



The Best Place - For All

# NOTICE

Issued by:

## Department of Inspections and Permits

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| Notice #:   |
| IP-22-01  |
| Release Date:   |
| 05/26/22  |
| Contact:  |
| Tracie Reynolds,<br>PIO   |
| Phone #:  |
| 410-222-7502  |
|  |
| Mark R. Wedemeyer<br>Director   |

### Anne Arundel County Department of Inspections and Permits Provides Guidance on Stormwater Warranty Agreements and Security Requirements

Anne Arundel County Department of Inspections and Permits announces guidance on Stormwater warranty agreements and security forms required in the County Code.

Anne Arundel County Code (§ 16-4-302 (C) (2)) requires that at the time of submission of As-Built plans and certification, applicants provide written warranty of any Best Management Practice (BMP) that will be owned or maintained by a Homeowner's Association (HOA).

Additionally, § 16-4-302 (C) (4) of the County Code requires that the written warranty shall be accompanied by a security posted in the form approved by the Department of Inspections and Permits.

Stormwater warranty and security shall apply to any new application for a grading permit, or any application for a major revision to a pending or issued grading permit, filed on or after January 1, 2021.

The Warranty Agreement and security forms (performance bond, letter of credit) are attached to this notice.

The Department of Inspections and Permits has coordinated with the development community regarding this notice and appreciates the collaborative effort.

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Mark Wedemeyer, Director

Memorandum

**To:** MBIA, Review Agencies and the General Public

**From:** Raghavenderrao Badami, PE, Assistant Director 

**Subject:** Stormwater Warranty and Security

**Date:** May 26, 2022

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### **Background**

County Code (§ 16-4-302 (C) (2)) requires that at the time of submission of as built plans and certification, the applicant provides written warranty of any Best Management Practice (BMP) that will be owned or maintained by a Homeowner's Association (HOA). Additionally, § 16-4-302 (C) (4) of the County Code requires that the written warranty shall be accompanied by a security posted in the form approved by the Department of Inspections and Permits.

### **Purpose - Stormwater Warranty Agreement and Security**

The Purpose of this notice is to provide Stormwater warranty agreement and security forms required by the county code. The agreement and security forms (performance bond, letter of credit) are attached to this notice.

### **Timing and Applicability**

Stormwater Warranty and security shall apply to any new application for a grading permit, or any application for a major revision to a pending or to issued grading permit, filed on or after January 1, 2021. I&P has coordinated with the several stakeholders including HOAs, development community regarding this notice and I&P appreciates the collaborative effort.

## Stormwater Warranty Agreement

THIS WARRANTY is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, Developer ("Developer"), and acknowledged by ANNE ARUNDEL COUNTY, MARYLAND, a body corporate and politic of the State of Maryland ("County").

WHEREAS, Developer has filed an application for a grading permit, Permit No. \_\_\_\_\_, and is the developer of a subdivision known as \_\_\_\_\_; and

WHEREAS, the Developer was required to install one or more Best Management Practice(s) ("BMP") in accordance with the grading permit; and

WHEREAS, the BMP(s) as shown in attached exhibit A will be owned or maintained by the Homeowner's Association known as, or to be known as \_\_\_\_\_ ("HOA"); and

WHEREAS, the Developer has submitted as-built plans and as-built certifications to the Department of Inspections and Permits (the "Department") in accordance with § 16-4-302(a) of the Anne Arundel County Code ("Code"); and

WHEREAS, Developer is required by § 16-4-302(c) of the Code to provide this Warranty. NOW, THEREFORE, in consideration of the conditions contained in this Warranty, the Developer hereby provides this warranty and agrees as follows:

1. For a period of two years after the date of the Department's final approval of the as-built plans, or as that period is extended as provided herein, the Developer warrants and guarantees that any BMP to be owned or maintained by the HOA complies with the approved grading permit and the approved as-built plans and as-built certification, and all applicable law and regulations. The Developer shall be responsible for any repairs or restoration of any BMP to be owned or maintained by the HOA, other than for routine maintenance and upkeep, as required by this Warranty, the approved grading permit and the final approved as-built plans and as-built certification, and all applicable law and regulations. The issuance of a

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permit or any inspection, repair, suggestion, approval, or acquiescence of any person affiliated with the County does not relieve the Developer from the warranty or any other term or condition of this Warranty. Routine maintenance and upkeep shall be the responsibility of the HOA.

2. During the Warranty Period, the County shall inspect any BMP owned or maintained by the HOA. The inspection shall include all required elements of a maintenance inspection described in the latest version of the County Stormwater Practices and Procedures Manual. If the Department determines that any a repair or restoration to any BMP owned or maintained by the HOA is required, other than routine maintenance and upkeep, a written notice shall be issued to the Developer. The notice shall include deficiencies, other than routine maintenance and upkeep, to be corrected by the Developer including any repair and restoration required by the Developer (“Developer Required Repair”).

