

**DOCUMENT 00520****AGREEMENT****City of Santa Clara Contract No. 2420A  
Electric Utility Overhead Facilities Master Construction Agreement****PREAMBLE**

This Agreement ("Agreement") is made and entered into on this 31 day of July (the "Effective Date") by and between Hot Line Construction, Inc., a California corporation, with its primary business address located at 9020 Brentwood Boulevard, Suite H, Brentwood, CA 94513 ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation, with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

The Parties agree as follows:

**AGREEMENT PROVISIONS****Article 1. Work**

- 1.1 Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions included in the Contract Documents.

**Article 2. Agency and Notices to City**

- 2.1 City has designated the City Engineer or his/her designee to act as City's Representative(s), who will represent City in performing City's duties and responsibilities and exercising City's rights and authorities in Contract Documents. City may change the individual(s) acting as City's Representative(s), or delegate one or more specific functions to one or more specific City's Representatives, including without limitation engineering, architectural, inspection and general administrative functions, at any time with notice and without liability to Contractor. Each City Representative is the beneficiary of all Contractor obligations to City, including without limitation, all releases and indemnities.
- 2.2 City has designated the City Engineer or his/her designee to act as Project Manager. City may assign all or part of the City Representative's rights, responsibilities and duties to Project Manager. City may change the identity of the Project Manager at any time with notice and without liability to Contractor.
- 2.3 City has designated itself to act as Consulting Engineers. City may change the identity of the Consulting Engineer(s) at any time with notice and without liability to Contractor.
- 2.4 All notices or demands to City under the Contract Documents shall be delivered to the City's Representative at 1500 Warburton Avenue, Santa Clara, California 95050, or to such other person(s) and address(es) as City shall provide to Contractor.

### **Article 3. Contract Time and Liquidated Damages**

- 3.1 Contractor shall commence Work at the Site on the date established in Document 00550, Notice to Proceed. The City reserves the right to modify or alter the Commencement Date of the Work due to the need to complete other City provided work at the Site. Contractor shall complete the Work following the schedule provided in each Call Order.:

3.2 Liquidated Damages.

City and Contractor recognize that time is of the essence of this Agreement and that City will suffer financial loss in the form of lost revenues, contract administration expenses (including project management and consultants' expenses), delay and loss of public use, if all or any part of the Work is not completed within the time specified in paragraph 3.1 above plus any extensions thereof allowed in accordance with the Contract Documents. Consistent with Article 15 of Document 00700, General Conditions, Contractor and City agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by City because of a delay in completion of all or any part of the Work.

Accordingly, City and Contractor agree that as liquidated damages for delay, Contractor shall pay City:

3.2.1 \$1,500.00 for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion, until the Work reaches Substantial Completion.

3.2.2 \$1,500.00 for each Day that expires after the time specified herein for Contractor to achieve Final Completion, until the Work reaches Final Completion.

These measures of liquidated damages shall apply cumulatively and shall be presumed to be, except as provided herein, the damages suffered by City resulting from the delay in completion of the Work.

- 3.3 Liquidated damages for delay shall only cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by City as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from defective work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from City (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

### **Article 4. Total Contract Price**

- 4.1 City shall pay Contractor for the completion of the Work performed under each Call Order subsequently executed by the Parties for work to be performed, plus any change orders, liquidated damages for each Call Order. The estimated value of this Agreement is anticipated to average of \$150,000.00 to \$1,000,000.00 per year.



- 4.2 The Contract Sum is all inclusive and includes all Work; all federal, state, and local taxes on materials and equipment, and labor furnished by Contractor, its subcontractors, subconsultants, architects, engineers, and vendors or otherwise arising out of Contractor's performance of the Work, including any increases in any such taxes during the term of this Agreement; and any duties, fees, and royalties imposed with respect to any materials and equipment, labor or services. The taxes covered hereby include (but are not limited to) occupational, sales, use, excise, unemployment, FICA, and income taxes, customs, duties, and any and all other taxes on any item or service that is part of the Work, whether such taxes are normally included in the price of such item or service or are normally stated separately. Notwithstanding the foregoing, each party shall bear such state or local inventory, real property, personal property or fixtures taxes as may be properly assessed against it by applicable taxing authorities.

