

Article V

PROVISIONS AND GUARANTEE REQUIRED BY OWNER

500 PURPOSE

To inform the Owner of the required provisions and guarantee needed for public improvements during construction and maintenance period prior to the acceptance of said improvements.

501 COUNTY HELD FREE AND HARMLESS

The Owner shall hold the County free and harmless from any claims for damages of every nature arising or growing out of the construction of such improvements, and shall defend, at their own cost and expense, each and every lawsuit brought against the County by reason thereof until the improvements have been accepted by the County Engineer and the County Commissioners.

502 OWNER'S PROJECT AGREEMENT

An agreement between the Owner and the County Commissioners shall be entered into which states the terms and conditions under which the Guarantees are established. This Project Agreement shall be in effect for the period of time specified in these Standards. A sample Project Agreement is included in the Supplemental Specifications of these Standards.

503 CONSTRUCTION INSPECTION FEES

An inspection and testing fee draw account shall be required for all projects. The amount of the deposit shall be determined by the County Engineer. The deposit must be received prior to the approval of the Owner's Project Agreement and scheduling of the Preconstruction Conference. The County Engineer shall draw funds from this account at an hourly rate for work performed by the County Engineer's Office and for all costs for contracted services.

504 CONSTRUCTION PERFORMANCE GUARANTEE

A. Private Developments

Private developments (private streets built to public standards) shall be required to complete all construction before the final plat will be approved by the County Engineer and forwarded to the County Commissioners for final approval.

B. Road Widenings

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All public improvements to existing roads (widening, turn lanes, etc.) that are required to be made under a separate plan from the subdivision plan (for example, for a road improvement within the County/Township Right-of-way and the subdivision is within another jurisdiction, such as the City of Powell, City of Delaware) shall provide a construction performance guarantee for the full amount of the approved construction cost estimate prior to the beginning of construction. For these types of projects, there will be no maintenance period required once the improvements have been made to the satisfaction of the County Engineer, and the construction performance guarantee will be released upon approval by the County Commissioners.

C. Stormwater Management Systems

All Stormwater Management Systems to be publically maintained shall provide a construction performance guarantee. Requirements for temporary sediment basins are outlined in the Supplemental Specifications to these Standards.

D. Subdivisions

All public improvements shall be constructed prior to final plat approval by the County Commissioners. The Owner, in lieu of the actual installation or completion of the required improvements, may furnish the County Commissioners with a construction performance guarantee as consideration for the approval of a final plat by the County Commissioners before all improvements have been made.

E. Types of Guarantee

1. Surety Performance Bond:

The Owner shall obtain a security bond from a surety bonding company authorized to do business in the State of Ohio. The bond shall be made payable to: "The Board of Delaware County Commissioners". It shall be in the appropriate amount and duration as outlined in these Standards. In addition to the security bond, the Owner and the surety company shall sign the bonding form.

2. Escrow Account:

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The Owner shall make arrangements to have an amount as outlined in these Standards held in an escrow account in a bank or other reputable lending institution approved by the County Commissioners. The appropriate escrow form(s) shall require the signatures of the Owner, lending institution and County Commissioners.

3. Irrevocable Letter of Credit:

The Owner shall provide a Letter of Credit from a bank or other reputable lending institution (all of which are subject to approval of the County Commissioners). This Letter shall be filed with the County Commissioners and shall certify the following:

A. That the issuer does guarantee funds in an amount as set forth in these Standards, and

B. Upon notification by the County Commissioners or the County Engineer that the Owner has failed to complete the specific improvements within the required time period, the issuer shall proceed without further action on the following:

1. Pay to the County Commissioners immediately such funds as are necessary for completion and maintenance of the required improvements up to the limit of credit stated in the letter.

2. Completion and maintenance of the required improvement, within a new time limit as agreed to by the County Commissioners.

C. That this letter of credit may not be withdrawn or reduced in amount without written approval by the County Commissioners based on recommendations by the County Engineer.

4. Certified or Bank Check:

The Owner shall deposit with the County Commissioners a certified or bank check in the amount as outlined in these Standards.

5. No Bond:

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A no-bond project Agreement is permitted as long as the final plat for the proposed development has not been signed and recorded. When a no bond agreement is desired the Owner shall still post all necessary inspection fees and subsequent Maintenance Guarantee as set forth in these Standards. If, during the course of construction and prior to the improvements being ready for the one-year maintenance period, the Owner wishes to record the plat, a “remaining items” construction performance guarantee, equal to 20 % of the approved construction cost estimate, can be posted upon approval by the County Engineer.

The County Engineer MUST agree that twenty (20) percent or less work is remaining. If greater than twenty (20) percent of the construction remains, the Owner will submit a Construction Performance Guarantee in the amount of 100 percent of the approved construction cost estimate. Upon the satisfactory completion of the remaining items, the Owner shall submit the Maintenance Guarantee.

6. Or other form as approved in writing by the County Commissioners:

The Guarantee shall clearly indicate the project for which it is issued. The date of expiration of the Guarantee shall also be shown.

F. Amount of Guarantee

The Financial Guarantee shall be in an amount equal to the approved construction cost estimate. This estimate of cost shall be in the amount as outlined in the Standards (Article IV). The amount of the construction cost estimate shall be rounded up to the nearest \$1,000.00.

