



PERFORMANCE, PAYMENT & MAINTENANCE BOND
FOR PRIVATE CONSTRUCTION CONTRACTS

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as Principal (hereinafter the "Contractor" or "Principal") and _____, as Surety are held and firmly bound unto the City of Des Moines, Iowa, as Obligee (hereinafter referred to as the "Jurisdiction"), and to all persons who may be injured by any breach of any of the conditions of this Bond in the penal sum of _____ DOLLARS (\$_____), 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 entered into a contract with _____ (hereinafter the "Owner"), bearing date the _____ day of _____, 20_____, wherein said Contractor undertakes and agrees to construct the following described improvements:

with the work further described on Private Construction Contract Attachment A, and to faithfully perform all the terms and requirements of said contract within the time therein specified, in a good and workmanlike manner, and in accordance with the Contract Documents.

It is expressly understood and agreed by the Contractor and Surety in this Bond that the following provisions are a part of this Bond and are binding upon said Contractor and Surety, to-wit:

1. **PERFORMANCE:** The Contractor shall well and faithfully observe, perform, fulfill and abide by each and every covenant, condition and part of said Contract and Contract Documents, by reference made a part hereof, for the above referenced improvements, and shall indemnify and save harmless the Jurisdiction from all outlay and expense incurred by the Jurisdiction by reason of the Contractor's default or failure to perform as required. The Contractor shall also be responsible for the default or failure to perform as required under the Contract and Contract Documents by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.
2. **PAYMENT:** The Contractor and Surety on this Bond are hereby agreed to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract on account of which this Bond is given, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used by the Contractor or any subcontractor, wherein the same are not satisfied out of the portion of the contract price which the Owner retains until completion of the improvement.
3. **MAINTENANCE:** The Contractor and the Surety on this Bond hereby agree, at their own expense:
 - A. To remedy any and all defects that may develop in or result from work to be performed under the contract within the period of four (4) years from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of said work;
 - B. To keep all work in continuous good repair; and
 - C. To pay the Jurisdiction's reasonable costs of monitoring and inspecting to assure that any defects are remedied, and to repay the Jurisdiction all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

Contractor's and Surety's agreement herein made extends to defects in workmanship or materials not discovered or known to the Jurisdiction at the time such work was accepted.

4. **GENERAL:** Every Surety on this Bond shall be deemed and held, any contract to the contrary notwithstanding, to the following provisions:
 - A. To consent without notice to any extension of time to the Contractor in which to perform the Contract;
 - B. To consent without notice to any change in the Contract or Contract Documents, which thereby increases the total contract price and the penal sum of this bond, provided that all such changes do not, in the aggregate, involve an increase of more than twenty percent of the total contract price, and that this bond shall then be released as to such excess increase; and
 - C. To consent without notice that this Bond shall remain in full force and effect until the Contract is completed; whether completed within the specified contract period, within an extension thereof, or within a period of time after the contract period has elapsed and the liquidated damages are being charged against the Contractor.

The Contractor and every Surety on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:

- A. That no provision of this Bond or of any other contract shall be valid which limits to less than five years after the acceptance of the work under the Contract the right to sue on this Bond.
- B. That as used herein, the phrase "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 Jurisdiction including 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, attorneys fees (including overhead expenses of the Jurisdiction's staff attorneys), and all cost and expenses of litigation as they are incurred by the Jurisdiction. It is intended the Contractor and Surety will defend and indemnify the Jurisdiction on all claims made against the Jurisdiction on account of Contractor's failure to perform as required in the Contract and Contract Documents, that all agreements and promises set forth in the Contract and Contract Documents, in approved change orders, and in this Bond will be fulfilled, and that the Jurisdiction will be fully indemnified so that it will be put into the position it would have been in had the Contract been performed in the first instance as required.
- C. In the event the jurisdiction incurs any "outlay and expense" in defending itself with respect to any claim as to which the Contractor or Surety should have provided the defense, or in the enforcement of the promises given by the Contractor in the Contract, Contract Documents, or approved change orders, or in the enforcement of the promises given by the Contractor and Surety in this Bond, the Contractor and Surety agree that they will make the Jurisdiction 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 this bond.

In the event that any actions or proceedings are initiated with respect to this Bond, the parties agree that the venue thereof shall be Polk County, State of Iowa. If legal action is required by the Jurisdiction to enforce the provisions of this Bond or to collect the monetary obligation incurring to the benefit of the Jurisdiction, the Contractor and the Surety agree, jointly and severally, to pay the Jurisdiction all outlay and expense incurred therefor by the Jurisdiction. All rights, powers, and remedies of the Jurisdiction hereunder shall be cumulative and not alternative and shall be in addition to all rights, powers and remedies given to the Jurisdiction, by law. The Jurisdiction may proceed against Surety for any amount guaranteed hereunder whether action is brought against the Contractor or whether Contractor is joined in any such action or actions or not.

- 5. CITY'S STANDARD BOND FORM CONTROLS: The Contractor and Surety acknowledge that this bond has been prepared utilizing a standard City of Des Moines bond form provided by the City or downloaded from the City's website in WORD format. The Contractor and Surety represent that no changes have been made to the form of the Bond other than to insert required information and text in text boxes provided for that purpose, and they agree that unauthorized changes made to the standard bond form shall not be binding on them or on the City and that the standard bond form as it appears on the City's website shall govern and be binding on the parties to this Bond.

NOW THEREFORE, the condition of this obligation is such that if said Principal shall faithfully perform all of the promises of the Principal, as set forth and provided in the Contract, in the Contract Documents, and in this Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

When a word, term, or phrase is used in this Bond, it shall be interpreted or construed first as defined in this Bond, the Contract, or the Contract Documents; second, if not defined in the Bond, Contract, or Contract Documents, it shall be interpreted or construed as defined in applicable provisions of the Iowa Code; third, if not defined in the Iowa Code, it shall be interpreted or construed according to its generally accepted meaning in the construction industry; and fourth, if it has no generally accepted meaning in the construction industry, it shall be interpreted or construed according to its common or customary usage.

Failure to specify or particularize shall not exclude terms or provisions not mentioned and shall not limit liability hereunder. The Contract and Contract Documents are hereby made a part of this Bond.

Witness our hands, in quadruplicate, this ____ day of _____, 20 _____.

<p>PRINCIPAL:</p> <p>_____</p> <p>Contractor</p> <p>By _____</p> <p>Signature</p> <p>_____</p> <p>Title</p>
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<p>SURETY:</p> <p>_____</p> <p>Surety Company</p> <p>_____</p> <p>Signature Attorney-in-Fact/Officer</p> <p>_____</p> <p>Name of Attorney-in-Fact/Officer</p> <p>_____</p> <p>Company Name</p> <p>_____</p> <p>Company Address</p> <p>_____</p> <p>City, State, Zip Code</p> <p>_____</p> <p>Company Telephone Number</p>
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<p>FORM APPROVED BY:</p> <p>_____</p> <p>Attorney for Jurisdiction</p>

NOTE:

1. All signatures on this performance, maintenance & payment bond must be original signatures in ink; copies or facsimile of any signature will not be accepted.
2. This bond must be sealed with the Surety's raised, embossing seal.
3. The Certificate of Power of Attorney accompanying this bond must be valid on its face and sealed with the Surety's raised, embossing seal.
4. The name and signature of the Surety's Attorney-in-Fact/Officer entered on this bond must be exactly as listed on the Certificate or Power of Attorney accompanying this bond.