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CITY of NOVI CITY COUNCIL

Agenda Item B
March 28, 2016

SUBJECT: Approval of Ordinance 16-173.05 to amend the City of Novi Code of Ordinances Chapter 26.5, "Financial Guarantees", Ordinance 16-96.03 to amend Chapter 7, "Buildings and Building Regulations" Article V, Site Restoration, and Ordinance 16-157.05 to amend Chapter 31, "Streets, Sidewalk and other Public Places", Section 31-1, "Construction within City Street, etc." and a resolution to set a fee and financial guarantee for a Final Grade/Site Restoration inspection for new Single Family Homes **SECOND READING**

SUBMITTING DEPARTMENT: Community Development *WJ*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

Following the direction received from City Council, Novi Community Development staff have gathered input and presented a number of proposed revisions to Ordinance chapter 26.5 related to Financial Guarantees for development projects within the City.

The potential amendments were presented and discussed at several meetings of the Ordinance Review Committee, which unanimously voted to forward the amendments to City Council for approval.

The only other change from the previously presented version of the proposed amendment is clarification that a financial guarantee is required for private residential streets that are fully completed prior to construction of at least 90% of the residences in the development.

While the proposed amendments were being prepared, staff spoke to or met with a number of stakeholders from the Novi development community to secure their input and suggestions, and to further understand the challenges of the current development markets. These stakeholders included Claudio Rossi with Mirage Development, Mike Noles with Toll Brothers, Bill Bye with Interphase Land Development, Matt Sosin of Northern Equities, Gary Jonna from Whitehall, Ryan Dembs, Glenn Jones and Jackie Varney from Dembs Development, and Mark Guidobono of Cambridge Homes. We also met with Jim Clarke of Robertson Brothers, Mark Kassab with M. Shapiro, and Gary Shapiro with Ivanhoe, and spoke with Mike Kahm from Singh Development by phone. John Carson from Pulte was also contacted, but has not forwarded his comments to date.

General input and views were requested as well as specific points related to:

- Critical project risk points for the developer
- Critical project risk points for the City and residents
- Crucial points in project financing
- Transfer of ownership point as it relates to completion of the development
- Advantages and disadvantages of the instruments available to post Financial Guarantees

- Risk associated with starting a project before approval of the Final Site Plan.

Input from these stakeholders covered a very wide range from those who felt that no financial guarantees should be required for their organizations to one individual that warned that the banks were becoming careless with funding and there was risk to the City from less-than-scrupulous developers. While the observations were wide ranging, common challenges included the following:

- The 150% multiplier applied to initial financial guarantee values
- The 200% multiplier applied to financial guarantees for projects under a Completion Agreement (not completed within 2 years)
- Timing of required guarantees
- Time required for release of cash guarantees (the warrant process)
- The need to get started on projects sooner to accommodate short timelines and seasonal limitations (Michigan weather)
- Posting of a single financial guarantee by a developer for multiple projects
- High standards for development work.

During the years since Chapter 26.5 was adopted, the City has seen many development projects come to fruition. The economic downturn created a challenging environment for a number of the ongoing projects, but the current ordinance provisions served the City well in assuring that projects were completed albeit at times over an extended period due to slow sales, occupancy and availability of financing. That said, it is also important to note that no reasonable program of financial guarantees would foresee or prevent a situation like that experienced by Pontiac with the Bloomfield Park project.

Where the City of Novi did see challenges was with projects initiated prior to 2004 or where an Environmental Preconstruction meeting was held prior to Final Site Plan approval and not subject to posting of sufficient guarantees. This will be further addressed below as an opportunity for improvement. The success of the current Ordinance provisions in holding developers accountable does not mean that review of the requirements is not appropriate.

The current language of Chapter 26.5 was reviewed in detail with an eye toward reducing any unnecessary burdens and barriers to development, balanced with reasonable additional risk to the City. Engineering staff also researched the practices and requirements of communities in the region. As a result, staff has identified a number of possible revisions to this chapter of the City Code with the intention of presenting them to the Ordinance Review Committee for consideration. These are as follows:

- Eliminate issuance of a Grading Permit and the associated fee. The current permit record would be repurposed as tracking for the initiation of the project as referenced in the Ordinance for internal use only.
- Delay the requirement for Site work, Utility, Street Tree, and Landscaping Financial Guarantees for all Commercial developments until just prior to issuance of a Temporary Certificate of Occupancy (TCO).
- Eliminate of the requirement for a Storm water Facilities Financial Guarantee 26.5-33(1).d.9

- Extend the construction period allowed before a Completion Agreement is required to 24 months with an additional 12 months allowed administratively (currently 24 months + 6 months)
- Reduce initial bond amount multiplier from 150% to 120% (105% value + 15% administrative costs)
- Eliminate the requirement for the Street or Utility Affidavit from the developer as referenced in 26.5-33(1)1-2 and 26.5-35(a)
- Reduce Completion Agreement bond amount multiplier from 200% to 150% (110% value+ 20% degradation/weathering + 20% administrative costs)
- Clarify that the \$400.00 per tree guarantees amounts for street trees and woodland replacement trees are not subject to the above multipliers.
- Allow administrative waiver of the utility bond required by 26.5.d.2 for utilities installed and in service for over 2 years. Waiver would be by the City Engineer.
- Revise current policy to approve easement documents in their final form at the time of stamping set submittal. The documents would be recorded after the improvements are constructed, but prior to any change in ownership, or when otherwise deemed so by the City Engineer.
- Revise policy regarding placement of final lift of asphalt under 26.5-33(2).a to allow immediate placement (sufficient financial guarantee would still be held for repair of deterioration or unforeseen damage as a result of construction).
- Request the Planning Commission consider a request to revise Section 6.1.4.F of the Zoning Ordinance to allow preliminary site work including clearing, grubbing, and grading prior to approval of the Final Site Plan for a project subject to a standard agreement to restore the site if Final Site Plan Stamping Set approval and respective pre-construction meeting are not completed within 6 months. All environmental permits (woodland, wetland, floodplain, watercourse, and SESC) and Financial Guarantees would be required to be posted and a "Plan B" storm water, grading and soil erosion plan approved as part of the Preliminary Site Plan approval demonstrating full restoration and stabilization of the site. This plan would be implemented if the project does not proceed towards approval and completion, by the City if necessary.

In addition to the revisions presented to the Ordinance Review Committee for consideration, staff recognized the opportunity to reduce the complexity of the Right of Way Permit and Site Restoration permit requirements related to construction of single family homes and combined and simplified the requirements and processes. These changes require updates of corresponding Sections of the Code of Ordinances including 7-71 thru 73 and 31-1 as noted below:

The current ordinance (in Chapter 7 Article V) requires that each builder deposit a site restoration bond in the amount of \$1,500 guaranteeing protection of facilities within the right-of-way and public easements such as drainage structures, water facilities, streets, sidewalks, etc. Currently, section 26.5-34 also requires the builder deposit a bond for

\$5,000 for protection of the same items when the structure is located adjacent to a public street, therefore, requiring a deposit of \$6,500 in many cases. Additionally, a right-of-way permit is required under Section 31-1 for a fee of \$100. At the time of issuance of the certificate of occupancy or shortly thereafter, there are currently five inspections for single family homes: 1) final grade inspection by the City's engineering consultant, 2) site restoration bond inspection by Water & Sewer Division, 3) site restoration bond by Field Operations Division for drainage and street related items, 4) a right-of-way inspection to close the permit, and 5) an inspection by Code Enforcement to ensure that the lawn has been established.

Staff is proposing the following minor ordinance revisions to simplify this process, reduce the costs to the builder and decrease the number of inspections:

1. Remove the duplicate requirements for site restoration bond from Chapter 7 and update the requirements in Section 26.5-34 to require only one site restoration bond for each single family home constructed.
2. Revise Section 31-1 to exempt the construction of new single family residential homes from the requirement to obtain a right-of-way permit in those cases where a site restoration bond is required. Under Section 26.5-34.
3. Add the site restoration bond inspection requirements to the existing final grade inspection requirements so that one inspection covers all items.
4. If there are deficient items related to site restoration, these would need to be resolved by the builder prior to certificate of occupancy and release of the site restoration bond.
5. Code enforcement would continue to complete the lawn inspection within 6 months of C of O issuance.

These revisions would combine two bonds into one, remove the requirement for one permit, and reduce the number of inspections from five to two. There may be a slight increase in the final grade inspection cost to address the additional items as part of the inspection, but the elimination of the right-of-way permit results in a reduction of \$100 in fees.

Also added was specific language relating to financial guarantees for private streets specifically in the event a developer chooses to fully construct the roads early in the buildout of a project. These occur in Section 26.5-35

Existing Financial Guarantees would be recalculated in accordance with the revised multipliers at the time they would otherwise typically be reduced under 26.5-8.

RECOMMENDED ACTION: Approval of Ordinance 16-173.05 to amend the City of Novi Code of Ordinances Chapter 26.5, "Financial Guarantees", Ordinance 16-96.03 to amend Chapter 7", Buildings and Building Regulations", Article V, Site Restoration, and Ordinance 16-157.05 to amend Chapter 31, "Streets, Sidewalk and other Public Places", Section 31-1, "Construction within City Street, etc." ." and a resolution to set a fee and financial guarantee for a Final Grade/Site Restoration inspection for new Single Family Homes

SECOND READING

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Burke				
Council Member Casey				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				

CITY OF NOVI

COUNTY OF OAKLAND, MICHIGAN

RESOLUTION ESTABLISHING AMENDED FEE FOR COMBINED FINAL GRADE/SITE RESTORATION INSPECTION FOR NEW SINGLE FAMILY HOMES

Minutes of a Meeting of the City Council of the City of Novi, County of Oakland, Michigan, held in the City Hall of said City on _____, _____, at ____o'clock P.M. Prevailling Eastern Time.

PRESENT: Councilmembers_____

ABSENT: Councilmembers_____

The following preamble and Resolution were offered by Councilmember _____ and supported by Councilmember _____.

WHEREAS, the City has established an Ordinance requiring Payment of Monies to Reimburse the City for engineering consultant inspection of new single family homes for Final Grade and Site Restoration in accordance with Chapter 7, Article V and Chapter 31, Section 31-1; and

WHEREAS, the revised single fee will take the place of the current fees for separate inspections for Final Grade and Site Restoration; and

WHEREAS, the City has negotiated with Spalding DeDecker, the city's engineering consultant, for a single fee of \$200.00 per inspection with the fee for any required re-inspections remaining at \$185.00; and

WHEREAS, the City has determined that a Financial Guarantee for combined Site Restoration for new single family homes of \$5000.00 is sufficient to secure performance of obligations under the ordinance.

NOW THEREFORE, IT IS THEREFORE RESOLVED that the fee for Final Grade/Site Restoration Inspection for new single family homes shall be \$200.00 per inspection and the Financial Guarantee shall be \$5000.00.

AYES:

NAYS:

RESOLUTION DECLARED ADOPTED.

Maryanne Cornelius, City Clerk

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Novi, County of Oakland, and State of Michigan, at a regular meeting held this _____ day of _____, 2016, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that the minutes of said meeting have been kept and made available to the public as required by said Act.

Maryanne Cornelius, City Clerk
City of Novi



March 16, 2016

Mr. Brian T. Coburn, P.E.
Engineering Manager
City of Novi - Department of Public Services
Field Services Complex – Engineering Division
26300 Lee BeGole Drive
Novi, MI 48375

Re: Renewal of Private Development Field Services Contract

Dear Mr. Coburn:

This letter is in response to our discussion regarding the renewal of Spalding DeDecker's 2012 Private Development Field Services Contract with the City of Novi. We are very pleased to have the opportunity to renew this contract, which is currently set to expire April 30, 2016. Spalding DeDecker respectfully requests the renewal of this contract for one year.

As a result, SDA agrees to hold all terms, conditions and fees to the original terms stated in the 2012 contract, except for the Final Grade/ SFR Restoration Bond inspections where the scope of services have been revised and agreed upon by the City of Novi Engineering Division and SDA. Therefore, we request the associated fee for the Final Grade/ SFR Restoration Bond inspection be increased to \$200 for the initial inspection and \$135 for all subsequent Final Grade/Restoration Bond inspections.

If you have any questions or concerns please do not hesitate to contact me.

Spalding DeDecker appreciates the opportunity to continue to provide professional engineering services to the City of Novi. We look forward to working with you and your staff in the year ahead.

Sincerely,

SPALDING DEDECKER

Ted Meadows
Project Manager

cc: SDA Job File

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 16-173.05

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, AT CHAPTER 26.5, "PERFORMANCE GUARANTEES" IN ORDER TO COMPREHENSIVELY AMEND THE REQUIREMENTS OF THE ORDINANCE IN GENERAL AS TO AUTHORIZATION, FORM AND AMOUNT, AND THE NATURE AND EFFECT OF THE GUARANTEES, AND TO AMEND THE SPECIFIC PROCESSES FOR THE ACCEPTANCE, RELEASE, AND FORFEITURE OF THE GUARANTEES.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 26.5, "Performance Guarantees" of the City of Novi Code of Ordinances is hereby amended to read as follows in its entirety:

Chapter 26.5 - PERFORMANCE GUARANTEES

ARTICLE I. - IN GENERAL

Sec. 26.5-1. - Purpose.

The purpose of this chapter is to establish the authority and procedures for requiring, accepting, and enforcing performance guarantees, in order to assure that development projects are completed and maintained in accordance with city standards, requirements, and approval conditions.

Sec. 26.5-2. - Administrative provisions.

This chapter sets forth provisions general to the administration of performance guarantees, including applicability, default, conditions, forms and amounts, reductions, release of guarantees, and scheduling of performance, maintenance, and defect inspections.

Sec. 26.5-3. - Applicability.

The provisions of this chapter shall apply to permits and approvals granted pursuant to the various provisions of this Code, including (without limitation) buildings and building regulations (chapter 7); design and construction standards (chapter 11); drainage and flood damage prevention (chapter 12); planning (chapter 27); signs (chapter 28); soil erosion (chapter 29); streets, sidewalks and other public places (chapter 31); subdivision of land (chapter 32); utilities (chapter 34); woodlands (chapter 37); zoning ordinance (appendix A); and subdivision ordinance (appendix C).

Sec. 26.5-4. - Definitions.

[The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.]

