



# MAYOR & COUNCIL COMMUNICATION

**DATE:** December 15, 2015  
**REGULAR**  
**ITEM #** 21

**AGENDA ITEM:** Development Agreement Security Reductions – Approve Policy Revisions.

**SUBMITTED BY:** Jack Griffin, City Engineer

**THROUGH:** Clark Schroeder, Interim City Administrator

**REVIEWED BY:** Stephen Wensman, City Planner  
Cathy Bendel, Finance Director

**SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item.....City Staff
- Report/Presentation.....City Staff
- Questions from Council to Staff ..... Mayor Facilitates
- Public Input, if Appropriate.....Mayor Facilitates
- Call for Motion ..... Mayor & City Council
- Discussion ..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

**POLICY RECOMMENDER:** Administration/Finance/Engineering are presenting a policy revision for Council consideration.

**SUMMARY AND ACTION REQUESTED:**

The City Council is respectfully requested to consider approving revisions to the “Summary of Security Requirements” and “Reduction of Security” provisions for the City’s Master Development Agreement as presented or amended at the meeting.

If revisions are approved, the City Council is respectfully requested to consider authorizing staff to apply the amended provisions to the active development projects in the City, thereby allowing for security reductions to be processed for council approval in advance of what is currently allowed in the respective signed development agreements.

**LEGISLATIVE HISTORY/BACKGROUND INFORMATION:**

At the December 1, 2015 Council meeting, City staff was directed to review the Security Reduction process from the City’s Master Development Agreement to determine if additional security reductions

could be accommodated as requested by several developers while maintaining the City's security interests and goals.

The key issue with the current security reduction procedures, as explained by the developers, is that the City potentially may retain 80% to 100% of the initial security until the improvements are roughly 75% to 85% complete. If the developer reaches this milestone during the construction season the timeframe for this discrepancy is relatively short if the development project is well managed. However, if this milestone is reached at the end of the construction season, due to weather conditions, the developer may end up with this discrepancy over the winter months without the opportunity to gain additional reductions for some time.

The City's primary goal is to retain at all times during the subdivision improvements a security amount that is adequate to ensure completion of all elements of the improvements as protection to the City tax payers against the potential of developer default. Additional City goals include: (1) the desire to retain sufficient security to provide the developer the incentive to complete all improvements on schedule, (2) to provide an incentive to maintain timely and responsive progress with the restoration, landscaping, corrective actions and other minor improvement items that would otherwise become a nuisance to surrounding properties and the City, and (3) to keep the number of security reduction requests manageable for City staff.

With these principals in mind, City staff has prepared revisions to the "Summary of Security Requirements" and "Reduction of Security" provisions for the City's Master Development Agreement for council consideration. The revised provisions are attached for review. Staff will review these provisions in greater detail with Council as part of the staff report at the meeting.

**RECOMMENDATION:**

Staff is recommending that the City Council approve revisions to the "Summary of Security Requirements" and "Reduction of Security" provisions for the City's Master Development Agreement as presented or amended at the meeting. The recommended motion for the action is as follows:

***"Move to approve revisions to the "Summary of Security Requirements" and "Reduction of Security" provisions for the City's Master Development Agreement (as presented) or (as amended)."***

If revisions are approved, staff is recommending that the City Council authorize staff to apply the amended provisions to the active development projects in the City, thereby allowing for security reductions to be processed for council approval in advance of what is currently allowed in the respective signed development agreements. The recommended motion for the action is as follows:

***"Move to authorize staff to apply the amended provisions to the active development projects in the City, thereby allowing for security reductions to be processed for council approval in advance of what is currently allowed in the respective signed development agreements."***

**ATTACHMENT(S):**

1. Proposed Revisions including Pages 18-21 of the Master Development Agreement.

from the date of final written acceptance, unless the wearing course is placed during the same construction season as the bituminous base course. In those instances, the Developer shall guarantee all work, including street construction, concrete curb and gutter, sidewalks and trails, material and equipment for a period of two (2) years from the date of final written City acceptance of the work.

C. The required warranty period for sod, trees, and landscaping is two growing seasons following installation.

**34. SUMMARY OF SECURITY REQUIREMENTS.** To guarantee compliance with the terms of this agreement, payment of special assessments, payment of the costs of all public improvements, and construction of all public improvements, the Developer shall furnish the City with an irrevocable letter of credit, in the form attached hereto, from a bank, cash escrow or a combination cash escrow and Letter of Credit ("security") for \$ \_\_\_\_\_. The amount of the security was calculated as follows:

CONSTRUCTION CATEGORY:	COST	125%
1. Grading		
2. Sanitary Sewer		
3. Watermain		
<del>4.</del> <u>Storm Sewer (includes pond structures and outfall pipes)</u>		
<del>4-5.</del> Streets (includes Sidewalks)		
<del>5-6.</del> Trails		
<del>7.</del> <u>Surface Water Facilities (pipe, ponds, infiltration basins, bio retention basins, rain gardens, etc.)</u>		
<del>7.</del> <u>Erosion Control</u>		
8. Street Lighting		
<del>9.</del> <u>Street Signs and Traffic Control Signs</u>		
<del>9-10.</del> <u>Private Utilities (electricity, natural gas, telephone, and cable)</u>		

Formatted: Indent: Left: 0.3", No bullets or numbering

Formatted: Indent: Left: -0.01", Hanging: 0.31", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5", Tab stops: Not at 0.92"

Formatted: Indent: Left: 0.3", No bullets or numbering

Formatted: Indent: First line: 0", Tab stops: Not at 0.92"

Formatted: Indent: Left: -0.01", Hanging: 0.31", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Indent: Left: 0", First line: 0"

Formatted: Indent: Left: 0.3", No bullets or numbering

- ~~40.11.~~ Landscaping
- ~~41.12.~~ Tree Preservation and Restoration
- ~~42.13.~~ Wetland Mitigation and Buffers
- ~~43.14.~~ Monuments
- 15. Erosion and Sedimentation Control
- ~~44.16.~~ Miscellaneous Facilities
- ~~45.~~ Developer's Record Drawings
- 17.

