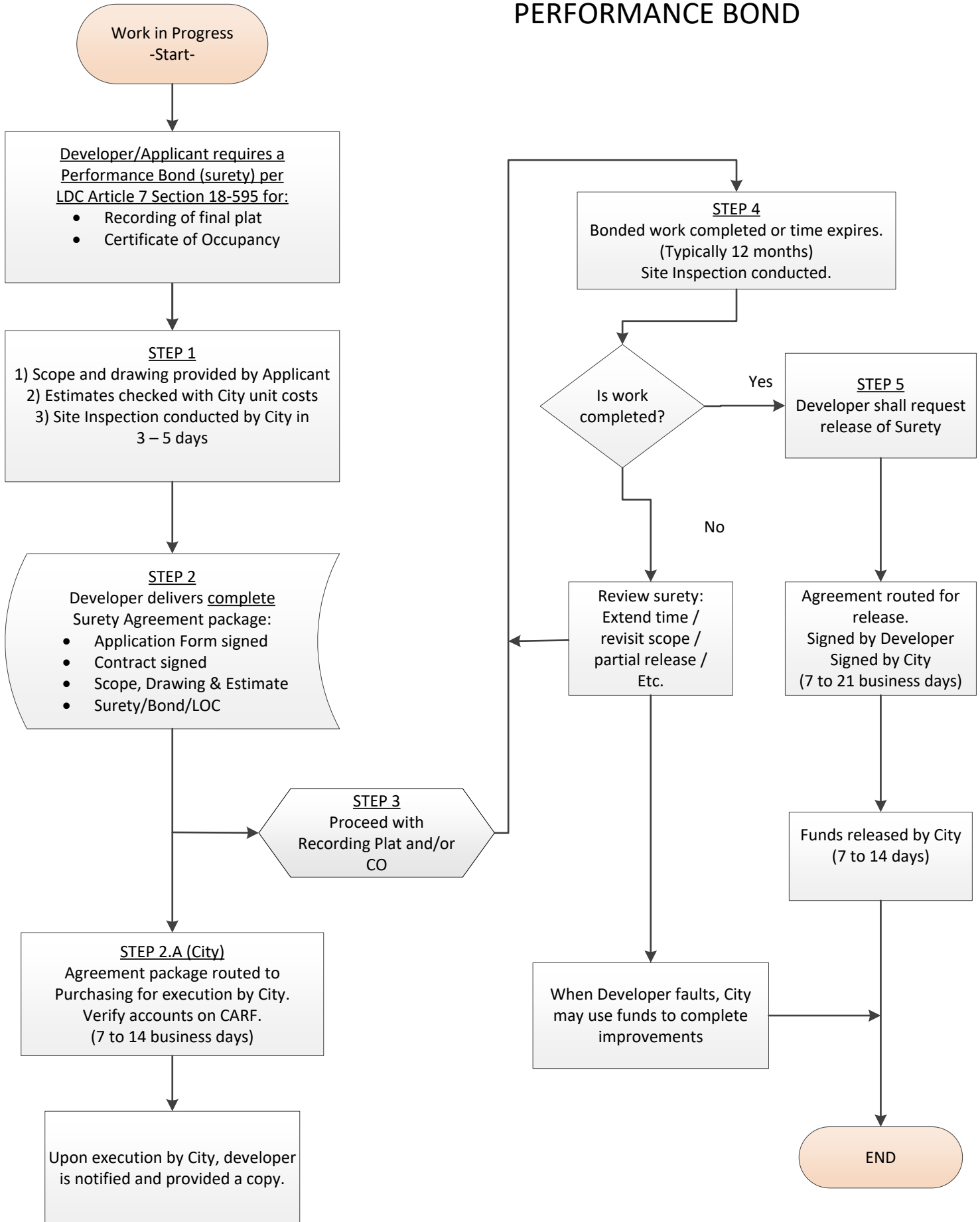


# City of Wilmington PERFORMANCE BOND





# APPLICATION SURETY/PERFORMANCE GUARANTEE

Engineering Division  
910-341-7807  
910-341-5881 fax  
Dial 711 TTY/Voice

### Submittal Checklist:

- |                          |  |                          |                       |
|--------------------------|--|--------------------------|-----------------------|
| <input type="checkbox"/> | Application Form: (fill-in below & sign) | <input type="checkbox"/> | Diagram or Plan sheet |
| <input type="checkbox"/> | Written justification and quantities     | <input type="checkbox"/> | Estimates             |

### Completed by Applicant:

**Name/Developer:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Project Name/Phase:** \_\_\_\_\_

**Description of work:** \_\_\_\_\_

**Location of work:** \_\_\_\_\_

**Anticipated Completion Date:** \_\_\_\_\_

**Applicant's Total Estimated Surety Amount: \$ \_\_\_\_\_.**

<b>Initial Payment Type: (circle)</b>	<b>Cash</b>	<b>Check</b>	<b>Irrevocable Letter-of-credit</b>	<b>Bond</b>	<b>Other</b>
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### Applicant's Acknowledgement

The undersigned applicant is an authorized representative of the organization listed above and has read and understands the applicable provisions of Wilmington City Code including Sec. 18-595; has submitted all required documents; and shall contact the City when work is completed. The Applicant acknowledges that the surety agreement requires execution by the Applicant and by the City Manager. Failure to comply with the applicable conditions within the specified time period may result in use of funds by City to complete the bonded work.

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

(Print)

\_\_\_\_\_

(Signature) \_\_\_\_\_ (Date)

**STATE OF NORTH CAROLINA**  
**NEW HANOVER COUNTY**

**SURETY AGREEMENT**

THIS SURETY AGREEMENT (hereinafter the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Wilmington, a  
(To be filled in by the city).  
North Carolina municipal corporation (hereinafter referred to as "City") and  
\_\_\_\_\_ ( hereinafter referred to as "Developer").

WHEREAS, Developer seeks to construct a Subdivision pursuant to Article 8 of §160D of the North Carolina General Statutes; and

WHEREAS, Developer is required to complete certain infrastructure and improvements pursuant to plans previously submitted to and accepted by City; and

WHEREAS, pursuant to § 160D-804.1, the City may enact certain ordinances to provide for performance guarantees to assure successful completion of required improvements and that such guarantees may be in the form of a surety bond, letter of credit or cash; and

WHEREAS, City has enacted Wilmington City Code § 18-595 outlining the standards required for the acceptance and deposit of a performance guarantee/surety; and

WHEREAS, in accordance with Wilmington City Code § 18-595, Developer has furnished an application with plans and bona fide cost estimates, which are attached hereto and incorporated herein, for the completion of the remaining improvements to the City's Engineering Division; and

WHEREAS, Developer and City desire to enter into this Agreement to clarify their respective rights and obligations with respect to the performance guarantee/surety offered by Developer.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed upon by the parties, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

1. The Developer agrees to complete, or cause to be completed, the remaining Improvements as set forth in the surety application and plans submitted to City, generally within twelve (12) months of the date of this Agreement in accordance with Wilmington City Code § 18-595.

2. Developer shall pay all costs for materials, labor, equipment and related expenses necessary to complete the Improvements. Developer covenants to pay for and be solely responsible for all liens, encumbrances, assessments and unpaid obligations resulting from and related to the Improvements.
3. Developer agrees that the Improvements shall be completed in compliance with City ordinances and in accordance with the specifications set forth in the plans on file with the City (as amended and approved by City). Improvements shall be installed and completed in a manner acceptable to the City. Developer acknowledges that the surety set forth herein shall be subject to, held and released in accordance with the provisions of Wilmington City Code § 18-595 as amended.
4. Developer agrees to provide a performance guarantee in the form of a Surety to the City in the following form:

\_\_\_\_\_ **Irrevocable Letter of Credit.** Following the execution of this Agreement, Developer shall issue and deliver to and maintain with the City a letter of credit from a federally insured banking institution with an office within the State of North Carolina in the amount of \$\_\_\_\_\_ (hereinafter the “Letter of Credit”). The Letter of Credit shall have an expiration date no sooner than 12 months following the execution of this Agreement. City may, in its sole discretion, agree to an extension of the Letter of Credit provided by the issuing bank.

**or**

\_\_\_\_\_ **Cash/Cash Equivalents Deposited with City.** Following the execution of this Agreement, Developer shall deposit with City cash or cash equivalents in the amount of \$\_\_\_\_\_ for the purposes set forth herein. Developer acknowledges that any interest earned on funds deposited with City shall not be refunded to the Developer and shall be retained by the City.

**or**

\_\_\_\_\_ **Surety Bond.** Following the execution of this Agreement, Developer shall cause to be issued a Surety Bond by and through an insurance or bonding company validly licensed within the State of North Carolina by the North Carolina Department of Insurance with City listed as obligee in the amount of \$\_\_\_\_\_ for the purposes set forth herein.

5. Developer acknowledges that if the Improvements are not installed within 12 months of the date of this Agreement, City shall have the absolute right to utilize the funds available under the surety for completion of the Improvements. If the amount of the surety is not sufficient to pay all costs, Developer shall immediately upon demand of City pay any costs in excess of the Surety necessary for the completion of the required Improvements. Any funds remaining upon completion of the Improvements shall be refunded to the Developer subject to the provisions of Wilmington City Code § 18-595.

6. For the purposes of this Agreement “costs” to complete the required Improvements shall include expenses for materials, labor and equipment necessary for the performance of this Agreement along with expenses for City personnel, labor time incurred from collection, bidding processes and other related expenses.
7. The Improvements as contemplated herein shall be considered completed only upon inspection and written approval of City.
8. Notice. All communications relating to this Agreement shall be through the parties' representatives. The parties may change representatives by written notice as provided herein. All notices under this Agreement must be in writing and given by certified mail, return receipt requested addressed as follows:

If to CITY:                    Anthony N. Caudle  
    City Manager  
    City of Wilmington  
    P.O. Box 1810  
    Wilmington, NC 28402-1810

If to DEVELOPER: Name \_\_\_\_\_  
                                  Organization Name \_\_\_\_\_  
                                  Address \_\_\_\_\_  
                                  Address \_\_\_\_\_  
                                  Phone Number \_\_\_\_\_

9. No Presumption. None of the Parties shall be considered the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein. This Agreement does not create an employee/employer relationship, joint venture, partnership or agency relationship between the parties.
10. Other Laws and Regulations. Developer will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. Developer will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Quality, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards,

regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. Developer specifically acknowledges and agrees that Developer, and any subcontractors it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. Developer shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R § 681.1 and in accordance with N.C.G.S. § 132-1.10 and § 75-65. The undersigned certifies that Developer is not listed on the Final Divestment List created by the N.C State Treasurer pursuant to Chapter 147 (the Iran Divestment Act) of the North Carolina General Statutes. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147, Developer shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

11. Construction of Agreement. The captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope or intent of this Agreement.
12. Severability. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.
13. Entire Agreement: Amendments. This Agreement, including any Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and no warranties, inducements, considerations, promises or other inferences shall be implied or impressed upon this Agreement that are not set forth herein. This Agreement shall not be altered or amended except in writing signed by all parties.
14. Immunity Not Waived. This Agreement is governmental in nature, for the benefit of the public, and is not intended to be for private profit or gain. City does not intend to waive its sovereign immunity by reason of this Agreement.
15. Governing Law. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard.

16. Binding Effect. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.
17. Time. Time is of the essence in this Agreement and each and all of its provisions.
18. Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.
19. Non-Waiver of Rights. It is agreed that either party's failure to insist upon the strict performance of any provision of this agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this agreement.
20. Assignment. No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above mentioned.

CITY OF WILMINGTON, NORTH CAROLINA

By: \_\_\_\_\_  
Anthony N. Caudle, City Manager

Date: \_\_\_\_\_

WITNESS:

\_\_\_\_\_  
Daryle L. Parker, Purchasing Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Gina Essey, Assistant City Attorney

FINANCE OFFICER'S CERTIFICATION STATEMENT

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Jennifer R. Maready, Finance Director

Project No. \_\_\_\_\_

Account No. \_\_\_\_\_

Amount \$ \_\_\_\_\_

Requisition/PO# \_\_\_\_\_

Federal ID # 56-6000239



IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed under their respective seals on the day and year first above written.

(SEAL)

**DEVELOPER:**

\_\_\_\_\_  
(Entity Name)

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_, \_\_\_\_\_  
Print Name Title

\_\_\_\_\_  
Secretary (if applicable)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for the state and county aforesaid, certify that \_\_\_\_\_ personally appeared before me this day and, being by me duly sworn, acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[SEAL]