Applicant means the person or entity that has a legal or equitable right to effect the development or improvement of the subject real property pursuant to an approved site plan or plot plan. Only the applicant may post a performance guarantee. If the subject real property is transferred, conveyed, or sold (other than as an individual, single-family lot or unit), the successor (with legal proof of ownership) shall replace any outstanding performance guarantees at the time of purchase. Cash bonds may be assigned upon proof of transfer, conveyance, or sale. If the successor does not replace all performance guarantees, then the applicant shall continue to be responsible under such guarantees for completing the project in accordance with their terms. This provision shall not prohibit joint performance guarantees, provided that the applicant is one (1) of the joint guarantors and if deemed acceptable by the community development director~~building official~~.

Building official means the city building official or his or her designee.

City engineer means the city engineer or his or her designee.

Community development director means the city community development director or his or her designee.

Default means the failure to:

- (1) Comply with performance guarantee requirements and conditions;
- (2) Complete, in the specified time, any required improvements in accordance with this Code and with an approved site or plot plan or plat and any conditions thereto;
- (3) Maintain, for the specified period of time, any required improvements in accordance with this Code and with an approved site or plot plan or plat and any conditions thereto; and
- (4) Pay current fee balances due.

Department means the city building division of the community development department, unless a different department or individual is specified in or by reference to a particular provision or section hereof.

Forfeiture. Performance guarantees cannot be terminated, canceled, reduced, rebated, or released without written authorization from the community development director~~building official~~. All guarantees shall remain in full force and effect until such time as the community development director~~building official~~ has authorized otherwise. On determination of the community development director~~building official~~ that any conditions of the performance

guarantee have not been complied with, the community development director ~~building official~~ shall have recourse to the rights created under the guarantee and as set forth in this chapter.

Refunds of cash bonds approved by the community development director ~~building official~~ will be made payable solely to the applicant, or to an assignee of the applicant in the event of a transfer. Refunds will be mailed to the address specified on the bond receipt if not retrieved by the applicant or assignee from the department within a reasonable time after notice that the refund is available. If the refund is returned undeliverable, it shall be held by the city and returned to the applicant upon demand; however, if such demand is not made within one (1) year after the date of refund, the bond shall be deemed forfeited and shall be deposited in the general fund of the city.

Guarantor means the applicant (or assignee) and, if applicable, either a corporate surety acceptable to the city and licensed to provide guarantees to third parties or a financial institution incorporated and located within the United States and insured by the Federal Deposit Insurance Corporation (FDIC).

Improvements means any physical construction, alteration, undertaking, or activity for which a permit is required under this Code, including (without limitation) buildings and building regulations (chapter 7); design and construction standards (chapter 11); drainage and flood damage prevention (chapter 12); planning (chapter 27); signs (chapter 28); soil erosion (chapter 29); streets, sidewalks and other public places (chapter 31); subdivision of land (chapter 32); utilities (chapter 34); woodlands (chapter 37); zoning ordinance (appendix A); and subdivision ordinance (appendix C), for which the posting of a performance guarantee is required or authorized.

Initial permit means a permit for mass grading, building foundations, or utilities, whichever occurs first.

Issuance of an initial permit means delivery by the city of the permit to the applicant and acceptance of such permit by the applicant as required under the code (e.g., signature or acknowledgment of same).

Parks/forestry operations manager means parks/forestry operations manager or his or her designee.

Performance guarantee means a form of financial security posted to ensure timely, proper, and workmanlike completion of improvements; to ensure compliance with this Code; and/or to warranty materials, workmanship of improvements, or design. Performance guarantees may be in the form of cash, certified check, irrevocable bank letter of credit, and/or performance/payment bonds. For the purposes of this chapter, the terms "financial guarantee," "maintenance guarantee," and "defect guarantee" are considered kinds of performance guarantees.

Project means a discrete, separate development described in and made subject to an approved site plan or plot plan or plat. Projects are categorized as single-family residential, multiple-family residential, or non-residential. For development projects that are approved with

separate and discrete phases, the requirements of this chapter shall be applied separately to each phase (i.e., on a phase-by-phase basis).

~~*Property* means the real property described in and made subject to an approved site plan or plot plan or plat on which a project is proposed to be constructed. For development projects that are approved with separate and discrete phases, the requirements of this chapter shall be applied separately to each phase (i.e., on a phase-by-phase basis).~~

Site improvements shall be a specific reference to all of the following unless otherwise noted in this chapter or in any approved site or plot plan or plat or any conditions thereon: streets, sanitary sewers, storm sewers, water mains, mass grading; sidewalks, safety paths, bicycle paths and public walkways; street signs; street island improvements; right-of-way disruption, woodland protection, woodland replacements; floodplain protection and restoration, soil erosion control, required landscaping and screen planting of non-access greenbelt easements and retention basins; maintenance of retention basins on private property; street trees, including an estimate for the removal of any dead trees within street rights-of-way for a period of two (2) full growing seasons after the date of acceptance of streets and utilities; and the placement or replacement, after construction of improvements, of all lot stakes and monuments.

Successor shall mean the person or entity obtaining the legal and/or equitable title to a development from the Applicant or a lienholder along with the right to control the remaining development rights as a result of a voluntary or involuntary transfer of the development. In assessing whether a person or entity has obtained the remaining "development rights" for a development, the City may consider some or all of the following types of rights and/or obligations, without limitation: the intent of the parties to the transfer; the right to amend the master deed, declaration of covenants or other real property or development related document; the right to operate and/or maintain a sales or leasing office; the right to control over general common elements and/or a homeowners association; the right to make building modifications; and/or the total number of units or lots acquired.

Treasurer means the city treasurer or his or her designee.

Sec. 26.5-5. - Authorization.

- (a) Subject to the provisions of article IV of this chapter, and as set forth in the various provisions of this Code, the department is authorized to require all applicants constructing improvements under any permits and approvals granted pursuant to this Code to post a performance guarantee with the city treasurer building official to guarantee completion of all required site improvements associated with a project in accordance with this chapter, in an initial amount of one hundred twenty (120) percent of the estimated cost of the site improvements for which the guarantee is required in the form required by Section 26.5-7, below.
- (b) Notwithstanding any provision of any other chapter of this Code with regard to issuance of permits for specific improvements, performance guarantees shall require actual construction and installation of all required site improvements within two (2) years after the

issuance of the initial permit, together with the posting of necessary bonds therefor, for any site improvements listed in subsection (a) above, or within six (6) months after a temporary occupancy permit has been issued for any structure on the property, whichever is shorter or occurs first. The time limit may be extended for ~~six~~ twelve (~~6~~12) months at the ~~building official's~~ community development director's discretion, upon determination that work is proceeding toward completion and that the delay is not dilatory or unreasonable under all the circumstances. In reaching this determination, the ~~building official~~ director may take into consideration any appropriate factors established by the applicant, including but not limited to weather conditions, delays in securing required approvals/permits from other regulatory agencies, and unforeseen economic events or conditions. The request for extension shall be in writing, accompanied by a schedule for completion of all remaining work. At the time an extension is requested, a site inspection will be conducted, with the cost of such inspection being the direct responsibility of the applicant, to confirm work remaining on the site.

If an extension is requested for longer than ~~six~~ twelve (~~6~~12) months, approval of the city council shall be required, together with a written completion agreement pursuant to section 26.5-12. In determining whether to grant the extension, the city council shall determine that the delay is not dilatory or unreasonable under all the circumstances may take into consideration any appropriate factors established by the applicant. If an extension is granted, a revised performance guarantee shall be posted in an amount no less than ~~two hundred~~ one hundred fifty (~~200~~150) percent of the cost of the work to be completed, unless otherwise provided by city council. In all events, however, the work must be completed at the time ninety (90) percent of the building permits have been issued or within four (4) years after the issuance of the initial permit.

(c) An applicant who has posted the performance guarantees required under this chapter who suspends work on a project or development may request a waiver of the requirements in this subsection to continue the guarantees in place upon a ~~showing~~ finding by the city council of the following:

- (1) Few or limited physical improvements have occurred on site, such as minimal clearing and grading, no site improvements such as roads or utilities have been installed or constructed, and no footing or foundations for any buildings have been commenced, or alternatively that any such improvements will be removed and the site restored as required by the city, including the stabilization of soils pursuant to state and local soil erosion and stabilization regulations;
- (2) No lot, unit, or parcel within the development or project has been created by the recording of an approved subdivision plat or condominium subdivision plan or transferred to a third party.

Upon a showing of the same cause for extension described herein, the city council may grant the requested waiver as to any site improvements not actually commenced, upon entry by the applicant into a completion agreement that shall include the posting of required guarantees for any work actually commenced, including clearing and grading, and for required soil erosion controlled measures, in an amount to be determined by city council. The waiver shall expire after two (2) years or upon expiration of the approved final

site plan, and as a condition of the waiver the applicant shall agree that, if the required performance guarantees are not posted and the project recommenced at the expiration of the agreement, the site plan and all project permit approvals shall be considered to be expired and/or null and void.

- (d) If the applicant does not meet the criteria for waiver set forth in subsection (c) above, the applicant may seek relief pursuant to section 26.5-12

Sec. 26.5-6. - Conditions.

- (a) Every performance guarantee shall obligate the applicant to comply with all of the provisions of this Code and to complete all conditions required by the permit or approved site or plot plan or plat within the time limit specified.
- (b) The city may collect or execute against and/or use a performance guarantee when work is not completed in a timely manner in accordance with terms and provisions of this chapter and of a permit or approved site or plot plan or plat, including any conditions thereto. The community development director ~~building official~~ shall notify the applicant in writing of any such determination.
- (c) ~~All performance or payment bonds or letters of credit shall contain language, acceptable to the city, that is substantially similar to the following: If at any time the city~~ community development director ~~determines that the funds remaining in the performance guarantee are not, or may not be, sufficient to pay in full one hundred fifty~~ (150/120) ~~percent of the remaining unpaid cost of all improvements and unpaid fees [or that the funds remaining in the maintenance guarantee are not, or may not be sufficient to pay all unpaid costs of correcting any defects and deficiencies in the improvements], then, within ten (10) days after demand by the city, the applicant shall increase the amount of the performance guarantee to be sufficient to pay the unpaid costs and fees. Failure to so increase the amount of the performance guarantee shall be grounds for the city to retain any remaining balance of the cash deposit and to draw down the entire remaining balance of the letter of credit. All unpaid fees will be deducted from this balance.~~

Sec. 26.5-7. - Form and amount.

~~(a) (a)~~ At the time of issuance of the initial permit for improvement for any single or multi-family project under subsection 26.5-5(a) above, and before conducting any preconstruction meetings, the ~~building official~~ community development director shall require the applicant to deposit a performance guarantee in the amount of one hundred ~~fifty~~ (150/120) percent of the estimated cost of the site improvements for which the guarantee is required. ~~The guarantee shall be a single guarantee posted by and in the name of the applicant encompassing all required improvements and shall be in the form of cash, certified check, or irrevocable bank letter of credit for all amounts up to two hundred fifty thousand dollars (\$250,000.00). To the extent that amounts required to be deposited are at any time in excess of two hundred fifty thousand dollars (\$250,000.00), such excess amounts may be posted by and in the name of the applicant as a separate guarantee, in any form allowed under the definition of "performance guarantee" in section 26.5-4, relating to all required~~

improvements. In unusual or unique circumstances affecting the applicant's ability to post the guarantee, the building official may accept a separate guarantee for a particular improvement if the guarantee is posted as a joint guarantee with a person or entity other than the applicant who has a contractual obligation to the applicant to post such guarantee. Maintenance guarantees posted pursuant to section 26.5-10 (including those described in sections 26.5-33, 26.5-37, 26.5-39, and 26.5-40) may be post

(b) At the time of issuance of the initial permit for improvement for any non-residential project under subsection 26.5-5(a) above, and before conducting any preconstruction meetings, the community development director shall require the applicant to deposit a performance guarantee in the amount of one hundred twenty (120) percent of the estimated cost of limited site improvements, including floodplain protection and restoration, woodland protection and replacements, wetland protection and restoration, soil erosion control, storm water management, any water or sanitary sewer facilities proposed for public operation and maintenance, and right-of-way disruption, for which the guarantee is required. If any other site improvements, including required site landscaping, parking lot paving, sidewalks, safety paths, bicycle paths and public walkways; street signs; street island improvements, traffic control improvements, and/or street trees, remain incomplete at the time the applicant seeks to use or occupy the non-residential project, prior to issuance of any temporary certificate of occupancy, the community development director shall require the applicant to deposit or maintain an existing performance guarantee in the amount of one hundred twenty (120) percent of the estimated cost of additional site improvements.

(c) The guarantee required by this section shall be a single guarantee posted by and in the name of the applicant encompassing all required improvements and shall be in the form of cash, certified check, or irrevocable bank letter of credit for all amounts up to two hundred fifty thousand dollars (\$250,000.00). To the extent that amounts required to be deposited are at any time in excess of two hundred fifty thousand dollars (\$250,000.00), such excess amounts may be posted by and in the name of the applicant as a separate guarantee, in any form allowed under the definition of "performance guarantee" in section 26.5-4, relating to all required improvements. In unusual or unique circumstances affecting the applicant's ability to post the guarantee, the city treasurer may accept a separate guarantee for a particular improvement if the guarantee is posted as a joint guarantee with a person or entity other than the applicant who has a contractual obligation to the applicant to post such guarantee. Maintenance guarantees posted pursuant to section 26.5-10 (including those described in sections 26.5-33, 26.5-37, 26.5-39, and 26.5-40) may be posted by a third party who performed the work guaranteed.

(d) Notwithstanding the foregoing, and further notwithstanding the requirement herein that each project shall separately comply with the requirements of this Chapter, an applicant may post a single performance guarantee amount for site improvements (~~not maintenance or site restoration~~) for more than one non-residential project, subject to the following:

(1) the applicant has previously completed a minimum of three (3) non-residential projects in the City within the immediately preceding past three (3) years in

compliance with the applicable provisions of this Chapter and other land use development and infrastructure--related portions of the City Code;

(2) the a single performance guarantee for site improvements is posted in cash, certified check, or irrevocable letter of credit (i.e., not a surety or performance bond) in an amount determined by the director of community development, with the approval of the city manager, to be sufficient to guarantee completion of each development covered by such guarantee, provided that the amount required to be posted shall not exceed \$1,500,000750,000-; and

(3) the applicant provides sufficient documentation, in a form acceptable to the City Attorney, to establish that the single performance guarantee may be executed against as to all affected projects, even if a separate entity, LLC, partnership, or other business entity is associated with the project.

