

## INDEMNITY AGREEMENT

Bond No. \_\_\_\_\_

WHEREAS, \_\_\_\_\_ (hereinafter called UNDERSIGNED) has requested National Indemnity Company (hereinafter called SURETY) to execute as surety the bond that is attached to this Agreement (hereinafter called BOND); and

WHEREAS, the UNDERSIGNED by executing this Agreement represents that it has a material and beneficial interest in the obtaining of the BOND.

NOW, THEREFORE, in consideration of the execution of the BOND, the UNDERSIGNED, for itself, its respective personal representatives, successors and assigns, covenants and agrees with respect to the BOND that:

1. This Agreement binds the UNDERSIGNED to SURETY with respect to the BOND.
2. The UNDERSIGNED agrees to pay in advance an annual premium of \$\_\_\_\_\_ for the BOND and agrees to continue to pay the annual premium until SURETY is fully discharged and released from any and all liability on the BOND and satisfaction by the UNDERSIGNED of its obligations to SURETY under this Agreement.
3. The UNDERSIGNED shall indemnify SURETY and hold it harmless from and against all claims, damages, suits, expenses, losses, costs, professional and consulting fees, disbursements, interests, attorney fees, and expenses of every nature (including premiums and fees due for the issuance and continuance of the BOND) which the Surety may sustain, incur or become liable for by reason of having executed or procured the BOND, or by making any investigation of any matter concerning the BOND, or by prosecuting or defending any action in connection with the BOND, or by recovering any salvage or enforcing this Agreement. In the event SURETY advances funds for the benefit of the UNDERSIGNED in connection with work subject to the BOND (hereinafter sometimes referred to as BONDED CONTRACT) and/or for the discharge of obligations incurred in connection with a BONDED CONTRACT, such advances shall be deemed "losses" under the terms of this Agreement whether or not such advances have been so used by the UNDERSIGNED.
4. (A) At SURETY's sole discretion, SURETY may demand and, upon SURETY's demand, the UNDERSIGNED shall deliver over to SURETY collateral security acceptable to SURETY and equal in value to any reserve set up by SURETY to cover any contingent losses and any subsequent increase thereof. SURETY shall return to the UNDERSIGNED any unused portion of collateral upon termination of the liability of SURETY on the BOND and satisfaction by the UNDERSIGNED of its obligations to SURETY under this Agreement.  
  
(B) All payments received for or on account of a BONDED CONTRACT, and all monies due and to become due under any such contract or contracts, whether in the possession of the UNDERSIGNED or otherwise, are trust funds, in which SURETY has an interest, for the payment of obligations incurred in the performances of such contract and for labor, materials and services furnished in the prosecution of the work provided in such contract or any extension of modification thereof.
5. The SURETY may settle or compromise any claim, liability, demand, suit or judgment upon the BOND executed or procured by it, and any such settlement or compromise shall be binding upon the UNDERSIGNED. The vouchers or other evidence of payments made by SURETY shall be prima facie evidence of the fact and amount of the liability of the UNDERSIGNED to SURETY.

6. The SURETY shall be entitled to reimbursement from UNDERSIGNED immediately upon making payments or upon incurring any costs, losses or expenses in connection with the BOND.

7. The UNDERSIGNED shall furnish to SURETY such information as it may request concerning any BONDED CONTRACT, and the UNDERSIGNED hereby authorizes those with whom such contracts are made to furnish to SURETY all information concerning such contracts and the work thereunder. The SURETY may from time to time, in its sole discretion, examine the books and records of the UNDERSIGNED.

8. (A) In the event (i) the UNDERSIGNED is declared to be in default in the performance of a BONDED CONTRACT or (ii) the UNDERSIGNED shall breach any terms or this Agreement (hereinafter collectively referred to as "EVENT OF DEFAULT"), then the UNDERSIGNED does hereby assign to SURETY all its right, title and interest to: (a) all payments, monies and properties that may become payable on a BONDED CONTRACT; (b) all supplies, equipment and material used in performance of a BONDED CONTRACT; and (c) all subcontracts related to work under a BONDED CONTRACT and all surety BOND securing the performance of, or the discharge of obligations incurred in connection with, such subcontracts. In addition, in any such event aforesaid, SURETY, at its option and in its sole discretion, may take possession of all or any part of the work under any or all BONDED CONTRACTS, and at the expense of the UNDERSIGNED complete, or cause the completion of, such work, or re-let, or consent to the re-letting or completion thereof. Upon the happening of an EVENT OF DEFAULT, SURETY shall have the right to take immediate possession of the supplies, tools, plant, equipment, and materials and to use, and consume, if necessary, the same in the performance of any BONDED CONTRACT by itself or by others.

