memo

To:	CITY COUNCIL
From:	Patrick Parsley
CC:	Kim Downs, City Administrator John Bender, City Engineer
Date:	10/10/2019
Re:	Development Agreement Template

Background: Staff has brought this forward to address some issues with our Development Agreement and our development policy for improvements in new subdivisions. The changes to the template and policy address the following:

1. The template name has been revised to differentiate between agreement types. The same title was used for TIF agreements but the two can now be recognized in the title.
2. The language in the agreement has been standardized with legal counsel. The agreement has been reviewed to reflect appropriate contract language.
3. The acceptable assurance from the developer no longer includes the assessment alternative. The new assurances are now the responsibility of the developer rather than implicating possible new owners for possible default by the developer. The option to assess still exists but only as a last resort.
4. The policy now describes when the assessment alternative may be implemented by Council. An assurance exceeding $10,000,000 may still be provided for as an assessment assurance if the Council so chooses. This language was presented to the Developer's Council on October 9th with no pushback from the group.
5. Storm Water Detention has been delineated separately from other public improvements. The language now reflects the developer is responsible for the basin until it is properly transferred to an HOA or other acceptable entity to maintain.

DRAFT

RESOLUTION NO. 19-
City Council

RESOLUTION AMENDING CITY OF HIAWATHA'S DEVELOPMENT AGREEMENT AND PERFORMANCE SECURITY POLICY IN RELATION TO SUBDIVISION REQUIREMENTS

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA, to amend the City of Hiawatha's Development Agreement and Performance Security Policy in relation to subdivision requirements excluding assessment alternatives with an assurance exceeding $10,000,000 and in addition reflects the developer's responsibility for storm water detention until it is properly transferred to the Home Owner's Association or other acceptable entity to maintain as in 'Exhibit A'.

AYES:
NAYS:
ABSENT:

PASSED AND APPROVED this 6th day of November, 2019.

_____
Bill Bennett, Mayor

ATTEST:

_____
Amy Scheer, Deputy City Clerk

Exhibit "A"

DEVELOPMENT AGREEMENT & PERFORMANCE SECURITY POLICY

The Unified Development Code (UDC); Chapter 165 of the Hiawatha Code of Ordinances, allows the City Council to approve final plats prior to the completion of related public improvements. The specific requirements are listed in UDC Section 165.67.

Items #11 and #12 in UDC Section 165.67 deal specifically with the submittal of a Performance Security in addition to the development agreement. Subsection 165.67 (11) lists the performance securities acceptable by the Council. The City will require one of the Performance Securities unless the waiver in Subsection (12) is applicable. Said security will have a value equal to 125% of the non-completed public improvements included in the approved set of improvement plans.

Subsection 165.67 (12) describes an alternate assessment process in place of the Performance Security. The Council will consider this option only for projects in which the remaining cost of the completion of the improvements included in the approved set of improvement plans exceeds ten million dollars ($10,000,000).

The remainder of the development agreement shall follow the attached template which describes the obligations of the CITY and the DEVELOPER as they relate to the agreement and the completion of the improvements within the development.

165.67 SUBDIVISION REQUIREMENTS.
Whenever land within the platting jurisdiction of the City of Hiawatha is proposed for division into two or more lots, the subdivider shall follow the subdivision requirements for the City of Hiawatha...

> *11. Performance Security. In lieu of the requirement that improvements be completed prior to the approval of a final plat, the subdivider* ***may post a performance bond, certified check, cashier's check or letter of credit with the City,*** *guaranteeing that improvements not completed shall be completed within a period of two (2) years from the date of approval of such final plat, but such approval of the plat shall not constitute final acceptance of any improvements to be constructed. Improvements will be accepted only after their construction has been completed.*
>
> *12.* ***Alternate Assessment Waiver Agreement****. As an alternative, at the sole discretion of the Council, the owner shall enter into an agreement with the City, which agreement shall be binding upon the owner and all subsequent purchasers of any portion of the subdivision and shall run with the land, to accept an assessment equal to the actual cost of constructing said improvement and furthermore, will waive the limitation provided in Section 384.62 of the Code of Iowa that an assessment may not exceed twenty-five percent (25%) of the value of the lot, as said waiver is provided for in Section 384.38 of the Code of Iowa, which agreement shall be duly acknowledged by the owner and filed of record with the County Recorder as part of the platting proceeding.*

POLICY TEMPLATE

(*TYPE OF: IE-TIF OR SUBDIVISION*) DEVELOPMENT AGREEMENT

REGARDING (*LOCATION*)

This (*type*) Development Agreement for (*location*), is entered into this _____ day of _____, 2019 by and between the City of Hiawatha, Linn County, Iowa (the "CITY") and _____.(the "DEVELOPER"). The CITY and the DEVELOPER may hereinafter be referred to collectively as the "Parties").

WHEREAS, Chapter 165 of the Hiawatha Code of Ordinances requires the DEVELOPER of new subdivisions located within the CITY to construct, or give satisfactory assurance to the CITY that it will construct certain improvements; and

WHEREAS, the DEVELOPER, above described, is now in the process of subdividing the premises legally described as follows to wit:

See Attachment A

subdivision shall be known as _____
to the City of Hiawatha, Linn County, Iowa.

WHEREAS, The DEVELOPER proposes to record a final plat situated on a portion of the Real Estate to be known as _____ to the City of Hiawatha, Linn County, Iowa, and has prepared a proposed final plat of such addition (the "Plat"). The Addition consists of _____(*describe lots*) _____; and

WHEREAS, any annexation agreement associated with the described property of this development shall remain valid and unaffected by this Development Agreement; and

WHEREAS, the Public Improvements that lie within or provide service to the area included in the proposed final plat of _____ to the City of Hiawatha, Linn County, Iowa have not yet been completed to date, and in order to receive the CITY's approval of the proposed plat the DEVELOPER by this Agreement has submitted a Performance Security equal to 125% of the City Engineer's approved estimated costs of incomplete improvements.

NOW, THEREFORE, IT IS AGREED TO BY THE PARTIES AS FOLLOWS:

1. The DEVELOPER has provided satisfactory assurances that all Public Improvements will be constructed and will perform to CITY Standards as required by Chapter 165 of the Code of Ordinances. The Developer has submitted a Performance Security to the CITY in the form of a:

   a. Letter of Credit in the amount of_____;
   b. assurance bond in the amount of_____;
   c. A certified check in the amount of_____; or
   d. A cashier's check in the amount of_____.

POLICY TEMPLATE

This amount shall equal 125% of the estimated cost of the public improvements yet to be completed as approved by the City Engineer. The DEVELOPER shall complete, and the CITY shall accept, all the items applicable to said subdivision set forth in the plan of improvements, not later than the earlier of

a) one (1) year from the date of passage of the City Council Resolution approving the Development Agreement unless specifically extended by the Council; or

b) occupancy of a newly constructed principal structure built upon a lot in the subdivision.

Upon completion and acceptance of the Public Improvements, the City Council shall cause to be filed with the Linn County Recorder a release instrument. Such release instrument will indicate that the Public Improvements have been accepted by the City Council and will release the DEVELOPER and the Real Estate from all obligations due under this Development Agreement and will specifically discharge and release the DEVELOPER and the Real Estate from any lien. If necessary, the City Council shall also cause to be executed and/or filed with the Linn County Recorder any additional instrument(s) reasonably required by the DEVELOPER to further demonstrate that the Public Improvements have been satisfactorily completed with the following exceptions:

a. The City reserves the right to terminate all construction with in this designated subdivision in conformance with Chapter 165 of the Code of Ordinances if the DEVELOPER is in default of this Development Agreement.

b. Construction of sidewalk shall be as described below in paragraph two (2) of this Development Agreement.

c. The Storm Water Detention described below in Paragraph six (6) of this Development Agreement is not included in the acceptance of the Public Improvements for release.

2. The DEVELOPER will either construct, or cause to be constructed, within the subdivision all sidewalks required by Chapter 165 and Chapter 136 of the Code of Ordinances as follows:

a. All sidewalks shall be constructed to meet City Engineer's specifications adjacent to lots _____ in the subdivision as part of the construction of a principal structure on each lot.

b. Notwithstanding the above, the DEVELOPER agrees to construct sidewalk adjacent to any lot which has not had sidewalk constructed for which the City Council passes a resolution of necessity within a period of time established within the resolution of necessity.

3. The CITY acknowledges that the DEVELOPER has paid the final plat filing fee in the amount of $150.00 and all other fees levied by the CITY including, but not limited to, the water main inspection fee of $500 or $1/foot of water main, whichever is greater.

4. Street lighting *(number and type)* shall be installed at the DEVELOPER'S expense in accordance with City Council Resolution 12-138. Or, the DEVELOPER has provided an acceptable verification of payment to the appropriate utility company for the street lighting installation.

POLICY TEMPLATE

5. The DEVELOPER has secured a NPDES General Permit No. 2 from the Department of Natural Resources and developed a pollution prevention plan and agrees to maintain and control the premises so as to prevent erosion. The DEVELOPER further assumes responsibility for any costs associated with erosion and/or siltation of this development as outlined in Chapter 167 of the Code of Ordinances as a result of development of this subdivision.

