



Performance Bond

This is one of several tools designed to assist local stormwater managers with the development of their post-construction stormwater program. The tools are a companion to the Post-Construction Guidance Manual (www.cwp.org/postconstruction). The following tools are available:

For more information on the Post-Construction Guidance Manual, contact the Center for Watershed Protection, 8390 Main Street, 2nd floor, Ellicott City, MD 21046, 410-461-8323
center@cwp.org
www.cwp.org.

Tool 1: Post-Construction Stormwater Program Self-Assessment

Tool 2: Program & Budget Planning Tool

Tool 3: Post-Construction Stormwater Model Ordinance

Tool 4: Codes & Ordinance Worksheet (COW)

Tool 5: Stormwater Manual Builder

Tool 6: Plan Review, BMP Construction, and Maintenance Checklists

Tool 7: Performance Bonds

Tool 8: BMP Evaluation Tool

Users' Guide to the Post-Construction Performance Bond Tool

USERS' GUIDE TO THE POST-CONSTRUCTION PERFORMANCE BOND TOOL

Performance bonds are financial tools used to guarantee that construction work affecting the public interest is performed in an appropriate manner and in accordance with appropriate codes and ordinances. In a typical stormwater management performance bond, a site developer or property owner guarantees that construction of stormwater practices will be completed in accordance with the terms of a stormwater ordinance and an approved stormwater management design plan. Should the site developer or property owner fail to initiate or complete construction of the stormwater practices according to the terms of the ordinance and approved design plan, the performance bond ensures that enforcement action can be taken by the jurisdiction at the site developer's or property owner's expense.

Fundamentally, a performance bond is a legal contract between the jurisdiction and the site developer or property owner. Depending on a jurisdiction's bonding requirements and bond forms, there may be up to three parties named in the contract, including:

- **Principal:** The party responsible for completing the requirements of the contract according to the approved stormwater management design plan and stormwater ordinance. The Principal is typically either the property owner or a site developer with appropriate authority to act on the property owner's behalf.
- **Guarantor:** The party providing the security or collateral in the form of a Cashier's Check, Letter of Credit, or Surety Bond. Depending on the form of security or collateral provided, the Guarantor may or may not be explicitly named in the contract.
- **Beneficiary:** The party receiving the benefits should the Principal fail to comply with the requirements of the stormwater management design plan and stormwater ordinance. The jurisdiction within which the project is taking place is always the Beneficiary. Should the Principal fail to comply with the stormwater management design plan and/or stormwater ordinance, the Beneficiary would receive up to the full amount of the Bond from the Guarantor in a timely manner.

PERFORMANCE BOND PROCESS

The total dollar value of a performance bond is usually calculated as a percentage (typically 100%) of the estimated construction cost of the stormwater practice(s). Depending on the jurisdiction, either the Stormwater Authority or the applicant is responsible for determining the total required dollar value of the performance bond, based on the estimated construction cost. The estimate can be completed using cost information from past projects or from established cost estimating tools, such as the RS Means manuals. See the **Performance Bond Cost Estimating Worksheet**.

Once a performance bond has been submitted by a site developer or property owner, it is reviewed and approved by the jurisdiction. Typically, the performance bond for a particular project is submitted at the same time as the stormwater management design plan and must be accepted before the stormwater management design plan is approved.

DURATION FOR PERFORMANCE BONDS

Performance bonds should remain in full force and effect for the full duration of a site development or redevelopment project. They are usually released within a defined period of time following project completion, typically within 60 days of issuance of a Stormwater Certificate of Completion by the Stormwater Authority or final acceptance of the stormwater

management practices by the Stormwater Authority. A local stormwater manager may also wish to adopt provisions for a partial pro-rata release of the performance bond at the completion of various stages or phases of construction

A local stormwater manager may also wish to extend the duration of a performance bond to cover an additional reasonable period of time (e.g. an additional 90 days) during which the stormwater BMPs are tested during storm events and initial maintenance activities are monitored. Alternatively, a local stormwater manager may require the issuance of a maintenance bond for site development and redevelopment projects. Similar in legal structure to a performance bond, a maintenance bond is a guarantee that the site developer, property owner, or responsible maintenance party will maintain a site's stormwater practices for a fixed period of time (e.g., two years). At the end of the period for the maintenance bond, the jurisdiction may inspect the system and extend the maintenance bond requirement if all of the original contract stipulations are not met.

