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## **Section 5 – Agreements, Declarations, Bonds and Letters of Credit**

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## **5.01 Agreements, Declarations, Bonds and Letters of Credit**

### Standard

Depending on the development activity, various legal agreements and/or permits must be executed by the applicant, approved by the Department of Public Works, and in some instances the Department of Planning, County Attorney's office, and the Clerk's Office. This section of the Manual includes descriptions of the use and requirements for each of these documents. Refer to Appendix D for examples of the forms.

### Applicability of the Standard

This standard applies to all types of development, including subdivisions and PODs.

### Design Requirements

N/A

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## **5.02 General Information for Submitting Agreements, Declarations and Letters of Credit**

### Standard

Because of various legal requirements, all Environmental Compliance Agreements, Letters of Credit, Assignments, and Declarations of Covenants are reviewed by the County Attorney's Office for proper signatures and form. In addition, the Clerk's Office also reviews all Declaration of Covenants submitted for recordation in the Records Room.

### Applicability of the Standard

This standard applies to all types of development, including subdivisions and PODs.

### Design Requirements

The following has been prepared as a guide for document submittal:

- If there is a need to erase, cross out, or add any information to a preprinted form, the persons who sign the document must also initial each change. To prevent fraud, the document shall not be modified by anyone other than the persons signing it. Changes shall be on an original document, in order to be sure that there are not multiple versions of the document.
- If a church is a contracting party, all trustees for the church must sign the agreement. If the document requires notarization, all signatures must be notarized. The notary's acknowledgement must state that each person signing is a "Trustee of \_\_\_\_\_."
- There must be at least one document with original signatures and, on forms which require notary signatures, original notary signatures.
- The name of the applicant on the first sheet of the Environmental Compliance Agreement must match the applicant's name on the signature page. For example, if the applicant listed on the first page is an individual, the individual, not a company office, must sign on the signature page.
- The applicant listed in the Letter of Credit or Assignment must be the same as the applicant in the Environmental Compliance Agreement.

- The date of the Environmental Compliance Agreement referenced in the Letter of Credit must be the date of the Environmental Compliance Agreement.
- If a corporation is the contracting party, an officer authorized to sign for the corporation must sign as officer of the corporation and the signature must be notarized as such, e.g., “XYS Corporation, by John Smith, President.” If a partnership is the contracting party, a partner or officer of the partnership authorized to sign must sign for the partnership and have the signature notarized as such.
- Letters of Credit may be issued on out-of-area banks but must list a draw address at a bank in the City of Richmond, Chesterfield County, or Henrico County, Virginia.
- All agreements that will be recorded must contain a Land Records Cover Sheet in accordance with the following:

Since July 1, 2004, the Clerks of both the Chesterfield and Henrico Circuit Courts have required a Land Records Cover Sheet (Cover Sheet) for all documents recorded in the Deed Book. This is pursuant to the *Code of Virginia*. The data contained on these Cover Sheets is scanned via barcode readers, which allows the instruments to be recorded more timely and accurately.

To create the required Cover Sheet, users must access the Cover Sheet software that is made available at the following web site:

<https://csa.landsystems.com/csa/CSALogin.asp>

Although several methods to obtain the software are available, the online monthly subscription option may be best to meet the needs of most attorneys and title firms since it allows storage and retrieval of Cover Sheets from any location in case future adjustments are necessary. Private citizens may either sign up individually at the Landsystems web site listed above or use an attorney or title company to obtain the Cover Sheets for them. An online trial period is available once a user account is established. This allows creation of up to 25 free Cover Sheets and printing of up to 10 free Cover Sheets. Beyond the online trial period, a monthly paid subscription is required.

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### **5.03 Declaration of Covenants for Inspection Maintenance of Runoff Control Measures**

#### Standard

This document is utilized in conjunction with stormwater management (SWM) facilities (quality and quantity) to assure that the County has proper authority to enter the property for inspection and maintenance purposes. It also outlines the inspection and maintenance requirements for each SWM facility. A Declaration of Covenants is required for all Stormwater Management facilities and must be submitted to the Engineering and Environmental Services Division prior to construction plan approval.

#### Applicability of the Standard

This standard applies to all types of development, including subdivisions and PODs.

#### Design Requirements

Because they are recorded documents, all Declaration of Covenants for Inspection and Maintenance of Stormwater Management Facilities (BMP Maintenance Agreements) must be submitted with a copy of the Land Records Cover Sheet that is discussed in Section 5.02 of this manual.

Additional information can be found in the Henrico County Environmental Compliance Manual.

