

CONTRACT FORM

CONTRACT # \_\_\_\_\_

This Contract, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the State of Nevada Department of Transportation, hereinafter called the Department, and (Contractor Name and Address) hereinafter called the Contractor.

Witnesseth: The Contractor agrees with the Department that, for the consideration and agreements hereinafter mentioned and contained to be made and performed by the Department, and under the conditions expressed in a bond bearing even date with these presents, and hereunto annexed, that the Contractor shall and will at its own proper cost and expense, do all the work and furnish all the materials necessary for the substantial construction and completion, and to the satisfaction of the Department, of a portion of the highway system of the State of Nevada, being in the County of \_\_\_\_\_, on (Location), Route Section \_\_\_\_\_, Mileposts \_\_\_\_\_, (Description), hereinafter called the Project, in strict conformity, in every part and particular, with the Department's Standard Specifications for Road and Bridge Construction 2001, Project Plans, Project Special Provisions, and Project Invitation to Bid which are made a part hereof, and in full compliance with the terms of this Contract.

And the Contractor hereby further agrees to receive and accept the prices set forth in the Proposal – Contract # \_\_\_\_\_, \_\_\_\_\_ (\$ \_\_\_\_\_), hereto annexed and thereby made a part of this Contract, as full compensation for furnishing all materials and labor, and the doing of all work, in strict accordance with the plans, special provisions and specifications hereinbefore mentioned, to the satisfaction of the Resident Engineer and in the manner and under the conditions hereinbefore specified.

The Department hereby promises and agrees with the Contractor, to employ, and does hereby employ, the Contractor to provide the materials and do the work according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner, and upon the conditions set forth herein; and the parties themselves, their heirs, executors, administrators, successors, and assigns, do hereby agree to the full performance of the covenants herein contained. The Contractor further agrees that no moneys payable under this Contract shall be assigned by power of attorney, or otherwise, except upon the written consent of the Department.

In the event that a Bidder's Preference was applied to the Contractor's Proposal according to NRS 338.1389, NRS 338.147, NRS 338.1693, NRS 338.1727 or NRS 408.3886, and the Bidder's Preference contributed to the Contractor being awarded the Contract, the Contractor will meet the following requirements for the entire duration of the Project:

- (a) At least 50 percent of all workers employed on the Project, including, without limitation, any employees of the Contractor and of any subcontractor engaged on the Project, will hold a valid driver's license or identification card issued by the Nevada Department of Motor Vehicles;
- (b) All vehicles used primarily for the Project will be:
  - (1) Registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the Nevada Department of Motor Vehicles pursuant to NRS 706.826; or
  - (2) Registered in this State;
- (c) At least 50 percent of the design professionals working on the Project, including, without limitation, any employees of the Contractor and of any subcontractor engaged on the public work, will have a valid driver's license or identification card issued by the Nevada Department of Motor Vehicles;
- (d) At least 25 percent of the suppliers of the materials used for the Project will be located in this State unless the Department requires the acquisition of materials or equipment that cannot be obtained from a supplier located in this State; and
- (e) The Contractor and any subcontractor engaged on the Project will maintain and make available for inspection within this State its records concerning payroll relating to the Project.

Contractor agrees that failure to comply with any requirement of paragraphs (a) to (e), inclusive, above at any time during the entire duration of the Project is a material breach of this Contract and entitles the Department to liquidated damages against the party responsible for a failure to comply with a requirement of

paragraphs (a) to (e), inclusive above. If a party to the Contract causes a material breach of contract between the Contractor and the Department as a result of a failure to comply with paragraphs (a) to (e), inclusive, above, the party is liable to the Department for liquidated damages in the amount of one percent (1%) of the cost of the largest contract to which he or she is a party. The Department may recover this amount directly against the party that causes the material breach, and no other party is liable to the Department for liquidated damages. These damages are not intended as a penalty. Damages are difficult to ascertain and the Parties agree that this amount is a reasonable estimate of presumed actual damages. Contractor must provide in any contract between Contractor and any subcontractor for the apportionment of liquidated damages assessed pursuant to this section if a person other than Contractor was responsible for the breach of this Contract for the Project caused by a failure to comply with a requirement of paragraphs (a) to (e), inclusive, above. The apportionment of liquidated damages must be in proportion to the responsibility of each party for the breach.

During the performance of this contract, the contractor, for itself, its assignees and successors in interest agrees as follows:

- (1) **Compliance with Regulations:** The Contractor shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, and low income status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, and low income status.
- (4) **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Nevada Department of Transportation (hereinafter, "NDOT") or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the NDOT, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the NDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
  - b. cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

It is further agreed, by and between the parties hereto, that should there be any conflict between the terms of this Contract and the Proposal of the Contractor, then this Contract shall control, and nothing herein shall be considered an acceptance of the terms of such Proposal conflicting therewith.

And the Contractor hereby further agrees that the payment of the final amount due under this Contract shall release the State of Nevada and the Department of Transportation from any and all claims or liability on account of work performed under this Contract other than such claims, if any, as may be specifically excepted by the Contractor in writing at the time final payment is made.

In Witness Whereof, each party to the presents have hereunto caused this Contract to be executed by a duly authorized representative as of the year and date first above written.

