



**CITY OF EVERETT, MASSACHUSETTS
INTERIOR PAINTING SERVICES**

George Keverian School & Sumner G. Whittier School

CITY PROJECT NO.: EPS-26-98

Delivery Method: M.G.L. c.149, §§ 44A-44H inclusive

ISSUED BY:

Everett Public Schools – Facilities Department
121 Vine Street
Everett, MA 02149

ISSUED THROUGH:

City of Everett, Massachusetts
484 Broadway, Room 14
Everett, MA 02149

April 15, 2026

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CIT OF EVERETT, MASSACHUSETTS

CITY Project Number: EPS-26-98

Interior Painting Services

**INVITATION TO BID AND INSTRUCTIONS TO BIDDERS:
GENERAL CONTRACTOR SERVICES**

Introduction: The City of Everett, on behalf of Everett Public Schools Facilities Department, invites sealed bids from qualified and DCAMM-certified General Contractors for Interior Painting Services at the George Keverian School and the Sumner G. Whittier School. Everett Public Schools will serve as the project owner and will manage all work performed under the resulting contract, including on-site coordination, scheduling, and quality control.

Summary of Work: The project consists of interior surface preparation and painting across multiple areas within both school buildings. Work must be completed within a compressed summer construction window, with strict adherence to safety requirements, school facility protocols, and prevailing wage laws.

Estimated construction cost is \$300,000.

On-Site Construction Start: June 29, 2026

Substantial Completion: August 13, 2026

Final Completion: August 28, 2026

The City of Everett (the “City”) hereby requests bids from:

Only General Contractors certified by DCAMM in the category of Painting

BID PROCESS

All bids for this project are subject to the applicable provisions of Massachusetts General Laws, Chapter 30, § 39M and Chapter 149, §§ 44A-44H inclusive. Attention is directed to the minimum wage rates to be paid on the work as determined by the Commissioner of Labor and Industries under the provisions of Massachusetts General Laws, Chapter 149, §§ 26-27 inclusive. The City reserves the

right to waive any informalities in or to reject any and all bids if it be in the best interest of the City to do so.

These instructions provide Bidders with information intended to enable them to prepare and submit Bids for consideration and evaluation by the City. The procurement process will consist of two phases of bidding: (1) Subcontractor bidding; and (2) General Contractor bidding. These instructions cover all work as documented in the attached bid documents, as modified by addenda, if any (collectively, the "Bid Documents"). The work outside of the publicly bid sub-trades will be awarded to a General Contractor. After the sub-bids are opened and reviewed, the tabulation of bids of sub-bidders in each publicly bid trade will be distributed to General Contractors. General Contractors will include publicly bid sub-trades in their general bid. The City's form of Owner-Contractor Agreement and the form of subcontract is included with these Bid Documents.

Every General Bidder must be certified by the Division of Capital Asset Management ("DCAMM") in the category of General Contractor for the dollar amount of their Bid. General Bids will be valid only when accompanied by a valid and current Certificate of Eligibility and Contractor Update Statement summarizing the General Bidder's record for the period between the latest DCAMM certification and the date the contractor submits its Bid. Every Sub-bidder must be certified by the DCAMM for the dollar amount of their sub-bid. Sub-bids will be valid only when accompanied by a Certificate of Eligibility and an Update Statement.

Bidders submitting bids for General Contractor Services shall submit a Bid that shall include all of the required items on the enclosed forms.

Bidders submitting bids for Subcontractor Services shall submit a Bid that shall include all of the required items on the enclosed forms, including but not limited to, a proposed lump sum price for the sub-trade's scope of work. The cost of performance and labor and materials bonds shall be set forth separately as a unit price. The selected sub-trade bids, when combined with the selected General Contractor bids, will establish the Stipulated Sum for the entire project.

Each Bid proposal must be secured by an accompanying deposit of five (5) percent of the total amount of the Bid. Deposits shall be in the form of a bid bond, certified check, treasurer's or cashier's check payable to the City of Everett. No cash will be accepted. Bid deposits of all General Bidders, except those of the three lowest responsible and eligible Bidders, will be returned within five (5) days, Saturdays, Sundays, and legal holidays excluded, after the opening of General Bids. The bid deposits of the three lowest responsible and eligible General Bidders shall be returned upon the execution and delivery of the General Contract or, if no award is made, then at the expiration of thirty (30) days after the opening of the bids, Saturdays, Sundays, and legal holidays excluded, unless forfeited by failure to sign the Contract. In case of refusal or failure to enter into the proposed contract or furnish required bonds as stated in its Bid, the Bidder shall forfeit the bid deposit and the amount shall become the property of the City as liquidated damages, provided that the amount of the bid deposit subject to forfeiture shall not, in any event, exceed the difference between the Bidder's price and the bid price of the next lowest responsible and responsive Bidder.

