

Bond No. _____

SUBCONTRACT PERFORMANCE BOND

Any singular reference to Subcontractor, Surety, Contractor or other party shall be considered plural where applicable.

KNOW ALL BY THESE PRESENTS: that *(Here insert full name & address of Subcontractor)*

as Principal, hereinafter called Principal; and *(Here insert full name and address of Surety)*

as Surety, hereinafter Surety, are held and firmly bound unto *(Here insert full name and address of Contractor)*

as Obligee, hereinafter called Contractor, in the amount of:

Amount: \$ _____

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement entered into a subcontract with Contractor in accordance with the Drawings, Specifications and Addenda for:

SUBCONTRACT

Date: _____

Project: (Spec#, Name & Location) _____

which subcontract is by reference made a part hereof, and is hereinafter referred to as the Subcontract.

1 The Subcontractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Contractor for the performance of the Subcontract, which is incorporated herein by reference.

2 If the Subcontractor performs the Subcontract, the Surety and the Subcontractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

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

3.1 The Contractor has notified the Subcontractor and the Surety at its address described in Paragraph 10 below of the Contractor's intention to terminate the Subcontract and has requested and attempted to arrange a conference with the Subcontractor and the Surety to be held not later than ten days after service of such notice to discuss methods of performing the Subcontract. If the Contractor, the Subcontractor and the Surety agree, the Subcontractor shall be allowed a reasonable time to perform the Subcontract, but such an agreement shall not waive the Contractor's right, if any, subsequently to declare a Subcontractor Default; and

3.2 The Contractor has declared a Subcontractor Default and formally terminated the Subcontractor's right to complete the subcontract. Such Subcontractor Default shall not be declared earlier than ten days after the Subcontractor and the Surety have been served notice as provided in Subparagraph 3.1; and

3.3 The Contractor has agreed to pay the Balance of the Subcontract Price to the Surety in accordance with the terms of the Subcontract or to a contractor selected to perform the Subcontract in accordance with

the terms of the subcontract with the Contractor.

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

4.1 Arrange for the Subcontractor, with consent of the Contractor in the Contractor's sole discretion, to perform and complete the Subcontract; or

4.2 Undertake to perform and complete the Subcontract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Contractor for a contract for performance and completion of the Subcontract, arrange for a contract to be prepared for execution by the Contractor and the contractor selected with the Contractor's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Subcontract, and pay to the Contractor the amount of damages as described in Paragraph 6 in excess of the Balance of the Subcontract Price incurred by the Contractor resulting from the Subcontractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Contractor and, as soon as practicable after the amount is determined, tender payment therefor to the Contractor; or
- .2 Deny liability in whole or in part and notify the Contractor citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Contractor to the Surety demanding that the Surety perform its obligations under this Bond, and the Contractor shall be entitled to enforce any remedy available to the Contractor. If the Surety proceeds as provided in Subparagraph 4.4, and the Contractor refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Contractor shall be entitled to enforce any remedy available to the Contractor.

6 After the Contractor has terminated the Subcontractor's right to complete the Subcontract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Contractor shall not be greater than those of the Subcontractor under the Subcontract, and the responsibilities of the Contractor to the Surety shall not be greater than those of the Contractor under the Subcontract. To the limit of the amount of this Bond, but subject to commitment by the Contractor of the Balance of the Subcontract Price to mitigation of costs and damages on the Subcontract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Subcontractor for correction of defective work and completion of the Subcontract;

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

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

7 The Surety shall not be liable to the Contractor or others for obligations of the Subcontractor that are unrelated to the Subcontract, and the Balance of the Subcontract 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 the Contractor or its heirs, executors, administrators or successors.

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

9 Any proceeding, legal or equitable, under this Bond shall be instituted in the Superior Court of the County of Riverside, State of California, The parties expressly consent to the jurisdiction of said court and agree that said court shall be a proper venue for any such action. This Bond shall be governed by and interpreted in accordance with the laws of the State of California, excluding any choice of law provisions.

10 Notice to the Surety, the Contractor or the Subcontractor shall be mailed or delivered to the address shown on the signature page.

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 other legal requirement 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 Subcontract Price: The total amount payable by the Contractor to the Subcontractor under the Subcontract after all proper adjustments have been made, including allowance to the Subcontractor of any amounts received or

to be received by the Contractor in settlement of insurance or other claims for damages to which the Subcontractor is entitled, reduced by all valid and proper payments made to or on behalf of the Subcontractor under the Subcontract and by all amounts withheld by the Owner in response to stop notices served upon the Owner, unless and until such stop notices are released.

12.2 Subcontract: The agreement between the Contractor and the Subcontractor identified on the signature page, including all Contract Documents and changes thereto.

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

Signed and sealed this _____ day of _____, _____

SUBCONTRACTOR AS PRINCIPAL
Company: _____

SURETY
Company: _____ (Corporate Seal)

Signature: _____
Name: _____
Title: _____

Signature: _____
Name: _____
Title: **Attorney-in-Fact**

Notary Public Acknowledgment required for Surety and Subcontractor