

## GENERAL INDEMNITY AGREEMENT

THIS AGREEMENT of Indemnity, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (year), is executed by the undersigned for the purpose of indemnifying CONTRACTORS BONDING AND INSURANCE COMPANY as hereinafter mentioned in connection with any Bonds executed on behalf of: \_\_\_\_\_

or executed on behalf of any other person or entity defined as Principal herein.

### I. DEFINITIONS

The following definitions apply in this agreement:

#### **Bond**

Any Bond, undertaking or other contractual obligation executed by Surety on, before or after this date, and any riders, endorsements, extensions, continuations, renewals, substitutions, increases or decreases in penal sum, reinstatements or replacements thereto.

#### **Principal**

The person(s) or entity(ies) set forth above, or any Affiliate, or any one or combination thereof, or their successors in interest, whether alone or in joint venture with others named herein or not named herein.

#### **Surety**

CONTRACTORS BONDING AND INSURANCE COMPANY, its reinsurers, and any other person or entity which it may procure to act as surety or co-surety on any Bond or any other person or entity who executes any Bond at its request.

#### **Contract**

Any agreement, obligation or undertaking of Principal, the performance of which is bonded or guaranteed by Surety.

#### **Affiliate**

A person or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with any signator to this agreement.

### II. INDEMNITY

The undersigned:

A. Agree to indemnify, keep indemnified, and save harmless Surety from and against any and all demands, liabilities, loss, costs, penalties, obligations, interest, damages or expenses of whatever nature or kind, as well as fees of attorneys (including both outside attorneys' fees and allocated in-house attorneys' fees) and all other expenses, including but not limited to costs and fees incurred in investigation of claims or potential claims, adjustment of claims, procuring or attempting to procure the discharge of such Bonds, enforcing this agreement, and/or attempting to recover losses or expenses from the undersigned or third parties, whether Surety shall have paid out any such sums or any part thereof or not; and

B. Agree to pay Surety all premiums on Bonds issued by Surety on behalf of the Principal, in accordance with Surety's rates in effect when each payment is due. Premiums on contract bonds are based on the contract price, without reference to the penal sum of the Bond, and shall be adjusted due to changes in the total contract price. On any Bond where Surety charges an annual premium, such annual premium shall be due upon execution of the Bond and upon the renewal date or annual anniversary date of such Bond until satisfactory evidence of termination of Surety's liability as a matter of law under said Bond is furnished to Surety; and

C. Agree that in furtherance of such indemnity:

(1) In any claim or suit hereunder and in any and all matters arising between the undersigned and Surety, an itemized statement of the aforesaid loss and expense, sworn to by a representative of Surety, or the vouchers or other evidence of disbursement by Surety, shall be prima facie evidence of the fact and extent of the liability hereunder of the undersigned.

(2) Surety shall have the right to reimbursement of its expenses, premiums, interest, consultants' fees and attorneys' fees hereunder, irrespective of whether any Bond loss payment has been made by Surety.

(3) In any suit between any of the undersigned and Surety under this agreement or otherwise, Surety shall be entitled to recover its further expenses and attorneys' fees incurred in such suit or in collecting any judgment obtained against any of the undersigned.

### III. DEFAULT

Principal shall be in Default with respect to a Contract, and hereunder, if any of the following occur:

A. Principal breaches, abandons, repudiates or fails to prosecute diligently the work under any Contract, whether or not justified.

B. Any obligee declares Principal to be in default or gives the Principal a notice to cure which is not strictly complied with according to its own terms.

C. Principal fails to pay for any labor, equipment, materials, taxes, contributions or other services or obligations when such payment is due.

D. Principal diverts any Contract funds from any Contract to uses not in furtherance of that Contract prior to the complete discharge of Surety.

E. Principal, or any one of the undersigned, breaches any provision of this agreement.

F. Principal, or any one of the undersigned, becomes the subject of any agreement or proceedings of composition, insolvency, bankruptcy, receivership, trusteeship, or assignment for the benefit of creditors.

