



**SURETY**

Company: \_\_\_\_\_ (Corporate Seal)

Signature: \_\_\_\_\_

Printed Name:

Title:

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public, do hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, who, being first duly sworn to me, declared that he is the \_\_\_\_\_ of Surety, and that he signed this document in the capacity therein set forth, and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, on the day and year first above written.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_ (Notary Seal)

1. Supplier and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner for the performance of the Construction Contract, which is incorporated by reference.

2. If Supplier fully performs the Construction Contract in accordance with its terms, including without limitation full and prompt payment and discharge of all obligations to subcontractors and other persons performing labor or furnishing materials or equipment in connection with the Construction Contract and the prompt release of any liens placed upon Owner's property by said persons, Surety and Supplier shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3. Surety's obligation under this Bond shall arise after:

3.1 Owner has notified Supplier and Surety at its address described in Paragraph 10 below that Owner is considering declaring a Supplier Default and has requested and attempted to arrange a conference with Supplier and Surety to be held not later than ten (10) days after receipt of such notice to discuss methods of performing the Construction Contract. If Owner, Supplier and Surety agree, Supplier shall be allowed a reasonable time (determined by Owner in its sole discretion) to perform the Construction Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Supplier Default; and

3.2 Owner has declared a Supplier Default and formally terminated Supplier's right to complete the Construction Contract. Such default shall not be declared earlier than ten (10) days after Supplier and Surety have received notice as provided in Subparagraph 3.1; and

3.3 Owner has agreed to pay the Balance of Contract Price to Surety in accordance with the terms of the Construction Contract or to a supplier selected to perform the Construction Contract in accordance with the terms of the Construction Contract.

4. When Owner has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:

4.1 Undertake to perform and complete the Construction Contract itself, through its agents or through independent suppliers acceptable to Owner; or

4.2 At Surety's expense, (a) obtain bids or negotiated proposals from qualified suppliers acceptable to Owner for a contract for performance and completion of the Construction Contract, (b) arrange for a contract to be prepared for execution by Owner and the supplier selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and (c) pay to owner the amount of damages as described in Paragraph 6 in excess of the Balance of Contract Price incurred by Owner resulting from a Supplier Default.

5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond ten (10) days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner.

6. After Owner has terminated Supplier's right to complete the Construction Contract, and if Surety acts under Subparagraph 4.1 or 4.2 above, then the responsibilities of Surety to Owner shall not be greater than those of Supplier under the Construction Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the Balance of Contract Price to mitigation of costs and damages on the Construction Contract, Surety is obligated without duplication for:

6.1 The responsibilities of Supplier for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design, professional and delay costs resulting from a Supplier Default, and resulting from the actions or failure to act of Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of Supplier.

7. Surety shall not be liable to Owner or others for obligations of Supplier that are unrelated to the Construction Contract, and the Balance of Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators or successors.

8. Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two (2) years after a Supplier Default or within two (2) years after Supplier ceased working or within two (2) years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs last. If the provisions of this Paragraph are void or prohibited by law, the maximum time available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to Surety, Owner or Supplier shall be mailed or otherwise delivered to the address shown on the signature page, effective upon receipt thereof.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or legal requirements shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

## 12. DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by Owner to Supplier under the Construction Contract after all proper adjustments have been made, including allowance to Supplier of any amounts received or to be received by Owner in settlement of insurance or other claims for damages to which Supplier is entitled, reduced by all valid and proper payments made to or on behalf of Supplier under the Construction Contract.

12.2 Construction Contract: The agreement between Owner and Supplier identified on the signature page, including all Contract documents and changes thereto.

12.3 Supplier Default: Failure of Supplier, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.