3. The Developer shall make any Developer Required Repair in accordance with this Warranty within the time provided in a written demand from the County. If the Developer does not initiate corrective action as required, the County may take any appropriate action necessary in accordance with the County Code as it may be amended from time to time, and this Warranty.

4. The Warranty shall be extended for one additional year beyond the two year period if the Developer is issued a Developer Required Repair notice from the Department during the two-year warranty period (“Extended Warranty Period”). The Extended Warranty Period shall only apply to the BMP(s) cited in the Department’s written notice.

5. The Warranty shall be extended for an additional one year beyond the Extended Warranty Period if the Developer is issued a Developer Required Repair notice from the Department during the Extended Warranty Period.

6. The Maximum Warranty period shall not exceed four years.

7. The Developer affirms that it has reserved a right of entry on any property upon which there is any BMP to be owned or maintained by the HOA. The Developer affirms that it has provided the HOA with an estimate of BMP maintenance costs, which is also attached hereto as Exhibit B.

8. This Warranty is accompanied by a performance and completion security (Exhibit C). The amount of the security is \$\_\_\_\_\_, which is equal to the construction costs as estimated at the time of issuance of the grading permit for any BMP that will be owned or maintained by the HOA.

9. All security required by this Warranty shall be in the form of a\_\_\_\_\_cash deposit (including a certified or cashier's check),\_\_\_\_\_irrevocable letter of credit, or\_\_\_\_\_bond from a surety acceptable to the County.

10. If the warranty is extended beyond the original two-year warranty period and if the Department determines that a partial release of the security will not impair implementation of this Warranty, the Department may allow a partial release, not to exceed 75% of the total security required by this Warranty. To request reduction, the Developer shall file an application with the County; provide justification and any required documentation, including new or additional security if the County so requires; and agree that all other terms and conditions of this Warranty shall remain in full force and effect.

11. If the Developer fails to make any Developer Required Repair as directed by the Department, the security shall be forfeited to the County. If the County's cost to complete the work to repair or restore a BMP, for any Developer Required Repair, is greater than the amount of the security, the Developer agrees to reimburse the County for any and all additional costs incurred to complete, restore, or repair any BMP, for any Developer Required Repair, owned or maintained by the HOA, including all County administrative costs; independent contractor, consulting engineer, or other expert fees; attorneys' fees; and pre-judgment interest at the rate of 6% per year.

12. The Developer shall be released from the terms of this Warranty when the security is fully released in accordance with § 16-4-302 (c) (8); the security is forfeited to the County in accordance with the terms of this Warranty and § 16-4-302(c) (7); or upon expiration of the warranty period, as it may be extended in accordance with the terms herein. The forfeiture provision contained in paragraph 11 and the Code survives an expiration of the warranty period if the security has not been released.

13. All notices between the parties shall be mailed by first class mail, electronic transmission,

or hand-delivered to the addresses listed below. For purposes of this Warranty, the date of notice to any party at the address listed below shall conclusively constitute notice to that party. If the address of any party changes, the party shall notify all parties to this Warranty in writing.

TO THE COUNTY:

Director, Anne Arundel County Department of Inspections and Permits 2664  
Riva Road, Second Floor - MS 6202  
Annapolis, Maryland 21401

TO THE DEVELOPER:

14. This document and its attachments contain the complete and final Warranty between the parties and representations, whether written or oral, not contained in this Warranty shall not be part of this Warranty.

15. The laws of the State of Maryland shall govern this Warranty.

16. This Warranty may not be assigned without prior written approval from the County and, as a condition of approval, the County may require the execution of a new Warranty. This Warranty shall inure to the benefit of and be binding on the parties and their heirs, personal representatives, legal representatives, successors, and approved assigns.

17. The parties agree that this Warranty constitutes a contract under seal and that they intend the twelve-year statute of limitations period as set forth in Maryland Courts and Judicial Proceedings Code Annotated § 5-102 to apply to this Warranty.

18. This Warranty may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same document.

WITNESS OR ATTEST:

\_\_\_\_\_

Type name of business entity, if applicable.

By: \_\_\_\_\_(SEAL)

DEVELOPER

Type Name: \_\_\_\_\_

Type Title: \_\_\_\_\_

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

ANNE ARUNDEL COUNTY, MARYLAND

\_\_\_\_\_  
(SEAL)

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

Christine M. Anderson, Chief Administrative Officer

APPROVED FOR FORM AND LEGAL  
SUFFICIENCY ANNE ARUNDEL  
COUNTY, MARYLAND GREGORY J.  
SWAIN, COUNTY ATTORNEY

\_\_\_\_\_

Office of Law

\_\_\_\_\_

Date

**RETURN TO THE DEPARTMENT OF INSPECTIONS AND PERMITS - MS 620**

# ANNE ARUNDEL COUNTY DEPARTMENT OF INSPECTIONS & PERMITS

## STORMWATER WARRANTY AGREEMENT (SWA)<sup>1</sup> - SUBMITTAL REQUIREMENTS

*Instructions: All submittals are to be delivered to the Permit Center. Any submissions brought to the Permit Center with missing or incomplete information may be rejected or set aside until all necessary information has been provided. All incomplete submissions will not be logged in until the date that all necessary information has been supplied to the Permit Center.*

1. **Letter of Explanation** – provide one (1) copy of a Letter of Explanation for the project. (Note: The letter must include an e-mail address for the applicant, project name, applicable County grading permit number(s).
2. **Developer** – Identify the Developer and the person authorized to sign on behalf of the Developer that will sign the Agreement. Include the Developer name, address, phone number and email address. Indicate the State of origin and the name and title of the person authorized to sign the Agreement for the Developer. Provide verification that the Developer is in ‘Good Standing’ with the Maryland Department of Assessments & Taxation.  
(Note – if the Developer is a Limited Liability Company (LLC), a copy of the Operating Agreement (and the operating agreement(s) for all subsequent LLC’s) must be provided. If the Developer is a Partnership, LP or LLP, a copy of the Partnership Agreement must be submitted.)
3. **Approved Itemized Construction Costs** – provide one (1) copy of the itemized construction cost prepared within six (6) months of submittal. The cost must be signed and sealed by an engineer AND APPROVED by Anne Arundel County
4. **Approved Exhibit A** – Approved Exhibit A showing BMPs that will be owned or maintained by the Homeowner’s Association
5. **Certificate of Insurance** – provide one (1) copy of the Certificate of Insurance. The Certificate must be in the Developers name and identify Anne Arundel County as an additional insured with a minimum limit of \$1,000,000.00 coverage of general liability per occurrence. (Note – the certificate of insurance is only required when cost exceeds \$20,000.00.)
6. **Approved Exhibit B**– Approved Exhibit B -estimate of BMP maintenance costs, that will be owned or maintained by the Homeowner’s Association
7. **Stormwater Warranty Agreement** – one original must be signed and returned to the Department.
8. **Exhibit C- Security** – the required security (which is equal to item #4 - construction costs) must be returned with the Stormwater Warranty Agreement. (Note – all checks must be certified or a cashiers check. Personal and/or Company checks cannot be accepted.)

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<sup>1</sup> Refer to Blue Notice (IP-22-01) -<https://www.aacounty.org/sites/default/files/2023-04/IP-22-01.pdf>

**DO NOT MAKE CHANGES TO THIS FORM. Three originals are required. Bonding company must be listed in the Maryland Insurance Administration (MIA).**

ANNE ARUNDEL COUNTY, MARYLAND

BOND NO. \_\_\_\_\_;

STORMWATER WARRANTY AGREEMENT # \_\_\_\_\_

**STORMWATER WARRANTY BOND**

THIS STORMWATER WARRANTY BOND is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ as principal ("Principal") and \_\_\_\_\_, a business entity that is authorized to transact business in the State of Maryland and is organized and existing under the laws of the State of \_\_\_\_\_, as surety ("Surety"). Anne Arundel County, Maryland, a body corporate and politic of the State of Maryland, is the Obligee.

WHEREAS, the above-named Principal has entered into a written contract known as Stormwater Warranty Agreement No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, with Obligee for \_\_\_\_\_ (Project Name)

(the "Agreement"), the terms of which are hereby incorporated by reference; and

WHEREAS, as a condition of the Agreement and as required by the Anne Arundel County Code, Principal is required to provide security to Obligee to guarantee Principal's performance under and completion of the Agreement (or any extensions, alternations, or modifications of the Agreement) in an amount equal to the approved cost estimate.

NOW, THEREFORE, the Principal and Surety are held and firmly bound unto the Obligee in the sum of \$\_\_\_\_\_ Dollars (\$\_\_\_\_), lawful money of the United States of America, for the payment of which sum of money the Principal and Surety do bind themselves and their personal representatives, legal representatives, successors, and assigns, jointly and

severally, firmly by this bond.

The condition of this bond is as follows: If the Principal shall perform and accomplish all matters and things required under the Agreement (or any extensions, alternations, or modifications of the Agreement) in the time and manner required and if the Principal shall indemnify and save harmless the County from all loss, costs, or damages arising from a default under this bond and under the Agreement (or any extensions, alternations, or modifications of the Agreement), this obligation shall be void. Otherwise, it shall remain in full force and effect.