An applicant that fails to comply with any of the applicable provisions of this Chapter and other land use development and infrastructure--related portions of the City Code shall not be eligible for consideration under this subsection. If the City is required to draw on a performance guarantee posted by an applicant under this Chapter for any reason, such applicant shall be required to post the amounts that would be required for each project for the remainder of such projects, and shall not be eligible for consideration under this subsection as to future projects.

Sec. 26.5-8. - Release or rebate of performance guarantees.

The city treasurer-building official shall not release a performance guarantee until:

- (1) All fees that are due have been paid;
- (2) A maintenance guarantee has been posted, if applicable;
- (3) Inspection of the development site has been performed when required; and
- (4) The community development director building official has determined that the conditions and requirements of the permit/approval otherwise specified in the performance guarantee have been met and final approval of same has been granted.

The director-building official may, after performing a site inspection at the written request of an applicant, rebate or reduce portions of a performance guarantee upon determination by the building official-director, in his sole discretion, that the improvements and/or actions for which that performance guarantee was posted have been satisfactorily completed in accordance with the approved plans, any temporary certificate of occupancy, and all other applicable laws, regulations, and ordinances. No such rebate or reduction shall occur until fifty (50) percent of the value of all of the site improvements, based on an estimate of the value of labor and materials, for the property are complete, and at no point shall the amount of the performance guarantees held by the city be less than one hundred ~~forty~~ fifty-twenty (150120) percent of the cost to complete the remaining required improvements on the property. The applicant is responsible for the actual cost of inspections requested pursuant to this section.

Sec. 26.5-9. - Scheduling of performance, maintenance, and defect inspections.

All site improvements must be inspected by the city after the completion of construction of the improvements, as well as during the construction process as set forth in this chapter. The applicant must submit a written request for such inspection, provided that the improvements substantially comply with the requirements of the approved plans and all city standards, and city inspections will occur as soon as reasonably practicable thereafter, and should generally occur within thirty (30) days. Periodic inspections may also be made at the discretion of the building official.

Sec. 26.5-10. - Maintenance and defect guarantees authorized.

- (a) The ~~department-city~~ shall require all applicants to post a maintenance guarantee and/or defect guarantee warranting the successful operation and maintenance of site improvements, and guaranteeing the workmanship, materials, and design used in construction of site improvements required by the conditions of any permits or approvals issued pursuant to this Code, as defined above.
- (b) Unless otherwise specifically indicated in this Code, all maintenance guarantees and defect guarantees shall guarantee successful operation, workmanship, materials, and design of required facilities for a period of two (2) years following final inspection and final acceptance by the city in accordance with the procedures set forth in article II of this chapter. With regard to plantings required under chapter 37 of this Code or appendix A (zoning ordinance), the maintenance and guarantee period of two (2) full growing seasons is required. If any defect or deficiency occurs or becomes evident during the two-year period, then the owner shall after ten (10) days' written notice from the city, correct it or cause it to be corrected. In the event any improvement is repaired or replaced pursuant to the demand of the city, the ~~building official~~community development director may require the guarantee with respect to such repair or replacement, as defined and determined by the department, to be extended for two (2) full years from the date of the repair or replacement.
- (c) The applicant shall notify the city and schedule inspections of facilities required pursuant to this Code, as defined above, at least sixty (60) days before the end of the two-year maintenance and/or defect period, and the city shall conduct such inspection as soon thereafter as is practicable and should generally occur within thirty (30) days.

Sec. 26.5-11. - Default.

- (a) If the applicant fails to timely complete all site improvements and/or timely take the required action for which the performance guarantee was required, the applicant shall be deemed to be in default. Unless a shorter period has been specified in a permit or approval issued, or elsewhere in this Code, "timely" completion of improvements shall mean not longer than two (2) years from the date of issuance of the initial permit for improvements and the necessary performance guarantees therefor, unless such time is extended by the ~~building official~~community development director as permitted in subsection 26.5-5(c) or is specified in an agreement entered into as provided in section 26.5-12

- (b) In the event of a default, the city shall, following notice to the applicant and opportunity for the applicant to cure such default, as specified in the notice, have the right (but not the obligation) to use the performance guarantee deposited to complete the improvements or take the appropriate actions to achieve completion, and the application for site or plot plan or plat approval, building permit, temporary certificate of occupancy, or similar approvals shall be deemed to have authorized the right of the city to enter upon the property to bring about such completion. A notice to the applicant given under this section may be provided by one (1) or more of the following methods: regular first class mail to the address on the application for permit; delivery of the notice to the applicant at such address; hand-delivery to the applicant; or posting the property.
- (c) In the event the performance guarantee posted is insufficient in amount to allow the city to complete the improvements and/or actions, the applicant shall be required to pay to the city such additional costs as are needed for the completion of such improvements and/or actions. Should the city use the performance guarantee, or a portion thereof, to achieve such completion, any amounts remaining shall first be applied to the city's administrative costs, which shall be equal to twenty (20) percent of the cost of such completion, and to payment of actual attorney's fees, consultant fees, and like fees expended in connection with securing the guarantee and completing the improvements and/or actions; the balance remaining thereafter (if any) shall be refunded to the applicant.
- (d) In the event of default, the city may contract with a third party to complete work required pursuant to this chapter.
- (e) Subject to section 26.5-8, the applicant shall be responsible for ensuring that the required performance guarantees remain in place until all site improvements are complete and the guarantees have been released by the ~~building official~~community development director. Bonds and irrevocable letters of credit shall not be permitted to lapse or expire without renewal or replacement. The ~~building official~~community development director may call or collect upon any such guarantee prior to its expiration if it reasonably appears to the ~~building official~~community development director that the guarantee will be permitted to lapse or expire.

Sec. 26.5-12. - Exceptions; written completion agreement required.

The city council may authorize exceptions to the requirements and conditions as set forth in this chapter, including, but not limited to, the form, timing, waiver, or reduction of performance guarantee amounts.

The city council may also authorize the issuance of permits, approvals, or temporary certificates of occupancy before all requirements for issuance under this chapter have been met, where the applicant has demonstrated that unusual or unique circumstances exist, that work is proceeding toward completion, and that any delay in completion is not unreasonable or dilatory. In reaching this determination, the standards of section 1-12 of this Code shall apply. In addition, the council shall consider such factors as the size and nature of the development project and the existence of matters beyond the control of the applicant (such as weather conditions, delay in securing permits/approvals from other regulatory agencies, or unforeseen

economic events or conditions). If any such exceptions are granted, a written completion agreement may be required, in a form to be established by the city.

Sec. 26.5-13. - Violations.

A violation of any provision or requirement of this chapter shall be a civil infraction, subject to enforcement and the fines and penalties for civil infraction violations as set forth in this Code.

Secs. 26.5-14—26.5-30. - Reserved.

ARTICLE II. - SPECIFIC REQUIREMENTS

Sec. 26.5-31. - Generally.

The following provisions set forth special performance guarantee requirements for certain specific improvements.

Sec. 26.5-32. - Site improvements—Generally.

- (a) Before the issuance of an initial permit for site improvements as defined herein, and before any preconstruction meetings, a performance guarantee in the form and amount required under sections 26.5-5 and 26.5-7 shall be deposited with the city.
- (b) All unfinished site improvements that are included on an approved site or plot plan or plat, or that are otherwise required by this Code, shall be constructed, installed, or placed on the property, and be approved by the city engineer, upon substantial completion of all phases of the development process. Upon substantial completion, the city engineer may issue a master punchlist letter listing all items to be completed by the applicant within sixty (60) calendar days or such other time period as stated within the punchlist letter.
- (c) All site work shall be in accordance with appendix A, zoning ordinance; chapter 11, design and construction standards, and all other applicable statutes and ordinances.

Sec. 26.5-33. - Requirements for completion of improvements in developments with public streets and utilities.

The following requirements shall apply where the streets and utilities within a development are contemplated or required to be dedicated to the public and accepted by the city.

(1) No building permit shall be issued unless authorized by an approved site or plot plan or plat. No building permit shall be issued until the city has been notified of the recording of any required subdivision or plat or site condominium master deed, following appropriate approval.

(2) Completion of utilities and acceptance for maintenance.

- a. ~~No building permit shall be issued unless authorized by an approved site or plot plan or plat. No building permit shall be issued until the city has been notified of~~

~~the recording of any required subdivision or plat or site condominium master deed, following appropriate approval.~~

- ~~b~~a. Approval of plot plans for any single-family residential building sites, including platted subdivisions and site condominiums, shall be the responsibility of the ~~be~~ city engineer or his designee city engineer. No such plot plan shall be approved until completion of all utility construction and testing as well as road base construction in accordance with city-approved design standards and in accordance with the approved site plan or plat. In addition, no plot plan shall be approved until the city has been notified of the recording of the subdivision plat or site condominium master deed, following appropriate approval.
- ~~1.~~ After completion of utility construction and testing, as well as road construction, including asphalt base or concrete section, the applicant's engineer shall ~~furnish the city engineer a certified affidavit, in a form acceptable to the city, indicating satisfactory completion of required improvements.~~
 - ~~2.~~ After acceptance of the affidavit by the city, the applicant shall contact the department to schedule a final site inspection. This site inspection will be performed by the city engineer (or designee) and the applicant's engineer and contractor. If it is determined by the city engineer that the development is not ready for inspection, the inspection shall not occur until a determination is made that the inspection is proper. The city will conduct any required inspection as soon as reasonably practicable.
 - ~~3~~2. If after site inspection it is determined that the public utilities were not completed in accordance with design standards and the approved site plan or plat, the city engineer will prepare a "utility and grading punchlist". Approval of plot plans and/or building permits shall not be issued until these punchlist items have been addressed to the satisfaction of the city.
 - ~~4~~3. The applicant will have ten (10) working days to complete all items on the "utility and grading punchlist". If these items still have not been adequately addressed, additional fees shall be assessed for any reinspections.
 - ~~5~~4. After completion of the "utility and grading punchlist" items, the city engineer may issue a "ready for use" letter. The department may then issue building permits for model homes (no more than four (4), or twenty (20) percent of the number of total homes in the development, whichever is fewer). Building permits other than for model homes may not be issued for any single-family residential building site, including platted subdivisions and site condominiums, unless authorized by an approved plot plan and until after confirmation that all fees and performance guarantees have been collected and that the documents in subsection d. below have been received by the city in an acceptable form.

56. No temporary certificate of occupancy building permit, except for model homes, shall be issued for any single-family residential building until the following occur:

- i. The city attorney has provided a letter to the city engineer confirming that the documents required under subsection d. below are in a legally acceptable form and have been properly executed by all parties in interest determined by the city attorney as necessary to convey sufficient title to the utilities and corresponding easements to the city; and
- ii. The city engineer has provided the applicant a signed "acknowledgment" ~~excepting accepting the improvements, and~~ that the city engineer has issued the "ready for use" letter required by subsection (12) ~~ba.~~ ^{54.} of this section, has reviewed and approved the content of the exhibits to the documents required under subsection (12) ~~dc.~~ below, and acknowledges the city's acceptance of the title to and jurisdiction over such utilities identified in the documents, from and after the effective date of the "acknowledgment."

eb. No temporary certificate of occupancy shall be issued for any ~~nonsingle~~ non-single family residential or nonresidential developments or structure requiring utilities until a "ready for use" letter has been issued. ~~Where the project does not require a new certificate of occupancy (i.e., a project involving a non-occupied building), the improvements shall not be used until the required guarantees for remaining improvements are posted.~~ A "ready for use" letter shall not be issued until all of the requirements of subsections b.1—4. immediately above have been satisfied, including completion of any "utility and grading ~~punchlist~~ punch list" items and until all fees have been collected and all performance guarantees are in place and the following occur:

- i. The city attorney has provided a letter to the city engineer confirming that the documents required under subsection d. below are in a legally acceptable form and have been properly executed by all parties in interest determined by the city attorney as necessary to convey sufficient title to the utilities and corresponding easements to the city; and,
- ii. The city engineer has provided the applicant a signed "acknowledgment" that the city engineer has reviewed and approved the content of the exhibits to the documents required under subsection (12) ~~dc.~~ below, and acknowledges the city's acceptance of the title to and jurisdiction over such utilities identified in the documents, from and after the effective date of the "acknowledgment."

ec. ~~The following a~~Acceptance documents, which may include some or all of the following, without limitation, as determined by the city engineer to be applicable to the specific site, (executed by or on behalf of the applicant unless otherwise specified herein) must be submitted to the city engineer for review and approval prior to approval of plot plan for single-family residential building sites, including

platted subdivisions and site condominiums and prior to issuance of any temporary certificate of occupancy for all other developments:

1. Stormwater maintenance agreement as outlined in section 12-244 of the stormwater management ordinance.
2. Private ingress/egress easement (if applicable).
3. Private drainage easement(s) (if applicable).
4. Easements for storm sewer and stormwater drainage in proposed rights-of-way, where surface drainage or storm sewer drainage crosses property boundaries, including an easement surrounding the sedimentation basin and the detention basin (one-hundred-year storm elevation) and a maintenance access easement for the sedimentation basin, if applicable.
5. Water main easement providing a twenty-foot easement for water mains to be made public.
6. Sanitary sewer easement providing a twenty-foot easement for the sanitary sewers to be made public.
7. Easements for public non-motorized improvements.
8. Sanitary sewer access easement for a monitoring manhole.
- ~~79. Bill of sale for utility improvements and any public nonmotorized improvements.~~
8. Letter of map revision (LOMR)/Letter of map amendment (LOMA) from the Federal Emergency Management Agency (FEMA) (if applicable).
- ~~9. Stormwater facilities guarantee to be held for one (1) year after the date of completion of construction and final inspection of the stormwater facilities.~~
10. Waivers of lien from any parties involved with the installation of each utility to be made public.
11. Contractor's sworn statement listing those parties and stating that all labor and material expenses incurred in connection with the subject construction improvements have been paid.
12. Maintenance and guarantee bond equal to twenty-five (25) percent of the cost of the construction of the utilities to be accepted. This bond must be in effect for a period of two (2) years from the date of the "acknowledgement" signed by the city engineer indicating the city has accepted the utilities and corresponding easements. The City Engineer may waive the bond requirement

in cases where the utilities have been installed and satisfactorily operational for 2 years prior to acceptance.

