

**CITY OF SHAWNEE, KANSAS**  
Stormwater Treatment Facilities Maintenance Bond

Bond No. \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENT,**

that we, the undersigned \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the **City of Shawnee, Kansas**, a Municipal Corporation of the State of Kansas, in the initial sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), fifty (50%) percent of the total cost of the Stormwater Treatment Facilities as described by the Final Stormwater Treatment Report and Final Stormwater Quality Construction Documents accepted on \_\_\_\_\_, to guarantee the facilities shall endure without defects in materials and workmanship and that the vegetation required successfully becomes established as conditioned hereinafter or such greater amount as may be adjusted from time to time in accordance with the terms of this Stormwater Management Maintenance Bond, (the "Bond").

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

**WHEREAS**, the Principal has committed as a condition of the acceptance of the Final Stormwater Treatment Report and Final Stormwater Quality Construction Documents to the City to timely and fully make all required maintenance repairs and replace all vegetation that fails to successfully become established for the \_\_\_\_\_ development project. Hereinafter all such plans, Shawnee Municipal Code (SMC) Provisions of Title 11, Shawnee Design Manual, documents and conditions of acceptance are collectively referred to and known as the "Conditions of Acceptance" and the work required by such Conditions of Acceptance is referred to and known as the "Project Work"

**WHEREAS**, the City has required the Principal to fully and timely maintain the Project Work, including restoration, repairs, maintenance, and required annual inspections of the Project Work and Stormwater Treatment Facilities, as are determined necessary in the judgment of the City Engineer or the certifying Professional Engineer of the Principal, all as required by SMC, Chapter 11.16, Post-Construction Stormwater Quality Treatment, and the Conditions of Acceptance, for a three (3) year period following the date of the written Notice of Acceptance by the City Engineer of the Stormwater Treatment Facilities and Project Work, including delivery to the City of As-Built Plans and written certification by a Qualified Professional Engineer that the Project Work has been installed and is fully functional in accordance with the Conditions of Acceptance and SMC, Chapter 11.16, Post-Construction Stormwater Quality Treatment of the Shawnee Municipal Code, (hereinafter collectively referred to and known as the "Required Maintenance"); and,

**WHEREAS**, the City has required the Principal to furnish this Bond to the City to guarantee the performance of the Project Work and Required Maintenance.

**NOW, THEREFORE**, if the Principal shall in all particulars promptly and faithfully perform each and every covenant, condition, and part of the Project Work and Required Maintenance in accordance with the Conditions of Acceptance hereto attached or by reference made a part hereof, all to be done subject to the approval and acceptance of the City Engineer, and to the true intent and meaning in each case, then this obligation shall be and become null and void upon the written approval by the City approving the Project Work and the Required Maintenance in accordance with the Shawnee Design Manual; otherwise this obligation shall remain in full force and effect until its release by the City Engineer.

Further, the Surety and the Principal, both jointly and severally, and for themselves, their heirs, administrators, executors, successors and assigns agree that:

- 1) The Conditions of Acceptance are incorporated by reference and made a part of this Bond. The Surety and the Principal are bound for the full and timely performance of the Required Maintenance as designated and described in the Conditions of Acceptance, both express and implied.
- 2) If the City shall provide to Surety the written notice of the City stating that the Principal is in breach or default of the Conditions of Acceptance or Required Maintenance, and that such breach or default remains uncured by the Principal, then upon delivery of such written notice to the Surety in the method

for providing notices as set forth in Paragraph 6, Surety must promptly notify the City in writing which action it will take as permitted in Paragraph 3.

- 3) Upon the delivery of the City's written notice of breach or default by the Principal as provided in Paragraph 2, the Surety may promptly remedy the breach or default or must, within ten (10) days, proceed to take one of the following courses of action:
  - a. **Proceed Itself.** Complete performance of Required Maintenance in accordance with the Conditions of Acceptance and Required Maintenance, including, but not limited to, correction of defective and nonconforming Required Maintenance through its own contractors or employees, approved as being acceptable to the City, in the City's sole discretion, provided, however, that Principal will not be retained to complete such Required Maintenance, and provided further that City's discretion to approve Surety's contractor will not be unreasonably withheld as to any contractor who would have qualified to complete the Required Maintenance who is not affiliated with the Principal; or
  - b. **Tender the Full Penal Sum.** Tender to the City the full Penal Sum of this Bond. The City will refund to the Surety without interest any unused portion not spent by the City procuring and paying a completing contractor or completing the Required Maintenance, plus the cost allowed under Paragraph 4, after completion of the Required Maintenance; or
  - c. **Other Acts.** Take any other acts mutually agreed upon in writing by the City and the Surety.
- 4) In addition to those duties set forth herein above, the Surety must promptly pay the City (i) all losses, costs and expenses resulting from the Principal's failure to timely complete the Required Maintenance in accordance with the Conditions of Acceptance and Required Maintenance provisions, including, without limitation, fees, expenses and costs for architects, engineers, consultants, testing, surveying and attorneys, plus (ii) procurement costs and fees and expenses, plus (iii) costs incurred at the direction, request, or as a result of the acts or omissions of the Surety; provided that in no event shall Surety's liability exceed the Penal Sum of this Bond.
- 5) The Surety provides this Bond for the sole and exclusive benefit of the City and, if applicable, any dual obligee designated by attached rider, together with their heirs, administrators, executors, successors, and assigns. No other party, person or entity has any rights against the Surety.
- 6) All notices to the Surety, the Principal or the City must be delivered in person or otherwise given in writing to such party at the following address set forth below:

**SURETY**

Name: \_\_\_\_\_

Attention: \_\_\_\_\_

Street, City, State, ZIP \_\_\_\_\_

**PRINCIPAL**

Name: \_\_\_\_\_

Attention: \_\_\_\_\_

Street, City, State, ZIP \_\_\_\_\_

**CITY**

City of Shawnee, Kansas  
City Hall  
Attn: Doug Wesselschmidt, City Engineer  
11110 Johnson Drive  
Shawnee, Kansas 66203

- 7) The recitals contained in this Bond are incorporated by reference herein and are expressly made part of this Stormwater Management Maintenance Bond.

- 8) This Bond shall be governed by, and construed in accordance solely with, the laws of the State of Kansas without regard to its conflict of laws provisions.
- 9) In the event any legal action shall be filed upon this Bond, venue shall lie exclusively in the District Court of Johnson County, Kansas.
- 10) The Surety, for value received, waives notice of any modifications to the Conditions of Acceptance or the amount of Required Maintenance to be performed and hereby stipulates and agrees that no change, extension of time, alteration, or addition to the Conditions of Acceptance or the Required Maintenance be performed hereunder, or the specifications accompanying the same, shall in any way affect its obligations on this Bond or to the full and faithful performance of the Required Maintenance so amended.

**IN TESTIMONY WHEREOF**, Principal has hereunto set his/her hand, and the Surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do on this, the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**SIGNED, SEALED AND DATED** this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**PRINCIPAL:**

**SURETY:**

\_\_\_\_\_  
(Typed Company Name)

\_\_\_\_\_  
(Typed Company Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Attorney-in-Fact Signature)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Seal)

**Countersigned:**

\_\_\_\_\_  
(Kansas Resident Agent Signature)

\_\_\_\_\_  
(Typed Name)

(Accompany this bond with Attorney-in-Fact's authority from the Surety Company certified to include the date of the bond.)