### **Article 5. Contractor's Representations and Warranties**

In order to induce City to enter into this Agreement, Contractor makes the following representations and warranties:

- 5.1 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- 5.2 Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, product specifications or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, which are identified in Document 00320, Geotechnical Data and Existing Conditions, which may be apparent at the Site, or which may appear in the Drawings and accepts the determination set forth in these documents and Document 00700, General Conditions of the limited extent of the information contained in these documents and materials upon which the Contractor may be entitled to rely. Contractor agrees that except for the information so identified, Contractor does not and shall not rely on any other information contained in these documents, reports and drawings.
- 5.3 Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Section 5.2 of this Document 00520) that pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00700, General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.
- 5.4 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 5.5 Contractor has given City prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by City is acceptable to Contractor.



- 5.6 Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.
- 5.7 Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Contractor.

### **Article 6. Contract Documents**

- 6.1 Contract Documents, which comprise the entire agreement between the City and Contractor concerning the Work, consist of the following documents, including all changes, Addenda and Modifications thereto:

#### **CONTRACT DOCUMENTS**

**Division 0 - GENERAL PROVISIONS.**

**Division 1 - GENERAL REQUIREMENTS.**

**Division 2 - TECHNICAL PROVISIONS.**

**Division 3 and above - SPECIAL PROVISIONS.**

**Plans**

- 6.2 There are no Contract Documents other than those listed above in this Article 6. The information supplied under Document 00320, Geotechnical Data and Existing Conditions, is not part of the Contract Documents. The Contract Documents may only be amended, modified or supplemented as provided in Document 00700, General Conditions.

### **Article 7. Miscellaneous**

- 7.1 Terms used in this Agreement are defined in Document 00700, General Conditions and Section 00050, References and Definitions, and will have the meaning indicated therein.
- 7.2 It is understood and agreed that in no instance is any person, signing this Agreement for or on behalf of City or acting as an employee, agent or representative of City, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the City is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 7.3 Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contracting Code §4100 et seq.
- 7.4 The Contract Sum includes all allowances (if any).
- 7.5 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time City tenders final payment to Contractor, without further acknowledgment by the parties.

- 7.6 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents, and are on file in the City Clerk's Office, and shall be made available to any interested party on request. Pursuant to Section 1861 of the Labor Code, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 7.7 Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).




7.8 This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Santa Clara, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in Santa Clara County. Both parties hereby waive their rights under California Code of Civil Procedure Section 394 to file a motion to transfer any action or proceeding arising out of the Contract Documents to another venue. Contractor accepts the Claims Procedure in Document 00700, Article 12, established under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first mentioned above.

**CITY OF SANTA CLARA, CALIFORNIA,**  
a chartered California municipal corporation

Approved as to form:

  
BRIAN DOYLE  
Interim City Attorney

Attest:

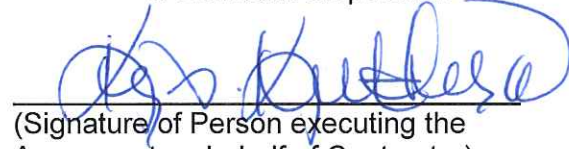
  
ROD DIRIDON, JR.  
City Clerk

  
RAJEEV BATRA  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: 1+(408) 615-2210  
Fax: 1+(408) 241-0347

"City"

**HOT LINE CONSTRUCTION, INC.**  
a California corporation

By:

  
(Signature of Person executing the  
Agreement on behalf of Contractor)

Kelly Kutchera  
(Please Print or Type Name)

Title: Chief Financial Officer

Local Address: 9020 Brentwood Boulevard, Suite H  
Brentwood, CA 94513  
Telephone: (925) 634-9333  
Fax: (925) 634-4535

"Contractor"

Bond No. 9237831

## DOCUMENT 00610

## CONSTRUCTION PERFORMANCE BOND

This Construction Performance Bond ("Bond"), dated July 13, 2017, is issued in the amount of one million dollars and no cents (\$1,000,000.00), (the "Penal Sum") which is equal to one hundred percent of the Contract Price, and is entered into by and between the Contractor and the Surety to ensure the faithful performance of the Construction Contract defined below. This Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 13, attached and incorporated by this reference. The Contractor and Surety are the parties to this Bond, which has been issued for the benefit of the City of Santa Clara, California, a chartered California municipal corporation ("City") and in compliance with the terms of the Construction Contract. Any singular reference to the Contractor, Surety, City or other party shall be considered plural where applicable.