**Attested:**

**STATE OF NEVADA**  
Through the Department of Transportation

\_\_\_\_\_  
Director, Department of Transportation

\_\_\_\_\_  
Chairman, Board of Directors, Department of Transportation

**Approved as to Form and Legality:**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
Deputy Attorney General, Chief Counsel

**By:** \_\_\_\_\_  
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\_\_\_\_\_  
otiti

Name and Title

Sample Form

PERFORMANCE BOND

Whereas, the Nevada Department of Transportation, hereinafter designated as "NDOT", has awarded to, (Contractor Name and Address) hereinafter designated "PRINCIPAL", a Contract dated \_\_\_\_\_, \_\_\_\_\_, 20\_\_ for the following work: Construction of a portion of the (Highway Type) Highway System in \_\_\_\_\_ County, (Location and Description); and

Whereas, PRINCIPAL is required under the terms of said Contract and by law to furnish a Bond for the performance of said Contract;

Now therefore, we PRINCIPAL, and

(Name and Address of Bonding Company Main Office)

hereinafter designated "SURETY", are held and firmly bound unto NDOT, in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), lawful money of the United States, being not less than one hundred percent (100%) of the estimated contract cost of the work, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above-bounden PRINCIPAL's heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and faithfully perform the covenants, conditions, and agreements in the Contract and any alterations made as therein provided, on PRINCIPAL's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning; and shall indemnify and save harmless NDOT, its officers and agents, as therein stipulated; then this obligation shall become null and void. Otherwise, it shall be and remain in full force and virtue.

SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of Contract, or to the work to be performed thereunder, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work.

And SURETY, for value received, hereby stipulates and agrees, if requested to do so by NDOT, to perform and fully complete the work mentioned and described in said Contract, pursuant to the terms, conditions and covenants thereof, if for any cause, said Principal fails or neglects to so perform and fully complete said work; the said SURETY further agrees to commence said work to full completion within twenty (20) days after notice thereof from NDOT, and to fully complete the same with all due diligence and in accordance with the plans and specifications.

And SURETY, for value received, further stipulates and agrees that should NDOT incur attorney's fees or other expenses for the enforcement of the Contract or this Bond, the same shall be paid by SURETY to NDOT.

\_\_\_\_\_  
Authorized Agent  
\_\_\_\_\_  
Agency Name  
\_\_\_\_\_  
Agency Address  
\_\_\_\_\_  
Agency Address

\_\_\_\_\_  
Contractor  
**By:** \_\_\_\_\_  
\_\_\_\_\_  
Name of Authorized Signer  
\_\_\_\_\_  
Title of Signer

The Surety Company hereby certifies that they are duly authorized by certificate of authority issued by the State of Nevada Division of Insurance.

**By:** \_\_\_\_\_  
Attorney-in-Fact  
Power of Attorney Form must be attached.

**Approval of Bond**

\_\_\_\_\_  
Deputy Attorney General of the State of Nevada      Date

Bond No(s).:

PAYMENT BOND

Whereas, the Nevada Department of Transportation, hereinafter designated as "NDOT", has awarded to, (Contractor Name and Address) hereinafter designated "PRINCIPAL", a Contract dated \_\_\_\_\_, \_\_\_\_\_, 20\_\_ for the following work: Construction of a portion of the (Highway Type) Highway System in \_\_\_\_\_ County, (Location and Description); and

Whereas, PRINCIPAL is required under the terms of said Contract and by law to furnish a Bond for the performance of said Contract;

Now therefore, we PRINCIPAL, and

\_\_\_\_\_  
(Name and Address of Bonding Company Main Office)

hereinafter designated "SURETY", are held and firmly bound unto NDOT, in the sum of \_\_\_\_\_ (\$\_\_\_\_\_), lawful money of the United States, being not less than one hundred percent (100%) of the estimated contract cost of the work, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above-bounden PRINCIPAL's heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provision, supplies, implements or machinery used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, together with interest at the rate of twelve percent per annum, or for amounts due under the Unemployment Compensation Law with respect to such work or labor, as required by the provisions of NRS 612, and provided that the claimant shall have complied with the provisions of NRS 408.363, SURETY hereon will pay the same within thirty (30) calendar days an amount not exceeding the sum specified in this Bond, and the above obligation shall then be null and void. Otherwise, it shall remain in full force and virtue.

SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of Contract, or to the work to be performed thereunder, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work.

This Bond shall inure to the benefit of any person who provides materials, provisions, supplies, trucks, other means of transportation, work or labor to complete the work called for in the contract, as to give a right of action to such persons or their assigns in any suit brought upon this Bond.

And SURETY, for value received, further stipulates and agrees that should NDOT or other obligees, incur attorney's fees or other expenses for the enforcement of the Contract or this Bond, the same shall be paid by SURETY to NDOT, subcontractors, workmen, laborers, mechanics, and furnishers of the materials as their interests may appear.

\_\_\_\_\_  
Authorized Agent  
\_\_\_\_\_  
Agency Name  
\_\_\_\_\_  
Agency Address  
\_\_\_\_\_  
Agency Address

\_\_\_\_\_  
Contractor  
**By:** \_\_\_\_\_  
\_\_\_\_\_  
Name of Authorized Signer  
\_\_\_\_\_  
Title of Signer

The Surety Company hereby certifies that they are duly authorized by certificate of authority issued by the State of Nevada Division of Insurance.

**By:** \_\_\_\_\_  
Attorney-in-Fact  
Power of Attorney Form must be attached.

**Approval of Bond**

\_\_\_\_\_  
Deputy Attorney General of the State of Nevada Date

Bond No(s):