

**Instructions
City of Raleigh
Private Stormwater Control Measure(s) Surety Agreement**

The following are instructions for completion of the form Private Stormwater Control Measure(s) Surety Agreement (the "Agreement") in accordance with the requirements of the City of Raleigh.

This Agreement must accompany the submittal of any financial surety instrument and be submitted prior to authorization to record lots or issuance of building permits, as established in the conditions of approval for the proposed development by the City of Raleigh.

Note that completion of this form may be deemed to be the practice of law in the State of North Carolina and it is recommended that an attorney licensed to practice in the State of North Carolina is consulted prior to submitting this form to the City.

Before preparing this form, obtain copies of all approval documents issued for the proposed development by the City of Raleigh. These approval documents may list additional conditions of approval that must be satisfied prior to authorization to record lots or issuance of permits for the project. After completing this Agreement, submit it (unsigned) along with copies of associated exhibits, attachments, and map(s) that serve to describe the property herein, to City staff for pre-review. If instructed, you may submit this Agreement and related documents to the City's official online Private Stormwater Control Measure(s) Surety Agreement portal for pre-review. Once approved for final submission, sign the Agreement, and submit it, along with the associated documents, to City review staff as directed. See the below web page for more information:

<https://raleighnc.gov/stormwater/stormwater-surety-agreement-process>

The instructions below are numbered in accordance with the areas in the Agreement requiring customization for each individual project. All fields must be filled out and none should be left blank or with the reference number remaining. The terms in this instructions document shall bear the same meaning as defined in the Agreement.

- [1] State the City of Raleigh Case File Number, which typically starts with SPR or LDG or MASS.
- [2] Reserved for future use.
- [3] Reserved for future use.
- [4] State the complete legal name of Developer, which should match name of owner in property records OR, if the Developer is not the owner, the Developer must provide evidence to City review staff via the City's official online Private Stormwater Control Measure(s) Surety Agreement portal that Developer has obtained written consent from the owner to enter on the subject property to construct, install, and complete the private stormwater control measure(s) listed in **Exhibit A** of this Private Stormwater Control Measure(s) Surety Agreement. For purposes of this document, the term Developer shall also include the principal named on the applicable performance guarantee.
- [5] State the property identification number (PIN) for the property as assigned by Wake County or Durham County, as the case may be.

- [6] State the County Register of Deeds book and page number of the deed that describes the subject property, followed by “Wake” or “Durham” as the case may be.
- [7] Estimated cost of construction as approved by City of Raleigh staff.
- [8] Reserved for future use.
- [9] State the amount of the financial instrument and/or security to be provided to the City of Raleigh. This amount shall be 1.25 x the estimated cost to construct the private stormwater control measure(s) that are listed in **Exhibit A** of this Private Stormwater Control Measure(s) Surety Agreement as such estimate has been approved by City of Raleigh staff.
- [10] State the official contact information for Developer, including contact name, title, full street address, phone number and E-mail address.
- [11] For signature execution using digital certificate technologies (e.g., DocuSign, etc.) that have been authorized for use by the City, state the E-mail address of the person who is legally authorized to bind DEVELOPER to the terms of this Agreement.

Exhibit A. List private stormwater control measure(s) to be installed.

Exhibit B. Developer must provide Construction Estimates for each private stormwater control measure and the overall construction estimate for all of the private stormwater control measure(s) to be constructed.

Exhibit C. List which lot(s) are served by which stormwater control measure(s). List out each lot number including PIN.

Exhibit D. Developer must provide City staff with copies of Performance Guarantees, which will be attached to the executed Agreement.

Upon approval by City staff as to the form of this Agreement and related exhibits, attachments and maps, it may be executed by the Developer and formally submitted for final review and/or approval by the City.

City of Raleigh Case File No. ID: _____

**City of Raleigh
Private Stormwater Control Measure(s) Surety Agreement**

This Private Stormwater Control Measure(s) Surety Agreement (“Agreement”), being made and entered into by and between _____ hereinafter called “DEVELOPER,” and the City of Raleigh, a North Carolina municipal corporation organized under the laws of the State of North Carolina, hereinafter called the “CITY.” The designation DEVELOPER as used herein shall include said party, its heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WHEREAS, the undersigned DEVELOPER proposes to construct certain private stormwater control measure(s) on real property designated by Property Identification Number (PIN(s)) _____ assigned by Wake County or Durham County, and as described in that deed recorded in (Book, Page, “Wake” or “Durham”) _____, _____ County Registry (the “Property”); and

WHEREAS, DEVELOPER states, affirms, and certifies that:

DEVELOPER is the owner of this Property: Or	Check: <input type="checkbox"/> YES or <input type="checkbox"/> NO
DEVELOPER is not the owner of the Property but has obtained written consent from the owner to enter thereon and construct the private stormwater control measure(s) stated herein:	Check: <input type="checkbox"/> YES or <input type="checkbox"/> NO

WHEREAS, DEVELOPER has submitted plans and data to CITY for the development of said Property, which said plans and any revisions thereto are on file with CITY and are incorporated herein by reference; and

WHEREAS, CITY has heretofore granted approval of said plans, approval having been conditioned, in part, upon DEVELOPER satisfactorily installing, constructing and completing the private stormwater control measure(s) listed in **Exhibit A**, which is attached hereto and incorporated herein by reference; and

WHEREAS, CITY has reasonably estimated and determined that the cost to construct, install, and complete the private stormwater control measure(s) will be in the sum of dollars (U.S. \$ _____) lawful money of the United States of America, with said estimate attached hereto as **Exhibit B** and incorporated herein by reference; and

WHEREAS, DEVELOPER acknowledges its obligation to satisfactorily construct all the private stormwater control measure(s) listed in **Exhibit A** in accordance with all approved plans and applicable governmental standards; and

WHEREAS, CITY is authorized to receive security to assure the satisfactory completion of such private stormwater control measure(s); and

WHEREAS, DEVELOPER, prior to completing construction of the private stormwater control

measure(s) listed in **Exhibit A**, desires to obtain CITY permits for the addresses listed in **Exhibit C**, attached hereto and incorporated herein by reference.

NOW, THEREFORE, in consideration for CITY issuing permits for the addresses listed in **Exhibit C** prior to installation, construction, and completion of the private stormwater control measure(s) listed in **Exhibit A**, the receipt of which is hereby acknowledged by DEVELOPER, and for CITY agreeing to accept security for the satisfactory completion of the private stormwater control measure(s) listed in **Exhibit A**, and for other consideration the parties agree to the following:

1. **DEVELOPER** agrees to post with CITY security in the form of check applicable box below):

- an irrevocable letter of credit
- cashier's check (checks must be certified and will be cashed)
- performance bond

The security is in the amount of dollars (U.S. \$ _____) lawful money of the United States of America, which is 1.25 times the estimated cost to complete construction of the private stormwater control measure(s) listed in **Exhibit A**. If such performance guarantee is in the form of a surety bond, then the surety bond must be issued by a surety authorized to do business in the State of North Carolina. If the performance guarantee is in the form of a letter of credit, the letter of credit must be issued by a financial institution licensed to do business in the State of North Carolina. Release of the security shall be conditioned upon the faithful performance by DEVELOPER of all terms and conditions of this Agreement, including furnishing the CITY with the "form 511" as-built certificate of completion, which first must be accepted by the CITY before the release of security to DEVELOPER, with all costs, including renewals and penalties of the security, to be paid by DEVELOPER. Withdrawals from the security may be in one or more payments.

- 2. Upon the satisfactory completion of the private stormwater control measure(s) listed in **Exhibit A**, as evidenced by CITY's acceptance of the "form 511" as-built certificate as furnished to CITY by DEVELOPER, the CITY shall release and return all of the security to DEVELOPER, at which point this Agreement shall become null and void.
- 3. DEVELOPER acknowledges and agrees that any letter of credit or surety bond shall be issued by a financial institution or surety, as applicable, which does not have any ownership, occupancy, or equity interest in the development other than having an interest merely as security for the performance of an obligation. So long as the private stormwater control measure(s) listed in **Exhibit A** have not been completed, with such completion to be evidenced by CITY's acceptance of the "form 511" as-built certificate as furnished to CITY by DEVELOPER, then DEVELOPER either must have the letter of credit or surety bond renewed at least thirty (30) days prior to its expiration, or must provide CITY with a new performance guarantee in the form of:
 - a. a surety bond issued by any surety authorized to do business in the State of North Carolina,
 - b. a letter of credit issued by a financial institution licensed to do business in the State of North Carolina, or

- c. another form of guarantee that provides equivalent security to a surety bond or letter of credit (for example, cash), in which case the issuing surety or financial institution shall not have an ownership, occupancy, or equity interest in the development other than having an interest merely as security for the performance of an obligation. Any such new performance guarantee shall be provided to CITY no later than thirty (30) days prior to the expiration of the original letter of credit or surety bond.
- 4. The letter of credit or surety bond shall list the "City of Raleigh" as the beneficiary or obligee, as applicable, and shall cover the completion of the private stormwater control measure(s) listed in **Exhibit A** to the satisfaction of the CITY. Failure of DEVELOPER to renew the letter of credit or surety bond, or to provide CITY with a new performance guarantee as described herein, shall be considered a breach of this Agreement and a default by DEVELOPER, entitling CITY to call upon any or all of the security.
- 5. Any renewed letter of credit or surety bond, or new performance guarantee issued in accordance with this Agreement, shall not exceed 1.25 times the estimated cost to complete the incomplete private stormwater control measure(s) still outstanding either as of the renewal date of the original letter of credit or original surety bond, as applicable, or as of the date of the new performance guarantee provided to CITY. DEVELOPER shall provide CITY with its estimate of the cost(s) to complete the private stormwater control measure(s) listed in **Exhibit A** that remain incomplete, which estimate must first be approved by CITY before any such original letter of credit or original surety bond is renewed, or new performance guarantee is issued for the private stormwater control measure(s) listed in **Exhibit A** that remain incomplete.
- 6. DEVELOPER guarantees that all private stormwater control measure(s) listed in **Exhibit A** will satisfactorily be installed, constructed, and completed in accordance with all applicable governmental standards, laws, and approved plans. DEVELOPER hereby authorizes CITY and the bonding company, their employees, agents, and independent contractors, at their independent option, after the occurrence of a breach hereby, to enter onto the Property to satisfactorily complete all of the private stormwater control measure(s) shown on the approved construction plan(s).
- 7. Prior to calling any security for a breach of this Agreement as stated herein, CITY shall provide at least sixty (60) days written notice to DEVELOPER. Notice shall be deemed given by depositing such in the United States Mail, first class, and addressed:

TO DEVELOPER: _____

Contact Address: _____

Telephone #: _____

E-mail: _____

- 8. In the event DEVELOPER cures its breach(es) of this Agreement to the satisfaction of CITY within this sixty (60) day notice period, then CITY shall have no right under this Agreement to call upon any or all of the security for such cured breach(es) as stated herein.
- 9. This Agreement shall not relieve DEVELOPER from any obligation to complete the construction of the private stormwater control measure(s) listed in **Exhibit A**. The calling of the security herein authorized shall not bar CITY from exercising any other rights it may have. All matters relating to this Agreement shall be governed by the laws of the State of North Carolina, without

regard to its choice of law provisions, and the proper, sole, and exclusive venue for any civil action arising out of or in any way related to this Agreement shall be the federal or state courts sitting in Wake County, North Carolina.

10. In the event CITY's cost to construct the private stormwater control measure(s) listed in **Exhibit A** exceeds the amount of the security DEVELOPER posted with CITY pursuant to this Agreement and which security CITY has called because of DEVELOPER's failure to cure its breach of this Agreement within the time permitted herein, then CITY will provide DEVELOPER with an invoice evidencing the amount of such deficiency which DEVELOPER shall reimburse to CITY within thirty (30) days of the date of the invoice. Should DEVELOPER fail to reimburse CITY within this thirty-day period, then CITY may seek any and all remedies against DEVELOPER, including all remedies at law and in equity.

11. To the extent permitted by North Carolina law, the parties for themselves, their agents, officials, directors, officers, members, representatives, employees, and contractors agree not to discriminate in any manner or in any form based on actual or perceived age, mental or physical disability, sex, religion, creed, race, color, sexual orientation, gender identity or expression, familial or marital status, economic status, veteran status or national origin in connection with this Agreement or its performance.

The parties agree to conform with the provisions and intent of Raleigh City Code § 4-1004 in all matters related to this Agreement. This provision is incorporated into the Agreement for the benefit of the City of Raleigh and its residents and may be enforced by an action for specific performance, injunctive relief, or any other remedy available at law or equity. This section shall be binding on the successors and assigns of all parties with reference to the subject matter of the Agreement.

12. Except as may be otherwise indicated in this Agreement, the term DEVELOPER shall be construed to include the principal named in the performance guarantees referenced herein, and their heirs, successors, and assigns.

13. This Agreement shall be binding upon the heirs, successors, and assigns of the parties.

14. In the event DEVELOPER seeks to be released from the terms and conditions of this Agreement on account ONLY of assignment, transfer, or loss of development rights with respect to the development of the Property as contemplated hereunder, or because of a change in ownership of the Property which includes a loss of such development rights to the Property, then CITY may release DEVELOPER from the terms and conditions of this Agreement subject to DEVELOPER delivering to CITY a substitute Private Stormwater Control Measure(s) Surety Agreement executed by a party which has been assigned, transferred, or is otherwise in possession of the development rights to the Property that are contemplated herein. Any such substitute Private Stormwater Control Measure(s) Surety Agreement shall be on a form acceptable to, and approved by, City. The terms and conditions of such substitute surety agreement shall be consistent with those contained herein (including any and all required performance guarantees), the UDO, applicable law and ordinances. Upon submission, acceptance, and approval by the City of such substitute surety agreement, the DEVELOPER may be released by the CITY from the surety obligations contained in this Agreement.

15. Copies of any performance guarantees required herein, such as letters of credit or surety bonds, are attached hereto as **Exhibit D** and incorporated herein by reference. DEVELOPER

states and affirms that the documents contained within ***Exhibit D*** are true and accurate copies of the originals and may be used and relied upon as if they were originals. The City reserves the right to require submission of original performance guarantee documents.

- 16.** If this Agreement is signed and executed by digital means, DEVELOPER affirms and agrees that the E-mail address of the person legally authorized to bind DEVELOPER to the terms of this Agreement is _____, and use of such E-mail address to digitally sign and execute this Agreement, represents the lawful and binding act of DEVELOPER for purposes of this Agreement. Such digital signature shall have the same legal effect as a physical signature and may be relied upon by CITY and others.
- 17.** To the extent not stated herein, DEVELOPER affirms and agrees that the undersigned person executing this Agreement on behalf of DEVELOPER is legally authorized to bind DEVELOPER to the terms and conditions of this Agreement.

[Signature pages follow]

EXAMPLE

[Complete this page ONLY if execution is by Digital Signatures, e.g. DocuSign.]

IN WITNESS WHEREOF, the undersigned parties agree to the aforesaid Agreement's terms and conditions, and have executed this Agreement by digital means, under seal, on the respective dates below, and this Agreement shall be effective upon the date of the City's digital signature below.

DEVELOPER/OWNER/APPLICANT	CITY OF RALEIGH , a North Carolina Municipal Corporation
By:	Approved By:
_____ Signature	_____ Signature
_____ Name of Developer/owner	_____ Engineering Services Director (or designee) Signing Group Name
_____ E-mail address Developer/Owner	_____ Title
_____ Title Developer/Owner	_____ Date of Signature
_____ Date of Signature	ATTEST:
ATTEST:	_____ City Clerk (or designee) (SEAL)
_____ Signature	Reviewed by City Stormwater Staff
_____ Name of Attester	_____ Engineering Services Stormwater Staff Reviewer Signing Group Name
_____ E-mail address Attester	_____ Title
_____ Title	
_____ Date of Signature	

EXHIBIT A

Private Stormwater Control Measure(s) Surety. Developer must satisfactorily install, construct, and complete the following stormwater control measure(s):

List private stormwater control measure(s) below:

Example: Wet Pond, Level spreader, Holding tank

EXAMPLE

EXHIBIT B

Private Stormwater Control Measure(s) Surety. Developer must provide Construction Estimates for each private stormwater control measure and the overall construction estimate for all of the private stormwater control measure(s) to be constructed:

Attach details cost estimate from Operations and Maintenance (O&M) manual below:

EXAMPLE

EXHIBIT C

Private Stormwater Control Measure(s) Surety. List which lot(s) are served by which private stormwater control measure(s). List out each lot number including PIN.

<u>Lot Address</u>	<u>PIN</u>
(1) _____	_____
(2) _____	_____
(3) _____	_____
(4) _____	_____
(5) _____	_____
(6) _____	_____
(7) _____	_____
(8) _____	_____
(9) _____	_____
(10) _____	_____

EXAMPLE

EXHIBIT D

Copies of Performance Guarantees (to be assembled by City staff and attached to final Agreement)

EXAMPLE