

GENERAL SUBORDINATION AGREEMENT

This Subordination Agreement (“**Agreement**”), dated this ____ day of _____, 20__ is entered by and between _____ (hereinafter called “Surety”), _____ (hereinafter called “Creditor”), and _____ (hereinafter called “Contractor”).

I. RECITALS:

This agreement is entered into in the light of these facts and circumstances:

1. Contractor obtained a loan in the principal amount of _____ Dollars (\$_____) from Creditor (the “Loan”) and as of the date of this Agreement is indebted to Creditor in the sum of _____ Dollars (\$_____), which is secured by _____ (the “Collateral”) as evidenced by _____ (collective hereinafter referred to, as amended, restated, modified or supplemented, and including all of the other agreements and documents entered into in connection therewith as the “Loan Documents”).
2. On _____, Contractor, _____, _____, and _____ (collectively with Contractor the “Indemnitors”) executed an Agreement of Indemnity (the “Indemnity Agreement”) as inducement for Surety, as surety, to issue surety bonds in connection with contractual undertakings or other obligations of Contractor.
3. In consideration of the covenants, agreements and promises contained in the Indemnity Agreement, Contractor has or may request Surety to execute instruments of suretyship on its behalf, hereinafter called bonds.
4. In connection with Contractor and/or the Indemnitors request for bonds from Surety, Surety requires, and Contractor and/or Indemnitors have agreed to allow the following Collateral to be used as collateral to secure the Surety’s obligations and risk undertaken by issuance of Bonds on behalf of Contractor: _____ (the “Bond Security”).
5. Contractor and Creditor desire Surety to furnish bonds as requested by contractor and as an inducement therefore to enter in the following Agreements.
6. Absent consent from Creditor, the creation of a security interest by Surety in the Bond Security could violate certain sections of the Creditor’s Loan Documents.
7. The Contractor and/or Indemnitors have requested, and Creditor has agreed to consent to the creation of a security interest in the Bond Security, and to the subordination of the Creditors interest in the Bond Security subject to the terms and conditions herein.

II. COVENANTS:

In consideration of the furnishing of such bond(s) by Surety, Contractor and Creditor hereby agree as follows:

1. Creditor hereby subordinates all rights and claims against Contractor on account of the mentioned indebtedness to any and all rights and claims of Surety on account of loss as defined herein. Loss shall mean any and all loss or expense of whatever kind, including interest, court costs and counsel fees which Surety incurs or sustains as a result of or in connection with any bond furnished by Surety, or as otherwise included in the definition of Loss in the Indemnity Agreement. Originals or photocopies of claim drafts, or of payment records kept in the ordinary course of business, including computer print-outs, verified by affidavit, shall be prima facie evidence of the fact and amount of Surety's loss and Surety shall be entitled to reimbursement for any and all disbursements made by it in good faith, under the belief that it was liable, or that such disbursement was necessary or expedient.
2. Surety's loss shall be paid in full out of the assets of Contractor before any payment on account of the mentioned indebtedness is made to or realized by Creditor under the Loan Documents.
3. Creditor hereby assigns to Surety its rights and claims on account of such indebtedness so that in the event of receivership, bankruptcy or insolvency of Contractor, Surety may enforce such rights and claims and may have dividends hereon until Surety is reimbursed in full for its loss.
4. Creditor and Contractor agree that until Surety has been provided with competent legal evidence of the release or exoneration of each and every bond, the mentioned indebtedness shall remain unchanged and unliquidated and that neither will by act or omission procure or permit the reduction of such indebtedness, nor will Creditor sell, transfer or hypothecate said indebtedness.
5. Creditor agrees that in the event of the breach of any of the terms of this Agreement, all funds and the value of any property and any benefit received by Creditor in connection with such breach shall be held in trust by Creditor for the benefit of Surety, to be promptly paid by Creditor to Surety in reimbursement of its loss until all is paid in full. Creditor further agrees to compensate Surety for any damage, in the form of loss or otherwise, sustained by it and caused or contributed to by such breach. Creditor agrees to personally indemnify the Surety from all Loss as described in the general indemnity agreement executed by Contractor and the Indemnitors. The personal Indemnity obligations of the Creditor and all Indemnitors shall be joint and several
6. This Agreement shall apply to bonds executed and furnished by Surety and where procured by Surety, to bonds executed by any other surety as sole surety or as co-surety, and the rights hereunder shall inure to the benefit of Surety, such other surety, if any, and their reinsurers, if any.
7. This Agreement shall apply to bonds provided or furnished both before and after the effective date of this Agreement and all alteration, renewals, extensions and modification thereof.
8. Creditor and Contractor agree that Surety's rights under this Agreement are in addition to, and not in lieu of any and all which Surety may have under other agreements or otherwise.
9. Creditor reserves the right to terminate this Agreement as a continuing inducement to Surety for the furnishing of bonds, upon written notice to Surety of not less than twenty (20) days, whereupon the effect of this Agreement shall be limited to the bonds furnished before the effective date of the notice.

10. This Agreement shall be binding upon and inure to the benefit of Surety, Creditor, Contractor, and their respective successors and assigns, provided however, that the rights and obligations of the Contractor under this Agreement shall not be assigned or delegated without the prior written consent of Creditor and Surety.
11. The provisions of this Agreement shall remain in full force and effect, despite Contractor's or any Indemnitors' insolvency or any case or proceeding under any bankruptcy or insolvency law.
12. The validity of this Agreement, the construction, interpretation, and enforcement hereof, and the rights of the parties hereto with respect to all matters arising hereunder or related hereto shall be determined under, governed by, and construed in accordance with the laws of the State of _____.
13. This Agreement may be executed in multiple counterparts, which together shall constitute a single original instrument, respectively. Any executed signature page to this Agreement may be transmitted by facsimile transmission and/or e-mail to the other party, which shall constitute an original signature page for all purposes.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement on the date indicated below in multiple originals.

Executed this _____ day of _____, 20_____.

Attest (Witness) _____ By _____
(Contractor)

Attest (Witness) _____ By _____
(Creditor)

Attest (Witness) _____ By _____
(Surety) |