

# **ROANOKE COUNTY**

## **BONDING POLICY**



Roanoke County Administration Center  
5204 Bernard Drive  
P. O. Box 29800  
Roanoke, VA 24018  
Office: 540-772-2065  
Fax: 540-772-2108

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## **Bonding Policy**

### ***I. Purpose***

To obtain a reliable guarantee of the timely construction of site and subdivision physical improvements to be accepted into a public system, improvements required by State, County Code, regulation, or non-public physical improvements required under proffered conditions (as provided in Sec. 15.2-2299), in accordance with approved plans, current County standards and specifications, and County and State Code Requirements. Further, to ensure that resources are available to complete such improvements should the developer fail to provide them.

### ***II. Performance Agreement***

Before recordation will be granted, to a proposed subdivision or site plan, the developer must execute a ***Performance Agreement*** promising to construct required improvements in a timely manner and in accordance with County specifications. The agreement must be supported by an approved form of guaranty. The maximum period of agreement shall be twenty four (24) months, although extensions may be made in accordance with this policy. The agreement shall be between the developer or his/her designee and the Roanoke County Board of Supervisors. Surety shall be equivalent to one hundred twenty-five percent (125%) of the estimated cost of improvements as determined by the design engineer and approved by the Department of Community Development.

### ***III. Forms of Guarantee***

Corporate Surety Bond, Cash Escrow Account, Irrevocable Letter of Credit, and/or Letter of Escrow (Set-Aside Agreement), are the only approved forms of guaranty. Whatever its form, the surety is designed to guarantee the County a fund for completion of required improvements in the event a developer fails to discharge the obligations of his performance agreement. The obligation of all surety is to **PAY ON DEMAND** from the designated funds as required to fully complete the improvements in accordance with the performance agreement.

#### **A. Corporate Surety Bond**

Such bonds must be furnished by an insurance company licensed to transact fidelity and surety insurance in Virginia and must guarantee the full amount of the improvements. Such bonds will obligate the surety when notified of its Principal's default to elect either to perform in its Principal's stead, or pay the face amount of the bond, or any lesser amount as determined by the Director of the Department of Community Development or his/her designee.

#### **B. Cash Escrow Account**

The face amount of the guaranty will be submitted to the Director of the Department of Community Development or his/her designee to be deposited

with the Treasurer of Roanoke County. The funds will be deposited in an interest-bearing account earning the highest rate of return for which the funds qualify. Interest accruing on such funds shall be available to the County in the event of default by the developer for application to the cost of completing required improvements; otherwise, such interest shall accrue for the benefit of the developer.

C. Irrevocable Letter of Credit

An Irrevocable Letter of Credit meeting the following minimum requirements will be accepted:

1. The lending institution must be insured by the FDIC or FSLIC.
2. The following language must be a part of all issued Letters of Credit:

"This Irrevocable Letter of Credit shall remain in full force for a period of one (1) year from the effective date hereof and shall automatically renew itself from year to year thereafter unless and until the *(issuing bank name)* shall give ninety (90) days prior written notice to the County of Roanoke, Virginia, by certified mail, return receipt requested, of its intent to terminate the same at the expiration of the ninety (90) day period. During the last thirty (30) days during which the Letter of Credit is in full force and effect, the County may draw up to the full amount available under the Letter of Credit with a draft accompanied by a document stating that *(applicant name)* has not completed the improvements and has not provided an acceptable substitute Irrevocable Letter of Credit and that the drawing is for the explicit purpose of guaranteeing and/or providing for the completion of the improvements. (Amended 08/23/88)

D. Letter of Escrow (Set-Aside Agreement)

Set-aside Agreement among the Developer, a lending institution insured by the FDIC or FSLIC which is making the development or construction loan to the developer for the project and the County:

1. This agreement must commit the bond funds to payment for required bonding improvements, and no other purposes.
2. The Director of the Department of Community Development or his/her designee will have fifteen (15) working days in which to approve or disapprove any expenditure, upon written request for approval identifying the project and the agreement, the nature of the proposed expenditure, and the balance of the completion fund.
3. The agreement will acknowledge that the fund cannot be drawn below twenty percent (20%) of the starting balance, or other such maximum reduction permitted by this policy, until final release, and shall limit to four (4)

the maximum number of draws that may be made.

