

CITY OF PORT ORCHARD
PERFORMANCE & MAINTENANCE BOND WITH GUARANTY
FOR CONSTRUCTION WITHIN THE PUBLIC RIGHT OF WAY

Name of Project _____
Project Address _____
Owner/Developer/Contractor _____
Project/Application # _____
Performance Bond Amount \$ _____
Maintenance Bond Amount \$ _____
Bond # _____

1. Date and Parties

This performance and maintenance bond with guaranty is dated, for reference purposes only, the _____ day of _____, 20__ and is executed by _____, as Principal(s), and _____, as Surety.

2. General Recitals

A. Pursuant to Port Orchard Municipal Code Chapter 12.04, the Principal has received a permit to excavate, cut, or do other work within the public right of way of the City of Port Orchard. Specifically, the Principal will undertake the following: _____

_____ within City right of way located at _____ as more specifically described in permit no. _____ (hereafter "Permit").

B. Port Orchard Municipal Code section 12.04.180 provides that before any such permit may be issued, the Principal must submit a bond in such amount as shall be fixed by the Director of Public Works and fully warrant the work for a period of two (2) years.

3. Bond Amount

The Principal and the Surety agree and do jointly and severally bind themselves, their heirs, executors, administrators, and assigns, unto the City in the sum of _____ dollars (\$ _____).

4. Agreement to Perform

A. The Principal hereby agrees that it shall, at its sole cost and expense, replace and/or repair any damage or defects in workmanship, materials, or installation to the public right of way on which the construction contemplated by the permit is to take place, and any City-owned facility thereon, and leave the same in as good condition as it was before the commencement of the work. The Principal shall complete the construction contemplated in the permit and restore the public right of way and City-owned facilities not later than _____, 20__ ("completion date"). The Principal must obtain acceptance by the City of the work completed, on or before thirty (30) days after the completion date set.

B. The Principal must construct the improvements to conform to the design, location, materials and other specifications for the indicated site improvements, as required by the City in the Permit. In addition, the Principal must construct the improvements according to the applicable ordinances and Public Works Standards of the City and/or state statutes, as the same now exist or are hereafter amended. During the construction period, the Principal shall ensure that all necessary precautions are taken in order to protect public and private property and the public safety, as directed by the Public Works Director for use and occupation of public rights-of-way.

C. The Principal must have paid all sums owing to laborers, contractors, mechanics, subcontractors, materialmen and suppliers or others as a result of such work for which a lien against any City property has arisen or may arise.

D. The Principal further agrees to maintain the improvements or restoration work installed or completed by the Principal pursuant to the above-referenced permit free from defects in materials, workmanship, or installation for a period of two (2) years from the date of written acceptance of the work by the City.

5. Indemnity Agreement

The Principal hereby agrees to indemnify and hold the City harmless from any and all claims that may be made against the City resulting directly or indirectly from any action or inaction of the Principal or his agents, employees or independent contractors relating directly or indirectly to work performed or to be performed under the terms of this agreement. This indemnity and hold harmless shall include City Costs related to defending against said claims, or in enforcing the terms of this agreement.

6. Obligation of Surety

A. If the Principal fails to construct the Improvements and receive City approval within the time limits set forth above, then the Surety shall be liable to the City for City Costs resulting from said failure to perform, but not to exceed the Bond amount. Except that, in the event legal action must be taken to enforce the provisions of this bond or to collect said bond, the prevailing party shall be entitled to attorney's fees and costs over and above the bond amount.

B. If the Principal fails to maintain the Improvements as required herein for the length of time set forth above, then the Surety shall be liable to the City for City Costs resulting from the failure to maintain the Improvements, but not to exceed the Bond amount. Except that, in the event legal action must be taken to enforce the provisions of this bond or to collect said bond, the prevailing party shall be entitled to attorney's fees and costs over and above the bond

C. For purposes of this document, the term "City Costs" shall mean all City expenditures, obligations or debt incurred, including, but not limited to: construction, equipment and material costs; City staff time; legal consultant fees; engineering consultant fees; financial consultant fees; publication, service or process and filing fees; mailing fees; cost of right-of way, real property and easement acquisition; and fees and costs to other governmental jurisdictions, that are made or incurred by the City, whether or not legal action is commenced.

7. Address for Notices

All notices required hereunder shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested, to:

Principal:	Surety:
_____	_____
Name	Name
_____	_____
Street address	Street address
_____	_____
City, State and zip code	City, state and zip code
_____	_____
Facsimile number	Facsimile number

8. Default

A. If the Principal fails to complete the Improvements, as required hereunder in a timely manner then the City shall notify the Principal and the Surety that the Improvements must be completed to the satisfaction of the City Public Works Department within thirty days from the date of the Notice. If the Improvements are not so completed and approved within said thirty day period then the Surety, upon written demand by the City, shall immediately tender to the City the full amount of the Performance Bond and the City will complete the improvements, deduct from the amount tendered the City Costs, and refund the remainder, if any, to the surety.

B. If the Principal fails to maintain the Improvements, as required hereunder, then the City shall notify the Principal and Surety that the Improvements must be repaired to the satisfaction of the City Public Works Department within 10 days from the date of the Notice. If the Improvements are not repaired and approved within said 10 day period, then the Surety shall tender to the City the full amount of the Maintenance bond, and the City shall retain that amount until the end of the maintenance period. If at the end of the maintenance period the tendered monies have not been expended for City Costs associated with Improvement maintenance, then the remaining amount shall be refunded to the Surety.

C. If the amount of the Maintenance and/or Performance Bond is inadequate to pay for City Costs, either because the City Costs exceed the Bond amounts or the Surety is no longer solvent or fails to timely tender the appropriate amount, then the City shall forthwith notify the Principal and he shall tender the deficiency to the City within five days of said notification. If the City commences legal action to collect said deficiency then the prevailing party in said legal action shall be entitled to judgment for their reasonable costs and attorney fees incurred therein and shall not be limited to the amount of the bond. Each principal is jointly and severally liable for the obligations set forth herein.

9. Modification.

This document cannot be modified, nor the obligations created hereunder terminated, without the City's express written consent.

10. Duration.

This bond shall remain in full force and effect until the obligations secured hereby have been fully performed and until the bond is released in writing by the City at the written request of the Surety or Principals.

11. Venue.

Venue for any litigation arising under this bond shall be in Kitsap County Superior Court.

PRINCIPAL:

SURETY:

By: _____
Title _____

By: _____
Title _____

PRINCIPAL:

Accepted by the City this _____ day of
_____, 20__.

By: _____
Title _____

By: _____
Title _____

(Use For Individual/Sole Proprietor Applicant Only)

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing
at: _____
My Commission expires: _____

(Use For Partnership or Corporation Applicant Only)

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged as the _____ of _____ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing
at: _____
My Commission expires: _____