

## CHAPTER 6. ASSURANCE FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS

### 6-1 Improvements and Performance Bond

1. *Performance Bond.* The applicant shall complete and dedicate all public improvements prior to the final subdivision plat approval. The Executive Director may provide that, in lieu of the completion of such work previous to the final approval of a plat:
  - a. the applicant may post a bond in an amount stipulated by the Executive Director as sufficient to secure the satisfactory construction, installation, and dedication of the required improvements. Such performance bond shall comply with all statutory requirements and shall be satisfactory to the Metropolitan Attorney as to form, sufficiency, and manner of execution as set forth in these regulations. And /or
  - b. an assessment or other method may be established whereby the municipality is put in assured position to do the work and make the installations at the cost of the owners of the property within the subdivision. Such assessment or other method shall comply with all statutory requirements and shall be satisfactory to the Metropolitan Attorney as to form, sufficiency, and manner of execution as set forth in these regulations.
2. *Composition of Performance Bond.* For the purpose of these regulations, performance bond shall mean two documents: a Performance Agreement and an accompanying security document.
  - a. *The Performance Agreement.* The Performance Agreement shall stipulate the work to be performed by general categories and the estimated value or cost of each category. The Performance Agreement shall also stipulate a completion date for all of the work to be performed. The Performance Agreement shall only be entered into by owner of the property.
  - b. *The Security Document.* The security document may be in a form as follows and shall express the value in a total amount equaling the sum of all work categories:
    1. *Surety Bond.* Issued by an insurance company licensed in the State of Tennessee and shall be non-expiring.
    2. *Irrevocable Letter of Credit.* Issued by or confirmed by a financial institution located in Davidson County, Tennessee, or an adjoining county. Any such letter of credit shall contain an auto-renewal clause.
    3. *Cashiers or Certified Check.* Issued by a financial institution located in Davidson County, Tennessee and shall be non-expiring.
  - c. The Surety Bond and Letter of Credit options (Sections 6-1.2.b.1 and 6-1.2.b.2) shall not be available to an applicant whose past performance has resulted in breached or expired bonds.
  - d. An entity whose past performance has resulted in non-payment of a bond may be excluded from providing a surety bond for an applicant for a period of one year from the date of breach.
3. *Temporary Improvements.* When applicable, the applicant shall build and pay for all costs of temporary improvements required by the Planning Commission, and shall maintain such for the period specified by the Planning Commission. Prior to construction of any temporary facility or improvement, bond shall be posted which shall insure that the temporary facilities shall be properly constructed, maintained, and removed.

4. *Costs of Improvements.* All required improvements shall be made by the applicant at the applicant's expense or cost sharing. Any provisions for reimbursement by the county, or any utility district shall be by separate agreement with the applicable Metro Department or other governmental entity.
5. *Governmental Agencies.* Governmental agencies to which these bonds and contract provisions apply may file, in lieu of said contract or bond, a letter from an agent authorized to act in their behalf agreeing to comply with the provisions of this chapter.
6. *Failure to Complete Improvements.* In those cases in which a performance bond has been posted and required improvements have not been installed within the terms of such performance bond agreement, the Executive Director may declare the bond to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the bond is declared to be in default. The funds of the bond shall be used to complete the improvements.

#### **6-2 Inspection of Improvements**

1. *Inspection of Improvements.* If the Executive Director finds that any of the required improvements have not been constructed in accordance with the applicable Metro Department's construction standards and specifications, the applicant shall be responsible for completing the improvements to the required standards. Whenever the cost of improvements is covered by a performance bond, the applicant and the bonding company or financial institution shall be liable severally and jointly for completing said improvements according to specifications.

#### **6-3 Release, Reduction, or Extension of Performance Bond**

1. *Certificate of Satisfactory Completion.* The Executive Director shall not release nor reduce a performance bond until all applicable Metro Departments or Agencies provide written confirmation that all required improvements have been satisfactorily completed and all associated and/or surplus construction materials are removed from the site. There shall be no reduction or release of a bond if there are any outstanding administrative penalties or violations related to the bonded site.
2. *Reduction of Performance Bond.* A performance bond may be reduced upon demonstration of satisfactory completion of public improvements, that includes installation of the asphalt surface binder course, and then only to the ratio that the installed improvement bears to the total public improvements for the subdivision. In no event shall a performance bond be reduced below ten percent or \$5,000.00, whichever is greater of the original principal amount unless the agency indicates a lower amount is sufficient to complete the infrastructure. No more than three reductions shall be considered by the Executive Director. The initial bond reduction shall be considered only after the asphalt surface binder is applied to the entire subdivision phase as platted.
3. *Extension of Performance Bonds.* The Executive Director, upon proof of extenuating circumstances by the applicant and acknowledged and agreed to by the Executive Director, may extend the completion date set forth in such bond and may require an increase in the bonded amount to cover increases in costs.

4. *Release of Bonds in Rural Character Subdivisions.* In addition to requirements of Sections 6-3.1, 6.3.2 and 6.3.3, no bond shall be released for improvements in a Rural Character Subdivision until the applicant demonstrates that the impacts associated with the improvements have been mitigated and that all conditions related to the improvements have been satisfactorily fulfilled.
5. *Refer to Planning Commission.* The Executive Director may refer decisions to release, reduce, or extend a bond to the Planning Commission.

#### **6-4 Maintenance of Improvements**

1. *Maintenance of Improvements.* The applicant shall be required to maintain all improvements including all lot improvements, until acceptance of such public improvements by the appropriate department.

#### **6-5 Expiration of Bond**

1. *Expiration of Bond.* Should the bond lapse or expire for any reason prior to completion of all required improvements no additional building permits shall be issued and the Executive Director shall, through the Metropolitan Department of Law, take any or all appropriate legal action necessary to assure completion of improvements. The bond may be declared in default and the security shall be held by Metro. Only after completion of all improvements or posting of a new bond, shall building permits again be issued.

#### **6-6 Certification of Private Street Completion**

1. *Certification of Private Street Completion.* Prior to release of the bond for private streets, the Developer's and Contractor's Certificate for Private Streets (see Appendix A) shall be filed. It shall be accompanied by a certification from a geotechnical engineer that all construction phase items as listed in Section 3-11.3 have been inspected and approved for compliance with the specifications and requirements of the applicable departments and agencies and the approved construction plan and final subdivision plat.

#### **6-7 Disposition of Liquidated Securities**

1. *Disposition of Liquidated Securities.* Funds derived from liquidation of securities, as a result of performance agreement default, shall be used by the applicable Metro Department or utility district to complete the required work. Project administration fees may be charged by the departments or utility district against liquidated funds to offset actual personnel or equipment costs utilized in the accomplishment of required work. Any surplus funds shall be returned to the security provider after all charges and expenses are paid and required work is accepted.