<b>CONSTRUCTION SUBTOTAL</b>	<b>\$</b>	<b>N/A</b>
<b>TOTAL PROJECT SECURITIES (at 125% Construction Costs)</b>	<b>\$</b>	<b>N/A</b>

Formatted: Indent: Left: 0.3", No bullets or numbering

Formatted: Indent: Left: -0.01", Hanging: 0.31", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

This breakdown is for historical reference; it is not a restriction on the use of the security. The bank shall be subject to the approval of the City Administrator. The City may draw down the security, without notice, for any violation of the terms of this Contract or if the security is allowed to lapse prior to the end of the required term. If the required public improvements are not completed at least thirty (30) days prior to the expiration of the security, the City may also draw it down. If the security is drawn down, the proceeds shall be used to cure the default.

**35.36. REDUCTION OF SECURITY.** Upon written request by the Developer to the City Engineer and upon receipt of proof satisfactory to the City Engineer that work has been completed in accordance with the approved plans and specifications, and terms of this Agreement, and that all financial obligations to the City have been satisfied, ~~with the~~ City Engineer may approve ~~reductions in~~ the security ~~may be reduced~~ as follows:

A. Upon completion of grading operations, including temporary site restoration, Developer shall submit an as-built grading survey to the City that at a minimum establishes the as-built grades at all lot corners and downstream drainage conveyance systems and storm water ponds. Upon inspection of the site and approval of the as-built survey, 100%, or \$ \_\_\_\_\_, of the

grading security ~~may~~ shall be released. This security reduction does not include amounts related to erosion and sedimentation control.

B. Up to 75% of the security provided in accordance with paragraph 34 may be released upon completion of the following key milestones of the project as determined by the City Engineer at the following stages of construction and project approvals by the City.

C. Construction Categories 2 and 3: The amount of \$ \_\_\_\_\_ may be released when all sanitary sewer and watermain utilities have been installed, all testing and televising has been successfully completed, sanitary sewer as-built inverts utility record drawings have been verified, and the utilities are considered ready for use by the City Engineer.

D. Construction Categories 4 and 5-6: The amount of \$ \_\_\_\_\_ may be released when all streets, sidewalks, ~~trails, and~~ storm sewer, ~~and storm water facilities~~ have been installed and tested, and have been found to be complete to the satisfaction of the City Engineer including all corrective work for any identified punch list items and including verification of storm sewer as-built inverts, but not including the final wear course.

E. Construction Categories ~~6-7-185~~: The amount of \$ \_\_\_\_\_ may be released when all remaining Developer's obligations under this Agreement have been completed ~~and the Public Improvements have been found to be complete to the satisfaction of the City including all corrective work for any identified punch list items, but not including the final wear course, including: (1) bituminous wear course, (2) street lighting and private utilities, (3) trails, (4) bio retention facilities, (5) iron monuments for lot corners have been installed, (3) all financial obligations to the City satisfied, (4) the required "record" plans in the form of the City standards have been received and approved by the City, and (5) the public improvements are accepted by the City Engineer and City Council.~~

F. At no point may the Security be reduced below Twenty-five percent (25%) of the ~~original security amounts in paragraph 34 shall be retained as security~~ until: (1) the warranty period has expired ~~all improvements have been completed, including bituminous wear course,~~ (2) all improvements have been fully completed and excepted by the City, including all corrective work and identified punch list items ~~iron monuments for lot corners have been installed,~~ and (3) all financial obligations to the City have

**Formatted:** Indent: First line: 1", Numbered + Level: 2 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: -0.5" + Indent at: 0"

~~been satisfied, (4) the required "record" plans have been received and approved by the City, (5) a warranty security is provided, and (6) the public improvements are accepted by the City.~~

~~G. In addition to the above project milestone based security reductions, the Developer may submit written request to the City Engineer and upon receipt of proof satisfactory to the City Engineer that work is progressing in accordance with the approved plans and specifications, and terms of this Agreement, and that all financial obligations to the City have been satisfied, the City Engineer may approve a one-time reduction in the security for Construction Categories 2-5 in an amount not to exceed fifty percent (50%) of the initial security amounts.~~

~~A.H. It is the intention of the parties that the City at all times have available to it a Letter of Credit in an amount adequate to ensure completion of all elements of the Subdivision Improvements and other obligations of the Developer under this Agreement, including fees or costs due to the City by the Developer. To that end and notwithstanding anything herein to the contrary, all requests by the Developer for a reduction or release of the Letter of Credit shall be evaluated by the City in light of that principle.~~

**36. SUMMARY OF CASH REQUIREMENTS.** The following is a summary of the cash requirements under this Contract which must be furnished to the City at the time of final plat approval:

Sewer Availability Charge (SAC)	\$
Water Availability Charge (WAC)	
Erosion Control	
Park Dedication	
Street Light Operating Fee	
City Base Map Upgrading	
City Engineering Administration Escrow	
<b>TOTAL CASH REQUIREMENTS</b>	<b>\$</b>

**37. NOTICES.** Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified mail at the following address: \_\_\_\_\_ . Notices to the City shall be in writing and shall be either hand delivered to the City Administrator, or mailed to the City by certified mail in care of the City Administrator at the following address: Lake Elmo City Hall, 3800 Laverne Avenue N. Lake Elmo, Minnesota 55042.