



SUBCONTRACT PERFORMANCE BOND

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KNOW ALL BY THESE PRESENTS, That we, _____, called the "Principal", and _____, a _____ corporation, called the "Surety", are held and firmly bound unto Morette Company PO Box 13452 Pensacola, FL 32591, hereinafter called the "Obligee", in the sum of _____ U.S. Dollars (\$_____) (the "Penal Sum"), for the payment whereof said Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein.

WHEREAS, Principal has by written agreement dated _____ entered into a subcontract number with Obligee for the performance of subcontract work _____, including warranty obligations, in accordance with drawings and specifications for the construction of the _____ project (hereinafter "the Project"), which subcontract is by reference made a part hereof, and is hereinafter referred to as the "Subcontract".

A. NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that, if Principal shall promptly and faithfully perform said Subcontract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions: (i) Principal is in default under the and (iii) the Obligee has performed its obligations under the Subcontract. Upon the occurrence of each of the above conditions, Surety shall have 30 days ("Investigatory Period") from the last event to occur of the following: (a) receipt of the written notice of default; (b) the date access to the Project site is provided to Surety; or (c) the date the information and documentation in Obligee's or its agent's possession and requested by Surety is received by the Surety, which information and documentation must be requested by Surety within 10 days of its receipt of Obligee's written notice of default, to:

- 1.** Notify Obligee that it has elected to complete the Subcontract through independent contractor(s) retained by Surety and thereafter commence such performance with reasonable promptness. In such event, that portion of the Balance of the Subcontract Price as may be required to complete the Subcontract or remedy the default and to reimburse the Surety for its expenditures shall be paid to the Surety at the times and in the manner as said sums would have been payable to Principal had there been no default under the Subcontract; or
- 2.** Notify the Obligee that it has elected to arrange for a subcontract between Obligee and a replacement subcontractor reasonably acceptable to Obligee guaranteed by subcontract performance and payment bonds provided by the replacement subcontractor in the amount of the replacement subcontract. In such event, Surety shall pay Obligee the difference between the cost of the replacement subcontractor and the amount that would have been payable to the Principal had there been no default under the Subcontract. Such payments may be in a lump sum (in the case of a lump sum subcontract) or periodically as incurred by Obligee; or

3. Request that Obligees complete the Subcontract. In such event, Surety shall pay Obligees the difference between the reasonable cost of a replacement subcontractor and the amount that would have been payable to the Principal had there been no default under the Subcontract; or
 4. Arrange to provide financial and/or other assistance to the Principal ("Financing") to assist the Principal with completion of the Subcontract. In the event Obligees has formally terminated Principal's right to proceed under the Subcontract, this option shall be subject to Obligees's concurrence, which shall not be unreasonably withheld. The Obligees shall pay the Balance of the Subcontract Price as directed by the Surety. In the event Surety provides Financing, Surety, in its sole discretion, may upon written notice to Obligees cease providing such Financing at any time, in which event Surety shall immediately make a further election without a further Investigatory Period under this paragraph A; or
 5. Deny liability and notify the Obligees, citing the reasons therefor; or
 6. After investigation, determine the amount for which it may be liable to the Obligees and, as soon as practicable after the amount is determined, make payment to the Obligees.
- B.** After Obligees has provided Surety with written notice of the Principal's default, and during the Investigatory Period and any subsequent period before the commencement of work under paragraph A, subparagraphs 1 or 2, Obligees may take action pursuant to its Subcontract rights to mitigate the damages caused by the Principal's default. To the extent that Obligees performs obligations under the Subcontract during this period (the "Mitigation Work") Obligees shall be entitled to deduct the Cost of the Mitigation Work from the Balance of the Subcontract Price. To the extent the Balance of the Subcontract Price is exhausted, and Surety elects to proceed under paragraph A, subparagraphs 1, 2, 3 or 4, Surety shall reimburse Obligees for the difference between the Balance of the Subcontract Price and the Cost of the Mitigation Work incurred and paid by Obligees.
- C.** If Surety proceeds under paragraph A, subparagraphs 1, 2, 3, 4 or 6, Surety may additionally advise in its notice of its election to Obligees that the Obligees's claim is disputed as to liability and/or amount and Surety is proceeding under a reservation of all rights and defenses. In that event, Surety shall make all payments otherwise called for under this Bond. However, in the event it is determined that Surety is not liable, in whole or in part, under this Bond and Surety expended monies in excess of the funds paid by Obligees to Surety, then Surety shall be entitled to recover the excess from Obligees.
- D.** The Surety's aggregate liability is limited to the Penal Sum of this Bond, regardless of whether the liability arises from the actions or failure to act of Principal or Surety. All amounts expended by the Surety under paragraphs A and/or B and/or C of this Bond, in excess of funds paid by Obligees to Surety, shall be credited against the Penal Sum. However, in the event it is determined that Surety expended monies in excess of the Penal Sum of this Bond, then Surety shall be entitled to recover the excess from Obligees. The Penal Sum of this Bond shall automatically be increased or decreased by the amount of any change order, provided the change order(s) do not, either singly or in the aggregate, exceed 10% of the original Subcontract amount. Should any change order singly or in the aggregate exceed 10% of the original Subcontract amount, Surety's written consent must be obtained by Obligees in order to increase the penal sum.
- E. DEFINITIONS:**
1. The term "Balance of the Subcontract Price," as used in this Bond, shall mean the total amount payable by Obligees to Principal under the Subcontract and any amendments thereto, less the amounts heretofore properly paid by Obligees under the Subcontract.

- 2. The term "Cost of the Mitigation Work" means the cost actually incurred by Obligee in proper performance of work under the Subcontract, including remedying defects in the work of the Principal. Such costs shall be at rates and hours not higher than the standard customarily incurred at the place of the Project except with the prior written consent of the Surety. Obligee's overhead (both field and home office) as well as profit shall be included in the Cost of the Mitigation Work at a markup of 15% to the actual labor, material, equipment, and subcontractor costs incurred and paid for by Obligee. Obligee shall not apply markup to the cost of any subcontractor that is affiliated with Obligee.

- F. Notwithstanding any provision in this Bond and any document incorporated herein to the contrary, any proceeding, legal or equitable, under this Bond must be instituted in a court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of default or within two years after the Principal ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

- G. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.

- H. Any notice given or any demand made under this Bond shall be given in writing and may be provided to the following email address _____ or given by any method of delivery that provides evidence or confirmation of receipt, including personal delivery, express courier (such as Federal Express), and prepaid certified or registered mail with return receipt requested. The Surety's address for notice is _____.

- I. The Surety shall not be liable to the Obligee or others for obligations of the Principal that are unrelated to the Subcontract work, and the Balance of the Subcontract Price shall not be reduced or set off on account of any such unrelated obligations.

- J. The Surety hereby waives notice of change, including changes of time, to the Subcontract, purchase orders or other obligations.

Signed this _____ day of _____, 20 ____

BY: _____
PRINCIPAL

SURETY

ATTORNEY-IN-FACT