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Technical Bulletins: Bonds for Subdivision Improvements

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technical bulletin

Municipal Technical Advisory Service
Institute for Public Service, The University of Tennessee
In cooperation with the Tennessee Municipal League

May 10, 1979

BONDS FOR SUBDIVISION IMPROVEMENTS

This Municipal Bulletin outlines the procedure for securing bonds from subdividers which is being used in Union City, with the thought that this information might be helpful to other cities of Tennessee. MTAS is indebted to City Manager Harold Pumford, Union City, TN, for supplying the information for this bulletin.

The Union City Planning Commission has adopted a policy whereby subdivision improvement bonds must be in one of two forms: a corporate surety bond from a company listed on Treasury Circular 5-70, or a deposit of cash, cashier's check, or certified check in lieu of a bond.

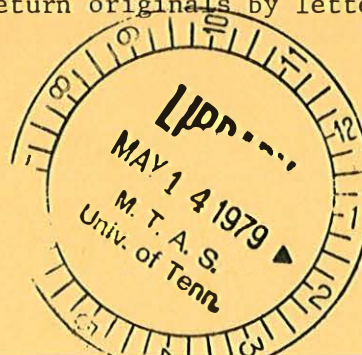
In every instance it is necessary for the developer to execute an "Agreement for Completion of Required Subdivision Improvements" in substantial conformance to the following sample agreement. The subparagraph (2) of this sample agreement would be changed to reflect a surety bond, if such were given.

If a deposit is to be made in lieu of a bond, the city also requires an "Escrow Agreement" in the same form as the attached sample escrow agreement. This agreement is required whether the deposit is in the form of cash, a cashier's check, or a certified check. The city will not accept responsibility for holding the deposit. Therefore there is no possibility that the deposit may be construed as "Public Funds."

It is necessary that a planning commission stipulate the amount of the bond and the duration of the agreement in the minutes of their meetings.

The director of planning and code enforcement has the responsibility for explaining these procedures to developers and for seeing that the developer submits final documents in proper form. The director also shall secure the city attorney's approval for each document. When all papers have been properly signed and notarized, they shall be submitted to the city clerk for filing.

When improvements have been completed, the director of planning and code enforcement shall request that the planning commission cancel the bond and/or agreements and the city clerk shall return originals by letter to the developer.



(Over)

SAMPLE AGREEMENT FOR COMPLETION OF
REQUIRED SUBDIVISION IMPROVEMENTS

WHEREAS, _____
(hereinafter referred to as DEVELOPER) has been granted final approval, subject to the posting of a bond, by the Union City Municipal-Regional Planning Commission (hereinafter referred to as COMMISSION) of a certain plat of a subdivision to be known as _____ Subdivision (hereinafter referred to as SUBDIVISION), containing _____ acres and lots numbered _____ through _____, and located in the _____ Civil District of _____ County, Tennessee; and

WHEREAS, the COMMISSION gave its approval to the final plat of this SUBDIVISION at its meeting on the _____ day of _____, 19____; and

WHEREAS, the DEVELOPER is obligated to construct or complete improvements in this SUBDIVISION in accordance with the "Subdivision Regulations of _____ (city) _____, Tennessee," as a part of the consideration of the subdivision plat being approved by the COMMISSION.

NOW, THEREFORE, the DEVELOPER does hereby unconditionally promise and agree to the following conditions:

(1) The DEVELOPER will construct or complete all improvements for this SUBDIVISION in accordance with the "Subdivision Regulations of _____ (city) _____, Tennessee," to the approval of the COMMISSION.

(2) In event the required improvements are built and installed in accordance with the foregoing standards and requirements as approved by the COMMISSION, the deposit made in lieu of a bond and in accordance with the attached Escrow Agreement will be returned to the DEVELOPER. In event the construction and installation are not completed or approved by the COMMISSION, the deposit, or so much thereof as may be necessary, shall be expended as provided in the attached escrow agreement. The escrow agreement is made a part hereof by reference thereto as fully and completely as if copied.

(3) The statutes in Tennessee Code Annotated relating to subdivisions, the "Subdivision Regulations of _____ (city) _____, Tennessee," and the minutes of the _____ Planning Commission are made a part hereof by reference thereto as fully and completely as if copied herein, and all of which are intended to be a part of the agreement between the DEVELOPER and COMMISSION.

(4) The DEVELOPER shall have _____ days from the date of this Agreement within which to complete the construction and/or make the aforesaid improvements, to the approval of the COMMISSION; provided, however, that such time of completion may be extended by the COMMISSION.

IN WITNESS THEREOF, the parties have executed this agreement on the _____ day of _____, 19__.

DEVELOPER

Chairman
PLANNING COMMISSION

APPROVED AS TO FORM AND LEGALITY:

City Attorney

(Signatures must be attested by a notary.)

SAMPLE ESCROW AGREEMENT

THIS AGREEMENT is made and entered into on this _____ day of _____, 19__, by and between the _____ Planning Commission (sometimes hereinafter referred to as COMMISSION); _____ (sometimes hereinafter referred to as DEVELOPER); and _____ (name of official), _____ (city), Tennessee (sometimes hereinafter referred to as ESCROW AGENT).

WITNESSETH:

WHEREAS, the DEVELOPER and COMMISSION have entered into an "Agreement for the Construction of Subdivision Improvements" dated the _____ day of _____, 19__ ; and

WHEREAS, the DEVELOPER has agreed to deposit \$ _____ in cash with the COMMISSION as security for the Agreement; and

WHEREAS, a copy of the Agreement setting forth the terms of the transaction is attached hereto and marked Exhibit 1 and made a part hereof by reference as fully and completely as if copied.

NOW, THEREFORE, for and in consideration of the premises and the sum of One Dollar (\$1.00), the ESCROW AGENT agrees and promises to hold the sum of \$ _____ in accordance with the terms, provisions, and conditions of the attached Agreement and to pay over the same or such portion thereof to the parties in accordance with the terms, conditions, and provisions of the aforesaid attachment and the succeeding paragraphs hereof.

In event the required improvements are not constructed or completed as provided by the Agreement which is attached hereto and marked as Exhibit 2, the Director of Public Works of _____ (city) _____, Tennessee, shall certify the costs of constructing or completing the improvements to the Planning Commission, and the chairman of the Commission in turn shall certify the amount to the ESCROW AGENT, and the ESCROW AGENT is authorized, directed, and empowered to pay such amount to the party constructing or completing the improvements at the conclusion of the work, and at the conclusion of work, the balance remaining, if any, shall be paid by the ESCROW AGENT to the DEVELOPER.

The ESCROW AGENT shall be discharged from any further obligation hereunder upon payment of the sum or sums as stated, and it shall not be liable to either party except for fraud.

In event of any litigation in regard to this agreement, the DEVELOPER agrees to indemnify and hold harmless the ESCROW AGENT, its successors, and assigns, from any and all claims, controversies, suits, judgments, and expenses, including out-of-pocket expenses and attorneys' fees and court costs, as may be incurred by the ESCROW AGENT, except if the ESCROW AGENT is found by any court to be guilty of fraudulent conduct, this indemnification agreement shall not be of any force and effect.

EXECUTED on the date above written.

(Name)

PLANNING COMMISSION

BY _____
CITY CLERK OF THE CITY OF
TENNESSEE, ITS AGENT

DEVELOPER

BY _____

ESCROW AGENT

BY _____

APPROVED AS TO FORM AND LEGALITY:

CITY ATTORNEY

Municipal Technical Advisory Service
The University of Tennessee
Knoxville, TN 37916

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