The City of Santa Clara Construction Contract to which this Bond applies is:

City Contract No.: 2420A

In the Amount of one million dollars and no cents (\$1,000,000.00) (Referred to as the "Total Contract Price")

The Contractor and Surety each acknowledge and accept the terms and conditions of this Bond as evidenced by the following signatures of their representatives. The Contractor and Surety each specifically represent that the individual representatives who have signed below are duly authorized to execute this Bond on its behalf. It is the intent of the Parties that this Bond shall become operative on the date first set forth above.

## CONTRACTOR AS PRINCIPAL:

Name: Hot Line Construction, Inc.

Principal Place of Business:

Address: 9020 Brentwood Blvd., #H

City/State/Zip Brentwood, CA 94513

Signature: 

Name: KELLY G. KUTCHER

Title: EVP / CFO

## SURETY:

Name: Fidelity and Deposit Company of Maryland

Principal Place of Business:

Address: 1299 Zurich Way

City/State/Zip Schaumburg, IL 60196

Signature: 

Name: Lisa M. Lucas

Title: Attorney-in-fact

(Please Note: Surety signature must be notarized)

(Please Apply Corporate Seal Here)

(Please Apply Corporate Seal Here)

Approved as to Form:

  
Interim City Attorney

Date: 7/26/17



**BOND TERMS AND CONDITIONS**

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to City for the complete and proper performance of the Construction Contract, which is incorporated herein by reference.
2. If Contractor completely and properly performs all of its obligations under the Construction Contract, Surety and Contractor shall have no obligation under this Bond.
3. If there is no City Default, Surety's obligation under this Bond shall arise after:
  - 3.1 City has declared a Contractor Default under the Construction Contract pursuant to the terms of the Construction Contract; and
  - 3.2 City has agreed to pay the Balance of the Contract Price:
    - 3.2.1 To Surety in accordance with the terms of this Bond and the Construction Contract; or
    - 3.2.2 To a contractor selected to perform the Construction Contract in accordance with the terms of this Bond and the Construction Contract.
4. When City has satisfied the conditions of paragraph 3, Surety shall promptly (within 30 days) and at Surety's expense elect to take one of the following actions:
  - 4.1 Arrange for Contractor, with consent of City, to perform and complete the Construction Contract (but City may withhold consent, in which case the Surety must elect an option described in paragraphs 4.2, 4.3 or 4.4, below); or
  - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; provided, that Surety may not select Contractor as its agent or independent contractor without City's consent; or
  - 4.3 Undertake to perform and complete the Construction Contract by obtaining bids from qualified contractors acceptable to City for a contract for performance and completion of the Construction Contract, and, upon determination by City of the lowest responsible bidder, arrange for a contract to be prepared for execution by City and the contractor selected with City's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract; and, if Surety's obligations defined in paragraph 6, below, exceed the Balance of the Contract Price, then Surety shall pay to City the amount of such excess; or
  - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, and, after investigation and consultation with City, determine in good faith its monetary obligation to City under paragraph 6, below, for the performance and completion of the Construction Contract and, as soon as practicable after the amount is determined, tender payment therefore to City with full explanation of the payment's calculation. If City accepts Surety's tender under this paragraph 4.4, City may still hold Surety liable for future damages then unknown or unliquidated resulting from the Contractor Default. If City disputes the amount of Surety's tender under this paragraph 4.4, City may exercise all remedies available to it at law to enforce Surety's liability under paragraph 6, below.