Surety expressly waives any right to receive notice of extensions of time or alterations or modifications to the Agreement that may be granted by Obligee and agreed upon by the Principal, and any such extensions, alterations, or modifications shall not affect the obligation of the Surety under this bond.

WITNESS OR ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Type name of business entity, if applicable.

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

PRINCIPAL

Type \_\_\_\_\_ Name: \_\_\_\_

Type Title: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_  
Type name of business entity.

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

SURETY

Type \_\_\_\_\_ Name: \_\_\_\_

Type Title: \_\_\_\_\_

Type Address: \_\_\_\_\_

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

## **INSTRUCTIONS FOR LETTERS OF CREDIT**

A Letter of Credit must be executed on the letterhead of the financial institution and it must be worded as provided in the attached form Letter of Credit. The issuing institution must be a bank or financial institution that has the authority to issue Letters of Credit and whose Letter of Credit operations are regulated and examined by a federal or state agency.

The Letter of Credit is irrevocable. A Letter of Credit issued in connection with a Stormwater Warranty Agreement must be issued for a period of at least two years. The term of other Letters of Credit is governed by the applicable agreement or by governing law.

The Letter of Credit provides for an automatic extension for periods of one year unless, not less than 120 days before the current expiration date (first expiration date or successive expiration date) the issuing institution notifies the Controller of Anne Arundel County by certified mail of a decision not to extend the expiration date. The 120 days begins to run after the Controller has received the notice as evidenced by the return receipt.

If the Applicant does not establish alternate financial assurance and obtain written approval of that alternate assurance from the Controller within 90 days after the Controller received the cancellation notice, the Controller will draw on the Letter of Credit. Drawing on the Letter of Credit may be delayed if the issuing institution grants an extension of the terms of the credit. The Controller also may draw on the Letter of Credit for a default by the Applicant under the agreement to which the Letter of Credit relates.

[Date]

ANNE ARUNDEL COUNTY, MARYLAND  
c/o Controller, Office of Finance  
Arundel Center  
Annapolis, Maryland 21401

Re: Irrevocable Letter of Credit No. \_\_\_\_\_  
\_\_\_\_\_, Applicant  
Amount: \_\_\_\_\_  
Expiration Date: \_\_\_\_\_  
Beneficiary: Anne Arundel County, Maryland

Anne Arundel County, Maryland:

We hereby issue our irrevocable Letter of Credit # \_\_\_\_\_ in your favor on behalf of [applicant name], referred to in this Letter of Credit as the Applicant, for a sum of \$ \_\_\_\_\_ ( \_\_\_\_\_ and \_\_\_\_\_ /100 Dollars), available by your drafts at sight drawn on our institution, [name of institution], marked "Drawn under [name of institution] Letter of Credit # \_\_\_\_\_ dated [effective date]."

We are a bank or financial institution that has the authority to issue Letters of Credit. Our Letter of Credit operations are regulated and examined by [name of federal or state agency].

This Letter of Credit is issued to provide financial assurance to Anne Arundel County, Maryland for [Stormwater Warranty Agreement No. \_\_\_\_\_  
\_\_\_\_\_; other named and described agreement].

This Letter of Credit shall expire on [date at least two years beyond effective date if issued in connection with a Stormwater Warranty Agreement; otherwise appropriate time frame], but the expiration date shall be automatically extended without notification for successive periods of one year, unless, not less than 120 days before the expiration date, you receive a notification from us by certified mail of our decision not to extend the current expiration date.

You may draw on this Letter of Credit upon a written certification by the Controller of Anne Arundel County, Maryland stating that the Applicant has failed to properly execute its responsibilities under the [Stormwater Warranty Agreement or other named and described agreement]. You also may draw on this Letter of Credit upon a written certification by the Controller of Anne Arundel County, Maryland stating that the Applicant failed to provide you with an acceptable replacement Letter of Credit, or another type of financial assurance acceptable to you, within 90 days after receipt by you

of a notice from us that we have decided not to extend this Letter of Credit beyond its current expiration date. Partial drawings are permitted.

We shall honor drafts drawn under and in compliance with the terms of this Letter of Credit and these drafts will be duly honored upon presentation to us if presented on or after the effective date of this Letter of Credit and before its expiration date or any automatically extended date as provided in this Letter of Credit.

This Letter of Credit is governed by the laws of the State of Maryland and any litigation relating to it shall be instituted in the courts of the State of Maryland.

We certify that this Letter of Credit is in accord with the format of Anne Arundel County, Maryland, as of the date shown immediately below.

[Institution] \_\_\_\_\_  
[Address, City, State] \_\_\_\_\_  
[Signature] \_\_\_\_\_  
[Name and Title] \_\_\_\_\_  
[Date] \_\_\_\_\_