

**PERFORMANCE AND MAINTENANCE BOND**  
**FOR ROW EXCAVATION AND RESTORATION WORK**  
**PERFORMED UNDER RIGHT-OF-WAY PERMIT**  
**(Blanket Bond for All Projects - Contractor)**

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 Oblige (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 proposes to obtain excavation permits and excavate in City of Des Moines street and alley rights-of-way (ROW) on behalf of private persons and entities with whom it contracts to provide such services, and further proposes to perform such excavation and to restore City of Des Moines ROW disturbed by its excavation activities (such excavation and restoration work hereinafter referred to as "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, 2000, as said Article exists or may hereafter be amended; the Urban Standard Specifications for Public Improvements, 2001 Edition or later; the latest edition of the City of Des Moines Utility Accommodation and Street Restoration Specifications; the permit conditions included in any excavation permit under which it works; and orders issued by the City Engineer for the City of Des Moines with respect to work under any such permit, and proposes to complete all such excavation and restoration work within the permit period specified therefor in the permits issued for such work.

It is expressly understood and agreed by the Contractor and Surety on 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 such laws, regulations, specifications, orders, permits and permit conditions referenced above, for excavation and restoration work undertaken by it pursuant to permit issued by the City of Des Moines, 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 by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of such work under permit.
2. **MAINTENANCE:** The Contractor and the Surety on this Bond hereby agree, at their own expense:
  - A. To remedy any and all defects in or damages to property of the Jurisdiction, including but not limited to street or sidewalk surfaces, traffic control devices or cabling, telecommunications devices or cabling, sewers, water lines, or street trees or plantings, that may develop in or result from ROW excavation or restoration work to be performed pursuant to a ROW permit issued by the City of Des Moines within the period of four (4) years from the date such work is completed, by reason of defects in workmanship or materials or inappropriate construction methods or operations used in the 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 and damages 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 or damage as required by this section.

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

- 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 for completion of the work under permit;
  - B. To consent without notice that this Bond shall remain in full force and effect until the work is completed, whether completed within the period specified in the permit or within an extension thereof.

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

- C. That no provision of this Bond or of any other contract shall be valid which limits to less than five years after the completion of the work under permit the right to sue on this Bond.
- D. 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 costs and expenses of litigation as they are incurred by the Jurisdiction. It is intended that 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 by applicable laws, regulations, specifications, orders, permits and permit conditions, and that the Jurisdiction will be fully indemnified so that it will be put into the position it would have been in had the work been performed in the first instance as required.

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 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.

NOW THEREFORE, the condition of this obligation is such that if said Principal shall faithfully perform all of the requirements and obligations of the Principal, as set forth and provided in all applicable laws, regulations, specifications, orders, permits and permit conditions, 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; **second**, if not defined in the Bond, it shall be interpreted or construed as defined in Chapter 102, Article XI of the Municipal Code of Des Moines, 2000 as it presently exists or may hereafter be amended, in the Urban Standard Specifications for Public Improvements, 2001 Edition or later, or in the latest edition of the City of Des Moines Utility Accommodation and Street Restoration Specifications; **third**, if not defined in Chapter 102, Article XI of the Municipal Code of Des Moines, 2000 as it presently exists or may hereafter be amended, in the Urban Standard Specifications for Public Improvements, 2001 Edition or later, or in the latest edition of the City of Des Moines Utility Accommodation and Street Restoration Specifications, it shall be interpreted or construed as defined in the Iowa Code; **fourth**, if not defined in the Iowa Code, it shall be interpreted or construed according to its generally accepted meaning in the construction industry; and **fifth**, 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.

Witness our hands, in quadruplicate, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**PRINCIPAL:**

\_\_\_\_\_

Contractor

By \_\_\_\_\_

Signature

\_\_\_\_\_

Title

**SURETY:**

\_\_\_\_\_

Surety Company

\_\_\_\_\_

Signature Attorney-in-Fact/Officer

\_\_\_\_\_

Name of Attorney-in-Fact/Officer

\_\_\_\_\_

Company Name

\_\_\_\_\_

Company Address

\_\_\_\_\_

City, State, Zip Code

\_\_\_\_\_

Company Telephone Number

**FORM APPROVED BY:**

\_\_\_\_\_

Attorney for Jurisdiction

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.