G. Principal, or any one of the undersigned, becomes actually insolvent.

H. Principal, or any one of the undersigned, submits to Surety, whether before or after the date of this agreement, a false written statement regarding the financial condition of the Principal and/or any one or more of the undersigned.

I. Principal, if an individual, dies, is adjudged mentally incompetent, is convicted of a felony, becomes a fugitive from justice or disappears and cannot be located with usual methods.

J. Principal, if a business entity, is dissolved, undergoes change of ownership, or ceases to do business. Change of ownership means addition or departure of any person or entity having a 10% or greater ownership interest in Principal.

K. Principal loses, or fails to have and to keep in force, any licenses or other requirements of doing business in the state(s) in which Principal performs a Contract.

L. Any claim is made against any Bond. Surety shall have the right in its sole discretion to determine when a demand, notice, request, or other communication regarding a Bond constitutes a claim against the Bond.

### IV. SURETY'S RIGHTS

A. In the event of Default as defined above, Surety shall have the absolute right, at its sole option and sole discretion, to take any or all of the following actions at the expense of the undersigned:

(1) Notify any obligee in writing as Principal's attorney-in-fact that Principal is in default with respect to their Contract.

(2) Direct any obligee in writing (including the Federal Government on projects governed by 40 U.S.C. § 270a, et. seq.) as Principal's attorney-in-fact to make all checks payable to Principal but mail them directly to Surety.

(3) Take over any Contract and complete it or arrange for its completion by any means it deems appropriate, utilizing any contract funds available, either earned or to be earned, including any progress payments, deferred payments, retainages, compensation for extra work, and proceeds of damage claims.

(4) Appoint a successor trustee to receive and disburse all contract funds due or to become due to Principal under any Contract covered by a Bond for the purposes set forth in paragraph VI herein, and notify any obligee as Principal's attorney-in-fact that all further payments are to be sent directly to the successor trustee.

(5) Take possession of the Principal's equipment, materials and supplies at the site of the work or elsewhere, and utilize the same for completion of any Contract.

(6) Take possession of the office equipment, books and records of Principal as are necessary for completion of any Contract.

(7) Notify any obligee of the Surety's rights under paragraph VII following.

(8) Require that any obligee withhold contract funds unless and until Surety consents to their release.

(9) Require any obligee to make payment by joint check to Principal and any claimant.

(10) File an immediate suit to enforce the provisions of this agreement.

(11) Determine in its sole discretion whether any claims shall be paid, compromised, defended, prosecuted or appealed, regardless of whether or not suit is actually filed or commenced against Surety upon such claim. Absent fraudulent intent on the part of the Surety, the undersigned agree to be conclusively and unconditionally bound by Surety's determination.

(12) Pay its Bond(s), in full or in part.

(13) Incur such expenses in handling a claim as it shall deem necessary, including but not limited to the expense for investigative, accounting, engineering and legal services.

B. Surety shall have the foregoing rights, irrespective of the fact that the undersigned may have assumed, or offered to assume, the defense of the Surety upon such claim.

C. If it becomes necessary or advisable in the judgment of Surety to take any action described above, or to control, administer, operate, or manage any or all matters connected with the performance of any Contract for the purpose of attempting to minimize any ultimate loss to undersigned or Surety, or for the purpose of enabling Surety to discharge its obligations of suretyship, the undersigned expressly covenant and agree that such action on the part of Surety shall be entirely within its rights and remedies under the terms of this agreement.

D. The undersigned promise to promptly pay to Surety upon demand all expenses incurred in the exercise of any right of Surety under paragraph IV or elsewhere. In no event shall Surety's option to exercise the rights herein conferred be construed as mandatory upon Surety, and the undersigned agree that Surety shall not have any liability to undersigned for exercising or not exercising the rights conferred herein or elsewhere in this agreement.

