



STAFFORD COUNTY DEVELOPER SECURITY POLICY

Amended

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SECURITY POLICY

DEFINITIONS

For the purpose of this policy, terms used herein shall be interpreted and defined as follows: Words used in the present tense shall include the plural and the singular unless the natural construction of the word indicates otherwise; the word "shall" is mandatory and not discretionary; the word "approve" shall be considered to be followed by the words "or disapprove." All gender-oriented references shall include male and female genders. Actions not specifically declared to be the responsibility of the AGENT or other party shall be considered the responsibility of the DEVELOPER.

AGENT: The County Administrator of Stafford County or his designee.

DEVELOPER: An individual, corporation, trustee, joint venture, partnership, or other entity having legal or equitable title to any tract or parcel of land to be developed or improved who submits plans pursuant to the Zoning, Subdivision, Erosion and Sediment Control, Stormwater Management, or Utility Ordinances of Stafford County, or the successor(s) in interest to such individual corporation, trustee, joint venture, partnership or other legal entity.

QUALIFIED PROFESSIONAL: Individual licensed as a professional engineer or surveyor in the Commonwealth of Virginia.

PERSON: The word PERSON shall extend, and be applied to associations, firms, partnerships, and bodies politic and corporate, as well as to individuals.

PROJECT: The term PROJECT shall include all subdivisions, site plans, utility plans, erosion and sediment control plans, and storm water management plans, infrastructure plans, or sections thereof required to be submitted for approval under the Stafford County Code. The term PROJECT shall not include individual house site plans submitted for the issuance of building permits.

SECURITY: The term SECURITY as used in this policy means cash escrow, certified checks, cashier's checks, standby letters of credit, and SURETY bonds (unless noted otherwise)

SURETY: An individual, corporation, bank, savings and loan, insurance company, firm, or partnership who undertakes to pay money in the event the DEVELOPER fails to complete his obligation.

VDOT: The Virginia Department of Transportation.

SECTION 100. PURPOSE

To obtain an acceptable guarantee of performance to assure the timely construction and completion of all physical improvements in accordance with approved plans and profiles, current County standards and specifications, and County and State requirements.

SECTION 100.005 APPLICABILITY

A SECURITY and associated Performance Agreement shall be required for all public and other physical improvements as shown on the approved construction, infrastructure, grading and site plans, as well as record plats. Such improvements shall include, without limitation, road, curb, gutter, sidewalk, trails, storm drainage, traffic signalization and control, and any other site-related improvements required by Stafford County Ordinances and/or the Virginia Code for vehicular ingress and egress, public access roadways, structures necessary to ensure stability of critical slopes, and stormwater management facilities.

A security for Erosion and Sediment control shall be in accordance with Stafford County Code Chapter 11 and Section 100.09 of the Security Policy.

Any builder, DEVELOPER or other PERSON(s) seeking to gain approval of a subdivision plat/site plan/construction plan or public improvement plan in the County shall enter into a Performance Agreement with the County, prior to the approval and issuance of any land disturbing (grading) permit, which details the agreed-upon elements of the improvements, and is supported by SECURITY in the amount not greater than 125% of the estimated cost of construction. The Performance Agreement and SECURITY shall be required from any builder, DEVELOPER, or other PERSON, except the Stafford County Board of Supervisors.

SECTION 100.01 PERFORMANCE AGREEMENTS

An agreement and SECURITY shall be required for all PROJECTS except those exempted above, which shall obligate the DEVELOPER to construct the required improvements in accordance with the approved subdivision, site, construction or infrastructure plan and all applicable County and State standards, specifications, and requirements in a timely manner.

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- A. The maximum initial period of the agreement shall be twenty-four (24) months, with the exception of agreements relating to telecommunication facilities which shall be for a maximum initial period of five (5) years.
- B. The agreement shall be between the DEVELOPER and the Board of Supervisors.
- C. If the DEVELOPER seeking to enter into a new Performance Agreement with the County has a previous Performance Agreement with the County that is in default, the County may decline the new agreement until the previous default is resolved.
- D. Any and all forms of SECURITY shall be not greater than one hundred and twenty-five percent (125%) of the estimated cost of improvements as determined by a QUALIFIED PROFESSIONAL with the approval of the AGENT.
- E. Notwithstanding the requirements of paragraph D of this section, SECURITY for water and sanitary improvements for site plans shall be 10% of the total construction cost estimate as determined by a QUALIFIED PROFESSIONAL with the approval of the AGENT, or \$10,000, whichever is greater. This amount shall be adjusted annually based upon the Engineering News Record Construction Cost Index.
- F. Notwithstanding the requirements of paragraph D of this section, Road and Road Stormwater Management/Drainage system SECURITY for site plans shall be 10% of the total construction cost estimate as determined by a QUALIFIED PROFESSIONAL with the approval of the AGENT, or \$15,000, whichever is greater. This amount shall be adjusted annually based upon the Engineering News Record Construction Cost index.

SECTION 100.02 FORMS OF SECURITY

Cash, Cash Escrow, Certified Checks, Cashier's Checks, Standby Letters of Credit, and SURETY Bonds are the acceptable forms of SECURITY (unless noted otherwise in this SECURITY Policy). Whatever its form, the SECURITY is designed to guarantee the County funding for completion of required improvements in the event the DEVELOPER fails to

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discharge the obligations of his performance agreement. The shared obligation of all sureties is to pay the designated funds on demand. SURETY Bonds shall not be accepted for Erosion and Sediment control.

A. Cash Escrow:

The face amount of the SECURITY shall be submitted to the AGENT who shall deposit same with the Treasurer of Stafford County. Upon completion and acceptance of all physical site improvements by the DEVELOPER, the original face amount of the Cash Deposit will be returned to the PERSON who provided the SECURITY. Interest shall be paid at the rate of 0.5% per year for a period not longer than the term of the original Performance Agreement, payable upon satisfaction of all obligations for which the security was issued and at the time the security is returned. The interest rate will be evaluated and may be adjusted annually by the AGENT.

B. Standby Letters of Credit: Shall meet the following minimal conditions:

1. The lending institution shall be insured by an agency of the United States government.
2. There shall be no minimum time for which SECURITY is posted; with the exception of landscaping, which shall be for two (2) years.
3. A minimum of a ninety (90) day notification period of a lending institution's election not to extend the Standby Letter of Credit is required and shall be sent by certified mail to the AGENT. Failure to give notice as required shall automatically extend the Standby Letter of Credit for an additional six (6) month period. Such provision shall be stated in the Standby Letter of Credit.
4. Institutions providing Standby Letters of Credit must at all times be satisfactory to the County, and shall be assigned a composite peer group rating of 25 or better in the most recent issue of "Bank Insight" published by Thomson Reuters (f/k/a Highline Financial) and be insured by the Federal Deposit Insurance Corporation (FDIC).

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5. Upon the AGENT's determination that the lending institution's composite peer group rating drops below 25, the DEVELOPER shall provide a replacement SECURITY that meets the standards set forth in this Security Policy. If the DEVELOPER fails to provide such replacement SECURITY in a reasonable time, the DEVELOPER shall be in default of the Performance Agreement and the SECURITY shall be subject to a draw.
6. Notwithstanding paragraph 4 above, the County may accept a Standby Letter of Credit issued by a non-qualifying lending institution, where that institution causes to be issued to the Board of Supervisors as beneficiary, an additional Standby Letter of Credit of equal value from a qualifying institution; which Standby Letter of Credit shall serve as additional collateral to secure PROJECT involved.
7. Standby Letters of credit shall not be accepted from a lending institution that has declined to honor a Standby Letter of Credit issued to the County or that is also the DEVELOPER of the PROJECT for which the Standby Letter of Credit is offered.

C. SURETY Bonds:

1. Bonds to secure public and private improvements by DEVELOPER on subdivision, site, construction, or infrastructure plans shall be acceptable only when issued by insurance companies satisfactory to the County. Such satisfactory insurance companies shall be those companies that are rated A or better by A. M. Best Company, are licensed to do business in the Commonwealth of Virginia, and do not have a poor performance history with Stafford County. SURETY bonds shall not be accepted to secure Erosion and Sediment control measures.
2. Upon the AGENT's determination that the insurance company's rating drops below an A, the DEVELOPER shall provide a replacement SECURITY that meets the standards set forth in this Security Policy. If the DEVELOPER fails to provide such replacement SECURITY in a reasonable time, the DEVELOPER shall be in default of the Performance Agreement and the SECURITY shall be subject to a draw.

3. SURETY bonds shall be issued for a period that extends until the AGENT provides written notice that the terms of the Performance Agreement have been satisfied, or until satisfactory substitute SECURITY has been received.
4. SURETY bonds shall not be accepted from any insurance company that has declined to honor a proper request for funds from a SURETY Bond issued to the County or that is also the DEVELOPER of the PROJECT for which the Bond is offered, until such time that the insurance company and the County have come to an agreement on terms for request of funds and payment.

SECTION 100.03 FORMS

The AGENT shall prepare, approve, and may amend, from time to time, standard forms which shall be used for any Performance Agreement and SECURITY.

SECTION 100.04 EXTENSIONS AND REBONDING OF AGREEMENTS

It shall be the sole responsibility of the DEVELOPER to keep the Performance Agreement and SECURITY current and in effect.

- A. When a DEVELOPER enters into a Performance Agreement with the County, it is understood that all the necessary physical improvements shall be completed in the specified time. Should a DEVELOPER need additional time to complete the required public improvements he may request that the completion period be extended by making a request of the AGENT. If all the physical improvements are not completed within the time specified, and no extension has been obtained, or a replacement agreement has not been submitted and approved with a new expiration date, the agreement shall be in default.
- B. The maximum initial term of a Performance Agreement shall be twenty-four (24) months with the exception of Performance Agreements relating to telecommunication facilities which shall be for a maximum initial period of five (5) years. The DEVELOPER shall have the opportunity to request an extension of time in a maximum increment of one (1)

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year in accordance with the requirements of this policy if the physical improvements are not completed within sixty (60) days prior to the expiration of the agreement AND provided that the DEVELOPER has exhibited good faith in the progress of the construction. The maximum period for satisfaction of the requirements of the Performance Agreement shall be five (5) years. Approval of the request for time extension shall be at the sole discretion of the AGENT, who shall provide reasons for denial to the DEVELOPER in writing.

- C. The DEVELOPER shall make a written request to the AGENT for an extension no later than thirty (30) days prior to the expiration date of the agreement. The DEVELOPER shall state the reasons and conditions which have precluded him from completing the required physical improvements.

- D. If the DEVELOPER has requested an extension or a substitute agreement and SECURITY, the AGENT shall review an inspection report prepared by the appropriate County Department on the PROJECT and the request submitted by the DEVELOPER. The factors considered by the AGENT shall include the following:
 - 1. The extent to which the PROJECT has been completed as determined by the percentage of construction finished, the number of homes completed, occupied, and served by public facilities and other such information as the AGENT deems pertinent.
 - 2. Rate of construction activity. Any extension or re-bonding approval may be conditioned upon an increase in the face amount of the SECURITY to reflect increases in the estimated cost of completion.

- E. A current cost estimate prepared by a QUALIFIED PROFESSIONAL will be required for an extension of any SECURITY. The cost estimate shall be reviewed and approved by the AGENT.

SECTION 100.05 SECURITY REDUCTIONS

A. SECURITY Reduction Requirements: Partial release(s) of securities, referred to herein as SECURITY reductions, shall be granted based upon completion of specified, identifiable portions of the PROJECT and shall be subject to the following limitations:

1. All requests for periodic partial release or reduction of any SECURITY shall be submitted in writing by the DEVELOPER upon completion of at least thirty (30) percent of the physical improvements secured by the SECURITY.
2. A total of three (3) periodic partial releases may be made within a twelve-month period.
3. The amount of SECURITY retained shall not be greater than one hundred twenty-five (125) percent of the work remaining to be done, or ten (10) percent of the original SECURITY, whichever is greater.

A. No reduction, release, or extension shall be approved if the Performance Agreement is in default; however, a reduction request may be considered concurrently with an extension request.

B. No SECURITY shall be reduced to an amount less than ten (10) percent of the original SECURITY amount.

C. A DEVELOPER seeking partial release of any SECURITY shall submit a written SECURITY reduction request to the AGENT. No request shall be deemed received unless it is submitted in accordance with this section and meets the following minimum requirements:

1. If an extension of the time to complete the improvements is sought in association with a reduction request, every requirement for an extension request shall be met.
2. The DEVELOPER's request shall identify the PROJECT, performance agreement, SECURITY, and completion date; and the request shall specify the reduction sought. Such request shall also:

- a) Certify the percentage of the PROJECT completed;

- b) Include a current cost estimate prepared by a QUALIFIED PROFESSIONAL for all reductions and the remaining improvements of any SECURITY. The cost estimate shall be reviewed and approved by the AGENT and provide a current cost estimate prepared by a qualified professional stipulating the nature and cost of the work remaining, and;
 - c) Include a projected timetable for completion of the remaining improvements.
3. The DEVELOPER shall furnish a certificate of completion from a QUALIFIED PROFESSIONAL that the work described has been performed in conformity with approved plans or in accordance with as-built plans submitted therewith, and that the work meets all applicable standards.
4. The AGENT shall approve or disapprove any reduction request within thirty (30) days of receipt. If the request is disapproved, the AGENT shall notify the DEVELOPER in writing of the specific reasons for disapproval.

SECTION 100.06 SECURITY AND AGREEMENT RELEASE PROCEDURES

- A. After all physical improvements required by the STAFFORD COUNTY CODE are completed; the DEVELOPER shall notify the AGENT and request an inspection by the appropriate County department(s) and/or State agency(s). Upon receipt of a request for inspection, the AGENT shall notify all parties and set a date for a joint field inspection.
 1. The AGENT shall prepare a punch list of those items requiring correction.
 2. The DEVELOPER shall be sent a copy of the punch list and shall have thirty (30) days to complete necessary improvements. 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 shall be subject to re-inspection.
 3. The DEVELOPER shall notify the AGENT that he has completed the punch list items and requests final inspection. The AGENT shall then set a date for joint inspection with the appropriate department(s) and/or agency(s) and the DEVELOPER.

B. After the joint inspections, if all improvements have been satisfactorily completed, the following steps shall be taken:

1. The County department(s) and/or State agency(s) shall forward a letter to the AGENT indicating that the inspection disclosed that the PROJECT meets County and/or State standards. The AGENT shall, upon receipt of such letter(s), prepare the necessary resolution for consideration by the Board of Supervisors if the SECURITY covers road improvements.
2. Securities for road construction and road stormwater management/drainage system dedicated to public use will be completely released after the streets and drainage systems in the right of way have been accepted into the state system of secondary highways.
3. If the SECURITY covers road improvements, the AGENT shall notify applicable State Agencies and County Departments of the completed inspections and the pending request for a Board Resolution. The AGENT shall contact all applicable agencies and the County Departments for written confirmation that:
 - d) All appropriate Code enforcement complaints are satisfied.
 - e) All utility appurtenance and as-built plans have been accepted by the County.
 - f) All as-built plans of roads and road drainage facilities have been accepted.
 - g) All fees have been collected.
 - h) All contributions for off-site drainage, sewer, or other improvements have been made.
 - i) All physical improvements covered by agreements have been approved and accepted.
 - j) All collateral agreements have been satisfied.
4. Following the adoption of the resolution for road acceptance by the Board of Supervisors, copies shall be forwarded to the VDOT and other applicable County Departments. For all other required improvements, all applicable stipulations of Section 100.06 must be met.

The AGENT shall then process the release of the SECURITY, and shall release the SECURITY upon receipt of notification of street acceptance by VDOT or when all stipulations pertinent to the required improvements are met, as set forth by this Section.

In the event any dedicated road cannot be taken into the State System for reasons other than quality of construction, the developer may seek release in accordance with the provisions of this section, provided that he shall comply with the requirements of Section 100.07 "Securities During Warranty Period".

SECTION 100.07 SECURITIES DURING WARRANTY PERIOD

- A. At the completion of construction of the Water and/or Sanitary Sewer component(s) of a project, the DEVELOPER or PERSON shall request in writing, to the Utilities Department, a tentative acceptance inspection to determine if the component(s) are satisfactory for public use. Upon successful completion of the tentative acceptance inspection and provided that the DEVELOPER or PERSON provides a Performance Agreement and maintenance SECURITY, these components may be tentatively accepted into the public Water and/or Sewer System(s).
- B. The maintenance SECURITY for water and sanitary sewer improvements shall be a minimum of ten percent (10%) of the current approved engineer's construction cost estimate for the improvements. For site plans, the full SECURITY required by section 100.01, paragraph E shall be retained as a maintenance SECURITY. Maintenance securities for subdivisions shall be released following satisfactory completion of the final inspection, which shall not be earlier than one (1) year after successful completion of the tentative acceptance inspection.
- C. Maintenance SECURITY for site plans shall be released upon the final inspection which shall not be earlier than one year after final approval of the as-built drawings.

D. Road Maintenance SECURITY – If provided for in the Subdivision Ordinance and in the event the county has accepted the dedication of a road for public use and such road due to facts other than the quality of construction is not acceptable into the secondary system of state highways and the responsible party desires to be released from SECURITY obligations, then the responsible party shall furnish the county with a maintenance and indemnifying corporate SURETY bond, Standby Letter of Credit or cash SECURITY in accordance with the requirements of this policy. The SECURITY shall be in an amount sufficient for and conditioned upon the maintenance of secured roads until such time as it is accepted into the secondary system of state highways.

SECTION 100.08 DEFAULT PROCEDURES

- A. If the DEVELOPER fails to complete the required public improvements in the time specified in the agreement or any approved extension thereof, the DEVELOPER shall be in default.

- B. Upon default, the AGENT may make a demand of the SURETY for payment. Upon receipt of the funds the AGENT shall complete the required public improvements. If the funds prove insufficient to complete the PROJECT, including County staff time, the County, at its option, may delay the completion of the public improvements until such time sufficient resources become available. Furthermore, the County reserves the right to bring suit in a court of law to recover the difference. If the County prevails, court costs will be charged to the DEVELOPER.

- C. If the owner or DEVELOPER defaults, the County shall be entitled to retain or collect the allowance for the ten percent (10%) administrative costs from the SURETY Bond, Letter of Credit, Cash Escrow, Certified Checks, Cashier's Checks, or Cash Deposit.

SECTION 100.09 EROSION AND SEDIMENT CONTROL PERFORMANCE GUARANTEE

- A. A DEVELOPER shall enter into a separate Performance Guarantee for Erosion and Sediment control measures on individual residential building lots and construction, subdivision, site, grading, and infrastructure plans. Acceptable securities for Erosion and Sediment Control Performance Guarantees shall be Cash, Cash Escrow, Certified Checks, Cashier's Checks, and Letters of Credit, not greater than one hundred twenty-five (125) percent of the estimated costs of installation, maintenance, and completion of the control measures required by the approved plan associated with the Performance Guarantee. The Performance Guarantee is to ensure that action can be taken by the County to complete the project, at the DEVELOPER's expense, should he fail, after proper notice and within the time specified, to initiate or maintain such measures. SURETY Bonds shall not be accepted for Erosion and Sediment control.

- B. A certified estimate of costs prepared by a QUALIFIED PROFESSIONAL and approved by the AGENT shall be used to verify costs for the purpose of determining the amount of the Performance Guarantee required by this section.

- C. Notwithstanding the requirements of Paragraph B of this section, a security for Erosion and Sediment control measures on individual building lots shall be in accordance with the amounts specified in the County Fee Schedule. The AGENT reserves the right to require that a certified estimate of cost be prepared by a QUALIFIED PROFESSIONAL.

- D. The security furnished pursuant to this section, or the unexpended or unobligated portion thereof, shall be returned to the applicant within sixty (60) days of the achievement of adequate stabilization of the land-disturbing activity, as determined by the AGENT, which includes final stabilization of the land, removal of all Erosion and Sediment controls, and inspection and approval by the AGENT.

- E. The maximum initial term of a Performance Guarantee shall be twenty-four (24) months with the exception of Performance Agreements relating to telecommunication facilities which shall be for a maximum initial period of five (5) years. The DEVELOPER shall

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have the opportunity to request an extension of time in a maximum increment of one (1) year in accordance with the requirements of this Policy if the physical improvements are not completed within sixty (60) days prior to the expiration of the Agreement AND provided that the DEVELOPER has exhibited good faith in the progress of the construction of the physical improvements. The maximum period for satisfaction of the requirements of the Performance Guarantee shall be five (5) years. Approval of the request for all time extensions shall be at the sole discretion of the AGENT, who shall provide reasons for denial to the DEVELOPER in writing.

- F. Notwithstanding the requirements of Paragraph D of this section, a Performance Guarantee for Erosion and Sediment control measures on individual building lots shall be issued for a period not longer than one (1) year from the date of the Building Permit issuance.