

Contractor Trust Program Agreement

The purpose of this Agreement is to outline the terms and conditions by and among _____ (the "Principal"), Colonial Surety Company (the "Surety"), and Matson Driscoll & Damico, LLP (the "Agent") for the Contractor Trust Program.

WITNESSETH

WHEREAS, the Principal entered into an General Indemnity Agreement ("GIA") in favor of the Surety; and

WHEREAS, as induced by and in reliance upon the execution of the GIA and the Agreement by the Principal and others, the Surety, may, in its sole discretion, execute certain payment and performance bonds ("the Bonds") in connection with contract(s) (the "Contract");

NOW, THEREFORE, for and in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby mutually understood and agreed by and among the Principal, the Surety, and the Agent as follows:

- 1. Assignment.** The Principal shall execute and deliver/has delivered and executed to the Surety the form of Assignment/Letter of Direction (the "Assignment") as may be required by the Oblige relative to the Contract. The Assignment assigns, transfers, and sets over to the Surety all monies due or to become due to the Principal on the Contract and directs the Oblige to remit all monies due or to become due under the Contract to the Agent. The Assignment shall be delivered by the Principal to the Oblige upon execution of this Agreement. In the event the Principal or others related thereto receive any payment in connection with the Contract notwithstanding the Assignment, the Principal promptly shall remit such payment to the Agent.
- 2. Escrow Account.** The Agent will establish a non-interest bearing bank account with Wells Fargo Bank N.A for the purpose of receiving and disbursing funds on behalf of the Principal (the "Account"). The Account will be designated as Matson Driscoll & Damico f/b/o Colonial Surety/Principal's Name. All Contract funds shall be deposited into the Account. The Agent acknowledges that all funds are trust funds of the Principal to be held in escrow and that the Agent is operating in a fiduciary capacity with respect to the funds in the Account. Checks will bear the payor title of "name of Principal Special Account" and Agent shall be the solely authorized signer on the Account.
- 3. Use of Contract Funds.** The Principal acknowledges that all Contract funds on deposit in the Account are trust funds under applicable law and the GIA. Funds in the Account and any other funds deposited into the Account will be used solely to pay for (a) labor costs incurred by the Principal in the performance of the Contract; (b) payments to subcontractors and suppliers on the Contract and any other beneficiaries of the trust funds; (c) payments to reimburse the Principal for indirect costs incurred on the Contract; and (d) payments to satisfy any and all obligations of the Principal under the GIA. The Surety retains the sole and absolute discretion to direct the Agent as to whether such costs and expenses may be paid from the Account; provided, however, absent a direction from the Surety not to authorize any particular payment or disbursement requested by the Principal or determined by the Agent to be permitted by this Agreement, the Agent is authorized to honor disbursements contemplated by this Agreement. In determining the validity of any payment request presented hereunder, the Agent shall be entitled to rely upon the documentation that accompanies the Principal's requests.
- 4. Request of Funds.** On an "as required" basis that is not more frequently than monthly, the Principal will submit in writing to the Agent requests to approve payment from the Account for (a) the payment of direct gross labor for the Contract; (b) the payment of subcontractors, suppliers, and direct job costs incurred on the Contract; and (c) the payment of indirect costs incurred on the Contract. Each request shall contain a summary of items to be paid by vendor name, invoice number and amount requested to be paid. Accompanying the summary page shall be invoices or support which clearly reference costs attributable to the Contract and the amount. The Principal shall be responsible to prepare and obtain a release from all payees from the Account. The Agent will provide the Principal and the Surety with a monthly bank account reconciliation of the Account. The Principal hereby agrees to cooperate with requests from Agent and to permit access to any and all Contract records as well as other information and documentation with respect to the Contract as may be deemed necessary..
- 5. Payroll.** The Principal shall submit to the Agent a written payroll funding request, based on the Principal's direct gross payroll, in connection with the Contract, including without limitation wages, salaries, withholding taxes, union fringe benefits (if applicable), employee payroll tax obligations, and unemployment taxes, matching FICA payments, and all other payroll tax obligations for which the employer is responsible. Once a payroll funding request has been approved by the Agent, the Agent will wire funds to the Principal's payroll account. The Principal hereby acknowledges and agrees that any payroll tax obligations for which the employer is responsible, including, but not limited to, matching FICA and unemployment taxes, will be the sole responsibility of the Principal, and the parties agree that the Surety and the Agent shall in no way be responsible for such employer-paid contributions or the timely payment thereof. The Principal shall provide the Agent with receipts and sufficient documentation to demonstrate that all such withholding taxes and deductions have been satisfied. The Principal acknowledges that the Agent shall not be responsible for the preparation or filing of any tax, union or payroll information.
- 6. Governing Law.** This Agreement will be construed and governed by the laws of the State of New York and will bind the heirs, personal representatives, assignees and successors in interest of the parties hereto.
- 7. Reservation of Rights.** This Agreement is not to be considered a modification, novation or accord and satisfaction of the GIA. The terms and provisions of the GIA shall remain in full force and effect. Nothing contained in this Agreement shall in any way prejudice or waive the rights of the Surety under the GIA or otherwise. The legal and equitable rights of the Surety are specifically reserved.
- 8. Written Modification.** The terms and conditions of this Agreement cannot be modified, amended, or otherwise changed except by a formal written amendment signed by the Surety and the Principal.

IN WITNESS WHEREOF, the parties have executed this Agreement and each of the undersigned represent and warrant that they have the full right, power, and authority to execute this Agreement on behalf of the respective parties.

Witness:

THE SURETY:

Colonial Surety Company

By: _____

Name: Wayne Nunziata

Title: President

THE PRINCIPAL:

By: _____

Name:

Title:

THE AGENT:

Matson, Driscoll & Damico., LLP

By: _____

Name: Peter Fascia

Title: Partner

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