

**RESOLUTION NO. 3966**

**A RESOLUTION APPROVING AN AGREEMENT WITH WILLIAMS BROTHER CONSTRUCTION, LLC, FOR MILES CITY WASTEWATER IMPROVEMENTS PHASE II-2016.**

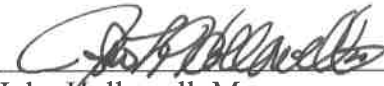
**WHEREAS**, the City of Miles City has awarded the bid for the Miles City Wastewater Improvements Phase II-2016 project to Williams Brother Construction, LLC (Contractor).

**AND WHEREAS**, the responsibilities of the Contractor and the City are set forth in the attached Agreement;

**NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:**

1. The Agreement City between the City and Williams Brother Construction, LLC, attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City, and bind the City of Miles City thereto.
3. The Mayor is hereby authorized to execute such further documents as may be necessary to carry out the terms of said Agreement.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A REGULAR MEETING THIS 9th DAY OF AUGUST, 2016.**

  
John Hollowell, Mayor

ATTEST:

  
Lorrie Pearce, City Clerk

## **AGREEMENT**

### **FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT is dated as of the 13th day of July, in the year 2016, by and between  
City of Miles City, (hereinafter called Owner) and  
Williams Brother Construction, LLC, (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

#### **ARTICLE 1. SCOPE OF WORK**

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows (Title, Schedule):

Miles City Wastewater Improvements Phase II-2016, Base Bid and Additive Alternate One

The Project which includes the Work in the Contract Documents may be generally described as follows (Project Name):

Base Bid: This includes installing a new entrance gate, constructing a new solids handling building, constructing a new aerobic digester, modifying the existing aerobic digester, installation of aeration, dewatering and thickening equipment, and modifying the existing chlorine contact basin for UV disinfection.

Additive Alternate One: the construction of new Septage Receiving Station including septage pumps, a package septage receiving station, a manual coarse screen, and associated sitework.

#### **ARTICLE 2. TIME OF COMPLETION**

The Work to be performed under this Contract shall be commenced on or before a date set forth by the Owner in a written "Notice to Proceed" and shall be completed within 240 calendar days.

Liquidated damages are as stipulated in Article 6.

#### **ARTICLE 3. THE CONTRACT SUM**

The Owner shall pay the Contractor for the performance of the Contract, subject to additions and deductions caused by quantity variations on unit price work, the amount of \$ 3,810,000.00.

#### **ARTICLE 4. PROGRESS PAYMENTS**

The Owner shall make payments on account of the Contract as follows: 100% of the value (less up to 5% retainage as provided in the Special Provisions), based on the Contract prices of labor and materials incorporated in the work and of materials suitably stored at the project site or at some other location agreed upon in writing, on a monthly basis, less the aggregate of the previous payments.

#### **ARTICLE 5. ACCEPTANCE AND FINAL PAYMENT**

Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract price as recommended by Engineer as provided in said paragraph 14.07.

#### **ARTICLE 6. LIQUIDATED DAMAGES**

The contractor agrees to pay liquidated damages for each consecutive calendar day work continues past the contract time, until such work is substantially complete. Liquidated damages for this contract will be \$500 per day, plus reimbursement for the unscheduled employment of the Engineer.

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## **AGREEMENT**

### **ARTICLE 7. CONTRACTOR'S REPRESENTATIONS**

In order to induce Owner to enter into this Agreement Contractor makes the following representations:

**7.1** Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

**7.2** Contractor has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Special Provisions of Contract Documents, and accepts the determination set forth in the Contract Documents of the extent of the technical data contained in such reports and drawings, and has personally completed his own field investigations.

**7.3** Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site that otherwise may affect the cost, progress, performance or furnishing of the Work as Contractor considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

**7.4** Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by Contractor in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.04 of the General Conditions.

**7.5** Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

**7.6** Contractor has given Engineer written notice of all conflicts, errors or discrepancies he has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.

### **ARTICLE 8. NO DAMAGES FOR DELAY - OTHER CONTRACTORS**

It shall be the affirmative duty of each and every Contractor on the project to cooperate and coordinate the scheduling and progress of its work with that of all other Contractors. Under no circumstances shall the Owner be liable for any damages for delay. It is further stipulated and agreed that the terms of this provision shall govern any other Contract document as defined in this Agreement.

