



TOWN OF TRUMBULL, CONNECTICUT

REQUEST FOR PROPOSAL

**TRUMBULL RFP # 6334
LOTCIP PROJECT #L144-0003**

CHESTNUT HILL ROAD RECONSTRUCTION PROJECT

PROPOSAL SUBMITTAL: March 21, 2019 @ 2 pm

REQUEST FOR PROPOSALS

VOLUME ONE - ATTACHMENTS

Prepared for the Town of Trumbull by:

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TOWN OF TRUMBULL
CHESTNUT HILL ROAD RECONSTRUCTION PROJECT
LOTCIP PROJECT # L144-0003

INDEPENDENT CONTRACTOR CONTRACT DOCUMENTS

WHEREAS, _____ (“Hereinafter “Contractor”) wishes to provide certain services to the Town of Trumbull (Hereinafter ‘Town”) as described in Bid # _____ dated _____, Notice to Bidders, General Instructions to Bidders, General and Special Conditions, Bid Proposal Form, Contractor’s Response to Bid and this Agreement (Hereinafter collectively said documents are referred to as “Contract Documents”) which said Contract Documents are incorporated into and made a part of this Contract Documents.

WHEREAS, the Town wishes _____ to provide said services pursuant to the Contract Documents;

NOWTHERFORE, for good and valuable consideration receipt of which is hereby acknowledged, the Parties agreed to the following addendum:

1. This Contract Documents is for services to be performed as described in the Contract Documents.
 - a. The Contractor shall commence and complete the work as set forth in the RFP and such work shall meet all specifications, requirements, scope of work, terms and conditions contained in the RFP Documents and per the unit pricing within said RFP Documents.
 - b. The Contractor shall furnish all material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the project as described in the Contract Documents. Contractor agrees to abide by all provisions, requirements, standards and specifications included in the RFP whether actual or by reference.
 - c. The Contractor shall perform all of the work described in the RFP Documents and the Contractor’s sole measurement of payment for said work shall be the sum of the total quantities of the units completed and accepted by the Town multiplied by the corresponding unit price as set forth in the RFP Documents for each respective unit.
 - d. The Owner will pay the Contractor in the manner and at such time as set forth in the RFP Documents.
 - e. All invoices submitted to the Town will be against a Purchase Order given to _____ by the Town.
 - f. Contractor acknowledges that the project set forth in the Construction Documents are a Federally and/or State funded project, therefore all aspects of the work, including but not necessarily limited to formats for billing, submittals, testing, change orders, DBE and prevailing wages shall be in accordance with any and all Federal and/or State requirements.

2. Representations and Warranties. Contractor hereby represents and warrants the following to the Town:

(a) Contractor's performance of any and all services pursuant to the Contract Documents shall be in compliance with all applicable federal, state and local laws, statutes, ordinances, orders, rules and/or regulations.

(b) Contractor is authorized and empowered to enter into the Contract Documents, and that the terms and provisions of the Contract Documents are binding upon it and do not conflict with any other Contract Documents, regulation, law or order to which it is a party or by which it is bound.

(c) Contractor's execution and delivery of the Contract Documents and compliance by Contractor with all of the provisions of the Contract Documents: (i) are within Contractor's authority and powers, (ii) will not conflict with or result in any breach of or constitute a default under any resolution, contract, articles of organization or other instrument to which Contractor is a party or by which it may be bound or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency having jurisdiction over Contractor or any of its activities or properties, and (iii) have been duly authorized by all necessary action on the part of Contractor, so that upon execution by all Parties thereto, the Contract Documents will constitute a valid and binding contract of Contractor enforceable upon Contractor in accordance with its respective terms herein.

(d) To the best of Contractor's information and belief, there are no actions, suits, proceedings, inquiries or investigations pending or threatened against or affecting Contractor in any court or before any governmental authority or tribunal which might materially and adversely affect Contractor's ability to perform its obligations under the Contract Documents.

