

CHAPTER 5. FINANCIAL ASSURANCE

A. FINANCIAL GUARANTEE REQUIRED

Before any Permit is issued, the Permit Authority may, at its discretion, require the applicant to file a guarantee of financial security deemed adequate by the Permit Authority and payable to the County. The purpose of the financial guarantee is to assure the following:

1. Faithful performance of the requirements of the Permit and applicable Regulations.
2. That the Project or activity is completed and, if applicable, that the development area is properly reclaimed.
3. That the applicant performs all mitigation requirements and Permit conditions in connection with the construction, operation and termination of the Project.
4. That increases in public facilities and services necessitated by the construction, operation and termination of the Project are borne by the permit holder.
5. That shortfalls to County revenues are offset in the event that the Project is suspended, curtailed or abandoned.

B. AMOUNT OF GUARANTEE

In determining the amount of the financial guarantee, the County shall consider the following factors:

1. The estimated cost of completing the Project or activity and, if applicable, of returning the development area to its original condition or to a condition acceptable to the County.
2. The estimated cost of performing all mitigation requirements and Permit conditions in connection with the construction, operation, and termination of the Project, including:
 - a. The estimated cost of providing all public service necessitated by the Project until two (2) years after the Project ceases to operate; and
 - b. The estimated cost of providing all public facilities necessitated by the Project until all such costs are fully paid.

C. ESTIMATE

1. Estimated cost shall be based on the applicant's submitted cost estimate plus the Permit Authority's estimate of the additional cost to the County of bringing personnel and equipment to accomplish any unperformed purpose of the financial guarantee. The Permit Authority shall consider the duration of the development or activity and compute a reasonable projection of increases due to inflation. The Permit Authority may require, as a condition of the permit, that the financial security be adjusted upon receipt of bids to perform the requirements of the Permit and these Regulations.
2. Revisions to the estimate may be required based on information available to the County.

D. FORM OF GUARANTEE

1. The guarantee may be in the form of cash, federally-issued certificates of deposit, irrevocable letters of credit issued by a bank acceptable to the Board, or any other form, or combination of forms, established by the Board.

2. At least ten percent (10%) of the amount of the financial guarantee must be in cash deposited with the County's treasurer and placed in an earmarked escrow account mutually agreeable to the Board and applicant.
3. Financial guarantees in the form of performance bonds shall provide a financial guarantee that the permit holder will fulfill all obligations under the terms of the Permit. The surety issuing a performance bond shall have at least an "A" rating from Moody's or an equivalent rating as designated by a nationally recognized rating firm, and shall additionally be included in the most recent listing of companies holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, Department of Treasury, Circular 570 (or its successor).
4. The surety issuing an irrevocable letter of credit must maintain an office or corresponding bank within fifty (50) miles of Georgetown, and shall have a current rating of 125 or better from IDS Financial Services, Inc., or otherwise be approved by the County's Director of Finance.
5. The permit holder shall not have greater than a twenty percent (20%) ownership or managerial control over the surety issuing any financial guarantee.

E. RELEASE OF GUARANTEE

1. The financial guarantee may be released only when:
 - a. The Permit has been surrendered to the Permit Authority before commencement of any physical activity on the site of the permitted development or activity;
 - b. The development or activity has been abandoned and the site has been returned to its original condition or to a condition acceptable to the County in accordance with criteria adopted by the County for the matter of state interest for which the Permit is being granted;
 - c. The Project has been satisfactorily completed;
 - d. A phase or phases of the Project have been satisfactorily completed allowing for partial release of the financial guarantee consistent with Project phasing and as determined appropriate by the Board of County Commissioners; or
 - e. The applicable guaranteed conditions have been satisfied.

F. CANCELLATION OF THE GUARANTEE

Any security may be canceled only upon receipt of the Permit Authority's written consent, which may be granted only when such cancellation will not detract from the purposes of the security.

G. FORFEITURE OF GUARANTEE

1. If the Permit Authority determines that the financial guarantee should be forfeited because of any violation of the Permit, mitigation requirements, conditions or any applicable Regulations adopted by the Board, it shall provide written notice to the surety and the permit holder that the financial guarantee will be forfeited unless the permit holder makes written demand to the Permit Authority within thirty (30) days after permit holder's receipt of notice, requesting a hearing before the Permit Authority. If no demand is made by the permit holder within said period, then the Permit Authority shall order the financial guarantee forfeited.

2. The Permit Authority shall hold a hearing within thirty (30) days after the receipt of the demand by the permit holder. At the hearing, the permit holder may present for the consideration of the Permit Authority statements, documents, and other information with respect to the alleged violation. At the conclusion of the hearing, the Permit Authority shall either withdraw the notice of violation or enter an order forfeiting the financial guarantee.
3. A financial guarantee shall be deemed forfeited if it is not renewed in a form acceptable to the Board not later than fifteen (15) business days before its expiration date.
4. The deposit described above may be used by the Permit Authority of the County in the event of the default or alleged default of the permit holder, only for the purposes of recovering on the surety or fulfilling the permit obligation of the permit holder. In the event that the ultimate reviewing court determines that there has been a default by the permit holder, that portion of any moneys expended by the County from the escrow funds relating to such default shall be replaced in the escrow account by the Board immediately following such determination. The County may arrange with a lending institution, which provides money for the permit holder, that said institution may hold in escrow any funds required for said deposit. Funds shall be disbursed out of escrow by the institution to the County upon County's demand for the purpose specified in this section.
5. If the forfeiture results in inadequate revenue to cover the costs of accomplishing the purposes of the financial guarantee, the County's attorney shall take such steps as deemed proper to recover such costs where recovery is deemed possible including costs and attorney fees.

H. SUBSTITUTE GUARANTEE

If the license to do business in Colorado of any surety upon a security filed pursuant to this regulation is suspended or revoked by any State authority, then the applicant shall within thirty (30) days after receiving notice thereof, substitute a good and sufficient surety licensed to do business in Colorado. Upon failure of the permit holder to make substitution within the time allowed, the Board of County Commissioners shall suspend the Permit until proper substitution has been made.