

## PERFORMANCE BOND

Surety Bond No. \_\_\_\_\_

Principal (Contractor)

Surety

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The Principal and Surety, a surety company authorized to do business in the State of Utah, do hereby obligate and bind themselves, jointly and severally, to San Juan County, which shall be called the "Owner" in this Performance Bond, in the amount of \$\_\_\_\_\_, for the faithful performance of the terms and conditions of the *San Juan County Project Contract* and any amendments of change orders to it for the Project and agree to pay each claimant supplying labor, services, equipment, or material for the performance of the terms and conditions of the *San Juan County Project Contract* between San Juan County and Redoubt Restoration, Inc. for the Project which is designated as the San Juan County Project: San Juan County Pack Creek Emergency Watershed Protection Projects and related services at the San Juan County Pack Creek Area (the "Contract") and any amendments or change orders to it, subject to the following terms and conditions, pursuant to the provisions of Section 63G-6a-1103, *Utah Code Annotated*, and other applicable law:

1. **Contract.** San Juan County made and entered into the Contract dated May 21, 2024, for the contract amount of \$\_\_\_\_\_, and that Contract, together with any amendments, modifications, work directives and authorizations, or change orders thereto, is incorporated into this Performance Bond by reference.
  
2. **Effective Date of Bond.** This Performance Bond is effective as of the date that the Contract was executed by all of the Parties.
  
3. **Condition of Performance Bond.** If the Principal shall faithfully perform all of the terms and conditions of the Contract, and any modifications to it, including any amendments, change orders, or work directives and authorizations; if the Principal shall for a period of one year from the date of the issuance of a certificate of substantial completion of the Contract acceptance by the Owner, replace and remedy any and all defects or deficiencies resulting from workmanship or materials; and if Surety shall comply with its obligations under this Performance Bond, then this obligation shall be deemed void; otherwise, it shall remain in full force and effect.
  
4. **Purpose.** This Performance Bond is executed in accordance with and for the purpose of complying with Section 63G-6a-1103, *Utah Code Annotated*, and for the protection of the Owner from all defaults of the Principal and all defects and deficiencies in construction, equipment, and materials, by Principal with respect to the above-designated Project.

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**5. Default by Principal.** In the event of any default by the Principal in the performance of the Contract, including, but not limited to, any defect or deficiency in the services of the Principal under this Performance Bond which has become known during the term of this Performance Bond, and if the Owner has given notice of such default, defect, or deficiency, to the Principal or Surety and the Principal remains in default or any defects or deficiencies have not been remedied within a reasonable time of that notice, not to exceed fifteen days, the Surety shall either:

- a. Arrange for the Principal, with the consent of the Owner, to correct such default, defect, or deficiency and complete the Contract; or
- b. Undertake to perform and complete the Contract itself or through its agents or independent contractors.

**6. Obligation of Surety.** To the limit of this Performance Bond, the Surety is obligated in the event of a default by the Principal for:

- a. The responsibilities of the Principal for the correction of any defect or deficiency and the performance and completion of the Contract;
- b. Additional legal, design, professional, and delay costs resulting from the default, deficiency, or delay of the Principal and any failure of the Surety to act under the terms of this Performance Bond; and
- c. Liquidated damages, if any, as specified in the Contract.

**7. Owner Payment to Surety.** In the event that the Surety undertakes to perform and complete the Contract itself or through its agents or independent contractors and the Owner has terminated the right of the Principal to complete the Contract and fully perform its/their obligation(s) under this Performance Bond, the Owner shall pay the remaining balance of the contract price to the Surety in accordance with the terms of the Contract.

**8. Notice to Principal or Surety.** Any notice required to be given by the Owner to the Principal and Surety under this Performance Bond or by law shall be deemed properly and sufficiently given if such notice is given to either the Surety or the Principal. Notice shall be mailed or delivered to the Principal or Surety at the following addresses and shall be deemed to have been given as of the date of mailing or delivery:

Principal: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Surety: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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- 9. Notice to Owner.** Any notice to be given to the Owner with respect to this Performance Bond shall be mailed or delivered to the Owner at the following addresses:

San Juan County  
Attn: Purchasing Manager  
117 South Main  
PO Box #9  
Monticello, Utah 84535

- 10. Default of Surety.** If the Surety does not proceed within fifteen days after notice from the Owner of any default on the part of the Principal or any defect or deficiency in the construction project by the Principal following reasonable notice from the Owner to the Principal, then the Surety shall be deemed to be in default under the terms of this bond and Owner shall be entitled to enforce any remedy against Surety available to Owner by law, equity or otherwise.

- 11. Changes in Contract.** No modifications, including amendments, change orders, or work directives and authorizations to the Contract or any extensions of time granted under the provisions of the Contract shall release either the Principal or Surety from their respective obligations under this Performance Bond.

- 12. Indemnification.** The Principal and Surety shall indemnify San Juan County for any costs incurred in the enforcement of this Performance Bond, including court costs, reasonable attorney fees, and defense costs.