(e) Contractor shall provide the services as set forth in Exhibit A (i) in a good, professional and workmanlike manner, (ii) so that deadlines agreed between the Town and the Contractor are strictly adhered to, (iii) so that at all times the Contractor shall be qualified and professionally competent to carry out said services and (iv) so that at all times the Contractor possess all licenses and/or certifications required to perform said services.

(f) Contractor and its subcontractors, officers, employees, agents or representatives are duly qualified, capable, and experienced to perform the services set forth herein.

(g) Contractor (i) is not in receivership or contemplating same, (ii) has not filed for bankruptcy, and (iii) is not currently delinquent with respect to payment of property taxes in any state.

(h) Contractor further warrants to the truth and accuracy of all representations in this Contract Documents.

3. Compliance and Reliance. In connection with Contractor's representations, warranties and covenants set forth hereinabove; the Town reserves the right to perform reasonable periodic monitoring (including on-site monitoring) of Contractor's compliance with the terms of the Contract Documents and the adequacy and timeliness of Contractor's performance hereunder. Contractor expressly acknowledges that the Town has relied on Contractor's representations, warranties and covenants concerning its subcontractors, officers,

employees, agents or representatives who will be performing the services per the Contract Documents, including, without limitation, their experience and qualifications, and that if any other person is to replace any such subcontractor, officer, employee, agent or representative, such person shall have equivalent qualifications and experience. Contractor agrees to and shall provide the Town with such information regarding the qualifications of its subcontractors and staff, including professionals and others, as is reasonably required by the Town to verify that present and subsequent activities and services are being rendered by competent and trained personnel.

4. Conditions

(a) Contractor shall comply with all federal, state and local laws, statutes, regulations, ordinances, regulations and rules in connection with the services set forth within the Contract Documents.

(b) Contractor's satisfactory compliance with all conditions as set forth in this subsection and throughout the Contract Documents shall be determined in the sole and absolute discretion of the Department Head for whom services are provided, or the First Selectman if applicable. Contractor's acknowledges that satisfactory compliance as set forth in this subsection shall in no way limit, or act as a waiver on behalf of the Town, of Contractor's requirement to provide the work in a good, professional and workmanlike manner.

(c) Contractor shall cause all its employees, agents, representatives and subcontractors to abide by all conditions set forth herein and rules and regulations prescribed by the Town governing all of the Contractor's operations.

5. Insurance. The Contractor, at its sole cost and expense, shall obtain and maintain continuously at all times its occupies and uses the premises pursuant to this Addendum insurance naming the Town as an additional insured with a carrier licensed to do business in the State of Connecticut and meeting the minimum coverage limits and other requirements set forth in the Contract Documents.

6. Indemnity and Hold Harmless.

(a) Contractor shall indemnify, defend, save and hold harmless the Town, including but not limited to, its elected officials and officers, employees, representatives and agents (collectively, the "Municipal Indemnified Parties") from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorneys' and consultants' fees, and will defend the Municipal Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person or persons, or loss or damage to property arising out of (i) Contractor's performance or non-performance of its obligations under the Contract Documents, (ii) the breach of any obligation of Contractor contained in the Contract Documents or (iii) any misrepresentation or breach of warranty by Contractor contained in the Contract Documents. Notwithstanding anything herein to the contrary, Contractor shall not, however, be required to reimburse or indemnify any Municipal Indemnified Party for loss or claim arising out of the willful misconduct, recklessness, or negligence of such Municipal Indemnified Party, and the Municipal Indemnified Party whose willful misconduct, recklessness,

or negligence is adjudged by a court of competent jurisdiction to have caused such loss or claim will reimburse the Contractor (without duplication) for the costs of defending any suit as required above.

(b) A Municipal Indemnified Party shall promptly notify Contractor of the assertion of any claim against it for which it may be entitled to be indemnified hereunder, shall give Contractor the opportunity to defend such claim with legal counsel reasonably acceptable to such Municipal Indemnified Party, and Contractor shall not settle such claim without the approval of the Municipal Indemnified Party, which approval shall not be unreasonably withheld. In addition to such legal counsel retained by Contractor, a Municipal Indemnified Party shall have the right to employ separate counsel in response to the assertion of any claim against it for which it may be entitled to indemnification hereunder, but the fees and expenses of such counsel shall be paid by the Municipal Indemnified Party.

(c) In claims against any Municipal Indemnified Party by an employee of Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

(d) The foregoing indemnification provisions are for the protection of the Municipal Indemnified Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this Section shall survive the expiration or earlier termination of the Contract Documents.

7. Independent Contractor. Nothing contained in the Contract Documents is intended to create or establish, or shall be construed as creating or establishing the relationship of employer/employee or as constituting Contractor as the agent or representative of the Town for any purpose, or in any manner whatsoever. Contractor shall act hereunder as an independent contractor. Contractor shall be responsible for his own federal and state income, social security and unemployment taxes and shall not be eligible to participate in any retirement, medical, health, disability or other plan or arrangement sponsored by the Town. Contractor shall remain liable for all work or actions performed by its subcontractors, employees, and agents in the provision of activities and services to be performed pursuant to the Contract documents. and the Town shall not be liable for the payment of any wages, materials or other expenses of any subcontractor, employee and/or agent of Contractor. Contractor agrees and hereby shall indemnify, defend, save and hold harmless the Town from any such claims; provided, however, that no portions of the Contract Documents activities and/or services may be subcontracted to an entity that is not a subsidiary or affiliate of Contractor in the first instance unless: (1) the Town shall give prior written approval to such subcontract in writing, which approval shall not be unreasonably withheld; (2) any document incorporated into any such subcontract shall be approved as to form and legality by the Town; (3) all of the terms, covenants, conditions and provisions of the Contract Documents shall have been incorporated in such subcontract, and the subcontractor shall have agreed in writing to assume, perform and be bound by all of the terms, covenants, conditions and provisions of the Contract Documents, including, without limitation, the representations as to its

expertise set forth in the Contract Documents. In the event of Contractor default, the Town, at its option, shall be granted an assignment of the duties and obligations of the subcontractors to perform the Contract Documents activities and services.

8. Default. Any of the following occurrences shall be deemed a default by the Contractor pursuant to the Contract Documents: (i) failure of the Contractor to perform or meet any of its duties or obligations pursuant to the Contract Documents; and/or (ii) failure of Contractor observe any of the covenants, conditions, representations or contracts required on the part of the Contractor pursuant to the Contract Documents; and/or (iii) if Contractor makes general assignment of the Contract Documents for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any custodian, receiver or trustee for it or any substantial part of its property, commences any proceeding relating to it under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect, or if there shall have been filed any such proceeding, in which an order for relief is entered or which remains undismissed for a period of one hundred twenty (120) calendar days or more or if by any act indicates its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of any custodian, receiver or any trustee for it or any substantial part of its property or suffers any such custodianship, receivership or trusteeship to continue undismissed for a period of one hundred twenty (120) calendar days or more.

9. Force Majeure. If either Party shall be unable to carry out any part of its obligations under the Contract Documents due to causes beyond its control ("Force Majeure"), including but not limited to an act of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders or restraints of any kind of the government of the United States or any state or any of their departments, agencies, or officials, or any other civil governmental, transportation delays, military or judicial authority, war, blockage, insurrection, riot, sudden action of the elements, fire, explosion, flood, earthquake, storms, drought, landslide, or explosion or nuclear emergency, the Contract Documents shall be voidable at the option of the party unable to carry out any part of its obligations under the Contract Documents due to such causes.

10. Termination. This Contract Documents shall terminate upon the occurrence of any of the following events: (i) upon mutual written consent of both the Contractor and the Town, (ii) upon the Town's unilateral determination that the Contractor failed to properly perform under the terms of the Contract Documents, which such failure shall be determined at the sole and absolute discretion of the Town, (iii) upon Town's unilateral determination that it is dissatisfied with the Contractor's character, reputation or performance, which determination shall be made at the sole and absolute discretion of the Town. Termination of the Contract Documents or termination of services shall not affect the provisions under Sections 6, 11, 12 and 13, which shall survive any termination.

11. Confidentiality. The Contractor acknowledges and agrees that all information provided to Contractor by the Town constitutes confidential information ("Confidential Information"), and that the Contractor shall not use, copy or disclose any such Confidential information, unless such use, copying or disclosure is necessary to accomplish Contractor's duties

hereunder. This provision shall survive termination pursuant to Paragraph 10 and/or the duration of the Contract Documents.

12. Choice of Law. This Contract Documents shall be interpreted pursuant to laws of the State of Connecticut.

13. Entire Contract Documents. The Contract Documents represents the entire integrated Contract Documents between the Parties, and supersedes all prior negotiations, representations or agreements, either written or oral, between the Parties. The Contract Documents shall be amended only by written instrument signed by all parties hereto with the formality necessary as prescribed by the Town. If any provision of the Contract Documents is held to be invalid under applicable law, the remaining provisions shall remain in full force and effect. The Contract Documents shall be binding upon the Contractor and its respective heirs, administrators, successors and/or assigns.

Dated this ____ day of _____, 20____

Town of Trumbull

By:
Its:

By:
Its:

STATE OF CONNECTICUT
Certificate of Compliance with
Connecticut General Statute Section 31 - 57b

I hereby certify that all of the statements herein contained below have been examined by me, and to the best of my knowledge and belief are true and correct.

been cited for three (3) or more willful or serious or serious violations of any Occupational Safety and Health Act (OSHA) or of any standard, order or regulation promulgated pursuant to such act, during the three year period preceding the bid, provided such violations were cited in accordance with the provisions of any State Occupational Safety and Health Act of 1970, and not abated within the time fixed by the citation and such citation has not been set aside following appeal to the appropriate agency or court having jurisdiction or **HAS / HAS NOT** (Cross out Non-applicable) received one or more criminal convictions related to the injury or death of any employee in the three-year period preceding the bid.

The list of violations (if applicable) is attached.

(Name of Firm, Organization or Corporation)

Signed: _____ *Written Signature:*

Name Typed: _____ (Corporation Seal)

Title: _____ *(Title of Above Person, typed)*

Dated:

Sworn to and personally appeared before me for the above, _____, (Name of Firm, Organization, Corporation)

Signer and Sealer of the foregoing instrument of and acknowledged the same to be the free act and deed of _____, and his/her free act and deed as
(Name of Person appearing in front of Notary or Clerk)

(Title of Person appearing in front of Notary or Clerk)

PERFORMANCE BOND

CONTRACTOR (*name and address*):

SURETY (*name and address of principal place of business*):

OWNER (*name and address*):

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description (*name and location*):

BOND

Bond Number:

Date (*not earlier than the Effective Date of the Agreement of the Construction Contract*):

Amount:

Modifications to this Bond Form: None See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

(*seal*)

Surety's Name and Corporate Seal

(*seal*)

By: _____
Signature

By: _____
Signature (*attach power of attorney*)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence,

to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any 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 Contractor Default or within two years after the Contractor 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 periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims

for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

PAYMENT BOND

CONTRACTOR (*name and address*):

SURETY (*name and address of principal place of business*):

OWNER (*name and address*):

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description (*name and location*):

BOND

Bond Number:

Date (*not earlier than the Effective Date of the Agreement of the Construction Contract*):

Amount:

Modifications to this Bond Form: None See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

(*seal*)
Surety's Name and Corporate Seal

By: _____
Signature

By: _____
(*seal*)
Signature (*attach power of attorney*)

Print Name

Print Name

Title

Title

Attest:
Signature

Attest:
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. 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.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. **Definitions**

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and

8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows: