

**EXHIBIT "K"**

**PERFORMANCE AND PAYMENT BOND FORMS**

**FORM OF PAYMENT BOND**

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

**KNOW ALL MEN BY THESE PRESENTS,**

**THAT WHEREAS**, the City of Long Beach, acting by and through its Board of Harbor Commissioners, commonly known as the Port of Long Beach (the "Owner") has awarded to \_\_\_\_\_, a \_\_\_\_\_ (the "Obligee"), a Design-Build Contract (as amended from time to time, the "Contract") for the design and construction of the Gerald Desmond Bridge Replacement Project (the "Project");

**AND WHEREAS**, in connection with the Project, Obligee has entered into a Subcontract (as amended from time to time, the "Subcontract") with \_\_\_\_\_, a \_\_\_\_\_ (the "Principal"), which Subcontract is specifically incorporated by reference herein;

**AND WHEREAS**, capitalized terms not otherwise defined herein shall have the meanings set forth in the Subcontract; and

**AND WHEREAS**, it is one of the conditions of the Subcontract that these presents shall be executed.

**NOW THEREFORE**, We the undersigned Principal and \_\_\_\_\_ (the "Surety" or "Co-Sureties"), an admitted surety insurer in the State of California, are held and firmly bound unto the Obligee, in the sum of \_\_\_\_\_ **United States Dollars (\$US \_\_\_\_\_ .00)** (the "Bonded Sum"), to be paid to the Obligee for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

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

1. The Subcontract is incorporated by reference herein.
2. A Claimant is defined as one who, regardless of tier, furnished labor, material, equipment or services, including design and engineering services, or any combination thereof, used or reasonably required for use in the performance of the Subcontract including, but not limited to, any persons named in California Civil Code Section 3181.

3. If said Principal, or its subcontractors and suppliers, or their respective heirs, executors, administrators, successors or assigns, shall fail to pay:

- (a) any Claimant involved in the prosecution of the Work, as provided for in the Subcontract, or
- (b) any amounts due under the Unemployment Insurance Code, with respect to Work or labor performed by such Claimant under the Subcontract or further subcontracts thereunder (regardless of tier), or
- (c) any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Principal and its subcontractors (regardless of tier) pursuant to Revenue and Taxation Code Section 18662 et seq. with respect to such Work and labor, or
- (d) anyone required to be paid by law,

then the Surety (or Co-Sureties) herein shall pay for the same, in an aggregate amount not exceeding the Bonded Sum, otherwise the above obligation shall be null and void. In case suit is brought upon this Bond, the Surety (or Co-Sureties) will pay reasonable attorney's fee to be fixed by the court.

4. This Bond shall inure to the benefit of any of the Claimants, as defined herein, or anyone required to be paid by law under the Subcontract so as to give a right of action to such persons or their assigns in any suit brought upon this Bond.

5. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Subcontract, 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 Subcontract, or any rescission or attempted rescission of the Subcontract, or this Bond, 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 against this Bond, shall in any way affect the obligations of the Surety (or Co-Sureties) on this Bond, and the Surety (or Co-Sureties) hereby waive(s) notice of such changes, extension of time, alterations, additions, omissions or other modifications.

6. The Principal and the Surety (or Co-Sureties) agree that the Bonded Sum shall automatically be increased by the amount of any change orders issued to the Subcontract between Principal and Obligee, notice to Surety (or Co-Sureties) of the issuance of such change orders being hereby waived; however, deductive change orders shall not lower the Bonded Sum.

7. This Bond shall cover all payment obligations under the Subcontract.

**8. [Note: Use in case of multiple or co-sureties or, otherwise, delete.]** 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 \_\_\_\_\_.”

In Witness Whereof, We have hereunto set our hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_.

Correspondence or claims relating to this Bond should be sent to the Surety (or Sureties) at the following address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Principal’s name, title, and signature)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Surety

By: \_\_\_\_\_

Attorney-in-Fact

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

NOTE: Signatures of those executing for the Surety (or Co-Sureties) must be properly acknowledged, and a Power of Attorney attached.

**[NOTE: Use the following acknowledgement form for a California notary. For a notary from another state, use an acknowledgement form and follow the notary requirements that apply in that state.]**

**CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT**

State of California

County of \_\_\_\_\_

On this \_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_ before me, a notary public in and for the county and state aforesaid, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_ (SEAL) \_\_\_\_\_

*Signature of Notary Public*

**FORM OF PERFORMANCE BOND**

Subcontract No. \_\_\_\_\_

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

**KNOW ALL MEN BY THESE PRESENTS,**

**THAT WHEREAS**, the City of Long Beach, acting by and through its Board of Harbor Commissioners, commonly known as the Port of Long Beach (the "Owner") has awarded to \_\_\_\_\_, a \_\_\_\_\_ (the "Obligee"), a Design-Build Contract (as amended from time to time, the "Contract") for the design and construction of the Gerald Desmond Bridge Replacement Project (the "Project");

**AND WHEREAS**, in connection with the Project, Obligee has entered into a Subcontract (as amended from time to time, the "Subcontract") with \_\_\_\_\_, a \_\_\_\_\_ (the "Principal"), which Subcontract is specifically incorporated by reference herein;

**AND WHEREAS**, capitalized terms not otherwise defined herein shall have the meanings set forth in the Subcontract; and

**AND WHEREAS**, it is one of the conditions of the Subcontract that these presents shall be executed.

**NOW THEREFORE**, We the undersigned Principal and \_\_\_\_\_ (the "Surety" or "Co-Sureties"), an admitted surety insurer in the State of California, are held and firmly bound unto the Obligee, in the sum of \_\_\_\_\_ **United States Dollars (\$US \_\_\_\_\_ .00)** (the "Bonded Sum"), to be paid to the Obligee for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

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

1. The Subcontract is incorporated by reference herein.
2. If the above bound Principal, or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform the covenants, conditions, obligations and agreements in the Subcontract, including any and all amendments, supplements, and alterations made to the Subcontract as therein provided, on the Principal's part to be kept and performed at the time and in the manner therein specified, and shall indemnify, defend and save harmless the Obligee and all other Indemnified Parties, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force, virtue and effect.

3. This Bond shall cover the cost to perform all the obligations of the Principal pursuant to the Subcontract.

4. The obligations covered by this Bond specifically include liability for liquidated and stipulated damages that may be assessed pursuant to the Contract, delay damages that may be assessed pursuant to the Subcontract, warranties as specified in the Subcontract, and latent defects in the Work, but not to exceed the Bonded Sum.

5. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Subcontract, 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 Subcontract, or any rescission or attempted rescission of the Subcontract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of an Obligee entitled to recover under this Bond, or any fraud practiced by any other person other than an Obligee seeking to recover from this Bond, shall in any way affect the obligations of the Surety (or Co-Sureties) on this Bond, and the Surety (or Co-Sureties) hereby waive(s) notice of such changes, extension of time, alterations, additions, omissions or other modifications. The Surety (or Co-Sureties) agree(s) that payments made to Claimants (as defined in the Payment Bond) to satisfy claims on the Payment Bond do not reduce the Surety's legal obligations under this Bond. Payments made to subcontractors or suppliers (regardless of tier) under any agreement where the Surety (or Co-Sureties) has (have) arranged for completion of the Work to satisfy this Bond will not be considered Payment Bond claims.

6. Whenever the Principal shall be, and is declared by the Obligee to be, in default under the Contract, the Surety (or Co-Sureties) shall promptly:

- (a) remedy such default, or
- (b) complete the Work covered by this Bond in accordance with the terms and conditions of the Subcontract then in effect, or
- (c) select a subcontractor or subcontractors to complete all Work covered by this Bond in accordance with the terms and conditions of the Subcontract then in effect, using a subcontractor or subcontractors approved by the Obligee and the Owner (provided, however, that the Surety (or Co-Sureties) may not select the Principal or any affiliate of the Principal to complete the Work for and on behalf of the Surety (or Co-Sureties) without the Obligee's and Owner's express written consent, which the Obligee and the Owner may or may not grant in their sole discretion), arrange for a subcontract that contains substantially the same terms and conditions of the Subcontract between such subcontractor or subcontractors and the Obligee, and make available as Work progresses (even though there should be a default or a succession of defaults under such subcontract or subcontracts of completion arranged under this paragraph) sufficient funds to pay

the cost of completion less the unpaid balance of the Subcontract Price; but not exceeding, including other costs and damages for which the Surety (or Co-Sureties) is (are) liable hereunder, the Bonded Sum.

7. If the Surety (or Co-Sureties) does (do) not proceed as provided in Paragraph 6 of this Bond with reasonable promptness, Surety (or Co-Sureties) shall be deemed to be in default on this Bond ten (10) days after receipt of an additional written notice from the Obligee to Surety (or Co-Sureties) demanding that Surety (or Co-Sureties) perform its (their) obligations under this Bond, and the Obligee shall be entitled to enforce any and all remedies available to the Obligee.

8. The guarantees contained herein shall survive Final Acceptance of the Work called for in the Subcontract with respect to those obligations of Principal which survive such Final Acceptance.

9. The Principal and the Surety (or Co-Sureties) agree that the Bonded Sum shall automatically be increased by the amount of any change orders issued to the Subcontract between Principal and Obligee, notice to Surety (or Co-Sureties) of the issuance of such change orders being hereby waived; however, deductive change orders shall not lower the Bonded Sum.

10. **[Note: Use in case of multiple or co-sureties or, otherwise, delete.]** 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 will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee 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 \_\_\_\_\_.

**IN WITNESS WHEREOF**, We have hereunto set our hands and seals on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Correspondence or claims relating to this Bond should be sent to the Surety (or Sureties) at the following address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Principal's name, title, and signature)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Surety

By: \_\_\_\_\_

Attorney-in-Fact

NOTE: Signatures of those executing for the Surety (or Co-Sureties) must be properly acknowledged, and a Power of Attorney attached.



**[NOTE: Use the following acknowledgement form for a California notary. For a notary from another state, use an acknowledgement form and follow the notary requirements that apply in that state.]**

**CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT**

State of California

County of \_\_\_\_\_

On this \_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_ before me, a notary public in and for the county and state aforesaid, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_ (SEAL) \_\_\_\_\_

*Signature of Notary Public*