### **ARTICLE 9. THE CONTRACT DOCUMENTS**

The Bid Documents, together with this Agreement, form the Contract; and they are as totally a part of the Contract as if hereto attached or herein repeated. The following is an enumeration of the Contract Documents:

Invitation for Bid, Instructions to Bidders, Bid Proposal, Bid Bond, Notice of Award, Agreement, Performance Bond, Labor and Material Bond, Insurance Certificates, Consent of Surety, Notice to Proceed, Work Directive Change, Change Order, Affidavit on Behalf of Contractor, Approval of Subcontractors, Substitution Request Form, Schedule of Values, Payment Request, Contractor's Certificate of Completion, Certificate of Substantial Completion, General Conditions, Supplementary Conditions, Special Provisions, Technical Specifications, Drawings, Wage Rates.

## AGREEMENT

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by Engineer on their behalf.

This Agreement will be effective on the first date written above.

**OWNER:** City of Miles City

17 South 8th Street

Miles City, MT 59301

**BY:**

SIGNATURE

8-23-16

DATE

PRINT OR TYPE NAME

TITLE

John Hollowell

MAYOR

**CONTRACTOR:** Williams Brother Construction, LLC

1123 Cerise RD

Billings, MT 59103

**BY:**

SIGNATURE

8/8/16

DATE

PRINT OR TYPE NAME

Genl Mgr/ Pres

TITLE

(SEAL)

(SEAL)

**ATTEST:**

SIGNATURE

8/23/16

DATE

PRINT OR TYPE NAME

TITLE

Horrie Pearce

City Clerk

ADDRESS FOR GIVING NOTICES

17 S 8th  
Miles City, MT 59301

**ATTEST:**

SIGNATURE

8-8-16

DATE

PRINT OR TYPE NAME

TITLE

Chelsea Barton

Office Admin.

ADDRESS FOR GIVING NOTICES

1817 ELAINE  
BILLINGS, MT 59105

RECEIVED

JUL 20 2016

**NOTICE OF AWARD**

TO: John Williams

Williams Brother Construction, LLC

5713 W Garden Springs RD

Spokane, WA 99224

DATE: 6/27/2016

PROJECT: Miles City Wastewater Improvements

Phase II - 2016

PROJECT NO: 14804.000

Robert Peccia &amp; Associates

**PROJECT DESCRIPTION:**

The project consists of constructing several improvements to the Miles City Wastewater Treatment Facility. The Base Bid improvements include: installing a new entrance gate, constructing new solids handling building, constructing a new aerobic digester, modifying the existing aerobic digester, and modifying the chlorine contact basin to a UV disinfection system. Additive Alternate One includes constructing a new septage receiving station.

The Owner has considered the Bid submitted by you for the above-described work in response to its Invitation to Bid dated May 17, 2016 and Instructions to Bidders.

You are hereby notified that your Bid has been accepted for:

Miles City Wastewater Improvements Phase II - 2016 - Base Bid (\$3,585,000.00)  
Additive Alternate One (\$225,000.00)

In the amount of \$ 3,810,000.00

You are required by the Instructions to Bidders to execute the Agreement and furnish the required Contractor's Performance Bond, Payment Bond, and Certificates of Insurance within 10 calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said bonds and proof of insurance within 10 days from the date of this Notice, the Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the Owner.

Dated this 8<sup>th</sup> day of July, 2016.

OWNER: City of Miles City

BY:

SIGNATURE

Lorrie Pearce

PRINT OR TYPE NAME

CITY CLERK

**ACCEPTANCE OF NOTICE OF AWARD**

Receipt of the above Notice of Award is hereby acknowledged

this 14 day of July, 2016.

CONTRACTOR:

BY:

SIGNATURE

JOHN D. WILLIAMS

PRINT OR TYPE NAME

Genl Mgr.



## PERFORMANCE BOND

CONTRACTOR (name and address):  
Williams Brother Construction, LLC  
5713 W Garden Springs Rd  
Spokane, WA 99224

SURETY (name and address of principal place of business)  
Travelers Casualty and Surety Company of America  
One Tower Square  
Hartford, CT 06183

OWNER (name and address):  
City of Miles City  
P.O. Box 910, 17 South 8th Street  
Miles City, MT 59301

### CONSTRUCTION CONTRACT

Effective Date of the Agreement: 7/13/2016

Amount: Three Million Eight Hundred Ten Thousand And No/100 (\$3,810,000.00)

Description (name and location): Miles City Wastewater Improvements Phase II- 2016, Miles City MT,  
Project No: 14804.000

### BOND

Bond Number: 106495575

Date (not earlier than the Effective Date of the Agreement of the Construction Contract): 7/13/2016

Amount: Three Million Eight Hundred Ten Thousand And No/100 (\$3,810,000.00)

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

Williams Brother Construction, LLC (seal)  
Contractor's Name and Corporate Seal

By:

Signature

JOHN D. WILLIAMS

Print Name

Genl Mgr

Title

Attest:

Chelsea L Barton  
Signature Chelsea Barton

Admin.

