

# PERFORMANCE BOND

Principal(s) Name _____	RE: Permit No. _____
Address _____	Type of permit _____
Surety Name _____	Bond Number _____
Address _____	Sum of Bond _____
	Date Bond Executed _____

KNOW ALL MEN BY THESE PRESENTS, that I(We), \_\_\_\_\_ ,  
 hereinafter referred to as "Principal," and \_\_\_\_\_ ,  
 \_\_\_\_\_  
*surety and address*  
 a \_\_\_\_\_ Corporation authorized to do business in the State of Maryland, hereinafter  
 \_\_\_\_\_  
*state*  
 referred to as "Surety" hereby recite and declare that:

1. We are held and firmly bound unto the City of Gaithersburg, Maryland, (hereinafter referred to as the "City,") in the full and just sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ), lawful money of the United States of America, to be paid to the City, its successors, assigns, and we bind ourselves, our heirs, executors, administrator, successors, and assigns, jointly and severally, firmly by this Bond.
2. This Bond shall be void if the Principal performs, in every respect, all of its obligations under the Permit with the City, entitled \_\_\_\_\_ and dated \_\_\_\_\_ , said Permit incorporated herein by reference. Otherwise, this Bond shall continuously remain in full force and effect until released by the City.
3. A. It shall be the duty of the Principal to notify Surety of any revision to the plans, profiles, and specifications referred to in the Permit. Except as otherwise provided herein, Surety expressly waives any right to receive notice from the City or to review or approve any revisions to the plans, profiles and specifications referred to in the Permit which are required to meet City, County or State standards. No such

revisions of any kind in the work shall in any way affect the obligation of the Surety under this Bond; except that the Principal shall submit to the Surety for review and approval, and the Surety shall have the right to review and approve, any such revision which:

- (1) Grants the Principal any extension of time beyond the period provided for in the Permit for completion of its obligations under the Permit;
  - (2) Increases the cost of remaining construction and improvements required under the Permit by more than ten percent of the original penal sum of the Bond, as established by the estimate of Principal; provided, however, that the Surety shall be in all cases conclusively bound for purposes of this subparagraph by the estimate rendered by the Principal to the City as to the cost of any such revision. Where revisions are made without approval of Surety as required by this subparagraph 3(A)(2), Surety shall be released from any liability for such revisions in excess of ten percent of the original penal sum of this Bond; provided, however, that such revision without review and approval of Surety as required under this subparagraph 3(A)(2) shall not otherwise operate as a release or discharge of any obligation of Surety under this Bond.
- B. The failure or refusal of the City to take any action, proceeding, or step to enforce any remedy or exercise any right under the Permit or the taking of any action, proceeding, or step by obligee, acting in good faith upon the belief that same is permitted by the provisions of the Permit shall not in any way release Principal or Surety, or either of them, or their respective executors, administrators, successors, or assigns, from liability under this Bond. Except as set forth herein, Surety hereby waives notice of any amendment, indulgence, or forbearance, made, granted or permitted.
- C. The City, Principal, and Surety intend each provision of this Bond be valid and binding upon them, and expressly agree to abide thereby.
- D. In the event of a default (as defined in paragraph 4(A) of this Bond), the City may terminate whatever rights Principal and/or Surety may have, to perform further work on the project.
4. A. A default shall be deemed to have occurred on the part of the Principal, if Principal shall fail to complete its obligations under the Permit within the time set forth therein or any extensions thereof; or, prior to the expiration of such period, if in the judgement of the City Manager, the Principal has:
- (1) Abandoned or unnecessarily delayed the performance of its obligations under the Permit; or,
  - (2) Renounced or repudiated its obligations under the Permit; or,
  - (3) Clearly demonstrated through insolvency, or otherwise, that its obligations under the Permit cannot be completed within the time allotted under the Permit.
- B. If Principal defaults in the performance of all or any part of the obligations specified in the Permit, the City Manger shall give written notice of the default to the Surety, with a copy to the Principal.

In the event of such default and notice, Surety shall within 30 days of receipt of the default notice, give written notice to the City stating whether it will assume or decline to assume the Permit and the obligations of the Principal; and should it elect to assume said obligations Surety shall be required to complete the requirements of the Permit according to its terms and provisions within 180 days of said notice, but not before expiration of the period provided for under the Permit and approved extensions thereof. In the event that Surety elects to assume the obligations of Principal as provided herein and thereafter fails to faithfully perform all or any part of the work, or should it unnecessarily delay all or any part of the work, the City may proceed as provided in paragraph 5 of the Bond.

5. Should Surety, following notice of default, notify the City that it elects not to assume the obligations of Principal under the Permit; or fails within 30 days of receipt of the default notice as provided in paragraph 4 above to notify the City whether it elects to assume the obligations of Principal; or having elected to assume the obligations of Principal should it then fail to perform; then in either event the City may elect any of the following procedures or any combination thereof:
  - A. Terminate whatever rights Principal and/or Surety may have to perform further work on the project.
  - B. Take over or relet all or any part of the work under the Permit which is not completed and complete the same for the account and at the expense of the Principal and Surety, who shall be jointly and severally liable to the City for the costs incurred in completion and/or correction thereof. Such costs shall include maintenance and/or deterioration; provided however, that Surety's liability shall in no case be greater than the total amount of the Bond.
  - C. Make demand on the Surety for cash payment within 30 days of such demand for the costs of completion in an amount not greater than the amount of the Bond.
  - D. Take such other action, including but not limited to institution of legal action in a Court of competent jurisdiction to compel performance and/or payment to cover the costs of completions, including reasonable attorneys' fees.

The Principal and Surety consent and agree to comply with any and all elections of the above remedies, procedures, and demands with respect thereto exercised by the City and further agree in the event of a failure to so comply with any demand made by the City pursuant to Paragraphs 4 and 5 herein, then they consent to and waive protest against the entry of a confessed or consent judgment in an amount to cover the cost of completion of work secured by this Bond, including Court costs and attorneys' fees; provided, however, that any such judgement against the Surety shall not exceed the amount of the Bond securing performance.

6. Surety shall have the right, at any time within 30 days of the default notice provided for in 4(B) hereof, to demand that the City Manager state a sum constituting the estimated costs, as of that time, of completion and/or correction of the work required under the Permit. Should it so elect, Surety may then pay over to the City the sum so stated and be released from any further obligations under this Bond. If funds are paid over under this section and the paid-over funds are not sufficient to complete the work, the City's sole remedy shall be to proceed against the Principal for any deficiency. If there are any paid-over funds not necessary for completion of the work, the City will return the excess, with legal interest, to Surety after completion of the work.
7. If any action or proceeding is initiated in connection with this bond and any and all obligations arising hereunder, the venue thereof shall be Montgomery County, Maryland, and it is further understood and agreed that this contract shall be governed by the laws of the State of Maryland, both as to interpretation and performance.
8. All notices sent to the Principals and Surety shall be sent to the addresses set forth on the signature page unless said Principals and Surety notify the City Manager in writing of such change. If the addresses of any of the Principals or Surety change, the Principal or Surety shall immediately notify the City Manager in writing of such change. Failure to notify the City Manager of any change in address is deemed to be a waiver of any requirement for notice under this Bond to the Principals or Surety. All written notice to the City required under this Bond shall be sent certified mail and addressed to the City Manager with a copy to the City Attorney.
9. If any one or more of the provisions of this Bond are determined to be illegal or unenforceable by a court of competent jurisdiction, all other provisions shall remain effective.
10. The Principal, his agents and servants, will comply with the applicable ordinances, laws, regulations, and requirements of the City or applicable within the City.
11. The Principal will save harmless the City or any of its officers from any expense incurred through the failure of the Principal to perform or complete its obligations under the Permit, or from any damages growing out of the negligence of the Principal, or his agents or servants.
12. Approval of this Bond by the City shall be deemed acceptance without further notice to the Principal(s) and/or Surety(ies).
13. The failure of the City to enforce or timely comply with any provision of this Bond shall not be deemed a waiver of the obligation of the Principal and Surety hereunder.



**ACKNOWLEDGMENT OF PRINCIPAL(S)**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, do hereby certify that \_\_\_\_\_

whose name is signed to the foregoing bond, this day personally appeared before me in my State and County aforesaid and acknowledged the same.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_ .

\_\_\_\_\_  
*Notary Public*

My commission expires: \_\_\_\_\_

**ACKNOWLEDGMENT OF CORPORATE SURETY**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, do hereby certify that \_\_\_\_\_

\_\_\_\_\_,  
Attorney-in-Fact for the \_\_\_\_\_ whose name is signed to the foregoing bond, this day personally appeared before me in my State and County aforesaid and acknowledged the same.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_ .

\_\_\_\_\_  
*Notary Public*

My commission expires: \_\_\_\_\_

In witness of which, the City Manager has caused this agreement to be executed on behalf of the City of Gaithersburg.

WITNESS:

CITY OF GAITHERSBURG, MARYLAND

\_\_\_\_\_

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

*City Manager*

STATE OF MARYLAND

COUNTY OF MONTGOMERY

This \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, appeared before me in my State and County afore-said City Manager of the City of Gaithersburg, Maryland, and acknowledged his signature.

\_\_\_\_\_  
*Notary Public*

My commission expires: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
*City Attorney*