivider at his cost.

4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

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