

EXHIBIT C

PERFORMANCE BOND

EXHIBIT C

Performance Bond No. _____

PERFORMANCE BOND

WHEREAS, the County of San Bernardino ("County") has awarded [insert name of Design-Builder] designated as the "Principal" herein, a contract for the work described as follows:

WHEREAS, on or about _____, 20____, the Principal entered into a Design-Build Contract with the County for the design and construction of the work of improvement, which Design-Build Contract and all Contract Documents set forth therein are incorporated herein and made a part hereof by this reference; and

WHEREAS, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents concurrently with delivery to County of the executed Design-Build Contract.

NOW, THEREFORE, Principal and _____ ("Surety"), a duly admitted surety in the State of California, are held and firmly bound to County for payment of the penal sum of \$_____ ("the Bonded Sum"), in lawful money of the United States, for payment of which sum Principal and Surety jointly and severally bind themselves and their heirs, executors, administrators, successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The following terms and conditions shall apply with respect to this Bond:

1. The Design-Builder and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to County for the complete and proper performance of the Design-Build Contract, which is incorporated herein by reference.
2. If the Design-Builder completely and properly performs all of its obligations under the Design-Build Contract, the Surety and the Design-Builder shall have no obligation under this Bond.
3. If there is no County Default, the Surety's obligation under this Bond shall arise after:
 - 3.1 County has declared a Design-Builder Default under the Design-Build Contract pursuant to the terms of the Design-Build Contract; and
 - 3.2 County has agreed to pay the Balance of the Contract Sum to:
 - 3.2.1 The Surety in accordance with the terms of this Bond and the Design-Build Contract; or
 - 3.2.2 The contractor selected to perform the Design-Build Contract in accordance with the terms of this Bond and the Design-Build Contract.
4. When County has satisfied the conditions of Paragraph 3, the Surety shall promptly (within thirty (30) days) and at the Surety's expense elect to take one of the following actions (provided, that unless and until County

EXHIBIT C

has actually terminated Design-Builder for default, the Surety need only respond to County and commence a diligent investigation, not make an election):

- 4.1 Arrange for the Design-Builder, with consent of County, to perform and complete the Design-Build Contract (but County may withhold consent, in which case the Surety must elect an option described in Paragraphs 4.2, 4.3 or 4.4, below); or
 - 4.2 Undertake to perform and complete the Design-Build Contract itself, through its agents or through independent contractors, but County may reject use of the Design-Builder as an agent or independent contractor; or
 - 4.3 Obtain bids from qualified Design-Builders acceptable to County for a contract for performance and completion of the Design-Build Contract (other than the original Design-Builder), and, upon determination by County of the lowest responsible bidder, arrange for a contract to be prepared for execution by County and the Design-Builder selected with County's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Design-Build Contract; and, if the Surety's obligations defined in Paragraph 6, below, exceed the Balance of the Contract Sum, then the Surety shall pay to County the amount of such excess; or
 - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new Design-Builder and with reasonable promptness under the circumstances, and, after investigation and consultation with County, determine in good faith its monetary obligation for which it may then be liable to County under Paragraph 6, below, for the performance and completion of the Design-Build Contract and, as soon as practicable after the amount is determined, tender payment therefor to County with full explanation of the payment's calculation. If County accepts the Surety's tender under this Paragraph 4.4, County may still hold Surety liable for future damages then unknown or unliquidated resulting from the Design-Builder Default. If County disputes the amount of Surety's tender under this Paragraph 4.4, County may exercise all remedies available to it at law to enforce the Surety's liability under Paragraph 6 below.
5. If the Surety does not proceed as provided in Paragraph 4, above, then the Surety shall be deemed to be in default on this Bond ten (10) days after receipt of an additional written notice from County to the Surety demanding that the Surety perform its obligations under this Bond. At all times County shall be entitled to enforce any remedy available to County at law or under the Design-Build Contract including, without limitation, and by way of example only, rights to perform work, protect work, mitigate damages, or coordinate work with other consultants or Design-Builders.
6. The Surety's monetary obligation under this Bond is limited to the amount of this Bond, plus the Balance of the Contract Sum paid hereunder. Subject to these limits, the Surety's obligations under this Bond are commensurate with the obligations of the Design-Builder under the Design-Build Contract. The Surety's obligations shall include, but are not limited to:
- 6.1 The responsibilities of the Design-Builder under the Design-Build Contract for completion of the Design-Build Contract and correction of defective work;
 - 6.2 The responsibilities of the Design-Builder under the Design-Build Contract to pay liquidated damages, and for damages for which no liquidated damages are specified in the Design-Build Contract, actual damages caused by non-performance of the Design-Build Contract, including but not limited to, all valid and proper backcharges, offsets, payments, indemnities, or other damages;

EXHIBIT C

- 6.3 Additional legal, design professional and delay costs resulting from the Design-Builder Default or resulting from the actions or failure to act of the Surety under Paragraph 4, above.
7. No right of action shall accrue on this Bond to any person or entity other than County or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, alteration or addition to the Design-Build Contract or to related subcontracts, purchase orders and other obligations, including changes of time. The Surety consents to all terms of the Design-Build Contract, including provisions on changes to the Contract. No extension of time, change, alteration, modification, deletion, or addition to the Contract Documents, or of the work required thereunder, shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond.
9. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between County and the Design-Builder regarding the Design-Build Contract, or in the courts of the County of San Bernardino, or in a court of competent jurisdiction in the location in which the work is located.
10. Notice to the Surety, County or the Design-Builder shall be mailed or delivered to the address shown on the signature page.
11. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.
12. Definitions.
- 12.1 Balance of the Contract Sum: The total amount payable by County to the Design-Builder pursuant to the terms of the Design-Build Contract after all proper adjustments have been made under the Design-Build Contract, for example, deductions for progress payments made, and increases/decreases for approved modifications to the Design-Build Contract.
- 12.2 Design-Build Contract: The agreement between County and the Design-Builder identified on the signature page, including all Contract Documents and changes thereto.
- 12.3 Design-Builder Default: Material failure of the Design-Builder, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Design-Build Contract.
- 12.4 County Default: Material failure of County, which has neither been remedied nor waived, to pay the Design-Builder progress payments due under the Design-Build Contract or to perform other material terms of the Design-Build Contract, if such failure is the cause of the asserted Design-Builder Default and is sufficient to justify Design-Builder termination of the Design-Build Contract.
13. Qualification Regarding Extended Warranties. The Surety's liability for extended warranties for Subcontractors and suppliers shall not apply to a breach of any such extended warranty under the Design-Build Contract that occurs more than one year after the applicable warranty commencement date under the Design-Build Contract.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety of the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s)

EXHIBIT C

pursuant to authority of its governing body. Principal and Surety have caused this Bond to be duly executed and delivered as of this _____ day of _____, 20__.

SURETY:

PRINCIPAL:

Name

Name

Principal Place of Business

Address

By: _____
Signature

By: _____
Signature

Attorney-In-Fact

Printed Name

Signature

Its: _____
Title

(Attach Attorney-in-Fact Certificate, Corporate Seal and Surety Seal)

END OF DOCUMENT