72115-1 72115-1

No. 72115-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

CONTRACTORS BONDING AND INSURANCE COMPANY,
a surety insurer,

Respondent,

v.

WAYNE and KIMBERLY BERRY, husband and wife and the marital community comprised thereof and COMMERCIAL CONSTRUCTION SERVICES, INC.,

Appellants.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE PALMER ROBINSON

BRIEF OF RESPONDENT

COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 DEC 12 AM 10:51

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INTRODUCTION

On or about the 20th of January, 2011 Appellants Berry and Commercial Construction Services, Inc. (CCS) requested that Contractors Bonding and Insurance Company (CBIC) issue a payment bond and a performance bond on a job in which Commercial Construction Services was a subcontractor for Hensel Phelps on a project in New Mexico. The Appellants requested this bond as they would be unable to perform the contract without it. On that same date they entered into a General Indemnity Agreement under which, among many other provisions, they promised to indemnify Contractors Bonding and Insurance Company from any loss that CBIC may incur for issuing those bonds for non-payment of suppliers or failure to complete the work. Commencing before June of 2011 suppliers began making claims against the bond for non-payment of materials supplied. In June of that year a Notice of Default was sent by the general contractor Hensel Phelps to Commercial Construction Services (CCS) and the bonding company CBIC notifying them that CCS was in default on its contract for failure to complete the work and pay suppliers. Appellants hired an attorney to resolve those claims in New Mexico in June of 2011 however he was unsuccessful in resolving those issues and notified Contractors Bonding and Insurance Company that he was withdrawing. Contractors Bonding

and Insurance Company thereafter paid the claims of the suppliers and also the claims of Hensel Phelps, the completing contractor, for both their work and for a warranty and as built plans which was required under their contract with the owner. Numerous demands were made on both CCS and the Berry's to indemnify Contractors Bonding and Insurance Company against the claims which had been paid on their behalf. The Berry's refused.

Finally on August 26, 2013 Respondent served this action on the Defendants Berry and CCS. CBIC received a notice from a New Mexico attorney, Ms. Hahs-Brooks that she would be appearing for them on October 2, 2013 and a Washington attorney, Joel Watkins appeared for Berry on November 6, 2013 to defend the action. Many requests were made to the local attorney to file an Answer but no Answer was forthcoming. Finally on February 24, 2014 this action was filed in the King County Superior Court, six months after the original service on Defendants. On March 4, 2014 Contractors Bonding and Insurance Company filed a Motion for Default and on March 7, 2014 received an Intent to Withdraw from Defendants' local counsel Joel Watkins. Subsequently on March 13, 2014 an Answer was filed and the Motion for Default was stricken. On the 27th of April, 2014 Plaintiff served a Motion for Summary Judgment on the Appellants with a courtesy copy to their

New Mexico attorney set for May 30, 2014, (reset by the Court to May 29th). On the 23rd of May, Requests for Production from Defendants were sent to Contractors Bonding and Insurance Company by email requesting production of documents. On the 28th of May, one day before the hearing Appellants filed their response and requested a Continuance based upon their inability to commence discovery even though this case had been pending for nine months and the underlying claims were well known by all parties since June of 2011. Contractors Bonding and Insurance Company's Summary Judgment Motion was based upon their General Indemnity Agreement with the Appellants/Defendants Berry's and CCS signed by those parties in which they agreed to indemnify and hold harmless Contractors Bonding and Insurance Company.

After hearing testimony that the Appellants had not done any discovery in this matter prior to six days before the Motion, in spite of having three different attorneys working on the case, one of them for over two years, that the Appellants had taken no action to contest the underlying claims, that no Affidavits supported what specific information Appellants expected to discovery, and only vague allegations that Contractors Bonding and Insurance Company and Hensel Phelps were somehow in collusion to punish the Defendants Berry. It was clear from the Court record that Judge Robinson did not abuse her discretion and that

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this was just another attempt by the Berry's to drag this case on so that the Judgment would not be entered against them.

ISSUES

1. Did the Trial Court err by refusing to continue a Summary Judgment Motion where the evidence presented showed that this dispute had been going on since at least June of 2011; during that time Appellants took no action as required under their contracts to defend against the claims or take action to conduct discovery since 2011 or properly respond to the Motion's under CR 56(c) and (f)?

2. Did the Trial Court err by granting Summary Judgment to a surety based on the provisions of the General Indemnity Agreement entered into between the surety and their Principal and Indemnitors/Appellants?

STATEMENT OF FACTS

J. Wayne Berry is the President of Commercial Construction Services, Inc., (CCS) (CP 57). Mr. Berry lives with his wife Kimberly in Corrales, New Mexico (CP 28).

In December 2009, CCS subcontracted with Hensel Phelps Construction New Mexico LLC to work on a project for Las Alamos National Labs (CP 32, 58). In August 2010, Contractors Bonding and Insurance Company (CBIC) provided a bond on behalf of CCS for the Las

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Alamos project and agreed to serve as surety for any claims against CCS up to the subcontract's price of $427,887 (CP 32-33). Mr. Berry signed an Indemnity Agreement with CBIC in his individual capacity and as the President of CCS; Mrs. Berry signed the agreement as well (CP 34-37).

After CCS completed 95% of its work for the Las Alamos National Labs contract, a dispute arose between CCS and Hensel Phelps (CP58). Hensel Phelps removed CCS from the jobsite and refused to allow CCS to complete the remaining portion of the contract (CP 58).

On August 26, 2013, CBIC served the Berry's in New Mexico with a Complaint alleging that CBIC had paid $331,380.12 to unidentified "claimants against the bond." (CP 1-4; RP 7). CBIC waited until February 24, 2014, to file the Complaint in King County Superior Court, relying on a venue provision in the Indemnity Agreement that purported to allow venue in King County (CP7, 90). The Court set a discovery deadline of March 2, 2015, a deadline for dispositive Motions of April 6, 2015, and a trial date of April 20, 2015 (CP 92).

Claims were filed in 2011 prior to the removal of CCS (Appellant Contractor) from the jobsite by suppliers for failure to be paid in the amount of $169,312.00. In June of 2011 demand was made by Hensel Phelps on Appellants to properly man the job and declaring CCS in breach of their contract (CP 30). CCS hired an attorney in New Mexico, Stephen

Lawless, to defend those claims however no ascertainable action was made to indemnify the bonding company from those claims nor was arbitration requested by CCS or other Appellants pursuant to the subcontract agreement between Hensel Phelps and CCS (RP 23, 24). Despite repeated demands by Contractors Bonding and Insurance Company to CCS and the Berry's since November 30, 2011, the Defendants have refused to reimburse Contractors Bonding and Insurance Company (CP 30, 31).

After the lawsuit was served on Appellants on August 21, 2013 (CP 1-4) (RP 7), attorney Hahs-Brooks sent a letter that she was representing the Defendants (RP 7). Local counsel Joel Watkins appeared on November 6, 2013 (RP 7). After many un-kept promises to file an Answer between November 6 and February 24, 2014 (over 108 days) Contractors Bonding and Insurance Company filed the Complaint in King County Superior Court on February 24, 2014 (CP 7, 90) (RP 14).

Contractors Bonding and Insurance Company then set a Motion for Default on March 4, 2014. In response to that Motion local counsel Joel Watkins filed an Intent to Withdraw as attorney on March 7, 2014 (CP 95-99). Appellants through attorney Watkins then filed an Answer on March 14, 2014 (CP 9-17). The Berry's then proceeded Pro Se apparently with

the advice of Mr. Lawless and Ms. Hahs-Brooks, their attorneys in New Mexico (RP 23) (RP 7).

On April 24, 2014, CBIC moved for Summary Judgment (CP 18-26). An Affidavit from CBIC submitted in support of the Motion (CP 29-37) set forth the claimants that CBIC had paid – although with the exception of Hensel Phelps, the Affidavit did not state how much CBIC claimed to have had paid to each claimant, lumping together $169,312.12 in payments made on disclosed dates to 11 different subcontractors, all of which were well known to the Appellants and their attorney Lawless (CP 29-37; App. A).

By written Motion on one day's notice, the Berry's moved to continue the Summary Judgment Motion for 120 days to conduct discovery and to arrange for new Washington counsel (CP 42-44). The Berrys' Motion for Continuance also explained that Mr. Berry's mother had passed away on April 8, 2014, and that he had spent the previous month caring for her in hospice (CP 44). CBIC's counsel refused a separate request for a continuance from the Berrys' New Mexico counsel, Ilyse Hahs-Brooks (CP 44).

The Berry's also filed an Opposition one day before the Summary Judgment to CBIC's Summary Judgment Motion which did not comply with CR 56(e) or 56(f) (CP 54-56) which reiterated that the Motion was

"premature" that Defendants needed to "conduct discovery in order to justify their defenses in this case," and emphasized that CBIC has not submitted any documentary evidence to "support the amounts claimed." (CP 54-56). In a supporting Affidavit Mr. Berry disputed the amounts paid by CBIC's "blanket claims" because none of the alleged payments "are broken down by contractor, scope or amount for each contractor." (CP 57). In conjunction with their Motion to continue, the Berry's served CBIC six days before the Motion with a form Request for Production seeking, among other things, documents support the amount of the alleged payments to Hensel Phelps and the 11 subcontractors (CP 71-80).

King County Superior Court Judge Palmer Robinson heard CBIC's Summary Judgment Motion on May 29, 2014. The Berry's, as well as their New Mexico counsel, Ms. Hahs-Brooks, appeared at the hearing telephonically (RP 3-4). Ms. Hahs-Brooks explained that she was unable to find Seattle counsel in the previous 82 days and that she was in discussions with an unnamed Seattle attorney to sponsor her for admission pro hac vice, and that she needed additional time to finalize her application, but recognized that she could not present argument (RP 5). CCS therefore had no representation at the hearing nor did they present any evidence, yet they are appealing an Evidentiary Hearing in which they chose not to participate (CP 84-89).

Following the hearing, the Trial Court granted CBIC's Summary Judgment Motion and entered Judgment against the Berry's for $411,241.12, including $79,861.08 in prejudgment interest (CP 81-83). The Berry's appeal (CP 84).

I. ARGUMENT

A. The Trial Court did not err in refusing to grant a continuance.

The Trial Court reviewed the evidence and heard Mr. Berry's statements that he was represented by at least two lawyers in this matter, Ms. Hahs-Brooks who had been representing the Appellants since October 2, 2013, another New Mexico attorney, Mr. Stephen Lawless since 2011 and by local counsel, Joel Watkins who had represented them from November 6, 2013. After many promises to file an Answer the Complaint was filed on February 24, 2014. The Motion for Default was set for March 4, 2014. On March 7, 2014 Plaintiffs' Washington attorney Joel Watkins filed his Intent to Withdraw. He then filed an Answer on March 13, 2014 and the Motion for Default was stricken. On the 27th of April, 2014 Summary Judgment was served on Defendants with a courtesy copy to their attorney in New Mexico, Hahs-Brooks, set for the 30th of May, 2014 (reset by the Court for May 29, 2014). The New Mexico attorney,

Hahs-Brooks, testified that she was unable to find a Washington attorney between March 7, 2014 and the 29th of May, some 82 days (RP 5).

No opposition was timely filed to Contractors Bonding and Insurance Company's Motion for Summary Judgment with the only filing being made on the 28th of May, one day before the hearing nor was any Motion made pursuant to 56(e) or (f) setting forth what documents they expected to receive (CP 42-53) or what specific evidence they expected to uncover as opposed to the 600 pages of documents which Mr. Berry testified he had already received from Contractors Bonding and Insurance Company. (RP 18, 19)

Commercial Construction Services, Inc. never appeared through counsel and was unrepresented at the hearing. Judge Robinson queried Mr. Berry and specifically asked "are you asking me to continue this?" to which Mr. Berry replied "No ma'am" (RP25). Mr. Berry did not comply with Rules 56(e), 56(f) or 56(c).

The Trial Court appropriately did not grant a continuance to the Defendants Berry. The Trial Court showed exceptional patience in dealing with Mr. Berry's contention that he needed more time to find local counsel even though 82 days had passed from the filing of the Intent to Withdraw to the purported Affidavits filed by Appellants (CP 42-53). The response and Affidavits did not comply with Rule 56(c) in that they were

not filed until one day before the Motion for Summary Judgment. CR 56(c) provides in pertinent part that "the adverse party may file and serve opposing Affidavits, Memorandum of Law or other documentation not later than eleven calendar days before the hearing." Plaintiff's Motions were filed two days before the hearing. In addition, their Motion under 56(f) did not comply with that Court Rule which states that the Court may order a continuance to permit Affidavits to be obtained "should it appear from the Affidavits of a party opposing the Motion that he cannot for reasons stated, present by Affidavit facts essential to justify his opposition.

A Trial Court may deny a CR 56(f) request for continuance for any of the following reasons (1) the requesting party does not offer a good reason for the delay in obtaining the evidence; (2) the requesting party does not state what evidence would be established through additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact *Winston v. Dep't of Corr.,* 130, Wn. App. 61, 65, 121 P.3d 1201 (2005) as pointed out by the Appellants, the party seeking the continuance should "state what evidence would be established through the additional discovery" *Coggle v. Snow*, 56 Wn. App. 499, 507, 784 P.2d 554 (1990) likewise the requirement in *Butler v. Joy* 116 Wn. App. 291, 65 P.3d 671 (2003). In this case the Plaintiff has failed to state what

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probative evidence as opposed to just questions in general they establish through additional discovery. Neither did they present convincing evidence for delay, or rebut what the material fact might be.

The Court had trouble squaring Mr. Berry's statements that he had a dispute with Hensel Phelps and had 600 pages of documents about the dispute and what CBIC was going to do about it, but said he never had a chance to do discovery (RP 30, 31). As can be seen from the above, this case of course is very similar to *Bonneville v. Pierce County,* 148 Wn. App. 500, 508, 202 P.3d 309 (2008). In that case as here, the Defendant had ample time to retain counsel before the Summary Judgment Motion and offered no explanation for not responding until the day before the hearing, and the Trial Court believed the Defendant was simply delaying the case.

Appellants not only had two attorneys representing them at the time of the hearing but also had 82 days to acquire new counsel and had not done so. The only comment regarding their failure was that they were still looking for counsel in Washington State (RP 5). In addition, in spite of the untimely Motion for Continuance and in spite of their failure to comply with Rule 56(f) or to timely file their Motion under Rule 56(c) Judge Robinson asked the Defendant Berry "are you asking me to continue this?' to which Mr. Berry replied "no ma'am" (RP 25). After

informing the court he did not wish a continuance, Mr. Berry admitted to the Court that the contract he had signed provided for venue in King County (RP 26) and that Washington law would be applied (RP 27). Appellants various attorneys had this case from June, 2011 until the time of the hearing and none had made any attempt at discovery until Mr. Berry filed a form Request for Production along with his Motion for Continuance. In his Motion he alleged that he had no time to do discovery and no time to hire an attorney. In oral testimony however he stated that he had not only had attorneys working on this case in New Mexico from 2011 (RP 28) but that he had local counsel in Washington working on this case for "six or seven months prior to the case being filed (RP 8). Appellants had the opportunity to do discovery commencing in June of 2011, but despite have three attorneys working on the case had not managed to do any discovery at all. Mr. Berry's last minute attempts to seek a continuance in this matter are just a continuation of the delay tactics which have served him so well since June of 2011. There is nothing in Defendant's papers pursuant to CR 56(f) which show specific information which Appellants have been unable to obtain and their reasons for being unable to obtain that information prior to the Summary Judgment. Mr. Berry instead asserts that he has over 600 documents and has had them for many years (RP 18, 19). Mr. Berry's only contention (unsupported by any

documents) appears to be that the claimant Hensel Phelps might be owned by Contractors Bonding and Insurance Company (CP 30). In spite of having 600 pages of documents, since CCS' termination in June of 2011 until this date he has not been able to articulate either under oath or in documents and any shred of evidence to submit to this Court indicating collusion between Contractors Bonding and Insurance Company and Hensel Phelps other than his bizarre statement that Hensel Phelps may own Contractors Bonding and Insurance Company (RP 30).

This case is very similar to *Bonneville* (supra) in that this is just a further attempt to delay reimbursing the bonding company which has worked so well for him since the original demand was made in 2011.

Washington Courts have consistently held that Pro Se Defendants are bound to the same procedure and substantive law as attorneys. *Patterson v. Superintendent of Public Inst.,* 76 Wn. App. 666, 671, 887 P.2d 411 (1994) (Review Denied).

B. The Trial Court did not err in granting Contractors Bonding and Insurance Company's Summary Judgment Motion.

The Appellants' allegations of lack of supporting documents are not borne out by the facts of this case. Rather than lacking supporting documents, the Appellants state that they have over 600 pages of supporting documents received by their attorney Mr. Lawless (RP 18, 19

and 21). The Appellants' attorneys have been aware of these claims since 2011 yet never took any action to defend against them nor took any action under their arbitration clause of their contract with Hensel Phelps to resolve the claims (RP 23 and 24). They also failed to defend Contractors Bonding and Insurance Company against these claims by Hensel Phelps and suppliers as required in their contract of indemnity (CP 34, 35, 36 and 37) (RP 23, 24).

Appellants in their response choose to ignore all of its terms of the Indemnity Agreement and the case law regarding their obligation to the surety. Paragraph II(A) of that Agreement of Indemnity requires the Defendants to" indemnify keep indemnified and save harmless surety from any and against any and all demands liabilities, loss, costs, penalties, obligations, interest, damages or expenses of whatever nature and kind…." It also provides at Paragraph IV(A)(11) that the surety Contractors Bonding and Insurance Company may "determine in its sole discretion whether any claim shall be paid, compromised, defended, prosecuted or appealed regardless of whether or not suit is actually filed or commenced against the surety upon such claim" and "to be unconditionally bound by surety's determination." (CP 34, 35). The Courts have long recognized that the purpose of the surety is to protect the oblige not the principal (Appellants) and that the surety has a right to protect itself *Liberty Mutual*

Insurance Company v. Aventura Engg & Construct. Corp. 534 F.Sup 2d 1290, 1305 (S.D. Fla. 2008).

The Motion for Summary Judgment brought by Contractors Bonding and Insurance Company was based upon the obligations set forth in the General Indemnity Agreement (CP 34-37) and not under a common law indemnity as Appellants would have the court believe.

While the specific terms of a General Indemnity Agreement will vary surety to surety, the essential objective of an agreement of indemnity is to "facilitate the handling of settlements by sureties and obviate unnecessary and costly litigation" *Transamerica Insurance Company v. Bloomfield* 401 F2d, 357, 362 (6th Circ. 1968). Courts have routinely held that Indemnity Agreements are valid and enforceable contracts. *Continental Casualty Company, v. Seattle,* 66 Wn. 2d 831, 405 P2d 581 (1966), *New Amsterdam Casualty Company v. Hamilton,* 123 Wn. 147, 212 P. 147 (1923). See also *Commercial Insurance Company v. Pacific/Peru Construction* 558, F.2d 948 (9th Circ. 1977) where the Court stated that the indemnitors are held to the reimbursement terms of an Indemnity Agreement and that all rights are governed by the contracts. The Courts have also held that there is an implied promise by the principal to indemnify its surety in any relationship even in the absence of a written contract *Luening v. Hill* 79 Wn. 2d 396, 489 P.2d 87 (1971).

Appellants were well aware of all of the claims made by the claimants but were unable to supply any documentation supporting their defense to Contractors Bonding and Insurance Company. Neither Appellants nor their attorney Mr. Stephen Lawless provided a defense or take any steps to protect the surety from claims as required by the Indemnity Agreement (RP 23, 24). Mr. Lawless informed Contractors Bonding and Insurance Company that he was withdrawing as he was unable to obtain the necessary documents from his client (CP 29).

The amounts paid to Hensel Phelps are not just for their demands for correction in the June 6, 2011 letter. They comprise the damages incurred by Hensel Phelps Construction to complete the work and provide as built drawings and warranties (Simmelink's Affidavit CP 29). Under the terms of the indemnity contract signed by the Appellants, 2011 was the time for Mr. Berry to indemnify and defend Contractors Bonding and Insurance Company against claims against the bond and engage in discovery with the claimants if needed. Appellants allege they received 600 pages of documents regarding these claims yet do not know who the claimants might be or what the claims are for. The time for Appellants to discover the aforementioned was in 2011, not 2014. The Affidavit of Simmelink sets forth with specificity who was paid. The Appellants have never raised any allegation that the claimants on the job, both suppliers to

Appellants and the completing contractor, Hensel Phelps were not paid by Contractors Bonding and Insurance Company. The terms of Paragraph IV(A)(11) of the Contract of Indemnity sets forth that the surety may "determine in its sole discretion whether any claims shall paid…" and "absent fraudulent intent on the part of the surety the undersigned agreed to be unconditionally bound by surety's determination". Simmelink's sworn testimony is conclusive evidence of the indemnitors' liability under the Indemnity Agreement. *Safeco Ins. Co. of Am. v. Gaubert,* 829, S.W. 2d 274, 282 (Tex. App 1992).

Respondent is unclear why Appellants cites the *Modern Builder of Tacoma v. Manke*, 27 Wn. App. 86, 615 P.2d 1332 (1980) in their Memorandum (Pg. 16) as it is a quantum merit case not involving a bond company which states the rule that interest cannot be recovered on unliquidated amounts.

CONCLUSION

Judge Robinson did not abuse her discretion by deciding not to grant a continuance after hearing all of the facts, conflicting testimony by Mr. Berry and his statement that he did not want a continuance.

The Court did not err in granting Summary Judgment under the

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facts of this case and well settled surety law.

RESPECTFULLY SUBMITTED this 11 day of December 2014.

YUSEN & FRIEDRICH

By_____
John S. York, Jr., WSBA # 7785
Attorney for Respondent
Contractors Bonding and Insurance Company

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on December 11, 2014, I arranged for service of the foregoing Brief of Respondent to the Court and to the parties to this action as follows:

Clerk of the Court Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	[X] Via Messenger/Hand Delivery [ ] Via Facsimile [] Via U.S. Mail [ ] Via E-Mail
Ian C. Cairns Attorney at Law 1619 - 8th Ave N Seattle, WA 98109-3007	[X] Via Messenger/Hand Delivery [ ] Via Facsimile [ ] Via U.S. Mail [] Via E-Mail
Ilyse Hahs-Brooks Attorney at Law 2014 Central Avenue SW Albuquerque, NM 87104	[ ] Via Messenger/Hand Delivery [ ] Via Facsimile [ ] Via U.S. Mail [X] Via E-Mail

EXECUTED THIS 11 day of December, 2014, at Seattle, Washington.

Margo Whisenhunt

FILED

14 APR 24 AM 9:21

Honorable Judge Mary Yu
Motion for Summary Judgment
Friday, May 30, 2014 at 10:00 a.m.
With oral argument
CASE NUMBER: 14-2-05977-9 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

CONTRACTORS BONDING AND INSURANCE COMPANY, a surety insurer, Plaintiff, v. WAYNE and KIMBERLY BERRY, husband and wife and the marital community composed thereof and Commercial Construction Services, Inc. Defendants.	NO. 14-2-05977-9SEA AFFIDAVIT OF CHRIS SIMMELINK

Chris Simmelink being duly sworn on oath deposes and states as follows:

That I am a claims examiner for Contractors Bonding and Insurance Company and have personal knowledge of the following facts and am competent to testify thereto.

1. That I am one of the custodians of record for Contractors Bonding and Insurance Company and attached hereto is a true and correct copy of the payment bond issued by Contractors Bonding and Insurance Company on behalf of Commercial Construction Services, Inc., Exhibit A, and as Exhibit B a copy of the General Indemnity Agreement signed by all of the Defendants herein. Contractors Bonding and Insurance Company issued the payment bond (Exhibit A) being bond number KA 5317 to cover any claims made against Commercial Construction Services, Inc. and guarantee payment of those claims in the event

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Phelps against the payment performance bond issued by Contractors Bonding and Insurance Company.

Despite repeated demands Defendants have refused to reimburse Contractors Bonding and Insurance Company for the amounts paid to claimants on the bond issued by Contractors Bonding and Insurance Company which now totals $331,380.12.

DATED this 22nd day of April, 2014.

Chris Simmelink
Claims Examiner
Contractors Bonding and Insurance Company

SUBSCRIBED AND SWORN TO before me this 22nd day of April, 2014.

KRISTI BROTHERSON
STATE OF WASHINGTON
NOTARY PUBLIC
MY COMMISSION EXPIRES
04-19-17

NOTARY PUBLIC in and for the State of Washington, residing at: Lynnwood, WA
My commission expires: 4/19/17

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PAYMENT BOND

(Subcontract)

Bond No. KA5317 (if applicable)

KNOW ALL BY THESE PRESENTS, that COMMERCIAL CONSTRUCTION SERVICES, INC. (hereinafter called the "Principal"), as Principal, and Contractors Bonding and Insurance Company, a corporation organized and existing under the laws of the State of Washington (hereinafter called the "Surety"), as Surety, are held and firmly bound unto Honeywell Phelps Construction New Mexico, LLC, a Delaware corporation, with principal offices located at 420 Sixth Avenue, Greeley, Colorado (hereinafter called "HPNM" as "Obligee"), in the sum of FOUR HUNDRED TWENTY-SEVEN THOUSAND EIGHT HUNDRED EIGHTY SEVEN AND NO/100 DOLLARS ($427,887.00), for the payment of which sum well and truly to be made, the said Principal and Surety bind themselves, and their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, HPNM has been awarded a contract (hereinafter called the "Prime Contract"), by LOS ALAMOS NATIONAL SECURITY, LLC, for the NMSSUP II UTILITY TRUNK, UTILITY BUILDING AND STORM WATER DETENTION SYSTEM ("Project"); and

WHEREAS, the Principal has entered into a written Subcontract with HPNM, dated 12/16/09 in the amount of $427,887.00 ("Subcontract Price") to perform as Subcontractor, certain portions of the work in connection with said Prime Contract, consisting generally of UTILITY BUILDING CONSTRUCTION, which Subcontract is hereby referred to and made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that, if Principal shall promptly make payment to all Claimants as hereinafter defined, for all labor, material and equipment used or reasonably required for use in the performance of the Subcontract, and any and all change orders or modifications issued to said Subcontract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. The purpose of this Bond is, in part, to indemnify HPNM and its surety (if any) for any payments made by HPNM or its surety, whether due to a lien or payment bond claim or otherwise, to any Claimant, as defined herein, upon the failure of Principal or Surety to make such payment. Such indemnification shall include all legal expenses necessarily incurred by HPNM or its surety in connection with such payments, which legal expenses shall be due and owing to HPNM in addition to, and not as a part of, the penal sum of this Bond.