13. Maintenance and guarantee bond equal to twenty-five (25) percent of the cost of the construction of the non-motorized improvements to be accepted. This bond must be in effect for a period of two (2) years from the date of the "acknowledgement" signed by the city engineer indicating the city has accepted the non-motorized improvements and corresponding easements.

14. Warranty deed or other appropriate conveyance for any additional right-of-way intended for acceptance by the city, excluding streets subject to subsection (2) below.

15. As-built drawings of the construction plans (exclusive of landscape and utility detail sheets).

16. Title policy, title commitment, or title search, showing all owners and lienholders of record (dated within ninety (90) days of acceptance) for the purpose of verifying that the parties signing the easement and bill of sale documents have the legal authority to do so. All parties of interest shown on the title policy (including mortgage holders) shall either sign the easement documents themselves or a subordination agreement.

ed. With respect to all projects requiring a stormwater maintenance agreement as indicated in subsection (12)c.1. above, no final certificate of occupancy shall be issued until the stormwater maintenance agreement has been approved by city council subsequent to approval by the city engineer and city attorney in accordance with subsections (12)a. and (12) e. of this section.

(23) Acceptance of streets as public upon substantial completion. The following requirements shall apply where the streets within the development are contemplated or required to be dedicated to the public and accepted by the City.

a. At the time ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, or within four (4) years after the issuance of the initial permit, whichever occurs first, the final lift of asphalt (where applicable) and all required "street trees" must be completed including all required soil erosion/sedimentation control measures. If the street is asphalt, the final lift of asphalt may be placed earlier at the risk of the developer and subject to execution of a paving waiver as required in Chapter 11 and posting of sufficient Performance Guarantee in an amount determined by the City for repair of deterioration or unforeseen damage as a result of construction until acceptance or final approval.

No final certificate of occupancy shall be issued until all site improvements required by an approved site or plot plan or plat (except the final lift of asphalt, where applicable if the street is asphalt) are constructed, installed, or placed on the property and final approval of same has been obtained from the department and

any other approving body, unless a completion agreement as described in section 26.5-12, together with any required performance guarantees is in place.

- b. The applicant shall submit an affidavit towards acceptance of streets to the city engineer before a final site inspection will be conducted. If a final site inspection is not requested by the applicant at least sixty (60) days before the expiration of the required date of completion, the ~~building official~~community development director may schedule an inspection to determine if the applicant is in default under this chapter.
- c. The following signed acceptance documents must be submitted to the city engineer no later than the time ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, or four (4) years after the initial paving has been installed, whichever occurs first:

~~1.~~ 1. Bill of sale for each street conveying the improvements to the city.

~~2.~~ 2. Warranty deed for each street and proposed right-of-way;

~~3.~~ 3. Title policy, title commitment, or title search, showing all owners and lienholders of record (dated within ninety (90) days of acceptance).

4. Any amendment of a master deed required to remove streets and/or proposed right-of-way from the general common elements.

32. Contractor's sworn statement listing those parties and stating that all labor and material expenses incurred in connection with the subject construction improvements have been paid.

43. A maintenance bond equal to twenty-five (25) percent of the cost of the construction of the streets to be accepted, in a form acceptable to the city attorney's office. The maintenance bond must be in effect for a period of two (2) years from the date of formal acceptance by city council.

d. Acceptance of the streets that are to be public shall be accomplished by resolution of city council as and when determined by the city, in its sole discretion, to be appropriate pursuant to the requirements and provisions of this chapter and other applicable provisions or sections of this Code, but not before ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, or four (4) years after the initial paving has been installed, whichever occurs first; provided, however, that in unusual circumstances presenting a substantial hardship to the applicant (such as commencement of a development before the effective date of this provision), council may accept the streets before either such event has occurred, but in such case shall require a site restoration guarantee for the purposes set forth in section 26.5-34, and to guarantee the physical integrity of the roads to be accepted in light of continuing construction activity. The amount of the guarantee shall be established by the city engineer in an amount to be determined on the basis of the number of buildings remaining to be constructed, an estimate of time for completion and expected acceptance of the remaining site improvements, and other factors specific to the development at issue.

Where a development has been approved in phases, and the applicant seeks acceptance of streets in one (1) or more phases before substantial completion of all remaining phases, the city council shall also require such site restoration guarantee for the purposes set forth in section 26.5-34, and to guarantee the physical integrity of the roads to be accepted in light of continuing construction activity, upon determination, in its sole discretion, to accept such streets in phases.

- e. Except with the prior express consent of the city, and as further set forth in section 26.5-34 below, no construction traffic shall be permitted to use any street dedicated to the city after installation of the final surface course of that street. If the applicant uses the street for construction traffic, the applicant shall post the site restoration guarantee as set forth in the immediately preceding paragraph d, and keep the street free and clear of mud, debris, obstructions, and hazards and shall after the use is no longer necessary, restore and repair that street to city standards.

- f. Upon issuance by the city of any permit authorizing the construction of any public road improvements within a platted subdivision or a site condominium, public trust title to such public roads shall be deemed to pass to the city, unless otherwise specifically indicated in the permit, and the dedication of such right-of-way by the applicant may not thereafter be withdrawn except with the consent of the city. However, no public road improvements within such underlying right-of-way (i.e., physical improvements such as utilities, curb and gutter, asphalt, or concrete) shall be deemed to have been accepted by the city and the city shall have no obligation or liability in respect of maintenance or repair of the street, until the street has been constructed, approved, and accepted by city council and the utilities have been accepted by the city pursuant to the "acknowledgement" issued by the city engineer in accordance with subsections (12)ba. or (12)cb. of this section. The city shall not be obligated to keep any street cleared, plowed, or otherwise maintained before the street has been completed, approved, and accepted by city council. The city may (but is not obligated to) undertake emergency maintenance, including without limitation snow plowing, flood prevention/repair, and the like as set forth in the city's emergency operations plan, and may upon exercise of such authority recover the cost of such action from the applicant pursuant to the terms of the appropriate performance guarantee(s). The exercise of such authority shall not be construed in any way to constitute an "acceptance" of the street or utility improvements before all requirements of this chapter are met.

Sec. 26.5-34. - Site restoration bond.

- (a) The performance guarantee required under sections 26.5-5 and 26.5-7 shall include a guarantee for site maintenance and restoration, in an amount to be specified by resolution of the city council, guaranteeing that the applicant shall:
 - (1) Establish or reestablish ditches and culverts and properly drain the building area and reopen and reestablish any drainage ways that may have been interrupted by the building operation;

- (2) Repair, replace, and rebuild public road surfaces damaged in the course of construction so that the same shall be in comparable status as prior to commencement of construction;
- (3) Repair, replace, and rebuild any sidewalk damaged during the course of construction;
- (4) Repair all public utility structures if damaged during the course of construction and restore and adjust all manholes, catch basins, gate wells, hydrants, and shut-off boxes to the condition that they were prior to construction;
- (5) Maintain streets, highways, pathways, and alleys free of mud, dirt, debris, and other material from the construction site, as required by chapter 16, article IV of this Code; and

(6) Maintain construction sites, as required by section 16-84.

(7) Guarantee that newly—constructed infrastructure located within the existing or proposed right-of-way or easement and proposed to become public (including, but not limited to, sidewalks, pathways, curbs, hydrants, manholes, catch basins, etc.) is constructed in accordance with Appendix A, "Zoning Ordinance," Chapter 11, "Design and Construction Standards," and all other applicable statutes and ordinances.

In the event there is damage or other prohibited condition to the public street or road, or other public improvement, directly adjacent to the property for which the site restoration guarantee has been posted, there shall be a rebuttable presumption that the damage or condition has been caused by or in connection with the activity occurring under the building permit, and the city may use the guarantee for the purposes stated in subsections (a)(1)—(7) of this section. The building permit holder may rebut the presumption by establishing that the damage or condition was caused by another or by other activity. If the amount of the guarantee is insufficient to repair or remedy the damage or condition, the city may require the posting of an additional guarantee. The permit holder shall at all times remain responsible for repair of any damage or condition actually caused by the permit holder.

- (b) In the event that the applicant fails to perform under the provisions of subsections 26.5-34(a)(1)—(75), above, either during the life of the building permit or any extension thereof, or within thirty (30) days after written notice is given to the applicant to correct or fulfill unperformed provisions, the site restoration bond shall be forfeited and deposited in the general fund of the city. If the applicant fails to perform the provision of subsection 26.5-34(a)(6) above, the performance guarantee may be used for the payment of site cleanup performed by the city. The cost of cleanup shall be used and collected in the same manner provided in section 16-87. In addition, the site restoration bond may be utilized for payment of the costs of street clean-up performed by the city pursuant to chapter 16, article IV. Whenever funds are expended for such purposes the permit holder shall be required to replace such amount to bring the performance guarantee to that amount set by resolution of city council.

- (c) The site restoration guarantee amount shall be returned to the applicant or assignee after final inspection and determination by the ~~building official~~community development directorcity engineer that the provisions of subsection 26.5-34(a) have been performed. If the site restoration bond is sent by mail to the builder at the address specified on the bond receipt, and is returned undelivered, it shall be held by the city and returned to the builder on demand; however, if such demand is not made within one (1) year after the issuance of the certificate of occupancy, the site restoration bond shall be deemed forfeited and shall be deposited in the general fund of the city.
- (d) ~~In addition to any other performance guarantees permitted in this section or elsewhere in this Code, as a condition of issuance of any building permit for construction on property abutting a public street or road, the city engineer shall require a site restoration guarantee as provided and for the purposes set forth in this section in the amount of five thousand dollars (\$5,000.00), to be posted in the form of cash, letter of credit or performance bond in a form acceptable to the cityapplicant shall be required to post the guarantee described in Section 7-71 of the Code. In the event there is damage or other prohibited condition to the public street or road, or other public improvement, directly adjacent to the property for which the site restoration guarantee has been posted, there shall be a rebuttable presumption that the damage or condition has been caused by or in connection with the activity occurring under the building permit, and the city may use the guarantee for the purposes stated in subsections (a)(1)–(5) of this section. The building permit holder may rebut the presumption by establishing that the damage or condition was caused by another or by other activity. If the amount of the guarantee is insufficient to repair or remedy the damage or condition, the city may require the posting of an additional guarantee. The permit holder shall at all times remain responsible for repair of any damage or condition actually caused by the permit holder.~~

Sec. 26.5-35. — Requirements for Private streets.

- (a) A certificate of occupancybuilding permit shall not be issued for any residential dwelling unit permitted to front on a private street unless private roads have been constructed in accordance with city standards for such road (except for the final lift of asphalt, where applicable), and a certified affidavit is received from the applicant's engineer indicating satisfactory completion of all private streets within the development, in accordance with such standards and the approved site or plot plan or plat and requesting inspection by the city engineer. Following inspection by the city engineer and satisfactory correction of any deficiencies by the developer, the city engineer shall confirm the required performance guarantee.
- (b) Prior to issuance of the first certificate of occupancy, the developer shall post a performance guarantee in an amount equal to 30% (equal to 25% with a 1.2 multiplier) of the cost to construct the roadways within the development including base and related drainage to guarantee the physical integrity of the roads to be accepted in light of continuing construction activity. Such performance guarantee will be held until ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued or four (4) years' time has elapsed from the issuance of the initial permit.
- (c) At the time ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, or within four (4) years after the issuance of the initial

permit, whichever occurs first, no final additional Building Permits shall be issued until all site improvements required by an approved site or plot plan or plat including the final lift of asphalt and all sidewalks and pathways for common; installation of all required "street trees" are completed; all required soil erosion/sedimentation control measures are constructed, installed, or placed on the property and final approval of same has been obtained from the department and any other approving body, unless a completion agreement as described in section 26.5-12, together with any required performance guarantees is in place.

(d) Closeout may occur, when, all site improvements have been completed to City Standards and are found to be in acceptable condition pursuant to the requirements and provisions of this chapter and other applicable provisions or sections of this Code. Following closeout of the financial guarantee required in 26.5-35(b) and not otherwise required elsewhere, shall be returned to and the improvements will be the sole responsibility of the owner(s).

(e) The applicant shall submit an inspection request towards closeout of streets to the city engineer before a final site inspection will be conducted. If a final site inspection is not requested by the applicant at least sixty (60) days before the expiration of the required date of completion, the city engineers may schedule an inspection to determine if the applicant is in default under this chapter.

(f) Where a development has been approved in phases, and the applicant may seek closeout of streets in one (1) or more phases before substantial completion of all remaining phases.

(bg) The city will not maintain streets, signs, or drainage improvements on private streets. A private maintenance covenant approved by the city engineer shall be required for any private street. The covenant shall set out the terms and conditions of responsibility for maintenance, maintenance methods, standards, distribution of expenses, remedies for noncompliance with the terms of the agreement, right of use easements, and other considerations.

(c) A statement is required on the face of any plan, plat, or master deed containing a private street with the following language:

"City of Novi has no responsibility to improve or maintain the private streets contained within or private streets providing access to the property described in this [plan/plat]".

Sec. 26.5-36. - Soil erosion and sedimentation control.

The performance guarantee required under sections 26.5-5 and 26.5-7 of this chapter shall include guarantee amounts in accordance with the provisions of chapter 29, article II of this Code.

Sec. 26.5-37. - Woodlands and fence maintenance guarantees.

(a) The performance guarantee required under sections 26.5-5 and 26.5-7 of this chapter shall include guarantee amounts to secure the planting of required woodland trees, at a rate of four hundred dollars (\$400.00) per tree, and a fence maintenance guarantee in an amount as determined by policy of the ~~building official~~ community development director or his or

her designee. The rate of four hundred dollars (\$400.00) per tree shall not be subject to the 120% and 150% multipliers described above.

- (b) Where tree relocation or replacement is not feasible within the woodland area, or on the property where the activity is to be conducted, or on other property within the city approved by the parks/forestry operations manager the permit grantee shall pay into the city tree fund monies for tree replacement in a per tree amount representing the current market value for the tree replacement that would otherwise be required to be determined by the parks/forestry operations manager. The city tree account shall be used for all forestry related items including but not limited to the planting of trees within the city.
- (c) The applicant shall guarantee trees for two (2) growing seasons after the applicant's installation and the city's acceptance. A two-year maintenance bond in the amount of twenty-five (25) percent of the value of the trees, but in no case less than one thousand dollars (\$1,000.00), shall be required to insure the continued health of the trees following acceptance.

