

THE EFFECTIVE DATE OF THIS RESOLUTION IS FEBRUARY 6, 2014

RESOLUTION NO. 14-01  
(Repealing and Replacing Resolution No. 13-25)

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

Re: Acceptance of Surety Bonds to Guarantee Developer  
Funded and Constructed Public Improvements

BACKGROUND

On September 1, 2011, the Board of County Commissioners (BOCC) adopted Resolution No. 11-22, which permitted Frederick County to accept surety bonds in lieu of letters of credit or escrow accounts as guarantees for certain developer funded and constructed public improvements. Resolution No. 11-22 noted the following exceptions: (a) sediment and erosion control improvements; (b) non-dedicated stormwater management facilities; and (c) water and/or sewer facilities where the County contracts with the contractor on behalf of the developer for construction of the facilities.

Effective on January 1, 2014, the BOCC adopted Resolution No. 13-25, which replaced Resolution No. 11-22 and permitted the use of surety bonds for sediment and erosion control improvements and non-dedicated stormwater management facilities in accordance with the criteria set forth in Resolution No. 13-25.

The BOCC recently became aware that some of the provisions of Resolution No. 13-25 are inconsistent with State law. Specifically, §12-102 of the Insurance Article of the Maryland Code provides that, if the Maryland Insurance Commissioner has formally approved an entity as an underwriter of surety bonds in Maryland and has issued a certificate of authority to transact business within Maryland, the County cannot require further proof or qualification regarding solvency, credit or financial sufficiency before accepting that entity's bonds.

Therefore, this Resolution is hereby adopted to: 1) correct that concern, 2) make certain clarifying changes to the procedural language, and 3) repeal and replace Resolution No. 13-25.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Frederick County, Maryland that surety bonds for developer-funded and constructed improvements may be accepted in accordance with the following criteria:

1. Surety bonds may be accepted as guarantees for completion of developer funded and constructed improvements, with the exception of water and/or sewer facilities where the County contracts with the contractor on behalf of the developer for construction of these facilities.

2. Except as provided in Section 3 below, the amount to be guaranteed by the surety bond shall be one hundred percent (100%) of the estimated base cost of the improvements (including estimated costs of inspection) as approved by Frederick County, plus a fifteen percent (15%) contingency. After construction of the improvements has been completed and accepted by the County, the existing bond may be reduced to, or the developer may post a new surety bond for, the fifteen percent (15%) contingency (or such other amount as may be specified in the performance agreement or public works agreement). The reduced or new surety bond shall remain in effect until the expiration of all required warranty periods. Interim bond reductions, as various phases of the work have been completed, may be approved by Frederick County, in its sole discretion, with the exception of water and sewer improvements.

3. For developer funded and constructed improvements related to sediment and erosion control or non-dedicated stormwater management facilities, the amount to be guaranteed by the surety bond shall be the County-approved estimated base costs of the improvements minus the full amount of the line item estimated cost (if any) for permanent stabilization. An additional guarantee for fifteen percent (15%) of the County-approved estimated base costs of the improvements, plus

the aforementioned amount for permanent stabilization, must be provided via a letter of credit or escrow account payment. After these improvements have been completed and inspected by the County, including the receipt and approval by Frederick County of as-built plans (if required), the bond and the guarantee amount for permanent stabilization may be released. The fifteen percent guarantee shall be released after the completion of all obligations under the performance agreement. Interim bond reductions, as various phases of the work have been completed may be approved by Frederick County, in its sole discretion.

4. A surety bond will be accepted only on the form issued by or acceptable to the County, from sureties that meet the applicable requirements listed below. All agreements and surety bonds will be governed by and interpreted under Maryland law. A surety bond will be acceptable only if the bonding company meets the applicable requirements set forth in subsections (a), (b) and (c) below, at all times the surety bond is in effect:

(a) All bonding companies must provide evidence of a current and valid Certificate of Authority from the Maryland Insurance Administration.

(b) If the bonding company is not a Maryland corporation or company, it must provide evidence of the following additional requirements:

- (1) A Maryland registered agent; and
- (2) Consent to jurisdiction in the Circuit Court for Frederick County, Maryland, in the event of litigation.

(c) If the bonding company utilizes a co-surety, the co-surety must provide evidence of the following:

- (1) A Maryland registered agent; and
- (2) Consent to jurisdiction in the Circuit Court for Frederick County, Maryland, in the event of litigation; and

(3) A current and valid Certificate of Authority from the Maryland Insurance Administration.

5. Should the bonding company fail to meet any of the applicable requirements under Section 4 at any time the surety bond is in effect, the applicant shall be required to provide a substitute surety bond, within thirty days of receipt of notice from the County, from a bonding company that meets the requirements of Section 4.

6. In no event shall the total amount of surety provided by any single bonding entity exceed Ten Million Dollars (\$10,000,000).

7. Exceptions to the requirements in this Resolution may be granted only by approval of the BOCC.

8. The BOCC may, in its sole and absolute discretion, at the time that a financial guarantee is required, refuse to accept surety bonds for a particular project.


AND BE IT FURTHER RESOLVED, that this Resolution will become effective on February 6, 2014;

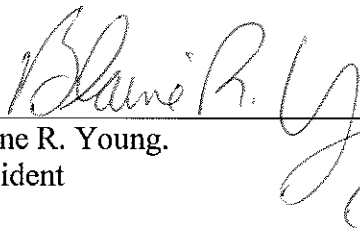
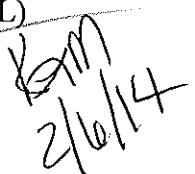
AND BE IT FURTHER RESOLVED THAT Resolution No. 13-25 is hereby repealed and replaced with this Resolution.

The undersigned hereby certifies that this Resolution was approved and adopted on this 6<sup>th</sup> day of February, 2014.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

  
\_\_\_\_\_  
Lori L. Depies, CPA  
County Manager

By:  (SEAL)  
\_\_\_\_\_  
Blaine R. Young.  
President  
  
KRM  
2/6/14