6. The DEVELOPER agrees (*describe outlot designation*) is designated as a storm water detention facility and will be certified, operated and maintained as such according to Chapter 162 of the Code of Ordnances. The detention system shall remain the responsibility of the DEVELOPER unless, or until, a transfer to a homeowners' association or other entity approved by the CITY is completed and recorded with the Linn County Recorder.

7. All Public Improvements shall be constructed to CITY standards and shall be inspected and approved by the City Engineer. The DEVELOPER, and any contractor or other agent employed by the DEVELOPER, shall provide maintenance surety as required by Chapter 165 of the Code of Ordinances prior to acceptance of the completed Improvements by the CITY.

8. The DEVELOPER, and any contractor or agent employed by the DEVELOPER, shall provide insurance as reasonably required by the City Council when working within the public rights-of-way.

9. All Public Improvements and construction on property dedicated to the CITY shall become property of the CITY upon acceptance by the CITY (except private service connections to sewer and water lines). Such acceptance by the CITY of any Public Improvement shall constitute a release of the obligations hereunder with respect to the Public improvement, except, as to being a surety under the maintenance bond.

10. If the DEVELOPER fails to complete the Public Improvements within the time period as provided in this Development Agreement, the CITY may cause the Public Improvements to be constructed in all respects as it shall reasonably deem appropriate. DEVELOPER shall remain responsible for all costs incurred by the CITY in completing the Public Improvements. In order to assure payment of such costs, if the DEVELOPER has not completed the Public Improvements within the time period above provided, the CITY and DEVELOPER further agree to the following agreement as provided for in Chapter 165 of the Code of Ordinances.

a. In consideration of the construction of the Public Improvements by the CITY, the undersigned DEVELOPER hereby waives Notice of such construction, waives all legal formalities required by the laws of Iowa to be observed by cities in the construction of Public Improvements where the expense of the Public Improvements is to be assessed, and waives each and every question of jurisdiction. The intention of the DEVELOPER is to authorize and direct the CITY to construct the Public Improvements without any of the formalities or legal proceedings required of cities in constructing like Public improvements. The express intention of the DEVELOPER is

that the Public Improvements shall be constructed as aforesaid as if each and every legal requirement pertaining thereto was fully and faithfully observed and performed.

b. The DEVELOPER has submitted a Performance Security in the amount of 125% of the cost of the unfinished Public Improvements as approved by the City Engineer to be accessed by the CITY to pay for the completion of the Public Improvements.

c. The Performance Security is to be released by the CITY only when the Public Improvements have been accepted by the CITY.

11. The DEVELOPER agrees to assume all expenses for any damage to public utilities, public improvements or other public property and assumes all risk of loss to the Public Improvements contemplated by this Development Agreement until final acceptance by the CITY.

12. The DEVELOPER agrees that building permits for any structure will not be allowed without an emergency access plan submitted and approved by the Hiawatha Fire Department.

13. The DEVELOPER agrees that permanent occupancy of any structure will not be allowed until all of the Storm Water Detention requirements as described in Paragraph six (6) of this Development Agreement have been certified as required by Chapter 162 of the Code of Ordinances and the improvements outlined in Paragraph seven (7) of this Development Agreement have been approved and accepted by the CITY and the required Certificate of Final Occupancy is issued by the CITY.

14. The DEVELOPER acknowledges that the home owners shall be responsible for reimbursement to the Hiawatha Water Department for water used within individual homes.

15. The DEVELOPER acknowledges that the CITY will impose and install no-parking signage restricting on one side of each street that contains the water main and fire hydrants.

16. The DEVELOPER agrees to hold harmless, indemnify and defend the CITY against any and all claims made by any person or entity as a result of personal injury, including death, or property damage occurring during the construction of any Public Improvements contemplated by this Development Agreement.

17. This Development Agreement shall be binding upon the Parties hereto and their heirs, successors and assigns, and the sale by the DEVELOPER of all or any part of the premises in the subdivision shall transfer obligations of the DEVELOPER to the successor in interest.

POLICY TEMPLATE

18. This Development Agreement shall be recorded with the Linn County Recorder by the DEVELOPER at the same time as recording the plat, and the CITY agrees that the City Engineer may, by written letter, satisfy any portion of this Development Agreement as having been satisfactorily completed by the DEVELOPER other than final acceptance of the Public Improvements

19. Should there be any ambiguities that arise in the construction of this Development Agreement, it is agreed by the Parties that any such ambiguities shall be construed to favor of public over private interests.

Signed this ____ day of _____, 20__

City of Hiawatha:

_____

Mayor

ATTEST:

_____

City Clerk

(Developer)

_____

Owner