



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

**PERFORMANCE BOND**  
(Subcontract)

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_,

(hereinafter called "Principal" or "Subcontractor"), as Principal, and \_\_\_\_\_,

a corporation organized and existing under the laws of the State of \_\_\_\_\_ (hereinafter called the Surety), as Surety, are held and firmly bound unto Clancy & Theys Construction Co. (hereinafter called "Obligee" or "Contractor"), as Obligee, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment of which sum well and truly to be made, the said Principal and Surety bind themselves, and their respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Contractor has been awarded a contract (hereinafter called the "Prime Contract"), by \_\_\_\_\_ for the construction of \_\_\_\_\_ and;

**WHEREAS**, the Subcontractor has entered into a subcontract and/or supply agreement with the Contractor, dated \_\_\_\_\_ (the "Subcontract") in the amount of \$ \_\_\_\_\_ (the "Subcontract Price") to furnish certain labor, materials, or equipment in connection with the Prime Contract, consisting generally of \_\_\_\_\_ (the "Subcontract Work"), which Subcontract is hereby referred to and made a part hereof.

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

1. If the above bounded Subcontractor shall well and truly perform all the undertakings, covenants, terms, conditions, and agreements of said Subcontract within the time provided therein and any extensions thereof that may be granted by Contractor, and during the life of any guaranty or warranty required under said Subcontract, and shall also well and truly perform all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Subcontract that may hereafter be made, and shall indemnify and save harmless Contractor of and from any and all loss, damage, cost and expenses (including attorneys' fees) that Contractor may sustain by reason of the Subcontractor's failure so to do, then this Bond shall be null and void; otherwise it shall remain in full force and effect.

2. The Surety agrees that no change, extension of time, alteration, addition, omission, or other modification of the terms of either the Subcontract or the Prime Contract, or both, or in the said work to be performed, or in the specifications, or in the plans, or any forbearance on the part of either the Contractor or Subcontractor to the other, shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such changes, extensions of time, alterations, additions, omissions, and other modifications. In 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 Subcontract without notice to or consent from Surety, such notice and consent being hereby waived.

3. Whenever Subcontractor shall be, and declared by Contractor, to be in default, in breach, and/or to have failed to perform in any manner under the Subcontract (collectively the "Declaration of Default"), Contractor having performed its obligations thereunder, the Surety shall promptly remedy the default by:

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

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 receipt of invoice, amounts due to Contractor under the Subcontract for correcting or performing the Subcontract Work after the Declaration of Default and prior to Surety remedying the default.

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

6. If Surety fails to remedy the Subcontractor's default in accordance with Paragraph 3, then Surety shall pay Contractor all attorneys' fees and costs incurred by Contractor 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, notwithstanding the limitation set forth in Subparagraph 3.

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

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

SURETY: \_\_\_\_\_ PRINCIPAL: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL) By: \_\_\_\_\_ (SEAL)

Print Name: \_\_\_\_\_ Print Name: \_\_\_\_\_

Print Title: Attorney-in-Fact Print Title: \_\_\_\_\_

(Attach Power of Attorney)

Surety Phone No.:

Witness: \_\_\_\_\_ Witness: \_\_\_\_\_

8-03-11