

**PERFORMANCE AND MAINTENANCE BOND FOR
CITY OF DES MOINES RIGHT OF WAY EXCAVATION PERMIT**

KNOW ALL BY THESE PRESENTS:

We, _____, as Principal (hereinafter “Principal” or “Contractor”) and _____, as Surety (hereinafter “Surety”), are held and firmly bound to the City of Des Moines, Iowa, as obligee (hereinafter “City”) and to all persons who may be injured by any breach of any of the conditions of this Performance and Maintenance Bond for Work Performed Under Right of Way Permit (hereinafter “Bond”), in the penal sum of **twenty five thousand dollars (\$25,000.00)**, lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, legal representative and assigns, jointly or severally, firmly by these presents.

The conditions of the above obligations are such that whereas said Contractor proposes to obtain a Right of Way excavation permit and excavate in City street and/or alley right of way (hereinafter “ROW”) for work on behalf of private persons and entities with whom it contracts to provide such services, and further proposes to perform such work and to restore said ROW disturbed by its excavation activities (such excavation and restoration activities hereinafter collectively the “Work”) in a good and workmanlike manner, all in conformance with all applicable laws, regulations, specifications, orders, permits and permit conditions, including but not limited to: Chapter 102, Article XI, of the Municipal Code of Des Moines, as said article exists or hereafter be amended; the current version of the Urban Standard Specifications for Public Improvements; the latest edition of the City of Des Moines Utility Accommodation and Street Restoration Specifications; orders issued by the City Engineer for the City, and Contractor further proposes to complete all such Work within the permit period specified within said permit.

This Bond is expressly conditioned upon the faithful performance of the ROW restoration work required under Chapter 102, Article XI, of the Municipal Code of Des Moines, as said article exists or hereafter be amended, or payment of the restoration costs incurred by the City and further conditioned upon the faithful performance of the terms of the permit, the provisions of Chapter 102, Article XI, as said article exists or hereafter be amended, and any other requirements provided by law.

It is expressly understood by the Contractor and Surety on this Bond that the following provisions are a part of this Bond and binding on Contractor and Surety, to wit:

1) Performance: The Contractor shall well and faithfully observe, perform, fulfill and abide by all the conditions set forth above and shall indemnify and hold harmless the City from all outlay and expense incurred by reason of the Contractor’s default or failure to perform as required, including but not limited to all costs, expense or liability for damages or injuries to persons or property or liability of any kind whatsoever arising from or growing out of the use and occupancy of such ROW or arising from or growing out of the deposit of such material or failure to property pile, deposit, guard, light or care for such. The Contractor shall be responsible for the

default or failure to perform as required by all its subcontractors, suppliers, agents, and employees furnishing materials or providing labor in the performance of the Work.

2) Maintenance: The Contractor and Surety on this Bond hereby agree, at their own expense:

- A. To remedy any and all defects in or damages to property of the City, including but not limited to street or sidewalk surfaces, traffic control devices or cabling, telecommunication devices or cabling, sewer, water lines, street trees or plantings that may develop in or result from the Work within the period of 48-months from the date all restoration portions of the Work are completed; and
- B. To keep the Work in continuous good repair; and
- C. To pay the City's reasonable costs of monitoring and inspecting to assure that any defects and damages are remedied, and to repay the City all outlay and expense incurred as result of the Contractor's and Surety's failure to remedy any defect or damage as required by this section; and
- D. Contractor's and Surety's agreement herein extends to defects in workmanship or materials and damage to property of the City not discovered or known to the City at the time such Work was completed.

3) General:

- A. The Surety on this Bond hereby agrees to consent without notice to any extension of time for completion of the Work, and hereby further agrees to consent without notice that this Bond shall remain in full force and effect regardless of whether the Work is completed within the time period specified in the permit or within an extension thereof.
- B. The Surety and Contractor hereby agree no provision of this Bond shall limit the City's right to sue under this Bond.
- C. The Surety, Contractor, and City hereby agree the venue for all proceedings initiated pursuant to this Bond shall be Polk County, Iowa.
- D. All rights, powers, and remedies of the City herein shall be cumulative and not alternative and shall be in addition to all rights, powers, and remedies given to City by law.
- E. If legal action is required by the City to enforce the provisions of this Bond, the Contractor and Surety agree, jointly and severally, to pay the City all outlay and expense incurred by the City. The City may proceed against the Surety for any amount guaranteed herein, whether action is brought against the Contractor or whether the Contractor in any such action(s) or not.
- F. In the event the City incurs any outlay and expense in defending itself with respect to any claims as to which the Contractor or Surety should have provided the defense, or in the

enforcement of the promises given by the Contractor or Surety herein, the Contractor and Surety agree they will make the City whole for all such outlay and expense, provided that the Surety's obligation under this Bond shall not exceed 125% of the penal sum of the Bond.

G. The term "all outlay and expense" is not to be limited in any way, but shall include the actual and reasonable costs and expenses incurred by the City interest, benefits, and overhead where applicable. Accordingly, "all outlay and expense" would include but not be limited to all contract or employee expense, all equipment usage or rental, materials, testing, outside experts, attorney's fees (including overhead expenses for the City's staff attorneys), and all costs and expenses of litigation as they are incurred by the City. The Contractor and Surety shall defend and indemnify the City on all claims made against the City on account of the Contractor's or Surety's failure to perform as required herein, including but not limited to claims by virtue of the authority given in such permit or in any way connect with, relating to, or growing out of any work performed by the Principal, his or it agents, employees or subcontractor. The City shall be fully indemnified by the Contractor and Surety so that the City will be put in the position it would have been had the Work been performed as required.

H. When a word, term, or phrase is used in this Bond, it shall be interpreted or construed first as defined in this Bond; second, if not defined in this Bond, then as defined in Chapter 102, Article XI of the Municipal Code, as it presently exists or hereafter may be amended, the latest edition of the Urban Standard Specifications for Public Improvements, or the latest edition of the City of Des Moines Utility Accommodation and Street Restoration Specifications for Public Improvements; third, then as defined in the Iowa Code; and fourth, then as interpreted or construed according to its generally accepted meaning in the construction industry, according to its common or customary usage.

NOW THEREFORE, if Principal shall faithfully perform all of the requirements and obligations of the Principal, as set forth and provided herein, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

SIGNATURE PAGE TO FOLLOW

PRINCIPAL

Contractor

By (Signature):

Title

Date

CITY

Approved as to Form:

Lisa A. Wieland
Assistant City Attorney

SURETY

Surety

Signature of Attorney-in-Fact

Name of Attorney-in-Fact

Date

Company Name

Company Address

City, State Zip

Company Telephone Number

NOTE:

Contractor and Surety signatures must be **original ink signatures**. This Bond must be sealed with the Surety's raised, embossing seal. The certificate of the Power of Attorney accompanying this Bond must be valid on its face and sealed with the Surety's raised, embossing seal. The name and signature of the Surety's Attorney-in-Fact must be exactly as listed on the certificate of Power of Attorney accompanying this Bond.