At one time the law allowed a single bond to cover both the city and subcontractors, but now contractors must provide separate performance and payment bonds. These forms are samples such as would be provided by the Surety Company.

**22. Contractor’s Performance Bond[[1]](#endnote-2)**

KNOW ALL PERSONS BY THESE PRESENTS that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Here insert the name and address or legal title of the contractor)

as Principal, hereinafter called Contractor, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Here insert the legal title of surety)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (a corporation certified by the Minnesota Commissioner of Commerce and authorized to act as a surety as provided in Minn. Stat., 60A.23, subd. 5 and 574.15)

 as Surety, are held and firmly bound unto

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Here insert the name and address or legal title of the city)

as Obligee, hereinafter called Owner, in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Dollars ($\_\_\_\_\_\_\_\_\_\_).[[2]](#endnote-3)

For the payment whereof, Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these present.

WHEREAS, contractor has by written agreement, dated (month) (day) , (year) *.*

entered into a contract with Owner for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Here insert full name and title of the project or contract)

which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

a. The Surety hereby waives notice of any alteration or extension of time made by the Owner.

b. Whenever Contractor shall be, and declared by Owner to be, in default under the Contract, the Owner, having performed Owner’s obligations hereunder, the Surety may promptly remedy the default, or shall promptly:

 1. Complete the Contract in accordance with its terms and conditions, or

 2. Obtain a bid or bids for submission to Owner for completing the Contract in accordance with its terms and conditions, and upon determination by Owner and Surety of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion, less the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “balance of the Contract price” as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

c. Any suit under this bond must be instituted before the expiration of two years from the date on which final payment under the Contract falls due.

d. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators, or successors of Owner.

SIGNED AND SEALED this \_\_\_\_\_\_\_ day of (month) *,* (year) A.D.

In the presence of;[[3]](#endnote-4) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

 (Principal) (name of Contractor)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

Witness Surety

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness Title

(The complete post office address Countersigned

for both parties should be included by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

where necessary for identification)[[4]](#endnote-5) Attorney-in-fact

INDIVIDUAL ACKNOWLEDGMENTS[[5]](#endnote-6)

STATE OF MINNESOTA )

 ) SS.

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

On this \_\_\_\_\_\_\_\_\_\_ day of (month) , (year) , before me personally appeared \_\_\_\_\_\_\_, to me well known to be the person described in, and who executed, the foregoing bond, and acknowledged that he/she executed the same as his/her free act and deed.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

CORPORATE ACKNOWLEDGMENTS[[6]](#endnote-7)

STATE OF MINNESOTA )

 ) SS.

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

On this \_\_\_\_\_\_\_\_\_\_ day of (month) , (year) , before me appeared \_\_\_\_\_\_\_ and \_\_\_\_\_\_\_,, to me personally known, who being by me duly sworn, did say that they are respectively the (president) and (secretary) of \_\_\_\_\_\_\_, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was executed in behalf of said corporation by authority of its board of directors; and said \_\_\_\_\_\_\_ and \_\_\_\_\_\_\_ acknowledged such instrument to be the free act and deed of the corporation.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

APPROVAL[[7]](#endnote-8)

Approved as to form and execution this \_\_\_\_\_\_\_ day of (month) , (year) .

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Attorney

**END OF FORM**

1. The law requires a contractor to provide separate performance and payment bonds to be executed in connection with most public improvements over $175,000. (Minn. Stat. § 574.26.) It is always advisable to insist on the bond of a surety company authorized to do business in Minnesota. If personal sureties are accepted there is often difficulty in collecting on the bond; financial responsibility of the surety company authorized to do business in Minnesota is generally complete. However, it is not wise to use the bond forms furnished by corporate sureties for their bond unless it is clear that the forms do not include limitations to protect the surety which materially decrease the protection of the municipal corporation. See Minn. Stat. §§ 574.261 and 574.38 for alternatives to bonds for securing contractor performance. [↑](#endnote-ref-2)
2. The amount of the surety bond cannot be less than the contract price. If the contract amount is increased later an additional bond should be required. (Minn. Stat. § 574.26.) [↑](#endnote-ref-3)
3. It is advisable to insist upon having two witnesses to each signature. [↑](#endnote-ref-4)
4. Section 574.28 requires addresses of contractor and surety on both payment and performance bonds. [↑](#endnote-ref-5)
5. Every signature to the bond should be acknowledged by a notary public. If the contractor is a corporation the form of corporate acknowledgement below can be used. If the contractor is an individual, the individual acknowledgement is the form to be used. If the contractor is a partnership, it should be insisted upon that every partner sign the contract and that everyone acknowledge the contract before a notary. It is not necessary to have a separate acknowledgment for each signer. All individuals can acknowledge the contract at one time before the same notary public and she/she can make the acknowledgement read so as to cover all of such parties. [↑](#endnote-ref-6)
6. The acknowledgement of a corporation must be taken from two executive officers of the corporation, preferably the president and the secretary. Every corporate signature should be accompanied by the corporate seal if one exists. [↑](#endnote-ref-7)
7. It is advisable to have the bond checked by the attorney after its execution, as well as before. This is required by some charters. [↑](#endnote-ref-8)