

WESTERN NATIONAL MUTUAL INSURANCE COMPANY

LABOR AND MATERIAL PAYMENT BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, _____, as Principal, and Western National Mutual Insurance Company, with its home office at 4700 West 77th Street, Edina, MN 55435, a corporation organized and existing under and by virtue of the laws of the State of Minnesota, and duly authorized to transact business in the State of _____, as Surety, are held and firmly bound, jointly and severally, with our heirs, executors, administrators, successors and assigns unto _____, having an address of _____ (hereinafter referred to as "Obligee") in the penal sum of _____ \$(_____) dollars, for the payment of all Labor, materials and equipment furnished for use in the performance of the Construction Contract, contingent upon all of the terms, conditions and limitations hereof.

SIGNED and sealed this _____ day of _____, 20__.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT, WHEREAS, the above named Principal did on the _____ day of _____, 20__ enter into a written contract with the Obligee for _____ (hereinafter "the Contract").

NOW, if the said Principal shall pay all valid and adequately documented claims asserted by Claimants as defined herein, we agreeing and assenting that this undertaking shall be for the benefit of such Claimants, then the Surety and Principal shall have no obligations under this Bond and this obligation shall be void; otherwise, the same shall remain in full force and effect, it being expressly understood and agreed that the total liability of the Surety hereunder shall in no event exceed the penal amount of this obligation as herein stated. The Obligee agrees that any and all payments issued by the Surety under this bond are to be credited against the penal amount of the bond.

1. The Surety shall have no obligation to Claimants under this Bond unless and until:
 - a) Claimants, who do not have a direct contract with the Principal, have furnished a written notice of non-payment to the Principal, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment in the Claim; or

b) Claimants who are employed by or have a direct contract with the Principal shall have given written notice to Surety, the Principal and the Obligee, above named, stating that a claim is being made under this Bond and stating with substantial accuracy the amount of such claim. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the Principal, Obligee or Surety, as the case may be, at the address stated for each herein.

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

a) Unless, and no sooner than forty-five (45) days after, Claimant has served notice to Surety, Principal and Obligee as required in the preceding paragraph;

b) After the expiration of one (1) year following the date upon which the Claimant last performed work or furnished materials under said contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law;

c) Other than in a state court of competent jurisdiction in and for 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.

3. Obligee agrees that amounts owed by Obligee to the Principal under the Construction Contract shall be used for the performance of the Contract and to pay valid claims by subcontractors, suppliers and/or others providing Labor, materials and/or equipment to or on behalf of the Principal in the performance of the Construction Contract. By the Principal furnishing and the Obligee accepting this bond, they each agree that all funds earned by the Principal in the performance of the Construction Contract are dedicated to satisfy the obligations of the Principal and Surety under this bond.

4. The Obligee agrees that Surety shall not be liable to Obligee or others for obligations of the Principal that are unrelated to the Contract, and that the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations or by any other claims of Obligee or others.

5. The Obligee shall not be liable for payment of any costs or expenses of any Claimant under this Bond and Obligee shall have no obligation to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

6. Upon request by any person or entity appearing to be a potential Claimant under this Bond, the Obligee shall promptly furnish a copy of this Bond or permit a copy to be made by the potential Claimant.

7. **Definitions**

- a) **Claim.** A written statement by the Claimant including at a minimum:
- i. The name of Claimant;
 - ii. The name of the person for whom the labor was done, or materials or equipment furnished;
 - iii. A copy of the agreement or purchase order pursuant to which labor,

materials or equipment was furnished for use in the performance of the Construction Contract;

- iv. A brief description of the labor, material or equipment furnished;
- v. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- vi. The total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- vii. The total amount of previous payments received by the Claimant; and
- viii. The total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

- b) **Claimant.** An individual or entity having a direct contract with the Principal or with a subcontractor of the Principal to furnish Labor, materials or equipment for use directly in the performance of the Construction Contract. **The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located.** The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Principal and Principal's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
- c) **Construction Contract.** The agreement between the Obligee and the Contractor identified herein, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- d) **Obligee Default.** Failure of the Obligee, which has not been remedied or waived, to pay the Principal as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- e) **Contract Documents.** All the documents that comprise the agreement between the Obligee and Principal.
- f) **Labor.** Net wages only due and owing for work directly required in the performance of the Contract, and shall not be deemed to include union dues, fringe benefit or similar contributions, employee withholding taxes (or any other taxes), bonuses, or any other form of compensation or remuneration whatsoever.

- 8. If this Bond is issued for an agreement between a Principal and subcontractor, the term Principal in this Bond shall be deemed to Subcontractor and the term Oblige shall be deemed to be Principal.

Principal
Name:
Address:

Attest: _____
Name and Title:

Signature: _____
Name and Title:

Surety
Company
Address:

Attest: _____
Name and Title:

Signature: _____
Attorney-in-fact: