

SECTION 5: Financial Guarantee of Performance

5.1 Acceptable Forms of Guarantee

If the subdivider chooses to file a letter of credit or bond in lieu of completing construction prior to final plat approval, he may utilize either of the following methods of posting security conditioned that such improvements will be completed within twelve (12) months after approval of such plat. The plat shall not be recorded until the subdivider files with the Planning Department one of the following securities in an amount of the total cost of improvements required, plus ten (10) percent. The cost of such improvements shall be as estimated by the subdivider's engineer with final acceptance of amount made by the City Engineer and/or the Waterworks Manager or authorized designee.

Any Bond and any Letter of Credit deviating from the sample format shown in Exhibit G shall be submitted for approval as to form and legality by the City Attorney.

5.2 Irrevocable Letter of Credit

Must meet the following requirements:

- A. Must be from an institution that is federally insured;
- B. The letter of credit shall list as sole beneficiary the City of Harlingen and shall not expire before fifteen (15) months from date of plat recordation;
- C. The letter of credit shall be conditioned upon installation or construction of all facilities and improvements meeting the criteria established under this Ordinance within twelve (12) months from the date the plat is approved by the Planning & Zoning Commission;
- D. Where good cause exists, the City Commission may extend the period of time for completion for an additional period of time not to exceed twelve (12) months if the subdivider has not completed the required site improvements or completed such improvements in compliance with this Ordinance. Any extension of time granted for construction of improvements shall be accompanied by a revised Letter of Credit reflecting the time extension;
- E. A sample format of an approved letter of credit is available in Exhibit G.
- F. Any proposed subdivision of land located within the extra territorial jurisdiction of the City of Harlingen presented for approval by the Planning and Zoning Commission shall meet the requirements of this Section and any surety bond or irrevocable letter of credit required under this Section, shall be made payable to the City of Harlingen and Cameron County and

the specifications attached to such surety bond or letter of credit for such subdivision shall conform to all applicable subdivision regulations of the City of Harlingen and Cameron County.

5.3 Surety Bonds

Must meet the following requirements:

- A. The bond or financial guarantee shall be payable to the City of Harlingen.
- B. The bond shall be executed with sureties as may be approved by the City. The City shall establish criteria for acceptability of the surety companies issuing bonds that include but are not limited to:
 - 1. Registration with the Secretary of State and be authorized to do business in Texas; and
 - 2. Authorization to issue bonds in the amount required by the City Commission; and
 - 3. Rating of at least B from Best's Key Rating Guide; or if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of the Treasury Circular 570. Such bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury.

5.4 Performance Guarantee

In most cases a contractor's one year written warranty on improvements will suffice for a performance guarantee.

If a contractor has performed unsatisfactory work in the past on a public improvement project, the City may require a security filed by the subdivider in an amount equal to twenty-five (25%) percent of the cost of the improvements required as estimated by the City Engineer and the Waterworks System Manager conditioned that the subdivider will warrant such improvements in good condition for a period of twelve (12) months after final acceptance of the completed construction by the Director of Public Works and Waterworks System Manager, as provided in Section 4. Security shall be submitted for approval as to form and legality by the City Attorney.

5.5 Alternative to Financial Guarantee.

The City may approve a final plat under this section without receiving a financial guarantee in the name of the City if:

- A The property being subdivided lies wholly within the etj; and
- B The City has executed an interlocal agreement with the County that imposes the obligation on the County to:
 - 1. Accept the bonds, letters of credit, or other financial guarantees, that meet the requirements of this section;
 - 2. Execute the construction agreement with the subdivider; and
 - 3. Assume the obligations to enforce the terms of the financial guarantee under the conditions set forth therein and complete construction of the facilities identified in the construction agreement.