

# CITY OF SHAWNEE, KANSAS

## Public Improvement Performance and Maintenance Bond

Bond No. \_\_\_\_\_

### KNOW ALL MEN BY THESE PRESENT,

that we, the undersigned \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the **City of Shawnee, Kansas**, a Municipal Corporation of the State of Kansas, in the full and just 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, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

### THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

**WHEREAS**, the Principal has obtained, or is about to obtain, a Public Improvement Permit (Permit) accepted by the City Engineer of said City of Shawnee, Kansas, to construct the following public improvement (Project) within the said City: \_\_\_\_\_;

(hereinafter all such plans, Technical Specifications, documents, conditions of acceptance, and terms of acceptance of the Public Improvement Permit issued in writing by the Beneficiary to the Principal, are collectively referred to and known as the "Conditions of Acceptance" and the work required by such Conditions of Acceptance is referred to and known as the "Project Work").

**WHEREAS**, the Permit requires that the Principal shall furnish the City a performance and maintenance bond, in an amount equal to 100% of the total cost of the above-stated public improvement to guarantee the completion, and the Principal agrees to provide in a good, substantial and workmanlike manner all construction, labor, materials, equipment, tools, transportation, superintendence, and other facilities and accessories, for and in connection with the satisfactory performance of all work and construction of certain public improvements referred to as the Project, more particularly designated, defined and described in, and in accordance with, the specifications and City accepted plans.

**NOW, THEREFORE**, if the Principal shall construct, or cause to be constructed, the entire public improvement set forth in said Permit and the conditions, specifications, and City accepted plans hereto attached or by reference made a part hereof, according to the true intent and meaning in each case and complete, or cause to be completed, the same within the time specified for such completion, and construct the same in strict accordance with the Permit, conditions, specifications, City accepted plans and other documents and according to the lines and grades shown on the accepted plans or given by the City Engineer, and with the specifications used by the City of Shawnee, Kansas, for like public improvements, all to be done subject to the acceptance of the City Engineer, and construct the same with such materials and in such manner that the same shall endure without need for any repairs or maintenance for a period of two (2) years from and after the completion of the Project and initial acceptance thereof by the City Engineer; and that if the entire public improvement endures without the need of repairs or maintenance for this specified period, then this obligation shall be and become null and void; otherwise, this obligation shall remain in full force and effect until its release by the City Engineer. If the Project requires repairs or maintenance within such 2-year period then this obligation shall continue in full force and effect.

Further, the Surety and the Principal, both jointly and severally, and for themselves, their heirs, administrators, executors, successors and assigns agree that:

- 1) This Permit is subject to compliance with the Conditions of Acceptance. Said Conditions of Acceptance are incorporated by reference and made a part of this Bond. The Surety and the Principal are bound for the full and timely performance of the Project Work and Required Maintenance as designated and described in the Conditions of Acceptance, both express and implied.

- 2) If the City shall provide to Surety the written notice of the City stating that the Principal is in breach or default of the Conditions of Acceptance or the timely completion of the Project Work or Required Maintenance, and that such breach or default remains uncured by the Principal, then upon delivery of such written notice to the Surety in the method for providing notices as set forth in Paragraph 6, Surety must promptly notify the City in writing which action it will take as permitted in Paragraph 3.
- 3) Upon the delivery of the City's written notice of breach or default by the Principal as provided in Paragraph 2, the Surety may promptly remedy the breach or default or must, within ten (10) days, proceed to take one of the following courses of action:
- a. **Proceed Itself.** Complete performance of the Project Work in the Permit and Required Maintenance in accordance with the terms, Conditions of Acceptance, specifications and City-approved plans therein, including, but not limited to, correction of defective and nonconforming Project Work and Required Maintenance through its own contractors or employees, approved as being acceptable to the City, in the City's sole discretion, provided, however, that Principal will not be retained to complete such Project Work and Required Maintenance, and provided further that City's discretion to approve Surety's contractor will not be unreasonably withheld as to any contractor who would have qualified to complete the Project Work and Required Maintenance who is not affiliated with the Principal; or
  - b. **Tender the Full Penal Sum.** Tender to the City the full Penal Sum of this Performance Bond. The City will refund to the Surety without interest any unused portion not spent by the City procuring and paying a completing contractor or completing the Project Work and Required Maintenance, plus the cost allowed under Paragraph 4, after completion of the Project Work; or
  - c. **Other Acts.** Take any other acts mutually agreed upon in writing by the City and the Surety.
- 4) In addition to those duties set forth herein above, the Surety must promptly pay the City (i) all losses, costs and expenses resulting from the Principal's failure to timely complete the Project Work and Required Maintenance in accordance with the Conditions of Acceptance, including, without limitation, fees, expenses and costs for architects, engineers, consultants, testing, surveying and attorneys, plus (ii) procurement costs and fees and expenses, plus (iii) costs incurred at the direction, request, or as a result of the acts or omissions of the Surety; provided that in no event shall Surety's liability exceed the Penal Sum of this Bond.
- 5) The Surety provides this Performance and Maintenance Bond for the sole and exclusive benefit of the City and, if applicable, any dual obligee designated by attached rider, together with their heirs, administrators, executors, successors, and assigns. No other party, person or entity has any rights against the Surety.
- 6) All notices to the Surety, the Principal or the City must be delivered in person or otherwise given in writing to such party at the following address set forth below:

**SURETY**

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

Attention: \_\_\_\_\_

Street, City, State, ZIP \_\_\_\_\_

**PRINCIPAL**

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

Attention: \_\_\_\_\_

Street, City, State, ZIP \_\_\_\_\_

**CITY**

City of Shawnee, Kansas  
City Hall  
Attn: Raegan Long  
11110 Johnson Drive  
Shawnee, Kansas 66203

- 7) The recitals contained in this Performance and Maintenance Bond are incorporated by reference herein and are expressly made part of this Bond.
- 8) This Performance and Maintenance Bond shall be governed by, and construed in accordance solely with, the laws of the State of Kansas without regard to its conflict of law provisions.
- 9) In the event any legal action shall be filed upon this Performance and Maintenance Bond, venue shall lie exclusively in the District Court of Johnson County, Kansas.
- 10) The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Permit, the Project work to be performed hereunder, or the specifications accompanying the same, shall in any way affect its obligations on this Performance and Maintenance Bond and it does hereby waive notice of any change, extension of time, alteration, or addition to the terms of the Permit, or to the Project work, or to the specifications or City-approved plans.

IN TESTIMONY WHEREOF, Principal has hereunto set his/her hand, and the Surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do on this, the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**SIGNED, SEALED AND DATED** this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**PRINCIPAL:**

\_\_\_\_\_  
(Typed Company Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

**SURETY:**

\_\_\_\_\_  
(Typed Company Name)

\_\_\_\_\_  
(Attorney-in-Fact Signature)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Seal)

**Countersigned:**

\_\_\_\_\_  
(Kansas Resident Agent Signature)

\_\_\_\_\_  
(Typed Name)

(Accompany this bond with Attorney-in-Fact's authority from the Surety Company certified to include the date of the bond.)