

**ORDINANCE NO. 08-14-2023-01**  
**AN ORDINANCE CREATING A SYSTEM FOR CREATING PERFORMANCE**  
**GUARANTEE BONDS TO ENSURE TIMELY CONSTRUCTION OF**  
**IMPROVEMENTS FOR DEVELOPMENT WITHIN THE CITY**

**WHEREAS** the City of Eureka desires to promote the timely construction of required landscaping and/or infrastructure improvements in the City; and

**WHEREAS**, Title 10 Chapter 3 and § 10-8-84 of the Utah Code authorizes the City Council to pass ordinances which are reasonably and appropriately related to providing for the public health, safety, morals, convenience, order, prosperity, and general welfare of the City and its residents; and

**WHEREAS** the City of Eureka seeks to create a uniform system for creating Performance Guarantee Bonds, as detailed herein.

**NOW THEREFORE**, BE IT ORDAINED BY THE CITY COUNCIL OF EUREKA CITY, THAT THE FOLLOWING "PERFORMANCE GUARANTEE BOND ORDINANCE" BE ENACTED AS FOLLOWS.

**I. THE FOLLOWING SHALL BE ENACTED AS PART OF EUREKA CITY MUNICIPAL CODE.**

**PERFORMANCE GUARANTEES**

- 1 APPLICATION OF THIS CHAPTER
- 2 TYPE OF ASSURANCE OR WARRANTY ACCEPTED
- 3 IMPROVEMENT COMPLETION ASSURANCE
- 4 IMPROVEMENT WARRANTY
- 5 DEFAULT
- 6 ACTUAL CONSTRUCTION OF IMPROVEMENTS IN-LIEU OF POSTING IMPROVEMENT COMPLETION ASSURANCE PERMITTED - CONDITIONS
- 7 DORMANT PROJECTS
- 8 IMPROVEMENT COMPLETION ASSURANCE - CITY RIGHTS-OF-WAY

**Section 1 APPLICATION OF THIS CHAPTER**

The provisions of this chapter shall be applicable wherever the terms of the development code require the posting of an improvement completion assurance or improvement warranty to ensure the timely construction of required landscaping and/or infrastructure improvements within a subdivision, large scale development, commercial project, or similar development project in a timely manner and/or in accordance with city standards or the terms of approval for such project, as applicable. All improvement completion assurances and improvement warranties shall be submitted and administered in accordance with the terms of this Chapter.

## **Sec 1.1 Terms and Definitions**

- A. Actual construction of required improvements. The city shall require actual construction of all required public landscaping and public infrastructure improvements prior to plat recordation or development activity.
- B. Improvement completion assurance. Improvement completion assurance means an escrow account, cash deposit with the city, secured letter of credit or surety bond provided, upon the applicant's request, to guaranty the proper completion of landscaping or infrastructure improvement required as a condition precedent to:
  - 1. Recording a subdivision plat; or
  - 2. Development of a commercial, industrial, mixed use, or multifamily project.
- C. Improvement warranty. Improvement warranty means applicant's unconditional warranty that the applicant's installed and accepted landscaping or infrastructure improvement:
  - 1. Complies with the city's written standards for design, materials, and workmanship; and
  - 2. Will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.
- D. Infrastructure improvement. Infrastructure improvement means permanent infrastructure that an applicant must install:
  - 1. Pursuant to published installation and inspection specifications for public improvements; and
  - 2. As a condition of: (a) Recording a subdivision plat; or (b) Development of a commercial, industrial, mixed use, condominium, or multifamily project.

## **Section 2 TYPE OF ASSURANCE OR WARRANTY ACCEPTED**

The type of improvement completion assurance or improvement warranty shall be limited to one of the following:

- A. Cash deposit with the city. A cash deposit with the city. Prior to the improvement completion assurance being deemed acceptable by the city, the deposit shall be verified by the city's financial institution as a completed transaction. The deposit shall be in an amount sufficient to cover the requisite improvement completion assurance amount as determined by Section 3 or 4, as applicable. Any interest derived shall inure to the benefit of the applicant, provided the applicant makes a written request for payment of said interest on an annual basis thirty days prior to the anniversary date of deposit with the city. Failure of the applicant to make such a request for said interest shall be considered forfeiture of said funds.

- B. Escrow account. Establishment of an escrow account by a financial institution acceptable to the city. Said account shall include a written agreement between the city and financial institution containing provisions which include: (1) the amount of the improvement completion assurance, (2) a provision that any release of funds will require the written prior approval of the city, (3) be for a period of time equal to the improvement completion assurance period established for the project according to Sections 3 and 4, plus six months, and (4) authorization for direct payment to the city by the issuer of the account upon receipt of a notice of default from the city and a request for payment.

Any interest derived from the account shall inure to the benefit of the applicant. The escrow shall be in an amount sufficient to cover the requisite improvement completion assurance amount as determined by Section 3 or improvements warranty amount as determined by Section 4, as applicable.

- C. Secured letter of credit. A secured letter of credit issued by a federally insured bank, savings and loan, or credit union acceptable to the city, in a form approved by the city attorney. Said form shall include, at minimum, (1) the amount of the improvement completion assurance, (2) a provision that any release of funds will require the written prior approval of the city, (3) be for a period of time no less than that established for the project according to Sections 3 and 4, plus six months, (4) authorization for direct payment to the city upon receipt of a notice of default from the city and request for payment. The secured letter of credit shall be in an amount sufficient to cover the requisite improvement completion assurance amount as determined by Section 3 or improvement warranty amount as determined by Section 4, as applicable.
- D. Surety bond. Establishment of a surety bond with a bonding company acceptable to the city. Said bond shall be payable to the city and shall be in an amount sufficient to cover the requisite of improvements as determined by Section 3 and Section 4, as applicable. A surety bond shall not be released until (1) all improvements have been installed, inspected and approved by the city, and (2) the City Council accepts the improvements pursuant to Section 3 and Section 4. No surety bond may be released based upon time alone.

### **Section 3 IMPROVEMENT COMPLETION ASSURANCE**

Sec 3.1 Amount Of Improvement Completion Assurance - Tasks To Be Included Under Assurance

Sec 3.2 Procedure For Determination Of Improvement Completion Assurance

Sec 3.3 Duration Of Improvement Assurance Period

Sec 3.4 Partial Releases Authorized - Conditions And Procedures

Sec 3.5 Procedure For Final Disposition And Release

#### **Sec 3.1 Amount Of Improvement Completion Assurance - Tasks To Be Included Under Assurance**

The amount of the improvement completion assurance shall be in an amount equal to or less than one hundred ten percent (110%) of the estimated cost for construction of all required public



improvements for the project, including: (1) cost of materials, (2) cost of installation, (3) contingency amount for the public improvements, (4) cost for clean-up of the site following completion of construction, (5) amount of reimbursement for public improvements constructed by previous developers, if any, and (6) estimated cost of inspection, administration, and enforcement by the city and their agents.

### **Sec 3.2 Procedure for Determination of Improvement Completion Assurance**

The amount of the improvement completion assurance shall be determined by the city engineer.

The following procedure should be utilized by the city engineer to establish the amount:

- A. Applicant shall provide to the city engineer a detailed cost estimate for construction of all required public improvements for the project, including all costs identified in [Section 3.1](#).
- B. The city engineer shall review and accept or decline the proposed costs from the applicant. In the event the city engineer declines to accept the proposed cost estimate, he/she shall provide notice to the applicant of which line items are not acceptable and the reason for the declination.
- C. Applicant shall resolve the line items declined by the city engineer and re-submit a detailed cost estimate. In the even applicant disputes the city engineer's declination he/she shall provide documentation to support the proposed cost estimate.
- D. The city engineer shall review that re-submittal to determine the amount of the improvement completion assurance.

### **Sec 3.3 Duration of Improvement Assurance Period**

- A. The duration of the improvement completion assurance shall be for twelve months, or such period of time specified for completion of the respective type of development, if other than twelve months. The improvement completion assurance period shall also include any extensions for completion of public improvements approved in accordance with paragraph B. of this section. The improvement completion assurance period shall commence on the day of recording of any final plat at the office of the county recorder, date of approval action by the land use authority when no recording of a plat is required, or when the improvement assurance is established, whichever occurs later. The city may allow the duration of the improvement completion assurance [to](#) be extended for a period of up to six additional months in order to provide adequate time for completion of public improvements. The improvement completion assurance period shall continue until the passage of time herein above specified and until the City Council shall have issued a notice of completion and acceptance of public improvements and release of the improvement completion assurance. With the mutual written consent of all parties, the length of the improvement completion assurance period may be shortened.

- B. An extension of the improvement completion assurance period may be granted by the City Council upon receipt of a request by the project owner, provided: (1) that such application is submitted at least sixty days prior to the expiration of the improvement completion assurance period, (2) the issuer of the improvement completion assurance is willing to extend the time of the assurance, (3) the city makes a finding that work in completing the required public improvements is satisfactory, (4) the estimated cost of performing the remaining tasks is less than the amount of the assurance remaining, or the amount of the improvement completion assurance is increased in an amount sufficient to cover the remaining tasks and (5) the City Engineer or designated representative makes a finding that the uncompleted work does not pose a hazard or unreasonable inconvenience to the public or adjacent residents. If an extension is not granted by the City Council then default shall occur according to Section 5.
- C. Any required public improvements to be installed within existing street right-of-way currently in use by the public shall be diligently pursued and completed with minimum disruption to public safety and convenience. In the event that work within the right-of-way area is not diligently pursued in accordance with good engineering and construction practice, the City Council, subject to a finding that the quality or timing of construction is unsatisfactory, inconsistent with reasonable norms of construction practice, and poses unreasonable hazard and inconvenience to the public, may declare part or all of the improvement completion assurance in default and proceed to collection of the proceeds as provided under the terms of Section 5.

### **3.4 Partial Releases Authorized - Conditions and Procedures**

The city may authorize partial release(s) of the improvement completion assurance in an amount not greater than one hundred percent (100%) of the: (1) estimated cost of materials and (2) estimated cost of installation of the required public landscaping and public infrastructure improvements.

The amount of any partial release shall be in an amount commensurate with the estimated proportionate share of public improvements completed as of the date of the request, as determined by the City Engineer or designated representative, following an on-site review of the project. Requests for partial releases shall be made not more frequently than thirty days and shall be authorized in writing by the City Engineer or the designated representative, subject to a finding that the materials and workmanship conform to city standards and good engineering practice.

### **3.5 Procedure for Final Disposition and Release**

- A. At such time as all required public improvements have been completed and all outstanding fees due to the city paid, the applicant may request a final release of the improvement completion assurance. An applicant requesting final release shall submit a written notice of completion and request for release. The city may require a copy of lien releases, documentation from all suppliers of materials and sub-contractors showing that their costs have been fully satisfied, a current title report, or such other measure or report



as deemed appropriated by the city as a means of determining the existence of any unreported liens upon the project.

- B. Following receipt of the notice of completion and request for release, the City Engineer or the designated representative, following an on-site review of the project, shall prepare a report setting forth the condition of the public improvements. If the final inspection report specifies corrections of the improvements, corrections shall be completed within 30 days or the City Council may deem the applicant in default per Section 5. When all improvements are approved by the City Engineer or designated representative, the final report shall be submitted to City Council for review.
- C. If the condition of the public improvements is found to be satisfactory; all liens have been released; all outstanding fees, costs of administration and reimbursement payments to prior developers (if any) have been made; and the project clean-up is found to be satisfactory then the City Council shall act to accept the public improvements and authorize release of the remainder of the improvement completion assurance, except such portion of said assurance intended to be applied as part of the improvement warranty pursuant to the terms of Section 4.
- D. Upon issuance of the notice of acceptance of the public improvements and release of the improvement completion assurance relating thereto, the city shall be deemed to have assumed title to the public improvements.
- E. The city may initiate the final release and acceptance prior to the end of the improvement assurance period without receipt of a request from the applicant, subject to a finding that construction of the public improvements has been completed in accordance with city standards or that early activation of the public improvements is necessary to provide access, circulation and/or utility or fire service to adjacent properties.

#### **Section\_4 IMPROVEMENT WARRANTY**

Sec 4.1 Improvement Warranty Required - Amount

Sec 4.2 Length Of Improvement Warranty Period - Purpose

Sec 4.3 Release Of Improvement Warranty

#### **Sec 4.1 Improvement Warranty Required – Amount**

- A. Concurrently with the final release of the improvement completion assurance and acceptance of the public improvements by the city council, an improvement warranty shall be established. The amount of the improvement warranty shall be in the amount of up to ten percent of the lesser of the (1) cost of completion as determined by the city engineer pursuant to Section 3.2 or (2) applicant's reasonable proven cost of completion. The improvement warranty shall serve to ensure the durability of the constructed public improvements during the improvement warranty period.

#### **Sec 4.2 Length of Improvement Warranty Period - Purpose**

The length of the improvement warranty period shall be no later than one year after the city's acceptance of required landscaping or one year after the city's acceptance of required infrastructure unless the city determined, for good cause, that the one-year period would be inadequate to protect the public health, safety, and welfare and has substantial evidence, on the record, of prior poor performance by the applicant or that the area upon which the infrastructure will be constructed contains suspect soil and the city has not otherwise required the applicant to mitigate the suspect soil.

If, during the improvement warranty period, the quality of materials and workmanship of the public improvements is found to be satisfactory, the improvement warranty shall be released in accordance with the procedure set forth in Section 4. If, however, during the improvement warranty period the quality of materials or workmanship of the public improvements fail in any material respect, or if it becomes evident that certain work was not completed or that the public improvements do not otherwise comply with the city's written standards for design, material, and workmanship, said condition shall be corrected by the applicant. If the durability inspection report specifies corrections of the improvements, corrections shall be completed within 30 days or the City Council may deem the applicant in default per Section 5 and use the improvement warranty funds to defray the cost of any required work.

#### **Sec 4.3 Release of Improvement Warranty**

- A. At the conclusion of the improvement warranty period, the City Engineer or the designated representative, following an on-site review of the project and a finding that the quality of construction and materials have endured without evidence of poor workmanship or materials, nonconformance of the city's written standards, or need for remedial action, shall prepare a report setting forth the condition of the public improvements. When all improvements are approved by the City Engineer or designated representative, a durability report shall be submitted to city council for review.
- B. The City Council may authorize the release of the improvement warranty.

#### **Section 5 DEFAULT**

Where, in the opinion of the City Council: (1) a developer fails or neglects to satisfactorily install the required public landscaping or public infrastructure improvements within the required time frame or make required correction thereto, or (2) fails to pay all liens in connection with said public improvements, or (3) fails to make payment to the city for reimbursement charges for public improvements previously installed by others, or (4) otherwise fails to carry out the activity for which the improvement completion assurance or improvement warranty was required, the City Council may, after due notice on the matter, declare the improvement completion assurance forfeited. Upon issuance of a declaration of forfeiture, the city shall notify the issuer of the improvement completion assurance and upon receipt of the funds held by the issuer, proceed to install or repair or cause to be installed or repaired, the required but uncompleted or unsatisfactory public improvements. Provided, however, that the city shall not be responsible for work beyond the limits of the improvement completion assurance or improvement warranty

amount. Any portion of the improvement completion assurance or improvement warranty remaining after completion of the required public improvements shall be returned to the issuer.

## **Section 6 ACTUAL CONSTRUCTION OF IMPROVEMENTS IN-LIEU OF POSTING IMPROVEMENT COMPLETION ASSURANCE PERMITTED – CONDITIONS**

### **Sec 6.1 Time Frame For Construction Of Required Improvements - Extensions Permitted**

As an alternative to posting an improvement completion assurance, as identified under Section 1, the city council may authorize the actual construction of required public improvements in-lieu of posting an improvements construction guarantee. All required public landscaping and/or public infrastructure improvements shall be completed prior to any plat recordation or building permit issuance. Additionally, city and developer shall enter into a development agreement that includes the following:

- A. Proof of developer's ownership of the land in question;
- B. A commitment from the developer that construction of the required public improvements will commence immediately following approval;
- C. A commitment from the developer that construction of the required public landscaping and public improvements will be diligently prosecuted to completion within the time frame authorized under Section 6.1; and
- D. A schedule showing the expected time frame for constructing the public landscaping and public infrastructure improvements.
- E. Submittal of a blanket easement over the entire project area authorizing the installation of required public improvements in the locations shown on the approved final plat and engineering drawings.
- F. A finding by the council that the developer has sufficient financial resources to accomplish the construction of the required public improvements within the time frame outlined in the development agreement.

Further, the developer shall complete the following:

1. Actual payment of the portion of the improvement completion assurance amount attributable to costs of inspection, clean-up, reimbursement of prior constructed public improvements, and other city costs.
2. Actual payment of the improvement warranty in accordance with the terms of Section 4.
3. An acknowledgment from the developer that failure to complete the required public improvements within the time frame set forth in this title, or to request and receive approval of an extension of time to complete the public improvement, shall constitute grounds for termination of all previous approvals.



4. Obtain a land disturbance permit.

#### **Sec 6.1 Time Frame for Construction of Required Improvements - Extensions Permitted**

- A. The maximum period of time for which the council's approval action of a subdivision or other development project which includes the sale of individual parcels and requires recording at the office of the county recorder shall remain valid (delay-in-recording period) not more than two hundred seventy-five days from the date of action by the City Council. An extension of the time, not to exceed ninety days may be granted by the City Council provided: 1. Application is made by the developer and submitted sixty days prior to the end of the two hundred seventy-five-day period; or 2. The City Council finds that the developer has been delayed by circumstances beyond control.
- B. At the end of the approved delay-in-recording period and any extensions which may have been granted, the city may declare the project a dormant project and proceed to terminate approval as provided under Section 7.

#### **Section 7 DORMANT PROJECTS**

In the event that the developer, after receiving final approval by the land use authority and shall fail to complete construction of the required public improvements pursuant to the provisions of Section 6.1 and fails to post an improvement completion assurance, or fails to request and receive approval of an extension, the city council may declare the project a dormant project and thereafter act to rescind prior approval actions and take such other action as it deems appropriate in order to protect the public interest, including but not limited to one or more of the following:

- A. For large scale developments granted final approval by ordinance, but not requiring recording at the office of the Juab County Recorder: By passage of a motion to reconsider and enactment of an ordinance repealing the ordinance of approval.
- B. For subdivision projects granted final plat approval by ordinance, but not yet recorded at the Office of the Juab County Recorder: By enactment of a motion of the city council to reconsider and rescind the motion of approval.
- C. For subdivisions, PUDs, condominium projects and similar projects granted final approval and recorded at the office of the Juab County Recorder: 1. If covered by a development agreement permitting vacation: By commencement of plat vacation procedures as set forth in state law and enactment of an ordinance repealing the ordinance of approval, where appropriate. 2. If recorded without a development agreement: By recording of a notice of interest relating to each parcel to the effect that no building permit will be issued for lots on unimproved streets.

#### **Section 8 IMPROVEMENT COMPLETION ASSURANCE - CITY RIGHTS-OF-WAY**

The format for securing the improvement completion assurance for a single public rights-of-way permit shall be per Section 2. Amount of said improvement completion assurance shall be a minimum of two thousand dollars.

Following receipt of the notice of completion and request for release, the City Engineer or the designated representative, following an on-site review of the project, shall prepare a report setting forth the condition of the public landscaping and infrastructure.

One half of the improvement completion assurance shall be released upon initial completion with the remaining balance of not less than \$1,000 being held as an improvement warranty pursuant to section 4.

In the event that an entity, contractor, franchise utility, or other party providing an improvement completion assurance for work in city rights-of-way wishes to secure sufficient assurance with the city to provide for multiple projects, said applicant shall provide an improvement completion assurance in the amount not less than five times the minimum assurance amount to secure permission for an ongoing improvement completion assurance pursuant to Section 2.

This assurance will allow the applicant to complete multiple projects with a single improvement completion assurance. Additional bonds may be required for each project exceeding the minimum amount. This assurance shall then serve as sufficient guarantee to allow the applicant to continue work in the city streets until such time as release is requested and all warranty period have passed for work completed under said assurance, or when the city exercises the assurance to complete or remediate work or workmanship.

The City Engineer or designated representative shall be the authority determining release and/or calls for performance assurance funds associated with city rights-of-way permitting and work remediation. In the event a street excavation permit is associated with a development project for which an improvement completion assurance has been provided, the primary means of guarantee for the work in city rights-of-way shall be the amounts secured by the development to ensure completion of the project.

EFFECTIVE DATE:

This ordinance shall become effective on the date passed by the City Council of Eureka.

PASSED AND APPROVED THIS 14<sup>th</sup> DAY OF AUGUST, 2023.

MAYOR OF EUREKA:

  
CHRISTOPHER J. DEVER, SR.

ATTEST:

  
CITY RECORDER