

# SUBCONTRACT PERFORMANCE BOND

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Bond No.:

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

WHEREAS, the Principal has entered into a subcontract with the Obligee, dated \_\_\_\_\_, for \_\_\_\_\_ ("Subcontract").

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

1. Upon entering into an acceptable written takeover agreement with Obligee, undertake to perform and complete the Construction Work to be done under the Subcontract; or

2. Obtain bids or negotiated proposals from qualified contractors for a contract for completion of the Construction Work to be done under the Subcontract, arrange for a contract to be prepared for execution by the Obligee and the 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 Subcontract balance, as defined below, shall be credited against the reasonable cost of completing the Construction Work to be performed under the Subcontract. If completed by the Obligee pursuant to paragraphs 2 or 3 above, and the reasonable cost exceeds the Subcontract balance, the Surety shall pay to the Obligee such excess, but in no event shall the aggregate liability of the Surety exceed the amount of this bond. If the Surety completes the work pursuant to paragraph 1 above, that portion of the Subcontract balance as may be required to complete the Construction Work to be done under the Subcontract and to reimburse the Surety for its outlays shall be paid to the Surety at the times and in the manner as said sums would have been payable to Principal had there been no default under the Subcontract; provided, however, that to the extent that the Surety's outlays exceed the Subcontract balance paid to Surety by Obligee, the Surety shall be entitled to a dollar for dollar reduction of its liability under this bond, and the Surety's aggregate liability shall not exceed the penal sum of this bond. The term "Subcontract balance," as used herein shall mean the total amount payable by Obligee under the Subcontract and any amendments thereto, less the amounts heretofore properly paid by Obligee to the Principal under the Subcontract. The term "Construction Work" as used herein shall mean the providing of all labor and/or material necessary to complete Principal's scope of work under the Subcontract. Notwithstanding any language in the Subcontract to the contrary, the Subcontract 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 the 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 the Principal ceased performing the Construction Work under the Subcontract, excluding warranty claims. 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 (y) the date of substantial completion of the Construction Work or (z) the date the Principal ceased performing Construction Work, excluding warranty work, whichever occurs first.

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.

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

(Principal)

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

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