

CHAPTER 39**STANDARDIZED FORMS FOR PERFORMANCE GUARANTEES****Authority**

N.J.S.A. 40:55D-53a.

Source and Effective Date

R.2001 d.245, effective July 16, 2001.

See: 33 N.J.R. 1247(b), 33 N.J.R. 2475(b).

Chapter Expiration Date

Chapter 39, Standardized Forms for Performance Guarantees, expires on July 16, 2006.

Chapter Historical Note

Chapter 39, Standardized Forms for Performance Guarantees, was adopted as R.2001 d.245, effective July 16, 2001. See: Source and Effective Date.

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SUBCHAPTER 1. STANDARDIZED FORMS**5:39-1.1 Performance surety bonds**

The standardized form of performance surety bond required by an approving authority pursuant to section 41 of P.L. 1975, c.291 (N.J.S.A. 40:55D-53) shall be as follows:

Block(s) _____ Lot(s) _____

PERFORMANCE SURETY BOND

We, _____, having offices at _____, _____, as principal, and _____, having offices at _____, _____, a corporation duly licensed to transact a surety business in the State of New Jersey, as surety, are indebted to the municipality of _____ in the county of _____, obligee, in the sum of \$_____, for which payment we bind ourselves and our respective heirs, legal representatives, successors, and assigns, jointly and severally.

On _____ (date), principal was granted approval by the _____ (approving authority) of the _____ of _____ for _____ (include reference to specific job and resolution of approval). The estimate by the municipal engineer of the cost of this work and the resolution of approval are attached hereto and made a part hereof.

Pursuant to municipal ordinance, adopted under authority of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the principal hereby furnishes a performance surety bond in the amount of \$_____ (not to exceed 120 percent of the cost of the improvements, as certified by the municipal engineer), written by _____, a surety licensed in the State of New Jersey, guarantying full and faithful completion of improvements approved by the approving authority, in lieu of completing the required improvements prior to the granting of final approval. This bond shall remain in full force and effect until such time as all improvements covered by the bond have been approved or accepted by resolution of the municipal governing body, except that in those instances where some of the improvements are approved or accepted by resolution of the governing body upon certification by the municipal engineer, partial release from the bond shall be granted in accordance with N.J.S.A. 40:55D-53. The amount of the bond remaining shall be sufficient to secure provision of the improvements not yet approved; provided, however, that the municipality may require that 30 percent of the amount of the bond be retained to ensure completion of all improvements.

This bond shall remain in full force and effect until released by resolution of the municipal governing body.

This bond is issued subject to the following expressed conditions:

1. This bond shall not be subject to cancellation either by the principal or by the surety for any reason until such time as all improvements subject to the bond have been accepted by the municipality, in accordance with the applicable provisions of the Municipal Land Use Law.

2. This bond shall be deemed to be continuous in form and shall remain in full force and effect until the improvements are accepted by the municipality and the bond is released, or until default is declared, or until the bond is replaced by another bond meeting applicable legal requirements. Upon approval or acceptance of all improvements by the municipality, or upon replacement of this bond by another bond, liability under this bond shall cease. Upon approval or acceptance of some, but not all, of the required improvements by the municipality, partial release from the bond shall be granted in accordance with N.J.S.A. 40:55D-53; provided, however, that the portion of the bond amount sufficient to secure completion of the improvements shall continue in effect and the municipality may retain 30 percent of the bond amount posted in order to ensure such completion.

3. The aggregate liability of the surety shall not exceed the sum set forth above.

4. In the event that the improvements subject to this bond are not completed within the time allowed under the conditions of the final approval issued pursuant to the

Municipal Land Use Law, including such extensions as may be allowed by the approving authority, the municipal governing body may, at its option, and upon at least 30 days prior written notice to the principal and to the surety by personal delivery or by certified or registered mail or courier, declare the principal to be in default and, in the event that the surety fails or refuses to complete the work in accordance with the terms and conditions of the original approval, claim payment under this bond for the cost of completion of the work. In the event that any action is brought against the principal under this bond, written notice of such action shall be given to the surety by the municipality by personal delivery or by registered or certified mail or courier at the same time.

5. The surety shall have the right to complete the work in accordance with the terms and conditions of the original approval, either with its own employees or in conjunction with the principal or another contractor; provided, however, that the surety, in its sole discretion, may make a monetary settlement with the municipality as an alternative to completing the work.

6. In the event that the principal and the approving authority agree to changes in the scope of work, the obligations of the surety under this bond shall not be affected so long as the cost of the work does not exceed 120 percent of the municipal engineer's certified estimate, attached hereto and made a part hereof, which 120 percent of the estimate shall be the limit of the surety's obligation under this bond in any case. If the cost of the work exceeds 120 percent of the certified estimate, the principal shall secure a rider from a surety for the additional amount; provided, however, that this provision shall not be construed as requiring a surety to provide additional coverage.

7. This bond shall inure to the benefit of the municipality only and no other party shall acquire any rights hereunder.

8. In the event that this bond shall for any reason cease to be effective prior to the approval or acceptance of all improvements, a cease and desist order may be issued by the governing body, in which case all work shall stop until such time as a replacement guarantee acceptable to the approving authority becomes effective.

Date: _____, Principal Witness/Attest: _____

_____, Surety Witness/Attest: _____

5:39-1.2 Maintenance surety bond

The standardized form of maintenance surety bond required by an approving authority pursuant to section 41 of P.L. 1975, c.291 (N.J.S.A. 40:55D-53) shall be as follows:

Block(s) _____ Lot(s) _____

MAINTENANCE SURETY BOND

We, _____, having offices at _____, _____, as principal, and _____, having offices at _____, _____, a corporation duly licensed to transact a surety business in the State of New Jersey, as surety, are indebted to the municipality of _____ in the county of _____, obligee, in the sum of \$_____, for which payment we bind ourselves and our respective heirs, legal representatives, successors, and assigns, jointly and severally.

On _____ (date), principal was granted approval by the _____ (approving authority) of the _____ of _____ for _____ (include reference to specific job and resolution of approval).

This bond shall become effective upon approval or acceptance of the improvements by the governing body, as certified by the resolution of the governing body, which is, or shall be, attached hereto and made a part hereof. The improvements subject to this bond are as follows: _____. The certification of the cost of such improvements by the municipal engineer is attached hereto and made a part hereof.

Pursuant to municipal ordinance, adopted under authority of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the principal, as a condition of approval or acceptance of improvements, hereby furnishes this maintenance bond in the amount of \$_____ (not to exceed 15 percent of the cost of the improvements as certified by the municipal engineer), written by _____, a surety licensed in the State of New Jersey, guarantying full and faithful compliance with all terms and conditions of the approval. The bond shall continue in effect for a period of _____ (not to exceed two years) from the date of approval or acceptance of the said improvements.

This bond is issued subject to the following expressed conditions:

1. This bond shall not be subject to cancellation either by the principal or by the surety for any reason until the end of the period for which it is required to be maintained.

2. The aggregate liability of the surety under this bond shall not exceed the sum set forth above.

3. In the event that the improvements subject to this bond exhibit any defects in functioning, materials or quality of work, the municipal governing body may, at its option, and upon at least 30 days prior written notice to the principal and to the surety by personal delivery or by certified or registered mail or courier, declare the principal to be in default and, in the event that the surety fails or refuses to perform the necessary corrective work, claim payment under this bond for the cost of any work required for the proper correction of any such defects in the said improvements. In the event that any action is brought against the principal under this bond, written notice of such action shall be given to the surety by the municipality by personal delivery or by registered or certified mail or courier at the same time.

4. The surety shall have the right to repair any defects in functioning, materials or quality of work and, to that end, to do such corrective work as may be necessary in accordance with the terms and conditions of the original approval, either with its own employees or in conjunction with the principal or another contractor; provided, however, that as an alternative to performing such maintenance or corrective work it may, in its sole discretion, make a monetary settlement with the municipality.

5. This bond shall inure to the benefit of the municipality only and no other party shall acquire any rights hereunder.

Date: _____ Witness/Attest:
_____, Principal

_____, Surety

Witness/Attest:

5:39-1.3 Irrevocable standby letter of credit (performance)

The standardized form for a letter of credit (performance) required by an approving authority pursuant to section 41 of P.L. 1975, c.291 (N.J.S.A. 40:55D-53) shall be as follows:

Block(s) _____ Lot(s) _____

IRREVOCABLE STANDBY LETTER OF CREDIT

(PERFORMANCE)

Issued by:

Name of Banking Institution: _____
Address: _____
City/State/ZIP: _____
Telephone: _____ Fax: _____

Issue date: _____

Expiration date and time: _____

Letter of Credit Number _____

Beneficiary:

Name: _____
Address: _____
City/State/ZIP: _____
Telephone: _____ Fax: _____

Applicant:

Name: _____
Address: _____
City/State/ZIP: _____
Telephone: _____ Fax: _____

Amount: _____ Dollars (\$) _____

(Not to exceed 120 percent of the cost of the improvements, as certified by the municipal engineer)

We hereby issue our irrevocable standby letter of credit in your favor, which is available by your draft at sight bearing

our letter of credit number _____ on _____ (name of banking institution).

Your draft must be presented at the office indicated above by personal delivery or by registered or certified mail or courier and must be accompanied by (1) the original standby letter of credit and any subsequent original amendments and (2) an original statement purportedly signed by the municipal engineer of _____ (name of the municipality) stating: "The amount of this drawing under irrevocable Standby Letter of Credit No. _____, issued _____ by _____ (name of banking institution), represents the amount due us as a result of the failure of _____ (name of applicant) to complete, in whole or in part, the required site improvements as detailed in the municipal resolution of approval and in that certain Engineer's Estimate entitled "_____ " prepared by _____ and dated _____. I hereby certify that notice of the incompletions upon which this drawing is based was given to the applicant by registered or certified mail or by courier on _____ (date at least 30 days prior to the date of the municipal engineer's statement)." This certification shall be accompanied by a resolution of the municipal governing body endorsing the findings of the engineer and stating that the improvements have not been approved or accepted.

This letter of credit shall be deemed to be automatically extended annually for periods of one year unless written notice is given by the banking institution by registered or certified mail or by courier to the applicant and the municipality at least 60 days prior to the then-current expiration date.

In the event of the failure of the applicant to furnish another letter of credit meeting the requirements of N.J.S.A. 40:55D-53.5 and N.J.A.C. 5:39-1.3, or other acceptable security, at least 30 days prior to the expiration date of this letter of credit, the municipality may, to the extent allowed by law, draw upon this letter of credit to pay the cost of any incompletions.

This letter of credit shall expire upon approval or acceptance by resolution of the municipal governing body of all improvements cited in the aforesaid Engineer's Estimate or upon replacement of this letter of credit by other security meeting applicable legal requirements. Upon approval or acceptance of some, but not all, of said improvements, a reduction in the amount of this letter of credit shall be granted in accordance with N.J.S.A. 40:55D-53, provided that the remaining amount shall be sufficient to secure provision of the improvements not yet approved and that the municipality may require that the remaining amount be 30 percent of the original amount.

All correspondence to the banking institution concerning this letter of credit shall be addressed to the office indicated above.

This letter of credit shall inure to the benefit of the beneficiary municipality only and no other party shall acquire any rights hereunder.

This letter of credit is subject to [Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500] [International Standby Practices 1998 (ISP98)]. (Note: Either shall be acceptable.)

We hereby agree with you that drawings under and in compliance with the terms of this letter of credit shall be duly honored upon presentation to us.

Witness/Attest:

(authorized signature and title)

Administrative correction.
See: 33 N.J.R. 2687(b).

5:39-1.4 Irrevocable standby letter of credit (maintenance)

The standardized form for a letter of credit (maintenance) required by an approving authority pursuant to section 41 of P.L. 1975, c.291 (N.J.S.A. 40:55D-53) shall be as follows:

Block(s) _____ Lot(s) _____

IRREVOCABLE STANDBY LETTER OF CREDIT

(MAINTENANCE)

Issued by:

Name of Banking Institution: _____

Address: _____

City/State/ZIP: _____

Telephone: _____ Fax: _____

Issue date: _____

Expiration date and time: _____

Letter of Credit Number _____

Beneficiary:

Name: _____

Address: _____

City/State/ZIP: _____

Telephone: _____ Fax: _____

Applicant:

Name: _____

Address: _____

City/State/ZIP: _____

Telephone: _____ Fax: _____

Amount: _____ Dollars (\$) _____

(Not to exceed 15 percent of the cost of the improvements, as certified by the municipal engineer)

We hereby issue our irrevocable standby letter of credit in your favor, which is available by your draft at sight bearing our letter of credit number _____ on _____ (name of banking institution).

Your draft must be presented at the office indicated above by personal delivery or by registered or certified mail or courier and must be accompanied by (1) the original standby letter of credit and any subsequent original amendments and (2) an original statement purportedly signed by the municipal engineer of _____ (name of the municipality) stating: "The amount of this drawing under irrevocable Standby Letter of Credit No. _____, issued _____ by _____ (name of banking institution), represents the amount due us as a result of the failure of _____ (name of applicant) to take necessary corrective action to repair defects in functioning, materials or quality of work in the required site improvements as detailed in the municipal resolution of approval and in that certain Engineer's Estimate entitled "_____ prepared by _____ and dated _____. I hereby certify that notice of the defects upon which this drawing is based was given to the applicant by registered or certified mail or by courier on _____ (date at least 30 days prior to the date of the municipal engineer's statement)." This certification shall be accompanied by a resolution of the municipal governing body endorsing the engineer's findings.

This letter of credit shall continue in effect until the expiration date and shall be deemed to be automatically extended for a further period of _____ (not to exceed one year) unless written notice is given by the banking institution by registered or certified mail or by courier to the applicant and the municipality at least 60 days prior to the then current expiration date.

In the event of the failure of the applicant to furnish another letter of credit meeting the requirements of N.J.S.A. 40:55D-53.5 and N.J.A.C. 5:39-1.4, or other security meeting applicable legal requirements, at least 30 days prior to the expiration date of this letter of credit, the municipality may draw upon this letter of credit, to the extent allowed by law.

All correspondence to the banking institution concerning this letter of credit shall be addressed to the office indicated above.

This letter of credit shall inure to the benefit of the beneficiary municipality only and no other party shall acquire any rights hereunder.

This letter of credit is subject to [Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500] [International Standby Practices 1998 (ISP98)]. (Note: Either shall be acceptable.)

We hereby agree with you that drawings under and in compliance with the terms of this letter of credit shall be duly honored upon presentation to us.

Witness/Attest: