

PROJECT: \_\_\_\_\_

**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

That we \_\_\_\_\_ as Principal (hereinafter referred to as the "Utility") and \_\_\_\_\_, as Surety are held and firmly bound unto the City of Ankeny, 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 \_\_\_\_\_ lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, legal representatives and assigns, jointly or severally, firmly by these presents.

The conditions of the above obligations are such that whereas the Utility will be performing work (hereinafter referred to as the "Utility Installation") within the Jurisdiction's public right-of-way, wherein said Utility undertakes and agrees to restore the Jurisdiction's public right-of-way as described in Section 122.08 of the City of Ankeny's Municipal Code.

And to faithfully perform all the terms and requirements of said Utility Installation within a reasonable time and in a good and workmanlike manner.

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

1. **PERFORMANCE:** The Utility shall well and faithfully observe, perform, fulfill, and abide by each and every covenant, condition, and part of the Utility Installation, by reference made a part hereof, and shall indemnify and save harmless the Jurisdiction from all outlay and expense incurred by the Jurisdiction by reason of the Utility's default or failure to perform as required. The Utility shall also be responsible for the default or failure to perform as required by all its contractors, subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Utility Installation.
2. **GENERAL:** Every Surety on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:
  - A. To consent without notice that this Bond shall remain in full force and effect until the Utility Installation is completed.

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

- B. 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 Utility Installation the right to sue on this Bond.
- C. 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, attorney's 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 the Utility and Surety will defend and indemnify the Jurisdiction on all claims made against the Jurisdiction on account of Utility's failure to complete the required Utility Installation, and that the Jurisdiction will be fully indemnified so that it will be put into the position it would have been in had the Utility Installation 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 Utility or Surety should have provided the defense, or in the enforcement of the promises given by the Utility, or in the enforcement of the promises given by the Utility and Surety in this Bond, the Utility and Surety agree that they will make the Jurisdiction whole for all such outlay and expense.

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 Utility and the Surety agree, jointly and severally, to pay the Jurisdiction all outlay and expense incurred therefore 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 Utility or whether Utility is joined in any such action or actions or not.

NOW THEREFORE, the condition of this obligation is such that if said Utility shall faithfully perform all of the promises of the Utility, as set forth and provided 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 phase 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 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.

Witness our hands, in triplicate, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

<p>Surety Countersigned By:</p> <p>_____ Signature of Agent</p> <p>_____ Printed Name of Agent</p> <p>_____ Company Name</p> <p>_____ Company Address</p> <p>_____ City, State, Zip Code</p> <p>_____ Company Telephone Number</p>	<p><b>PRINCIPAL:</b></p> <p>_____ Utility</p> <p>By: _____ Signature</p> <p>_____ Title</p> <p><b>SURETY:</b></p> <p>_____ Surety Company</p> <p>By: _____ Signature Attorney-in-Fact/Officer</p> <p>_____ Printed Name of Attorney-in-Fact/Officer</p> <p>_____ Company Name</p> <p>_____ Company Address</p> <p>_____ City, State, Zip Code</p> <p>_____ Company Telephone Number</p>
--	---

**NOTE:**

- 1. All signatures on this performance, payment, and maintenance 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 or 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.**