

ALAMEDA COUNTY TRANSPORTATION COMMISSION

PERFORMANCE BOND

(To Accompany Contract)

Bond No. _____

WHEREAS, the Alameda County Transportation Commission, a joint powers agency (“Alameda CTC”), and _____, (Contractor)”, are parties to that certain contract dated _____, 2011, (“Contract”) which Contract is on file in the office of the Alameda CTC and which Contract is hereby incorporated herein and made a part hereof by this reference; and

WHEREAS, said Contractor has agreed and is obligated by the terms of the Contract to do and perform certain work and to discharge and perform and carry out certain other obligations in the Contract in accordance with the terms and provisions of the Contract, including but not limited to any plans and specifications incorporated therein, and

WHEREAS, the Contractor is required to furnish a bond in connection with said contract, guaranteeing the faithful performance thereof:

NOW, THEREFORE, we the undersigned Contractor and _____, a corporation, duly organized and existing under the laws of the State of _____, and duly authorized to transact business in the State of California, as Surety are held firmly bound to the Alameda CTC in the sum of \$ _____ dollars (\$ _____), to be paid to Alameda CTC for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if the above bound Contractor, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing contract and any alteration thereof made as therein provided, on his or their part to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning, and shall indemnify and save harmless Alameda CTC and its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and virtue.

Whenever Contractor shall be and declared by Alameda CTC in default under the Contract, Surety shall promptly remedy the default, or shall promptly:

Undertake through its agents or independent contractors, reasonably acceptable to Alameda CTC, to complete the Contract in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract; or

Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and, upon determination by Alameda CTC of the responsible bidder whose price, terms and conditions are in the Alameda CTC’s best interests, arrange for a contract between such bidder and Alameda CTC, as selected at the sole discretion of Alameda CTC, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety’s total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term “balance of the Contract Sum,” as used in this paragraph, shall mean the total amount payable by Alameda CTC to the Principal under the Contract and any amendments thereto, less the amount paid by Alameda CTC to Principal.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the plans and specifications accompanying the same shall in any wise affect its obligation on this bond, and it hereby waives notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work or to the plans and specifications.

Surety, by the execution of this bond, represents and warrants that this bond has also been duly executed by said Contractor with proper authority, and Surety hereby waives any defense which it might have by reason of any failure of Contractor to execute or properly execute this bond.

In the event suit is brought upon this bond and judgment is recovered by Alameda CTC, Principal and Surety, jointly and severally, shall be liable to Alameda CTC for court costs and for reasonable attorneys' fees.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this _____ day of _____, 20__.

Correspondence or claims relating to this bond should be sent to the surety at the following address:

Contractor

Name of Surety (SEAL)

By : Attorney-in-Fact

NOTE: Signatures of those executing for the surety must be properly acknowledged.

CERTIFICATE OF ACKNOWLEDGEMENT

State of California, City / County of _____ SS

On this _____ day of _____ in the year 20__ before me

_____, a notary public in and for the City / County of _____, personally appeared _____

(Attorney-in-fact), known to me to be the person whose name is subscribed to this instrument and known to me to be the attorney-in-fact of _____ and acknowledged to me that he/she subscribed the name of the said company thereto as surety, and his/her own name as attorney-in-fact.

(SEAL) Notary Public