

## **SECTION 5 – AGREEMENTS, DECLARATIONS, BONDS AND LETTERS OF CREDIT**

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 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.

### **5-1 General Information for Submitting Agreements, Declarations and Letters of Credit**

Because of various legal requirements, all Erosion and Sediment Control Agreements, Letters of Credit, Assignments, and Declaration 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.

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. If the document requires notarization, all signatures must be notarized. The notary's acknowledgement should 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 Erosion and Sediment Control 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 Erosion Control Agreement.
- The date of the Erosion and Sediment Control Agreement referenced in the Letter of Credit must be the date of the Erosion and Sediment Control 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 should 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.

## **5-2 Declaration of Covenants for Inspection Maintenance of Runoff Control Measures**

This document is utilized in conjunction with stormwater management facilities (BMPs and detention) to assure that the County has proper authority to enter the property for inspection and maintenance purposes. A Declaration of Covenants is required for all Stormwater Management facilities prior to construction plan approval.

## **5-3 Erosion and Sediment Control Agreement and Bond**

In accordance with Chapter 10 of the County Code, an Erosion Control Bond and Agreement is required for land disturbance activity in excess of 2,500 square feet. Exceptions to this requirement are stated in Chapter 10 of the County Code. Submittals of the required documents for processing are to be directed to the Design Division in Public Works. The developer or his consultant shall be responsible for delivering the executed agreement and bond in an acceptable form. The construction plans will not be approved until these documents have been forwarded to the County Attorney.

## **Agreements**

Two copies of the completed Erosion and Sediment Control Agreement are required for each project. Agreements are reviewed and approved by the County Attorney's Office and the Department of Public Works. Upon approval of the agreements, one copy will be returned to the developer and the other will be retained by the Department of Public Works.

## **Financial Guarantee**

For purposes of erosion control, the term "Bond" shall mean cash, letter of credit (on a local bank), or Assignment of a Certificate of Deposit. All Erosion and Sediment Control Bonds will be based on the cost of implementing the approved Erosion Control plan. The minimum amount of any bond for erosion and control measures shall be \$750.00. Unit prices based on the County's Annual Contract will be utilized in determining the amount of the bond. The consultant submitting the plan for approval shall provide a detailed listing on the construction plans of the erosion control devices and their quantities as approved on the Erosion and Sediment Control plan.

## **Release**

At the completion of the project, the developer may request the release of the financial guarantee. This request shall be made in writing to the attention of the Department of Public Works. An inspection will be conducted by the Environmental Inspector responsible for the project. The Department of Public Works will notify the developer of the inspection results.

## **Special Conditions Requiring Individual Bond**

In the event that there is no existing agreement on a subdivision, which includes buildable lots, an individual agreement and financial guarantee shall be obtained from the builder/owner prior to approval of the building permit.

## **5-4 Performance Bonds for Roads**

A Performance Bond is required for all roadway construction approved under the subdivision process. The bond may be submitted as cash, Letter of Credit or Surety Bond. The submittal shall be to the Planning Office where approval by the Director of Planning and the County Attorney's Office is required.

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

The Department of Public Works will provide the Planning Office with the amount of Public Works related improvements shown on the plans for inclusion in the bond figure total.

The Planning Office will compile a total for the project and advise the developer of that amount upon his request. The developer or his consultant shall be responsible for delivering the bond to the Planning Office for approval. Upon approval, the Planning Office will authorize the recording of the subdivision plats thus allowing the project to go to record.

### **Bond Reduction**

The developer may request a bond reduction through the Planning Office as the project progresses toward completion. The Planning Office will advise the Department of Public Works of the request. An inspection will be made by the Construction Division resulting in an approval or denial of the reduction request. A bond shall not be reduced to less than 10 percent of its original value.

### **Release of Bond**

The bond will be released by the Planning Office upon notification 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.

## **5-5 Roadway Defect Bond**

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. 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 following schedule should be used to calculate Defect Bond amounts:

**2 Lane Road**

Minimum (up to 0.25 miles)  
From 0.25 to 0.50 miles  
Over 0.50 miles

**Financial Guarantee**

\$3,750  
\$7,500  
\$7,500 + \$150/each additional  
hundredth mile (or fraction thereof)

**4 lane Road**

Minimum (up to 0.25 miles)  
From 0.25 to 0.50 miles  
Over 0.50 miles

**Financial Guarantee**

\$7,500  
\$15,000  
\$15,000 + \$300/each additional  
hundredth mile (or fraction thereof)

**6 lane Road**

Minimum (up to 0.25 miles)  
From 0.25 to 0.50 miles  
Over 0.50 miles

**Financial Guarantee**

\$11,250  
\$22,500  
\$22,500 + \$450/each additional  
hundredth mile (or fraction thereof)

**5-6 Agreement for Use of Public Right-of-Way**

The installation of any private facility in the County right-of-way, in which the County will not ultimately become the owner of the facility, shall not be installed in the County right-of-way unless an Agreement for Use of the Public Rights-of Way has been executed between the Applicant and the County. A copy of this agreement is included in Appendix E of this Manual.