

PERFORMANCE BOND AND PAYMENT BOND

We \_\_\_\_\_, hereinafter referred to as Principal, and \_\_\_\_\_, hereinafter referred to as Surety, are held and firmly bound unto \_\_\_\_\_, as obligee, hereinafter referred to as Owner, in the initial Contract amount of \$ \_\_\_\_\_, said amount to be deemed a performance bond payable to Owner under the terms of this Performance and Payment Bond Agreement. The Principal and Surety state that the Surety is a solvent corporate surety company authorized to do business in the State of Arkansas.

Principal has by written agreement dated \_\_\_\_\_ entered into a capital improvement contract (Contract) with the Owner for: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_. The above referenced Contract is incorporated herein by reference.

Under this Performance and Payment Bond Agreement, the Principal and Surety shall be responsible for the following:

- a. The Principal shall faithfully perform the above referenced Contract, which is incorporated herein by reference and shall pay all indebtedness for labor and materials furnished or performed under the Contract.
- b. In the event that the Principal fails to perform the Contract, the Principal and the Surety, jointly and severally, shall indemnify and save harmless the Owner from all cost and damage which the Owner may suffer by reason of Principal's failure to perform the Contract. Said indemnification shall include, but not be limited to, full reimbursement and repayment to the Owner for all outlays and expenses which the Owner may incur in making good any such default or failure to perform the Contract by the Principal.
- c. Principal shall pay all persons all indebtedness for labor or material furnished or performed under the Contract and in doing so this obligation shall be null and void. In the event that Principal fails to pay for such indebtedness, such persons shall have a direct right of action against the Principal and Surety, jointly and severally, under this obligation, subject to the Owner's priority.
- d. Principal shall guarantee the faithful performance of the prevailing hourly wage clause as provided in the Contract.

This bond is given in accordance with Arkansas laws and regulations, including Ark. Code Ann. § 18-44-503, §19-4-1405, and § 22-9-401 et seq. The Surety guarantees that the Principal shall comply with Ark. Code Ann. § 22-9-308 (d) by payment and full compliance with all prevailing hourly wage contract provisions where the contract amount exceeds the amount provided in Ark. Code Ann. § 22-9-302(1).

Any changes made in the terms of the Contract including but not limited to the amount of the contract, or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the contract, or any other forbearance on the part of either the Owner or the Principal to the other shall not in any way release the Principal and the Surety or Sureties or either or any of them, their heirs, personal representatives, successors or assigns from their liability hereunder, notice to and consent of the Surety or Sureties of any such change, extension or forbearance being are hereby voluntarily waived. In no event shall the aggregate liability of the Surety exceed the Contract documents.

This Performance and Payment Bond Agreement is binding upon the above named parties, and their successors, heirs, assigns and personal representatives.

Executed by the parties who individually represent that each voluntarily enters into and has the authority to enter into this agreement.

BY: \_\_\_\_\_  
Contractor Date

BY: \_\_\_\_\_  
Arkansas Resident Agent or Non Resident Agent/ Attorney-in-Fact Date

Print: \_\_\_\_\_  
Agent's Name Date

Address \_\_\_\_\_

City County State Zip Code

Business #: \_\_\_\_\_ Fax #: \_\_\_\_\_

E-Mail: \_\_\_\_\_

**THIS FORM IS THE ONLY PERFORMANCE AND PAYMENT BOND ACCEPTABLE.**