

Aug 23/07

SUBSTITUTE
PRIVATELY MAINTAINED ROADS AGREEMENT
-NEW OWNER-

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

WHEREAS, _____ (the "Prior
Owner") entered into a Privately Maintained Roads Agreement with the Board dated
_____, 20____ (the "**Original Agreement**") to construct certain improvements
in accordance with approved construction plans and profiles (CPAP ____ - ____) for the
subdivision known as _____ (the
"Plans"); and

WHEREAS, the Prior Owner provided security in the amount of \$ _____
in the form of [Irrevocable Letter of Credit] [Bond] Number _____,
issued by _____, dated _____,
20____, to secure the performance of the obligations of the Original Agreement as required by
law; and

WHEREAS, Subdivider has acquired title to the subdivision and wishes to complete
performance of the work required by the Plans and to undertake all of the obligations of the Prior
Owner as contained in the Original Agreement and to provide a substitute security to secure
performance of such obligations; and

03/03/09

WHEREAS, under the Original Agreement and [Letter of Credit] [Bond], the time for performance of the obligations set forth in the Original Agreement is/was _____ 20____, and the amount of the security is \$ _____; and

WHEREAS, the parties hereto wish to confirm by this Agreement that Subdivider, as successor in interest to the Prior Owner, has undertaken all of the obligations of the Prior Owner under the Original Agreement; and

WHEREAS, the parties desire to extend the time for performance of the obligations under the Original Agreement; and

WHEREAS, in consideration of the approval of the Plans by the Board, and the Board not having required the following work to be completed prior to the approval and recordation of the plat of the said subdivision, and in consideration of the premises, the Subdivider, its successors and assigns, agrees to perform the following work within twelve (12) months from the date hereof:

1. To construct all physical improvements in accordance with the Plans and 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, adequate storm drainage system both on the subject property and on the adjacent properties as needed, the construction of streets and roads in accordance with current standards of the Board, and the submission of as-built plans for all such public 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

03/09

3. To construct the improvements in such a manner that they will be reasonably acceptable to the applicable property owners' Association for operation and maintenance, to make prompt application to the Board and the Association 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 at all times; and
5. To provide for 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 those premises which are occupied by owners or occupants other than the Subdivider or its agents, until such premises are accessible via the private streets that have been built in accordance with the Plans as approved by the Board and accepted for maintenance and operation as set forth below, 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 perform all overlot grading in accordance with the approved Plans; and
8. 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 streets are accepted for maintenance and operation by the applicable property Owner's Association or subsequent owners of all the property abutting the streets, or the 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

Am 03/09

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

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

10. 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.

11. It is agreed and understood that in the event the Subdivider 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 Subdivider, the Subdivider shall pay all reasonable attorney's fees and all other costs that may reasonably be incurred; and

12. Subdivider hereby agrees to provide security in the amount of \$_____ in the form of a [Letter of Credit] [Corporate Surety Bond], 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 Subdivider. Such [Letter of Credit] [Bond] Number _____ is attached hereto and made a part hereof, and the Subdivider hereby ratifies and reaffirms its agreement that such funds 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 Subdivider, its successors and assigns.

13. 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

10/30/09

of the issuing [Bank] [Surety Company] to achieve 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 Subdivider shall, upon request of the Director of Building and Development, promptly provide a substitute surety or security satisfactory to the Board. Failure of the Subdivider to furnish such substitute surety or security within sixty (60) days after the Director mails such request to the Subdivider 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 Subdivider.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

10/03/09

IN WITNESS WHEREOF, the Subdivider has caused its name and seal to be affixed
hereto by _____,
its duly authorized representative.

SUBDIVIDER: _____
By: _____(SEAL)
Name: _____
Title: _____

STATE OF _____
COUNTY OF _____, to-wit

I, _____, a
Notary Public in and for the State and County aforesaid, do hereby certify that on the _____ day
of _____, 20____, personally appeared before me in my jurisdiction

as _____
of _____,
whose name is signed to the affixed Agreement and acknowledged said signature.

Notary Public

My Commission Expires: _____

My Notary Registration Number: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

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

APPROVED AS TO LEGAL FORM

**THE BOARD OF SUPERVISORS OF
LOUDOUN COUNTY, VIRGINIA**

By: _____
Assistant County Attorney

By: _____

Director of Building and Development

**COUNTY OF LOUDOUN
COMMONWEALTH OF VIRGINIA, to-wit**

I _____, a
Notary Public in and for the jurisdiction aforesaid, do hereby certify that on the ____ day of
_____, 20____, personally appeared before me in my jurisdiction,

Chairman of the Board of Supervisors of Loudoun County, Virginia, whose name is signed to the
affixed Agreement and acknowledged said signature.

Notary Public

My Commission Expires: _____

My Notary Registration Number: _____

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 \$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 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: |
| Iona 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.