
APPENDIX G

BONDING POLICY, PERFORMANCE BOND TEMPLATE, AND CONSTRUCTION CONTRACTS

Appendix G - Bonding Policy and Performance Bond Template

The following details the bonding process for public infrastructure development. Based upon approved construction plans, a Planning Commission representative will prepare a detailed cost estimate to cover infrastructure improvements in the event of developer default. This estimate will be used for bonding purposes to ensure the Planning Commission can complete the infrastructure to standards acceptable by local government.

The Planning Commission accepts three (3) forms of sureties for infrastructure development.

1. Cash
2. A Letter of Credit (LOC) from an approved financial institution.
3. A Performance Bond from an approved Institution.

Administrative fees are calculated at two percent (2%) of the bond estimate for cash or LOC bonds and two and a half percent (2.5%) for performance bonds. The bond must be in place and fees paid to the Planning Commission prior to construction starting. LOC sureties shall be effective for one (1) year and may be renewed/reduced with Planning Commission approval prior to the three (3) year completion deadline specified in the construction contract. Performance Bonds shall be effective for the duration of the construction contract ~~or and~~ until written authorization to reduce or release is submitted by the Planning Commission to the bonding agent. The Planning Commission shall be informed in writing by the bonding agent thirty (30) days prior to any changes in status of the bond not specifically authorized by the Planning Commission.

The bond shall stipulate that in the event of developer default (as defined by the construction contract) the bond amount is immediately due and payable to the Planning Commission in the form of cash. These funds will be deposited into a separate financial account in order that the Planning Commission can ensure completion of the infrastructure. Upon acceptance of the infrastructure by the City/County government, any unused funds will be returned to the bonding agent.

Reductions: As work is **successfully** completed, the Planning Commission representative may recommend reductions in the bond amount. Recommendations for bond reductions are subject to approval by the Planning Commission at regularly scheduled meetings. Reductions shall be requested by the developer and a contingency amount shall be included in the bond estimate in the event of unanticipated failures or work oversights. The contingency amount will typically be fifteen percent (15%) of the original project quantities but may be increased if issues have occurred during construction or the Planning Commission representative has concerns regarding materials or workmanship. In no case will the bond be reduced below twenty (20%) of the original bond estimate, until such time as the developments infrastructure has been accepted for maintenance by the governmental entity.

Reductions/Renewals: Approximately thirty (30) days prior to the current bond expiration, the Planning Commission will inform the developer, by mail, if a reduction has been allowed. In no case will the bond be reduced below twenty percent (20%) of the

original bond estimate, until such time as the developments infrastructure has been accepted for maintenance by the governmental entity. The new bond shall be in place on the date directed by the Planning Commission representative and in all cases prior to the expiration date of the current bond.

Release: The developer has three (3) years from the date the construction contract is signed to complete construction and have the infrastructure accepted by local ordinance. If construction is not completed after three (3) years or the infrastructure has not been accepted by local ordinance then the bond shall be converted to cash by the Planning Commission. Once the infrastructure is accepted by local ordinance the bond will be released.

Bonding Options:

Option A – At the time of the preconstruction conference the developer is required to bond the entire estimated cost for constructing the proposed infrastructure, pay administrative fees based upon the bond estimate and sign a construction contract. The developer will then be allowed to plat and transfer lots while the subdivision infrastructure is being constructed. During the construction process Planning Commission representatives will be onsite monitoring construction and as work is successfully completed the developer may request bond reductions. The developer shall then be allowed to substitute a smaller bond amount that reflects work remaining plus ten percent (10%) contingency. Quality issues during construction may influence the allowable bond reduction. The bond will not be reduced below twenty percent (20%) of the original bond estimate until such time as the developments infrastructure has been accepted for maintenance by local ordinance.

Option B – At the time of the preconstruction conference the developer will be required to bond twenty percent (20%) of the estimated cost for constructing the proposed infrastructure, sign a construction contract, pay administrative fees based upon the original bond estimate and may then begin construction of the development infrastructure. The developer may not record the subdivision plat or transfer lots. During the construction process Planning Commission representatives will be onsite monitoring construction. Once the developer is ready to transfer lots, a request may be made to the Planning Commission representative who will estimate the cost of the remaining work items plus a minimum ten percent (10%) for contingencies. This shall be the bond amount that the developer will provide as surety to the Planning Commission until the project is accepted by the appropriate governmental entity. Once the bond is posted the developer will be allowed to plat and transfer lots. The minimum bond will be at least twenty percent (20%) of the original bond estimate until such time as the development's infrastructure has been accepted for maintenance by local ordinance. Quality issues during construction may necessitate more than a twenty percent (20%) bond.

Bonding Options Example

	Option A (Bond 100%)	Option B (Bond 20%)
	\$500,000 Original Bond Est.	\$500,000 Original Bond Est.
At the Pre- Construction Conference	Post \$500,000 Bond	Post \$100,000 Bond
	Pay Fees, Sign Contract	
	Plat & Build	Build
	\$350,000 1st Bond Reduction	Plat - Post \$100,000 Bond
	\$175,000 2nd Bond Reduction	
	\$100,000 Minimum Bond	
	(Maintain until acceptance)	

The developer has three (3) years from the date the construction contract is signed to complete construction and have the infrastructure accepted by local ordinance. If after three (3) years construction has not been completed or the infrastructure has not been accepted by local ordinance then the bond shall be converted to cash.

Following acceptance by the appropriate local governing body the bond will be released.

Conditional acceptance may be allowed at the discretion of the governing body. In cases where conditional acceptance is permitted, a separate construction contract and new cash bond will be required for the remaining items left for the conditional acceptance. The amount of the cash bond will be determined by staff of the Planning Commission in consultation with staff from the appropriate jurisdiction. The length of the conditional construction contract will be determined on a case by case basis. Following completion of the conditional items and acceptance by the appropriate governing body, any remaining bond will be released.

Print on Surety Letterhead

PERFORMANCE BOND

Commonwealth of Kentucky X
Warren County X

Subdivider:
Surety:
Surety's Address for Demand:
Surety's Phone Number:
Bond Amount:
Subdivision Name:
Date of Preconstruction Conference:

This Performance Bond is given to the City-County Planning Commission of Warren County, Kentucky in satisfaction of the guarantee of performance requirements outlined in the Subdivision Regulations of Warren County and any applicable provisions of the Zoning Ordinance and local governing body in which the subdivision resides. The rights and obligations of Subdivider, Surety, and the City-County Planning Commission of Warren County are governed by the terms and conditions set forth on Exhibit A, which is incorporated into this bond for all purposes as if fully set forth.

In Witness Whereof, the parties have caused their representatives to set their hands.

/Subdivider Name/a Kentucky corporation
By:
Printed Name:
Title:
Date:

/Surety Name/ a Kentucky
By:
Printed Name:
Title:
Date:

Approved and accepted this day of , 20.
City-County Planning Commission
By:

Printed Name: _____

Title: _____

Date: _____

PERFORMANCE BOND EXHIBIT A: TERMS AND CONDITIONS

Whereas, the Subdivider petitioned the City-County Planning Commission of Warren County ("Planning Commission"), Kentucky for permission to develop within its jurisdiction; and

Whereas, the Site Development Plan and /or the Subdivision Construction Plans, were approved by the Planning Commission on the Date of Planning Commission Approval; and

Whereas, the Warren County Subdivision Regulations and Zoning Ordinance ("Regulations") requires that the site improvement ("Site Improvements") set out below be completed by Subdivider in conformance with the Regulations within three years from the Date of Planning Commission Approval and executed Construction Contract; and

Whereas, the Regulations require that release from the Construction Contract and any associated sureties may not be undertaken until such Site Improvements have been completed and accepted by the local governing jurisdiction; and

No therefore, the Subdivider, as principal, and Surety, as surety, jointly and severally guarantee to the Planning Commission full payment of the Bond Amount if the required Site Improvements are not completed and accepted by the local governing jurisdiction within three years of the Date of Planning Commission Approval or such extended deadline for performance as Subdivider may obtain in conformity with the Regulations. Subdivider and Surety bind themselves and their respective heirs, administrators, executors, and assigns, jointly and severally, firmly to this bond.

If the Site Improvements are not completed by the Construction Contract Default Date, the Planning Commission need only to make written demand on the Surety for Demand for the Planning's estimate of the cost of the remaining Site Improvements. The Demand cannot exceed the Bond Amount. If the Planning Commission demands less than the full Bond Amount but is able to complete the Site Improvements, it may make multiple draws until the Site Improvements are completed or until it has drawn the full Bond Amount. If upon completion of the Site Improvements the Planning Commission still has unspent Surety Funds, the Planning Commission must refund the unspent funds to Surety.

Changes in the nature or extent of Site Improvements do no impair Surety's obligations, but nothing increases the Bond Amount without Surety's written consent.

If within three years of the Date of Planning Commission Approval or such extended deadline for performance as Subdivider may obtain in conformity with the Regulations,

Subdivider constructs and has accepted significant portions of the subdivision, the Bond Amount may be reduced with written permission from the Planning Commission.

If within three years of the Date of Planning Commission Approval or such extended deadline for performance as Subdivider may obtain in conformity with the Regulations, Subdivider constructs or causes to be constructed and accepted in full the Site Improvements according to the requirements of the Regulations, then this obligation terminates. Otherwise the obligation under this bond remains in full force and effect.

The Bond Amount may not be reduced or revoked without written permission from the Planning Commission.

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT made and entered into on this the _____ day of _____ 20____ by and between _____, whose address is _____, hereinafter called "Developer"; and the CITY-COUNTY PLANNING COMMISSION OF WARREN COUNTY, KENTUCKY, hereinafter called "Commission".

WHEREAS, the Developer has requested the City/County accept public improvements as herein defined for a certain tract of land within Warren County, Kentucky, _____ to _____ be _____ known _____ as _____, and has agreed, as a condition of acceptance of the subdivision or development by the Commission, to install improvements as set forth herein below and which improvements are, but are not limited to grading, paving, filling, storm water drainage, erosion control, landscaping and similar improvements as required by the Commission; and,

WHEREAS, the approval of the above subdivision plan/plat is further conditioned upon the furnishing of this agreement to complete the above described improvements within a period of three years upon execution of this contract in good workmanlike manner, with an adequate surety thereon to be furnished to the Commission; and,

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in further consideration of the approval by the commission of the subdivision or development aforementioned, the parties hereto agree as follows:

1. (a) The term "development or subdivision" as used herein shall be defined as all plats, plans, representations, specifications, drawings, or conditions of approval as are approved by the Commission and applicable to the subdivision which is the subject hereof.

(b) The terms "grade and drain" as used herein shall refer to the excavation

and site work, including but not limited to, construction of embankments, storm water drainage, seeding of all excavation areas, installation of guard rails, concrete

sidewalks, curbs and gutters, signs, and any other improvements deemed necessary to satisfy the conditions of acceptance by the public agency.

(c) The term "surfacing" as used herein shall be defined as all work required

for the construction and installation of pavement as approved by the Commission.

2. The Developer shall construct, in accordance with the construction plans of the foregoing subdivision, including all conditions attached by the Commission thereto, those improvements within said subdivision, including but not limited to paving, grading, filling, storm water drainage, erosion control, landscaping and similar improvements, in accordance with the Subdivision Regulations and Storm Water Drainage Requirements of Bowling Green, Warren County, Kentucky, and the plat and specifications for such subdivision as approved by the City-County Planning Commission; this agreement shall extend to and include any and all amendments to such amendments to construction plans.

3. This contract shall continue in full force and effect until completion of all improvements hereunder and until the Developer shall be released by the Commission. As a material part of the Developer's duty to construct in accordance with the plat, plans and specifications, as set forth above, the Developer does further agree to warrant, for a period of 24 months following the appropriate Governmental Agency's acceptance of the work, that the work performed and the products installed under this agreement, have been performed in accordance with said plans, plat and specifications, in a good and workmanlike manner and are free from defects. In the event the Developer breaches its warranty, the appropriate Governmental Agency shall be entitled to recover its damages, costs, including reasonable attorney's fees, from the Developer and/or his surety.

4. The Developer agrees and stipulates that the sum of _____ shall be the estimated cost of construction of the improvements aforementioned. Upon the breach of this agreement the Developer shall pay over unto the Commission such sums as are necessary for full and satisfactory completion of such improvements not to exceed the estimated construction costs set forth hereinabove. The determinations on satisfactory completion shall be exclusively vested in the Commission and in its sole discretion.

5. In the event of the amendment of the original construction plans, including the estimated cost of construction, as hereinabove set forth same shall become a part hereof upon approval by the Commission and same shall be incorporated herein by reference as if copied in full.

6. The following events shall constitute an event of default and/or breach of this agreement:

- (a) Failure to construct any of the improvements hereunder, or any portion thereof.
- (b) A breach or failure of performance by Developer of any provision of this agreement.
- (c) The termination and/or lapse of any surety for the performance of this agreement, including but not limited to the lapse or termination of any performance bond, letter of credit or deposit agreement.
- (d) The Developer, or in the event of individual Developers either of them (i) files petition in bankruptcy or for the approval for a plan or reorganization or arrangement under the bankruptcy code no existing or as may be from time to time amended or an admission seeking relief there under; (ii) is unable, or admits in writing the inability to perform this contract; (iii) makes an assignment for the benefit of creditors; (iv) has a receiver appointed voluntarily or otherwise, for its property, or in the event of individual Developers for their property; (v) is adjudicated a bankruptcy; (vi) suspends business; or (vii) becomes insolvent, however, or as otherwise evident.

7. That in the event of default hereunder the Commission may, in its sole discretion, undertake completion of the improvements to be constructed hereunder, or any portion thereof, and the Developer shall pay the cost of such construction in accordance with paragraph three (3) above; in the event that the Commission undertakes completion of such improvements the Developer shall, in addition to the cost of construction, also reimburse the Commission for any and all engineering, administrative or legal costs

actually incurred by the Commission, whether or not such services are provided by an employee or employees of the Commission.

8. The Developer hereby grants to the Commission full power, in its uncontrolled discretion and without notice to the Developer to deal in any manner with any surety hereunder, including but without limiting the generality of the foregoing, the following powers:

- (a) To modify or otherwise change any term or any part of any surety agreement, including any letter of credit, performance bond or escrow agreement. No changes, reductions, releases or alterations should be made to the original bond unless written authorization is given by the Planning Commission.
- (b) To consent to the substitution, exchange, or release of all or any part of the surety;
- (c) In the event of the default and/or breach of this contract, including all liabilities created hereunder, the Commission is hereby granted full and complete authority to require payment by the surety as the Commission may elect, without notice to the Developer; or,
- (d) In the event of the default or breach of this contract any letter of credit, performance bond or escrow agreement shall be converted to a cash surety.
- (e) To exercise all of its rights with such surety, including but not limited to issuing any drafts of letters of credit, demands for payment under deposit agreements and demands for performance under any performance bond, or the Commission may forebear from requiring payment by such surety, all as the Commission in its uncontrolled discretion may deem proper.

9. No failure on the part of the Commission to enforce any provision of this contract, including the extensions and/or renewals of any surety agreements hereunder, shall act as a waiver on the part of the Commission.

10. This agreement shall be in all respects governed by and construed in accordance with laws of the Commonwealth of Kentucky, including all matters of construction, validity, and performance.

11. This agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

12. Nothing in this agreement, whether express or implied, shall be construed to give to any party other than the Commission and the Developer any legal or equitable right, remedy, or claim under or in respect to this agreement or any covenant, condition, or other provision contained herein.

13. This instrument contains the entire agreement between the parties hereto, and is a total integration thereof, and no statements, promises, or inducements by any party hereto or by any agent of any party hereto, which is not contained in this written agreement shall be valid or binding; no modification, variation, or amendment of this agreement shall be of any force unless such modifications, variation or amendment is in writing and signed by the party against whom enforcement shall be sought.

14. Subject to the provisions hereof, this agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns to become such in accordance with the terms of this agreement, and in the case of the individual parties, their heirs, administrators, executors, and personal representatives.

15. This agreement may be assigned only upon the prior written consent of the Commission.

16. In construing this document neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for those singular and singular for plural in any place in which the context so requires.

17. In the event of individuals constituting the Developer hereunder, their liability shall be joint and several as to the Commission.

WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed, the day and date first above written.

DEVELOPER:

COMMONWEALTH OF KENTUCKY)

)

COUNTY OF WARREN)

)

This is to certify that the above Contract was signed and acknowledged before me on this the _____ day of _____, 20____, by

_____.

NOTARY PUBLIC - KY State at Large
My Commission Expires:

BONDING AGENT / CO-DEVELOPER:

COMMONWEALTH OF KENTUCKY)

)

COUNTY OF WARREN)

)

This is to certify that the above Contract was signed and acknowledged before me on this the _____ day of _____, 20____, by

_____.

NOTARY PUBLIC - KY State at Large

My Commission Expires: _____

**CITY-COUNTY PLANNING
COMMISSION OF WARREN COUNTY,
KENTUCKY**

Chairman

COMMONWEALTH OF KENTUCKY))
COUNTY OF WARREN))

This is to certify that the above Contract was signed and acknowledged before me
this the _____ day of _____, 20____,
by _____.

NOTARY PUBLIC - KY State at Large
My Commission Expires:

Revised 04/2019

CONSTRUCTION CONTRACT FOR CONDITIONAL ACCEPTANCE

THIS CONSTRUCTION CONTRACT made and entered into on this the _____ day of _____ 20____ by and between _____, whose address is _____, hereinafter called "Developer"; and the CITY-COUNTY PLANNING COMMISSION OF WARREN COUNTY, KENTUCKY, hereinafter called "Commission".

WHEREAS, the Developer has requested the City/County accept public improvements as herein defined for a certain tract of land within Warren County, Kentucky, to be known _____ as _____, and has agreed, as a condition of acceptance of the subdivision or development by the Commission, to install improvements as set forth herein below and which improvements are, but are not limited to sidewalks or other public improvements as required by the Commission; and,

WHEREAS, the approval of the above subdivision or development is further conditioned upon the furnishing of this agreement to complete within a period of two years upon execution of this contract the improvements described below in good workmanlike manner, with an adequate surety thereon to be furnished to the Commission; and,

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in further consideration of the approval by the City/County and the Planning Commission of the development aforementioned, the parties hereto agree as follows:

1. (a) The term "development and/or subdivision" as used herein shall be defined as all plats, plans, representations, specifications, drawings, or conditions of approval as are approved by the Commission and applicable to the subdivision which is the subject hereof.

(b) The terms "sidewalks and other improvements" as used herein shall refer to the excavation and site work, including but not limited to, construction of embankments, storm water drainage, seeding of all excavation areas, installation of guard rails, concrete sidewalks, curbs and gutters, signs, and any other

improvements deemed necessary to satisfy the conditions of acceptance by the public agency.

2. The Developer shall construct, in accordance with the construction plans of the foregoing subdivision, including all conditions attached by the Commission thereto, those improvements within said subdivision, including but not limited to paving, grading, filling, storm water drainage, erosion control, landscaping and similar improvements, in accordance with the Subdivision Regulations and Storm Water Drainage Requirements of Bowling Green, Warren County, Kentucky, and the plat and specifications for such subdivision as approved by the City-County Planning Commission.

3. The Developer agrees and stipulates that the sum of _____ shall be the estimated cost of construction of the improvements outlined below:

-
-
-
-

4. The following events shall constitute an event of default and/or breach of this agreement:

- (a) Failure to construct any of the improvements hereunder, or any portion thereof.
- (b) A breach or failure of performance by Developer of any provision of this agreement within two years of execution of this contract; OR when construction of seventy five percent (75%) of the developable lots are constructed upon.
- (c) The Developer, or in the event of individual Developers either of them (i) files petition in bankruptcy or for the approval for a plan or reorganization or arrangement under the bankruptcy code no existing or as may be from time to time amended or an admission seeking relief there under; (ii) is unable, or admits in writing the

inability to perform this contract; (iii) makes an assignment for the benefit of creditors; (iv) has a receiver appointed voluntarily or otherwise, for its property, or in the event of individual Developers for their property; (v) is adjudicated a bankruptcy; (vi) suspends business; or (vii) becomes insolvent, however, or as otherwise evident.

5. That in the event of default hereunder the Commission may, in its sole discretion, undertake completion of the improvements to be constructed hereunder, or any portion thereof, and the Developer shall pay the cost of such construction in accordance with paragraph three (3) above; in the event that the Commission undertakes completion of such improvements the Developer shall, in addition to the cost of construction, also reimburse the Commission for any and all engineering, administrative or legal costs actually incurred by the Commission, whether or not such services are provided by an employee or employees of the Commission.

6. The Developer hereby grants to the Commission full power, in its uncontrolled discretion and without notice to the Developer to deal in any manner with any surety hereunder, including but without limiting the generality of the foregoing, the following powers:

- (a) To consent to the substitution, exchange, or release of all or any part of the surety;
- (b) In the event of the default and/or breach of this contract, including all liabilities created hereunder, the Commission is hereby granted full and complete authority to make payments from the surety to complete any outstanding work necessary.

7. No failure on the part of the Commission to enforce any provision of this contract, shall act as a waiver on the part of the Commission.

8. This agreement shall be in all respects governed by and construed in accordance with laws of the Commonwealth of Kentucky, including all matters of construction, validity, and performance.

9. This agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

10. Nothing in this agreement, whether express or implied, shall be construed to give to any party other than the Commission and the Developer any legal or equitable right, remedy, or claim under or in respect to this agreement or any covenant, condition, or other provision contained herein.

11. This instrument contains the entire agreement between the parties hereto, and is a total integration thereof, and no statements, promises, or inducements by any party hereto or by any agent of any party hereto, which is not contained in this written agreement shall be valid or binding; no modification, variation, or amendment of this agreement shall be of any force unless such modifications, variation or amendment is in writing and signed by the party against whom enforcement shall be sought.

12. Subject to the provisions hereof, this agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns to become such in accordance with the terms of this agreement, and in the case of the individual parties, their heirs, administrators, executors, and personal representatives.

13. This agreement may be assigned only upon the prior written consent of the Commission.

14. In construing this document neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for those singular and singular for plural in any place in which the context so requires.

This is to certify that the above Contract was signed and acknowledged before me
this the _____ day of _____, 20____,
by_____.

NOTARY PUBLIC - KY State at Large
My Commission Expires:
