



Updated 3/2/2023

**BONDING REQUIREMENTS AND PROCEDURES
STORMWATER CONTROL MEASURES (SCMS)**

ORDINANCE REQUIREMENT FOR BONDING:

6.1.12 Stormwater Control Measures (SCMs)

G) Performance Guarantees

- 1) As provided in a, b, and c below, in lieu of prior performance otherwise required by this Article, the Town may accept a performance guarantee that the improvements required by this Article will be constructed according to the Town's specifications at the owner's expense. Guarantees shall comply with the requirements of this Subsection G.
 - a) *Site plan:* In lieu of performance prior to the issuance of a temporary certificate of occupancy related to a site plan, a performance guarantee may be provided by the owner guaranteeing the installation of the improvements required by this Article. Improvements guaranteed under this Subsection a. shall be constructed by the owner within one (1) year after issuance of the temporary certificate of occupancy. All improvements required by this Article related to a site plan, shall be constructed prior to the issuance of a permanent certificate of occupancy.
 - b) *Phased site plan:* In lieu of performance prior to the issuance of a temporary or permanent certificate of occupancy related to a phased sited plan, a performance guarantee may be provided by the owner guaranteeing the installation of the improvements required by this Article for each phase. All improvements guaranteed under this Subsection b. shall be completed prior to the issuance of certificates of occupancy for 90% of the buildings within that phase, or within 60 days after receipt of written notice that the Stormwater Engineering Manager has determined that the contributing drainage area to the SCM is sufficiently stabilized to install the SCM, whichever occurs first.
 - c) *Subdivisions:* In lieu of performance prior to approval of a Final Plat for subdivisions, a performance guarantee may be provided by the owner guaranteeing the installation of the improvements required by this Article. All improvements guaranteed under this Subsection c. shall be completed prior to the issuance of certificates of occupancy for 90% of the lots within the subdivision. If the subdivision is to be phased, all improvements within or required for each phase shall be

completed prior to issuance of certificate of occupancy for 90% of the lots within that phase.

- 2) *Performance guarantee.* Performance guarantees shall be provided by the owner in the amount equal to 125% of the total construction cost of the required SCM. The total cost of the SCM(s) shall include all construction costs, including but not limited to, the cost of materials, landscaping, seeding and soil stabilization, grading, excavation and fill. The owner's estimate of this amount shall be submitted and is subject to review, modification, and approval by the Stormwater Engineering Manager. Such estimate shall be signed and sealed by a licensed North Carolina professional engineer, landscape architect, or land surveyor. Guarantees required by this Section may be in the form of a surety bond enforceable at the sole discretion of the Town and in the form prescribed by the Town, a letter of credit that meets the specifications of Sec. 7.5.17 *Irrevocable Letter of Credit in Lieu of Surety Bond or Other Guarantee of Performance*, certified check drawn in favor of the Town, or cash deposited with the Town.
- 3) *Duration of performance guarantee.* Performance guarantees shall run until the requirements in this Section 6.1.12 have been satisfied and the Stormwater Engineering Manager has given final approval of the required SCM(s).
- 4) *Default.* Failure of the owner to construct, repair, and if necessary, reconstruct the structural SCM(s) as required by this Section 6.1.12 is a default. Upon such default, the Town may obtain and use all or any portion of the performance guarantee necessary to complete the improvements.
- 5) *Costs in excess of performance guarantee.* In the event the Town calls the performance guarantee required by this Section and the reasonable cost of performance exceeds the amount of the performance guarantee the Town may collect the difference from the owner.

H) Maintenance and Maintenance Guarantees

- 1) *Duty to maintain and maintenance and defects guarantee.* The owner is responsible for all maintenance and repair of improvements required by this Article. In addition to the Operation and Maintenance Agreement required by UDO Sec. 6.1.12.D, with respect to a subdivision, a maintenance and defects guarantee shall be provided by the owner in the amount equal to 25% of the total construction cost of the SCM to ensure proper maintenance and repair prior to conveyance of the improvements to a property owners association. The maintenance and defects guarantee shall be submitted to the Town of Apex prior to SCM final approval. The owner's estimate of this amount shall be submitted and is subject to



review, modification, and approval by the Stormwater Engineering Manager. Such estimate shall be signed and sealed by a licensed North Carolina professional engineer, landscape architect, or land surveyor. Guarantees required by this Section may be in the form of a surety bond enforceable at the sole discretion of the Town and in the form prescribed by the Town, a letter of credit that meets the specifications of Sec. 7.5.17 *Irrevocable Letter of Credit in Lieu of Surety Bond or Other Guarantee of Performance*, certified check drawn in favor of the Town, or cash deposited with the Town.

- 2) *Duration of maintenance and defects guarantee for subdivision.* The maintenance and defects guarantee shall be in effect for one (1) year after the SCM final approval date issued by the Town's Stormwater Engineering Manager or designee.
- 3) *Default.* Upon failure of the owner to maintain the SCM as required, the Town may obtain and use all or any portion of the maintenance and defects guarantee necessary to continue maintenance of the structure.

BONDING REQUIRED FOR PLATTING AND COMMERCIAL CERTIFICATE OF OCCUPANCY:

All development projects within the Town of Apex will be required to place surety funds in the Town's favor prior to receiving the subdivision plat for residential or non-residential subdivisions or a Certificate of Occupancy for non-residential construction. The amount of these funds shall receive prior approval by the Water Resources Director or Public Works and Transportation Director, as appropriate (see "Approved Methods for Submitting Bond Amounts for Approval"). Under no circumstance will the Town of Apex accept a bond from multiple contractors on a project. The Town will accept a bond from a single contractor, for the entire approved amount, for the whole project. **All Letters of Credit submitted as security must have the issuing Bank's place of collection in the Triangle region in the State of North Carolina or be collectible via fax or overnight courier.**

DEFINITIONS RELATED TO BONDING:

Bond - A security instrument to guarantee work, typically issued by an insurance company

Letter of Credit - A security instrument to guarantee work, typically issued by a lending institution.

Bond Language - Specific wording placed within the contents of the security instrument that allows for drafts by the Obligee.

Obligee - Entity that is entitled to make drafts against the security instrument. This will be the Town of Apex.

Principal - Entity that is performing the guaranteed work. This will be the developer or contractor. Also referred to as the Applicant.

Performance Bond - A security instrument (Bond or Letter of Credit) in the Town's favor, which protects the Town from the developer's default to install improvements.



Maintenance Bond - A security instrument (Bond or Letter of Credit) in the Town's favor, which protects the Town from the developer's default to maintain the installed improvements.

Bond Amount - An amount supplied by the developer to be approved by the Stormwater Engineering Manager. The amount must be approved prior to the submittal of the guarantee.

APPROVED METHODS FOR SUBMITTING BOND AMOUNTS FOR APPROVAL:

Certified estimate prepared, signed, and sealed by a Licensed North Carolina professional engineer, landscape architect, or land surveyor.

Invoices or contract documentation from all sub-contractors. Invoices or contract documents must include construction costs for all SCM(s). Project Continuation Sheets are a valid form of contract documentation, provided the Continuation Sheets most nearly match the installed improvements.