#### **V. COLLATERAL SECURITY**

If a claim or demand for performance of any obligation under any Bond is made against Surety, or if Surety deems it necessary to establish a reserve for potential claims or demands or for loss adjustment expense (including but not limited to attorneys' fees), upon demand from Surety (including the filing of a proof of claim in bankruptcy) the undersigned shall deposit with Surety cash or other property acceptable to Surety, as collateral security, in sufficient amount to protect Surety with respect to such claim(s) or potential claims and any expense or attorneys' fees. The reserve for loss may vary from time to time as Surety deems necessary to protect itself from loss and if Surety deems it necessary to increase its reserve it may make a new or further demand for increased collateral. Cash collateral equal to the reserve for loss shall be adequate. Other collateral shall be adequate if the net equity value of the collateral, as determined by Surety, is equal to 166% of the reserve for loss. In the event that suit is necessary to enforce this paragraph, the undersigned shall supply to Surety a list of the undersigned's assets and the assets of Principal and any Affiliate, indicating the address of the assets and the person(s) having custody. Surety may insist on cash security. At the same time that the undersigned provide collateral to Surety, they shall also immediately take all actions and provide all documents necessary to allow Surety to perfect its lien on and/or security interest in the collateral under all applicable law. Specific performance of this paragraph shall be a remedy available to Surety. All post-judgment procedures for executing on judgments will be available to enforce Surety's decree of specific performance, in addition to all prejudgment procedures available by law. Collateral may be held by Surety until it has received evidence of its complete discharge from any and all such claims or potential claims even if said claims are made against Surety after collateral is deposited or are made against a different Bond, and until Surety has been fully reimbursed for all loss, expenses and attorneys' fees. All expense of Surety, including attorneys' fees, in connection with taking, administering, realizing upon or releasing collateral, whether deposited under this paragraph or as a requirement prior to execution of any Bond, shall be covered by the indemnity hereunder. The undersigned agree to indemnify, defend and hold Surety harmless from any and all liability of any type to any person, entity or governmental body resulting from the collateral provided, including but not limited to any claim under the Federal Comprehensive Environmental Response Compensation Liability Act of 1980 (CERCLA), as amended, the Federal Resource Conservation and Recovery Act (RCRA), as amended, and any other applicable federal, state or local law.

#### **VI. TRUST FUNDS**

The undersigned agree and hereby expressly declare that all funds due or to become due to Principal or its successors or assigns under any Contract covered by a Bond are trust funds, whether in the possession of the Principal or another, for the benefit and payment of all persons to whom the Principal incurs obligations in the performance of such Contract and for which the Surety would be liable under the Bond. If the Surety discharges any such obligation, it shall be entitled to assert the claim of such person to the trust funds.

#### **VII. ASSIGNMENT**

A. As security for the performance of all provisions of this agreement, including but not limited to Surety's right to payment for indemnity contained in paragraph II, the undersigned hereby irrevocably pledge, grant a security interest in, assign, transfer, and convey to Surety, effective as of the date of this agreement or the date any Bond is executed by Surety, whichever is earlier, but subject to the trust herein created, the following, whether now held or after acquired:

(1) All rights in connection with any contract (whether or not bonded by Surety) held by the undersigned, including but not limited to:

- a. All subcontracts let by the undersigned, and the subcontractors' surety bonds,
- b. Any and all sums due or which may hereafter become due under any contract including but not limited to progress payments, retainages, compensation for extra work, deferred payments, and any damage claims and/or any proceeds of any damage claims in which the undersigned may have an interest,

(2) All rights arising out of insurance policies,

(3) Any and all accounts receivable, chattel paper, general intangibles, documents of title, and bills of lading held by the undersigned or in which the undersigned may have an interest,

(4) Any and all machinery, plant, equipment, and tools in which the undersigned may have an interest,

(5) Any and all materials and/or inventory in which the undersigned may have an interest.

