

PERFORMANCE BOND

(Subcontract)

Bond No. _____
(if applicable)

1 KNOW ALL MEN BY THESE PRESENTS, that _____ (hereinafter called the
2 "Principal"), as Principal, and _____, a corporation organized and existing under the laws
3 of the State of _____ (hereinafter called the "Surety"), as Surety, are held and firmly bound unto Faris
4 Construction Company, a California corporation, with principal offices located at 2810 El Camino Real, Oceanside, CA 92054 (hereinafter called the
5 "Obligee"), in the sum of _____
6 _____ DOLLARS (\$ _____), for the payment of which sum,
7 well and truly to be made, the said Principal and Surety bind themselves, and their respective heirs, administrators, executors, successors and assigns,
8 jointly and severally, firmly by these presents.

9
10 WHEREAS, the Obligee has been awarded a contract (hereinafter called the "Prime Contract"), by _____ for
11 _____ ("Project"); and

12
13 WHEREAS, the Principal has entered into a written Subcontract with the Obligee, dated _____ in the amount of \$ _____
14 _____
15 ("Subcontract Price") to perform, as Subcontractor, certain portions of the work in connection with said Prime Contract, consisting generally of _____
16 _____ ("Subcontractor Work"), which
17 Subcontract is hereby referred to and made a part hereof.

18
19 NOW, THEREFORE, Surety and Principal agree to be bound as follows:

20
21 1. If the above bonded Principal shall well and truly perform all the undertakings, covenants, terms, conditions, and agreements of said
22 Subcontract within the time provided therein and any extensions thereof that may be granted by the Obligee, and during the life of any guaranty or
23 warranty required under said Subcontract, and shall also well and truly perform all the undertakings, covenants, terms, conditions, and agreements of
24 any and all duly authorized modifications of said Subcontract that may hereafter be made, and shall indemnify and save harmless said Obligee of and
25 from any and all loss, damage and expense that the said Obligee may sustain by reason of the Principal's failure so to do, then this Bond shall be null and
26 void; otherwise it shall remain in full force and effect.

27
28 2. Surety agrees that no change, extension of time, alteration, addition, omission, or other modification of the terms of either the said Subcontract
29 or the said Prime Contract, or both, or in the said work to be performed, or in the specifications, or in the plans, shall in any way affect its obligation on
30 this Bond, and it does hereby waive notice of any such changes, extensions of time, alterations, additions, omissions, and other modifications. In
31 addition, the penal sum of this Bond shall automatically be adjusted to reflect the additive or deductive amounts of all change orders issued to the
32 Subcontract; provided, however, that Obligee shall notify Surety if an individual change order increases the Subcontract Price by more than 10%, and, if
33 at any point the aggregate amount of all change orders increases the Subcontract Price by more than 35% of the Subcontract Price, the Surety's consent
34 shall be required to increase the penal sum of this Bond in excess of 35% of the Subcontract Price, such consent not to be unreasonably withheld.

35
36 3. Whenever Principal is in default under the Subcontract, and Obligee declares a default and terminates the Principal's right to proceed therefor,
37 the Surety shall promptly, following receipt of such written declaration of default and termination, remedy the default by:

- 38
39 a. Tendering to Obligee the penal sum of this Bond; or
40
41 b. Completing the Subcontract in accordance with its terms and conditions; or
42
43 c. Obtaining bids or offers from contractors acceptable to Obligee for completing the remaining Subcontract Work in accordance with the
44 terms and conditions of the Subcontract, and upon determination by Obligee and the Surety jointly of the lowest responsible bidder or
45 offeror, arranging for a subcontract between such completion contractor and the Obligee, and arranging for new performance and
46 payment bonds for such completion contractor from a surety acceptable to the Obligee. Upon acceptance of the completion contractor by
47 the Obligee, the Surety shall pay to the Obligee the difference between the cost to complete the Subcontract Work and the Subcontract
48 balance, including the cost of obtaining new performance and payment bonds; or
49
50 d. Agreeing to pay, within twenty (20) days of receipt of invoice, amounts due Obligee under the terms of the Subcontract for correcting or
51 completing the performance of the Subcontract Work or arranging for such correction or completion.

52
53 Except as provided in Paragraph 6 below, Surety's liability under this Bond shall not exceed, in the aggregate, the penal sum of this Bond, as adjusted
54 pursuant to Paragraph 2 above.

55 4. If Surety remedies the default pursuant to Subparagraph 3(b) or 3(c), then Surety shall also be obligated to pay, within thirty (30) days of
56 receipt of invoice, amounts due to the Obligee under the Subcontract for correcting or performing the Subcontract Work after the declaration of default
57 and prior to Surety remedying the default.

58

1 5. Upon commencement of the remedy of the default as set forth in Paragraph 3, Obligees shall make available as the Subcontract Work
2 progresses and as amounts become due under the terms of the Subcontract, the Balance of the Subcontract Price. The term "Balance of the Subcontract
3 Price" as used in this Paragraph shall mean the Subcontract Price, including any amendments thereto executed as of the date of termination, less the
4 amount paid by Obligees to Principal in accordance with the terms of the Subcontract, and less any other amounts for which Surety is liable to Obligees
5 under this Bond.
6

7 6. If Surety fails to remedy the Principal's default in accordance with Paragraph 3, then Surety shall pay Obligees all attorneys' fees and costs
8 incurred by Obligees in enforcing Surety's obligations hereunder, and such obligation shall be in addition to and not a part of the penal sum of this Bond,
9 notwithstanding the limitation set forth in Subparagraph 3.
10

11 7. In the event of a dispute between Surety and Obligees related to the Subcontract or to this Bond, the dispute shall be resolved by the dispute
12 resolution procedures set forth in the Subcontract. Surety shall be bound by any decision or ruling issued in any legal proceedings relating to the
13 Subcontract involving Obligees and Principal concerning the Principal's obligations under the Subcontract.
14

15 IN WITNESS WHEREOF, the above bonded parties have executed this instrument under their several seals this _____ day of _____
16 _____, _____, the name and corporate seal of each corporate party being affixed and these presents duly signed by
17 its undersigned representative, pursuant to authority of its governing body.
18

19
20 _____ (Seal)
21 (Principal)
22

23 _____
24 (Business Address)
25

26 Witness:

27 By _____
28 Or Secretary's Attest _____ (Signature and Title)
29

30 _____ (Seal)
31 (Surety)
32

33 _____
34 (Business Address)
35

36 Witness:

37 By _____
38 Or Secretary's Attest _____ (Signature and Title)

PAYMENT BOND
(Subcontract)

Bond No. _____
(if applicable)

1 KNOW ALL MEN BY THESE PRESENTS, that _____ (hereinafter called the
2 "Principal"), as Principal, and _____, a corporation organized and existing under the laws
3 of the State of _____ (hereinafter called the "Surety"), as Surety, are held and firmly bound unto Faris
4 Construction Company, a California corporation, with principal offices located at 2810 El Camino Real, Oceanside, CA 92054 (hereinafter called the
5 "Obligee"), in the sum of _____
6 _____ DOLLARS (\$ _____), for the payment of which sum,
7 well and truly to be made, the said Principal and Surety bind themselves, and their respective heirs, administrators, executors, successors and assigns,
8 jointly and severally, firmly by these presents.

9
10 WHEREAS, the Obligee has been awarded a contract (hereinafter called the "Prime Contract"), by _____ for
11 _____ ("Project"); and

12
13 WHEREAS, the Principal has entered into a written Subcontract with the Obligee, dated _____ in the amount of \$ _____
14 _____
15 ("Subcontract Price") to perform, as Subcontractor, certain portions of the work in connection with said Prime Contract, consisting generally of _____
16 _____, which Subcontract is hereby
17 referred to and made a part hereof.

18
19 NOW, THEREFORE, the condition of this obligation is such that, if Principal shall promptly make payment to all Claimants as hereinafter defined,
20 for all labor, material and equipment used or reasonably required for use in the performance of the Subcontract, and any and all change orders or
21 modifications issued to said Subcontract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the
22 following conditions:

- 23
24 1. The purpose of this Bond is, in part, to indemnify Obligee and its surety (if any) for any payments made by Obligee or its surety, whether due
25 to a lien or payment bond claim or otherwise, to any Claimant, as defined herein, upon the failure of Principal or Surety to make such payment.
26 Such indemnification shall include all legal expenses necessarily incurred by Obligee or its surety in connection with such payments, which
27 legal expenses shall be due and owing to Obligee in addition to, and not as a part of, the penal sum of this Bond.
- 28
29 2. Surety agrees that no change, extension of time, alteration, addition, omission, or other modification of the terms of either the said Subcontract
30 or the said Prime Contract, or both, or in the said work to be performed, or in the specifications, or in the plans, shall in any way affect its
31 obligation on this Bond, and it does hereby waive notice of any such changes, extensions of time, alterations, additions, omissions, and other
32 modifications. In addition, the penal sum of this Bond shall automatically be adjusted to reflect the additive or deductive amounts of all
33 change orders issued to the Subcontract; provided, however, that Obligee shall notify Surety if a change order increases the Subcontract Price
34 by more than 10%, and, if at any point the aggregate amount of all change orders increases the Subcontract Price by more than 35% of the
35 Subcontract Price, the Surety's consent shall be required to increase the penal sum of this Bond in excess of 35% of the Subcontract Price,
36 such consent not to be unreasonably withheld.
- 37
38 3. The Obligee and its surety, if any, are intended beneficiaries of this Bond.
- 39
40 4. A Claimant is defined as one supplying labor, material and/or equipment, used or reasonably required for use in the performance of the
41 Subcontract, labor, material and equipment being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone
42 service, or rental equipment directly applicable to the Subcontract. Although possessing the right to file a lien or statutory bond claim is not
43 required to meet the definition of Claimant under this Bond, Claimant is further defined as anyone possessing a right to file a lien or statutory
44 bond claim on the Project arising out of the Subcontractor's work.
- 45
46 5. The above named Principal and Surety hereby jointly and severally agree that every Claimant as herein defined, who has not been paid
47 amounts due for labor, material or equipment used or reasonably required for use in the performance of the Subcontract may recover such
48 amounts from Surety under this Bond. The Obligee shall not be liable for the payment of any costs or expenses that may be incurred by a
49 Claimant in recovering amounts due under this Bond.
- 50
51 6. The penal sum of this bond shall be reduced by and to the extent of any payment or payments made by Surety in good faith hereunder.
- 52
53 7. In the event of a dispute between Surety and Obligee related to the Subcontract or this Bond, the dispute shall be resolved by the dispute
54 resolution procedures set forth in the Subcontract. Surety shall be bound by any decision or ruling issued in any legal proceedings relating to
55 the Subcontract involving Obligee and Principal concerning the Principal's obligations under the Subcontract.
- 56

1 IN WITNESS WHEREOF, the above bonded parties have executed this instrument under their several seals this _____
2 day of _____, _____, the name and corporate seal of each corporate party being affixed and
3 these presents duly signed by its undersigned representative, pursuant to authority of its governing body.
4

5
6 _____ (Seal)
7 (Principal)
8

9 _____
10 (Business Address)

11 Witness:
12
13 By _____
14 Or Secretary's Attest

15 _____ (Signature and Title)

16 _____ (Seal)
17 (Surety)
18

19 _____
20 (Business Address)

21 Witness:
22
23 By _____
24 Or Secretary's Attest
25

25 _____ (Signature and Title)