5. If Surety does not proceed as provided in paragraph 4, above, then Surety shall be deemed to be in default on this Bond ten days after receipt of an additional written notice from City to Surety demanding that Surety perform its obligations under this Bond. At all times City shall be entitled to enforce any remedy available to City at law or under the Construction Contract including, without limitation, and by way of example only, rights to perform work, protect work, mitigate damages, advance critical work to mitigate schedule delay, or coordinate work with other consultants or contractors.
6. Surety's monetary obligation under this Bond is limited by the Amount of this Bond identified herein as the Penal Sum. This monetary obligation shall augment the Balance of the Contract Price. Subject to these limits, Surety's obligations under this Bond are commensurate with the obligations of Contractor under the Construction Contract. Surety's obligations shall include, but are not limited to:
  - 6.1 The responsibilities of Contractor under the Construction Contract for completion of the Construction Contract and correction of defective work;
  - 6.2 The responsibilities of Contractor under the Construction Contract to pay liquidated damages, and for damages for which no liquidated damages are specified in the Construction Contract, actual damages caused by non-performance of the Construction Contract including, but not limited to, all valid and proper backcharges, offsets, payments, indemnities, or other damages;
  - 6.3 Additional legal, design professional and delay costs resulting from Contractor Default or resulting from the actions or failure to act of the Surety under paragraph 4, above (but excluding attorney's fees incurred to enforce this Bond).
7. No right of action shall accrue on this Bond to any person or entity other than City or its successors or assigns.
8. Surety hereby waives notice of any change, alteration or addition to the Construction Contract or to related subcontracts, purchase orders and other obligations, including changes of time. Surety consents to all terms of the Construction Contract, including provisions on changes to the Contract. No extension of time, change, alteration, modification, deletion, or addition to the Contract Documents, or of the work required thereunder, shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond.
9. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between City and Contractor regarding the Construction Contract, or in the courts of the County of Santa Clara, or in a court of competent jurisdiction in the location in which the work is located. Communications from City to Surety under paragraph 3.1 of this Bond shall be deemed to include the necessary agreements under paragraph 3.2 of this Bond unless expressly stated otherwise.
10. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to City shall be mailed or delivered as provided in Document 00520, Agreement. Actual receipt of notice by Surety, City or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
11. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.

12. Definitions.

- 12.1 Balance of the Contract Price: The total amount payable by City to Contractor pursuant to the terms of the Construction Contract after all proper adjustments have been made under the Construction Contract, for example, deductions for progress payments made, and increases/decreases for approved modifications to the Construction Contract.
- 12.2 Construction Contract: The agreement between City and Contractor identified on the signature page of this Bond, including all Contract Documents and changes thereto.
- 12.3 Contractor Default: Material failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract including, but not limited to, "default" or any other condition allowing a termination for cause as provided in Document 00700, General Conditions.
- 12.4 City Default: Material failure of City, which has neither been remedied nor waived, to pay Contractor progress payments due under the Construction Contract or to perform other material terms of the Construction Contract, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Construction Contract.

13. Surety shall submit following documents along with this Construction Performance Bond:

- 13.1 Verification that Surety is admitted to transact surety business the State of California; and
- 13.2 Copy of Surety's Certificate of authority issued by the insurance Commissioner of the State of California along with a statement that said Certificate has not been surrendered, revoked, cancelled, annulled or suspended.

END OF DOCUMENT



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of Contra Costa )  
 On July 13, 2017 before me, Tanya Chinchilla, Notary Public,  
 Date Here Insert Name and Title of the Officer  
 personally appeared Lisa M. Lucas  
 Name(s) of Signer(s)

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]  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
 Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

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

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **MICHAEL BOND, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **D. Richard STINSON, Lisa M. LUCAS, A.W. BROWN, Tanya CHINCHILLA and Nicholas TAN, all of San Ramon, California, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 5th day of December, A.D. 2016.

ATTEST:

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



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

*Eric D. Barnes*

*Secretary  
Eric D. Barnes*

*Michael Bond*

*Vice President  
Michael Bond*

State of Maryland  
County of Baltimore

On this 5th day of December, A.D. 2016, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **MICHAEL BOND, Vice President, and ERIC D. BARNES, Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

*Constance A. Dunn*

Constance A. Dunn, Notary Public  
My Commission Expires: July 9, 2019





## EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

### CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 13th day of July, 2017.



*Gerald F. Haley*

Gerald F. Haley, Vice President

**TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT ALL REQUIRED INFORMATION TO:**

Zurich American Insurance Co.  
Attn: Surety Claims  
1299 Zurich Way  
Schaumburg, IL 60196-1056

Bond No. 9237831

## DOCUMENT 00620

## CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

This Construction Labor And Material Payment Bond ("Bond") dated July 13, 2017 is issued in the amount of one million dollars and no cents (\$1,000,000.00), (the "Penal Sum") which is equal to one hundred percent of the Contract Price, and is entered into by and between the Contractor and the Surety to ensure the payment of claimants under the Construction Contract defined below. This Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 14, attached and incorporated by this reference. The Contractor and Surety are the parties to this Bond, which has been issued for the benefit of the City of Santa Clara, California, a chartered California municipal corporation ("City") in compliance with the terms of the Construction Contract. Any singular reference to the Contractor, Surety, City or other party shall be considered plural where applicable.

The City of Santa Clara Construction Contract to which this Bond applies is:

## Electric Utility Overhead Facilities Master Construction Agreement

City Contract No.: 2420A

In the Amount of one million dollars and no cents (\$1,000,000.00) (Referred to as the "Contract Price"). The Contractor and Surety each acknowledge and accept the terms and conditions of this Bond as evidenced by the following signatures of their representatives. The Contractor and Surety each specifically represent that the individual representatives who have signed below are duly authorized to execute this Bond on its behalf. It is the intent of the Parties that this Bond shall become operative on the date first set forth above.

## CONTRACTOR AS PRINCIPAL:

Name: Hot Line Construction, Inc.

Principal Place of Business:

Address: 9020 Brentwood Blvd., #H

City/State/Zip Brentwood, CA 94513

Signature: [Signature]

Name: Kelly A. Toller

Title: EVP / CFO

## SURETY:

Name: Fidelity and Deposit Company of Maryland

Principal Place of Business:

Address: 1299 Zurich Way

City/State/Zip Schaumburg, IL 60196

Signature: [Signature]

Name: Lisa M. Lucas

Title: Attorney-in-fact

(Please Note: Surety signature must be notarized)

(Please Apply Corporate Seal Here)

(Please Apply Corporate Seal Here)

Approved as to Form:

[Signature]  
Interim City Attorney

Date: 7/26/17



**BOND TERMS AND CONDITIONS**

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to City and to Claimants, to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to City, this obligation shall be null and void if Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants; and
  - 2.2 Defends, indemnifies and holds harmless City from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided City has promptly notified Contractor and Surety (at the address set forth on the signature page of this Bond) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to Contractor and Surety, and provided there is no City Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly through its Subcontractors, for all sums due Claimants. If Contractor or its Subcontractors, however, fail to pay any of the persons named in Section 9100 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to Work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor or Subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such Work and labor, then Surety shall pay for the same, and also, in case suit is brought upon this Bond, a reasonable attorney's fee, to be fixed by the court.
4. Consistent with the California Civil Code §8000, *et seq.*, Surety shall have no obligation to Claimants under this Bond unless the Claimant has satisfied all applicable notice requirements.
5. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety under this Bond.
6. Amounts due Contractor under the Construction Contract shall be applied first to satisfy claims, if any, under any Construction Performance Bond and second, to satisfy obligations of Contractor and Surety under this Bond.
7. City shall not be liable for payment of any costs, expenses, or attorney's fees of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
8. Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations. Surety further hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Construction Contract, or to the Work to be performed thereunder, or materials or equipment to be furnished thereunder or the Specifications accompanying the same, shall in any way affect its obligations under this Bond, and it does hereby waive any requirement of notice or any such change, extension of time, alteration or addition to the terms of the Construction Contract or to the Work or to the Specifications or any other changes.
9. Suit against Surety on this Bond may be brought by any Claimant, or its assigns, at any time after the Claimant has furnished the last of the labor or materials, or both, but, per Civil Code



§9558, must be commenced before the expiration of six months after the period in which stop notices may be filed as provided in Civil Code §9356.

10. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to City shall be mailed or delivered as provided in Document 00520 (Agreement). Actual receipt of notice by Surety, City or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
11. This Bond has been furnished to comply with the California Civil Code §§9550, 9554, *et seq.* Any provision in this Bond conflicting with said statutory requirements shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
13. Definitions.
  - 13.1 Claimant: An individual or entity having a direct contract with Contractor or with a Subcontractor of Contractor to furnish labor, materials or equipment for use in the performance of the Contract, as further defined in California Civil Code §9100. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's Subcontractors, and all other items for which a stop notice might be asserted. The term Claimant shall also include the Employment Development Department as referred to in Civil Code §9554(b).
  - 13.2 Construction Contract: The agreement between City and Contractor identified on the signature page of this Bond, including all Contract Documents and changes thereto.
  - 13.3 City Default: Material failure of City, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract, provided that failure is the cause of the failure of Contractor to pay the Claimants and is sufficient to justify termination of the Construction Contract.
14. Surety shall submit following documents along with this Construction Labor and Material Payment Bond:
  - 14.1 Verification that Surety is admitted to transact surety business the State of California; and
  - 14.2 Copy of Surety's Certificate of authority issued by the insurance Commissioner of the State of California along with a statement that said Certificate has not been surrendered, revoked, cancelled, annulled or suspended.

END OF DOCUMENT



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**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT****CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Contra Costa )  
On July 13, 2017 before me, Tanya Chinchilla, Notary Public,  
Date Here Insert Name and Title of the Officer  
personally appeared Lisa M. Lucas  
Name(s) of Signer(s)

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]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or  
fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

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

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

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

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

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

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

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



**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **MICHAEL BOND, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **D. Richard STINSON, Lisa M. LUCAS, A.W. BROWN, Tanya CHINCHILLA and Nicholas TAN, all of San Ramon, California, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York, the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 5th day of December, A.D. 2016.

ATTEST:

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



By: *Eric D. Barnes*  
Secretary  
Eric D. Barnes

*Michael Bond*  
Vice President  
Michael Bond

State of Maryland  
County of Baltimore

On this 5th day of December, A.D. 2016, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **MICHAEL BOND, Vice President, and ERIC D. BARNES, Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

*Constance A. Dunn*

Constance A. Dunn, Notary Public  
My Commission Expires: July 9, 2019



## EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

### CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 13th day of July, 2017.



*Gerald F. Haley*

Gerald F. Haley, Vice President

**TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT ALL REQUIRED INFORMATION TO:**

Zurich American Insurance Co.  
Attn: Surety Claims  
1299 Zurich Way  
Schaumburg, IL 60196-1056



**DOCUMENT 00630****GUARANTY**

TO THE CITY OF SANTA CLARA, a chartered Municipal Corporation of the State of California ("City"), for construction of:

**SANTA CLARA, CALIFORNIA**

1. The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.
2. Contractor hereby grants to City for a period of one (1) year following the date of Final Completion, or such longer period specified in the Contract Documents, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers in connection with the Work.
3. Neither final payment nor use or occupancy of the Work performed by the Contractor shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Contractor of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Contractor shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one (1) year, or longer if specified in the Contract Documents, from the date of Final Completion.
4. If within one (1) year after the date of Final Completion, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to City and in accordance with City's written instructions, correct such defective Work. Contractor shall remove any defective Work rejected by City and replace it with Work that is not defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct defective Work, or defects are discovered outside the correction period, City shall have all rights and remedies granted by law.
5. Inspection of the Work shall not relieve Contractor of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Contractor shall, at its own expense, replace or repair any such equipment, material, or Work found to be defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.
6. All abbreviations and definitions of terms used in this Agreement shall have the meanings set forth in the Contract Documents, including, without means of limitation, Section 00050, References and Definitions.

7. The foregoing Guaranty is in addition to any other warranties of Contractor contained in the Contract Documents, and not in lieu of, any and all other liability imposed on Contractor under the Contract Documents and at law with respect to Contractor's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Guaranty and any warranty or obligation of the Contractor under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of the Contractor.

**HOT LINE CONSTRUCTION, INC.**

A California corporation

By: (Signature of Person authorized to sign  
on behalf of Contractor)  
DateKelly Kutchera

(Please Print or Type Name)

Chief Financial Officer

Title

Local Address: 9020 Brentwood Boulevard, Suite H  
Brentwood, CA 94513

Telephone: (925) 634-9333

Fax: (925) 634-4535

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