



Updated 3/2/2023

BONDING REQUIREMENTS AND PROCEDURES

ORDINANCE REQUIREMENT FOR BONDING:

7.5.13 Performance Guarantee in Lieu of Construction Prior to Acceptance of Final Plat

In lieu of prior construction of the improvements required by this Article [Article 7 of the Unified Development Ordinance], the Town **may**, for the purpose of approving a Final Plat, accept a guarantee from the subdivider that such improvements will be carried out according to the Town's specifications at subdivider's expense.

- A) Such guarantee may be in the form of a surety bond enforceable at the sole discretion of 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.
- B) The subdivider shall install sufficient improvements to provide functional fire protection (with adequate street access and water supplies for the fire-fighting equipment).
- C) Such guarantee shall be in an amount of not less than 125% of the estimated cost of the construction of the required improvements. The developer shall submit an estimate of this amount subject to review, modification, and approval, which shall be by the Water Resources Director or Public Works and Transportation Director, as appropriate.
- D) Performance guarantees shall run for a period of one (1) year unless otherwise determined by the Water Resources Director or Public Works and Transportation Director, as appropriate.
- E) All required construction of improvements, less the final lift of asphalts and adjustments, shall be completed within one (1) year from approval of the Final Plat unless otherwise determined by the Water Resources Director of Public Works and Transportation Director, as appropriate.
- F) The obligation to maintain Performance Guarantees for the final lift of asphalt and utility adjustments is independent of the additional obligation to provide the Defects Guarantee.

7.5.14 Defects Guarantee

- A) The Town shall require a guarantee (enforceable at the sole discretion of the Town) for utility taps, curbs, gutters, street pavement, sidewalks, greenways, drainage facilities, water and sewer lines and other improvements against defects for one year. For residential subdivisions, a guarantee must remain in force in the Town's favor for a period of no less than the longer of 1) one year from the satisfactory completion of the performance inspection, or 2) until 75% of the residential lots in the bonded phase have been issued a Certificate of Occupancy. For non-residential subdivisions, the guarantees must remain in force in the Town's favor for a period of no less than the longer of 1) one year from the satisfactory completion of the performance inspection, or 2) until 50% of the lots in the bonded phase have been issued a Certificate of Occupancy. If during the defects period substantial corrections to the required improvements are made, then such corrections must be bonded for an additional one (1) year after acceptance by the Town. Substantial corrections are defined as follows:
- 1) *Roadway*. Total repair area exceeds 15% of the original construction.
 - 2) *Curb and gutter*. Total linear feet of repairs exceeds 15% of the original construction.
 - 3) *Water system*. The system experiences two (2) or more failures with the piping or any associated components.
 - 4) *Sewer system*. The system experiences two (2) or more failures with the piping or any associated components.
 - 5) *Storm water collection system*. The system experiences two (2) or more failures with the piping or any associated components.
- B) This guarantee shall be in the amount determined by the Water Resources Director or Public Works and Transportation Director, as appropriate.

7.5.15 Maintenance Guarantee

The Town shall secure from all subdividers a guarantee in which each subdivider shall agree to maintain the backfill and any improvements located thereon and therein and any ditch, which has been dug in connection with the installation of such improvements. Such guarantee shall be binding on the subdivider for a period of one (1) year after the acceptance of such improvements by the Town.

7.5.16 Final Plat Review Contingent on Execution of Guarantees

No Final Plat will be accepted for review by the Planning Director, Water Resources Director, or Public Works and Transportation Director unless such plat is in compliance with Sec. 14.1.5.C and Secs. 7.5.12 through 7.5.15.

7.5.17 Irrevocable Letter of Credit in Lieu of Surety Bond or Other Guarantee of Performance

Whenever by this Article a surety bond, certified check, or cash bond is required to guarantee performance by any person or to guarantee against defects, the security for said guarantee may be in the form of an irrevocable letter of credit from any commercial bank doing business in the state and addressed to the Town in the sum and the terms required by such bond, guarantee, or deposit.

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.**

BONDING REQUIRED FOR WARRANTY:

After satisfactory completion of a construction inspection of all development projects within the Town of Apex, the developer must provide a warranty guarantee in the Town's favor guaranteeing the improvements against defects and workmanship per 7.5.14 Defects Guarantee. The warranty guarantee must be in the amount of 25% of the construction costs for utility taps, curbs, gutters, street pavement, sidewalks, drainage facilities, water and sewer lines and other improvements. The amount of these funds must 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"). All projects must receive a final passing End of Warranty inspection (including final lift of asphalt, sidewalk installation, camera, hydrant and valve, street signs, etc.) to the satisfaction of the Town prior to guarantee release.

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 Inspection - An inspection completed by the Town of Apex to initiate the start of warranty. This inspection is typically performed after all utilities and roadways are constructed (less the final lift of asphalt).

Final Inspection - An inspection completed by the Town of Apex at the end of the Warranty Period. Upon satisfactory completion of the Final Inspection, the Town of Apex will accept the project and release the developer from his obligation to maintain the project. This inspection is typically performed after all utilities and roadways are found to be free of defects and the final lift of asphalt has been installed.

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.

Warranty Bond - A security instrument (Bond or Letter of Credit) in the Town's favor, which protects the Town from the developer's default to warranty the installed improvements. May be referred to as a Defects Bond.

Bond Amount - An amount supplied by the developer to be approved by the Water Resources Director and/or Public Works and Transportation Director, as appropriate. 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 professional engineer using the Town's **Infrastructure Bond Worksheet**. Estimate must include construction costs and material quantities for all public street improvements (including curbs, gutters, sidewalks and handicap ramps, pavement, and storm drainage), road widening, water and sewer facilities, and other improvements. Engineered Stormwater Control Measures (SCM) estimates shall be submitted separately.

COLLECTION AND DRAFTS:

The Town of Apex, at its discretion, will collect on a security instrument or request a draft for any of the following (*this list shall not be construed as being all inclusive*):

- 1) Failure of the developer/contractor to perform or correct defects in the project's construction.
- 2) Failure of the developer/contractor to renew or extend an expiring bond or letter of credit within the timeframe acceptable to the Town when the Town has not accepted the project.
- 3) When the developer/contractor causes damage to the Town's existing utilities and roadway system and refuses to make prompt and/or correct repairs.
- 4) Failure of the developer/contractor to perform construction in accordance with the *Town of Apex Standard Specifications and Standard Details* and/or at the Town's direction.