



8954 Rio San Diego Drive, Suite 102  
San Diego, CA 92108

Tel: (619) 398-0240  
Fax: (619) 398-0260

License No. AB824679

## Subcontractor Performance Bond

3/8/2006

(Any singular reference to Subcontractor, Surety, Contractor or other party shall be considered plural where applicable. Bonds shall be underwritten by a surety licensed to do business in the State of California and listed on the US Department of the Treasury's Federal Register.)

### SUBCONTRACTOR

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City/State/Zip

### SURETY

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City/State/Zip

### CONSTRUCTION SUBCONTRACT

Amount: \_\_\_\_\_  
Date: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Project Address: \_\_\_\_\_

### BOND

Amount: \_\_\_\_\_  
Date (Not earlier than Subcontract Date): \_\_\_\_\_  
Modifications to this Bond: \_\_\_\_\_ None \_\_\_\_\_ See Last Page

### SUBCONTRACTOR AS PRINCIPAL

\_\_\_\_\_  
Company  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name/Title  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City/State/Zip

### SURETY

\_\_\_\_\_  
Company  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name/Title  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City/State/Zip

(Corporate Seal)

(Additional signatures, if required, appear on the last page)

(Corporate Seal)

## Subcontractor Performance Bond

3/8/2006

### Provisions 1 through 12 of the Subcontractor Performance Bond

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 Construction Subcontract, which is incorporated herein by reference.
2. If the Subcontractor performs the Construction 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. If there is no Contractor Default, 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 that the Contractor is considering declaring a Subcontractor Default and has requested and attempted to arrange a conference with the Subcontractor and Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Subcontract. If the Contractor, the Subcontractor and the Surety agree, the Subcontractor shall be allowed a reasonable time to perform the Construction 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 twenty days after the Subcontractor and the Surety have received notice as provided in Sub-paragraph 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 Construction Subcontract or to a subcontractor selected to perform the Construction 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, to perform and complete the Construction Subcontract; or
  - 4.2 Undertake to perform and complete the Construction Subcontract itself, through its agents or through independent subcontractors; or
  - 4.3 Obtain bids or negotiated proposals from qualified subcontractors acceptable to the Contractor for a subcontract for performance and completion of the Construction Subcontract, arrange for a subcontract to be prepared for execution by the Contractor and the subcontractor 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 Construction 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 subcontractor and with reasonable promptness under the circumstances:
    - .1 After investigation, determine the amount for which it may be liable to Contractor and, as soon as practicable after the amount is determined, tender full payment therefore to the Contractor; or
    - .2 During the course of construction make equal monthly progress payments to Contractor, not to exceed 60% of the Penal Sum, with final payment following completion of the Work by Contractor and determination of the amount for which it may be liable to Contractor, or
    - .3 Deny liability in whole or in part and notify the Contractor citing reasons therefore.
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 Construction 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 Construction Subcontract, and the responsibilities of the Contractor to the Surety shall not be greater than those of the Contractor under the Construction 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 Construction Subcontract, the Surety is obligated without duplication for:
  - 6.1 The responsibilities of the Subcontractor for correction of defective work and completion of the Construction 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 Construction 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 Construction 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 Construction Subcontract 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 years after Subcontractor Default or within two years after the Subcontractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are 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.



# Subcontractor Performance Bond

3/8/2006

10. Notice to the Surety, the Contractor of 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 here from 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 Subcontractor Price: The total amount payable by the Contractor to the Subcontractor under the Construction 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 Construction Subcontract.

12.2 Construction Subcontract: The agreement between the Contractor and the Subcontractor identified on the signature page, including all Subcontract 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 Construction Subcontract.

12.4 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to pay the Subcontractor as required by the Construction Subcontract or to perform and complete or comply with the other terms thereof.

## MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

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(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

### SUBCONTRACTOR AS PRINCIPAL

### SURETY

\_\_\_\_\_  
Company

\_\_\_\_\_  
Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
City/State/Zip

### (INFORMATION ONLY)

Agent/Broker: \_\_\_\_\_

Street: \_\_\_\_\_

City/State: \_\_\_\_\_

Telephone: \_\_\_\_\_



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## Subcontractor Payment Bond

3/8/2006

(Any singular reference to Subcontractor, Surety, Contractor or other party shall be considered plural where applicable. Bonds shall be underwritten by a surety licensed to do business in the State of California and listed on the US Department of the Treasury's Federal Register.)