2. Surety agrees that no change, extension of time, alteration, addition, omission, or other modification of the terms of either the said Subcontract or the said Prime Contract, or both, or in the said work to be performed, or in the specifications, or in the plans, shall in any way 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, provided, however, that HPNM shall notify Surety if a change order increases the Subcontract Price by more than 10%, and, if at any point the aggregate amount of all change orders increases the Subcontract Price by more than 35% of the Subcontract Price, the Surety's consent shall be required to increase the penal sum of this Bond in excess of 35% of the Subcontract Price, such consent not to be unreasonably withheld.

3. HPNM and its surety, if any, are intended beneficiaries of this Bond.

4. A Claimant is defined as one supplying labor, material and/or equipment, used or reasonably required for use in the performance of the Subcontract, labor, material and equipment being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment strictly applicable to the Subcontract. Although possessing the right to file a lien or statutory bond claim is not required to meet the definition of Claimant under this Bond, Claimant is further defined as anyone possessing a right to file a lien or statutory bond claim on the Project arising out of the Subcontractor's work.

5. The above named Principal and Surety hereby jointly and severally agree that every Claimant as herein defined, who has not been paid amounts due for labor, material or equipment used or reasonably required for use in the performance of the Subcontract may receive such amounts from Surety under this Bond. HPNM shall not be liable for the payment of any costs or expenses that may be incurred by a Claimant in recovering amounts due under this Bond.

6. The penal sum of this Bond shall be reduced by and to the extent of any payment or payments made by Surety in good faith hereunder.

7. In the event of a dispute between Surety and HPNM related to the Subcontract or 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 HPNM and Principal concerning the Principal's obligations under the Subcontract.

Ex. A

IN WITNESS WHEREOF, the above bonded parties have executed this instrument under their several seals this 3rd day of August, 2010, the name and corporate seal of each corporate party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Commercial Construction Services, Inc. (Seal)
(Principal)

(Business Address)

Witness:

By _____
Or Secretary's Attest

(Signature and Title)

Contractors Bonding and Insurance Company (Seal)
(Surety)

5300 DTC Parkway #490, Greenwood Village, CO 80111
(Business Address)

Witness:

By _____
Or Secretary's Attest

(Signature and Title)

Christian B. Downey, Attorney-In-Fact

GENERAL INDEMNITY AGREEMENT

Home Office:
1212 Valley Street
P.O. Box 9271
Seattle, WA 98109-0272

THIS AGREEMENT of Indemnity, made and entered into this 20th day of January, 2011 (year), is executed by the undersigned for the purpose of indemnifying CONTRACTORS BONDING AND INSURANCE COMPANY as hereinafter mentioned in connection with any Bonds executed on behalf of Commercial Construction Services, Inc.

or executed on behalf of any other person or entity defined as Principal herein.

I. DEFINITIONS

The following definitions apply in this agreement:

Bond
Any Bond, undertaking or other contractual obligation executed by Surety on, before or after this date, and any riders, endorsements, extensions, continuations, renewals, substitutions, increases or decreases in penal sum, reinstatements or replacements thereto.

Principal
The person(s) or entity(ies) set forth above, or any Affiliate, or any one or combination thereof, or their successors in interest, whether alone or in joint venture with others named herein or not named herein.

Surety
CONTRACTORS BONDING AND INSURANCE COMPANY, its reinsurers, and any other person or entity which it may procure to act as surety or co-surety on any Bond or any other person or entity who executes any Bond at its request.

Contract
Any agreement, obligation or undertaking of Principal, the performance of which is bonded or guaranteed by Surety.

Affiliate
A person or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with any signator to this agreement.

II. INDEMNITY

The undersigned:

A. Agree to indemnify, keep indemnified, and save harmless Surety from and against any and all demands, liabilities, loss, costs, penalties, obligations, interest, damages or expenses of whatever nature or kind, as well as fees of attorneys (including both outside attorneys' fees and allocated in-house attorneys' fees) and all other expenses, including but not limited to costs and fees incurred in investigation of claims or potential claims, adjustment of claims, procuring or attempting to procure the discharge of such Bonds, enforcing this agreement, and/or attempting to recover losses or expenses from the undersigned or third parties, whether Surety shall have paid out any such sums or any part thereof or not; and

B. Agree to pay Surety all premiums on Bonds issued by Surety on behalf of the Principal, in accordance with Surety's rates in effect when each payment is due. Premiums on contract bonds are based on the contract price, without reference to the penal sum of the Bond, and shall be adjusted due to changes in the total contract price. On any Bond where Surety charges an annual premium, such annual premium shall be due upon execution of the Bond and upon the renewal date or annual anniversary date of such Bond until satisfactory evidence of termination of Surety's liability as a matter of law under said Bond is furnished to Surety; and

C. Agree that in furtherance of such indemnity:

(1) In any claim or suit hereunder and in any and all matters arising between the undersigned and Surety, an itemized statement of the aforesaid loss and expense, sworn to by a representative of Surety, or the vouchers or other evidence of disbursement by Surety, shall be prima facie evidence of the fact and extent of the liability hereunder of the undersigned.

(2) Surety shall have the right to reimbursement of its expenses, premiums, interest, consultants' fees and attorneys' fees hereunder, irrespective of whether any Bond loss payment has been made by Surety.

(3) In any suit between any of the undersigned and Surety under this agreement or otherwise, Surety shall be entitled to recover its further expenses and attorneys' fees incurred in such suit or in collecting any judgment obtained against any of the undersigned.

III. DEFAULT

Principal shall be in Default with respect to a Contract, and hereunder, if any of the following occur:

A. Principal breaches, abandons, repudiates or fails to prosecute diligently the work under any Contract, whether or not justified.

B. Any obligee declares Principal to be in default or gives the Principal a notice to cure which is not strictly complied with according to its own terms.

C. Principal fails to pay for any labor, equipment, materials, taxes, contributions or other services or obligations when such payment is due.

D. Principal diverts any Contract funds from any Contract to uses not in furtherance of that Contract prior to the complete discharge of Surety.

E. Principal, or any one of the undersigned, breaches any provision of this agreement.

F. Principal, or any one of the undersigned, becomes the subject of any agreement or proceedings of composition, insolvency, bankruptcy, receivership, trusteeship, or assignment for the benefit of creditors.

G. Principal, or any one of the undersigned, becomes actually insolvent.

H. Principal, or any one of the undersigned, submits to Surety, whether before or after the date of this agreement, a false written statement regarding the financial condition of the Principal and/or any one or more of the undersigned.

I. Principal, if an individual, dies, is adjudged mentally incompetent, is convicted of a felony, becomes a fugitive from justice or disappears and cannot be located with usual methods.

J. Principal, if a business entity, is dissolved, undergoes change of ownership, or ceases to do business. Change of ownership means addition or departure of any person or entity having a 10% or greater ownership interest in Principal.

K. Principal loses, or fails to have and to keep in force, any licenses or other requirements of doing business in the state(s) in which Principal performs a Contract.

L. Any claim is made against any Bond. Surety shall have the right in its sole discretion to determine when a demand, notice, request, or other communication regarding a Bond constitutes a claim against the Bond.

IV. SURETY'S RIGHTS

A. In the event of Default as defined above, Surety shall have the absolute right, at its sole option and sole discretion, to take any or all of the following actions at the expense of the undersigned:

(1) Notify any obligee in writing as Principal's attorney-in-fact that Principal is in default with respect to their Contract.

(2) Direct any obligee in writing (including the Federal Government on projects governed by 40 U.S.C. § 270a, et. seq.) as Principal's attorney-in-fact to make all checks payable to Principal but mail them directly to Surety.

(3) Take over any Contract and complete it or arrange for its completion by any means it deems appropriate, utilizing any contract funds available, either earned or to be earned, including any progress payments, deferred payments, retainages, compensation for extra work, and proceeds of damage claims.

(4) Appoint a successor trustee to receive and disburse all contract funds due or to become due to Principal under any Contract covered by a Bond for the purposes set forth in paragraph VI herein, and notify any obligee as Principal's attorney-in-fact that all further payments are to be sent directly to the successor trustee.

(5) Take possession of the Principal's equipment, materials and supplies at the site of the work or elsewhere, and utilize the same for completion of any Contract.

(6) Take possession of the office equipment, books and records of Principal as are necessary for completion of any Contract.

(7) Notify any obligee of the Surety's rights under paragraph VII following.

(8) Require that any obligee withhold contract funds unless and until Surety consents to their release.

(9) Require any obligee to make payment by joint check to Principal and any claimant.

(10) File an immediate suit to enforce the provisions of this agreement.

(11) Determine in its sole discretion whether any claims shall be paid, compromised, defended, prosecuted or appealed, regardless of whether or not suit is actually filed or commenced against Surety upon such claim. Absent fraudulent intent on the part of the Surety, the undersigned agree to be conclusively and unconditionally bound by Surety's determination.

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Contractors Bonding and Insurance Company

Ex. B

(12) Pay its Bond(s), in full or in part.
(13) Incur such expenses in handling a claim as it shall deem necessary, including but not limited to the expense for investigative, accounting, engineering and legal services.

B. Surety shall have the foregoing rights, irrespective of the fact that the undersigned may have assumed, or offered to assume, the defense of the Surety upon such claim.

C. If it becomes necessary or advisable in the judgment of Surety to take any action described above, or to control, administer, operate, or manage any or all matters connected with the performance of any Contract for the purpose of attempting to minimize any ultimate loss to undersigned or Surety, or for the purpose of enabling Surety to discharge its obligations of suretyship, the undersigned expressly covenant and agree that such action on the part of Surety shall be entirely within its rights and remedies under the terms of this agreement.

D. The undersigned promise to promptly pay to Surety upon demand all expenses incurred in the exercise of any right of Surety under paragraph IV or elsewhere. In no event shall Surety's option to exercise the rights herein conferred be construed as mandatory upon Surety, and the undersigned agree that Surety shall not have any liability to undersigned for exercising or not exercising the rights conferred herein or elsewhere in this agreement.

V. COLLATERAL SECURITY

If a claim or demand for performance of any obligation under any Bond is made against Surety, or if Surety deems it necessary to establish a reserve for potential claims or demands or for loss adjustment expense (including but not limited to attorneys' fees), upon demand from Surety (including the filing of a proof of claim in bankruptcy) the undersigned shall deposit with Surety cash or other property acceptable to Surety, as collateral security, in sufficient amount to protect Surety with respect to such claim(s) or potential claims and any expense or attorneys' fees. The reserve for loss may vary from time to time as Surety deems necessary to protect itself from loss and if Surety deems it necessary to increase its reserve it may make a new or further demand for increased collateral. Cash collateral equal to the reserve for loss shall be adequate. Other collateral shall be adequate if the net equity value of the collateral, as determined by Surety, is equal to 166% of the reserve for loss. In the event that suit is necessary to enforce this paragraph, the undersigned shall supply to Surety a list of the undersigneds' assets and the assets of Principal and any Affiliate, indicating the address of the assets and the person(s) having custody. Surety may insist on cash security. At the same time that the undersigned provide collateral to Surety, they shall also immediately take all actions and provide all documents necessary to allow Surety to perfect its lien on and/or security interest in the collateral under all applicable law. Specific performance of this paragraph shall be a remedy available to Surety. All post-judgment procedures for executing on judgments will be available to enforce Surety's decree of specific performance, in addition to all prejudgment procedures available by law. Collateral may be held by Surety until it has received evidence of its complete discharge from any and all such claims or potential claims even if said claims are made against Surety after collateral is deposited or are made against a different Bond, and until Surety has been fully reimbursed for all loss, expenses and attorneys' fees. All expense of Surety, including attorneys' fees, in connection with taking, administering, realizing upon or releasing collateral, whether deposited under this paragraph or as a requirement prior to execution of any Bond, shall be covered by the indemnity hereunder. The undersigned agree to indemnify, defend and hold Surety harmless from any and all liability of any type to any person, entity or governmental body resulting from the collateral provided, including but not limited to any claim under the Federal Comprehensive Environmental Response Compensation Liability Act of 1980 (CERCLA), as amended, the Federal Resource Conservation and Recovery Act (RCRA), as amended, and any other applicable federal, state or local law.

VI. TRUST FUNDS

The undersigned agree and hereby expressly declare that all funds due or to become due to Principal or its successors or assigns under any Contract covered by a Bond are trust funds, whether in the possession of the Principal or another, for the benefit and payment of all persons to whom the Principal incurs obligations in the performance of such Contract and for which the Surety would be liable under the Bond. If the Surety discharges any such obligation, it shall be entitled to assert the claim of such person to the trust funds.

VII. ASSIGNMENT

A. As security for the performance of all provisions of this agreement, including but not limited to Surety's right to payment for indemnity contained in paragraph II, the undersigned hereby irrevocably pledge, grant a security interest in, assign, transfer, and convey to Surety, effective as of the date of this agreement or the date any Bond is executed by Surety, whichever is earlier, but subject to the trust herein created, the following, whether now held or after acquired:

(1) All rights in connection with any contract (whether or not bonded by Surety) held by the undersigned, including but not limited to:
a. All subcontracts let by the undersigned, and the subcontractors' surety bonds,
b. Any and all sums due or which may hereafter become due under any contract including but not limited to progress payments, retainages, compensation for extra work, deferred payments, and any damage claims and/or any proceeds of any damage claims in which the undersigned may have an interest,
(2) All rights arising out of insurance policies,
(3) Any and all accounts receivable, chattel paper, general intangibles, documents of title, and bills of lading held by the undersigned or in which the undersigned may have an interest,
(4) Any and all machinery, plant, equipment, and tools in which the undersigned may have an interest,
(5) Any and all materials and/or inventory in which the undersigned may have an interest.

B. The Surety is irrevocably authorized to assert and prosecute any right or claim hereunder assigned, transferred or conveyed in the name of the Principal and to compromise and settle on behalf of the Principal and Surety any such right or claim, and/or litigation based thereon, on such terms as it considers reasonable under the circumstances.

C. Surety may at any time and at its option file or record this agreement or any other document executed by any or all of the undersigned, individually or jointly, as a security agreement or as part of a financing statement or as a notice of its prior interest and assignment under the provisions of the Uniform Commercial Code or any other statute, ordinance or regulation of any jurisdiction or agency, but the filing or recording of such document shall be solely at the option of Surety and the failure to do so shall not release or impair any obligations of the undersigned under this agreement. A carbon, photographic, or other reproduction of this agreement, or of any other document so filed or recorded by the Surety, is sufficient as a financing statement, security agreement, or notice of prior interest, under this agreement.

VIII. POWER OF ATTORNEY

The undersigned hereby irrevocably nominate, constitute, appoint and designate Surety or its designee as their attorney-in-fact with the right, but not the obligation, to exercise all of the rights assigned, transferred and set over to Surety by the undersigned in this agreement, and to make, execute and deliver any and all additional or other assignments, agreements, directions, documents, pleadings or papers, including but not limited to the execution of instruments referred to in Section VII and the endorsement of checks or other instruments representing payment of contract monies deemed necessary and proper by the Surety in order to give full effect, not only to the intent and meaning of the within assignment, but also to the full protection intended to be herein given to Surety under all other provisions of this agreement. The undersigned hereby ratify and affirm all acts and actions taken and done by Surety or its designee as attorney-in-fact.

IX. GENERAL PROVISIONS

A. The obligations of the undersigned hereunder are joint and several. Surety may bring separate suits hereunder against any or all of the undersigned as causes of action may accrue hereunder. Surety need not proceed first against the Principal. Release of any one or more of the undersigned shall not release the others. No action or inaction of Surety with respect to anyone other than the undersigned shall relieve the undersigned of any duties hereunder. The undersigned shall not be released from liability hereunder because of the status, condition, or situation of any other signator to this agreement or any Affiliate as defined herein.

B. Undersigned shall, on request of Surety, procure the discharge of Surety from any Bond, and all liability by reason thereof.

C. Undersigned warrant that each of them is specifically and beneficially interested in the obtaining of each Bond.

D. Undersigned waive notice of any Default or of the making of a claim against Surety.

E. Undersigned agree to give to Surety prompt notice of any facts which might give rise to any claims or suits against Surety upon any Bond.

F. Surety may consent to any changes or alterations in a Contract, without affecting the liability hereunder of the undersigned.

G. Surety shall have every right, defense or remedy which a personal surety without compensation would have, including the right of exoneration.

H. At any time and until such time as Surety has been furnished with conclusive evidence that its liability under any Bond is terminated and/or until such time as Surety has been indemnified as provided in paragraph II above, the Surety shall have the right to free access to all of the books, records, and accounts of the undersigned for the purpose of examining them and copying them. Time is of the essence, and Surety shall have such right of free access at any time of day and any day of the week. However, should Surety demand such access outside of the hours of 8:00 a.m. through 6:00 p.m., Monday through Friday, the undersigned may charge Surety a fee not to exceed $10 per hour.

I. Undersigned waive all right to claim any property, including homestead, as exempt from legal process in any action hereunder.

J. If the execution hereof by any of the undersigned may be defective or invalid for any reason, such defect or invalidity shall not affect the validity hereof as to any other of the undersigned. Invalidity of any provisions hereof by reason of the law of any state or for any other reason shall not render the other provisions hereof invalid.
K. Surety shall have the right to fill in any blanks left herein and to correct any errors in filling in any blanks herein and to fill in or correct errors in any other documents required of the undersigned in connection with execution of any Bond.
L. Undersigned waive any defense that this instrument was executed subsequent to the date of any Bond, admitting and covenanting that such Bond was executed pursuant to the undersigneds' request and in reliance on the undersigneds' promise to execute this agreement.
M. This agreement may not be changed or modified orally. No change or modification shall be effective unless specifically agreed to by Surety in writing.
N. In the event any of the undersigned become insolvent, or in case any of the undersigned who execute this agreement shall not be bound for any reason, the other undersigned shall, nevertheless, be bound hereunder for the full amount of the liability as defined in paragraph II herein.
O. Repeated actions on this agreement, as breaches thereof may occur, may be maintained by Surety, its successors or assigns, without any former action operating as a bar to any subsequent action brought on this agreement for breaches hereunder.
P. Wherever used in this agreement the plural shall include the singular and the singular shall include the plural, as the circumstances require.
Q. The liability of undersigned hereunder shall not be affected by the failure of the Principal to sign any Bond or Bonds or by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity or the return or exchange of any collateral that may have been obtained, whether or not notice of said actions has been given to undersigned.
R. Neither execution by Principal, any other undersigned, or any Affiliate (1) of any application for any bond or (2) of any other agreement of indemnity on behalf of Principal, any other undersigned, or any Affiliate, nor the taking of the indemnity of any other person by Surety with regard to any Bond for Principal, any other undersigned, or any Affiliate, shall in any way be deemed to waive, diminish, or abrogate any rights of Surety under this agreement.
S. Any suit brought upon this agreement shall be brought in a court of competent jurisdiction in King County, Washington, and the undersigned consent to venue and personal jurisdiction in King County, Washington for that purpose. This agreement is governed by the laws of the state of Washington. Surety shall have the right, in its sole discretion, to waive venue and/or jurisdiction in King County, Washington. Any waiver by Surety of the venue and/or jurisdiction herein shall not waive the choice of law herein agreed to.
T. Undersigned shall not claim as a defense to undersigneds' obligations hereunder that the person or entity appearing on any Bond executed by Surety is not a Principal as defined herein, where: (1) any undersigned or any representative of any undersigned gave Surety reason to believe that the person or entity appearing on Bond should be a Principal as defined herein; or (2) the differences between such Bond and Principal's name herein arose because of typographical error or good faith mistake and it is reasonably apparent that the person(s) or entity(ies) named in such Bond and the person(s) or entity(ies) named herein should be treated as one and the same. Nor shall undersigned claim as a defense to undersigneds' obligations hereunder that any name set forth herein or in any Bond is not the exact legal name of the undersigned or Principal.
U. If more than one Principal is named in this agreement, conjunctively or disjunctively, this agreement applies in its entirety to Bonds for any and all such Principals, singly or in combination.
V. Neither this agreement, nor acceptance by Surety of payment for its suretyship, nor agreement to accept or acceptance at any time of other security, nor any act by undersigned, nor assent to any act of undersigned by Surety, shall in any way abridge, defer, or limit Surety's right to be subrogated to any right or remedy, nor limit or abridge any remedy which Surety might otherwise have, acquire, exercise, or enforce, nor create any liability on the part of Surety which would not exist were this agreement not executed.
W. The Principal's and the other undersigneds' right to recover damages against Surety caused by Surety's fault or negligence shall not exceed $2,000. Surety will not be liable for damages resulting from loss of profits or for incidental or consequential damages, even if advised of the possibility of such damage. This limitation will apply regardless of the form of the action, whether in contract or tort, including negligence.
X. Undersigned agree that they have a duty to review all Bonds executed by Surety for errors and omissions prior to delivery of the Bond to the obligee.
Y. The undersigned shall have no rights of indemnity against each other or each others' property until its/their obligations to Surety under this agreement have been satisfied.
Z. If the undersigned desire that a claim or demand against Surety, to which Surety has determined a meritorious defense exists, be resisted and litigated, the undersigned shall (1) give written notice to Surety to this effect, (2) simultaneously deposit with Surety cash or other collateral as defined in paragraph V herein satisfactory to Surety in an amount sufficient to cover the claim or demand and interest thereon to the probable date of disposition, and (3) either deposit simultaneously with Surety cash or other collateral as defined in paragraph V herein satisfactory to Surety in an amount sufficient to cover the expenses and fees of defense, or take over the resistance and litigation of the claim; provided, however, Surety shall have the right to be represented by separate counsel of its choice and the undersigned understand that, as agreed in paragraph II herein, they shall be obligated to indemnify Surety for attorneys' fees incurred if Surety chooses to be represented by separate counsel of its choice.
AA. A facsimile copy of this agreement shall be considered an original and shall be admissible in a court of law to the same extent as the original agreement.

X. DECLINE EXECUTION
Unless otherwise specifically agreed in writing, Surety may decline to execute any bond for any reason, and Surety shall not be liable to the undersigned, or any other person or entity (other than an obligee on a bid or proposal Bond) where Surety declines executing any bond, including the final bond for an awarded contract upon award of the contract. If Surety executes a bid or proposal Bond and then declines to execute the final bond(s) for that bid or proposal Bond for any reason (including, but not limited to, bid spread, financial or financing or funding conditions, change in scope of the work, failure to provide information or documentation or to meet a condition imposed by Surety, unsatisfactory terms or conditions contained in the contract to be bonded or the bond form required, or change in underwriting criteria), the undersigned shall nevertheless be obligated to indemnify Surety with respect to the bid or proposal Bond.

XI. TERMINATION
This agreement is a continuing obligation of undersigned unless terminated by written notice to Surety as hereinafter provided, and such termination as to an undersigned shall in no way affect the obligation of any other undersigned who has not given such notice. The liability of undersigned hereunder as to future Bonds of Principal shall not terminate by reason of the failure of Surety to disclose fact(s) known or learned by Surety about the Principal, even though such fact(s) materially increase the risk beyond that which undersigned might intend to assume. Surety may have reason to believe such fact(s) are unknown to undersigned, and Surety may have reasonable opportunity to communicate such facts to undersigned; and undersigned hereby waive notice of such fact(s). In order to terminate liability as to future Bonds of Principal, undersigned must:

A. Give written notice to Surety of such termination at its Home Office, 1213 Valley Street, P.O. Box 9271, Seattle, Washington 98109-0271; and
B. State in such notice the effective date (not less than thirty days after receipt thereof by Surety) of termination of such undersigneds' liability for future Bonds.

After the effective date of such termination, the undersigned who has given notice of termination shall nonetheless be liable hereunder for:

A. Bonds executed or authorized prior to such date and modifications thereof;
B. Bonds executed pursuant to a bid or proposal Bond executed or authorized prior to such date, and modifications thereof; and
C. Any maintenance or guarantee Bonds thereafter executed incidental to any other Bond, which is executed prior to such date, and modifications thereof.

Modifications, as used in this paragraph, include but are not limited to renewals, substitutions, riders, endorsements, reinstatements, replacements, increases or decreases in penal sum, continuations, and extensions. A Bond is authorized when approved for execution by Surety's underwriters or promised to Principal or any third party, where in Surety's sole discretion Surety shall deem itself liable or potentially liable in any way for failure to execute such bond.

XII. AUTHORIZATION TO CHECK CREDIT
Surety and its agents are authorized to investigate the undersigneds' credit (including, but not limited to, obtaining account numbers and/or account balances from financial institutions), now and at any time in the future, with any creditor, supplier, customer, financial institution, and any other person or entity. Authorization is hereby granted, now or at any time in the future, to release information to Surety and/or its agents pertaining to the undersigneds' credit, including but not limited to disclosing to Surety and/or its agents, the undersigneds' account numbers and/or account balances.

I HAVE READ THE ABOVE GENERAL INDEMNITY AGREEMENT, WHICH CONSISTS OF 4 PAGES OF FORM IdmEGNL.01-U5020299 FULLY UNDERSTAND MY OBLIGATIONS HEREUNDER, AND FREELY CONSENT TO ITS TERMS.

SIGNATURES OF THE PRINCIPAL AND OTHER INDEMNITORS

Commercial Construction Services, Inc.

BY:

Wayne Berry, President

BY:

Kimberly Berry, Secretary

BY:

Wayne Berry, Individually

BY:

Kimberly Berry, Individually

Firm/Partnership/LLC Acknowledgment

STATE OF _____

COUNTY OF _____

On this _____ day of _____, _____ (year),

before me personally appeared _____

_____, to me known and

known to me to be the _____

_____

of the firm of _____

_____

described in and who executed the foregoing instrument, and s(he)/they thereupon acknowledged to me that s(he)/they executed the same as and for the act of deed of said firm.

_____

Notary Public

My commission expires: _____

Corporate Acknowledgment

STATE OF New Mexico

COUNTY OF Bernalillo

CHRISTIAN B. DOWNEY

On this 20th day of January, 2011 (year),

before me personally appeared Wayne Berry

_____, to me known,

who being by me duly sworn, did depose and say: that s(he)/they resided in the

State of New Mexico

that s(he)/they is/are the President

_____

of Commercial Construction Solutions, Inc. _____, the

corporation described in and which executed the foregoing instrument; that s(he)/they knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was affixed by order of the Board of Directors of said corporation, and that s(he)/they signed his/her/their name thereunto by like order.

Christian B Downey

Notary Public

My commission expires 4-16-2014

Individual Acknowledgment

STATE OF _____

COUNTY OF _____

On this _____ day of _____ (year),

before me personally appeared _____

_____

_____

to me known and known to be the person(s) described in and who executed the foregoing instrument, and s(he)/they thereupon duly acknowledged to me that s(he)/they executed the same.

_____

Notary Public

My commission expires: _____

Individual Acknowledgment

STATE OF New Mexico

COUNTY OF Bernalillo

CHRISTIAN B. DOWNEY

On this 20th day of January, 2011 (year),

before me personally appeared Wayne Berry and

Kimberly Berry

_____

to me known and known to be the person(s) described in and who executed the foregoing instrument, and s(he)/they thereupon duly acknowledged to me that s(he)/they executed the same.

Christian B Downey

Notary Public

My commission expires 4-16-2014

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