

**CITY OF SHAWNEE, KANSAS**

**LAND DISTURBANCE PERFORMANCE BOND**

**BOND NO.** \_\_\_\_\_

\_\_\_\_\_, as surety ("Surety"), and \_\_\_\_\_, as principal ("Principal"), enter into and execute this Bond ("Performance Bond"), and bind themselves in favor of the City of Shawnee, as obligee ("Beneficiary"), in the initial amount of \_\_\_\_\_ Dollars, (\_\_\_\_\_), or such greater amount as may be adjusted from time to time in accordance with the terms of this Bond, (the "Penal Sum").

WHEREAS, the Principal has submitted to the Beneficiary an application for a Land Disturbance Permit, to timely and fully provide all labor, tools, equipment and materials or supplies in conformance with generally accepted standards for quality, skill and construction of similar projects in a workmanlike manner, as designated, described and required by the plans submitted by the Principal or agent with the application and approved by the Beneficiary, the Stormwater Pollution Prevention Plan submitted by the Principal or agent and approved by the Beneficiary, the City of Shawnee Manual of Technical Specifications and Design Criteria for Public Improvement Projects, and any other written conditions issued by the Beneficiary to the Principal for approval of the Land Disturbance application and issuance of a Land Disturbance Permit by the Beneficiary to the Principal, all as may be reasonably related to the

development project, (hereinafter all such plans, Technical Specifications, documents, conditions of approval, and terms of approval of the Land Disturbance Permit issued in writing by the Beneficiary to the Principal, are collectively referred to and known as the "Conditions of Approval" and the work required by such Conditions of Approval is referred to and known as the "Project Work").

WHEREAS, the Beneficiary has further required the Principal to guarantee timely restoration of any public or private improvements damaged, disturbed, or harmed by the Project Work, including restoration of improved or unimproved surfaces to a neat and presentable condition, and removal of debris, excess dirt, or materials, all as required by the Conditions of Approval, (hereinafter collectively referred to and known as the "Required Restoration").

WHEREAS, the Beneficiary has required the Principal to furnish this Performance Bond as a condition to the issuance of a Land Disturbance Permit to the Beneficiary to guarantee the performance of the Project Work and Required Restoration.

It is agreed if the Principal shall in all particulars promptly and faithfully perform each and every covenant, condition, and part of the Project Work and Required Restoration in accordance with the Conditions of Approval, and to the true intent and meaning in each case, then this obligation shall be and become null and void upon the issuance of a final written certificate by the Beneficiary approving the Project Work; otherwise this obligation shall remain in full force and effect.

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

- 1) The Conditions of Approval 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 Restoration as designated and described in the Conditions of Approval, both express and implied.
- 2) If the Beneficiary shall provide to Surety the written notice of the Beneficiary stating that the Principal is in breach or default of the Conditions of Approval or the timely completion of the Project Work or Required Restoration, 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 7 below, Surety must promptly notify the Beneficiary in writing which action it will take as permitted in Paragraph 3.
- 3) Upon the delivery of the Beneficiary's written notice of breach or default by the Principal as provided in Paragraph 2 above, 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 and Required Restoration in accordance with the Conditions of Approval, including correction of defective and nonconforming Project Work and Required Restoration through its own contractors or employees, approved as being acceptable to the Beneficiary, in the Beneficiary's sole discretion, provided, however, that Principal will not be retained to complete such Project Work and Required Restoration, and provided further that Beneficiary'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 Restoration who is not affiliated with the Principal; or
  - b. **Tender the Full Penal Sum.** Tender to the Beneficiary the full Penal Sum of this Performance Bond. The Beneficiary will refund to the Surety without interest any unused portion not spent by the Beneficiary procuring and paying a completing contractor or completing the Project Work and Required Restoration, plus the cost allowed under Section 4, after completion of the Project Work; or
  - c. **Other Acts.** Take any other acts mutually agreed upon in writing by the Beneficiary and the Surety.
- 4) In addition to those duties set forth herein above, the Surety must promptly pay the Beneficiary (i) all losses, costs and expenses resulting from the Principal's failure to timely complete the Project Work and Required Restoration in accordance with the Conditions of Approval, 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 waives notice of any modifications to the Conditions of Approval or the amount of Project Work to be performed. The parties expressly agree that this Bond shall be deemed amended automatically and immediately, without formal and separate

amendments hereto, upon amendment to the Conditions of Approval or the Project Work, so as to bind the Principal and the Surety to the full and faithful performance of the Project Work so amended. The term "amendment" or "modification" wherever used in this Bond shall include any alteration, addition, extension, or modification of any character whatsoever.

- 6) The Surety provides this Land Disturbance Performance Bond for the sole and exclusive benefit of the Beneficiary 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.
- 7) All notices to the Surety, the Principal or the Beneficiary 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: \_\_\_\_\_

**BENEFICIARY**

City of Shawnee, Kansas  
City Hall  
Attn: Doug Wesselschmidt, City Engineer  
11110 Johnson Drive  
Shawnee, Kansas 66203

**with a copy to:**

Office of the City Attorney  
City Hall  
Attn: Ellis Rainey  
11110 Johnson Drive  
Shawnee, Kansas 66203

- 8) The recitals contained in this Land Disturbance Performance Bond are incorporated by reference herein and are expressly made part of this Performance Bond.

- 9) This Performance Bond shall be governed by, and construed in accordance with, the laws of the State of Kansas without regard to its conflict of laws provisions.
- 10) In the event any legal action shall be filed upon this Performance Bond, venue shall lie exclusively in the District Court of Johnson County, Kansas.

**IN TESTIMONY WHEREOF**, said Principal has hereunto set his/her hand, and said 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 at

\_\_\_\_\_ Charlotte, North Carolina \_\_\_\_\_,

on this, the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Principal**

**Surety**

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

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

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

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

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

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

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

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

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

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

\_\_\_\_\_  
Attorney in Fact  
(Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Date of Execution)

\_\_\_\_\_  
(Date of Execution)

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

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NOTES:

1. Date of bond must be prior to date of any land disturbance work on the property.
2. The amount of the bond shall be \$5,000 or 100% of the project cost, whichever sum is greater
3. If Principal is partnership, all partners should execute bond.
4. The owner of the property to be disturbed is required to be the Principal who executes this bond.
5. Surety companies executing bonds must appear on the Treasury Departments most current list (Circular 570 as amended) and be authorized to transact business in the state of Kansas.
6. Accompany this bond with Attorney-in-Facts Authority from the surety company certified to include the date of the bond.

SURETY SOLUTIONS