

SURETY BOND FOR PAYMENT

GIVEN BY: _____

ON BEHALF OF: _____

**FOR OBLIGEE: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 825 EMPLOYEE
BENEFIT FUNDS**

BOND NUMBER: _____

THIS SURETY BOND FOR PAYMENT (“Surety Bond”) is made on this _____ day of _____, in the year of _____ by and between _____ (“Employer” or “Principal”), with a principal place of business at _____, _____, _____, and _____ (“Surety”), of the state of _____, a corporation duly organized under the laws of the State _____, with a principal place of business at _____, _____, _____ (collectively, the “Parties”).

WHEREAS, the Surety is held and firmly bound unto the International Union of Operating Engineers Local 825 Employee Benefit Funds,¹ with a principal place of business located at 65 Springfield Avenue, Second Floor, Springfield, New Jersey, 07081 (“Obligee”), in the penal sum of **(\$25,000.00) TWENTY-FIVE THOUSAND DOLLARS**, lawful money of the United States of America, for the payment of which sum, well and truly to be made; and

WHEREAS, the Principal has entered into a certain collective bargaining agreement (“CBA”) with the International Union of Operating Engineers Local 825 (“Union”), which requires Principal to pay contributions to the Obligee, including pension, welfare, annuity, SUB, training, and savings contributions (“Fringe Benefits”) and requires the Principal to obtain a surety bond to guarantee payment of said Fringe Benefits; and

WHEREAS, this surety bond is now given by the Surety on behalf of the Principal, and by the Principal, to the Obligee, to guarantee the payment of Fringe Benefits due on behalf of the Principal’s employees who perform covered work, as defined by the CBA; and

NOW THEREFORE, the Parties having agreed to create this surety bond for the Obligee’s benefit, do hereby assent to the following terms:

1 The Obligee is comprised of the following funds: Operating Engineers Local 825 Pension Fund, Operating Engineers Local 825 Welfare Fund, Operating Engineers Local 825 Apprenticeship Training and Re-Training Fund, Operating Engineers Local 825 Supplemental Unemployment Benefit Funds, Operating Engineers Local 825 Savings Fund, and Operating Engineers Local 825 Profit Sharing Fund f/k/a Operating Engineers Local 825 Annuity Fund.

1. **Binding Release / Bond Amount / Continuance.** Parties do hereby bind themselves, jointly and severally, to Obligees, to all the terms contained in this Surety Bond for payment, in the amount of **TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00)**, and so bind their successors, assigns, heirs, administrators and executors. This bond is to remain in full force and effect until terminated as articulated in paragraph 5. Moreover, if not so terminated, this Bond shall remain in full force and effect, provided that the full extent of the Surety's liability under this Bond, and all continuations thereof, shall not exceed the penal sum of the bond, either individually or in the aggregate. Upon the expiration date of this bond, Surety is to provide Obligees with an original continuation certificate and/or updated bond, in the same form as this one, or in such later form as Obligees may require and shall cooperate with Obligees's request, from time to time.

2. **Fringe Benefit Calculation.** The Fringe Benefits assured and guaranteed by this surety bond shall be calculated in the manner and by the rates delineated in the CBA.

3. **Time for Payment to Obligees.** The payment of Fringe Benefits assured and guaranteed herein shall be made to the Obligees within thirty (30) days after the Obligees notifies the Surety that the Principal is delinquent in remitting fringe benefits.

4. **Notice.** All notices, requests, demands, including request for payment of fringe benefit funds as articulated in paragraph 3, supra, of this surety bond, and other communications hereunder must be in writing and shall be deemed to have been duly given if delivered by hand or mailed within the continental United States by first class, certified mail, return receipt requested, postage and registry fees prepaid, to the applicable party as follows:

If to the Obligees, 825 Fringe Benefit Funds:

Sherry Viso, Fund Administrator
IUOE Local 825 Employee Benefits Funds
65 Springfield Avenue, 2nd Floor
Springfield, New Jersey 07081
973-671-6800

If to Principal:

NAME OF OFFICER: _____
NAME OF COMPANY: _____
ADDRESS OF COMPANY: _____
CITY, STATE, ZIP: _____
PHONE NUMBER: _____

If to Surety:

NAME OF SURETY: _____

NAME OF COMPANY: _____
ADDRESS OF SURETY: _____
CITY STATE ZIP: _____
PHONE NUMBER: _____

5. **Surety's Right to Terminate.** Surety may terminate this surety bond by serving written notice upon the Principal and the Obligee, no less than (60) days prior to the effective date of termination, in the manner delineated herein in paragraph 4. Surety shall remain liable for any of the Principal's fringe benefit delinquencies that accrued between the date of this surety bond's creation and the termination date of the same.

6. **Surety's Liability to Obligee.** Surety is bound hereunder independently of Principal in the maximum amount of **TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00)**. Obligee may collect from Surety the principal amount of Principal's delinquent fringe benefits, in addition to any applicable interest, liquidated damages, fees, and costs awarded by an arbitrator with jurisdiction over the delinquency, or additional fees above and beyond the principal delinquency amount that are statutorily granted under any pertinent federal laws.

7. **Obligee's Notifications to Surety.** In the event of Principal's default to the Obligee, the Obligee shall notify the Surety within ninety (90) days after the Obligee shall have had knowledge of such default, and provided further that no suit, action or proceeding shall be brought hereunder, unless the same be instituted within one (1) year after the date of expiration or cancellation of this bond. If time limitations for the notice of loss or institution of a suit, action, or legal proceeding are shorter than that permitted to be fixed by agreement under any statute controlling the construction of this Surety Bond, the shortest permissible statutory limitation of time shall govern and shall supersede the time limitation stated herein. For the purposes of this Surety Bond, the Principal shall be deemed in default upon the issuance of an arbitration award declaring that it owes money to the Funds for contributions.

8. **Partial and Multiple Claims against Surety Bond.** Partial and multiple claims are permitted under this surety bond as long as the claims in the aggregate do not exceed the value of this surety bond.

9. **Renewal or Modification of CBA's Effect on Surety Bond.** The renewal, extension or modification of the CBA shall not invalidate or otherwise modify this surety bond. The terms of the CBA or any successor agreement may be changed and modified without the knowledge or consent of the Surety. Surety may, however, request a copy of any modified CBA which alters the fringe benefits calculation rates.

10. **Estimation of Delinquent Benefits.** The Principal's failure to file employer remittance reports as it is required to do by the CBA, shall not impact the Obligee's rights to collect

delinquent Fringe Benefits from the Surety. Should the Principal fail to file its employer reports, the Benefit Funds are entitled to estimate and set the amount due and collect the same from the Surety. The estimate may be calculated by the Obligee or the Obligee's agents based on the number of hours for the month in which the largest number of hours were reported for the previous twelve (12) months submitted by the Principal. The total number of hours for the unreported period as determined aforesaid may then, in the Obligee's sole discretion, be multiplied by the current contribution rate, and the amount of contributions so computed shall be deemed the amount due from the Principal, plus interest and any other damages.

11. **Authority.** The undersigned signatories represent and warrant that he, she, or it have the authority to create this surety bond and bind himself, herself, or itself thereto.

12. **Counterpart Originals.** This surety bond may be executed in its original version or in copies, counterparts, or other such duplicate versions. All signatures need not appear on the same copy, and the parties may execute different copies, so long as they contain identical provisions and all such executed copies shall constitute the complete agreement. Signatures made by facsimile copy shall have the same force and effect as original signatures.

13. **Legal Fees and Costs.** In the event that the Obligee, in its sole discretion, institutes suit or arbitration proceedings against the Principal or the Surety to recover under this Bond, the Obligee shall be entitled, in addition to the Sums due under this Bond, to a further amount of 35% of the recovery as liquidated costs and fees for bringing suit or arbitration proceedings. In such a proceeding, the report of the auditor of the Obligee and supporting papers shall be presumed to have "been made by the auditor in the regular course of business."

14. **Entire Understanding.** This Surety Bond contains the entire understanding between the Parties and supersedes any and all prior agreements between the Parties concerning the subject matter contained herein. No representations, promises, understandings, covenants, or undertakings, oral or otherwise, shall have any force or effect except as set forth in this Surety Bond. The Parties acknowledge that they are not relying on any representations other than those expressly set forth herein. This Surety Bond may not be modified except by written instrument executed and acknowledged by all of the parties.

15. **Effect of Extension of CBA.** This Bond shall be deemed renewed and continued in full force and effect by the execution or extension of another CBA between the Principal and Obligee.

16. **Enumerations and Paragraph Titles.** The enumerations and boldface descriptions of each paragraph contained herein are for convenience only and have no legal meaning or significance whatsoever.

17. **Signatures.** This surety bond is hereby agreed to and accepted in substance and in form by and among the parties.

WHEREFORE, SURETY AND PRINCIPAL so bind themselves by signatures and seals:

FOR THE SURETY:

NAME
TITLE
SURETY COMPANY NAME

Dated:

FOR THE PRINCIPAL:

NAME
TITLE
PRINCIPAL EMPLOYER'S NAME

Dated:

CORPORATION ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

On this _____ day of _____ in the year _____, before me personally came _____ to me known, who, being duly sworn, did depose and say he or she resides in _____; that he or she is the _____ of _____, the entity described herein and which executed the foregoing instrument; that the seal affixed to said instrument is such corporate seal; and that it was so affixed by order of the Board of Directors of the said corporation, and that he or she signed his or her name thereto by like order.

NOTARY PUBLIC

SURETY ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

On this _____ day of _____ in the year _____, before me personally came _____ to me known, who, being duly sworn, did depose and say he or she resides in _____; that he or she is the _____, _____ the entity described herein and which executed the foregoing instrument; that the seal affixed to said instrument is such corporate seal; and that it was so affixed by order of the Board of Directors of the said corporation, and that he or she signed his or her name thereto by like order.

NOTARY PUBLIC