

PERFORMANCE AGREEMENT
FOR SITE PLANS

This Agreement, made and entered into this ____ day of _____, 20____, by and between _____
(hereinafter called "**Developer**"); and **THE BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA**, a body politic (hereinafter called "**Board**").

WHEREAS, in consideration of the approval by the Board of the plat, plans, and profiles of the **Site Plan** known as " _____," designated as County application number CPAP/STPL _____, and any and all revisions thereof however such revisions may be redesignated (the "**Plans**"), and the Board not requiring the following work to be completed prior to the approval of the said site plan, the Developer, its successors and assigns agrees to complete the following work within _____ months from the date hereof:

1. To construct all physical improvements as shown on the approved Plans and in accordance with applicable provisions of the Loudoun County Subdivision and Zoning Ordinances governing such Plans (with Ordinances to take precedence over Plans in the event of conflict), including, but not limited to, the placement of survey monuments, the construction of an adequate storm drainage system both on the subject property and on adjacent properties as needed, the construction of vehicle and pedestrian travelways in accordance with current standards of the Board, and the submission of as-built plans for all such improvements; and

2. To provide adequate supervision on the project site during the installation of all required improvements and a responsible superintendent or foreman together with one (1) set of approved Plans on the project site at all times when work is being performed; and

3. To construct the improvements in such a manner that they will be reasonably acceptable to the applicable property owners' Association or such other entity that will be responsible for the permanent operation and maintenance of the improvements, to make prompt application to the Board and the Association or such other entity for acceptance of such improvements, and diligently to pursue and carry out all actions reasonably necessary to achieve such acceptance; and

4. To maintain dust control on the project site at all times; and

5. To provide for the adequate control of erosion and sedimentation by temporary and permanent control practices and measures which will be implemented during all phases of clearing, grading, and construction; and

6. To provide and maintain convenient, safe, unobstructed, all-weather access to all those premises which are occupied by owners or occupants other than the Developer or its agents, until such premises are accessible via travelways that have been built in accordance with the Plans as approved by the Board and accepted for permanent maintenance and operation by the said Association or other entity and promptly to repair any deterioration or damage to completed work for which partial but not complete reduction in the amount of the security has been approved; and

7. To install all traffic warning and regulatory signs and devices required by the approved Plans during construction and to maintain said signs and devices in an operable condition until the (a) travelways have been accepted for maintenance and operation by the said Association or other entity or the subsequent owners of all the property abutting the travelways or (b) Board is otherwise satisfied regarding the provisions for permanent maintenance. All traffic signs shall be kept in proper position, clean, and legible at all times. Damaged signs shall be replaced immediately.

Special care shall be taken to see that weeds, shrubbery, construction materials, and snow are not allowed to obscure the face of any sign; and

8. To maintain control on the project site at all times so that mud is not tracked out of the project by vehicle tires and deposited on adjacent streets of the state system, or such other travelways as may be adjacent to the project site.

9. To completely control and prevent any untreated stormwater from discharging from any stormwater management facility installed or constructed on the property.

10. (a) For any stormwater management facility subject to §1096.02(b)(1)A of the Codified Ordinances of Loudoun County, as amended (including but not limited to wet ponds), when such facility is determined by the County to be substantially complete and no longer serving an erosion and sediment control function, Developer shall request a separate construction inspection by the County for such facility, and shall promptly repair any deficiency in construction noted by the County during such inspection. Failure to make such repairs within thirty (30) days after such inspection shall be a default under this Agreement. Upon receiving final inspection approval from the County for such facility, the Developer shall enter, execute, and record a Stormwater Maintenance Agreement pursuant to §1096.02(b)(1)A with respect to such stormwater management facility.

(b) For any stormwater management facility subject to §1096.02(b)(1)B of the Codified Ordinances of Loudoun County, as amended (including but not limited to manufactured filtration devices), prior to the removal of any inlet protections, Developer shall request a separate construction inspection by the County for such facility, and shall promptly repair any deficiency in construction noted by the County during such inspection. Failure to make such repairs within thirty

(30) days after such inspection shall be a default under this Agreement. Upon receiving final inspection approval from the County for such facility, the Developer shall enter, execute, and record a Facilities Maintenance Performance Agreement pursuant to §1096.02(b)(1)B with respect to such stormwater management facilities.

(c) For any stormwater management facility not subject to subparagraphs (a) or (b) above (including but not limited to dry ponds), when such facility is determined by the County to be substantially complete, Developer shall request a separate construction inspection by the County for such facility, and shall promptly repair any deficiency in construction noted by the County during such inspection. Failure to make such repairs within thirty (30) days after such inspection shall be a default under this Agreement. Upon receiving final inspection approval from the County for such facility, the Developer shall submit a Latent Defect and Indemnification Agreement and Bond to the County with respect to such facility in accordance with Section 8.305.F of the Facilities Standards Manual, in a bond amount equal to no less than five (5) percent of the construction cost for the facility.

(d) After either a Stormwater Maintenance Agreement or a Latent Defect and Indemnification Agreement and Bond pursuant to subparagraph (a) or (c) above has been accepted by the County, thereafter, the County shall be responsible for maintenance and repair of the facility that is the subject of such agreement in accordance with the Stormwater Management Ordinance Chapter 1096, and no deficiency in the construction of said facility shall prevent the release of this Performance Agreement for Site Plans and the security furnished herewith.

11. It is agreed and understood that final approval of completed work can only be given by the Director of Building and Development of Loudoun County, Virginia, upon recommendation of the Zoning Administrator.

12. It is agreed and understood that in the event the Developer shall default in its obligations under this Agreement and it becomes necessary for the Board to institute legal proceedings to enforce compliance with said obligations or to obtain reimbursement for costs incurred in fulfilling said obligations on behalf of the Developer, the Developer shall pay all reasonable attorney's fees and all other costs that may reasonably be incurred.

[13. Developer hereby provides security in the form of a cash escrow deposit in the amount of \$ _____, which funds are to be made available to the Board upon default or breach of any of the terms and conditions of this Agreement by the Developer. The said deposit is delivered herewith by certified check or cashiers check (issued by a bank satisfactory to the County), receipt of which is hereby acknowledged by the Board. Such amount shall be placed in an escrow account with the Treasurer of Loudoun County until drawn upon by the Board or returned to Developer as provided herein and in the Bonding Policy of Loudoun County, Virginia. All interest accruing on this account shall be paid to the same party to whom the principal is paid, except that, in any event, five percent (5%) of any interest accrued may be retained by the Treasurer to cover the cost of administering the account. The Developer hereby ratifies and reaffirms its agreement that the said funds deposited as cash escrow are available to the Board on default of this Agreement. This paragraph shall not be construed in any manner as a waiver of any right of the Board to enforce the obligations of this Agreement against the Developer or its successors and assigns.]

[OR]

[13. Developer hereby provides security in the form of a [Letter of Credit] [Corporate Surety Bond] in the amount of \$_____, which funds are to be made available to the Board upon default or breach of any of the terms and conditions of this Agreement by the Developer. Such [Bond] [Letter of Credit] Numbered _____ is attached hereto and made a part hereof, and the Developer hereby ratifies and reaffirms its agreement that the said funds represented by the [Bond] [Letter of Credit] are available to the Board on default of this Agreement. This paragraph shall not be construed in any manner as a waiver of any right of the Board to enforce the obligations of this Agreement against the Developer, its successors and assigns.]

[13A. Developer acknowledges that the aforesaid security amount is a reduced amount equal to approximately _____ percent of the approved Bond Estimate for the Plans and has been accepted by the County at such reduced amount pursuant to the privilege extended for site plan bonding published by the Director under Section 8.304 of the Facilities Standards Manual. In consideration therefore, (a) Developer hereby waives and releases any and all right to partial security release (reduction) that might otherwise have been available under the Code of Virginia or the Ordinances of Loudoun County, and Developer acknowledges that Developer has been granted hereby, and shall be deemed to have been granted hereby, the maximum bond reduction available by law, and that no release of this security, partial or full, shall be requested or granted until this Agreement has been completely performed, including, if applicable, the acceptance of streets by VDOT; and (b) Developer agrees that the acceptance of such reduced surety amount shall not preclude the Director from requiring at any time hereafter an increase in the amount of the surety

pursuant to an Extension of this Agreement due to an increase in the costs of construction, deterioration or damage to the work or other factors.]

14. If the [Bond] [Letter of Credit] provided to the Board pursuant to the preceding paragraph becomes not an acceptable form of surety or security, whether as a result of the failure of the issuing [Bank] [Surety Company] to achieve and maintain the rating required by the Board's duly adopted Bonding Policy or as a result of any other failure of such [Bond] [Letter of Credit] to satisfy any of the other criteria established by said Bonding Policy for acceptable forms of surety or security, then the Developer shall, upon request of the Director of Building and Development, promptly provide a substitute surety or security satisfactory to the Board. Failure of the Developer to furnish such substitute surety or security within sixty (60) days after the Director mails such request to the Developer by certified mail with return receipt requested shall constitute a default and a failure to perform in accordance with this Agreement and a failure to discharge its obligations under this Agreement, such that the Board may, thereafter, without further notice, call upon such [Bond] [Letter of Credit] for payment in accordance therewith.

The undersigned warrants that this Agreement is made and executed pursuant to authority properly granted by the [partnership agreement] [charter, bylaws and action of the Board of Directors] [articles of organization, operating agreement or majority vote of the members] of the Developer.

IN WITNESS WHEREOF, the Developer has caused its name and seal to be affixed hereto, by _____, its duly authorized representative.
 [PRINT NAME OF PERSON SIGNING FOR DEVELOPER]

JSH

Developer: _____
[TYPE OR PRINT NAME OF DEVELOPER]

By: _____ (SEAL)
[SIGNATURE]

Title: _____
[TYPE OR PRINT]

COMMONWEALTH OF VIRGINIA
COUNTY OF _____, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____ as _____ of _____, whose name is signed to the foregoing Agreement, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this ____ day of _____, 20____.

My commission expires: _____
Notary Public

Registration Number: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the County has caused this Agreement to be executed, under seal, in its behalf, and its seal affixed.

APPROVED AS TO FORM:

THE BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA

Assistant County Attorney

By: _____(SEAL)

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA

COUNTY OF _____, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____ as _____, on behalf of the BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA, whose name is signed to the foregoing Agreement, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this ____ day of _____, 20____.

My commission expires:

Registration Number:

Notary Public

Project Engineer Initials _____.

LCO Forms SPPA w/ 1096 + options for [PCT]

June 2007 Edition

Revised April 2012 (JSH)

Revised October 2012 (JSH)

Please complete the below contact information in reference to the attached agreement and submit this with your completed agreement and bond packet.

Project Name: _____

Bond Number: _____

Please provide contact information for the PRINCIPAL/CO-PRINCIPAL of the bond:	Please provide contact information for the Developer/ Owner. This individual will keep the Performance Agreement/Bond current with Loudoun County:
Name:	Name(s):
Title:	Title(s):
Address:	Address(es):
Phone No:	Phone No(s):
Email:	Email(s):

Thank you for your help.
Bonds Management Team

For more Information:

Email: bonds@loudoun.gov

www.loudoun.gov/bonds

QUICK REFERENCE FOR PERFORMANCE BOND PROCESS WITH LOUDOUN COUNTY

Now that your agreement has been accepted by Loudoun County, its life has begun and may consist of Bond Maintenance prior to Bond Release.

This is only the beginning. You are not done.

Per [Facilities Standards Manual \(FSM\)](#) Section 8.302, “If construction of the subject project is not completed within the initial Performance Agreement term (12, 24, or 36 months), the performance bond amount may require *adjustment* (increase in bond amount) and subsequent *reconsideration* (new owner or surety substitution) and review by the Bond Committee”.

Until the Bond Committee recommends approval or release of the bond, the performance agreement must be extended every year with a new set of completed extension documents and a \$300.00 extension fee per year(s) extended. (See [FSM](#) Section 8.305.E for release requirements).

To keep your agreement *current* (not expired and out of default), you may need to take one or more of the following actions:

- 1) ***When would I need an Extension Agreement?*** This is the most common action that needs to be taken every year in order to keep your agreement current. Submit the required completed extension documents and a \$500.00 fee per year. Except for the 1st extension, all extensions are for one (1) year.

Please note, when extending a State Maintained Roads Agreement, a Preliminary Street Acceptance Package is also required. (See [Checklist for Preliminary Street Acceptance Package \(aka PSAP\)](#)).

Documents required:

- | | | |
|---------------------------|-------------------------|-------------------------------------|
| 1) Extension Agreement | 2) Consent to Extension | 3) Rider/Letter of Credit Amendment |
| 4) Extension Request Form | 5) Fee | |

Please note, if your agreement is not extended by the expiration date, your agreement will be in DEFAULT (No reduction, release, permits, or inspections for project will be authorized) (See Loudoun County’s website for documents/information: [LC Perf Agree Extension](#)). Per [FSM](#) Section 8.305.B, submit an extension agreement approximately sixty (60) days prior to the agreement expiration. Upcoming expiration letters are generally emailed to owner/developer ninety (90) days from the expiration date of the agreement.

- 2) ***When would I need a New Owner Substitution?*** If the ownership of the property has changed, request a New Owner Substitution.

Please note, if the original agreement is expired, the agreement is in DEFAULT. When submitting a New Owner Substitution agreement on an expired performance agreement, a \$500.00 fee is required, per year(s) in default, to bring the expired agreement current. (See Loudoun County’s website for documents/information: [LC Substitutions](#)).

Documents required:

- | | |
|--------------|--|
| 1) Agreement | 2) Bond (Preferred Collateral Discussion: Cash, Letters of Credit, Surety Bonds) |
|--------------|--|

- 3) ***When would I need a Surety Substitution?*** If the bank or surety company no longer meets the requirements of [FSM](#) Section 8.303, request a Surety Substitution. (See Loudoun County’s website for documents/information: [LC Substitutions](#))

Documents required:

- | | |
|--------------|--|
| 1) Agreement | 2) Bond (Preferred Collateral Discussion: Cash, Letters of Credit, Surety Bonds) |
|--------------|--|

- 4) ***When would I need a Reduction?*** If you have completed 30% of the improvements, request a bond reduction and submit a \$1,215.00 fee. (See Loudoun County’s website for documents/information: [LC Reductions](#)).

Documents required:

- | | | | |
|-----------------------------|-------------------------|---------|------------------------------|
| 1) Reduction request letter | 2) Bond Unit Price List | 3) Fees | 4) Geo-tech certified letter |
|-----------------------------|-------------------------|---------|------------------------------|

- 5) ***When would I need a Release?*** If improvements have been completed, request a bond release and submit a \$1,645.00 release fee and a \$185.00 fee for as-built plans. (See Loudoun County’s website for documents/information: [LC Street Acceptance / Bond Release](#)).

Documents required:

- | | |
|---------------------------|---|
| 1) Release request letter | 2) Items Requested on Public Street Acceptance OR |
| 3) Fees | Items requested on Private Street/Site Plan/Proffer Release Checklist |

If after reviewing the website links above you have further questions or need clarifications, please contact:

Contact Infrastructure Compliance Team for PSAP Questions	
Contact:	Issue:
Rick Hoffman / 703-737 8625 richard.hoffman@loudoun.gov	PSAP Submission

Contact Infrastructure Compliance Team for RELEASE and REDUCTION Questions	
Contact:	Issue:
Ilona McGee / 571-258-3216 ilona.mcgee@loudoun.gov	Project Manager Assignments
Coleman Hutton / 703-737-8486 coleman.hutton@loudoun.gov	Street Acceptance Process

Contact Bonds Management Team for Extension, New Owner Substitution, or Surety Substitution Questions	
Contact:	
Michael Baggett – project names beginning with A-D	703-771-5043 / michael.baggett@loudoun.gov
Will Himel – project names beginning with E-O	703-737-8765 / will.himel@loudoun.gov
Diana Larson – project names beginning with P – Z	703-771-5345 / diana.y.larson@loudoun.gov
Bonds Information Line	703-737-8942 / bonds@loudoun.gov

COMMONLY MADE ERRORS

- The Agreement must be dated on or prior to the date of the Corporate Surety Bond or Letter of Credit.
- Application name and number must be correct and agree across all documents.
- Common Typos on the Rider/Continuation/Verification Certificate for application types (ex.: SPTL versus STPL, APAP versus CPAP).
- The Corporate Surety Bond or Letter of Credit Number must be filled in on Agreement.
- Owner of the property must be party to the Performance Agreement even if the Corporate Surety Bond is provided by a different entity or party.
- Incorrect or Missing Dates on the Consent to Extension.
- Notary Attestation cannot be before the date of the agreement.
- Signers' names must agree exactly across all documents (signature block and notary).
- Corporate Surety Bond Number must be on the upper left corner of the face of the bond and in the upper right corner of each subsequent page of the bond.
- Power of Attorney should be dated the same date as the Consent to Extension and/or the Bond Rider.
- Not using the EXACT template language if re-typed.