

**22.10 CONSTRUCTION STANDARDS AND GUARANTEES, CONSTRUCTION AND MAINTENANCE INSPECTIONS, ACCEPTANCE OF PUBLIC IMPROVEMENTS AND MAINTENANCE PERIOD** *Amended, 467, 397*

A. **CONSTRUCTION AND MAINTENANCE REQUIREMENTS:** The site grading and erosion control, water distribution system, sanitary sewer system, stormwater management system, street system, street lights, sidewalks, bicycle paths, driveway approaches, landscaping and tree planting (“Public Improvements”) for every subdivision/planned development shall be constructed in strict accordance with the approved engineering plans and specifications therefore, and the standards set forth herein. The public improvements shall be so maintained by the subdivider/developer for a minimum period of 24 months after the Village Engineer has certified completion of the public improvements for the subdivision/planned development as to comply with maintenance requirements set forth in this section and in the Village Stormwater Management Ordinance (Chapter 25 of the Prairie Grove Municipal Code), where applicable. The letter of credit shall be posted to guarantee the completion of and payment for the public improvements, and the procedures for their acceptance by the Village are hereinafter set forth. Security shall be posted to guarantee maintenance and payment for repairs to the public improvements in accordance with the provisions hereinafter set forth. The letter of credit to be in the Village approved format.

B. **CONSTRUCTION STANDARDS:** The public improvements for all subdivisions and planned developments shall be constructed in a good and workmanlike manner in strict accordance with the standards set forth herein, as they may be amended from time to time, and the approved final engineering plans and specifications therefore.

C. **GUARANTEE OF COMPLETION, PAYMENT AND CONSTRUCTION:** The Board of Trustees will not cause the final plat/plan of any subdivision/planned development to be signed and recorded unless and until the subdivider/developer and the owner have (1) satisfied all the terms and conditions of the ordinance approving of the preliminary plat; (2) has executed and delivered to the Village Hall a Public Improvement Completion Agreement and has tendered cash or filed with the Village a letter of credit to guarantee that all required public improvements, including, but not limited to: site grading and erosion control, water distribution system, sanitary sewer system, storm water management system, street system, street lights, sidewalks, bicycle paths, driveway approaches, landscaping and tree planting, damage to existing public improvements, and will be completed in a good and workmanlike manner with materials of good quality in strict accordance with the engineering plans and specifications (the “Plans”) for the public improvements approved by the Village Engineer within a reasonable time (the “Time Limits”) to be determined by the subdivider/developer with the approval of the Board of Trustees, on the recommendation of the Village Engineer, and to further guarantee that the public improvements will be fully paid for and properly maintained in accordance with the requirements of this Subdivision Code; and (3) has complied with all of the provisions of this Subdivision Code.

D. **GUARANTEE PUBLIC IMPROVEMENTS:** To guarantee that the public improvements will be completed within the time limits, fully paid for and properly maintained, the subdivider/developer shall file with the Village:

1. A Public Improvements Completion Agreement in the form approved by Village Attorney.

2. One of the following forms of guarantee of performance and payment (“the Construction Security”) in an amount equal to 150 percent of the estimated construction cost of the public improvements, as approved by the Village Engineer, shall be filed with the Village in form approved by Village Attorney, amount approved by Village Engineer and approved by the Board of Trustees: a cash deposit or an irrevocable letter of credit issued by a federally insured financial institution with assets of at least \$50,000,000, and a capital asset ratio of at least 6 percent, in the form approved by the Village Attorney.

The form of the construction security must be approved by the Village Attorney and it shall be the developer/subdivider’s obligation to cause the financial institution from which it intends to furnish a letter of credit, if applicable, to furnish a current financial statement to the Village so that the Village can determine whether the issuer meets the minimum standards.

3. Cost estimates shall be prepared by the subdivider’s engineer and submitted to the Village Engineer for approval not less than 30 days prior to a request for execution of a plat by the Village. The Village Engineer shall estimate and certify to the Board for its approval the amount of security required, being an amount equal to not less than 150 percent of the reasonably estimated cost of the public improvements plus such additional amount as may be required.
4. If the scheduled completion date for any of the public improvements is more than one year after the date on which any cash deposit is made or letter of credit is issued, the amount of such cash deposit, letter of credit or escrow deposit shall be increased by 1.25 percent for each month or fraction thereof by which such scheduled completion date exceeds one year to allow for estimated construction cost increases and repairs to partially completed improvements. For example, if parkway and open space restoration is not scheduled for completion until two years and six months after the security deposit is made, the security shall be in an amount equal to 137.5 percent of the estimated construction cost of parkway and open space restoration and 150 percent of the estimated construction cost of the other public improvements, assuming the other public improvements are reasonably estimated to be completed within one year.
5. **Record of Account:** Village Hall staff shall maintain a complete record of each cash deposit or letter of credit established to guarantee completion of public improvements, the name of the subdivision, the estimated cost of the public improvements, the scheduled completion dates and the date on which the letter of credit expires. Village Hall staff shall report quarterly to the Board of Trustees on the status of each such cash deposit and letter of credit.
6. **Time Limits:** The time limits may be extended up to one year by the Board of Trustees upon the recommendation of the Village Engineer and/or Plan Commission, for good cause shown, provided the security

shall be extended to cover the new completion date and adjusted for estimated increased costs. The time limits may be extended beyond one year by the Board of Trustees, in its sole discretion, provided the security shall be extended to cover the new completion date and adjusted for increased costs.

7. **Expiration of Letter of Credit:** Upon receipt of the notice of expiration of any letter of credit to the Village, the Village Engineer shall issue a written status report to the Board of Trustees indicating which, if any, of the public improvements are not complete, and either recommend the security be (a) extended, and if extended, whether the amount of the security must be increased to cover the incomplete work, or (b) collected such (1) that the cash deposit be forfeited, or (2) the letter of credit be drawn upon, to cover the estimated cost of the incomplete work plus a sum equal to 15 percent of the Engineer's original estimate of cost to satisfy the subdivider/developer's maintenance security obligation. In the event the subdivider/developer fails to renew and/or extend the letter of credit upon request to do so, the Village shall draw the entire amount available under such letter of credit. Village Hall staff shall maintain the proceeds of any forfeited cash deposit drawn on a letter of credit in a separate fund to be used solely for payment of the cost of completion of the public improvements for that subdivision/planned development, including engineering fees and any legal expenses incurred in connection with obtaining the proceeds of the letter of credit.
8. **Cost Estimate:** If an engineer's estimate of cost is more than 6 months old at the time the plat is recorded, a revised estimate of cost shall be provided, reviewed and approved by the Village Engineer at the subdivider/developer's expense.
9. **Reduction Requests:** The subdivider/developer may request reductions in the balance of the security upon completion of each eligible category of public improvement. The reduction will be 90 percent of the original estimated amount for each eligible category. The remaining 10 percent shall be retained to cover punch list work. Also an additional 15 percent of the approved estimate of the cost of construction of the public improvements shall be retained until the public improvements have been accepted and the requisite maintenance guaranty posted with the Village. Specific information regarding security reductions is available through the Village Engineer.

E. **PERMITS REQUIRED:** None of the work specified herein shall be performed on any portion of the site of a subdivision/planned development until the Village has issued the following special permits:

1. **Early Earthwork Permit:** An early earthworks permit may be issued by the Village only after all of the items listed in the early earthwork checklist have been completed (see Appendix E), the subdivider/developer has executed a Waiver Agreement (see Appendix E), and has posted cash or a let-

ter of credit in an amount sufficient to perform said earth work and to completely restore the property to its original condition if the project is not subsequently approved by the Village.

2. **Site Development Permit:** A site development permit may be issued by the Village only after all of the items listed in the site development permit checklist have been completed, the final subdivision plat/planned development plan has been approved and the site development permit fee has been paid pursuant to the Prairie Grove Municipal Code.
3. **Demolition Permits:** Prior to the demolition of any structure on the land being improved as part of a subdivision/planned development, the subdivider/developer shall apply for and secure a demolition permit. Demolition permits shall also be required for abandoning private wells and septic systems after presentation of a permit or other authorization from the McHenry County Department of Public Health.

F. **TREE REMOVAL:** Tree removal shall be pursuant to the Prairie Grove Municipal Code.

G. **OTHER PERMITS:** The subdivider/developer shall be subject to any other applicable permits, such as those required and issued by the Illinois Environmental Protection Agency, U.S. Army Corps of Engineers, state and county.

H. **INSPECTION OF PUBLIC IMPROVEMENTS REQUIRED:** The public improvements shall be subject to inspection by the Village Engineer and other officials or personnel as designated by the Board of Trustees, both during the course of construction and after construction is completed. The Village Engineer shall have authority over construction, materials, methods of construction and workmanship to insure compliance with this Subdivision Code and the submitted and approved plans. The subdivider/developer shall provide for reasonable tests and proof of quality of materials as reasonably requested by the Village Engineer. The Village Engineer may require that work be suspended for due cause, which shall include adverse weather conditions, questionable materials or methods of construction or workmanship, or failure to adhere to this Subdivision Code and the submitted and approved plans.

1. **Notification:** It shall be the responsibility of the subdivider/developer or its general contractor to notify the Village Engineer and other Village officials or personnel as designed by the Board of Trustees when work is to be started and to request inspections. The initial notification that a particular improvement is to be started shall be in writing and every request for an inspection must be received by the Village at least 72 hours in advance of the time that the requested inspection is to begin.
2. **Subdivider/Developer Responsibility:** Failure of any Village employee, inspector, agent or official to detect construction work or materials, which fail to meet the requirements of this Subdivision Code and the submitted and approval plans, or either of them, shall in no way relieve the subdivider/developer of full responsibility for adherence by it and all contractors and material suppliers to this Subdivision Code and the submitted and

approved plans, nor for failure to adhere to high standards of materials, methods and workmanship.

3. **Inspection and Approval:** When all of the public improvements, including the public improvements of a separate phase or unit, are completed in their entirety, the developer/subdivider must formally request the Village Engineer in writing to certify completion of the public improvements. Upon receipt of the letter of request, the Village Engineer, in conjunction with the Building Inspector, will schedule a final inspection to take place as soon as reasonably possible after receipt of the letter. The first final inspection is done in order to allow the developer to start the 24-month maintenance period. Another final inspection is done at the end of the 24-month maintenance, which allows the developer to turn all improvements over to the Village. Due to the inability to determine whether parkway trees are living during winter months, and the inability to conduct certain other inspections when snow is on the ground, the Village Engineer will not certify completion or recommend acceptance by the Board of Trustees between November 1 and May 1. All deficient Public Improvements which do not totally conform to this Subdivision Code and the submitted and approved plans will be put on a written punch list (the "Construction Punch List"). The Construction Punch List will be forwarded to the developer/subdivider for processing. When the developer/subdivider has corrected the deficiencies in the Construction Punch List, the developer/subdivider shall request a second final inspection of the Village Engineer. Scheduling of a second inspection shall be the same as for the final inspection. If the length of time between the initial final inspection and the second final inspection is greater than 4 months, or if the noted deficiencies have not been corrected at the time the second final inspection is made, the request for certification of acceptance may be canceled by the Village Engineer. If canceled, a second request letter will be required, and said certification will be subject to the following additional requirements:

- a. The developer/subdivider shall be required to pay all costs incurred by the persons conducting the inspection, including, but not limited to, Village staff.
- b. The Construction Punch List recorded during the initial final inspection will be voided and a complete re-inspection may be required.

Neither acceptance nor certification of completion by the Village Engineer or acceptance by any employee, inspector, agent or official of the Village, nor maintenance of the public improvements by the Village shall be deemed accepted by the Village. No public improvements shall be accepted or deemed to be accepted until the Board of Trustees enact an ordinance accepting such public improvements on the written recommendation of the Village Engineer upon satisfaction of the conditions set forth herein. This is after the final inspection at the end of the 15-month maintenance period.

4. **Required Barricades:** Once residential or commercial structure construction activities have started, the subdivider/developer shall have on the project site at all times a minimum of 12 type 2 barricades with lights, which can be erected as needed during repair activities to curb, pavement, sidewalk or other public improvement, to protect the residents in the subdivision/planned development and area. Above what is necessary on site, an additional 12 barricades must be available.

I. **PROTECTION AND REPAIR OF EXISTING PUBLIC IMPROVEMENTS:** The subdivider/developer and its contractors, subcontractors and material suppliers shall be jointly and severally responsible for protecting the existing public improvements in the subdivision/planned development against damage resulting from their construction activities in the Subdivision/planned development and assuring the Village that such existing public improvements and the property of the Village are not damaged or rendered less useful or unsightly as a result of such construction activities. This provision is intended to include any and all damages to, and any nuisance created upon, all public lands, improvements and landscaping of the Village or other governmental entities and public agencies; damage to existing streets, sidewalks, curbs and gutters, driveway approaches and parkways, by the passage there over of equipment or trucks, or by excavation for any purpose; the spilling or tracking of earth, sand or rock onto existing streets, sidewalks, curbs and gutters or parkways; the erosion by storm water of earth, gravel, sand or other debris onto streets, sidewalks, curbs and gutters, drainage swales, manholes, valve vaults, inlets or catch basins; or the damage of water mains, sanitary sewer, b-boxes, hydrants, culverts or storm sewers. To reduce or localize the possibility of damage to streets by heavy trucks, the subdivider/developer shall cause its contractors, subcontractors and material suppliers to follow instructions of the Village as to which streets may be used for access to the subdivision/planned development by their equipment and trucks and the subdivider/developer shall be absolutely responsible for the enforcement of such instructions upon its contractors, subcontractors and their suppliers. Where deemed advisable, the Board of Trustees shall require, either prior to commencement of construction or after construction is in progress, that the subdivider/developer post additional security in the form of a cash deposit or a letter of credit to guarantee the repair of any damages or abatement of any nuisance, caused, suffered or permitted by the subdivider/developer, its contractors or material suppliers. Where the need for such assurance becomes apparent after construction is in progress, the Board of Trustees shall order construction discontinued until such security has been posted. The Village may draw upon such cash deposit or letter of credit to pay for any expenses that have been or may be incurred by the Village for cleaning its streets, catch basins and sewers, regrading as landscaping drainage swales, and repairing any damages to its public improvements.

J. **CONCLUSION OF THE PUBLIC IMPROVEMENT CONSTRUCTION:** The completion date of the public improvements shall be the first day of the next month following completion of the public improvements and all punch list work certified by the Village Engineer based on the Village Engineer's determination that all of the conditions set forth herein have been satisfied (the "Completion Date").

K. **ACCEPTANCE PROCEDURE FOR PUBLIC IMPROVEMENTS:** Public improvements shall be accepted only by the enactment of an ordinance by the Board of Trustees upon the recommendation of the Village Engineer. Such recommendation shall be contingent upon the following conditions being satisfied:

1. **Work in Accordance with Plans:** All of the public improvements shall have been completed in a good and workmanlike manner using materials of good quality and shall be maintained in good repair by the subdivider/developer in accordance with the standards and requirements of this Subdivision Code as of a date certain, and no component part of the public improvements shall be accepted until all of the component parts of the public improvements throughout the subdivision/planned development have been completed in accordance with the plans therefore, and this Subdivision Code, and maintained by the subdivider/developer.
2. **Waivers:** The developer/subdivider has furnished to the Village Engineer a sworn contractor's statement from each prime contractor with whom it contracted for the construction, installation, repair and maintenance, and a final waiver of lien from every person and entity that furnished labor and/or material in connection with the public improvements, including final waivers from all subcontractors and material suppliers shown on first tier subcontractor's waivers to assure the Village of protection against mechanic's lien claims through the completion date.
3. **Test Reports:** Where required by this Subdivision Code or reasonably deemed necessary by the Village Engineer, test reports indicating compliance with this Subdivision Code and the submitted and approved plans must have been furnished to the Village Engineer.
4. **Village Attorney Approval:** The Village Attorney shall have given a written report to the Board of Trustees that the developer/subdivider or owner, as the case may be, has or have made all necessary conveyances and the Village Attorney has approved of the form of the maintenance guaranty posted by the developer/subdivider.
5. **Village Hall Staff Approval:** Village Hall staff shall have acknowledged in writing their receipt of the original maintenance guaranty in form as approved by the Village Attorney.
6. **Warranty Title:** A warranty title, in form approved by the Village Attorney, transferring title to the public improvements to the Village, shall have been delivered to the Village Hall staff.
7. **Benchmarks:** At least 2 benchmarks must be set in each subdivision. One for up to 80 acres and 1 for each additional 40 acres or part thereof. This will be done through coordination with the Village Engineer and paid for by the developer.
8. **Submittal of Final Plans:** Submit to the Village Engineer reproducible mylar set and prints of the required record drawings. The record drawings shall include service location information for sanitary sewer and water for each lot or well and septic as applicable reflect all field changes regarding location and elevation for public improvements.

9. **Inspection of Improvements:** All sanitary sewers must be clean; must have been televised and the videotape thereof turned over to Village for its records, and must have passed the required tests. All sanitary sewer and valve vaults manholes must be water tight and clean. All fire hydrants must be at grade and operable, all hydrant auxiliary valves must be keyable. All catch basins, inlets and storm sewer lines must be free of dirt and debris. No manholes, valve vault frames and drainage structure frames located within roadways may protrude above the roadway surface, but must be even with, or no more than one-half inch below the roadway surface. A full stand of grass shall have been established on all parkways and drainage swales. In the opinion of the Village all dead, dying or diseased parkway trees shall have been replaced. All domestic "buffalo" boxes shall have been adjusted to proper grade, located and keyed by Village Public Works personnel. All structurally cracked or sinking sidewalks, driveways, aprons or curbs shall have been replaced. Variations in roadway surfaces shall not be greater than one-quarter inch in 10 feet as checked using a 10-foot long straight-edge in each wheel lane. All roadway surface and base course thickness must be within substantial compliance with the approved plans and specifications. The Village shall have received a set of "record drawings" showing the locations of all water and sanitary sewer service connections. All streetlights must provide the minimum light levels specified in the lighting standards of this Subdivision Code. All failures must have been repaired and all defects corrected. The public improvements must have been constructed in substantial compliance with the plans. The developer shall submit "as-builts" of the entire project, including location of drain tiles, at the time of the walk through.

L. **GUARANTEE FOR MAINTENANCE OF PUBLIC IMPROVEMENTS:** The subdivider/developer shall post adequate security to guaranty the maintenance of the public improvements and every component part of the public improvements in an acceptable condition for the maintenance period and to guaranty payment for all maintenance work. To guaranty that the public improvements will be maintained during the maintenance period and to guaranty payments for all labor and/or material during the maintenance period, the subdivider/developer shall file with the Village one of the following forms of guaranty of maintenance ("the Maintenance Guaranty") in an amount equal to 15 percent of the engineer's estimate of construction cost of the public improvements as approved by the Village Engineer: a cash deposit or an irrevocable letter of credit issued by a federally insured financial institution with assets of at least \$50,000,000 and a capital asset ratio of at least 6 percent, in the form approved by Village Attorney.

M. **RESPONSIBILITY FOR MAINTENANCE:** The subdivider/developer shall be responsible for the maintenance of all of the public improvements for its subdivision/planned development for the 24-month maintenance period, and for the payment of all costs associated therewith.

1. **Protection of Improvements:** The subdivider/developer shall be responsible for protecting the public improvements from any damage resulting from the subsequent construction activities of its own contractors and sub-



contractors, and the construction activities of builders who purchase lots in the subdivision/planned development.

2. **Maintenance Obligations:** The subdivider/developer's maintenance responsibilities obligations shall include, but are not limited to: (a) maintaining the public improvements, (b) repairing any damage to the public improvements caused by the developer, its agents, servants, employees or its successors and assigns, or by any contractor hired by the subdivider/developer, its agents, servants, employees, successors or assigns, or any subcontractor hired by such contractor, (c) repairing or replacing any defective workmanship or material in the public improvements, (d) making good and protecting the Village against the results of any defective workmanship or materials appearing to have been incorporated in any part of the public improvements which shall have appeared or been discovered within the maintenance period, and (e) paying for the cost of all such maintenance work. In the event that any such public improvements are damaged, the burden shall be on the subdivider/developer to show that such damage was not caused by the subdivider/developer, its agents, servants, employees, successors or assigns, or by any contractor hired by the subdivider/developer, its agents, servants, employees, successors or assigns, or any subcontractor hired by such contractor.
3. **Village Services:** During the maintenance period, the Village will provide its customary street sweeping and snow plowing services, and enforce its vehicle code, on the public streets of a subdivision/planned development, but any and all other maintenance of the public improvements therefore shall be performed by the subdivider/developer. A separate snowplow agreement shall be signed prior to winter and before any services by the Village shall commence.
4. **Term of Maintenance Period:** The maintenance period shall commence on the completion date as certified by the Village Engineer and continue for a minimum of 24 months. The Village Engineer shall establish the length of the maintenance period such that the expiration date of the maintenance period occurs between May 1 and November 1. This schedule eliminates expiration during the winter months and allows inspections and repairs to be made during favorable weather conditions.

Notwithstanding the length of the maintenance period, the maintenance guarantee shall in all cases be for 24 months. Approximately 90 days before the expiration of the maintenance period, the Village Engineer and Public Works Department, or their designees, shall conduct a maintenance inspection. In the event the inspection reveals any deficiencies in the public improvements, the deficiencies will be inventoried and placed on a Maintenance Punch List, which the Village Engineer will forward to the developer/subdivider to remedy. The Village Engineer shall also prepare an estimate of the approximate cost to correct all such deficiencies on the Maintenance Punch List and forward the estimate to the Village Treasurer. The developer/subdivider shall then have 45 days from the date the Main-

tenance Punch List is mailed to correct and remedy all items listed. The Village Engineer and Superintendent of Public Works shall then conduct a final maintenance inspection prior to expiration of the maintenance period to determine compliance. In the event there remain any uncorrected deficiencies or any new deficiencies are discovered, the Village Engineer shall provide a written estimate of the cost to correct said deficiencies to the Village Hall staff.

Within 30 days of the end of the maintenance period, the developer/subdivider shall furnish to the Village Engineer a general contractor's sworn statement from each prime contractor with whom it contracted to perform any of the maintenance work and final waivers of lien from all persons and entities that furnished labor and/or materials in connection with the maintenance work.

In the event there were any uncorrected deficiencies during the maintenance period and/or missing waivers of lien, the Village Clerk shall either (a) deduct from the cash deposit an amount sufficient to correct said deficiencies, including all estimated engineering, legal and other expenses to cover the cost of preparing specifications, bid documents (if applicable) and contract(s) to perform such corrective work, and to cover any potential lien claims based on missing waivers of lien, (b) deliver a notice to the surety demanding performance of its obligations under the maintenance bond, and (c) deliver a site draft to the issuer of the maintenance letter of credit in an amount sufficient to correct the deficiencies, including estimated engineer, legal and other expenses to cover the cost of preparing specifications, bid documents (if applicable) and contract(s) to perform such corrective work, and to cover any potential lien claims based on missing waivers of lien, all before the expiration of the 24-month maintenance guaranty. A fine of \$1,000 cash shall be charged for incomplete work. The Village Engineer shall set the end of the maintenance period such that it will not expire between November 1 and the following May 1.

N. COMPLETION OF ALL SUBDIVISION RELATED CONSTRUCTION RESPONSIBILITIES: All public improvement construction requirements secured by letters of credit or performance bonds shall be fully completed upon the earlier to occur of 24 months subsequent to final subdivision plat approval or when building permits have been issued for 75 percent of the lots in the particular subdivision ("Required Public Improvement Completion Date"). Failure to meet the Required Public Improvement Completion Date shall constitute a violation of this Section and a default under the applicable letter of credit, performance bond or cash security on deposit with the Village.

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