A BIDDER MAY NOT, IN ITS PROPOSAL, TAKE EXCEPTION TO THE FORM OF OWNER-CONTRACTOR AGREEMENT OR OTHERWISE CONDITION ITS PROPOSAL ON CHANGES TO THE FORM OF OWNER-CONTRACTOR AGREEMENT. THE BIDDERS TO WHOM CONTRACTS ARE AWARDED WILL BE

REQUIRED TO ENTER INTO THE CITY FORM OF OWNER-CONTRACTOR AGREEMENT OR THE STATUTORY FORM OF SUBCONTRACT AGREEMENT, AS APPROPRIATE, WITHIN FIVE (5) BUSINESS DAYS OF PRESENTATION OF THE CONTRACT BY THE CITY.

SCHEDULE OF BID PROCESS:

- Bid Documents available to Bidders: April 15, 2026
- Pre-Bid Conference: April 22, 2026 at 9:00 AM
 1. Sumner G. Whittier School: 337 Broadway, Everett, MA 02149 and then,
 2. George Keverian School 20 Nichols St, Everett, MA 02149
- Question/Clarification Period closes:
 - For General Contractors: April 15, 2026 at 2:00PM
- Bid Submission Deadline:
 - For General Contractors: May 13, 2026 2:00PM at Everett City Hall, Purchasing Dept, Room 14, 484 Broadway, Everett, MA 02149.

BIDDER'S REPRESENTATIONS:

Each Bidder by making a proposal or Bid represents that:

1. The Bidder has read and understands the Bid Documents and the Bid is made in accordance therewith. The Bidder has visited the site where the Work is to be performed and is familiar with the local conditions under which the Work will be performed. Failure to so examine the Bid Documents and site will not relieve any Bidder from any obligation under the Bid as submitted.
2. The information contained in the Bid is true and complete.
3. The Bid has been prepared in good faith and has been duly and properly authorized for submission on behalf of the Bidder.
4. In preparation and development of the Bid, the Bidder has not, directly or indirectly, solicited or received any advice, assistance, or information concerning the Project from any representative of the City, its agents, or consultants which was not issued in writing by the City to all Bidders.
5. The Bidder has filed with the Secretary of State all certificates and annual reports required by Chapter 156D, section 16.22 (domestic and foreign corporation), Section 15.03 (foreign corporations), Section 109 (Massachusetts business corporation), or Chapter 180, Section 26A (non-profit corporation) as applicable, of the Massachusetts General Laws

REQUESTS FOR INTERPRETATION:

Bidders shall promptly notify the City in writing of any ambiguity, inconsistency or error, which they may discover upon examination of the Bid Documents, the site, and local conditions.

Bidders requiring clarification or interpretation of the Bid Documents shall make a written request to the Architect with a copy of the City by email or by fax as follows:

Kiara M. Freeman, Chief Procurement Officer
Everett City Hall, Purchasing Dept.
484 Broadway, Room 14
Everett, Massachusetts, 02149
Email: Kiara.Freeman@ci.everett.ma.us

Requests via phone will not be accepted. Any responses to written questions will be issued as an addendum to the Bidding Documents. The City will not be responsible for, and a Bidder may not rely upon or use as the basis of any claim or protest against the City or a consultant of the City, any information, explanation or interpretation of this Invitation to Bid/Instructions to Bidders rendered in any fashion except as explicitly herein provided.

It is the sole responsibility of Bidders to ascertain the existence of any and all Addenda. Only written Addenda issued as described in these Instructions to Bidders shall be effective to modify the Bid Documents.

Any Bidder that contacts directly or indirectly any member or employee of the City, or the City's consultants, in connection with the selection process or the contract contemplated herein, other than by participation in the pre-bid conference, submission of a written question or request for clarification or interpretation as prescribed in this section, may be subject to disqualification and rejection of its Bid.

PREPARATION AND SUBMISSION OF BIDS:

Bids shall be submitted on the appropriate Bid Form attached hereto.

- All entries on the Bid Form shall be made by typewriter or in ink.
- No modifications should be made to the Bid Forms.
- Sums shall be expressed in both words and figures in the space indicated on the Bid form. Where there is a discrepancy between the bid sum expressed in words and the bid sum expressed in figures, the words shall control.
- If the requirement of Performance and Payment Bonds for filed subcontractors is left blank by the General Bidder on the Form for General Bid, the Awarding Authority shall interpret this as a "yes". No increase in contract price will be allowed for providing these bonds.