Sec. 26.5-38. - Wetlands.

Any applicant conducting any activities within a watercourse or wetland location must obtain a use permit and file with city administration a performance guarantee to guarantee continued compliance with the use permit granted. These performance guarantees shall be paid prior to issuance of a building permit.

Sec. 26.5-39. - Landscaping.

The performance guarantee required under sections 26.5-5 and 26.5-7 of this chapter shall include guarantee amounts to secure the completion and improvement of required landscaping in accordance with approved site plan. There will be no issuance of any temporary or final certificate of occupancy in the development until this guarantee is paid. A final certificate of occupancy will not be granted until all required landscape material has been inspected and accepted by the city unless a completion agreement as described in section 26.5-12 of this chapter, together with any required guarantees, is in place. The applicant shall guarantee planting materials for two (2) growing seasons after applicant installation and acceptance by the city. A two-year maintenance bond in the amount of ten (10) percent of the value of the landscaping, but in no case less than one thousand dollars (\$1,000.00), shall be required to insure the continued health of the landscaping following acceptance. The applicant shall replace all unhealthy and dead plant material without delay and within three (3) months following notice, or the next appropriate planting period, whichever comes first. The applicant shall guarantee all replacement material for an additional two (2) years after, if required by the building official community development director.

Sec. 26.5-40. - Street trees.

The performance guarantee required under sections 26.5-5 and 26.5-7 of this chapter shall include guarantee amounts to secure the planting of required street trees, at a rate of four hundred dollars (\$400.00) per tree. The rate of four hundred dollars (\$400.00) per tree shall not be subject to the 120% and 150% multipliers described above. There will be no issuance of

any temporary certificate of occupancy in the development until this guarantee is in place. A final certificate of occupancy will not be granted until the applicant has planted all required street trees and they have been inspected and accepted by the city unless a completion agreement as described in section 26.5-12 of this chapter, together with any required guarantees, is in place. The applicant shall guarantee trees for two (2) growing seasons after applicant installation and acceptance by the city. A two-year maintenance bond in the amount of twenty-five (25) percent of the value of the street trees, but in no case less than one thousand dollars (\$1,000.00), shall be required to insure the continued health of the street trees following acceptance. The applicant shall replace all unhealthy and dead plant material within three (3) months following notice or the next appropriate planting period, whichever comes first. The applicant shall guarantee all replacement trees for an additional two (2) years after, if required by the ~~building official~~community development director.

Sec. 26.5-41. - Right-of-way.

For any work proposed within the right-of-way of the arterial system of the city, a performance guarantee shall be posted in accordance with chapter 31 of this Code.

Sec. 26.5-42. - Application of chapter to existing developments.

Unless the ~~building official~~community development director determines otherwise for good cause and as a result of peculiar practical difficulties establishing an applicant's inability to comply with the requirements hereof, this chapter shall apply to all property and development within the city after the effective date hereof, including any phase of any property or development for which an initial permit has not been issued, except:

- (1) A property or development for which an initial permit has been issued; or
- (2) A property or development for which a building permit has been issued pursuant to an approved plot plan.

PART II.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the ____ day of _____, 2016.

Maryanne Cornelius, City Clerk

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 16-1587.05

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, AT CHAPTER 31, "STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES," ARTICLE I, "IN GENERAL," SECTION 31-1, "CONSTRUCTION WITHIN CITY STREET, HIGHWAY, ALLEYWAY, PARKING, SIDEWALK, BIKE PATH, PARK EASEMENT OR OTHER PUBLIC PLACE," IN ORDER TO PROVIDE THAT EXISTING PROHIBITIONS ON CONSTRUCTION SHALL NOT APPLY TO THE CONSTRUCTION OF A SINGLE-FAMILY HOME FOR WHICH A SITE RESTORATION BOND IS PROVIDED UNDER CHAPTER 26.5 OF THE CODE.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 31, "Streets, Sidewalks, and Other Public Places," Article I, "In General," Section 31-1, "Construction Within City Street, Highway, Alleyway, Parking, Sidewalk, Bike Path, Park Easement or Other Public Place," of the City of Novi Code of Ordinances is hereby amended to read as follows in its entirety:

Sec. 31-1. - Construction within city street, highway, alley, parkway, sidewalk, bikepath, park, easement or other public place.

- (a) It shall be unlawful for any person to conduct any construction and/or maintenance activities within, over or below any street, highway, alley, parkway, sidewalk, bikepath, park, easement or other public place under the jurisdiction of the City of Novi, or which is the location of improvements or infrastructure owned by the City of Novi, without first having obtained a written permit therefore from the city engineer. In those instances where emergency circumstances require immediate action, the city engineer may grant verbal permission, provided that a written application shall be submitted within twenty-four (24) hours.
- (b) The prohibitions contained within subsection 31-1(a) shall not apply to:
 - (i) Work performed by the City of Novi
 - (ii) The construction of a single-family residential home for which a site restoration bond is required under Section 26.5-34 of this Code.
 - (iii) ~~or to d~~De minimis activities such as the cutting of grass, or the removal of snow or the installation of a water sprinkling system for use with a single-family residential dwelling.

- (c) ~~The city engineer and director of public works~~ Director of Public Services are authorized and directed to ~~jointly~~ establish and promulgate reasonable rules and regulations for construction and/or maintenance within, over or below any street, highway, alley, parkway, sidewalk, bikepath, park or other public place under the jurisdiction of the City of Novi. Such rules and regulations shall be published in a newspaper of general circulation within the city at least thirty (30) days prior to their proposed effective date.
- (d) Prior to approval of a permit for the installation or construction of a structure or other improvement under subsection (a) above, the city engineer may require the applicant to execute a license agreement, in a form to be approved from time to time by the city council, including indemnification/hold harmless provisions and insurance requirements, before any such installation or construction.
- (e) It shall be unlawful for any person to violate the terms of rules and regulations duly adopted pursuant to section 31-18.

PART II.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the _____ day of _____, 2016.

Maryanne Cornelius, City Clerk

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 16-96.03

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, AT CHAPTER 7, "BUILDINGS AND BUILDING REGULATIONS," ARTICLE V, "SITE RESTORATION," IN ORDER TO REVISE PROVISIONS RELATING TO THE REQUIREMENTS FOR SITE RESTORATION BONDS, THEIR FORFEITURE, AND THEIR RETURN TO BUILDER.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 7, "Buildings and Building Regulations," Article V, "Site Restoration," of the City of Novi Code of Ordinances is hereby amended to read as follows in its entirety:

ARTICLE V. - SITE RESTORATION

Sec. 7-71. - Specifications required; bond required.

At the time of acquiring a building permit for a new construction, the builder shall deposit a site maintenance and restoration bond, being a cash bond in an amount to be specified by resolution of the council, guaranteeing that the builder shall meet the requirements of section 26.5-34.

- ~~(1) Establish or reestablish ditches and culverts and properly drain the building area and reopen and reestablish any drainageways that may have been interrupted by the building operation;~~
- ~~(2) Repair, replace, and rebuild public road surfaces damaged in the course of construction so that the same shall be in comparable status as prior to commencement of construction;~~
- ~~(3) Repair, replace and rebuild any sidewalk damaged during the course of construction;~~
- ~~(4) Repair all public utility structures if damaged during the course of construction and restore and adjust all manholes, catch basins, gate wells, hydrants, and shut-off boxes to the condition that they were prior to construction;~~
- ~~(5) Maintain streets, highways, pathways and alleys free of mud, dirt, debris and other material from the construction site, as required by Chapter 16, Article IV of this Code; and~~
- ~~(6) Maintain construction sites, as required by chapter 16, article IV, section 16-84 of this Code.~~

~~All site work shall be in accordance with the Appendix A, "Zoning Ordinance," Chapter 11, "Design and Construction Standards," and all other applicable statutes and ordinances.~~

~~Sec. 7-72. Forfeiture of bond.~~

~~In the event that the builder shall fail to perform under the provisions of subsections 7-71(1), (2), (3) or (4) either: (a) during the life of the building permit or any extension thereof, or (b) within thirty (30) days after written notice is given to the builder to correct or fulfill unperformed provisions, the site restoration bond shall be forfeited and deposited in the general fund of the city. If the builder fails to perform the provision of subsection 7-71(6), the site restoration bond may be used for the payment of site cleanup performed by the city. The cost of cleanup shall be used and collected in the same manner provided in section 16-87 for street cleanups. In addition, the site restoration bond may be utilized for payment of the costs of street clean-up performed by the city pursuant to Chapter 16, Article IV of this Code. Whenever funds are expended for such purposes the permit holder shall be required to replace such amount to bring the cash deposit up to that amount set by resolution of city council.~~

~~Sec. 7-73. Return of bond to builder.~~

~~The site restoration bond shall be returned by the department of finance to the builder after final inspection and determination by the city's building official that the provisions of section 7-71 have been performed. If the site restoration bond is sent by mail to the builder at the address specified on the bond receipt, and is returned undelivered, it shall be held by the city and returned to the builder on demand; however, if such demand is not made within one (1) year after the issuance of the certificate of occupancy, the site restoration bond shall be deemed forfeited and shall be deposited in the general fund of the city.~~

PART II.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the _____ day of _____, 2016.

Maryanne Cornelius, City Clerk

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 16-173.05

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, AT CHAPTER 26.5, "PERFORMANCE GUARANTEES" IN ORDER TO COMPREHENSIVELY AMEND THE REQUIREMENTS OF THE ORDINANCE IN GENERAL AS TO AUTHORIZATION, FORM AND AMOUNT, AND THE NATURE AND EFFECT OF THE GUARANTEES, AND TO AMEND THE SPECIFIC PROCESSES FOR THE ACCEPTANCE, RELEASE, AND FORFEITURE OF THE GUARANTEES.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 26.5, "Performance Guarantees" of the City of Novi Code of Ordinances is hereby amended to read as follows in its entirety:

Chapter 26.5 - PERFORMANCE GUARANTEES

ARTICLE I. - IN GENERAL

Sec. 26.5-1. - Purpose.

The purpose of this chapter is to establish the authority and procedures for requiring, accepting, and enforcing performance guarantees, in order to assure that development projects are completed and maintained in accordance with city standards, requirements, and approval conditions.

Sec. 26.5-2. - Administrative provisions.

This chapter sets forth provisions general to the administration of performance guarantees, including applicability, default, conditions, forms and amounts, reductions, release of guarantees, and scheduling of performance, maintenance, and defect inspections.

Sec. 26.5-3. - Applicability.

The provisions of this chapter shall apply to permits and approvals granted pursuant to the various provisions of this Code, including (without limitation) buildings and building regulations (chapter 7); design and construction standards (chapter 11); drainage and flood damage prevention (chapter 12); planning (chapter 27); signs (chapter 28); soil erosion (chapter 29); streets, sidewalks and other public places (chapter 31); subdivision of land (chapter 32); utilities (chapter 34); woodlands (chapter 37); zoning ordinance (appendix A); and subdivision ordinance (appendix C).

Sec. 26.5-4. - Definitions.

[The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.]

Applicant means the person or entity that has a legal or equitable right to effect the development or improvement of the subject real property pursuant to an approved site plan or plot plan. Only the applicant may post a performance guarantee. If the subject real property is transferred, conveyed, or sold (other than as an individual, single-family lot or unit), the successor (with legal proof of ownership) shall replace any outstanding performance guarantees at the time of purchase. Cash bonds may be assigned upon proof of transfer, conveyance, or sale. If the successor does not replace all performance guarantees, then the applicant shall continue to be responsible under such guarantees for completing the project in accordance with their terms. This provision shall not prohibit joint performance guarantees, provided that the applicant is one (1) of the joint guarantors and if deemed acceptable by the community development director.

Building official means the city building official or his or her designee.

City engineer means the city engineer or his or her designee.

Community development director means the city community development director or his or her designee.

Default means the failure to:

- (1) Comply with performance guarantee requirements and conditions;
- (2) Complete, in the specified time, any required improvements in accordance with this Code and with an approved site or plot plan or plat and any conditions thereto;
- (3) Maintain, for the specified period of time, any required improvements in accordance with this Code and with an approved site or plot plan or plat and any conditions thereto; and
- (4) Pay current fee balances due.

Department means the city building division of the community development department, unless a different department or individual is specified in or by reference to a particular provision or section hereof.

Forfeiture. Performance guarantees cannot be terminated, canceled, reduced, rebated, or released without written authorization from the community development director. All guarantees shall remain in full force and effect until such time as the community development director has authorized otherwise. On determination of the community development director that any conditions of the performance guarantee have not been complied with, the community

development director shall have recourse to the rights created under the guarantee and as set forth in this chapter.

Refunds of cash bonds approved by the community development director will be made payable solely to the applicant, or to an assignee of the applicant in the event of a transfer. Refunds will be mailed to the address specified on the bond receipt if not retrieved by the applicant or assignee from the department within a reasonable time after notice that the refund is available. If the refund is returned undeliverable, it shall be held by the city and returned to the applicant upon demand; however, if such demand is not made within one (1) year after the date of refund, the bond shall be deemed forfeited and shall be deposited in the general fund of the city.

Guarantor means the applicant (or assignee) and, if applicable, either a corporate surety acceptable to the city and licensed to provide guarantees to third parties or a financial institution incorporated and located within the United States and insured by the Federal Deposit Insurance Corporation (FDIC).

Improvements means any physical construction, alteration, undertaking, or activity for which a permit is required under this Code, including (without limitation) buildings and building regulations (chapter 7); design and construction standards (chapter 11); drainage and flood damage prevention (chapter 12); planning (chapter 27); signs (chapter 28); soil erosion (chapter 29); streets, sidewalks and other public places (chapter 31); subdivision of land (chapter 32); utilities (chapter 34); woodlands (chapter 37); zoning ordinance (appendix A); and subdivision ordinance (appendix C), for which the posting of a performance guarantee is required or authorized.

Initial permit means a permit for mass grading, building foundations, or utilities, whichever occurs first.

Issuance of an initial permit means delivery by the city of the permit to the applicant and acceptance of such permit by the applicant as required under the code (e.g., signature or acknowledgment of same).

Parks/forestry operations manager means parks/forestry operations manager or his or her designee.