- 13. Surety's Waiver of Notice.** Surety waives notice of any modifications including addenda, change orders, work directives and authorizations, and time changes, to the Contract.

- 14. Time of Essence.** Time is of the essence in respect to all parts or provisions of this Performance Bond, which specify a time performance or otherwise, and the Parties each agree to comply with all such times.

- 15. Choice of Law; Jurisdiction; Venue.** This Performance Bond and all matters, disputes, and/or claims arising out of, in connection with, or relating to this Performance Bond or its subject matter, formation or validity (including non-contractual matters, disputes, and/or claims) shall be governed by, construed, and interpreted in accordance with the laws of the State of Utah, without reference to conflict of law principals. The Parties irrevocably agree that the courts located in San Juan County, State of Utah (or Salt Lake City, State of Utah, for claims that may only be litigated or resolved in the federal courts) shall have exclusive jurisdiction and be the exclusive venue with respect to any suit, action, proceeding, matter, dispute, and/or claim arising out of, in connection with, or relating to this Performance Bond, or its formation or validity. The Parties irrevocably submit to the exclusive jurisdiction and exclusive venue of the courts located in the State of Utah as set forth directly above. Any party who unsuccessfully challenges the enforceability of this clause shall reimburse the prevailing party for its attorneys' fees, and the party prevailing in any such dispute shall be awarded its attorneys' fees.

- 16. Authority.** The undersigned representatives of the Principal and Surety verify that they are authorized by the Principal and Surety, respectively, to execute this Performance Bond and thereby bind and obligate the Principal and Surety to its terms. If that authority is granted by a power of attorney, a duly executed and acknowledged copy of that power of attorney shall be attached to and incorporated by reference into this Performance Bond.
- 17. Severability.** If any part or provision of this Performance Bond is found to be prohibited or unenforceable in any jurisdiction, such part or provision of this Performance Bond shall, as to such jurisdiction only, be inoperative, null and void to the extent of such prohibition or unenforceability without invalidating the remaining parts or provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render inoperative, null or void such part or provision in any other jurisdiction. Those parts or provisions of this Performance Bond, which are not prohibited or unenforceable, shall remain in full force and effect.
- 18. Binding Effect.** The terms, conditions, and obligations set forth in this Performance Bond shall be binding upon the Principal and Surety and their respective heirs, assigns, administrators, and successors in interest.
- 19. Waivers or Modification.** No waiver or failure to enforce one or more parts or provisions of this Performance Bond shall be construed as a continuing waiver of any part or provision of this Performance Bond, which shall preclude the Parties from receiving the full-bargained-for benefit under the terms and provisions of this Performance Bond. A waiver or modification of any of the provisions of this Performance Bond or of any breach thereof shall not constitute a waiver or modification of any other provision or breach, whether or not similar, and any such waiver or modification shall not constitute a continuing waiver. The rights of and available to each of the Parties under this Performance Bond cannot be waived or released verbally, and may be waived or released only by an instrument in writing, signed by the party whose rights will be diminished or adversely affected by the waiver.
- 20. Entire Contract, Amendment.** This Performance Bond is binding upon and shall inure to the benefit of the Parties and their respective heirs, successors, assigns, officers, directors, employees, agents, representatives, subrogees and to all persons or entities claiming by, through or under them. This Performance Bond, including all attachments, if any, constitutes and/or represents the entire agreement and understanding between the Parties with respect to the subject matter herein. There are no other written or oral agreements, understandings, or promises between the Parties that are not set forth herein. Neither this Performance Bond, nor any provisions hereof may be supplemented, amended, modified, changed, discharged, or terminated verbally. Rather, this Performance Bond and all provisions hereof may only be supplemented, amended, modified, changed, discharged, or terminated by an instrument in writing, signed by the Parties.
- 21. Rights and Remedies Cumulative.** The rights and remedies of the Parties under this Performance Bond shall be construed cumulatively, and none of the rights and/or remedies

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under this Performance Bond shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law, unless specifically set forth herein.

**22. Counterparts.** This Performance Bond may be executed in counterparts, each of which shall be deemed an original, and all such counterparts, taken together, shall constitute one and the same Performance Bond.

IN WITNESS WHEREOF, the Parties have executed this Performance Bond on the dates set forth below.

Principal

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Acknowledgment of Principal**

STATE OF UTAH )  
COUNTY OF \_\_\_\_\_ )

The foregoing Performance Bond was acknowledged before me, the undersigned notary public, this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as of \_\_\_\_\_, the Principal designated in the foregoing Performance Bond.

\_\_\_\_\_  
Notary Public

Residing at: \_\_\_\_\_, Utah

Commission Expires: \_\_\_\_\_

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Surety

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Acknowledgment of Surety**

STATE OF UTAH )  
COUNTY OF \_\_\_\_\_ )

The foregoing Performance Bond was acknowledged before me, the undersigned notary public, this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as of \_\_\_\_\_, the Surety designated in the foregoing Performance Bond.

\_\_\_\_\_  
Notary Public  
Residing at: \_\_\_\_\_, Utah  
Commission Expires: \_\_\_\_\_