(B) Upon the happening of an EVENT OF DEFAULT, the UNDERSIGNED authorizes and empowers SURETY, or any person or persons designated by SURETY, to execute in the name of the UNDERSIGNED any agreements deemed necessary or desirable by SURETY to provide absolute title to SURETY of any funds, property and rights as are hereby assigned, transferred or conveyed; and the UNDERSIGNED hereby authorizes SURETY, or such person or persons designated by SURETY, to take immediate possession of such funds, property, and rights, to collect such sums as may be due from the UNDERSIGNED or other person, and to endorse, in the name of the UNDERSIGNED, and to collect any checks, drafts, warrants and other agreements made and issued in payment of any such funds. The SURETY is authorized to assert and prosecute any right of claim hereby assigned, transferred or otherwise conveyed in the name of the UNDERSIGNED and to compromise and settle any such right or claim on such terms as it considers reasonable under the circumstances in its sole and absolute discretion, subject only to the requirement that it act in good faith, which shall be defined as the absence of deliberate or willful malfeasance. The SURETY may sell any property assigned to it pursuant to this Agreement at public or private sale, with or without notice, at any time or place, without incurring any liability of any kind. The SURETY may purchase any of the property at such sale. SURETY shall not incur any liability to any of the UNDERSIGNED in the exercise of the rights granted by this Section 7, except for deliberate and willful malfeasance.

9. The UNDERSIGNED shall not, while the BOND shall be outstanding and shall not have been released or discharged to SURETY's satisfaction, take any action that would affect or diminish the rights of SURETY under this Agreement.

10. The UNDERSIGNED waives notice of default or any other acts giving rise to a claim under the BOND or liability of SURETY under the BOND.

11. If any provision or provisions of this Agreement be void or unenforceable under the laws of any place governing its construction or enforcement, this Agreement shall not be void or vitiated thereby, but shall be construed and enforced with the same effect as though such provision or provisions were omitted. All rights and remedies of SURETY under this Agreement shall be

cumulative, and the exercise of or failure to exercise any particular right or remedy at any time shall not be considered to be an election of remedy or a waiver of any other right or remedy. The rights, powers and remedies afforded SURETY by the terms of this Agreement are in addition to, and not in lieu of, any and all right rights, powers, and remedies which SURETY may have or acquire against the UNDERSIGNED or others whether by the terms of any other agreement or by operation of law.

12. This Agreement constitutes both a security agreement to SURETY and also a financing statement, in accordance with the provisions of the Uniform Commercial Code of every jurisdiction wherein such Code is in effect. The filing or recording of this Agreement shall be solely at the option of SURETY, and may be filed by SURETY without in any way subrogating, restricting or limiting the rights of SURETY under this Agreement, under law or in equity. The failure to file this Agreement shall not release or excuse any of the obligations of the UNDERSIGNED under this Agreement. The SURETY may add schedules to this Agreement, describing specific items of security covered by this Agreement. For the purpose of recording this Agreement, a photocopy acknowledged before a Notary Public to be a true copy hereof shall be regarded as an original. The SURETY, when recording this Agreement, may also prepare, execute, and file a UCC-1 form pursuant to the power of attorney granted to SURETY under this Agreement.

13. The UNDERSIGNED hereby irrevocably constitute and appoint SURETY as its true and lawful attorney with the right, but not the obligation, to exercise all of the rights of the UNDERSIGNED assigned, transferred and conveyed to SURETY in this Agreement; hereby giving and granting to SURETY full power and authority to make, execute, endorse and deliver any agreements for the full protection intended to be given to SURETY hereunder as the UNDERSIGNED might or could do.

14. This Agreement, its riders and addenda may be executed in separate counterparts, none of which need contain signatures of all parties, each of which shall be deemed an original, and all of which taken together constitute one and the same instrument.

15. The rights and remedies afforded SURETY by the terms of this Agreement may not be waived or modified unless agreed to in a writing executed by SURETY. There have been no oral or other agreements as a condition precedent or inducement to the execution of this Agreement by any of the UNDERSIGNED.

Dated this day of \_\_\_\_\_, 2005.

THE UNDERSIGNED REPRESENTS TO THE SURETY THAT IT HAS CAREFULLY READ THIS ENTIRE AGREEMENT AND THAT THERE ARE NO OTHER AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY WAY LESSEN OR MODIFY THE OBLIGATIONS SET FORTH HEREIN.

\_\_\_\_\_

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or Type Name and Title)

Tax ID: \_\_\_\_\_