

New Kent

C O U N T Y



V I R G I N I A

DEPARTMENT OF PUBLIC UTILITIES

PERFORMANCE BOND

BETWEEN

(Surety)

AND

THE COUNTY OF NEW KENT, VIRGINIA

DATE:	
PROJECT NAME:	
AMOUNT OF SECURITY:	
BOND NUMBER:	

**NEW KENT COUNTY
PERFORMANCE BOND
PROJECT DESCRIPTION**

**NEW KENT COUNTY
PERFORMANCE BOND**

BOND NO:		DATE BOND EXECUTED:		
PRINCIPAL(s): Legal name(s)	DATE BOND EXPIRES:			
	AMOUNT OF BOND (IN U.S. DOLLARS)			
	Million(s)	Thousand(s)	Dollar(s)	Cents
	SURETY(IES): Legal Name		TYPE OF AGREEMENT:	
	Virginia Registered Agent: Name: _____ Address: _____ _____		PERFORMANCE COMPLETION DATE (see attached Exhibit A):	

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety hereto recite and declare that:

1. We are held and firmly bound to the obligee Board of Supervisors of New Kent County, Virginia (the "County"), in the sum written above in lawful money of the United States of America, to be paid to the County, its successors or assigns, for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by this Bond.

2. The condition of this Bond is that if the Principal shall in every respect perform all of its obligations under the Agreement identified above (the "Agreement") which Agreement is attached hereto as Exhibit A and is incorporated herein by reference, then this Bond shall be void; otherwise, the Bond shall continuously remain in full force and effect until discharge in accordance with its terms. A summary of the Improvements and the dates by which they must be completed is attached and incorporated herein; provided, however, that the Agreement shall at all times take precedence over the Summary of Improvements and any discrepancy shall be resolved in favor of the Agreement.

3. (a) The Surety expressly waives any right to receive notice, review, or approve any revisions to the plans, profiles and specifications referred to in the Agreement. No such revision or alteration in the work undertaken that is required to meet County or State standards shall in any way affect the obligation of the Surety under this Bond.

(b) By signature hereto, the Surety consents to any extension of time granted to the Principal to permit performance of the obligations of the Agreement this Bond secures, whether or not Surety receives notice of same, provided such additional period shall not exceed the original period allowed for performance in the Agreement.
4. In the event of default by the Principal, as set forth in the Agreement, the Director shall give written notice of such default to the Principal and the Surety. Upon receipt of Notice, the Surety shall elect with thirty (30) days one of the following options:
 - (a) Tender payment to the County of the full face value sum of the Bond or such lesser amount as may be specified by the Director, in his sole discretion. If this option is selected:
 - (1) the Surety will be relieved of further liability under this Bond; and
 - (2) the County will take over or will let all or any part of the work required by the Agreement but not completed, and will complete the same to the extent of available funds. The costs and expenses of completing the work shall include the costs of consultants, engineers, and other professionals as well as legal fees and costs necessary to enforce the provisions of this bond; or
 - (b) Give written notice to the County that it will assume the obligations of the Principal and will complete the Improvements set forth in the Agreement according to its terms and provisions within the time remaining under the Agreement, or within 180 days of said notice whichever occurs later. The Surety may only arrange for the Developer to complete the Improvements with the consent of the County. Any contractor engaged by the Surety to complete the Improvements must be licensed in the State of Virginia and in New Kent County and approved by the Director. If the Surety fails to faithfully perform all or any part of the work or unnecessarily delays all or any part of the work, the County may proceed as provided in Paragraph 6 of this Bond.
5. Should Surety not proceed as provided in Paragraph 4 above within 30 days of receipt of default notice, or having elected option (b) in Paragraph 4, should thereafter fail to perform, the County may without further notice to Surety elect to:
 - (a) Take over or let all or any part of the work not completed and complete the same for the account and at the expense of the Principal and Surety, who shall be jointly and severally liable to the County for the costs incurred in completion, including all items set forth in Paragraph 6(b) of this Bond as the measure of damages; the actual cost to obligee, as evidenced by the written statement of the Director, shall be conclusive upon Principal and Surety as to the quantum of damages; and/or

- (b) Bring suit, action, or proceedings to enforce the provisions of this Bond. In such event, it is expressly agreed and understood that, regardless of the date of breach of the Principal or the Surety's failure to fulfill the obligations of this Bond, the measure of damages recoverable shall be the cost of completion and/or correction of the work required by the Agreement including the twenty-five percent (25%) administrative fee to the County for administering the completion of the Improvements as of the earliest of the following three dates:
- (1) when the work is actually completed and/or corrected to local and state approval and acceptance;
 - (2) final judgment of a court of competent jurisdiction;
 - (3) two years from the expiration of the underlying Agreement or last extension thereof.
6. It is further expressly agreed and understood that the measure of damages is set forth in the Agreement. The cost of completion and/or correction of the work required under the Agreement, and the twenty-five percent (25%) Administration Fee provided in Section III, paragraph 3 of the Agreement, the expenses attributable to litigation costs, costs necessary to enforce the provisions of this bond, attorney's fees, procurement costs, and any cost increases arising from delay occasioned by litigation, or other proceedings necessary to enforce the provisions of this Bond, and by delays by Surety under its obligations under this Bond.
7. Should the Surety determine that the bond will not be renewed, Surety hereby agrees to submit notice of non-renewal to the County within forty-five (45) days of the expiration of the bond.
8. The parties hereby submit to the personal jurisdiction and venue that any claims, causes of action or disputes arising out of, relating to or concerning this Bond shall have jurisdiction and venue only in the Circuit Court of New Kent County or the U.S. District Court, Eastern District of Virginia.
9. The Surety is licensed to do business in, and operates a place of business in, the Commonwealth of Virginia. Evidence of such licensure is attached hereto as Exhibit B.
10. If any provision of this Bond is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reasons, such provision shall be fully severable and this Bond shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of this Bond, and the remaining provisions of this Bond shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from this Bond.
11. Whenever notice is required, it shall be deemed given if mailed registered, return receipt requested, in the names and to the addresses given below; provided, however, that notice of change of address shall be effective if given in accordance with this paragraph.

SURETY

COUNTY

Director of Public Utilities
 P.O. Box 130
 New Kent, Virginia 23124

IN WITNESS WHEREOF, the parties hereto have caused this Bond Agreement to be executed as of the day and year set forth above.

PRINCIPAL

Type of Organization:

State of Incorporation:

Legal Name and Address:

_____ (SEAL)

Signature(s):

BY: _____

Name

Title

Phone #

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ACKNOWLEDGMENT OF PRINCIPAL

STATE OF _____:

COUNTY/CITY OF _____, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by

(name of person signing above and title)

Notary Public

My commission expires _____

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CORPORATE SURETY

State of Incorporation:

Legal Name and Address:

_____ (SEAL)

Signature(s):

BY: _____

Name

Title

ACKNOWLEDGMENT OF CORPORATE SURETY

STATE OF _____:

COUNTY/CITY OF _____, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by

(name of person signing above and title)

Notary Public

My commission expires _____

Attach valid Power of Attorney

New Kent

C O U N T Y



V I R G I N I A

DEPARTMENT OF PUBLIC UTILITIES

IRREVOCABLE LETTER OF CREDIT

BETWEEN

Bank

AND

THE COUNTY OF NEW KENT, VIRGINIA

DATE:	
PROJECT NAME:	
AMOUNT OF SECURITY:	

**NEW KENT COUNTY
IRREVOCABLE LETTER OF CREDIT
PROJECT DESCRIPTION**

**IRREVOCABLE
LETTER OF CREDIT NO. _____**

County of New Kent
Department of Public Utilities
P.O. Box 130
New Kent, Virginia 23124

Gentlemen:

We hereby open our Irrevocable Letter of Credit No. _____ effective on _____ in your favor for the account of _____, (the "Customer"), for a sum not to exceed _____ available by your sight drafts on the _____ bank (the "Issuing Bank").

We have been informed that the purpose of this Irrevocable Letter of Credit (the "Letter") is to furnish the County of New Kent, Virginia (the "County") with surety for the construction of all improvements (the "Improvements") required by that certain _____ Agreement dated _____, 20__ by and between _____ and the County (the "Agreement") and by the New Kent County Code (the "County Code") and all amendments thereto. Drafts hereon shall be promptly honored when accompanied by documents specified below:

1. A certified statement signed by the New Kent County Director of Public Utilities (the "Director") stating that the Customer has not satisfactorily installed and maintained, or caused to be installed and maintained, the Improvements.
2. A certified statement signed by the Director to the effect that the drawing is for the explicit purpose of providing for the completion of the Improvements.
3. All drafts must bear the clause "Drawn under the _____ bank letter of credit no. _____ dated _____."

We hereby engage with the beneficiary that all drafts drawn in compliance with the terms of this Letter shall be duly honored upon presentation and delivery of the documents.

This Letter shall extend itself automatically from year to year thereafter unless and until the issuing bank shall give at least ninety (90) days prior written notice to the Customer and to the Director of Public Utilities, P.O. Box 50, 12007 Courthouse Circle, New Kent, Virginia 23124, by certified mail return receipt requested, or overnight courier of its intent to terminate the same at the expiration of the ninety (90) day period. During the last sixty (60) days during which this Letter is in full force and effect, the County may draw up to the full amount of the sum when the draft is accompanied by the above described certified document stating that the Customer has not completed the Improvements and has not provided the County with an acceptable substitute Letter of Credit.

This Letter may be amended to each anniversary upon receipt by the Issuing Bank of a written request from the applicant reflecting the cost of inflation associated with the Improvements if it can be shown that the face value of this Letter is inadequate to cover the costs of the Improvements. This Letter may be terminated prior to the current expiration date upon the County giving written release to the

Customer and to the Issuing Bank that the Customer has installed and maintained all the Improvements in compliance with the Agreement and the County Code.

This Letter of Credit may also be terminated upon the County giving a written release to the Customer and to the Issuing Bank that the Customer has either:

1. Constructed a portion of the Improvements in compliance with the Agreement and the County Code and the warranty period provided in the Agreement has ended; or
2. Paid the construction costs of such Improvements to a third party and has certified such fact to the County and has furnished the County with the surety in an amount sufficient for and conditioned upon the construction of the remainder of such Improvements.

This Letter shall be construed according to the "Uniform Customs and Practices for Documentary Credits," International Chamber of Commerce Publication No. 500, 1993 Revision) and the provisions of the Uniform Commercial Code-Letters of Credit, Title 8.5 of the Code of Virginia, 1950, as amended.

Very truly yours,

(Bank's Name)
Letter of Credit _____
(Number and Date as above)

(Bank Name & Telephone No.)
BY: _____
(Type Name and Title)

ACKNOWLEDGMENT

STATE OF _____:
COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____
(Name of person signing above and title)

My Commission expires _____

Notary Public

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DEPARTMENT OF PUBLIC UTILITIES

CASH ESCROW AGREEMENT

BETWEEN

Property Owner

AND

THE COUNTY OF NEW KENT, VIRGINIA

DATE:	
PROJECT NAME:	
AMOUNT OF SECURITY:	

**NEW KENT COUNTY
CASH ESCROW AGREEMENT
PROJECT DESCRIPTION**

**NEW KENT COUNTY
CASH ESCROW AGREEMENT**

ESCROW NO:		AMOUNT OF ESCROW (IN U.S. DOLLARS)			
DEVELOPER(s): Legal name(s)	Million(s)	Thousand(s)	Dollar(s)	Cents	
	DATE ESCROW EXECUTED:				
	TYPE OF AGREEMENT:				
	AGREEMENT DATE:				
	COMPLETION DATE(S) (see Exhibit B):				

