**FORM OF PAYMENT BOND**

Bond No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

for

**[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] PROJECT**

**[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Project Number**

**That Whereas,** the South Carolina Department of Transportation, an agency of the State of South Carolina (the “Obligee”) has awarded to [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]***[Contractor’s legal name]*** (the “Principal”), that certain Agreement for the design and construction of the [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]***[name of project]*** Project in [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]***[insert county/ies]***, South Carolina, dated as of [\_\_\_\_\_\_\_\_\_\_]***[date]*** (the “Agreement”) to design and build the [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]***[insert name of project]*** (the “Project”);

**AND WHEREas**, the Principal is a[n] [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]***[entity type]***, duly formed and validly existing under the laws of the [\_\_\_\_\_\_\_\_\_\_\_\_\_\_]***[jurisdiction]***, and is duly authorized and in good standing to do business in the State of South Carolina;

**And WHEREAS**, it is one of the conditions of the Agreement that these presents shall be executed;

**Now Therefore**,we the undersigned Principal and [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (the “Surety” or “Co-Sureties”) are firmly bound and held unto the Obligee, in the penal sum of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] Dollars ($[\_\_\_\_\_\_\_\_\_\_])***[insert 100% Contract Price amount],*** good and lawful money of the United States of America, for the payment whereof, well and truly to be paid to the Obligee, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:**

1. If the Principal shall comply with all requirements of law and pay, as they become due, all just claims for labor performed and materials, equipment, and supplies furnished upon or for the work under the Agreement, whether said labor be performed and said materials, equipment, and supplies be furnished under the original Agreement, any subcontract or other agreement, or any and all duly authorized modifications thereto, then these presents shall become null and void; otherwise they shall remain in full force and effect.

2. The Surety’s (or Co-Sureties’) obligation to the Obligee under this bond shall arise after the Obligee has notified the Principal and the Surety (or Co-Sureties) of claims, demands, liens, or suits against the Obligee or purported to be against the Obligee’s property, by any person or entity seeking payment for labor, materials, equipment, or supplies furnished for use in the performance of the Agreement and tendered defense of such claims, demands, liens, or suits to the Principal and the Surety. Upon such notice, the Surety (or Co-Sureties) shall promptly, and at the Surety’s (or Co-Sureties’) sole cost and expense, defend, indemnify, and hold harmless the Obligee against the tendered claim, demand, lien, or suit, in each case, in an amount not to exceed the penal sum of this bond.

3. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Agreement, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Agreement, or any conditions precedent or subsequent in this bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this bond, or any fraud practiced by any other person other than the claimant seeking to recover this bond, shall in any way affect its obligations on this bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

4. If the Surety (or Co-Sureties) do(es) not proceed as provided in the foregoing Section 2 with reasonable promptness, then the Surety shall be in default on this bond seven days after receipt of an additional written notice from the Obligee to the Surety demanding that the Surety perform its obligations under this bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee at law or in equity.

5. Amounts owed by the Obligee to the Principal under the Agreement shall be used for the performance of the Agreement and to satisfy claims, if any, under the performance bond. The Surety (or Co-Sureties) agree(s) that amounts expended and/or payments made under the performance bond do not reduce the Surety’s legal obligations under this bond. Payments made to contractors or suppliers under any agreement where any surety or sureties has/have arranged for completion of the work to satisfy this bond will not be considered payment bond claims.

6. ***Use in case of multiple or co-sureties*]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this bond, so that the Obligee and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee or claimants to the Co-Sureties and all claims under this bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], and correspondence to be directed at the following address(es): [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].

[7.] This bond shall be governed by, and construed under, the laws of the State of South Carolina. Any dispute brought by the Surety (or Co-Sureties), the Principal, or the Obligee directly relating to the rights and obligations of any of the foregoing persons or entity under this bond shall be filed, heard, and decided non-jury in the Circuit Court for Richland County, South Carolina, which shall have exclusive jurisdiction and venue.

*[remainder of page intentionally blank]*

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at \_\_\_\_\_\_\_\_\_\_\_\_  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on this \_\_\_\_\_\_\_\_ day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, A.D., 20\_\_.

|  |  |
| --- | --- |
| **Principal (full legal name):** | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address: | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By: | |
| Contact Name: | |
| Phone: ( ) | |
| **Surety (full legal name):** | |
| Address: | |
| By: | |
| Contact Name: | |
| Phone: ( ) | |

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]