

**N.J.A.C. § 5:36-4.1 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:

*HISTORY:*  
*Recodified from 5:39-1.1 by R.2005 d.81, effective February 22, 2005.*  
*See: 36 New Jersey Register 4571(a), 37 New Jersey Register 667(a).*