

**ARTICLE VIII. AGREEMENTS****Sec. 26-201. General.**

(a) *Purpose.* The purpose of this article is to set forth the requirements and procedures that the city will use to ensure that:

- (1) Adequate funds are available for installation of public improvements;
- (2) Public improvements are installed in a coordinated and timely manner as development occurs;
- (3) Public improvements are installed in conformance with city standards;
- (4) Critical improvements and secured private improvements as defined in section 26-202, are installed in a timely manner;
- (5) Developments and improvements are made in accordance with an approved phasing plan; and
- (6) Any additional agreements between the city and the applicant are documented and enforceable; including those related to timing of development, the vesting of development rights for periods beyond three (3) years, or adjustments to required fees or dedications.

(b) *Definitions.* For the purpose of this article VIII, public improvements shall include improvements owned or maintained by the city or those located on city owned property.

(Ord. No. 1802, § 8.1, 7-23-01; Ord. No. 2302, § 1(Exh. 1), 2-2-10)

**Sec. 26-202. Improvements agreement.**

(a) *Purpose.* The purpose of an improvements agreement is to provide a mechanism where a developer can obtain a certificate of occupancy for a building, or receive approval of a final plat, prior to completing all of the required public and private improvements.

(b) *Applicability.* No final plat shall be signed by the city or recorded at the office of the county clerk and recorder and no certificate of occupancy shall be issued for development requiring the installation of public improvements and certain private improvements with public benefit such as sidewalks and trails, until the required improvements are completed and have final acceptance/approval or an improvements agreement between the city and the applicant is fully executed.

(c) *Prerequisites.* Prior to preparation of an improvements agreement, sufficient design information must be prepared to identify the scope of the improvements. When required by the director of public works for sites with public infrastructure, the design must be in the form of approved civil construction plans.

(d) *General.* An improvements agreement shall run with and be a burden upon the land described in the agreement.

(e) *Types of improvements.* An improvements agreement may address the following types of public and private improvements:

- (1) *Streets and transportation.* All elements of a complete street system including, but not limited to, roadway curbs and gutters, alleys, stormwater systems, sidewalks, street lights, traffic control (such as signs, striping, and traffic signals), bridges, railroad crossings, transit stops, transit shelters.
- (2) *Utilities and services.* Water, fire hydrants, sewer, gas, electric, telephone, cable television, and postal delivery facilities.
- (3) *Recreation.* Parks, open space, landscaping, playground equipment, and other facilities.
- (4) *Pedestrian facilities.* Sidewalks, trails, associated lighting, and over and underpasses.
- (5) *Drainage.* Stormwater detention ponds, water quality facilities, drainage ditches, flood prevention and flood mitigation improvements, wetlands, and other components of the stormwater system.
- (6) *Other.* Landscaping, survey monuments and other public improvements as determined by city council or the director.
- (7) *Secured private improvements.* The director may require construction of private improvements to be secured in an improvements agreement if the private improvements are necessary for efficient and orderly development or to prevent or mitigate the impact of development on adjacent property or the general public. Such private improvements include, but are not limited to: sidewalks and trails, private stormwater quality systems, private stormwater systems, grading, revegetation, and wetland mitigation. Private improvements so designated by the director shall be referred to as "secured private improvements".

(f) *Construction management.* Improvements agreement collateral calculations shall include the cost of construction management items such as mobilization, construction surveying, engineering testing and inspection, as-built documentation, erosion control, traffic control, and major permitting.

(g) *Submittal requirements.* Each improvements agreement submittal shall include the following items:

- (1) *Improvement status letter.* A copy of a letter from the project engineer, or testing firm and approved by the director of public works documenting those improvements that have received city acceptance and those that haven't received acceptance. The letter shall be prepared as required in the city's engineering and utility standards.
- (2) *Improvements agreement.* A copy of the proposed improvements agreement with the following attachments:
  - a. Schedule of improvements;
  - b. Legal description;

- c. Reduced copy of the final plat; and
  - d. Reduced copy of any approved phasing plan for the development.
- (3) *Fees.* The recording fees as required by the county clerk and recorder, and any review fees as required by city resolution.
- (4) *Collateral.* The required amount of collateral as outlined by the schedule of improvements, in a form required by section 26-204, collateral.
- (h) *Improvements agreements requirements.* An improvements agreement shall be prepared in conformance with the requirements of this section.
- (1) *Format.* The format for an improvements agreement and all attachments shall be reviewed and recorded in eight and one-half-inch by eleven-inch (8½" × 11"), and/or eight and one-half-inch by fourteen-inch (8½" × 14") format.
- (2) *Content.* The director shall keep on file copies of a standard improvements agreement with language acceptable to the city attorney. The applicant may use a standard agreement, or choose to make revisions to the standard agreement, but any agreement prepared by the applicant must be acceptable to the director, the director of public works, and the city attorney. Each improvements agreement shall contain at a minimum:
- a. The responsibilities and obligations of the landowner and/or developer;
  - b. Dates for completion of the improvements;
  - c. Reference to the type of collateral to be held as a guarantee for the completion of such improvements;
  - d. Construction specifications for the improvements or reference to the appropriate city specifications;
  - e. The remedies of the city in the event of default by the developer or property owner;
  - f. Terms and conditions for acceptance of improvements by the city;
  - g. Signature block for the property owner(s);
  - h. Signature block for the developer(s) if different from the property owner;
  - i. Signature block for the city council president;
  - j. Schedule of improvements in a form acceptable to the director. The form shall include a table (Exhibit A) listing the description, quantities, and cost of all public improvements and secured private improvements that have not been constructed or have not received final acceptance. Include a signature/stamp block for the licensed engineer and certification that that the cost estimates are a true and accurate representation of the work to be completed.
  - k. Signature blocks for the director, director of public works, and city council president;

- l. Legal description of property labeled as "Exhibit B" and attached to the agreement;
- m. Subdivision plat. An eight-and one-half by eleven inch (8½" × 11") copy of the approved final plat; labeled as "Exhibit C" and attached to the agreement;
- n. Phasing plan. Copy of the approved phasing plan if improvements are to be constructed in phases.

(i) *Lapse of improvement agreements.*

(1) *General lapse provision.* Unless otherwise provided in the terms of approval of the related land development application or building permit, or in the terms of the approved development agreement, all improvements shall be constructed within two (2) years of the effective date of the improvements agreement.

(2) *Extensions of lapsing period.*

- a. First request. Prior to the expiration of the one-year lapsing period, the property owner or developer may apply in writing to the director for one extension not to exceed one year. This application shall contain updated cost estimates for any work remaining. Upon evidence of good cause, the director may approve such request provided that: (1) provision of this CDC, the development approval, or the improvements agreement do not prohibit the extension, and (2) the extension request includes all completed forms, exhibits, and fees established by the director.

(3) *Use of development agreements to extend lapsing period(s).* The city may approve a development agreement pursuant to section 26-203 that allows for different time frames and lapsing provision related to public and private improvements.

(Ord. No. 1802, § 8.2, 7-23-01; Ord. No. 2302, § 1(Exh. 1), 2-2-10)

**Sec. 26-203. Development agreements.**

(a) *Purpose.* In connection with any discretionary development approval, including without limitation review of zoning map amendments, subdivision plats, development plans, or planned unit developments, the city council may enter into a development agreement with the applicant. Development agreements are voluntary contracts between the applicant and the city that may include provisions clarifying the phasing of construction; the timing, location, and financing of public or private infrastructure; reimbursement for oversized infrastructure; vesting of property rights for periods between three (3) years and ten (10) years; assurances that adequate public facilities (including roads, water, sewer, fire protection, and emergency medical services) will be available as they are needed to serve the development; and mitigation of anticipated impacts of the development on the general public.

(b) *Contents.* Development agreements may, without limitation, contain the following:

- (1) Provisions for the reservation or dedication of land for public purposes;

- (2) Provision for the timing, location, and financing of public improvements (including roads, water, sewer, fire protection, and emergency medical services);
  - (3) Provision for the timing, location, and maintenance of private on-site improvements, including landscaping of common open space, and amenities for residents, users, or the public;
  - (4) Provisions for the reimbursement of oversized infrastructure or other facilities;
  - (5) Proposed timing and phasing of public and/or private construction;
  - (6) Provisions to mitigate the impacts of the proposed development on the general public or nearby properties, including the protection of environmentally sensitive lands;
  - (7) Provisions for public benefits or improvements in excess of what is required by current city policy or law;
  - (8) Terms for subsequent discretionary actions, provided such terms shall not prevent the development of the property for the uses set forth in the agreement;
  - (9) Provisions that construction shall begin by a specified date or that certain phases shall be completed within a specified time;
  - (10) Provisions for the vesting of property rights for the periods between three (3) and ten (10) years;
  - (11) A termination date for the development agreement; and
  - (12) Any other provisions appropriate to guide the completion of the development as approved.
- (c) *Procedure and review criteria.*
- (1) *Procedure for review.* A proposed development agreement shall be reviewed by the staff at the same time the related development application is reviewed. Staff shall have the same power to make recommendations regarding the proposed development agreement as it does for the related development approval. Procedures for approval of development agreements shall be the same as for the related development approval.
  - (2) *Approval criteria.* In reviewing and acting upon proposed development agreements, staff shall consider the approval criteria for the development application and the following additional approval criteria:
    - a. Whether the benefit of the development agreement to the city outweighs the costs to the city;
    - b. Whether the development agreement is required to mitigate impacts that would otherwise make the proposed development unacceptable; and
    - c. Whether the city has received adequate assurances that the development will go forward as planned in return for any vesting of property rights beyond the three-year vesting period set forth in C.R.S. § 24-68-101 et seq.

(d) *Effect of approval; vesting of rights.* When a development agreement provides for the vesting of rights for longer than the three-year vesting period set forth in C.R.S. § 24-68-101 et seq., the following provisions shall govern:

- (1) *Rules prevailing at the time of execution.* Notwithstanding the provisions of C.R.S. § 24-68-102.5 and unless otherwise provided by the development agreement, the ordinances, rules, regulations, and official policies applicable to (1) permitted uses of the land; (2) density; and (3) design, improvement, and construction standards and specifications, shall be those ordinances, rules, regulations and official policies in force at the time of execution of the development agreement.
- (2) *Subsequent enacted regulations.*
  - a. *General rule.* Ordinances, rules, regulations, and official policies that govern permitted uses of the land, density, and design, improvement, and construction standards and specifications, and that are enacted subsequent to execution of the development agreement, shall not be enforced against development governed by the agreement.
  - b. *Exceptions.* Notwithstanding subsection (d)(2)a. above, a development agreement shall not prevent the city, in subsequent actions, from applying any of the following to the subject property:
    1. New ordinances, rules, regulations, and policies that do not conflict with those ordinances, rules, regulations, and policies applicable to the subject property as set forth in the development agreement;
    2. New ordinances, rules, regulations, and policies that are specifically anticipated and provided for in the development agreement; or
    3. New ordinances, rules, regulations, and policies that are necessary for the immediate preservation of the public health and safety.

(e) *Periodic review.* All development agreements may be reviewed by the director every two (2) years, unless the development agreement provides for more frequent reviews. At the review, the developer shall provide such information as may be required by the director to demonstrate compliance with the terms of the development agreement. If the director determines that the developer is not in compliance with the agreement or that the agreement should be terminated or modified, the matter shall be referred to the city council for review and action.

(f) *Lapse, modification and termination.*

- (1) *Lapse.* A development agreement shall automatically lapse and be null and void if the underlying land use approval lapses according to the provisions of this CDC.
- (2) *Modification and termination.*
  - a. A development agreement may be canceled or modified by the mutual consent of the developer and the city acting through the city council.

- b. The city council may terminate or modify a development agreement based upon evidence that the developer, or successor in interest thereto, has not complied with the terms or conditions of the agreement.
- c. In the event that state or federal laws or regulations are enacted after execution of the development agreement and prevent or preclude compliance with one or more provisions of the development agreement, such provisions of the agreement shall be modified or suspended to the extent necessary to comply with such state or federal laws or regulations.
- d. The decision-making body that approved the development agreement may modify or terminate a development agreement using the same procedures used for its approval.

(g) *Enforcement.* Unless amended or terminated pursuant to this section, a development agreement shall be enforceable by any party to the agreement.

(Ord. No. 1802, § 8.3, 7-23-01; Ord. No. 2302, § 1(Exh. 1), 2-2-10)

#### **Sec. 26-204. Collateral.**

(a) *Applicability.* All public improvements and secured private improvements that are required to be installed in accordance with a development approval, the approved civil construction drawings, and the project specifications shall be secured by collateral in a sufficient amount and form to insure the satisfactory and timely construction of the improvements.

(b) *Submission of collateral.* Collateral, in an amount stipulated in the improvement agreement or development agreement, shall be submitted prior to the execution of the final plat in accordance with the improvements agreement, or prior to the issuance of a certificate of occupancy if the improvement requirements relate to an approval other than a subdivision.

(c) *Estimates.* The amount of required collateral shall be determined by cost estimates provided by the developer in the form of an engineer's estimate or construction bids. All cost estimates are subject to review and approval by the director and director of public works. Upon rejection of any estimate, the director or director of public works may obtain an estimate from a licensed engineer in the state, which shall be binding upon the landowner for purposes of determining the amount of collateral required.

(d) *Acceptable forms of collateral.* Collateral may be posted in the form of cash, letter of credit, and/or a certificate of deposit. Any letter of credit from a financial institution located outside the state shall include specific language stating that the issuer agrees that the proper venue for any legal action is the county, and that the letter of credit shall be governed by the laws of the state. All language is subject to approval by the city attorney. The amount of collateral required to accompany an improvements agreement shall be as follows:

- (1) At least fifteen (15) percent of the cost of installing any public improvements that have preliminary acceptance;

- (2) At least one hundred fifteen (115) percent of the cost of installing any public improvements without preliminary acceptance and any secured private improvements not completed and approved;
- (e) *Term.* The collateral shall remain effective for a period of not less than sixty (60) days following the completion date listed in the improvements agreement.
- (f) *Release of collateral.* From time to time and as the required improvements in a development are completed, the developer may request that collateral be released in increments of not less than twenty (20) percent of the original amount held. Requests for release shall be made in writing and include documentation such as engineer estimates and copies of paid invoices to demonstrate that the work has been completed. Release requests will be processed in conformance with subsections 26-205(b) and (d) of this CDC regarding preliminary acceptance and final acceptance of improvements.
- (g) *Use of collateral.* If the city manager determines that reasonable grounds exist to believe that a developer is failing or will fail to install improvements as required by the improvements agreement, the city manager shall notify the developer in writing that the city intends to draw on the collateral for the purpose of completing the improvements, and the reasons for such decision.
- (h) *Appeal of city manager's decision.* The developer may request a hearing before city council on the matter, provided that the request for a hearing is made no more than fifteen (15) days following the date of the notice issued pursuant to subsection (g). Should a hearing not be requested within fifteen (15) days, or should the city council conduct a hearing and determine that the developer is failing or has failed to satisfactorily install required improvements; the city may draw on the collateral as necessary to construct the improvements. In such event, the city shall be entitled to recover from the developer such costs as are reasonable to administer the construction of the improvements.
- (i) *Developer responsibility.* It is the responsibility of the developer to maintain the necessary amount of collateral at all times until the required improvements are completed and accepted by the city. The city manager shall have the authority to draw upon collateral provided by any irrevocable letter of credit that is within fifteen (15) days of the expiration date. Determination that the developer is failing or will fail to install improvements is not required. The city will hold such funds until such time as the developer has provided a new letter of credit or other collateral in conformance with this section.
- (Ord. No. 1802, § 8.4, 7-23-01; Ord. No. 2302, § 1(Exh. 1), 2-2-10)

### **Sec. 26-205. Acceptance of public improvements.**

- (a) *Process generally.* Acceptance of public improvements is a three-step process that requires preliminary acceptance by the director of public works, completion of a warranty period, and final acceptance by written decision of the. The director of public works shall grant acceptance upon completion of an entire improvement; partial acceptance shall not be considered unless

approved as part of a phasing plan. The process for acceptance of public improvements shall be established by the director of public works and at a minimum includes the procedures set forth in subsection (b) of this section.

(b) *Acceptance procedures.* The process for obtaining acceptance, whether preliminary or final, is as follows:

- (1) *Request for inspection.* Upon completion of public improvements or any applicable warranty period, the developer shall notify the city in writing and request inspection.
- (2) *Improvements summary letter.* The developer shall provide a letter from the project engineer and testing firm verifying completion of the improvements in substantial conformance with approved project plans and specifications, in the case of a request for preliminary acceptance. In the case of a request for final acceptance, the letter shall verify completion of the warranty period and that the present condition of the improvements substantially conforms to the approved project plans and specifications. The letter shall be prepared as required by the city's engineering and utility standards.
- (3) *Inspection of improvements.* The city or its agents shall inspect the improvement for which the acceptance is being requested. The city or its agents are not required to conduct inspections when climatic conditions prevent a thorough inspection.
- (4) *[Preliminary acceptance.]* The director of public works shall grant preliminary acceptance upon a finding that the improvements have been completed in substantial conformance with the approved project plans and specifications. Preliminary acceptance may include the identification of conditions that will require correction prior to final acceptance. If the director of public works does not grant preliminary acceptance, the director shall notify the developer, in writing, of the reasons for non-acceptance and identify any corrective measures that must be carried out by the developer.
- (5) *Warranty period.* Prior to final acceptance, a minimum two-year warranty period for public roads, bridges, water and sewer mainlines shall be completed. The warranty period for other public items shall be as established by the public works director. Acceptance and warranty procedures of other service providers may apply.
- (6) *Final acceptance.* If any warranty period has expired and no unsatisfactory conditions are found, the director of public works shall grant final acceptance in writing. If the improvements do not meet city standards for final acceptance, the director of public works shall notify the developer, in writing, of the reasons for non-acceptance and identify any corrective measures that must be carried out by the developer.

(c) *Effect of preliminary acceptance.* Upon preliminary acceptance, the city will assume responsibility for street snow removal, but the applicant shall remain responsible for all other snow removal, maintenance and repairs pending final acceptance. Preliminary acceptance shall remain in effect until revoked or until final acceptance of public improvements. Upon preliminary acceptance, the city shall release collateral in the amount of one hundred (100) percent of the estimated costs to construct the preliminarily accepted improvements and shall retain collateral in the amount of fifteen (15) percent of such costs.

(e) *Effect of final acceptance.* Upon adoption of the resolution for acceptance by city council, the city shall fully release any guarantee for the public improvements and assume full maintenance responsibility for such public improvements unless otherwise specified in the resolution.

(f) *Effect of non-acceptance.* If the developer fails to complete the corrective measures identified by the director of public works prior to the expiration of the improvements agreement date or as outlined in a notice of non-acceptance from city council, the may revoke preliminary acceptance. In addition, the city may require the posting of additional collateral, revoke approval of any land use, subdivision, or site plan approval, cease issuing building permits for the property, and pursue any remedy provided in the improvements agreement, or otherwise available at law.

(Ord. No. 1802, § 8.5, 7-23-01; Ord. No. 1815, § 23, 11-6-01; Ord. No. 2302, § 1(Exh. 1), 2-2-10)

### **Sec. 26-206. Approval of private improvements.**

(a) *Process.* The process for approval of private improvements shall be established by the director of public works and at a minimum include:

- (1) *Request for inspection.* Upon completion of the improvements the developer shall notify the city in writing, and request inspection.
- (2) *Letter of completion.* The developer shall provide a letter from the project engineer and testing firm verifying completion of the private improvements in general conformance with approved project plans and specifications. The letter shall be prepared as required by the city's engineering and utility standards.
- (3) *Inspection of improvements.* The city or its agents shall inspect the improvement for which the approval is being requested. The city is not required to conduct inspections when climatic conditions prevent a thorough inspection.
- (4) *Approval of improvements.* If no unsatisfactory conditions are found, the director of public works will notify the developer of approval in writing.
- (5) *Non-approval of improvements.* If the improvements have not been satisfactorily completed, the director of public works shall notify the developer of deficiencies in writing.

(b) *Effect of approval.* Upon written approval by the director, the city shall fully release any collateral for the private improvements. Maintenance for such private improvements shall continue to be the responsibility of the developer.

(c) *Effect of non-approval.* If the developer fails to correct the deficiencies outlined in a notice of non-approval from the director of public works, the city may require the posting of additional collateral, revoke approval of any land use, subdivision, or site plan approval, cease issuing building permits for the property, and pursue any remedy provided in the improvements agreement, or otherwise available at law.

(Ord. No. 1802, § 8.6, 7-23-01; Ord. No. 2302, § 1(Exh. 1), 2-2-10)

**Sec. 26-207. Public improvements reimbursement agreements.**(a) *Statement of policy.*

- (1) The general policy of the City of Steamboat Springs is that development shall pay its own way and that the owners of undeveloped property benefited by the installation of public improvements shall contribute financially to the cost of such improvements as a condition of the development of their property. This policy is designed to achieve fairness in the division of costs of installation of public improvements and to protect the taxpayers of the City of Steamboat Springs.
- (2) The city council has determined that reimbursement agreements, where agreed to by the initial developer and the city, are an equitable and efficient means of promoting private installation of public improvements. The policy does not apply to special improvement districts or public improvements constructed within new developments.
- (3) The decision whether to enter into a reimbursement agreement between the city and an initial developer is wholly discretionary on the part of the city and the initial developer and depends on the individual circumstances of each development. In any specific development proposal where the city deems it inappropriate to do so, the city may decline to enter into a reimbursement agreement pursuant to this policy or may vary the terms of any reimbursement agreement in a manner that the city deems appropriate to the circumstances. The adoption of this policy does not create an obligation upon the city to enter into a reimbursement agreement with any particular initial developer, nor require any specific terms thereof. The adoption of this policy is not to be interpreted as creating or giving rise to an expectation that a reimbursement agreement will be entered into between the city and an initial developer, nor such an agreement is entered into, that any sums will be collected by the city for reimbursement to the initial developer except pursuant to the terms of the written reimbursement agreement.

(b) *Definitions.* Unless the context specifically indicates otherwise, the meaning of the terms used in this section shall be as follows:

*City* means the City of Steamboat Springs, Colorado.

*Connection* means access or a physical connection to public improvements.

*Construction costs* means actual costs borne by the initial developer of master planning, right-of-way acquisition, engineering and design, labor, materials, testing and as-built documents, and all other documented amounts paid for the actual installation of public improvements, as well as administrative costs not to exceed five (5) percent of all costs as detailed in a sworn affidavit from the initial developer.

*Initial developer* means a person constructing or contracting for construction of an extension of public improvements to provide service to a particular development.

*Person* means natural persons, corporations, limited liability companies, partnerships, or governmental entities.

*Subsequent developer* means a person seeking to connect to the city's public improvements after construction of said public improvements by an initial developer.

*Public improvements* means the following public utilities and other improvements:

- a. Sewer collection facilities, including all public main lines and appurtenances, designed and constructed by the initial developer and approved by the city.
- b. Storm drainage facilities, including public main lines, drainage ditches and channels, detention ponds, stormwater quality ponds and appurtenances designed and constructed by the initial developer and approved by the city.
- c. Street improvements, including grading, roadway, curb and gutter improvements, structural fill, road base, and finish surface such as asphalt, concrete, or other all-weather surface, structures, traffic control devices, sidewalks, and street lighting, which are designed and constructed by the initial developer and approved by the city.
- d. Water distribution facilities, including all public main lines, and appurtenances designed and constructed by the initial developer and approved by the city.

(c) *Public improvements extensions specifications.* In order to be eligible for reimbursement as set forth herein, all public improvements shall meet the following requirements:

- (1) Public improvements will be engineered by the initial developer.
- (2) All public improvements shall conform to and be in accordance with the City of Steamboat Springs construction standards and specifications.
- (3) All plans for public improvements will be approved in advance by the City of Steamboat Springs Department of Public Works.
- (4) Prior to acceptance by the city, all public improvements will be inspected and approved by the City of Steamboat Springs in accordance with the procedures set forth in the Community Development Code and other applicable city regulations.
- (5) All public improvements for which reimbursement is sought shall be dedicated by the initial developer to the city and shall be the sole property of the city.
- (6) With respect to water distribution or sewer collection facilities located in the Mt. Werner Water and Sanitation District or other public improvements under the jurisdiction and control of a local government other than the city, construction plans, inspections, approvals, and dedications required by this subsection shall be made to or by the applicable local government.

(d) *Reimbursement agreements.*

- (1) An initial developer who extends public improvements to the initial developer's property, and in making such extensions, provides capacity therein to serve other property and who has paid the entire cost of such construction will be eligible for reimbursement pursuant to a reimbursement agreement as provided herein.

- (2) An initial developer who extends public improvements as set forth in subsection (1) may enter into a reimbursement agreement with the city, the terms of which are full described in such agreement and which agreement is mutually reached between the initial developer and the city. The agreement shall specify, at the minimum, the following terms and conditions:
- a. Total reimbursable costs.
  - b. Method of determining reimbursement obligations (formula using lineal or square footage or other method).
  - c. Properties subject to reimbursement obligations.
  - d. Estimated reimbursement obligations of each affected property.
  - e. Administration fee to the city of the lesser of one percent of the total reimbursable costs or two thousand five hundred dollars (\$2,500.00), which shall be payable to the city at the time of execution of the agreement.
  - f. Nonliability clause for failure to collect or the impossibility of collection by the city.

In the event such an agreement is entered into, the city is hereby authorized to assess a charge against each subsequent developer whose property is specially benefited by the public improvements for the subsequent developer's share of the cost of the extension at the time connection to the public improvements is approved as a condition of such connection. The city shall give written notice to the affected property owner of its intent to assess such charges.

- (3) In the event a reimbursement agreement is entered into and reimbursement is collected from a subsequent developer, the city shall reimburse the initial developer to the extent of such collection. All construction costs of the public improvements must be fully paid by the initial developer before the initial developer shall be entitled to any reimbursement. Reimbursement of the initial developer is absolutely contingent upon actual collection from the subsequent developer by the city.
- (4) The amount of reimbursement which the city shall assess upon subsequent developers shall be based upon the city's determination of the reasonable costs of construction, not to exceed the original actual construction costs.
- (5) In order to obtain approval of a reimbursement agreement by the city, the initial developer shall first request such an agreement be considered during review of the initial development application for the project, and provide to the city's department of planning services, within one hundred twenty (120) days of completion of the public improvements extension, six copies of the following material:
- a. Completed bid forms from qualified contractors indicating which contractor was awarded the project, and evidence of a bidding process. All bid forms must contain the description, estimated quantity, and unit price for each utility included in the project.

- b. Satisfactory evidence that all costs in connection with the public improvements have been paid, as detailed in a sworn affidavit of the initial developer, and supported by evidence of payment.
  - c. A map which shall include the following information:
    1. Location of the public improvements.
    2. Names and addresses of the owners of each property specially benefited by the public improvements and the amount of those benefits.
    3. Legal descriptions of the properties specially benefited by the public improvements extensions.
    4. Such additional information which the city's department of community development or public works may deem necessary.
- (6) During the preparation of the reimbursement agreement, the books and records of the initial developer relating to the constructions costs of the public improvements for which the initial developer seeks reimbursement shall be open to the city for purposes of auditing and verifying the initial developer's cost.
- (7) In the event the information required in subsection (5) of this section is not submitted by the initial developer within one hundred twenty days (120) days of the date of completion of the improvements, there shall be no reimbursement agreement. In the event the information is submitted within the time allowed, the city will review such information and prepare an appropriate reimbursement agreement to be executed between the initial developer and the city. The reimbursement agreement shall be recorded in the office of the Routt County Clerk and Record at the initial developer's costs.
- (8) The city shall attempt to identify reimbursement obligations at the time of development of property specially benefited by public improvements and identified in reimbursement agreements and to collect such charges as a condition of connection by the subsequent developer. However, the city shall not be liable for failure to collect pursuant to a reimbursement agreement unless the developer notifies the city of development that is subject to a reimbursement agreement prior to the city's approval of connection and requests the city to collect such reimbursement charges.
- (9) Reimbursement payments shall be made to the city by the subsequent developer for distribution to the initial developer. The city shall notify the initial developer of its receipt of such reimbursement payments in writing by delivery to the initial developer's last known address. The initial developer shall have ninety (90) days, from and after the date of mailing of written notification by the city to the initial developer, in which to claim the proceeds of reimbursement payments. After such time, the city shall have no further obligation to the initial developer with regard to reimbursement payments referred to in the notice, and such amounts shall be refunded to the reimbursing developer.

- (10) Upon request of the initial developer, which request shall not occur more than once every twelve (12) months, the city shall provide an accounting of each reimbursement payment collected during the preceding twelve (12) months, the name and address of the remitter of such reimbursement payment, the property address for which the reimbursement was paid, and the current balance of the actual reimbursable costs incurred by the initial developer remaining unreimbursed.
  - (11) The term of a reimbursement agreement shall not exceed a period of fifteen (15) years from the date of its execution and, unless earlier terminated, shall expire when all reimbursable costs, have been reimbursed to the initial developer. The city shall not be liable for any portion of the uncollected balance of reimbursable costs. There shall be no collection of reimbursement payments by the city on or after the expiration of the term of the reimbursement agreement. Subsequent developers shall similarly have no obligation to make reimbursement payments after the expiration of the term of the reimbursement agreement.
  - (12) The right to receive reimbursement pursuant to the reimbursement agreement is personal to the initial developer who executes the reimbursement agreement. Any assignment of such right shall be by written assignment signed and acknowledged by the initial developer, its successor or assign, and physically delivered to the city.
  - (13) Notices of assessment per subsection (2) of this subsection shall be deemed to be administrative decisions of the director that may be appealed to the city council pursuant to section 26-50 of this Community Development Code. In hearing such appeals, the city council shall consider whether the subject public improvements benefit the appellant's property, whether the assessment represents an equitable share of the eligible reimbursement costs, and whether the benefit to the assessed property equals or exceeds the amount of the assessment.
- (e) *Pre-existing reimbursement agreements.* This section shall not be construed to invalidate any reimbursement agreement executed prior to the effective date of this section. The provisions of this section authorizing the assessment of charges against property owned by subsequent developers may be applied to assess and collect charges pursuant to reimbursement agreements executed prior to the effective date of this section.  
(Ord. No. 2153, § 1, 2-19-08)

**Secs. 26-208—26-220. Reserved.**