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.

**23. Contractor’s Payment Bond[[1]](#endnote-2)**

KNOW ALL PERSONS: That we \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

hereinafter called the Principal, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and

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

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

(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)

hereinafter called the Surety, or Sureties, are held and firmly bound unto

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

hereinafter called the Owners, and to such persons, firms and corporations who may furnish materials for, or perform labor on the work, building or improvements, contemplated in the contract hereinafter mentioned, in the sum of \_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_)[[2]](#endnote-3)

for the payment whereof the Principal and Surety, or Sureties, bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents:

WHEREAS, the Principal has by means of a written agreement dated\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

a copy of which Agreement is by reference made a part hereof.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform the Contract on his/her part, and satisfy all claims and demands incurred for the same, and shall fully indemnify and hold harmless the Owner from all costs and damage which he/she may suffer by reason of failure to do so, and shall fully reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any such default, and shall promptly make payment to all persons supplying labor or material for use in the prosecution of the work provided for in such contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

AND PROVIDED, that any alterations which may be made in the terms of the Contract, or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the Contract, or any other forbearance on the part of either the Owner or the Principal to the other shall not in any way release the Principal and the Surety, or Sureties, or either or any of them, their heirs, executors, administrators, successors, or assigns from their liability hereunder, notice to Surety, or Sureties, of any such alteration, extension or forbearance being hereby waived.

This bond is made for the use and benefit of all persons, firms, and corporations who may furnish any material or perform any labor for or on account of said work, building or improvements and they and each of them are hereby made Obligees hereunder the same as if their own proper names were written herein as such, and they and each of them may sue herein.

Signed and Sealed this \_\_\_\_\_ day of (month) , (year) .

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

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

) as to

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

) as to

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

) as to

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Countersigned

by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney-in-fact

(The complete post office address for both parties should be included)[[4]](#endnote-5)

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

STATE OF MINNESOTA )

) SS.

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

On this \_\_\_\_\_\_\_ day of (month) , (year) , before me personally appeared \_\_\_\_\_\_\_, to me 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.

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 to 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 acknowledgment 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 acknowledgement for each signer. All individuals can acknowledge the contract at one time before the same notary public and he/she can make the acknowledgment read so as to cover all of such parties. [↑](#endnote-ref-6)
6. The acknowledgment 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 execution, as well as before. This is required by some charters. [↑](#endnote-ref-8)