### SUBCONTRACTOR

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

### SURETY

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

### CONSTRUCTION SUBCONTRACT

Amount: \_\_\_\_\_

Date: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Address: \_\_\_\_\_

### BOND

Amount: \_\_\_\_\_

Date (Not earlier than Subcontract Date): \_\_\_\_\_

Modifications to this Bond: \_\_\_\_\_ None \_\_\_\_\_ See Last Page

### SUBCONTRACTOR AS PRINCIPAL

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Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

### SURETY

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Company

\_\_\_\_\_  
Signature

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Name/Title

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(Corporate Seal)

(Additional signatures, if required, appear on the last page)

(Corporate Seal)



## Subcontractor Payment Bond

3/8/2006

### Provisions 1 through 15 of the Subcontractor Payment Bond

1. The Subcontractor and the Surety, jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns to the Contractor to pay for labor, materials and equipment furnished for use in the performance of the Construction Subcontract, which is incorporated herein by reference.
2. With respect to the Contractor, this obligation shall be null and void if the Subcontractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies and holds harmless the Contractor from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Subcontract, provided the Contractor has promptly notified the Subcontractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens, or suits to the Subcontractor and the Surety, and provided there is no Contractor Default.
3. With respect to Claimants, this obligation shall be null and void if the Subcontractor promptly makes payments, directly or indirectly, for all sums due.
4. The Surety shall have no obligations to Claimants under this Bond until:
  - 4.1 Claimants who are employed by or have direct subcontract with the Subcontractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Contractor, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - 4.2 Claimants who do not have a direct subcontract with the Subcontractor:
    - .1 Have furnished written notice to the Subcontractor and sent a copy, or notice thereof, to the Contractor, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
    - .2 Have either received a rejection in whole or in part from the Subcontractor, or not received within 30 days of furnishing the above notice any communication from the Subcontractor by which the Subcontractor has indicated the claim will be paid directly or indirectly; and
    - .3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Contractor, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Subcontractor.
5. If the Contractor gives notice required by Paragraph 4 to the Subcontractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
  - 6.1 Send an answer to the Claimant, with a copy to the Contractor, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - 6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Contractor to the Subcontractor under the Construction Subcontract shall be used for the performance of the Construction Subcontract and to satisfy claims, if any, under any Construction Subcontract Performance Bond. By the Subcontractor furnishing and the Contractor accepting this Bond, they agree that all funds earned by the Subcontractor in the performance of the Construction Subcontract are dedicated to satisfy obligations of the Subcontractor and the Surety under this Bond, subject to the Contractor's priority to use the funds for the completion of the work.
9. The Surety shall not be liable to the Contractor, Claimants or others for obligations of the Subcontractor that are unrelated to the Construction Subcontract. The Contractor shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Subcontract or to related subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Subcontract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are 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.
12. Notice to the Surety, the Contractor or the Subcontractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Contractor or the Subcontractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. 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 here from 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.
14. Upon requested by any person or entity appearing to be a potential beneficiary of this Bond, the Subcontractor shall promptly furnished a copy of this Bond or shall permit a copy to be made.



# Subcontractor Payment Bond

3/8/2006

## 15. DEFINITIONS

15.1 Claimant: An individual or entity having a direct contact with the Subcontractor or with a subcontractor of the Subcontractor to furnish labor, materials or equipment for use in the performance of the Subcontract. 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 Subcontract, architectural and engineering services required for performance of the work of the Subcontractor and the Subcontractor'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.

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

15.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to pay the Subcontractor as required by the Construction Subcontract or to perform and complete or comply with the other terms thereof.

## MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

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(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

### SUBCONTRACTOR AS PRINCIPAL

### SURETY

\_\_\_\_\_  
Company

\_\_\_\_\_  
Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
City/State/Zip

### (INFORMATION ONLY)

Agent/Broker: \_\_\_\_\_

Street: \_\_\_\_\_

City/State: \_\_\_\_\_

Telephone: \_\_\_\_\_