- Costs for subcontractor's bond premiums shall be paid for by the General Contractor in accordance with M.G.L. c. 149, § 44F.
- Total lump sum price will be basis of award regardless of any mathematical errors by bidders.
- For subcontractors bidding multiple trades, each subtrade must be submitted on a separate bid form.

Bids shall be enclosed in a **sealed envelope** with the following plainly marked on the outside:

Bid for: **Kiara M. Freeman, Chief Procurement Officer
Everett City Hall, Purchasing Department, Room 14
Everett, MA, 02149**

Project Number EPS-26-98

Trade Name, if applicable

Bidder's Name, Business Address, and Phone Number

Bids must be received at Everett City Hall, Purchasing Dept, 484 Broadway, Room 14, Everett, MA 02149 on or before 2:00PM, April 22, 2026 for General Contractors. Timely delivery of a Bid to the location designated shall be the full and sole responsibility of Bidder.

WITHDRAWAL OF BIDS:

Any Bid may be withdrawn (retracted) prior to the time designated for receipt of bids upon written request made to the City of Everett. Withdrawal of Bids must be confirmed over the Bidder's signature by written notice post-marked or sent by facsimile or electronic mail on or before the date and time set for receipt of Bids. Withdrawn Bids may be modified and resubmitted up to the time designated for the receipt of Bids.

EVALUATION PROCESS:

The City will evaluate all Bids in accordance with the provisions of the Bid Documents and the criteria described below. The City may consider all information contained in the Bidder's DCAMM Qualifications Statement and the Bid, and any other information obtained or received by the City. Any Proposal from a Bidder that is determined to be nonresponsive or unacceptable may be rejected. Bids that are deemed to be unrealistic inasmuch as the price proposed, in the judgment of the City, substantially deviates from the City's estimate of cost to complete all of the Work, or portion thereof, will be considered as not responsive to the Invitation to Bid and may be rejected at the sole discretion of the Authority.

The City will award the contract in accordance with the "CONTRACT AWARD" section below. Before award, the City may first conduct interviews with selected Bidders. The purpose of the interviews will be to clarify and assure understanding of the contents of the Bid, as well as the

requirements of the Bid Documents and the contract, discuss deficiencies or uncertainties in the Bid, discuss cost and fee information, and discuss any other matters relevant to such Bid as the City may determine appropriate. No statements made or actions taken by any representative of the City during such discussions shall be binding on the City. If requested by the City, some or all of the key personnel identified in the Bidder's DCAMM Qualifications Statement or Bid will be required to participate in the discussions or to be available for an interview with City representatives.

EVALUATION CRITERIA

The criteria listed below are the criteria that will be applied to evaluate the Bids.

A. Price Proposal

Award will be to the lowest responsive and responsible Bidder with selected alternates provided that all required documents listed below are attached and satisfactory. The City may consider in its evaluation the reasonableness of the prices proposed by the Bidder.

B. Required Documents to be Submitted for Bidding

1. Bid Form.
2. Bid Deposit of 5% of the total bid amount (bid bond, certified check, or treasurer's or cashier's check payable to the City of Everett).
3. A proposed construction schedule showing all work included in the Bid. The proposed construction schedule must include key milestones including completion, commissioning, inspections, and occupancy.
4. DCAMM Update Statement and Certificate of Eligibility.
5. General Contractor or Subcontractor Bid Certifications, as appropriate.

C. Contractor Capacity Requirements

To ensure the contractor can complete both schools within the required summer window, bidders must submit:

1. Staffing Plan
A detailed staffing plan showing:
 - Number of painters
 - Supervisors
 - Support personnel
 - Confirmation that multiple crews can operate simultaneously

2. Schedule Assurance Statement
A written statement confirming the contractor's ability to complete all work between:
June 29, 2026 – August 28, 2026
3. Similar Project Experience
References for three (3) similar projects:
 - Comparable size and complexity
 - Multi building or multi area projects
 - At least one completed during a compressed summer schedule
4. Responsibility Determination
The City reserves the right to determine bidder responsibility based on:
 - Past performance
 - Staffing capacity
 - Ability to meet schedule
 - DCAMM standing
 - Reference verification

CONTRACT AWARD:

The City will open Bids on the Bid Due Date immediately following the Bid Submission Deadline. Bids will be read publicly, and a register will be maintained of those firms submitting timely Bids.

The City will award the General Contract and Subcontract(s) to the lowest responsible and eligible bidder in each trade category within thirty (30) days after the opening of Bids. The selected Bidders will be notified in writing.