G. The Terms of the Guarantee

The Owner shall complete the improvements within one year of the beginning of construction. The surety posted for the work will remain in force during the entire time of the construction phase. If, for unforeseen reasons, the project takes longer than one year to construct, the Owner shall request an extension (for one year only) in

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writing 30 days prior to the expiration date of the surety. If this extension is approved, an extension of the surety shall also be required. Only one extension for a period of one additional year shall be granted. The surety posted for this period shall be increased by 20% over the initial surety. After the extension has ended and construction items still remain to be completed, the County shall use the surety to construct the project. No Construction Performance Guarantee shall be released without the prior approval of the County Commissioners.

H. Release of Guarantee and Approval of the Improvement to go onto Maintenance

Upon the request of the Owner, the County Engineer shall make an inspection of the project to verify that all improvements are essentially complete and have been constructed in reasonably close conformity to the approved plans and specifications. Upon completion of the inspection, the County Engineer shall advise the Owner in writing of any work items that are incomplete or which are not in reasonably close conformity with the approved plans and specifications.

For the project to be considered for acceptance to maintenance, all significant work items shall be complete, including but not limited to: street name signs, traffic control devices, permanent or temporary barricades, flood routing, significant drainage and erosion control features. Temporary turnarounds shall also be complete.

I. Maintenance During Construction

The Owner shall be responsible for the maintenance of the improvements installed and for providing the services necessary to guarantee access to all the occupied lots for the term of the construction performance guarantee. This maintenance shall include but not limited to winter maintenance items such as snow and ice control, erosion and sediment control measures, debris, and mud tracking onto the County/Township road system.

505 MAINTENANCE GUARANTEE AFTER IMPROVEMENT APPROVAL

If the improvements specified in the approved plans have been satisfactorily completed, the County Engineer may recommend that the County

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Commissioners accept said improvements to maintenance as set forth herein.

A. Type of Guarantee

See 504 of these Standards.

The Maintenance Guarantee shall clearly indicate the project for which it is issued.

B. Terms and Amount of Guarantee

Term: The Maintenance Guarantee shall be issued for a period of at least one year from the month issued; however, the maintenance guarantee shall not expire during the time period of December 1 through May 31. The maintenance guarantee will not be accepted by the County Engineer until such time as the Owner has been notified that the project is ready to go on the maintenance period. If the maintenance guarantee is submitted prior to the project being ready to go on the maintenance period, it will be returned to the Owner. When the Owner has been notified by the County Engineer that the project is ready for maintenance, a new guarantee shall be submitted to cover the entire one-year maintenance period.

Amount: A Guarantee equal to ten percent of the originally approved construction cost estimate shall be presented to the County Commissioners for the Maintenance Guarantee for the improvements. Upon acceptance of the Maintenance Guarantee by the County Commissioners, the original Construction Performance Guarantee shall be released.

C. Items Covered Under Guarantee

The Owner shall be responsible for all routine maintenance during the Guarantee period. This shall include, but is not limited to: snow and ice removal, mud tracking, erosion and sediment control, any items relating to public safety, any items identified by the County Engineer in correspondence as part of the acceptance process, and repair/corrections of failures due to faulty construction or design. The Owner shall also make repairs needed due to erosion, damage created by utility companies in the installation of utilities, any damage created by the home builders, and shall repair all failures which occur for any other reason during the Guarantee period, as

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determined by the County Engineer. Failure to comply with the above items may result in forfeiture of the Maintenance Guarantee and other legal action if warranted.

D. Prefinal and Final Inspection

Approximately 120 days prior to the maintenance guarantee expiration date, the County Engineer shall issue the inspection report for the project. On or about 90 days prior to the maintenance guarantee expiration date, the County Engineer will have a meeting at the project location to discuss the Pre-Final punchout remedial items. Required attendees for this meeting are the County Engineer and the Owner. Optional attendees are the Township and Soil and Water Conservation District. Meeting requests will be sent to all of the above. The County Engineer shall provide a letter of remedial items to the Owner. These items shall be completed in a satisfactory manner prior to acceptance of the improvements onto the public system. The Owner shall notify the County Engineer of when the remedial work is completed so an inspection can be scheduled. All remedial items shall be completed no later than two weeks prior to the maintenance guarantee expiration date. The County Engineer reserves the right to require repairs to any item found during the final inspection that has failed even if it was not identified in the pre-final inspection report. If items are not completed prior to the maintenance guarantee expiration date, the County Commissioners will take action against the surety to complete the remedial items at the Owner's expense. Upon the satisfactory completion of all of the remedial items, the County Engineer will recommend to the County Commissioners that the improvements will be placed onto the public system.

It is the desire of the County to place the improvements made under these Standards onto the public system in a reasonable time period. Therefore, the above time frames shall be strictly enforced. However, should the Owner believe there are circumstances beyond his control a written request for a time extension shall be made to the County Engineer at least 14 calendar days prior to the expiration of the Maintenance Guarantee. The County Engineer will forward the request for an extension to the County Commissioners for consideration along with a recommendation. If this extension is

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approved, an extension to the Maintenance Guarantee shall be provided.

506 RELEASE OF MAINTENANCE GUARANTEE

The maintenance guarantee will be released upon acceptance by the County Commissioners.