

PAYMENT AND PERFORMANCE BOND

(Private Work)

Bond No.:

KNOW ALL PERSONS 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 promptly and faithfully perform the Construction Work and 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, then this obligation shall be null and void; otherwise to remain in full force and effect.

Surety's obligations hereunder to Obligee 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; or

2. Obtain bids or negotiated proposals from qualified contractors for a contract for completion of the Construction Work, arrange for a contract to be prepared for execution by 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 Contract balance, as defined below, shall be credited against the reasonable 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 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 balance of the Contract price 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 heretofore properly paid by Obligee under the Contract. The term "Construction Work" as used in this bond shall mean the providing of 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, excluding warranty work. 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 Principal ceased performing Construction Work, excluding warranty work, whichever occurs first.

6. A Claimant is defined as one other than Obligees having both: (a) a direct contract with Principal or with a direct subcontractor of Principal for labor and/or materials actually used, consumed or incorporated in the performance of the Construction Work, and (b) an enforceable lien on the property improved under the Contract for labor and/or materials actually used, consumed or incorporated in the performance of the Construction Work.

7. Principal and Surety hereby jointly and severally agree with Obligees 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 later of: (a) the date on which the last of such claimant's work or labor was done or performed or materials were furnished by such Claimant, or (b) the date Claimant filed an enforceable lien, may sue on this bond for the use of such Claimant, prosecute the suit to final judgment for the amount due under Claimant's contract for the labor and/or materials supplied by Claimant which were actually used, consumed or incorporated in the performance of the Construction Work, and have execution thereon. Obligees shall not be liable for the payment of any costs or expenses of any such suit.

8. No suit or action shall be commenced hereunder by any Claimant after the expiration of one (1) year after the day on which Claimant last supplied the labor and/or materials for which the claim is made. If this limitation is void or prohibited by law, then 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 on the day Claimant last supplied the labor and/or materials for which the claim is made.

9. No suit or action shall be commenced hereunder by Obligees or any Claimant 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.

10. The amount of this bond shall be reduced by and to the extent of any payment or payments made by Surety in good faith hereunder, whether made directly to Obligees or Claimant(s) or otherwise in discharge of Principal's obligations. Surety's liability hereunder to Obligees and all Claimants is limited, singly, or in the aggregate, to the penal sum of the bond set forth herein. Surety may, at its option, discharge all obligations under this bond by interpleading into the registry of any court of competent jurisdiction of the full-unexonerated penal sum of this bond, or such portion thereof that will satisfy the obligations owed to Obligees and/or Claimant(s). No right of action shall accrue on this bond to any person or entity other than Obligees and/or Claimant(s). 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.

Signed this _____ day of _____, _____.

(Principal)

By: _____

By: _____, Attorney-in-Fact