

PERFORMANCE AND MAINTENANCE BOND

Bond Number: \_\_\_\_\_

IT IS HEREBY AGREED:

That \_\_\_\_\_ (hereinafter called "OWNER") and \_\_\_\_\_ (hereinafter called "CONTRACTOR"), both as principals, (collectively or individually, hereinafter called "PRINCIPAL") and \_\_\_\_\_ as SURETY, are held and firmly bound unto the CITY of Ballwin, Missouri, hereinafter called CITY, as Obligees, in the amount of \_\_\_\_\_ Dollars (\$) for the completion and maintenance of the following described WORK:

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

upon the property located at \_\_\_\_\_, in accordance with the following: permit, permit applications, drawings, specifications, approvals, statements and understandings at hearings and public meetings, and ordinances approved by the CITY; all of which are made a part of this agreement by; and

WHEREAS: The following shall be part of the above described WORK and shall be included in this agreement:

- The repair of any off-site or on-site damage caused as a result of this WORK, or lack of same.
- The replacement, repair of substandard construction or deterioration, or damage to WORK already completed.
- The establishment or reestablishment of siltation and storm water control measures.
- The removal of mud, gravel, construction materials, or other similar trash, refuse and debris as, defined in the Code of Ordinances of the CITY, from the site or surrounding properties, easements and/or rights-of-way.

WHEREAS: PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

IT IS HEREBY MUTUALLY AGREED:

1. That the above funds herein are to guarantee the construction, installation, maintenance and completion of the above described WORK and off-site damage restoration in accordance with the plans and specifications approved by the CITY.
2. That the PRINCIPAL guarantees that all WORK and/or restoration will be completed within the time stipulated in the \_\_\_\_\_ permit or within the time specified by the CITY for corrective action or restoration. The PRINCIPAL agrees to maintain the improvements and restorations in good condition until they are determined by the CITY to conform to the approved plans and specifications.
3. That in the event that the PRINCIPAL shall:
  - a. Cease significant efforts towards the completion of the WORK for a period of six months, or
  - b. Fail to complete all WORK within the time stipulated in the \_\_\_\_\_ permit, or
  - c. Fail to maintain the work area and improvements in a safe and properly functioning manner, or
  - d. Fail to perform off-site repairs or restoration within the time specified by the CITY,

then, the SURETY shall promptly remedy the default, or shall promptly within such reasonable time specified by the CITY:

- a. Complete the above described WORK in accordance with the above referenced approved plans and specifications, or
  - b. Obtain a bid or bids for completing the above described WORK in accordance with the above referenced approved plans and specifications and upon determination by the CITY and the SURETY jointly of the lowest responsible bidder, arrange for a contract between such bidder and SURETY, and make available as WORK progresses sufficient funds to pay the cost of completion.
4. That in the event the PRINCIPAL and/or SURETY do not complete the aforesaid WORK within the time specified, or in accordance with the provisions of item 3 above, at the CITY's option, given in writing to the PRINCIPAL and SURETY at the address specified herein, all parties agree that:
  - a. The PRINCIPAL shall grant the CITY, its agents or its assigns, the right of access to the site for the purpose of completing the above described WORK, and/or correcting the identified failure(s), and/or restoring and repairing the site to a safe and secure condition with full vegetation cover, and
  - b. The PRINCIPAL and SURETY further agree that in the event the WORK is not completed within the time allowed in accordance with paragraph 3 above and any extensions thereof as may be granted by the CITY, they shall be jointly and severally liable to the CITY for any and all costs incurred by the CITY in completing the

required improvements. In such event, at the election of CITY, SURETY shall tender to CITY within thirty (30) calendar days the amount necessary, based upon the estimate of CITY, to carry out completion of the improvements; it being further understood that upon completion of the improvements, any unexpended funds shall be returned to SURETY.

c. As a part of the obligation secured hereby and in addition to the face amount specified, there shall be included costs and reasonable expenses and fees of enforcing this obligation, including, but not limited to attorney's fees incurred by CITY, all to be taxed as costs and included in any judgment rendered.

5. That the CITY hereby accepts this agreement as satisfactory under the provisions and requirements of \_\_\_\_\_ of the Code of Ordinances of the City of Ballwin, Missouri.

6. The parties acknowledge that the purpose of this Bond is to guarantee Performance and Maintenance of the improvements comprising the WORK and further agree that no partial releases or reductions are required or compelled by RSMo. Section 89.410 or other applicable law or contract until the WORK is completed and accepted by the CITY as provided in item 2 above.

**NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION** is such that if the PRINCIPAL shall promptly and faithfully perform the above described WORK, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The SURETY hereby waives notice of any alteration or extension of time made by the CITY.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the CITY named herein or its agents, successors, or assigns.

The CITY shall be entitled to recover from the PRINCIPAL and/or SURETY, its costs and attorney fees should any action be required to execute on the bond evidenced by this document.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hand and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

In the presence of:

\_\_\_\_\_  
(PRINCIPAL's Name)

Address:

\_\_\_\_\_  
(Witness)

(SEAL)

By \_\_\_\_\_  
(Owner)

In the presence of:

\_\_\_\_\_  
(Surety's Name)

\_\_\_\_\_  
(Witness)

Address:

(SEAL)

By \_\_\_\_\_  
(Surety)

In the presence of:

CITY OF BALLWIN, MISSOURI  
(City)

\_\_\_\_\_  
(Witness)

Address: 1 Government Ctr  
Ballwin, MO 63011

(SEAL)

By \_\_\_\_\_  
(Mayor)

In the presence of:

\_\_\_\_\_  
(Contractor's Name)

\_\_\_\_\_  
(Witness)

Address:

(SEAL)

By \_\_\_\_\_  
(Contractor)