



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

**IRREVOCABLE RIGHT-OF-WAY  
CONSTRUCTION AND PERFORMANCE BOND**

**SURETY:**

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

**OBLIGEE:**

City of Naperville ("CITY")  
400 S. Eagle Street  
Naperville, IL 60540  
Attention: City Clerk

**PRINCIPAL:**

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

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

**PRINCIPAL'S BOND BROKER:**

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

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Amount: \_\_\_\_\_

Right-of-Way Permit ("Permit") #: \_\_\_\_\_

For Public Right-of-Way ("RIGHT-OF-WAY") described and depicted on Exhibit A attached hereto and made part hereof.

**KNOW ALL MEN BY THESE PRESENTS,** \_\_\_\_\_, as  
PRINCIPAL, a corporation organized and existing under the laws of the State of \_\_\_\_\_,  
and authorized to do business in the State of Illinois, and \_\_\_\_\_ as  
SURETY, a corporation organized and existing under the laws of the State of \_\_\_\_\_,  
and authorized to transact surety business in the State of Illinois, are held and firmly bound unto  
the City of Naperville, Illinois, a municipal corporation and home rule unit of local government,  
as OBLIGEE, its successors and assigns in the sum of  
\_\_\_\_\_ (\$xx,000.00) Dollars lawful  
money of the United States for the payment of which to be made to the OBLIGEE, its successors

and assigns. Said PRINCIPAL and SURETY hereby firmly bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally by this Irrevocable Right-of-Way Construction and Performance Bond (“**Bond**”).

PRINCIPAL has entered into a Right-of-Way Use License Agreement with the CITY to allow the PRINCIPAL certain use of that portion of the CITY right-of-way described on page 1 hereof (“**RIGHT-OF-WAY**”) subject to the terms and conditions set forth in said Right-of-Way Use License Agreement. Where terms are capitalized herein, but not defined, they are defined in and have the meaning set forth in the Right-of-Way Use License Agreement. Said Agreement, dated as set forth on page 1 hereof, and the Permit issued pursuant thereto (hereinafter cumulatively referenced herein as the “**AGREEMENT**”), are incorporated herein and made part hereof in their entirety by reference. Subject to compliance with the terms, conditions, and covenants set forth in the AGREEMENT, the AGREEMENT permits the PRINCIPAL to construct, install, operate, maintain, or otherwise locate Facilities in, under, over or across the RIGHT-OF-WAY for the purpose of providing services to itself or other persons in areas within or outside the CITY.

This Bond is issued and shall serve as the Security Fund described in the Right-of-Way Use License Agreement. By issuance of this Bond, the SURETY guarantees payment by the PRINCIPAL to the OBLIGEE of those expenditures, expenses, and payments specified in the AGREEMENT in the manner provided therein. Further, by issuance of this Bond, the SURETY guarantees the PRINCIPAL’S faithful performance and compliance with the terms, conditions, and covenants of the AGREEMENT, including but not limited to: timely completion of construction of the Facilities in a location approved by the CITY and in compliance with applicable plans, permits, technical codes and standards, location specified by the CITY, restoration of the Public Ways, Public Streets and other property affected by the construction, submission of “as-built” drawings after completion of the work as required by Section 9-1B of the Naperville

Municipal Code, timely payment of all claims, demands or liens for labor, material or services provided in connection with the work for which this Bond is issued.

The SURETY will, upon written declaration of default by the OBLIGEE to the PRINCIPAL and SURETY, at the option of the OBLIGEE, complete the work for which this Bond is issued, pay to the OBLIGEE or the PRINCIPAL such amounts up to the principal amount of this Bond which will allow the OBLIGEE or the PRINCIPAL to complete said work, or pay the person or entity designated by the OBLIGEE who will perform said work. If said declaration of default identifies expenditures, expenses and/or payments provided for in the AGREEMENT which PRINCIPAL failed to pay to the OBLIGEE, the SURETY shall make payment of the same to the OBLIGEE. Failure of SURETY to honor the OBLIGEE'S demand of either payment and/or performance as specified in the declaration of default within ten (10) business days shall constitute dishonor. Notice of default shall be given to the PRINCIPAL and SURETY at the addresses set forth on page 1 hereof unless OBLIGEE is otherwise notified in writing by the PRINCIPAL or SURETY.

As set forth in the Right-of-Way use License Agreement, the PRINCIPAL shall, within fourteen (14) days after receipt of written notice from the OBLIGEE that this Bond has been reduced pursuant to a demand hereunder, provide the CITY with a replacement Bond in the full amount noted on page 1 hereof unless otherwise a different amount or timeframe is agreed to in writing by the OBLIGEE.

This Bond, including the terms and provisions of the AGREEMENT incorporated herein, sets forth in full the terms of the undertaking between the SURETY and OBLIGEE, and such undertaking shall not in any way be modified, amended, amplified or limited without the specific written agreement of the OBLIGEE, the SURETY, and the PRINCIPAL.

The obligations of SURETY under this Bond are not dependent upon the financial solvency of the PRINCIPAL and as such shall continue even if the PRINCIPAL is the subject of bankruptcy proceedings or no longer exists as a legal entity. The consent of the PRINCIPAL shall not be required prior to the OBLIGEE seeking payment and/or performance hereunder or prior to the SURETY making payment and/or performing hereunder.

This Bond shall remain in full force and effect and shall not be canceled or terminated until released by the prior written consent of the OBLIGEE.

The SURETY further agrees and commits to pay the OBLIGEE six percent (6%) pre-judgment interest and OBLIGEE'S reasonable and the OBLIGEE'S attorneys' fees costs (in-house or outside counsel) reasonably incurred in the enforcement of this Bond if it is wrongfully dishonored by SURETY. Said payment is in addition to any other remedy to which OBLIGEE may be entitled.

The laws of the State of Illinois shall control any dispute or action arising out of this Bond. Any legal action to enforce any right or obligation arising out of the enforcement of this Bond shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

IN WITNESS WHEREOF, we have set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_  
SURETY

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_