

## **PUBLIC WORKS CONSTRUCTION CONTRACT**

This Public Works Construction Contract ("Contract") is made and entered into this 19th day of August, 2014, by and between the City of Redlands, a municipal corporation organized and existing under the laws of the State of California, (hereinafter "City"), and Airite Heating & Air Conditioning (hereinafter "Contractor"). City and Contractor are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

In consideration of the mutual promises contained herein, City and Contractor agree as follows:

1. **SCOPE OF WORK:** Contractor shall furnish all materials and perform all of the work for the following: Replacement of Air Conditioning Units at Various City Buildings complete all items as required by the Contract Documents (as herein defined) and Specifications for City's Replacement of Air Conditioning Units at Various City Buildings (the "Work").
2. **THE CONTRACT SUM:** City shall pay Contractor the sum of \$359,963.00 as consideration for its performance of the Work in accordance with the terms and conditions set forth in the Contract Documents. Pursuant to Public Contract Code Section 22300, Contractor has the option to deposit securities with an escrow agent as a substitute for retention of earnings requirement to be withheld by City pursuant to an escrow agreement as set forth in the Public Contract Code Section 22300.
3. **TIME FOR COMPLETION:** The Work shall be completed within 90 calendar days from and after the date of the delivery to Contractor of a written Notice to Proceed by City.
4. **LIQUIDATED DAMAGES:** Contractor's failure to complete the work within the time allowed will result in damages being sustained by City. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Accordingly, Contractor shall pay to City, or have withheld from monies due to Contractor, the sum of \$500. for each consecutive calendar day in excess of the specified time for completion of Work.

Execution of the Contract shall constitute agreement by City and Contractor that \$500.00 per day is the estimated damage to City caused by the failure of the Contractor to complete the Work within the allowed time.

Such sum is for liquidated damages and shall not be construed as a penalty, and may be deducted from payments due Contractor if such delay occurs.

5. **CONTRACT DOCUMENTS:** This Contract includes all of the Contract documents set forth herein, to wit; Notice Inviting Bids, Instructions to Bidders, Contractor's Proposal, Bid Bond, Agreement, Performance Bond, Labor and Material Bond, General Conditions, General Requirements, Technical Specifications, and any addenda thereto.
6. **ATTORNEYS' FEES:** In the event any legal action is commenced to enforce or interpret the terms or conditions of the Contract documents, the prevailing Party in such action, in addition to any costs and other relief, shall be entitled to recover its reasonable attorneys' fees, including fees for use of in-house counsel by a Party.
7. **RESOLUTION OF CONSTRUCTION CLAIMS:** Claims by Contractor in the amount of \$375,000 or less shall be made by Contractor and processed by the City pursuant to the provisions of Part 3, Chapter 1, Article 1.5 of the Public Contract Code (commencing with Section 20104). All claims shall be in writing and include the documents necessary to substantiate the claim. Nothing in subdivision (a) of Public Contract Code Section 20104.2 shall extend the time limit or supersede the notice requirements provided in this case from filing claims by Contractor.
8. **ELIGIBILITY OF CONTRACTOR/SUBCONTRACTOR:** Contractor and all of its subcontractors shall abide by California Public Contract Code, Section 6109, and California Labor Code Sections 1777.1 and/or 1777.7, and certify that they are not debarred and are eligible to work on this project.
9. **ASSIGNMENT:** No assignment by a Party of any rights or interests under this Contract shall be binding on another Party without the written consent of the Party sought to be bound.
10. **SUCCESSORS AND ASSIGNS:** City and Contractor each binds itself and their respective successors and assigns in respect to all covenants, agreements, and obligations contained in the Contract Documents.
11. **SEVERABILITY:** Any provision or part of the Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first written above.

(SEAL)

City of Redlands  
(Owner)

By: \_\_\_\_\_



Mayor, City of Redlands,  
County of San Bernardino, California

**ATTEST:**



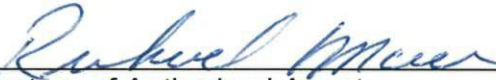
Deputy City Clerk, City of Redlands  
County of San Bernardino, California

(SEAL)

**Airite Heating and Air Conditioning**

Name of Contractor

By: \_\_\_\_\_



Signature of Authorized Agent



Title

Signature of Authorized Agent (if necessary)

Title

C-20 232930

Contractor's License No.

## WORKER'S COMPENSATION INSURANCE CERTIFICATION

Description of Contract: City of Redlands  
Quality of Life Department  
Replacement of Air Conditioning Units at  
Various City Buildings  
Project Number QOL05282014

Labor Code, Section 3700, provides, in part that:

"Every employer except the State shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurer duly authorized to write compensation insurance in this State.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract. (Labor Code section 1861)

Dated this 19th day of August, 2014.