Title

### SURETY

Travelers Casualty and Surety Company of America (seal)  
Surety's Name and Corporate Seal

By:

Signature (attach power of attorney)

John D. Leaf

Print Name

Attorney-in-Fact

Title

Attest:

Randi Rains  
Signature

Randi Rains, Bond Clerical

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.

COUNTERSIGNED:  
HUB INTERNATIONAL MOUNTAIN  
STATES LIMITED

RENE C. LEVEAUX  
RENE C. LEVEAUX

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):

Williams Brother Construction, LLC  
5713 W Garden Springs Rd  
Spokane, WA 99224

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

Travelers Casualty and Surety Company of America  
One Tower Square  
Hartford, CT 06183

OWNER (name and address):

City of Miles City  
P.O. Box 910, 17 South 8th Street  
Miles City, MT 59301

### CONSTRUCTION CONTRACT

Effective Date of the Agreement: 7/13/2016

Amount: Three Million Eight Hundred Ten Thousand And No/100 (\$3,810,000.00)

Description (name and location): Miles City Wastewater Improvements Phase II- 2016, Miles City MT,  
Project No: 14804.000

### BOND

Bond Number: 106495575

Date (not earlier than the Effective Date of the Agreement of the Construction Contract): 7/13/2016

Amount: Three Million Eight Hundred Ten Thousand And No/100 (\$3,810,000.00)

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

Williams Brother Construction, LLC (seal)

Contractor's Name and Corporate Seal

By:

Signature

JOHN D. WILLIAMS

Print Name

Title

Genl Mgr.

Attest:

Signature

Title

### SURETY

Travelers Casualty and Surety Company of America (seal)

Surety's Name and Corporate Seal

By:

Signature (attach power of attorney)

John D. Leaf

Print Name

Attorney-in-Fact

Title

Attest:

Signature

Randi Rains, Bond Clerical

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.

COUNTERSIGNED:  
HUB INTERNATIONAL MOUNTAIN  
STATES LIMITED

Rene C. LeVeaux  
RENE C. LEVEAUX

EJCDC C-615, Payment Bond

Published December 2010 by the Engineers Joint Contract Documents Committee.  
Page of 3

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:

**TRAVELERS**

**POWER OF ATTORNEY**

Farmington Casualty Company  
Fidelity and Guaranty Insurance Company  
Fidelity and Guaranty Insurance Underwriters, Inc.  
St. Paul Fire and Marine Insurance Company  
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
Travelers Casualty and Surety Company  
Travelers Casualty and Surety Company of America  
United States Fidelity and Guaranty Company

Attorney-In Fact No. 230580

Certificate No. 006730904

**KNOW ALL MEN BY THESE PRESENTS:** That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

John D. Leaf, Chris Jermunson, Jamie M. Roe, Billy J. Bolt, Kaye U. Muzzana, Christopher T. Hindoen, Kristin A. Piccioni, Brooke A. Garness, Brady Leaf, Randi Rains, Michelle Schermerhorn, and Chayleen Person

of the City of Great Falls, State of Montana, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 15th day of March, 2016.

Farmington Casualty Company  
Fidelity and Guaranty Insurance Company  
Fidelity and Guaranty Insurance Underwriters, Inc.  
St. Paul Fire and Marine Insurance Company  
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
Travelers Casualty and Surety Company  
Travelers Casualty and Surety Company of America  
United States Fidelity and Guaranty Company



State of Connecticut  
City of Hartford ss.

By: Robert L. Raney  
Robert L. Raney, Senior Vice President

On this the 15th day of March, 2016, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.  
My Commission expires the 30th day of June, 2016.



Marie C. Tetreault  
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 13TH day of JULY, 2016

  
Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800 421-3880 or contact us at [www.travelersbond.com](http://www.travelersbond.com). Please refer to the Attorney In-Fact number, the above-named individuals and the details of the bond to which the power is attached.