Performance guarantee means a form of financial security posted to ensure timely, proper, and workmanlike completion of improvements; to ensure compliance with this Code; and/or to warranty materials, workmanship of improvements, or design. Performance guarantees may be in the form of cash, certified check, irrevocable bank letter of credit, and/or performance/payment bonds. For the purposes of this chapter, the terms "financial guarantee," "maintenance guarantee," and "defect guarantee" are considered kinds of performance guarantees.

Project means a discrete, separate development described in and made subject to an approved site plan or plot plan or plat. Projects are categorized as single-family residential, multiple-family residential, or non-residential. For development projects that are approved with

separate and discrete phases, the requirements of this chapter shall be applied separately to each phase (i.e., on a phase-by-phase basis).

Property means the real property on which a project is proposed to be constructed.

Site improvements shall be a specific reference to all of the following unless otherwise noted in this chapter or in any approved site or plot plan or plat or any conditions thereon: streets, sanitary sewers, storm sewers, water mains, mass grading; sidewalks, safety paths, bicycle paths and public walkways; street signs; street island improvements; right-of-way disruption, woodland protection, woodland replacements; floodplain protection and restoration, soil erosion control, required landscaping and screen planting of non-access greenbelt easements and retention basins; maintenance of retention basins on private property; street trees, including an estimate for the removal of any dead trees within street rights-of-way for a period of two (2) full growing seasons after the date of acceptance of streets and utilities; and the placement or replacement, after construction of improvements, of all lot stakes and monuments.

Successor shall mean the person or entity obtaining the legal and/or equitable title to a development from the Applicant or a lienholder along with the right to control the remaining development rights as a result of a voluntary or involuntary transfer of the development. In assessing whether a person or entity has obtained the remaining "development rights" for a development, the City may consider some or all of the following types of rights and/or obligations, without limitation: the intent of the parties to the transfer; the right to amend the master deed, declaration of covenants or other real property or development related document; the right to operate and/or maintain a sales or leasing office; the right to control over general common elements and/or a homeowners association; the right to make building modifications; and/or the total number of units or lots acquired.

Treasurer means the city treasurer or his or her designee.

Sec. 26.5-5. - Authorization.

- (a) Subject to the provisions of article IV of this chapter, and as set forth in the various provisions of this Code, the department is authorized to require all applicants constructing improvements under any permits and approvals granted pursuant to this Code to post a performance guarantee with the city treasurer to guarantee completion of all required site improvements associated with a project in accordance with this chapter, in an initial amount of one hundred twenty (120) percent of the estimated cost of the site improvements for which the guarantee is required in the form required by Section 26.5-7, below.
- (b) Notwithstanding any provision of any other chapter of this Code with regard to issuance of permits for specific improvements, performance guarantees shall require actual construction and installation of all required site improvements within two (2) years after the issuance of the initial permit, together with the posting of necessary bonds therefor, for any site improvements listed in subsection (a) above, or within six (6) months after a temporary occupancy permit has been issued for any structure on the property, whichever is shorter or occurs first. The time limit may be extended for twelve (12) months at the

community development director's discretion, upon determination that work is proceeding toward completion and that the delay is not dilatory or unreasonable under all the circumstances. In reaching this determination, the director may take into consideration any appropriate factors established by the applicant, including but not limited to weather conditions, delays in securing required approvals/permits from other regulatory agencies, and unforeseen economic events or conditions. The request for extension shall be in writing, accompanied by a schedule for completion of all remaining work. At the time an extension is requested, a site inspection will be conducted, with the cost of such inspection being the direct responsibility of the applicant, to confirm work remaining on the site.

If an extension is requested for longer than twelve (12) months, approval of the city council shall be required, together with a written completion agreement pursuant to section 26.5-12. In determining whether to grant the extension, the city council shall determine that the delay is not dilatory or unreasonable under all the circumstances may take into consideration any appropriate factors established by the applicant. If an extension is granted, a revised performance guarantee shall be posted in an amount no less than one hundred fifty (150) percent of the cost of the work to be completed, unless otherwise provided by city council. In all events, however, the work must be completed at the time ninety (90) percent of the building permits have been issued or within four (4) years after the issuance of the initial permit.

- (c) An applicant who has posted the performance guarantees required under this chapter who suspends work on a project or development may request a waiver of the requirements in this subsection to continue the guarantees in place upon a finding by the city council of the following:
 - (1) Few or limited physical improvements have occurred on site, such as minimal clearing and grading, no site improvements such as roads or utilities have been installed or constructed, and no footing or foundations for any buildings have been commenced, or alternatively that any such improvements will be removed and the site restored as required by the city, including the stabilization of soils pursuant to state and local soil erosion and stabilization regulations;
 - (2) No lot, unit, or parcel within the development or project has been created by the recording of an approved subdivision plat or condominium subdivision plan or transferred to a third party.

Upon a showing of the same cause for extension described herein, the city council may grant the requested waiver as to any site improvements not actually commenced, upon entry by the applicant into a completion agreement that shall include the posting of required guarantees for any work actually commenced, including clearing and grading, and for required soil erosion controlled measures, in an amount to be determined by city council. The waiver shall expire after two (2) years or upon expiration of the approved final site plan, and as a condition of the waiver the applicant shall agree that, if the required performance guarantees are not posted and the project recommenced at the expiration of the agreement, the site plan and all project permit approvals shall be considered to be expired and/or null and void.

- (d) If the applicant does not meet the criteria for waiver set forth in subsection (c) above, the applicant may seek relief pursuant to section 26.5-12

Sec. 26.5-6. - Conditions.

- (a) Every performance guarantee shall obligate the applicant to comply with all of the provisions of this Code and to complete all conditions required by the permit or approved site or plot plan or plat within the time limit specified.
- (b) The city may collect or execute against and/or use a performance guarantee when work is not completed in a timely manner in accordance with terms and provisions of this chapter and of a permit or approved site or plot plan or plat, including any conditions thereto. The community development director shall notify the applicant in writing of any such determination.
- (c) If at any time community development director determines that the funds remaining in the performance guarantee are not, or may not be, sufficient to pay in full one hundred twenty (120) percent of the remaining unpaid cost of all improvements and unpaid fees [or that the funds remaining in the maintenance guarantee are not, or may not be sufficient to pay all unpaid costs of correcting any defects and deficiencies in the improvements], then, within ten (10) days after demand by the city, the applicant shall increase the amount of the performance guarantee to be sufficient to pay the unpaid costs and fees. Failure to so increase the amount of the performance guarantee shall be grounds for the city to retain any remaining balance of the cash deposit and to draw down the entire remaining balance of the letter of credit. All unpaid fees will be deducted from this balance.

Sec. 26.5-7. - Form and amount.

- (a) At the time of issuance of the initial permit for improvement for any single or multi-family project under subsection 26.5-5(a) above, and before conducting any preconstruction meetings, the community development director shall require the applicant to deposit a performance guarantee in the amount of one hundred twenty (120) percent of the estimated cost of the site improvements for which the guarantee is required.
- (b) At the time of issuance of the initial permit for improvement for any non-residential project under subsection 26.5-5(a) above, and before conducting any preconstruction meetings, the community development director shall require the applicant to deposit a performance guarantee in the amount of one hundred twenty (120) percent of the estimated cost of limited site improvements, including floodplain protection and restoration, woodland protection and replacements, wetland protection and restoration, soil erosion control, storm water management, any water or sanitary sewer facilities proposed for public operation and maintenance, and right-of-way disruption, for which the guarantee is required. If any other site improvements, including required site landscaping, parking lot paving, sidewalks, safety paths, bicycle paths and public walkways; street signs; street island improvements, traffic control improvements, and/or street trees, remain incomplete at the time the applicant seeks to use or occupy the non-residential project, prior to issuance of any temporary certificate of occupancy, the community development director shall require the applicant to deposit

or maintain an existing performance guarantee in the amount of one hundred twenty (120) percent of the estimated cost of additional site improvements.

(c) The guarantee required by this section shall be a single guarantee posted by and in the name of the applicant encompassing all required improvements and shall be in the form of cash, certified check, or irrevocable bank letter of credit for all amounts up to two hundred fifty thousand dollars (\$250,000.00). To the extent that amounts required to be deposited are at any time in excess of two hundred fifty thousand dollars (\$250,000.00), such excess amounts may be posted by and in the name of the applicant as a separate guarantee, in any form allowed under the definition of "performance guarantee" in section 26.5-4, relating to all required improvements. In unusual or unique circumstances affecting the applicant's ability to post the guarantee, the city treasurer may accept a separate guarantee for a particular improvement if the guarantee is posted as a joint guarantee with a person or entity other than the applicant who has a contractual obligation to the applicant to post such guarantee. Maintenance guarantees posted pursuant to section 26.5-10 (including those described in sections 26.5-33, 26.5-37, 26.5-39, and 26.5-40) may be posted by a third party who performed the work guaranteed.

(d) Notwithstanding the foregoing, and further notwithstanding the requirement herein that each project shall separately comply with the requirements of this Chapter, an applicant may post a single performance guarantee amount for site improvements (~~not maintenance or site restoration~~) for more than one non-residential project, subject to the following:

(1) the applicant has previously completed a minimum of three (3) non-residential projects in the City within the immediately preceding past three (3) years in compliance with the applicable provisions of this Chapter and other land use development and infrastructure-related portions of the City Code;

(2) the a single performance guarantee for site improvements is posted in cash, certified check, or irrevocable letter of credit (i.e., not a surety or performance bond) in an amount determined by the director of community development, with the approval of the city manager, to be sufficient to guarantee completion of each development covered by such guarantee, provided that the amount required to be posted shall not exceed **\$750,000**; and

(3) the applicant provides sufficient documentation, in a form acceptable to the City Attorney, to establish that the single performance guarantee may be executed against as to all affected projects, even if a separate entity, LLC, partnership, or other business entity is associated with the project.

An applicant that fails to comply with any of the applicable provisions of this Chapter and other land use development and infrastructure-related portions of the City Code shall not be eligible for consideration under this subsection. If the City is required to draw on a performance guarantee posted by an applicant under this Chapter for any reason, such applicant shall be required to post the amounts that would be required for

each project for the remainder of such projects, and shall not be eligible for consideration under this subsection as to future projects.

Sec. 26.5-8. - Release or rebate of performance guarantees.

The city treasurer shall not release a performance guarantee until:

- (1) All fees that are due have been paid;
- (2) A maintenance guarantee has been posted, if applicable;
- (3) Inspection of the development site has been performed when required; and
- (4) The community development director has determined that the conditions and requirements of the permit/approval otherwise specified in the performance guarantee have been met and final approval of same has been granted.

The director may, after performing a site inspection at the written request of an applicant, rebate or reduce portions of a performance guarantee upon determination by the director, in his sole discretion, that the improvements and/or actions for which that performance guarantee was posted have been satisfactorily completed in accordance with the approved plans, any temporary certificate of occupancy, and all other applicable laws, regulations, and ordinances. No such rebate or reduction shall occur until fifty (50) percent of the value of all of the site improvements, based on an estimate of the value of labor and materials, for the property are complete, and at no point shall the amount of the performance guarantees held by the city be less than one hundred twenty (120) percent of the cost to complete the remaining required improvements on the property. The applicant is responsible for the actual cost of inspections requested pursuant to this section.

Sec. 26.5-9. - Scheduling of performance, maintenance, and defect inspections.

All site improvements must be inspected by the city after the completion of construction of the improvements, as well as during the construction process as set forth in this chapter. The applicant must submit a written request for such inspection, provided that the improvements substantially comply with the requirements of the approved plans and all city standards, and city inspections will occur as soon as reasonably practicable thereafter, and should generally occur within thirty (30) days. Periodic inspections may also be made at the discretion of the building official.

Sec. 26.5-10. - Maintenance and defect guarantees authorized.

- (a) The city shall require all applicants to post a maintenance guarantee and/or defect guarantee warranting the successful operation and maintenance of site improvements, and guaranteeing the workmanship, materials, and design used in construction of site improvements required by the conditions of any permits or approvals issued pursuant to this Code, as defined above.
- (b) Unless otherwise specifically indicated in this Code, all maintenance guarantees and defect guarantees shall guarantee successful operation, workmanship, materials, and design of

required facilities for a period of two (2) years following final inspection and final acceptance by the city in accordance with the procedures set forth in article II of this chapter. With regard to plantings required under chapter 37 of this Code or appendix A (zoning ordinance), the maintenance and guarantee period of two (2) full growing seasons is required. If any defect or deficiency occurs or becomes evident during the two-year period, then the owner shall after ten (10) days' written notice from the city, correct it or cause it to be corrected. In the event any improvement is repaired or replaced pursuant to the demand of the city, the community development director may require the guarantee with respect to such repair or replacement, as defined and determined by the department, to be extended for two (2) full years from the date of the repair or replacement.

- (c) The applicant shall notify the city and schedule inspections of facilities required pursuant to this Code, as defined above, at least sixty (60) days before the end of the two-year maintenance and/or defect period, and the city shall conduct such inspection as soon thereafter as is practicable and should generally occur within thirty (30) days.

Sec. 26.5-11. - Default.

- (a) If the applicant fails to timely complete all site improvements and/or timely take the required action for which the performance guarantee was required, the applicant shall be deemed to be in default. Unless a shorter period has been specified in a permit or approval issued, or elsewhere in this Code, "timely" completion of improvements shall mean not longer than two (2) years from the date of issuance of the initial permit for improvements and the necessary performance guarantees therefor, unless such time is extended by the community development director as permitted in subsection 26.5-5(c) or is specified in an agreement entered into as provided in section 26.5-12
- (b) In the event of a default, the city shall, following notice to the applicant and opportunity for the applicant to cure such default, as specified in the notice, have the right (but not the obligation) to use the performance guarantee deposited to complete the improvements or take the appropriate actions to achieve completion, and the application for site or plot plan or plat approval, building permit, temporary certificate of occupancy, or similar approvals shall be deemed to have authorized the right of the city to enter upon the property to bring about such completion. A notice to the applicant given under this section may be provided by one (1) or more of the following methods: regular first class mail to the address on the application for permit; delivery of the notice to the applicant at such address; hand-delivery to the applicant; or posting the property.
- (c) In the event the performance guarantee posted is insufficient in amount to allow the city to complete the improvements and/or actions, the applicant shall be required to pay to the city such additional costs as are needed for the completion of such improvements and/or actions. Should the city use the performance guarantee, or a portion thereof, to achieve such completion, any amounts remaining shall first be applied to the city's administrative costs, which shall be equal to twenty (20) percent of the cost of such completion, and to payment of actual attorney's fees, consultant fees, and like fees expended in connection with securing the guarantee and completing the improvements and/or actions; the balance remaining thereafter (if any) shall be refunded to the applicant.

- (d) In the event of default, the city may contract with a third party to complete work required pursuant to this chapter.
- (e) Subject to section 26.5-8, the applicant shall be responsible for ensuring that the required performance guarantees remain in place until all site improvements are complete and the guarantees have been released by the community development director. Bonds and irrevocable letters of credit shall not be permitted to lapse or expire without renewal or replacement. The community development director may call or collect upon any such guarantee prior to its expiration if it reasonably appears to the community development director that the guarantee will be permitted to lapse or expire.

Sec. 26.5-12. - Exceptions; written completion agreement required.

The city council may authorize exceptions to the requirements and conditions as set forth in this chapter, including, but not limited to, the form, timing, waiver, or reduction of performance guarantee amounts.

The city council may also authorize the issuance of permits, approvals, or temporary certificates of occupancy before all requirements for issuance under this chapter have been met, where the applicant has demonstrated that unusual or unique circumstances exist, that work is proceeding toward completion, and that any delay in completion is not unreasonable or dilatory. In reaching this determination, the standards of section 1-12 of this Code shall apply. In addition, the council shall consider such factors as the size and nature of the development project and the existence of matters beyond the control of the applicant (such as weather conditions, delay in securing permits/approvals from other regulatory agencies, or unforeseen economic events or conditions). If any such exceptions are granted, a written completion agreement may be required, in a form to be established by the city.

Sec. 26.5-13. - Violations.

A violation of any provision or requirement of this chapter shall be a civil infraction, subject to enforcement and the fines and penalties for civil infraction violations as set forth in this Code.

Secs. 26.5-14—26.5-30. - Reserved.

ARTICLE II. - SPECIFIC REQUIREMENTS

Sec. 26.5-31. - Generally.

The following provisions set forth special performance guarantee requirements for certain specific improvements.

Sec. 26.5-32. - Site improvements—Generally.

- (a) Before the issuance of an initial permit for site improvements as defined herein, and before any preconstruction meetings, a performance guarantee in the form and amount required under sections 26.5-5 and 26.5-7 shall be deposited with the city.

- (b) All unfinished site improvements that are included on an approved site or plot plan or plat, or that are otherwise required by this Code, shall be constructed, installed, or placed on the property, and be approved by the city engineer, upon substantial completion of all phases of the development process. Upon substantial completion, the city engineer may issue a master punchlist letter listing all items to be completed by the applicant within sixty (60) calendar days or such other time period as stated within the punchlist letter.
- (c) All site work shall be in accordance with appendix A, zoning ordinance; chapter 11, design and construction standards, and all other applicable statutes and ordinances.

Sec. 26.5-33. - Requirements for completion of improvements in developments with public streets and utilities.

The following requirements shall apply where the streets and utilities within a development are contemplated or required to be dedicated to the public and accepted by the city.

- (1) No building permit shall be issued unless authorized by an approved site or plot plan or plat. No building permit shall be issued until the city has been notified of the recording of any required subdivision or plat or site condominium master deed, following appropriate approval.
- (2) *Completion of utilities and acceptance for maintenance.*

- a. Approval of plot plans for any single-family residential building sites, including platted subdivisions and site condominiums, shall be the responsibility of the city engineer or his designee . No such plot plan shall be approved until completion of all utility construction and testing as well as road base construction in accordance with city-approved design standards and in accordance with the approved site plan or plat. In addition, no plot plan shall be approved until the city has been notified of the recording of the subdivision plat or site condominium master deed, following appropriate approval.
 - 1. After completion of utility construction and testing, as well as road construction, including asphalt base or concrete section, the applicant's engineer shall contact the department to schedule a final site inspection. This site inspection will be performed by the city engineer (or designee) and the applicant's engineer and contractor. If it is determined by the city engineer that the development is not ready for inspection, the inspection shall not occur until a determination is made that the inspection is proper. The city will conduct any required inspection as soon as reasonably practicable.
 - 2. If after site inspection it is determined that the public utilities were not completed in accordance with design standards and the approved site plan or plat, the city engineer will prepare a "utility and grading punchlist". Approval of plot plans and/or building permits shall not be issued until these punchlist items have been addressed to the satisfaction of the city.

3. The applicant will have ten (10) working days to complete all items on the "utility and grading punchlist". If these items still have not been adequately addressed, additional fees shall be assessed for any reinspections.
4. After completion of the "utility and grading punchlist" items, the city engineer may issue a "ready for use" letter. The department may then issue building permits for model homes (no more than four (4), or twenty (20) percent of the number of total homes in the development, whichever is fewer). Building permits other than for model homes may not be issued for any single-family residential building site, including platted subdivisions and site condominiums, unless authorized by an approved plot plan and until after confirmation that all fees and performance guarantees have been collected and that the documents in subsection d. below have been received by the city in an acceptable form.
5. No building permit, except for model homes, shall be issued for any single-family residential building until the following occur:
 - i. The city attorney has provided a letter to the city engineer confirming that the documents required under subsection d. below are in a legally acceptable form and have been properly executed by all parties in interest determined by the city attorney as necessary to convey sufficient title to the utilities and corresponding easements to the city; and
 - ii. The city engineer has provided the applicant a signed "acknowledgment" accepting the improvements, and that the city engineer has issued the "ready for use" letter required by subsection (2)a.4. of this section, has reviewed and approved the content of the exhibits to the documents required under subsection (2)c. below, and acknowledges the city's acceptance of the title to and jurisdiction over such utilities identified in the documents, from and after the effective date of the "acknowledgment."
- b. No temporary certificate of occupancy shall be issued for any development or structure requiring utilities until a "ready for use" letter has been issued. Where the project does not require a new certificate of occupancy (i.e., a project involving a non-occupied building), the improvements shall not be used until the required guarantees for remaining improvements are posted. A "ready for use" letter shall not be issued until all of the requirements of subsections b.1—4. immediately above have been satisfied, including completion of any "utility and grading punch list" items and until all fees have been collected and all performance guarantees are in place and the following occur:
 - i. The city attorney has provided a letter to the city engineer confirming that the documents required under subsection d. below are in a legally acceptable form and have been properly executed by all parties in interest determined by

the city attorney as necessary to convey sufficient title to the utilities and corresponding easements to the city; and,

- ii. The city engineer has provided the applicant a signed "acknowledgment" that the city engineer has reviewed and approved the content of the exhibits to the documents required under subsection (2) c. below, and acknowledges the city's acceptance of the title to and jurisdiction over such utilities identified in the documents, from and after the effective date of the "acknowledgment."
- c. Acceptance documents, which may include some or all of the following, without limitation, as determined by the city engineer to be applicable to the specific site, (executed by or on behalf of the applicant unless otherwise specified herein) must be submitted to the city engineer for review and approval prior to approval of plot plan for single-family residential building sites, including platted subdivisions and site condominiums and prior to issuance of any temporary certificate of occupancy for all other developments:
1. Stormwater maintenance agreement as outlined in section 12-244 of the stormwater management ordinance.
 2. Private ingress/egress easement (if applicable).
 3. Private drainage easement(s) (if applicable).
 4. Easements for storm sewer and stormwater drainage in proposed rights-of-way, where surface drainage or storm sewer drainage crosses property boundaries, including an easement surrounding the sedimentation basin and the detention basin (one-hundred-year storm elevation) and a maintenance access easement for the sedimentation basin, if applicable.
 5. Water main easement providing a twenty-foot easement for water mains to be made public.
 6. Sanitary sewer easement providing a twenty-foot easement for the sanitary sewers to be made public.
 7. Easements for public non-motorized improvements.
 8. Sanitary sewer access easement for a monitoring manhole.
 9. Bill of sale for utility improvements and any public nonmotorized improvements
 8. Letter of map revision (LOMR)/Letter of map amendment (LOMA) from the Federal Emergency Management Agency (FEMA) (if applicable).

10. Waivers of lien from any parties involved with the installation of each utility to be made public.
 11. Contractor's sworn statement listing those parties and stating that all labor and material expenses incurred in connection with the subject construction improvements have been paid.
 12. Maintenance and guarantee bond equal to twenty-five (25) percent of the cost of the construction of the utilities to be accepted. This bond must be in effect for a period of two (2) years from the date of the "acknowledgement" signed by the city engineer indicating the city has accepted the utilities and corresponding easements. The City Engineer may waive the bond requirement in cases where the utilities have been installed and satisfactorily operational for 2 years prior to acceptance.
 13. Maintenance and guarantee bond equal to twenty-five (25) percent of the cost of the construction of the non-motorized improvements to be accepted. This bond must be in effect for a period of two (2) years from the date of the "acknowledgement" signed by the city engineer indicating the city has accepted the non-motorized improvements and corresponding easements.
 14. Warranty deed or other appropriate conveyance for any additional right-of-way intended for acceptance by the city, excluding streets subject to subsection (2) below.
 15. As-built drawings of the construction plans (exclusive of landscape and utility detail sheets).
 16. Title policy, title commitment, or title search, showing all owners and lienholders of record (dated within ninety (90) days of acceptance) for the purpose of verifying that the parties signing the easement and bill of sale documents have the legal authority to do so. All parties of interest shown on the title policy (including mortgage holders) shall either sign the easement documents themselves or a subordination agreement.
- d. With respect to all projects requiring a stormwater maintenance agreement as indicated in subsection (2)c.1. above, no final certificate of occupancy shall be issued until the stormwater maintenance agreement has been approved by city council subsequent to approval by the city engineer and city attorney in accordance with subsections (2)a. and (2) b. of this section.
- (3) *Acceptance of streets as public upon substantial completion.* The following requirements shall apply where the streets within the development are contemplated or required to be dedicated to the public and accepted by the City.
- a. At the time ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, or within four (4) years after the issuance of the initial permit, whichever occurs first, the final lift of asphalt (where

applicable) and all required "street trees" must be completed including all required soil erosion/sedimentation control measures. If the street is asphalt, the final lift of asphalt may be placed earlier at the risk of the developer and subject to execution of a paving waiver as required in Chapter 11 and posting of sufficient Performance Guarantee in an amount determined by the City for repair of deterioration or unforeseen damage as a result of construction until acceptance or final approval.

No final certificate of occupancy shall be issued until all site improvements required by an approved site or plot plan or plat (except the final lift of asphalt, if the street is asphalt) are constructed, installed, or placed on the property and final approval of same has been obtained from the department and any other approving body, unless a completion agreement as described in section 26.5-12, together with any required performance guarantees is in place.

- b. The applicant shall submit an affidavit towards acceptance of streets to the city engineer before a final site inspection will be conducted. If a final site inspection is not requested by the applicant at least sixty (60) days before the expiration of the required date of completion, the community development director may schedule an inspection to determine if the applicant is in default under this chapter.
- c. The following signed acceptance documents must be submitted to the city engineer no later than the time ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, or four (4) years after the initial paving has been installed, whichever occurs first:
 1. Bill of sale for each street conveying the improvements to the city.
 2. Warranty deed for each street and proposed right-of-way;
 3. Title policy, title commitment, or title search, showing all owners and lienholders of record (dated within ninety (90) days of acceptance).
 4. Any amendment of a master deed required to remove streets and/or proposed right-of-way from the general common elements.
3. Contractor's sworn statement listing those parties and stating that all labor and material expenses incurred in connection with the subject construction improvements have been paid.
4. A maintenance bond equal to twenty-five (25) percent of the cost of the construction of the streets to be accepted, in a form acceptable to the city attorney's office. The maintenance bond must be in effect for a period of two (2) years from the date of formal acceptance by city council.
- d. Acceptance of the streets that are to be public shall be accomplished by resolution of city council as and when determined by the city, in its sole discretion, to be appropriate pursuant to the requirements and provisions of this chapter and other applicable provisions or sections of this Code, but not before ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, or four (4) years after the initial paving has been installed, whichever occurs first; provided, however, that in unusual circumstances presenting a substantial hardship to the applicant (such as commencement of a development

before the effective date of this provision), council may accept the streets before either such event has occurred, but in such case shall require a site restoration guarantee for the purposes set forth in section 26.5-34, and to guarantee the physical integrity of the roads to be accepted in light of continuing construction activity. The amount of the guarantee shall be established by the city engineer in an amount to be determined on the basis of the number of buildings remaining to be constructed, an estimate of time for completion and expected acceptance of the remaining site improvements, and other factors specific to the development at issue.

Where a development has been approved in phases, and the applicant seeks acceptance of streets in one (1) or more phases before substantial completion of all remaining phases, the city council shall also require such site restoration guarantee for the purposes set forth in section 26.5-34, and to guarantee the physical integrity of the roads to be accepted in light of continuing construction activity, upon determination, in its sole discretion, to accept such streets in phases.

- e. Except with the prior express consent of the city, and as further set forth in section 26.5-34 below, no construction traffic shall be permitted to use any street dedicated to the city after installation of the final surface course of that street. If the applicant uses the street for construction traffic, the applicant shall post the site restoration guarantee as set forth in the immediately preceding paragraph d, and keep the street free and clear of mud, debris, obstructions, and hazards and shall after the use is no longer necessary, restore and repair that street to city standards.

- f. Upon issuance by the city of any permit authorizing the construction of any public road improvements within a platted subdivision or a site condominium, public trust title to such public roads shall be deemed to pass to the city, unless otherwise specifically indicated in the permit, and the dedication of such right-of-way by the applicant may not thereafter be withdrawn except with the consent of the city. However, no public road improvements within such underlying right-of-way (i.e., physical improvements such as utilities, curb and gutter, asphalt, or concrete) shall be deemed to have been accepted by the city and the city shall have no obligation or liability in respect of maintenance or repair of the street, until the street has been constructed, approved, and accepted by city council and the utilities have been accepted by the city pursuant to the "acknowledgement" issued by the city engineer in accordance with subsections (2)a. or (2)b. of this section. The city shall not be obligated to keep any street cleared, plowed, or otherwise maintained before the street has been completed, approved, and accepted by city council. The city may (but is not obligated to) undertake emergency maintenance, including without limitation snow plowing, flood prevention/repair, and the like as set forth in the city's emergency operations plan, and may upon exercise of such authority recover the cost of such action from the applicant pursuant to the terms of the appropriate performance guarantee(s). The exercise of such authority shall not be construed in any way to constitute an "acceptance" of the street or utility improvements before all requirements of this chapter are met.