B. The Surety is irrevocably authorized to assert and prosecute any right or claim hereunder assigned, transferred or conveyed in the name of the Principal and to compromise and settle on behalf of the Principal and Surety any such right or claim, and/or litigation based thereon, on such terms as it considers reasonable under the circumstances.

C. Surety may at any time and at its option file or record this agreement or any other document executed by any or all of the undersigned, individually or jointly, as a security agreement or as part of a financing statement or as a notice of its prior interest and assignment under the provisions of the Uniform Commercial Code or any other statute, ordinance or regulation of any jurisdiction or agency, but the filing or recording of such document shall be solely at the option of Surety and the failure to do so shall not release or impair any obligations of the undersigned under this agreement. A carbon, photographic, or other reproduction of this agreement, or of any other document so filed or recorded by the Surety, is sufficient as a financing statement, security agreement, or notice of prior interest, under this agreement.

#### **VIII. POWER OF ATTORNEY**

The undersigned hereby irrevocably nominate, constitute, appoint and designate Surety or its designee as their attorney-in-fact with the right, but not the obligation, to exercise all of the rights assigned, transferred and set over to Surety by the undersigned in this agreement, and to make, execute and deliver any and all additional or other assignments, agreements, directions, documents, pleadings or papers, including but not limited to the execution of instruments referred to in Section VII and the endorsement of checks or other instruments representing payment of contract monies deemed necessary and proper by the Surety in order to give full effect, not only to the intent and meaning of the within assignment, but also to the full protection intended to be herein given to Surety under all other provisions of this agreement. The undersigned hereby ratify and affirm all acts and actions taken and done by Surety or its designee as attorney-in-fact.

#### **IX. GENERAL PROVISIONS**

A. The obligations of the undersigned hereunder are joint and several. Surety may bring separate suits hereunder against any or all of the undersigned as causes of action may accrue hereunder. Surety need not proceed first against the Principal. Release of any one or more of the undersigned shall not release the others. No action or inaction of Surety with respect to anyone other than the undersigned shall relieve the undersigned of any duties hereunder. The undersigned shall not be released from liability hereunder because of the status, condition, or situation of any other signator to this agreement or any Affiliate as defined herein.

B. Undersigned shall, on request of Surety, procure the discharge of Surety from any Bond, and all liability by reason thereof.

C. Undersigned warrant that each of them is specifically and beneficially interested in the obtaining of each Bond.

D. Undersigned waive notice of any Default or of the making of a claim against Surety.

E. Undersigned agree to give to Surety prompt notice of any facts which might give rise to any claims or suits against Surety upon any Bond.

F. Surety may consent to any changes or alterations in a Contract, without affecting the liability hereunder of the undersigned.

G. Surety shall have every right, defense or remedy which a personal surety without compensation would have, including the right of exoneration.

H. At any time and until such time as Surety has been furnished with conclusive evidence that its liability under any Bond is terminated and/or until such time as Surety has been indemnified as provided in paragraph II above, the Surety shall have the right to free access to all of the books, records, and accounts of the undersigned for the purpose of examining them and copying them. Time is of the essence, and Surety shall have such right of free access at any time of day and any day of the week. However, should Surety demand such access outside of the hours of 8:00 a.m. through 6:00 p.m., Monday through Friday, the undersigned may charge Surety a fee not to exceed \$10 per hour.

I. Undersigned waive all right to claim any property, including homestead, as exempt from legal process in any action hereunder.

J. If the execution hereof by any of the undersigned may be defective or invalid for any reason, such defect or invalidity shall not affect the validity hereof as to any other of the undersigned. Invalidity of any provisions hereof by reason of the law of any state or for any other reason shall not render the other provisions hereof invalid.

K. Surety shall have the right to fill in any blanks left herein and to correct any errors in filling in any blanks herein and to fill in or correct errors in any other documents required of the undersigned in connection with execution of any Bond.

L. Undersigned waive any defense that this instrument was executed subsequent to the date of any Bond, admitting and covenanting that such Bond was executed pursuant to the undersigned's request and in reliance on the undersigned's promise to execute this agreement.

M. This agreement may not be changed or modified orally. No change or modification shall be effective unless specifically agreed to by Surety in writing.

N. In the event any of the undersigned become insolvent, or in case any of the undersigned who execute this agreement shall not be bound for any reason, the other undersigned shall, nevertheless, be bound hereunder for the full amount of the liability as defined in paragraph II herein.

O. Repeated actions on this agreement, as breaches thereof may occur, may be maintained by Surety, its successors or assigns, without any former action operating as a bar to any subsequent action brought on this agreement for breaches hereunder.

P. Wherever used in this agreement the plural shall include the singular and the singular shall include the plural, as the circumstances require.

Q. The liability of undersigned hereunder shall not be affected by the failure of the Principal to sign any Bond or Bonds or by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity or the return or exchange of any collateral that may have been obtained, whether or not notice of said actions has been given to undersigned.

R. Neither execution by Principal, any other undersigned, or any Affiliate (1) of any application for any bond or (2) of any other agreement of indemnity on behalf of Principal, any other undersigned, or any Affiliate, nor the taking of the indemnity of any other person by Surety with regard to any Bond for Principal, any other undersigned, or any Affiliate, shall in any way be deemed to waive, diminish, or abrogate any rights of Surety under this agreement.

S. Any suit brought upon this agreement shall be brought in a court of competent jurisdiction in King County, Washington, and the undersigned consent to venue and personal jurisdiction in King County, Washington for that purpose. This agreement is governed by the laws of the state of Washington. Surety shall have the right, in its sole discretion, to waive venue and/or jurisdiction in King County, Washington. Any waiver by Surety of the venue and/or jurisdiction herein shall not waive the choice of law herein agreed to.

T. Undersigned shall not claim as a defense to undersigned's obligations hereunder that the person or entity appearing on any Bond executed by Surety is not a Principal as defined herein, where: (1) any undersigned or any representative of any undersigned gave Surety reason to believe that the person or entity appearing on Bond should be a Principal as defined herein; or (2) the differences between such Bond and Principal's name herein arose because of typographical error or good faith mistake and it is reasonably apparent that the person(s) or entity(ies) named in such Bond and the person(s) or entity(ies) named herein should be treated as one and the same. Nor shall undersigned claim as a defense to undersigned's obligations hereunder that any name set forth herein or in any Bond is not the exact legal name of the undersigned or Principal.

U. If more than one Principal is named in this agreement, conjunctively or disjunctively, this agreement applies in its entirety to Bonds for any and all such Principals, singly or in combination.

V. Neither this agreement, nor acceptance by Surety of payment for its suretyship, nor agreement to accept or acceptance at any time of other security, nor any act by undersigned, nor assent to any act of undersigned by Surety, shall in any way abridge, defer, or limit Surety's right to be subrogated to any right or remedy, nor limit or abridge any remedy which Surety might otherwise have, acquire, exercise, or enforce, nor create any liability on the part of Surety which would not exist were this agreement not executed.

W. The Principal's and the other undersigned's right to recover damages against Surety caused by Surety's fault or negligence shall not exceed \$2,000. Surety will not be liable for damages resulting from loss of profits or for incidental or consequential damages, even if advised of the possibility of such damage. This limitation will apply regardless of the form of the action, whether in contract or tort, including negligence.

X. Undersigned agree that they have a duty to review all Bonds executed by Surety for errors and omissions prior to delivery of the Bond to the obligee.

Y. The undersigned shall have no rights of indemnity against each other or each others' property until its/their obligations to Surety under this agreement have been satisfied.

Z. Under the undersigned desire that a claim or demand against Surety, to which Surety has determined a meritorious defense exists, be resisted and litigated, the undersigned shall (1) give written notice to Surety to this effect, (2) simultaneously deposit with Surety cash or other collateral as defined in paragraph V herein satisfactory to Surety in an amount sufficient to cover the claim or demand and interest thereon to the probable date of disposition, and (3) either deposit simultaneously with Surety cash or other collateral as defined in paragraph V herein satisfactory to Surety in an amount sufficient to cover the expenses and fees of defense, or take over the resistance and litigation of the claim; provided, however, Surety shall have the right to be represented by separate counsel of its choice and the undersigned understand that, as agreed in paragraph II herein, they shall be obligated to indemnify Surety for attorneys' fees incurred if Surety chooses to be represented by separate counsel of its choice.

AA. A facsimile copy of this agreement shall be considered an original and shall be admissible in a court of law to the same extent as the original agreement.

## **X. DECLINE EXECUTION**

Unless otherwise specifically agreed in writing, Surety may decline to execute any bond for any reason, and Surety shall not be liable to the undersigned, or any other person or entity (other than an obligee on a bid or proposal Bond) where Surety declines executing any bond, including the final bond for an awarded contract upon award of the contract. If Surety executes a bid or proposal Bond and then declines to execute the final bond(s) for that bid or proposal Bond for any reason (including, but not limited to, bid spread, financial or financing or funding conditions, change in scope of the work, failure to provide information or documentation or to meet a condition imposed by Surety, unsatisfactory terms or conditions contained in the contract to be bonded or the bond form required, or change in underwriting criteria), the undersigned shall nevertheless be obligated to indemnify Surety with respect to the bid or proposal Bond.

## **XI. TERMINATION**

This agreement is a continuing obligation of undersigned unless terminated by written notice to Surety as hereinafter provided, and such termination as to an undersigned shall in no way affect the obligation of any other undersigned who has not given such notice. The liability of undersigned hereunder as to future Bonds of Principal shall not terminate by reason of the failure of Surety to disclose fact(s) known or learned by Surety about the Principal, even though such fact(s) materially increase the risk beyond that which undersigned might intend to assume. Surety may have reason to believe such fact(s) are unknown to undersigned, and Surety may have reasonable opportunity to communicate such facts to undersigned; and undersigned hereby waive notice of such fact(s). In order to terminate liability as to future Bonds of Principal, undersigned must:

A. Give written notice to Surety of such termination at its Home Office, **1213 Valley Street, P.O. Box 9271, Seattle, Washington 98109-0271**; and

B. State in such notice the effective date (not less than thirty days after receipt thereof by Surety) of termination of such undersigned's liability for future Bonds.

After the effective date of such termination, the undersigned who has given notice of termination shall nonetheless be liable hereunder for:

A. Bonds executed or authorized prior to such date and modifications thereof;

B. Bonds executed pursuant to a bid or proposal Bond executed or authorized prior to such date, and modifications thereof; and

C. Any maintenance or guarantee Bonds thereafter executed incidental to any other Bond, which is executed prior to such date, and modifications thereof.

Modifications, as used in this paragraph, include but are not limited to renewals, substitutions, riders, endorsements, reinstatements, replacements, increases or decreases in penal sum, continuations, and extensions. A Bond is authorized when approved for execution by Surety's underwriters or promised to Principal or any third party, where in Surety's sole discretion Surety shall deem itself liable or potentially liable in any way for failure to execute such bond.

## **XII. AUTHORIZATION TO CHECK CREDIT**

Surety and its agents are authorized to investigate the undersigned's credit (including, but not limited to, obtaining account numbers and/or account balances from financial institutions), now and at any time in the future, with any creditor, supplier, customer, financial institution, and any other person or entity. Authorization is hereby granted, now or at any time in the future, to release information to Surety and/or its agents pertaining to the undersigned's credit, including but not limited to disclosing to Surety and/or its agents, the undersigned's account numbers and/or account balances.