WHEREAS, Developer has executed an Agreement with the County of New Kent, Virginia, dated _____, 20_ (the “Agreement”), requiring installation of all improvements shown on the plat and plans on or before _____ (the “Completion Date”); and

WHEREAS, Developer has elected to post escrow, in cash, to secure performance of the terms and conditions of the said Agreement,

NOW, THEREFORE, _____ as Developer of said Agreement and this Escrow and the Board of Supervisors of New Kent County, Virginia (the “County”), as Obligee, hereby agreed as follows:

1. The County acknowledges receipt of the Escrow amount, _____ (\$ _____), to be invested, held and applied in accordance with the terms of this Escrow Agreement.
2. The condition of this Escrow is that Developer is held and firmly bound to the County in the sum written above in lawful money of the United States of America, as security for Developer’s performance of the Agreement identified above, incorporated herein, and attached hereto as Exhibit A.
3. County shall deposit said sum in an interest-bearing account in an institution insured by FDIC or FSLIC for the term of the Agreement and any approved extensions thereof, provided that the principal sum may be reduced and refunded to Developer in accordance with the terms of the Agreement.

4. If the Developer defaults in the performance of all or any part of the obligations of the Agreement, the Director of Public Utilities (the "Director"), or his designee shall give written notice of same to Developer, specifying the items of breach. Notice expressly given under paragraph 4 shall terminate whatever rights Developer may have to perform further work under the Agreement.
5. In the event of default by the Developer, the County shall apply the Cash Escrow and any accrued interest to completion of work required by the Agreement. Any funds remaining after completion shall be returned to Developer. If the Cash Escrow funds are not sufficient to complete the work, the County may recover the deficiency in funds from the Developer.
6. Computation of damages attributable to Developer's default and chargeable against the Escrow is set forth in the Agreement.
7. Any notice required hereunder shall be deemed effective if given by registered mail, return receipt requested, to Developer in the name and at the address given in accordance with this paragraph. Any notice to the County shall be so given to the Director of Public Utilities, P.O. Box 50, 12007 Courthouse Circle, New Kent, Virginia, 23124 or subsequent address notice of which is given as provided herein.

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WITNESS the following signatures and seals:

DEVELOPER

This document shall be signed by an authorized person(s). Individuals who have the authority to bind an organization are partners of a partnership or joint venture, or a president or vice-president of a corporation. For any person signing in a representative capacity (e.g., an attorney-in fact), notarized evidence of authority must be furnished.

Type of Organization:

Legal Name and Address:

_____ (SEAL)

State of Incorporation:

Federal Tax I.D. or S.S.N.

Signature(s):

BY: _____

Name

Title

ACKNOWLEDGMENT OF DEVELOPER

STATE OF _____:

COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,

by _____
(Name of person signing above and title)

Notary Public

My Commission expires _____

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PROPERTY OWNER

Type of Organization:

State of Incorporation:

Federal Tax I.D. or S.S.N.

Legal Name and Address:

_____ (SEAL)

Signature(s):

BY: _____

Name

Title

ACKNOWLEDGMENT OF PROPERTY OWNER

STATE OF _____:

COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____

(Name of person signing above and title)

Notary Public

My Commission expires _____

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BOARD OF SUPERVISORS OF NEW KENT COUNTY, VIRGINIA

By: _____
Chair

ATTEST:

Clerk to the Board

STATE OF VIRGINIA
COUNTY OF NEW KENT, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 200____,
by _____ and _____,
Chair and Clerk, respectively, of the Board of Supervisors of New Kent County, Virginia.

Notary Public

My Commission expires _____

Approved as to form
County Attorney

Date: _____