



## Policy 09

### PERFORMANCE AND INDEMNITY AGREEMENT (or "Performance Bond")

The Performance and Indemnity Agreement (also commonly known as a performance bond or a construction bond) is a contract between the Principal and the City of Knoxville. The purpose of the agreement is to ensure that the Principal guaranteeing that the construction work effecting the public interest (streets and drainage) is performed in an appropriate manner. Performance bonds are authorized in the Knoxville Stormwater and Street Ordinance in Sections 22.5-5 and 22.5-28 (see Appendix B).

The three parties included in the agreement are:

1. **Principal:** The party responsible for completing the requirements of the contract according to the design plan approved by the Engineering Department. This person must be either the property owner or a site developer with appropriate authority acting on the property owner's behalf.
2. **Guarantor:** The party providing the collateral in the form of a Letter of Credit, a Surety Bond, or a Cashier's Check.
3. **Beneficiary:** The party receiving the benefits should the Principal not comply with the requirements of the Agreement. The beneficiary is always the City of Knoxville, who would receive the full amount of money in a timely manner.

The Performance and Indemnity Agreement is the City's assurance that it will be reimbursed for assuming the costs of uncompleted work not completed by the Principal according to the required specifications and approved plans. The city plans reviewer will determine the dollar amount of the bond based on the actual construction or potential remediation expenses, using guidelines in the Knoxville Stormwater Ordinance.

When the reviewing engineer determines that a Performance and Indemnity Agreement is required for a project, the party submitting the plans will be notified. It is that party's responsibility (and/or the Principal's responsibility) to provide the Stormwater Engineering Division with the following information by mail or fax:

1. Name, address, phone and fax numbers and the contact person for the Principal.
2. The form of guarantee (Cashier's Check, Letter of Credit, Surety Bond).
3. Name, address, phone and fax numbers and the contact person for the Guarantor.

Upon receipt of this information, the Stormwater Engineering Division will then prepare the bond document for execution. A typical blank template is included as part of this policy. It is the Principal's responsibility to obtain all signatures and notarizations. When the document has been fully executed, it is to be returned to the Stormwater Engineering Division with the original signatures and notary seals.

The initial Performance and Indemnity Agreement covers a one-year time period, which is sufficient for most types of site development projects. If the project is not completed according to the approved site plans and the city's standards within that year, the agreement must be extended.



Approximately 60 days before the expiration date, the Principal and Guarantor will be notified by a courtesy letter concerning the bond agreement. It is the Principal's responsibility to contact the Stormwater Engineering Division to request that the bond be released or extended. The letter contains the names of contact persons within the Stormwater Engineering Division to request either an extension or a release. A second letter is issued approximately 21 days before the expiration date; this timeframe generally requires immediate action by the Principal.

If the Principal feels that the project is complete, a city construction inspector will visit the site to determine if all requirements have been met. Basic general requirements for the release of a performance bond are:

1. Development certification for constructed items being bonded (i.e., accurate as-builts)
2. No erosion problems, structural deficiencies, unsafe conditions or maintenance issues
3. A good stand of grass within required areas

There may be other specific requirements for each project. The city construction inspector will notify the Principal whether all requirements have been met and whether the bond can be considered for release or must be extended. Occasionally, the city construction inspector will decide that the dollar amount of the bond may be reduced but still needs to be extended. At that time the inspector will notify both the Principal and the Stormwater Engineering Division secretary.

If an extension is required, the Principal must notify the Stormwater Engineering Division secretary of his intention. The secretary will prepare the document for execution, and then either mail or fax it to the Principal. It is the Principal's responsibility to submit the executed document, along with either an amended Letter of Credit (extending the expiration date) or an extension of the Surety Bond. If the extension agreement has not been received in the Stormwater Engineering Division within ten days of expiration, the initial stages of the collection procedures will be implemented.