Airrite INC.  
(Contractor)  
Richard Moore  
(Signature)  
Pres  
(Official Title)

(SEAL)

(Labor Code Section 1861 provides that the above certificate must be signed and filed by the Contractor with the Owner prior to performing the work of the contract.)

This bond was issued in two(2)  
identical counterparts.

Bond No. 388997P  
Premium: \$8,999.00

THE FINAL PREMIUM IS  
PREDICATED ON THE  
FINAL CONTRACT PRICE

### FAITHFUL PERFORMANCE BOND

Whereas, the City of Redlands ("City"), State of California, and Airite Heating & Air Conditioning (hereinafter designated as "Principal") have entered into an agreement dated 19<sup>th</sup> day of August, 2014 ("Agreement") whereby Principal agrees to install and complete certain public improvements (the "Work"), which said Agreement is identified as **Replacement of Air Conditioning Units at Various City Buildings Project Number QOL05282014** and is hereby referred to and made a part hereof; and

Whereas, said Principal is required under the terms of the Agreement to furnish a bond for the faithful performance of the Agreement, now, therefore, we, the Principal and Indemnity Company of California, as Surety, are held and firmly bound unto the City in the penal sum of Three Hundred Fifty Nine Thousand, Nine Hundred Sixty Three Dollars (\$ 359,963.00) lawful money of the United States, for the payment of which sum we bind ourselves, and our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the Agreement and any alteration thereof made as therein provided, on his or its 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 faithfully fulfill the one-year guarantee of all materials and workmanship, and shall defend, indemnify and save harmless the City and its elected officials, officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City in successfully enforcing such obligations, all to be taxed as costs and included in the judgment rendered.

As a condition precedent to the satisfactory completion of the Agreement, the above obligation shall hold good for a period of one (1) year or longer if required by the Agreement after the acceptance of the work by the City, during which time if the Principal shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage made evident during this period from the date of completion of the Work, and resulting from or caused by defective materials or faulty workmanship, the above obligation in penal sum thereof shall remain in full force and effect.

The obligations of Surety hereunder shall continue so long as any obligation of the Principal remains.

Whenever the Principal shall be, and is declared by the City to be, in default under the Agreement, the City having performed the City obligations thereunder, the Surety shall promptly remedy the default, or shall promptly, at the City's option:

1. Complete the Agreement in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the Agreement in accordance with its terms and conditions, and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a contract between such bidder and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Work less the balance of the Agreement price, but not exceeding, including other costs and damages for which Surety may be liable hereunder, the amount set forth above. The term "balance of the Agreement price," as used in this paragraph, shall mean the total amount payable to the Principal by the City under the Agreement and any modifications thereto, less the amount previously properly paid by the City to the Principal.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal.

Surety shall not utilize the Principal in completing the Agreement nor shall Surety accept a bid from the Principal for completion of the Work if the City, when declaring the Principal in default, notifies Surety of the City's objection to the Principal's further participation in the completion of the Work.

No right of action shall accrue on the bond to or for the use of any person or corporation other than the City named herein or the successors or assigns of the City. Any suit under this bond must be instituted within the applicable statute of limitations period.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

No final settlement between the City and the Principal shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.

The Principal and Surety agree that if the City is required to engage the services of any attorney in connection with the enforcement of this bond, each shall pay the City's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

The Surety hereby stipulates and agrees that no change, extension of time alteration or addition to the terms of the Agreement or to the Work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

In witness whereof, this instrument has been duly executed by the Principal and Surety above named, on July 29th, 2014.

(SEAL)

Airite Heating and Air Conditioning, Inc.

(Contractor)

(Signature)

(SEAL)

Indemnity Company of California

(Surety)

BY:

(Signature)

Arturo Ayala, Attorney-in-Fact

Address: 500 S. Kraemer Blvd., Suite 300

Brea, CA 92821

Telephone: ( 714 ) 784-5660

(Seal and Notarial Acknowledgement of  
Surety)

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

County of Orange }

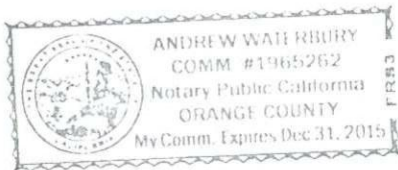
On 7/29/14 before me, Andrew Waterbury, Notary Public,

Date

Here Insert Name and Title of the Officer

personally appeared Arturo Ayala

Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature

Signature of Notary Public Andrew Waterbury

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Faithful Performance Bond

Document Date: 7/29/14

Number of Pages: Three

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Arturo Ayala

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☒ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**RIGHT THUMBPRINT  
OF SIGNER**

Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**RIGHT THUMBPRINT  
OF SIGNER**

Top of thumb here

This bond was issued in two(2)  
identical counterparts.

Bond No. 388997P  
THE FINAL PREMIUM IS  
PREDICATED ON THE  
FINAL CONTRACT PRICE

### LABOR AND MATERIAL PAYMENT BOND

**Whereas**, the City Council of the City of Redlands, State of California, and Airite Heating and Air Conditioning (hereinafter designated as "Principal") have entered into an agreement (the "Agreement") whereby Principal agrees to install and complete certain designated public improvements (the "Work"), which said agreement, dated August 19, 2014, and identified as \_\_\_\_\_ is hereby referred to and made a part hereof; and

\*Replacement of Air Conditioning Units at Various City Buildings - Project Number QOL05282014

**Whereas**, under the terms of the Agreement, Principal is required before commencing upon the performance of the Work, to file a good and sufficient payment bond with the City of Redlands to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California.

**Now, therefore**, said Principal and the undersigned as corporate surety, are held firmly bound unto the City and all contractors, subcontractors, laborers, material men and other persons employed in the performance of the aforesaid Agreement and referred to in the aforesaid Code of Civil Procedure in the sum of Dollars (\$359,963.00) for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

In witness whereof, this instrument has been duly executed by the Principal and surety above named, on  
July 29th, 2014.

(SEAL)

Indemnity Company of California

(Contractor)

(Signature)

(SEAL)

Indemnity Company of California

(Surety)

BY:

(Signature) Arturo Ayala, Attorney-in-Fact

Address:

500 S. Kraemer Blvd., Suite 300

Brea, CA 92821

(Seal and Notarial Acknowledgment of Surety)

Telephone( 714 ) 784-5660

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

County of Orange }

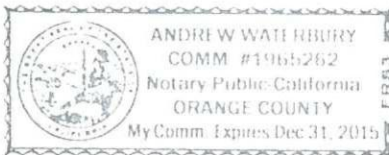
On 7/29/14 before me, Andrew Waterbury, Notary Public

Date

Here Insert Name and Title of the Officer

personally appeared Arturo Ayala

Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~<sup>they</sup> executed the same in his/~~her~~<sup>their</sup> authorized capacity(ies), and that by his/~~her~~<sup>their</sup> signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature

Signature of Notary Public Andrew Waterbury

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Labor and Material Payment Bond

Document Date: 7/29/14

Number of Pages: One

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Arturo Ayala

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☒ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

Signer Is Representing: \_\_\_\_\_

POWER OF ATTORNEY FOR  
DEVELOPERS SURETY AND INDEMNITY COMPANY  
INDEMNITY COMPANY OF CALIFORNIA  
PO Box 19725, IRVINE, CA 92623 (949) 263-3300

Bond No. 388997P

KNOW ALL BY THESE PRESENTS that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, do each hereby make, constitute and appoint:

\*\*\*Dwight Reilly, Daniel Huckabay, Arturo Ayala, jointly or severally\*\*\*

as their true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations, as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolutions adopted by the respective Boards of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, effective as of January 1st, 2008.

RESOLVED, that a combination of any two of the Chairman of the Board, the President, Executive Vice-President, Senior Vice-President or any Vice President of the corporations be, and that each of them hereby is, authorized to execute this Power of Attorney, qualifying the attorney(s) named in the Power of Attorney to execute, on behalf of the corporations, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of either of the corporations be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

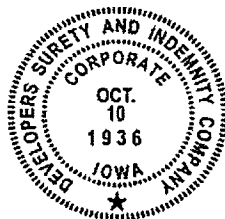
RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporations when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA have severally caused these presents to be signed by their respective officers and attested by their respective Secretary or Assistant Secretary this January 1st, 2008.

By: Daniel Young  
Daniel Young, Vice-President

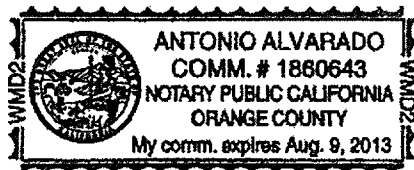
By: Stephen T. Pate  
Stephen T. Pate, Senior Vice-President

State of California  
County of Orange



On January 31, 2011 before me, Antonio Alvarado, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Daniel Young and Stephen T. Pate  
Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Antonio Alvarado  
Antonio Alvarado, Notary Public

CERTIFICATE

The undersigned, as Secretary or Assistant Secretary of DEVELOPERS SURETY AND INDEMNITY COMPANY or INDEMNITY COMPANY OF CALIFORNIA, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked and, furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, this 29th day of July, 2014.

By: Gregg Okura  
Gregg Okura, Assistant Secretary