PERFORMANCE BOND TOOL

To those unfamiliar with contract law and legal terminology, determining what should or shouldn't be included in a performance bond program can be challenging. To eliminate some of the confusion and help local stormwater managers develop a performance bond program, this **Performance Bond Tool** was developed. The tool includes:

- Basic introduction to performance bonds
- Sample performance bond forms
- Sample performance bond instructions
- Sample bond estimating worksheet (Excel format)

Please note that this **Performance Bond Tool** is only intended to provide local stormwater managers with basic information regarding performance bonds. It does not contain all of the guidance necessary to create and administer a local performance bond program, which requires expertise in contract law and familiarity with general legal terminology. Therefore, it is highly recommended that local stormwater managers enlist the help of a qualified attorney to assist in the development of a local performance bond program. At the very least, all performance bond procedures and standard forms should be reviewed and approved by an attorney before they are put into use. Links to several example performance bond programs can be found in the **Manual Building Tool**.

Stormwater Management Performance Bond (Surety)

BOND NUMBER _____

FOR CITY/TOWN/VILLAGE USE ONLY

Project Name: _____

File Number: _____

**CITY/TOWN/VILLAGE OF [NAME OF CITY/TOWN/VILLAGE]
STORMWATER MANAGEMENT PERFORMANCE BOND
(SURETY)**

KNOW ALL MEN BY THESE PRESENTS, that _____
_____, as Principal, and _____
_____, a corporation in the State of _____
_____, duly authorized as a surety company to transact business in the State of _____
_____, as Surety, are held and firmly bound unto the [City/Town/Village]
of [Name of City/Town/Village], a municipal corporation under the laws of the State of
[State], as Obligee, in the amount of _____
Dollars (\$ _____), for the payment whereof
Principal and Surety unconditionally bind themselves, their heirs, executors, administrators, successors and
assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal desires to engage in land development or redevelopment activity in accordance
with the terms of [Chapter/Section/Ordinance] [No.] [of the Code] of the [City/Town/Village]
of [Name of City/Town/Village] on property owned by _____
_____ and described as _____
_____ as shown on the plans entitled _____
prepared by _____
and dated _____.

AND WHEREAS, the Principal has submitted to the [Name of Stormwater Authority]
for approval a Stormwater Management Design Plan for the above described land
development or redevelopment activity, that satisfies the requirements of [Chapter/Section/Ordinance]
[No.] [of the Code] of the [City/Town/Village] of [Name of City/Town/Village],
which is by reference made a part of this Bond and is hereinafter referred to as "the Stormwater
Management Design Plan".

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if approval is granted by the
[Name of Stormwater Authority] for the above
described Stormwater Management Design Plan, and, if Principal shall promptly and faithfully perform the
activities required under the Stormwater Management Design Plan and all changes thereof, and, if Principal
shall fully secure and protect the Obligee from all liability and from all loss or expense of any kind, including
all court costs and attorneys' fees made necessary or arising from the failure, refusal or neglect of Principal
to comply with all obligations assumed by Principal in connection with the performance of activities required
under the Stormwater Management Design Plan and all changes thereof, then this obligation shall be null

and void; otherwise it shall remain in full force and effect.

Surety hereby stipulates and agrees that no extension of time, alteration of or addition to the above described Stormwater Management Design Plan shall in any way affect its obligation under this Bond and Surety does hereby waive notice of any extension of time, alteration of or addition to the above described Stormwater Management Design Plan.

Whenever Principal shall fail and is declared by the Obligee to have failed to perform the activities required under the Stormwater Management Design Plan and all changes thereof, the Obligee having performed Obligee's obligations under the terms of [Chapter/Section/Ordinance] [No.] [of the Code] of the [City/Town/Village] of [Name of City/Town/Village] ;

- (1) Surety, upon demand of Obligee, may take over and promptly complete the activities required under the Stormwater Management Design Plan and all changes thereof.
- (2) Obligee, after reasonable notice to Surety, or without notice to Surety in case of emergency, may arrange to complete the activities required under the Stormwater Management Design Plan and all changes thereof. Surety shall reimburse Obligee such reasonable expenses incurred during this process; however, in no event shall the aggregate liability of Surety exceed the amount of this Bond.

No right of actions shall accrue on this Bond to or for the use of any person or corporation other than the Obligee named herein.

This bond shall terminate at the expiration of sixty (60) days from the date of issuance of a Stormwater Certificate of Completion by the [Name of Stormwater Authority] ; however, such termination shall not discharge said Surety from any liability already accrued under this obligation.

CERTIFICATION

Signed and sealed this _____ day of _____, 20 _____.

PRINCIPAL

SURETY

By _____
SIGNATURE

By _____
SIGNATURE

Title _____

Title _____

Address _____

ATTEST (Corporate Secretary)

(ATTACH SURETY'S POWER OF ATTORNEY)

ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

I, _____ a Notary Public in and for said county, do hereby certify that
_____ who is personally known to me to be the same person
whose name is subscribed to the foregoing instrument on behalf of SURETY, appeared before me this day
in person and acknowledged respectively, that he/she signed, sealed, and delivered said instrument as
his/her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 20 _____.

NOTARY SIGNATURE My commission expires _____

APPROVAL

APPROVAL AS TO FORM

[City/Town/Village] Attorney Date

ACCEPTANCE

Authorized Agent of Stormwater Authority Date

Stormwater Management Performance Bond (Non-Surety)

BOND NUMBER _____

FOR CITY/TOWN/VILLAGE USE ONLY

Project Name: _____

File Number: _____

**CITY/TOWN/VILLAGE OF [NAME OF CITY/TOWN/VILLAGE]
STORMWATER MANAGEMENT PERFORMANCE BOND
(NON-SURETY)**

KNOW ALL MEN BY THESE PRESENTS, that _____, as Principal, is held and firmly bound unto the _____, as Obligee, in the amount of _____ Dollars (\$ _____), for the payment whereof Principal unconditionally binds itself, its heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. To secure the above described payment, Principal has provided the Obligee with the following security, in the full amount of this Bond;

- ☐ Irrevocable Letter of Credit No. _____ issued by _____
- ☐ Cashier's Check No. _____

WHEREAS, the Principal desires to engage in land development or redevelopment activity in accordance with the terms of [Chapter/Section/Ordinance] [No.] [of the Code] of the [City/Town/Village] of [Name of City/Town/Village] on property owned by _____ and described as _____

as shown on the plans entitled _____ prepared by _____ and dated _____.

AND WHEREAS, the Principal has submitted to the [Name of Stormwater Authority] for approval a Stormwater Management Design Plan for the above described land development or redevelopment activity, that satisfies the requirements of [Chapter/Section/Ordinance] [No.] [of the Code] of the [City/Town/Village] of [Name of City/Town/Village], which is by reference made a part of this Bond and is hereinafter referred to as "the Stormwater Management Design Plan".

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if approval is granted by the [Name of Stormwater Authority] for the above described Stormwater Management Design Plan, and, if Principal shall promptly and faithfully perform the activities required under the Stormwater Management Design Plan and all changes thereof, and, if Principal shall fully secure and protect the Obligee from all liability and from all loss or expense of any kind, including all court costs and attorneys' fees made necessary or arising from the failure, refusal or neglect of Principal to comply with all obligations assumed by Principal in connection with the performance of activities required

under the Stormwater Management Design Plan and all changes thereof, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever Principal shall fail and is declared by the Oblige to have failed to perform the activities required under the Stormwater Management Design Plan and all changes thereof, the Oblige having performed Oblige's obligations under the terms of [Chapter/Section/Ordinance] [No.] [of the Code] of the [City/Town/Village] of [Name of City/Town/Village], the above described security shall be forfeited to the Oblige to ensure the completion of the activities required under the Stormwater Management Design Plan and all changes thereof. No right of actions shall accrue on this Bond to or for the use of any person or corporation other than the Oblige named herein.

This Bond shall terminate at the expiration of sixty (60) days from the date of issuance of a Stormwater Certificate of Completion by the [Name of Stormwater Authority]; however, such termination shall not discharge said Principal from any liability already accrued under this obligation.

CERTIFICATION

Signed and sealed this _____ day of _____, 20 _____.

PRINCIPAL

By _____
SIGNATURE

Title _____

WITNESS

ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

I, _____ a Notary Public in and for said county, do hereby certify that
_____ who is personally known to me to be the same person
whose name is subscribed to the foregoing instrument on behalf of PRINCIPAL, appeared before me this
day in person and acknowledged respectively, that he/she signed, sealed, and delivered said instrument as
his/her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 20 _____.

NOTARY SIGNATURE My commission expires _____

APPROVAL

APPROVAL AS TO FORM

[City/Town/Village] Attorney Date

ACCEPTANCE

Authorized Agent of Stormwater Authority Date

Irrevocable Letter of Credit

IRREVOCABLE LETTER OF CREDIT
(On Bank or Lending Institution Letterhead)

Letter of Credit Number: _____

Date: _____

[City/Town/Village] of [Name of City/Town/Village]
[Street Address]
[City, State, Zip Code]

Attn: [Authorized Agent of Stormwater Authority]

Gentlemen,

We hereby extend our irrevocable credit to the [City/Town/Village] of [Name of City/Town/Village], a municipal corporation under the laws of the State of [State], in the amount of _____ Dollars (\$ _____), to guarantee that land development or redevelopment activity on property owned by _____ and described as _____ as shown on the plans entitled _____ prepared by _____ and dated _____, will be promptly and faithfully completed by _____ in accordance with the terms of [Chapter/Section/Ordinance] [No.] [of the Code] of the [City/Town/Village] of [Name of City/Town/Village].

We hereby guarantee that the above described amount shall be available upon demand by the [City/Town/Village] of [Name of City/Town/Village], available by your draft drawn on site, marked "Drawn under Letter of Credit Number _____", and accompanied by this Letter of Credit and a signed statement by an authorized agent of the [Name of Stormwater Authority] certifying that the Obligee has failed to perform the development or redevelopment activity in accordance with the terms of [Chapter/Section/Ordinance] [No.] [of the Code] of the [City/Town/Village] of [Name of City/Town/Village]. Partial and multiple draws will be accepted and any draft may draw up to the entire remaining balance of this Letter of Credit.

The [City/Town/Village] of [Name of City/Town/Village] may submit its site drafts without the consent of _____ or any other party. Said drafts shall be duly honored upon presentation of documents as specified within this Letter of Credit.

This letter of credit shall terminate at the expiration of sixty (60) days from the date of issuance of a Stormwater Certificate of Completion by the [Name of Stormwater Authority].

Very truly yours,

BANK OR LENDING INSTITUTION

By _____
SIGNATURE

Title _____

Instructions for Stormwater Management Performance Bond

INSTRUCTIONS FOR STORMWATER MANAGEMENT PERFORMANCE BOND

GENERAL INSTRUCTIONS

- Allowable forms of performance bond securities include Surety Bonds (Insurance Company Bonds), Letters of Credit, and Cashier's Checks.
- The value of all performance bonds and accompanying securities will be 100% of estimated construction cost.
- All bond forms shall be submitted in triplicate (white, yellow, pink). Each form shall contain original signatures and original Notary Public acknowledgement.
- All completed forms shall be transmitted to the Stormwater Authority for processing. No stormwater permits will be issued until the bond forms are completed and accepted.
- Once received by the Stormwater Authority, all three copies of the completed bond forms will be forwarded to the [City/Town/Village] attorney (under an appropriate letter of transmittal), who will approve the documents as to form. Upon approval, the [City/Town/Village] attorney will keep the yellow copy and return the white and pink copies to the Stormwater Authority. The stormwater authority will retain the white copy. The applicant will be provided with the yellow copy.
- For Surety Bonds, the bond number shall be the Surety's bond number. For Non-Surety Bonds, the bond number shall be the project file number.

INSTRUCTIONS FOR SURETY BONDS

- Requires only the Surety bond form.
- The bond number shall be the Surety's bond number.
- Notary Public shall complete Acknowledgement section.

Principal (Applicant)

Paragraph 1

Principal shall enter name/corporation name.

Paragraph 2

Principal shall enter name of property owner upon which development or redevelopment activity will occur.

Principal shall enter brief description of development or redevelopment activity.

Principal shall enter title of engineering plans prepared for development or redevelopment activity.

Principal shall enter name of entity that prepared the engineering plans for the development or redevelopment activity.

Principal shall enter date of engineering plans.

Certification

Principal shall enter name/corporation name in certification section.

Principal (or representative) shall sign name in certification section.

Principal (or representative) shall enter title.

Attest (witness) shall sign name.

Surety

Header

Surety shall insert bond number in upper left-hand corner of first page.

Paragraph 1

Surety shall insert corporation name.

Surety shall insert state of incorporation.

Surety shall insert state within which the development or redevelopment activity will occur.

Certification

Surety shall enter date.

Surety shall enter corporation name.

Attorney-in-fact shall sign name and include title.

Attorney-in-fact shall include agency address

Surety shall furnish three (3) copies of Power of Attorney form; one for each bond form.

INSTRUCTIONS FOR NON-SURETY BONDS

- Requires the Non-Surety bond form and the appropriate form of security (letter of credit or cashier's check).
- For Non-Surety Bonds, the bond number will be the same as the project file number.
- Notary Public shall complete Acknowledgement section.

Principal (Applicant)

Paragraph 1

Principal shall enter name/corporation name.

Principal shall check appropriate form of security and enter appropriate information.

Paragraph 2

Principal shall enter name of property owner upon which development or redevelopment activity will occur.

Principal shall enter brief description of development or redevelopment activity.

Principal shall enter title of engineering plans prepared for development or redevelopment activity.

Principal shall enter name of entity that prepared the engineering plans for the development or redevelopment activity.

Principal shall enter date of engineering plans.

Certification

Principal shall enter name/corporation name in certification section.

Principal (or representative) shall sign name in certification section.

Principal (or representative) shall enter title.

Attest (witness) shall sign name.

INSTRUCTIONS FOR LETTER OF CREDIT

- Requires Letter of Credit from bank and Non-Surety bond form.
- Bank shall prepare Letter of Credit on bank's letterhead in accordance with format and requirements of standard form.
- Applicant shall complete Non-Surety bond form.

INSTRUCTIONS FOR CASHIER'S CHECK

- Requires Cashier's Check issued by bank and Non-Surety bond form.
- Applicant shall complete Non-Surety bond form.