

12/06/07

**ADDENDUM TO PERFORMANCE AGREEMENT**  
**- SURETY SUBSTITUTION -**

This Addendum, dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, (hereinafter called "Owner") and **THE BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA**, a body politic (hereinafter called the "Board").

**WITNESSETH:**

**WHEREAS**, by Agreement dated \_\_\_\_\_, between Owner and the Board (the "**Agreement**"), wherein Owner agreed to complete certain work and improvements with respect to construction plans and profiles for the subdivision designated as \_\_\_\_\_, such work and improvements to be performed within \_\_\_\_ months from the date of said Agreement; and

**WHEREAS**, the performance of the obligations of Owner under the Agreement was secured by Bond/Letter of Credit No. \_\_\_\_\_ issued by \_\_\_\_\_ in the amount of \_\_\_\_\_, (\$ \_\_\_\_\_), [later reduced to \$ \_\_\_\_\_]; and

**[WHEREAS**, the Director of Building and Development, upon recommendation by the Loudoun County Bond Committee, on behalf of the Board, has determined that the security provided is inadequate to complete the work and improvements required by the Agreement; and

*06/07*

**WHEREAS**, the Owner has agreed that the amount of the security shall be increased from \$ \_\_\_\_\_, to \$ \_\_\_\_\_, such increase being evidenced by the Bond/Letter of Credit attached hereto; and]

**WHEREAS**, Owner now desires to replace the said Bond/Letter of Credit with a substitute performance guarantee in a form and amount acceptable to the Board, and to further extend the time for performance of the obligations under the Agreement;

**NOW, THEREFORE**, the parties hereto agree that the aforesaid Bond/Letter of Credit No. \_\_\_\_\_ issued by \_\_\_\_\_ shall be and is hereby replaced with Bond/Letter of Credit No. \_\_\_\_\_ issued by \_\_\_\_\_ in the amount of \$ \_\_\_\_\_, and that such replacement Bond/Letter of Credit shall secure the performance under the Agreement to the full extent as though such replacement Bond/Letter of Credit had originally secured performance under the Agreement and all amendments and extensions thereto.

**IT IS FURTHER AGREED** by the parties hereto that, in consideration of the premises and the provision of the said replacement Bond/Letter of Credit No. \_\_\_\_\_ which is attached hereto and made a part of this Addendum and the Agreement by this reference, the time for performance of the obligations set forth in the Agreement dated \_\_\_\_\_, is hereby extended from \_\_\_\_\_ to \_\_\_\_\_.

In all other respects, the provisions of the Agreement dated \_\_\_\_\_, including all prior extensions and amendments thereto, which are not inconsistent with this Addendum shall remain in full force and effect, and Owner reaffirms its commitments and obligations as contained therein.

*10/19 06/07*

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 Owner.

**IN WITNESS WHEREOF**, Owner has caused its name and seal to be affixed hereto by its authorized representative.

OWNER: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
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 Addendum, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

My Notary Registration Number: \_\_\_\_\_

**[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]**

*Aug 06/07*

IN WITNESS WHEREOF, the Board has caused this Addendum to be executed, under seal, on its behalf and its seal affixed.

BOARD OF SUPERVISORS OF  
LOUDOUN COUNTY, VIRGINIA

By: \_\_\_\_\_  
Its: Director, Dept. of Building and Development

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that \_\_\_\_\_ as Director of the Department of Building and Development on behalf of the Board of Supervisors of Loudoun County, Virginia, whose name is signed to the foregoing Addendum, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
My Notary Registration Number: \_\_\_\_\_

LOUDOUN FORMS BOND.NewSurety.Addndm.doc  
October, 1993 Edition  
August, 2001, revised  
June, 2003, revised  
June, 2007, revised

**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: \_\_\_\_\_

<b>Please provide contact information for the PRINCIPAL/CO-PRINCIPAL of the bond:</b>	<b>Please provide contact information for the Developer/ Owner. This individual will keep the Performance Agreement/Bond current with Loudoun County:</b>
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 \$500.00 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 1<sup>st</sup> 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 ( <a href="#">Preferred Collateral Discussion: Cash, Letters of Credit, Surety Bonds</a> ) |
|--------------|--|

- 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 ( <a href="#">Preferred Collateral Discussion: Cash, Letters of Credit, Surety Bonds</a> ) |
|--------------|--|

- 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 <b>OR</b>              |
| 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:*

<b>Contact Infrastructure Compliance Team for PSAP Questions</b>	
<b>Contact:</b>	<b>Issue:</b>
Rick Hoffman / 703-737 8625 <a href="mailto:richard.hoffman@loudoun.gov">richard.hoffman@loudoun.gov</a>	PSAP Submission

<b>Contact Infrastructure Compliance Team for RELEASE and REDUCTION Questions</b>	
<b>Contact:</b>	<b>Issue:</b>
Iona McGee / 571-258-3216 <a href="mailto:ilona.mcgee@loudoun.gov">ilona.mcgee@loudoun.gov</a>	Project Manager Assignments
Coleman Hutton / 703-737-8486 <a href="mailto:coleman.hutton@loudoun.gov">coleman.hutton@loudoun.gov</a>	Street Acceptance Process

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

### **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.