

# PERFORMANCE BOND

(Public Work)

Bond No.:

Premium: \$xxx

KNOW ALL BY THESE PRESENTS, That we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, a \_\_\_\_\_ corporation, as Surety, are held and firmly bound unto \_\_\_\_\_, as Obligee, in the sum of \_\_\_\_\_ Dollars (\_\_\_\_\_) for the payment whereof said Principal and Surety bind themselves, jointly and severally, as provided herein.

WHEREAS, Principal has entered into a contract with Obligee dated \_\_\_\_\_ for \_\_\_\_\_ ("Contract").

NOW, THEREFORE, the condition of this obligation is such that if Principal shall perform the Construction Work to be done under the Contract, then this obligation shall be null and void; otherwise to remain in full force and effect. Surety's obligations hereunder shall not arise unless Principal is in default under the Contract for failing to perform the Construction Work, and has been declared by Obligee to be in default under the Contract for failing to perform the Construction Work; and Obligee has performed its obligations under the Contract. In such event, Surety shall have a reasonable period of time to:

1. Upon entering into an acceptable written takeover agreement with Obligee, undertake to perform and complete the Construction Work to be done under the Contract; or
2. Obtain bids or negotiated proposals from qualified contractors for a contract for completion of the Construction Work to be done under the Contract, arrange for a contract to be prepared for execution by Obligee and contractor, to be secured with performance and payment bonds executed by a qualified surety; or
3. Waive its right to perform or complete the Construction Work pursuant to paragraphs 1 and 2 above, and with reasonable promptness under the circumstances: (a) After investigation, determine the amount for which it may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefor to the Obligee; or (b) Deny liability in whole or in part and notify the Obligee citing reasons therefor.
4. The Contract balance, as defined below, shall be credited against the reasonable construction cost of completing the Construction Work to be performed under the Contract. If completed by Obligee pursuant to paragraphs 2 or 3 above, and the reasonable construction cost exceeds the Contract balance, Surety shall pay to Obligee such excess, but in no event shall the aggregate liability of Surety exceed the amount of this bond. If Surety completes the Construction Work pursuant to paragraph 1 above, that portion of the Contract balance as may be required to complete the Construction Work to be done under the Contract and to reimburse Surety for its outlays shall be paid to Surety at the times and in the manner as said sums would have been payable to Principal had there been no default under the Contract; provided, however, that to the extent that Surety's outlays exceed the Contract balance paid to Surety by Obligee, Surety shall be entitled to a dollar for dollar reduction of its liability under this bond, and Surety's aggregate liability shall not exceed the penal sum of this bond. The term "Contract balance," as used in the paragraph, shall mean the total amount payable by Obligee under the Contract and any amendments thereto, less the amounts properly paid by Obligee to Principal under the Contract. The term "Construction Work" as used herein shall mean the providing all labor and/or material necessary to complete Principal's scope of work under the Contract. Notwithstanding any language in the Contract to the contrary, the Contract balance shall not be reduced or set off on account of any obligation, contractual or otherwise, except the reasonable construction cost incurred in completing the Construction Work.
5. Any suit by Obligee under this bond must be instituted before the earlier of: (a) the expiration of one year from the date of substantial completion of the Construction Work, or (b) one year after Principal

ceased performing the Construction Work under the Contract, excluding warranty work. If this bond is provided to comply with bond statutes in the location where the Construction Work is being performed, and the bond statutes contain a statute of limitations for suits on the performance bond, then the limitation period set forth herein shall be read out of this bond and the statute of limitation set forth in the bond statutes shall be read into this bond. If the limitation set forth in this bond is void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable, and said period of limitation shall be deemed to have accrued and shall commence to run no later than the earlier of (y) the date of substantial completion of the Construction Work, or (z) the date Principal ceased performing Construction Work, excluding warranty work.

6. No suit or action shall be commenced hereunder other than in a court of competent jurisdiction in the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

7. This bond shall not afford coverage for any liability of Principal for tortious acts, whether or not said liability is direct or is imposed by the Contract, and shall not serve as or be a substitute for or supplemental to any liability or other insurance required by the Contract. No right of action shall accrue on this bond to or for the use of any person or entity other than the named Obligee.

8. This bond is provided to comply with applicable statutory or other legal requirement for performing construction contracts for public owners in the location where the Construction Work is being performed. Except as provided in paragraph 5 above, all provisions in the bond which are in addition to or differ from applicable statutory or legal requirements shall be read out of this bond, and all pertinent statutes and other legal requirements shall be read into the bond.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Principal)

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

By: \_\_\_\_\_, Attorney-in-Fact

# PAYMENT BOND

(Public Work)

Bond No.:

Premium Included In Performance Bond

KNOW ALL BY THESE PRESENTS, That we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, a \_\_\_\_\_ corporation, as Surety, are held and firmly bound unto \_\_\_\_\_, as Obligee, in the sum of \_\_\_\_\_ U.S. Dollars (\_\_\_\_\_) for the payment whereof said Principal and Surety bind themselves, jointly and severally, as provided herein.

WHEREAS, Principal has entered into a contract with Obligee, dated \_\_\_\_\_, for \_\_\_\_\_ ("Contract").

NOW, THEREFORE, the condition of this obligation is such that if Principal shall promptly make payment to all Claimants as hereinafter defined for all labor and material actually used, consumed or incorporated in the performance of the construction work to be performed under the Contract, then this obligation shall be void; otherwise to remain in full force and effect, subject, however, to the following conditions:

1. A Claimant is defined as one other than Obligee having a contract with Principal or with a direct subcontractor of Principal to supply labor and/or materials and said labor and/or materials are actually used, consumed or incorporated in the performance of the construction work under the Contract.

2. Principal and Surety hereby jointly and severally agree with Obligee that every Claimant as herein defined who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labor was done or performed or materials were furnished by such Claimant, may bring suit on this bond, prosecute the suit to final judgment for the amount due under Claimant's contract for the labor and/or materials supplied by the Claimant which were used, consumed or incorporated in the performance of the work, and have execution thereon; provided, however, that a Claimant having a direct contractual relationship with a subcontractor of Principal shall have a right of action on this bond only if said Claimant notifies Surety in writing of its claim within ninety (90) days from the date on which said Claimant did or performed the last labor and/or materials for which the claim is made. Obligee shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any Claimant:

a. After the expiration of the earlier of: (1) one year after the day on which Claimant last supplied the labor and/or materials for which the claim is made; or (2) the limitation period set forth in the public works bond statutes, if any, in the location where the construction work is being performed. Any limitation contained in this bond which is prohibited by any law controlling in the state where the suit is filed shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by the law of that state, and said period of limitation shall be deemed to have accrued and shall commence to run on the day Claimant last supplied the labor and/or materials for which the claim is made; and

b. Other than in a state court of competent jurisdiction in the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder. Surety's liability hereunder is limited, singly, or in the aggregate, to the penal sum of the bond set forth herein.

5. This bond is provided to comply with a statutory or other legal requirement for performing construction contracts for public owners in the location where the construction work is being performed. Except as provided in paragraph 3 above, all provisions in the bond which are in addition to or differ from those statutory or legal requirements shall be read out of this bond, and all pertinent statutes and other legal requirements shall be read into the bond. This bond is a statutory bond, not a common law bond.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Principal)

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

By: \_\_\_\_\_, Attorney-in-Fact