#### ***IV. Debarment of Surety***

- A. Any person otherwise qualified in accordance with the requirements of this policy to act as surety for any Performance Bond may nevertheless be disqualified from acting in such a capacity on any agreement to which the Board of County Supervisors is a party, in accordance with the provisions of this section.
- B. Whenever the Bonding Committee shall recommend to the Board that any person be disqualified from acting as surety on any bond, the Board shall proceed as follows:
  1. Notice of such recommendation shall be served by certified mail on such person. Such notice shall inform such persons of the grounds upon which such recommendation is made and the time and place the matter will be taken up by the Board.
  2. Such person may appear and be heard on the matter.
  3. Following the hearing, the Board may declare such person ineligible from acting as surety satisfactory to the Board for such period of time, not to exceed, five (5) years, as it may specify; may defer its finding on such terms and conditions as it deems appropriate; or may dismiss the recommendation of the Bonding Committee.
- C. Any matter tending to establish that the surety will not perform in accordance with the terms of the surety's contract commitment shall be grounds for disqualification. Specific reasons for disqualification shall include but not be limited to:
  1. The surety commits an act of bankruptcy or reorganization, or becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors, or consents to the appointment of a trustee, or has a receiver appointed for a substantial part of its property without its consent;
  2. The surety is presently held in default of one or more bond contracts in which the County is obligee, or having breached a bond contract in the past fails to give reasonable assurances that it will discharge its obligations under future performance bonds;
  3. The surety is in default of one or more identical or substantially similar bond agreements with any other political subdivision of the state;
  4. Any managing or policy-making officer of the surety, acting in the course of his employment or on behalf of the surety, is convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of

records, fraud or any other offense indicating a lack of business integrity or business honesty which substantially affects the surety's responsibilities/reliability as a surety for performance and duties owed to the County.

5. Any other cause that the Board determines to be so serious and compelling as to affect responsibility as a surety, including debarment by another government entity.

## **V. Forms**

The County Attorney shall approve, and may amend from time to time, standard forms which may be used for any land subdivider or site agreement and letter of credit or bond. No deviations shall be accepted unless approved by the County Attorney for conformity with this policy and all applicable requirements.

## **VI. *Extensions and Rebonding of Agreements***

- A. When a developer enters into an agreement with the County, it is understood that all the necessary physical improvements must be completed in the specified period of time unless the developer obtains an extension of time with an extension of surety. If all the noted improvements are not completed within this amended time period and no extension has been obtained, or a replacement agreement and surety have not been submitted and approved with a new expiration date, the agreement is deemed in default.
- B. A minimum of not less than ninety (90) days prior to the expiration of the agreement, the developer and surety shall be notified in writing. The notification cautions the developer and surety that unless the work is completed in accordance with the agreement and approved plans, or an extension of time is obtained in accordance with the requirements of this policy, the developer will be in default.
- C. In the event the developer does not respond satisfactorily to the ninety (90) days letter referred to in Section VI paragraph B, the matter will be referred to the Bonding Committee for their action.
- D. Bond extensions, agreement extensions and sureties will be reviewed by a Bonding Committee appointed by the Board of Supervisors. Membership shall include the Assistant County Administrator, the Director of Community Development or his designee, and the County Attorney, or his/her designee.
- E. The developer can make a written request to the Bonding Committee for an extension of the expiration date for a maximum period of one (1) year. The developer must also indicate the reasons and conditions, which have precluded him from completing the required physical improvements. The

developer must also have all sureties' written consent to the request, including corporate surety companies.

F. If the developer has requested an extension or a substitute agreement and surety, Community Development staff may prepare a written fact finding report based on the reevaluation by the County review engineer and present it to the Bonding Committee. The Bonding Committee reviews the staff report of the project and the request submitted by the developer. The factors considered by the Bonding Committee include the following:

1. Percent of project already completed.
2. Percent of project completed and served by public facilities.
3. Rate of construction activity:
  - a) Weather conditions
  - b) Economic conditions
4. Developer's history of performance in development in the County.

If the Bonding Committee approves the request, the Community Development Director may issue an extension for no more than twelve (12) months/one (1) year from the date of approval.

G. In situations where it is clear that the developer can and will complete the physical improvements within ninety (90) days of the expiration of the agreement date, the County will take no further action on the default. However, the project will be continuously monitored to insure that progress is being made. Failure to complete the project within such period will result in handling the project as any other default.

## ***VII. Partial Release of Surety:***

Any surety subject to this policy may be partially released based on completed work on the project in accordance with this section or Section VIII. No more than three periodic partial releases can be issued by Roanoke County in any twelve-month period (§15.2-2245.E Code of Virginia).

A. A developer seeking partial release of any surety shall submit a written surety reduction request to the Director of the Department of Community Development or his/her designee. No request shall be deemed received unless it is submitted in accordance with this section and meets the following requirements:

1. The developer's request must identify the project, performance agreement, surety number, completion date and must specify the

amount of reduction sought; and,

2. Such request shall certify the percentage of the project completed, and shall summarize the nature and cost of the work remaining, together with a projected timetable for completion.
3. A certificate of completion from either an engineer or surveyor, licensed in the State of Virginia, certifying that the work described has been performed in strict conformity with approved plans or in accordance with as-built plans submitted therewith and that the work meets all applicable standards.
4. A certificate of substantial completion from the Western Virginia Water Authority certifying that the water and sewer construction or a specified part thereof is sufficiently completed so that the project or specified part can be utilized for the purposes for which it is intended. Such certification and subsequent request for reduction allows for a partial release of 75% of the bonded water and sewer amounts for the specified area only.

B. The Bonding Committee (or its designee) shall approve or disapprove any reduction request within thirty (30) days of receipt. If the request is approved, the Director of the Department of Community Development or his/her designee shall notify the developer and surety company in writing of the amount of the partial release. If disapproved, the Community Development Director shall notify the developer of the specific reasons for disapproval, of specific defects or deficiencies in construction, and suggested corrective measures.

## ***VIII. Surety and Agreement Release Procedures***

- A. After the physical improvements have been completed in their entirety, the developer must request a general inspection through the Director of the Department of Community Development or his/her designee. The general inspection will be a joint inspection with the Department of Community Development and the developer.

*Procedures to follow:*

1. A certificate of final completion from the Western Virginia Water Authority must be submitted to the Department of Community Development.
2. Date is set for in-field inspection with the Department of Community Development and the developer present and punch list is made of those items requiring correction.
3. The review engineer sends the developer a copy of the punch list. The developer has thirty (30) days to complete the necessary improvements. It should be noted that this punch list does not relieve the developer of liability

for defective work later discovered. If the punch list corrections are not completed within thirty (30) days, the entire project is subject to re-inspection. The developer notifies the Department of Community Development that he has completed the punch list items and desires final inspection.

4. If public streets are involved, the Department of Community Development will send the developer a check list of items required to be submitted to the County to complete the Virginia Department of Transportation acceptance of streets. Once these items are received, the County will then set a date for joint inspection with the Virginia Department of Transportation and the developer.
5. If the joint inspection discloses that all improvements are not satisfactorily completed, the following steps will be taken:
  - a) The review engineer sends the developer a copy of the punch list, and he has thirty (30) days to complete the necessary improvements. It should be noted that this punch list does not relieve the developer of liability for defective work later discovered. If the punch list corrections are not completed within thirty (30) days, the entire project is subject to re-inspection.
  - b) The developer notifies the Department of Community Development that he has completed the punch list items and desires final inspection.
6. If the joint inspection discloses that all improvements have been satisfactorily completed, the following steps will be taken:
  - a) The Virginia Department of Transportation will forward a letter to the Review Engineer indicating that a satisfactory inspection has been made.
  - b) The developer requests a resolution from the Board of Supervisors by submitting a maintenance bond (value determined by VDOT) to the department of community development department.

B. The Director of Community Development notifies the Bonding Committee and requests that the County Attorney prepare a resolution for action by the Board of County Supervisors.

C. Following the adoption of the resolution by the Board of Supervisors, copies shall be forwarded to the Virginia Department of Transportation, to the Bonding Committee, and to the Developer.

- i. The Virginia Department of Transportation shall then formally accept the roadway into the State Highway system.
- ii. The Bonding Committee or its designee will then process the

paperwork necessary for the release of the subdivision's bond and will release the bond upon receipt of notification of street acceptance by the Virginia Department of Transportation.

## ***IX. Default and Evaluation Procedures***

- A. If the developer fails to complete the required physical improvements in the period of time specified in the agreement or any approved extension, the project/developer is in default.
- B. The Bonding Committee will consider facts presented by the community development on the project and forward a report to the Board of County Supervisors, with the Committee's recommendation that the Board formally declares the developer/project to be in default, and with the Committee's recommendation for a course of action in response to a the default. Such recommendations may include the following in any combination:
  1. That the County Attorney be authorized to institute such actions as he deems appropriate to enforce the provisions of this policy, the performance agreement and bond, and applicable code provisions.
  2. That once the ninety (90) day notification is received from the bank, all physical improvements must be completed and accepted by all County and State agencies within sixty (60) days from bank notification or Roanoke County is required to automatically draw on the Letter of Credit. (Amended 08/23/88)
  3. That demand be made of the surety on the developer's bond for payment of the funds secured thereby, for application to completion of the project, or for performance of its principal's obligations.
  4. That the County contract for completion of the project.
- C. The developer and surety provider will be mailed copies of the Committee's report and recommendation and will be advised of their opportunity to be heard on the matter at the scheduled meeting of the Board. The developer or surety provider will be given at least fifteen (15) days notice of such meeting and may offer proposals for completion as alternative to that of the recommendation of the Bonding Committee. Any such proposal must be reduced to writing and signed by the developer and/or surety provider.

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