



PAYMENT BOND

FORM OF D&C PAYMENT BOND

[To be replaced with actual Performance Bond.]

US 181 HARBOR BRIDGE PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to _____, a _____ (“Principal”), a Comprehensive Development Agreement for the US 181 Harbor Bridge Project, duly executed and delivered as of _____, 201_ (the “Contract”), on the terms and conditions set forth therein; and WHEREAS, upon award of the Contract, Principal is required to furnish a bond (this “Bond”) guaranteeing the faithful performance of its obligations related to the D&C Work under the Contract Documents.

NOW, THEREFORE, Principal and _____, a _____ (“Surety”), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of \$[_____] *[Insert amount that is 100% of the D&C Price]*. (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect.

The following terms and conditions shall apply with respect to this Bond:

1. The Contract Documents are incorporated by reference herein.
Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.
2. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of TxDOT Directed Changes without the Surety’s prior written consent thereto having been obtained, does not increase the Price by more than \$[_____][*Insert amount that is 100% of the D&C Price*]. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.
3. Correspondence or claims relating to this Bond should be sent to Surety at the following address:



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- 4. This Bond shall inure to the benefit of Subcontractors and Suppliers with respect to the D&C Work so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 201__.

Principal: _____
By: _____
Its: _____
(Seal)

Surety: _____
By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

or secretary attest

SURETY

By: _____
Name:
Title:
Address:



PERFORMANCE BOND

FORM OF D&C PERFORMANCE BOND *[To be replaced with actual Performance Bond.]*

US 181 HARBOR BRIDGE PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to _____, a _____ (“Principal”), a Comprehensive Development Agreement for the US 181 Harbor Bridge Project, duly executed and delivered as of _____, 201_ (the “Contract”), on the terms and conditions set forth therein; and WHEREAS, upon award of the Contract, Principal is required to furnish a bond (this “Bond”) guaranteeing the faithful performance of its obligations related to the D&C Work under the Contract Documents.

NOW, THEREFORE, Principal and _____, a _____ (“Surety”), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of \$[_____] *[Insert amount that is 100% of the D&C Price]*. (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect.

Obligee shall release this Bond upon the occurrence of all of the conditions to release set forth in Section 8.1.3 of the Contract.

The following terms and conditions shall apply with respect to this Bond:

1. The Contract Documents are incorporated by reference herein.
Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.
2. This Bond specifically guarantees the performance of each and every obligation of Principal related to the D&C Work under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for Liquidated Damages, Noncompliance Charges and Lane Rental Charges as specified in the Contract Documents, but not to exceed the Bonded Sum.
3. The guarantees contained herein shall survive Final Acceptance of the Work called for in the Contract Documents with respect to those obligations of Principal which survive such Final Acceptance.
4. Whenever Principal shall be, and is declared by Obligee to be, in default under the Contract Documents, provided that Obligee is not then in material default thereunder, Surety shall promptly:
 - a. arrange for the Principal to perform and complete the Contract; or



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- b. complete the Project in accordance with the terms and conditions of the Contract Documents then in effect, through its agents or through independent contractors; or
 - c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the D&C Work, through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Obligee the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the D&C Price incurred by the Obligee resulting from the Principal's default; or
 - d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefore.
5. If Surety does not proceed as provided in Paragraph 4 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligee to Surety demanding that Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If Surety proceeds as provided in Subparagraph 4.d of this Bond, and the Obligee refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligee shall be entitled to enforce any remedy available to the Obligee.
 6. After the Obligee has terminated the Principal's right to complete the Contract, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the Contract. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the D&C Price to mitigation costs and damages on the Contract, Surety is obligated without duplication for:
 - a. the responsibilities of the Principal for correction of defective work and completion of the D&C Work;
 - b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and c. Liquidated Damages, Noncompliance Charges and Lane Rental Charges under the Contract.
 7. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond provided that the aggregate dollar amount of TxDOT-Directed Changes, without the Surety's prior written consent thereto having been obtained, does not increase the Price by more than \$_____ *[Insert amount that is 10% of the D&C Price]*. Surety waives notice of any alteration, modification, supplement or



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extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

8. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

9. No right of action shall accrue on this Bond to or for the use of any entity other than Obligee or its successors and assigns.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 201__.

Principal: _____

By: _____

Its: _____

(Seal)

Surety: _____

By: _____

Its: _____

(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

or secretary attest

SURETY

By: _____

Name:

Title:

Address: