



Parks and Public Works Department

BOND REQUIREMENTS FOR DEVELOPMENT AGREEMENTS AND PERMITS (Updated 9/1/2022)

- I. DEVELOPER or CONTRACTOR agrees to post a Faithful Performance Bond and a payment bond for Labor and Materials, or other guarantees, in the required amounts upon bond forms acceptable to the TOWN (see attached templates), guaranteeing the performance of the terms of the said agreement or permit. Surety issuing bonds for DEVELOPER or CONTRACTOR shall be approved by the U.S. Department of Treasury's Financial Management Service and shall be listed on the most current Treasury Circular 570 as contained in the Federal Register.
- II. For any improvements in the public right-of-way or TOWN property, DEVELOPER or CONTRACTOR agrees to allow five percent of the faithful performance bond to remain in effect for a period of two years following TOWN's project acceptance as guarantee for any needed repair or replacement caused by defective materials and workmanship.
- III. MAINTENANCE AND GUARANTY:
 - A. For work performed in the public right-of-way or TOWN property, DEVELOPER or CONTRACTOR shall promptly repair, replace, restore, or rebuild, as the TOWN may determine, any finished product in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during a two (2) year period subsequent to the date of final acceptance.
 - B. This article does not in any way limit the guaranty on any items for which a longer guaranty is specified or on any items which a manufacturer gives a guaranty for a longer period, nor does it limit the other remedies of the TOWN in respect to a latent defect, fraud or implied warranties. DEVELOPER or CONTRACTOR shall furnish the TOWN all appropriate guaranties or warranty certificates upon completion of the project.
- IV. HOLD HARMLESS:
 - A. DEVELOPER or CONTRACTOR hereby agrees to and shall hold TOWN, its elective and appointive boards, commissions, officers, agents, registered volunteers, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage and any other claims of any sort whatsoever, including, but not limited to, any liabilities, claims, losses, or expenses in any manner caused by, arising out of, or in connection with, either directly or indirectly, the construction or

installation of the work, the guarding of the work, the use of improper materials in construction of the work, or the negligent, willful, or intentional acts or omissions by DEVELOPER or CONTRACTOR or subcontractors, agents, or employee operations of the agreement or permit, whether such operations by DEVELOPER or CONTRACTOR or by any of subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for DEVELOPER or CONTRACTOR or any of subcontractors during the progress of the work or at any time before its completion and final acceptance, excepting suits and actions brought by the DEVELOPER or CONTRACTOR for default of the agreement or permit or arising from the sole active negligence or willful misconduct of the TOWN. TOWN may retain so much of the money due to the DEVELOPER or CONTRACTOR as shall be reasonably necessary to protect the TOWN, until disposition has been made of such suits or claims for damages as aforesaid.

- B. DEVELOPER or CONTRACTOR agrees to and shall pay TOWN's cost of defense (or, at the sole option of the TOWN, DEVELOPER or CONTRACTOR shall defend with counsel approved by the TOWN Attorney) and indemnify TOWN and its elective and appointive boards, commissions, officers, agents, and employees from any suits or actions at law or in equity arising out of the execution, adoption or implementation of the agreement and permit (exclusive of any such actions brought by DEVELOPER or CONTRACTOR), such indemnification to include all costs of defense, judgments, and any awards of attorneys' fees.
- C. Should any accident or incident causing death, personal injury or property damage occur between the date DEVELOPER or CONTRACTOR is notified that its General Liability and/or Workers Compensation Insurance is canceled and the effective date of such cancellation, DEVELOPER's or CONTRACTOR's obligation to indemnify, defend and save harmless the TOWN, as provided for hereinabove, shall in no manner be affected by the fact that the TOWN had not received the notice of cancellation prior to the date of such accident or incident.

V. NOTICES:

Any notice required to be given to TOWN shall be deemed to be duly and properly given if mailed to TOWN, postage prepaid, addressed to:

Gary Heap, Town Engineer
TOWN OF LOS GATOS
41 Miles Avenue
Los Gatos, California 95030

or personally delivered to TOWN at such address or at such other addresses as TOWN may designate in writing to DEVELOPER or CONTRACTOR.

BOND FOR FAITHFUL PERFORMANCE

BOND NUMBER: _____

PREMIUM: _____

Whereas, the Town of Los Gatos, State of California (hereinafter called "TOWN"), and _____ (hereinafter designated as "PRINCIPAL") have entered an agreement whereby PRINCIPAL agrees to install and complete certain designated [subdivision improvement, approved public improvements or grading permit work], which said [agreement, dated _____ or permit number _____], and identified as the _____, is hereby referred to and made a part hereof; and

WHEREAS, said PRINCIPAL is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

NOW, THEREFORE, we, the PRINCIPAL and _____, as Surety, are held and firmly bound unto the TOWN, in the penal sum of

_____ (\$_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, formally by these presents.

The conditions of this obligation is such that if the above bound PRINCIPAL, his/her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the same and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless TOWN, its officers, agents and employees, as therein stipulated, and this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

[THIS PARAGRAPH NOT NEEDED FOR ON-SITE GRADING PERMITS] PRINCIPAL and Surety further agree that upon TOWN's final approval of the work, five percent (5%) of this bond shall remain in effect to guarantee the repair and/or replacement of defective materials and/or construction, two (2) years after TOWN's final acceptance of the work.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by TOWN in successfully enforcing such obligation, all to be taxed as costs and included in any judgement rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

In witness whereof, this instrument has been duly executed by the PRINCIPAL and Surety above named, on _____, 2022.

PRINCIPAL

[Company Name]

SURETY:

[Surety Company Name]

[Name, Title]

[Address]

[Name, Title]

[Address]

[CORPORATE SEAL]

Notary Acknowledgement Required

LABOR AND MATERIAL BOND

BOND NUMBER: _____

PREMIUM: _____

Whereas, the Town of Los Gatos, State of California (hereinafter called "TOWN"), and _____ (hereinafter designated as "PRINCIPAL") have entered an agreement whereby PRINCIPAL agrees to install and complete certain designated [subdivision improvement, approved public improvements or grading permit work], which said [agreement, dated _____ or permit number _____], and identified as the _____, is hereby referred to and made a part hereof; and

WHEREAS, under the terms of said agreement, PRINCIPAL is required before entering upon the performance of the work, to file a good and sufficient payment bond with the TOWN to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

NOW, THEREFORE, said PRINCIPAL and the undersigned as Corporate Surety, are held and firmly bound unto the TOWN and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the aforesaid agreement and referred to in the aforesaid Code of Civil Procedures in the sum of

_____ (\$ _____) for materials furnished or labor thereon or any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the TOWN in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgement therein rendered

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

In witness whereof, this instrument has been duly executed by the PRINCIPAL and Surety above named, on _____, 2022.

PRINCIPAL

[Company Name]

SURETY:

[Surety Company Name]

[Name, Title]

[Address]

[Name, Title]

[Address]

[CORPORATE SEAL]

Notary Acknowledgement Required