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## **5.04 Environmental Compliance Agreement and Bond**

### Standard

In accordance with Chapter 10 of the County Code, an Environmental Compliance Agreement and Bond are required for land disturbance activity in excess of 2,500 square feet.

### Applicability of the Standard

This standard applies to all types of development, including subdivisions and PODs.

### Design Requirements

Exceptions to this requirement are stated in Chapter 10 of the County Code. All Environmental Compliance Agreements and bonds must be submitted to the Engineering and Environmental Services Division prior to construction plan approval. The developer or his consultant is responsible for delivering the executed agreement and bond in a form that is acceptable to the County Attorney. The construction plans will not be approved until these documents have been forwarded to the County Attorney.

Additional information regarding the Environmental Compliance Agreement and bond can be found in Chapter 16 of the Henrico County Environmental Compliance Manual.

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## **5.05 Performance Bonds for Roads**

### **Standard**

A Performance Bond is required for all roadway construction that is approved under the subdivision process.

### **Applicability of the Standard**

This standard applies to all types of development, including subdivisions and PODs.

### **Design Requirements**

The bond may be submitted as cash, Letter of Credit, or Surety Bond and must be delivered to the Planning Department prior to record plat approval. All submittals must be approved by the Director of Planning and the County Attorney's Office.

The bond amount is determined based on the approved construction plans and includes all roadways, storm sewer, stormwater management facilities, potable water and sanitary sewer utilities, and other improvements necessary to complete the project.

The Department of Public Works provides the Planning Department with the bond amount for the Public Works related improvements shown on the construction plans.

The Planning Department compiles a total bond amount for the project and advises the developer of that amount upon his request. The developer, or his consultant, is responsible for delivering the bond to the Planning Department for approval. Upon approval, the Planning Department will authorize subdivision plat recordation, thus allowing the project to go to record.

### **Bond Reduction**

The developer may request a bond reduction through the Planning Department as the project progresses toward completion. Once the Planning Department advises the Department of Public Works of the request, the Construction Division will conduct an inspection to determine if the bond can be released or reduced. A bond cannot be reduced to less than 10 percent of its original value.

## **Release of Bond**

The bond will be released by the Planning Department once they have been notified by the Department of Public Works (and any other departments with bonded improvements) that the work has been inspected and found to be acceptable. The developer must furnish the Department of Public Works with a Defect Bond prior to release of the Performance Bond.



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## **5.06 Roadway Defect Bond**

### **Standard**

The Construction Division will perform a final inspection of a road or roads, when requested to do so by the developer. If the construction is found acceptable, the developer will be notified in writing. Prior to acceptance of the streets into the County system for maintenance, the developer shall submit a Defect Bond to the Department of Public Works and the County Attorney's Office. The purpose of this bond is to insure correction of any unknown defects in the road, curb and gutter, drainage entrances, storm sewer, shoulders, roadside ditches or other improvements that may occur in public right-of-way or public drainage easements for a period of one year.

The Defect Bond may be cash, letter of credit or surety bond acceptable to the County Attorney's Office and the Director of Public Works. The Defect Bond is held by the Department of Public Works for the period of one year commencing with the Board of Supervisors road acceptance approval. Prior to returning the Defect Bond to the developer, the roadways are re-inspected and any defects are identified. If defects are found, a letter will be sent to the developer identifying the defects. The developer will have until the bond expires to correct the defects. If the defects are not corrected in this time frame, the County will utilize the bond to make the corrections and/or repairs.

The Defect Bond amount is:

- \$3,000 for each tenth of a lane mile, and any portion thereafter.

For example, a two-lane road that is 1.22 miles long would have a bond amount of:

- Two lanes x 1.22 miles = 2.44 miles x 10 (tenths per mile) = 24.4 tenths (rounded up to 25)
- 25 times \$3,000 per lane mile = \$75,000

The County of Henrico has the ability to adjust the amount on an annual basis. This amendment of the defect bond amount would be based upon changes in the producer price index for street construction materials. The bond amount cannot be greater than \$5,000 per tenth of a lane mile.

### **Applicability of the Standard**

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This standard applies to all types of development, including subdivisions and PODs.

Design Requirements

N/A

**5.07 Agreement for Use of Public Right-of-Way**

Standard

An Agreement for Use of the Public Rights-of-Way is required for the installation of any private facility within the County right-of-way where the County will not ultimately become the owner of the facility. This agreement must be executed between the Applicant and the County.

Applicability of the Standard

This standard applies to all types of development, including subdivisions and PODs.

Design Requirements

A copy of this agreement is included in Appendix D of this Manual.