## **PERFORMANCE BONDS - STEP BY STEP INSTRUCTIONS**

- I. The person submitting site development plans is notified by the city plans reviewer that a Performance and Indemnity Agreement is required. The city plans reviewer determines the dollar amount of the bond using standard estimates.
- II. The person submitting the plans (such as the contractor, developer, property owner, project manager, or design engineer) provides written information to the Stormwater Engineering Division listing the Principal, the Guarantor, and form of guarantee (including all contact information such as address and phone numbers).
- III. The Stormwater Engineering Division then prepares the bond document for execution and forwards it to the Principal/Guarantor.
- IV. The signed and notarized document must be returned with the original signatures and notary seals to the Stormwater Engineering Division secretary.
- V. The Principal notifies his financial institution that a letter of credit or cashier's check is required and that the original should be mailed to the Stormwater Engineering Division at the following address: City of Knoxville Engineering Department, 400 Main Street, Suite 480, Knoxville, TN 37902. Alternatively, the Principal may obtain a surety letter from his insurance company, which must be signed by the Principal and an authorized representative of the insurance company. The Principal shall mail the document with original signatures to the same address above (Suite 480), along with proper notarization by a licensed notary public.
- VI. Approximately 60 days prior to the expiration date of the Performance & Indemnity Agreement, the Principal and Guarantor are notified by letter that the agreement needs to be extended. A second notification letter is sent approximately 21 days prior to the expiration date, which is more urgent in nature. These letters are sent as a courtesy, and in no way is the City of Knoxville responsible for reminding the Principal of any expiration dates connected with bonds, site development permits, or the construction process in general.
- VII. It is the Principal's responsibility to notify the Stormwater Engineering Division secretary whether an extension agreement is requested, or that the project is complete and needs to be inspected. It is the Principal's responsibility to contact the city construction inspector in preparing for final inspections and punchlist items.
- VIII. If the city construction inspector determines that the project is complete and that all necessary documentation has been approved by the Stormwater Engineering Division, a Release Document will be prepared and signed by the City Engineering Department with executed copies to be mailed to the Principal and the Guarantor. At this time the Principal has no further responsibility for administering project construction for items that affect the general public and welfare (as far as the Stormwater Engineering Division is concerned).
- IX. If the city construction inspector determines that an extended agreement is required, the Principal must contact the Stormwater Engineering Division to prepare the Extension agreement document and forward it to the Principal for execution. The bond amount shall be unchanged if a bond reduction has not been approved by the Stormwater Engineering Division. The Principal must also notify his bank or insurance institution to provide an amended Letter of Credit or Surety Bond, extending the expiration date to agree with the Extension Agreement.



THIS DOCUMENT IS A  
BLANK TEMPLATE  
USED BY STORMWATER  
ENGINEERING DIVISION  
IN PREPARING A BOND.

## PERFORMANCE AND INDEMNITY AGREEMENT

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_,  
\_\_\_\_\_, Knoxville, Tennessee 379\_\_\_, PRINCIPAL, is held and firmly  
bound unto the CITY OF KNOXVILLE in the sum of \_\_\_\_\_ THOUSAND DOLLARS AND  
NO/100 (\$\_\_\_\_\_), guaranteed in the form of Letter of Credit Number \_\_\_\_\_ issued by  
\_\_\_\_\_ to ensure proper grading, construction, and drainage of  
\_\_\_\_\_, located at \_\_\_\_\_, CLT Number  
\_\_\_\_\_. The construction allowed by the issuance of this permit includes  
\_\_\_\_\_  
\_\_\_\_\_ to conform with City of Knoxville specifications as determined and  
approved by the Department of Engineering.

As a condition of the issuance of this permit, \_\_\_\_\_ hereby  
covenants and agrees that all work being performed on the above described property shall be  
performed in a workmanlike manner, shall be completed on or before \_\_\_\_\_, 2003, and  
shall conform with the site and drainage plans reviewed and approved by the Department of  
Engineering, all applicable provisions of the Knoxville City Code, and adopted regulations of the  
Engineering Department.

\_\_\_\_\_, further agrees to maintain all public streets,  
sidewalks, and right-of-ways and downstream drainage facilities in the condition that existed  
prior to construction.

If the work required in the permit is not completed in accordance with the approved plans  
to the satisfaction of the Engineering Department, or if the street, right-of-ways and downstream  
drainage facilities are not maintained to their preconstruction condition to the satisfaction of the  
Engineering Department, or if the work herein is not completed by \_\_\_\_\_, 2003, or within a  
written extension thereof granted by the Engineering Department, the Letter of Credit in the  
amount of \$\_\_\_\_\_ described herein shall be forfeited to the City of Knoxville to ensure the



satisfactory completion of the work required by the permit and the satisfactory repair and/or maintenance of the streets, sidewalks, right-of-ways and downstream facilities to preconstruction conditions.

\_\_\_\_\_, agrees that this Performance and Indemnity Agreement shall be governed by the laws of the State of Tennessee.

This the \_\_\_\_ day of \_\_\_\_\_, 2003.

PRINCIPAL:

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

CITY OF KNOXVILLE

APPROVED AS TO FORM:

\_\_\_\_\_  
VICTOR ASHE  
MAYOR

\_\_\_\_\_  
MICHAEL KELLEY  
LAW DEPARTMENT

\_\_\_\_\_  
CHRISTIAN THOMPSON  
ENGINEERING DEPARTMENT



PROPERTY OWNER:

\_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

THIS DOCUMENT IS A BLANK  
TEMPLATE USED BY  
STORMWATER ENGINEERING  
DIVISION IN PREPARING A  
NOTARY WITNESS FORM.

STATE OF TENNESSEE

COUNTY OF KNOX

Before me, \_\_\_\_\_, a Notary Public in and for the County  
and State aforesaid, personally appeared \_\_\_\_\_,  
with whom I am personally acquainted (or proved to me on the basis of satisfactory  
evidence), and who, upon oath, acknowledged himself to be the  
\_\_\_\_\_ (Title) of \_\_\_\_\_,  
the within named bargainor, a corporation, and that he/she being authorized so to do,  
executed the foregoing instrument for the purpose therein contained, by signing the name  
of the corporation by himself/herself as \_\_\_\_\_.

WITNESS, my hand and official seal at office this \_\_\_\_ day of  
\_\_\_\_\_, 2003.

MY COMMISSION EXPIRES:

\_\_\_\_\_

\_\_\_\_\_

NOTARY PUBLIC