Sec. 26.5-34. - Site restoration bond.

- (a) The performance guarantee required under sections 26.5-5 and 26.5-7 shall include a guarantee for site maintenance and restoration, in an amount to be specified by resolution of the city council, guaranteeing that the applicant shall:
- (1) Establish or reestablish ditches and culverts and properly drain the building area and reopen and reestablish any drainage ways that may have been interrupted by the building operation;
 - (2) Repair, replace, and rebuild public road surfaces damaged in the course of construction so that the same shall be in comparable status as prior to commencement of construction;
 - (3) Repair, replace, and rebuild any sidewalk damaged during the course of construction;
 - (4) Repair all public utility structures if damaged during the course of construction and restore and adjust all manholes, catch basins, gate wells, hydrants, and shut-off boxes to the condition that they were prior to construction;
 - (5) Maintain streets, highways, pathways, and alleys free of mud, dirt, debris, and other material from the construction site, as required by chapter 16, article IV of this Code; and
 - (6) Maintain construction sites, as required by section 16-84.
 - (7) Guarantee that newly-constructed infrastructure located within the existing or proposed right-of-way or easement and proposed to become public (including, but not limited to, sidewalks, pathways, curbs, hydrants, manholes, catch basins, etc.) is constructed in accordance with Appendix A, "Zoning Ordinance," Chapter 11, "Design and Construction Standards," and all other applicable statutes and ordinances.

In the event there is damage or other prohibited condition to the public street or road, or other public improvement, directly adjacent to the property for which the site restoration guarantee has been posted, there shall be a rebuttable presumption that the damage or condition has been caused by or in connection with the activity occurring under the building permit, and the city may use the guarantee for the purposes stated in subsections (a)(1)—(7) of this section. The building permit holder may rebut the presumption by establishing that the damage or condition was caused by another or by other activity. If the amount of the guarantee is insufficient to repair or remedy the damage or condition, the city may require the posting of an additional guarantee. The permit holder shall at all times remain responsible for repair of any damage or condition actually caused by the permit holder.

- (b) In the event that the applicant fails to perform under the provisions of subsections 26.5-34(a)(1)—(7), above, either during the life of the building permit or any extension thereof, or within thirty (30) days after written notice is given to the applicant to correct or fulfill unperformed provisions, the site restoration bond shall be forfeited and deposited in the general fund of the city. If the applicant fails to perform the provision of subsection 26.5-

34(a)(6) above, the performance guarantee may be used for the payment of site cleanup performed by the city. The cost of cleanup shall be used and collected in the same manner provided in section 16-87. In addition, the site restoration bond may be utilized for payment of the costs of street clean-up performed by the city pursuant to chapter 16, article IV. Whenever funds are expended for such purposes the permit holder shall be required to replace such amount to bring the performance guarantee to that amount set by resolution of city council.

- (c) The site restoration guarantee amount shall be returned to the applicant or assignee after final inspection and determination by the city engineer that the provisions of subsection 26.5-34(a) have been performed. If the site restoration bond is sent by mail to the builder at the address specified on the bond receipt, and is returned undelivered, it shall be held by the city and returned to the builder on demand; however, if such demand is not made within one (1) year after the issuance of the certificate of occupancy, the site restoration bond shall be deemed forfeited and shall be deposited in the general fund of the city.

Sec. 26.5-35. – Requirements for Private streets.

- (a) A building permit shall not be issued for any residential dwelling unit permitted to front on a private street unless private roads have been constructed in accordance with city standards for such road (except for the final lift of asphalt, where applicable), in accordance with such standards and the approved site or plot plan or plat and requesting inspection by the city engineer. Following inspection by the city engineer and satisfactory correction of any deficiencies by the developer, the city engineer shall confirm the required performance guarantee.
- (b) Prior to issuance of the first certificate of occupancy, the developer shall post a performance guarantee in an amount equal to 30% (equal to 25% with a 1.2 multiplier) of the cost to construct the roadways within the development including base and related drainage to guarantee the physical integrity of the roads to be accepted in light of continuing construction activity. Such performance guarantee will be held until ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued or four (4) years' time has elapsed from the issuance of the initial permit.
- (c) At the time ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, or within four (4) years after the issuance of the initial permit, whichever occurs first, no final additional Building Permits shall be issued until all site improvements required by an approved site or plot plan or plat including the final lift of asphalt and all sidewalks and pathways for common; installation of all required "street trees" are completed; all required soil erosion/sedimentation control measures are constructed, installed, or placed on the property and final approval of same has been obtained from the department and any other approving body, unless a completion agreement as described in section 26.5-12, together with any required performance guarantees is in place.
- (d) Closeout may occur, when, all site improvements have been completed to City Standards and are found to be in acceptable condition pursuant to the requirements and provisions of this chapter and other applicable provisions or sections of this Code. Following closeout of

the financial guarantee required in 26.5-35(b) and not otherwise required elsewhere, shall be returned to and the improvements will be the sole responsibility of the owner(s).

- (e) The applicant shall submit an inspection request towards closeout of streets to the city engineer before a final site inspection will be conducted. If a final site inspection is not requested by the applicant at least sixty (60) days before the expiration of the required date of completion, the city engineers may schedule an inspection to determine if the applicant is in default under this chapter.
- (f) Where a development has been approved in phases, and the applicant may seek closeout of streets in one (1) or more phases before substantial completion of all remaining phases.
- (g) The city will not maintain streets, signs, or drainage improvements on private streets. A private maintenance covenant approved by the city engineer shall be required for any private street. The covenant shall set out the terms and conditions of responsibility for maintenance, maintenance methods, standards, distribution of expenses, remedies for noncompliance with the terms of the agreement, right of use easements, and other considerations.
- (c) A statement is required on the face of any plan, plat, or master deed containing a private street with the following language:

"City of Novi has no responsibility to improve or maintain the private streets contained within or private streets providing access to the property described in this [plan/plat]".

Sec. 26.5-36. - Soil erosion and sedimentation control.

The performance guarantee required under sections 26.5-5 and 26.5-7 of this chapter shall include guarantee amounts in accordance with the provisions of chapter 29, article II of this Code.

Sec. 26.5-37. - Woodlands and fence maintenance guarantees.

- (a) The performance guarantee required under sections 26.5-5 and 26.5-7 of this chapter shall include guarantee amounts to secure the planting of required woodland trees, at a rate of four hundred dollars (\$400.00) per tree, and a fence maintenance guarantee in an amount as determined by policy of the community development director or his or her designee. The rate of four hundred dollars (\$400.00) per tree shall not be subject to the 120% and 150% multipliers described above.
- (b) Where tree relocation or replacement is not feasible within the woodland area, or on the property where the activity is to be conducted, or on other property within the city approved by the parks/forestry operations manager the permit grantee shall pay into the city tree fund monies for tree replacement in a per tree amount representing the current market value for the tree replacement that would otherwise be required to be determined by the parks/forestry operations manager. The city tree account shall be used for all forestry related items including but not limited to the planting of trees within the city.

- (c) The applicant shall guarantee trees for two (2) growing seasons after the applicant's installation and the city's acceptance. A two-year maintenance bond in the amount of twenty-five (25) percent of the value of the trees, but in no case less than one thousand dollars (\$1,000.00), shall be required to insure the continued health of the trees following acceptance.

Sec. 26.5-38. - Wetlands.

Any applicant conducting any activities within a watercourse or wetland location must obtain a use permit and file with city administration a performance guarantee to guarantee continued compliance with the use permit granted. These performance guarantees shall be paid prior to issuance of a building permit.

Sec. 26.5-39. - Landscaping.

The performance guarantee required under sections 26.5-5 and 26.5-7 of this chapter shall include guarantee amounts to secure the completion and improvement of required landscaping in accordance with approved site plan. There will be no issuance of any temporary or final certificate of occupancy in the development until this guarantee is paid. A final certificate of occupancy will not be granted until all required landscape material has been inspected and accepted by the city unless a completion agreement as described in section 26.5-12 of this chapter, together with any required guarantees, is in place. The applicant shall guarantee planting materials for two (2) growing seasons after applicant installation and acceptance by the city. A two-year maintenance bond in the amount of ten (10) percent of the value of the landscaping, but in no case less than one thousand dollars (\$1,000.00), shall be required to insure the continued health of the landscaping following acceptance. The applicant shall replace all unhealthy and dead plant material without delay and within three (3) months following notice, or the next appropriate planting period, whichever comes first. The applicant shall guarantee all replacement material for an additional two (2) years after, if required by the community development director.

Sec. 26.5-40. - Street trees.

The performance guarantee required under sections 26.5-5 and 26.5-7 of this chapter shall include guarantee amounts to secure the planting of required street trees, at a rate of four hundred dollars (\$400.00) per tree. The rate of four hundred dollars (\$400.00) per tree shall not be subject to the 120% and 150% multipliers described above. There will be no issuance of any temporary certificate of occupancy in the development until this guarantee is in place. A final certificate of occupancy will not be granted until the applicant has planted all required street trees and they have been inspected and accepted by the city unless a completion agreement as described in section 26.5-12 of this chapter, together with any required guarantees, is in place. The applicant shall guarantee trees for two (2) growing seasons after applicant installation and acceptance by the city. A two-year maintenance bond in the amount of twenty-five (25) percent of the value of the street trees, but in no case less than one thousand dollars (\$1,000.00), shall be required to insure the continued health of the street trees following acceptance. The applicant shall replace all unhealthy and dead plant material within three (3) months following notice or the next appropriate planting period, whichever

comes first. The applicant shall guarantee all replacement trees for an additional two (2) years after, if required by the community development director.

Sec. 26.5-41. - Right-of-way.

For any work proposed within the right-of-way of the arterial system of the city, a performance guarantee shall be posted in accordance with chapter 31 of this Code.

Sec. 26.5-42. - Application of chapter to existing developments.

Unless the community development director determines otherwise for good cause and as a result of peculiar practical difficulties establishing an applicant's inability to comply with the requirements hereof, this chapter shall apply to all property and development within the city after the effective date hereof, including any phase of any property or development for which an initial permit has not been issued, except:

- (1) A property or development for which an initial permit has been issued; or
- (2) A property or development for which a building permit has been issued pursuant to an approved plot plan.

PART II.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the ____ day of _____, 2016.

Maryanne Cornelius, City Clerk

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 16-157.05

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, AT CHAPTER 31, "STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES," ARTICLE I, "IN GENERAL," SECTION 31-1, "CONSTRUCTION WITHIN CITY STREET, HIGHWAY, ALLEYWAY, PARKING, SIDEWALK, BIKE PATH, PARK EASEMENT OR OTHER PUBLIC PLACE," IN ORDER TO PROVIDE THAT EXISTING PROHIBITIONS ON CONSTRUCTION SHALL NOT APPLY TO THE CONSTRUCTION OF A SINGLE-FAMILY HOME FOR WHICH A SITE RESTORATION BOND IS PROVIDED UNDER CHAPTER 26.5 OF THE CODE.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 31, "Streets, Sidewalks, and Other Public Places," Article I, "In General," Section 31-1, "Construction Within City Street, Highway, Alleyway, Parking, Sidewalk, Bike Path, Park Easement or Other Public Place," of the City of Novi Code of Ordinances is hereby amended to read as follows in its entirety:

Sec. 31-1. - Construction within city street, highway, alley, parkway, sidewalk, bikepath, park, easement or other public place.

- (a) It shall be unlawful for any person to conduct any construction and/or maintenance activities within, over or below any street, highway, alley, parkway, sidewalk, bikepath, park, easement or other public place under the jurisdiction of the City of Novi, or which is the location of improvements or infrastructure owned by the City of Novi, without first having obtained a written permit therefore from the city engineer. In those instances where emergency circumstances require immediate action, the city engineer may grant verbal permission, provided that a written application shall be submitted within twenty-four (24) hours.
- (b) The prohibitions contained within subsection 31-1(a) shall not apply to:
 - (i) Work performed by the City of Novi
 - (ii) The construction of a single-family residential home for which a site restoration bond is required under Section 26.5-34 of this Code, provided that a certificate of insurance meeting the requirements of this section is provided to the city engineer.

- (iii) De minimis activities such as the cutting of grass, or the removal of snow or the installation of a water sprinkling system for use with a single-family residential dwelling.
- (c) The Director of Public Services is authorized and directed to establish and promulgate reasonable rules and regulations for construction an/dor maintenance within, over or below any street, highway, alley, parkway, sidewalk, bikepath, park or other public place under the jurisdiction of the City of Novi. Such rules and regulations shall be published in a newspaper of general circulation within the city at least thirty (30) days prior to their proposed effective date.
- (d) Prior to approval of a permit for the installation or construction of a structure or other improvement under subsection (a) above, the city engineer may require the applicant to execute a license agreement, in a form to be approved from time to time by the city council, including indemnification/hold harmless provisions and insurance requirements, before any such installation or construction.
- (e) It shall be unlawful for any person to violate the terms of rules and regulations duly adopted pursuant to section 31-18.

PART II.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the _____ day of _____, 2016.

Maryanne Cornelius, City Clerk

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 16-96.03

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, AT CHAPTER 7, "BUILDINGS AND BUILDING REGULATIONS," ARTICLE V, "SITE RESTORATION," IN ORDER TO REVISE PROVISIONS RELATING TO THE REQUIREMENTS FOR SITE RESTORATION BONDS, THEIR FORFEITURE, AND THEIR RETURN TO BUILDER.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 7, "Buildings and Building Regulations," Article V, "Site Restoration," of the City of Novi Code of Ordinances is hereby amended to read as follows in its entirety:

ARTICLE V. - SITE RESTORATION

Sec. 7-71. - Specifications required; bond required.

At the time of acquiring a building permit for a new construction, the builder shall deposit a site maintenance and restoration bond, being a cash bond in an amount to be specified by resolution of the council, guaranteeing that the builder shall meet the requirements of section 26.5-34.

PART II.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the ____ day of _____, 2016.

Maryanne Cornelius, City Clerk