If a selected Bidder fails or refuses to execute the Owner-Contractor Agreement or Subcontractor Form of Agreement in the form included in the Bid Documents, as modified by addenda, if any, and furnish the other documents required in connection with execution of the contract, within five (5) business days after the presentation of the Owner-Contractor or Subcontractor Agreement, as applicable, by the City, the City may award the contract to another bidder.

THE CITY RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS if it determines that such action is in the best interest of the City. Any Bid which is incomplete, conditional or obscure may be considered invalid and the City may reject such Bid. In addition, the City may reject any Bid which is not prepared and submitted in accordance with all requirements of these Bid Documents and the attached forms or which contains alterations, contingencies or additions not called for or errors or irregularities of any kind; PROVIDED, HOWEVER, that the City reserves the right to waive any and all informalities or minor irregularities contained in the Bid. If these Bid Documents, the Bid Forms, or any other document or applicable law requires submission of certain information or other items as a part of or to accompany Bids and any Bidder neglects to furnish such information or other items with its Bid, the City may reject the Bid of such Bidder as

incomplete; PROVIDED, HOWEVER, that the City reserves the right to deem any such omission as an informality for which such Bid will not be rejected, and to subsequently receive such information or other items prior to award of the contract.

As used herein, the term “lowest responsive and responsible bidder” shall mean the Bidder whose Bid is the lowest of those Bidders demonstrably possessing the skill, ability, and integrity necessary for the faithful performance of the work described in the Bid documents, and who shall certify that they are able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work. The City may consider the reasonableness of the prices proposed for the scope of the work involved in its evaluation of the Bids.

The City reserves the right to amend these Bid Documents at any time. Any amendments to these Bid Documents shall be issued by means of addenda. All addenda so issued shall become part of these Bid Documents.

The City reserves the right to withdraw this Invitation to Bid at any time in its sole discretion before award of a contract.

The City assumes no responsibility for the costs incurred by the Bidders in the preparation of a Bid or any related activities. The Bid Documents and this ITB/Instructions to Bidders have been prepared solely to solicit Bids, and are not contract offers. The only documents that may be binding on the City is the **Owner-Contractor Agreement** duly executed by the City and the selected general contractor.

COUNCIL APPROVAL

In all cases, the award of the contract may be subject to the approval of the Members of the Everett City Council in public meeting.

INFORMATION

The City’s receipt or discussion of any information (including information contained in the proposal and any ideas or other material communicated or exhibited by the Bidder or on its behalf) shall not impose any obligation whatsoever on the City or entitle the Bidder to any compensation therefor, except to the extent specifically provided in such written agreement as may be entered into between the City and the Bidder. Any such information given to the City before, with, or after submission of the proposal, either orally or in writing, except as noted below, is not given in confidence, and may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever. Any statement which is inconsistent with the terms of this paragraph, whether made as part of or in connection with any information received from the Bidder or made at any other time in any fashion, shall be void and of no effect.

ATTACHMENTS

This IFB includes the following attachments:

Attachment A – Sample Bid Form - General Contractor Services

Attachment B – General Bid Certifications

CITY OF EVERETT, MASSACHUSETTS

City Project Number: EPS-26-98

Interior Painting Services – Keverian & Whittier School

ATTACHMENT A

Sample Bid Form – General Contractor Services

Section 00 41 00

CITY OF EVERETT, MASSACHUSETTS

City Project Number: EPS-26-98

Interior Painting Services – Keverian & Whittier School

FORM FOR GENERAL BID

Firm's Name: _____

(A) The Undersigned proposes to furnish all labor and materials required for the Interior Painting Services – Keverian & Whittier School , in accordance with the accompanying plans and specifications prepared Everett Public Schools, for the contract price specified below, subject to additions and deductions according to the terms of the specifications.

(B) This Bid includes addenda numbered _____

(C) The proposed fixed contract price is _____ dollars
(\$_____).

For Alternate No.1 - Add \$_____ ; Subtract \$_____

For Alternate No.2 - Add \$_____ ; Subtract \$_____

For Unit Price No.1 - Add \$_____ ; Subtract \$_____

For Unit Price No.2 - Add \$_____ ; Subtract \$_____

(D) The subdivision of the proposed contract price is as follows:

Item 1. The work of the general contractor, being all work other than that covered by Item 2.
\$_____

Item 2. Sub-bids as follows: \$_____

also a labor and materials payment bond, each of a surety company qualified to do business under the laws of the Commonwealth and satisfactory to the City and each in the sum of the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price.

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that he will comply fully with all laws and regulations applicable to awards made subject to section forty-four A.

(F) The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that he will comply fully with all laws and regulations applicable to awards of subcontracts subject to section 44F.

The undersigned further certifies under the penalties of perjury that this Bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

The undersigned certifies that there have been no substantial changes to its financial position or business organization since its most recent DCAMM update statement.

Date: _____

Name of Contractor- General Bidder

Signature

Title & Name of Person Signing Bid

Business Address

City and State

State of Incorporation

Telephone

Facsimile

Email

Taxpayer ID#

Attach: **DCAMM Certificate of Eligibility**
DCAMM Update Statement
List of Completed Construction Projects Submitted most recently to DCAMM
Proposed Construction Schedule
Bid Deposit
General Bid Certification

CITY OF EVERETT, MASSACHUSETTS

City Project Number: EPS-26-98

Interior Painting Services

ATTACHMENT B

General Bid Form Certifications

CITY OF EVERETT, MASSACHUSETTS

City Project Number: EPS-26-98

Interior Painting Services – Keverian & Whittier Schools

GENERAL BID CERTIFICATIONS

Certification Regarding Labor: The undersigned hereby certifies under penalties of perjury that: (i) that all employees to be employed in the work included in this Bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least ten (10) hours in duration; and (ii) any employee found on worksite subject to this Bid without documentation of successful completion of a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least ten (10) hours in duration shall be subject to immediate removal.

Certification Regarding Financial Position/Business Organization: The undersigned certifies under penalty of perjury that there have been no substantial changes to its financial position or business organization since its most recent DCAMM update statement.

Certification Regarding Tax Compliance: The undersigned further certifies under penalty of perjury that the said undersigned has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support pursuant to the provisions of M.G.L. c. 62C, §49A(b).

Certification of Compliance of Secretary of State Requirements: The undersigned further certifies under penalty of perjury that the Bidder has filed with the Secretary of State for the Commonwealth of Massachusetts all certificates and annual reports required by Chapter 156B, Section 109 (business corporation), by Chapter 181, Section 4 (foreign corporation), or Chapter 180, Section 26A (non-profit corporation) of the Massachusetts General Laws.

Certification Regarding Non-Collusion: The undersigned further certifies under penalty of perjury that this Bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Certification Regarding Prevailing Wage Compliance: The undersigned further certifies under penalty of perjury that the said undersigned shall comply with the provisions of sections 26 and 27D of chapter one hundred and forty-nine of the General Laws governing the payment of prevailing wages.

[SIGNATURE ON FOLLOWING PAGE]

Date: _____

Name of Contractor- General Bidder

Signature

Title & Name of Person Signing Bid

Business Address

CITY OF EVERETT, MASSACHUSETTS

City Project Number: EPS-26-98

Interior Painting Services – Keverian & Whittier Schools

CONTRACTING REQUIREMENTS

Form of Performance Bond and Payment Bond (A312-2010)

 **AIA**® Document A312™ – 2010

Performance Bond

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

OWNER:
(Name, legal status and address)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT
Date:

Amount:

Description:
(Name and location)

BOND
Date:
(Not earlier than Construction Contract Date)

Amount:

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL **SURETY**
Company: *(Corporate Seal)* Company: *(Corporate Seal)*

Signature: _____ Signature: _____
Name Name
and Title: and Title:
(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER: **OWNER'S REPRESENTATIVE:**
(Architect, Engineer or other party:)

init.

§ 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 Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .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 Section 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;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .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 Section 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 Section 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 Owner's 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 Section 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:

- .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
- .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 Section 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 Section 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 Section 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

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .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 Section 5; and
- .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 Section 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 period of limitation 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 to the Contractor of 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:

Sample

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

SURETY

Company: _____
(Corporate Seal)

Signature: _____

Name and Title: _____

Address _____

Signature: _____

Name and Title: _____

Address _____

Init.

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Payment Bond

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

OWNER:
(Name, legal status and address)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT
Date:

Amount:

Description:
(Name and location)

BOND
Date:
(Not earlier than Construction Contract Date)

Amount:

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL **SURETY**
Company: *(Corporate Seal)* Company: *(Corporate Seal)*

Signature: _____ Signature: _____
Name Name
and Title: and Title:
(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER: **OWNER'S REPRESENTATIVE:**
(Architect, Engineer or other party:)

§ 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 Section 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 Section 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,

- .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
- .2 have sent a Claim to the Surety (at the address described in Section 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 Section 13).

§ 6 If a notice of non-payment required by Section 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 Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 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 Section 7.1 or Section 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 Section 7.1 or Section 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 Section 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 Section 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 request 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 "labor, materials or equipment" that part of 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:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name and Title: _____

Address _____

Signature: _____

Name and Title: _____

Address _____

Init.

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