

Michigan Local Agency Warranty Program

April 17, 2019

The following Pass Through Warranty Contract and Pass Through Warranty Bond Form are part of the Michigan Local Agency Warranty Program. These documents were approved by CRA and MML on 09/04/2018, MDOT on 09/18/2018, and FHWA on 11/01/2018, and are being provided here for local agency use.

PASS THROUGH WARRANTY CONTRACT

This contract ID number _____(Contract) is executed on the date signed below by the <Chairman of the Board? Manager? Superintendent?> of the <local agency name> (Local agency) between the Warranty Contractor, Prime Contractor and the Department in conjunction with the execution of this contract ID number, _____, between the Local Agency and the Prime Contractor.

(Warranty Contractor)

(Prime Contractor)

The work included within this Warranty Contract is (Warranted Work) described here:

The Warranty Contractor represents that it has entered into a subcontract with the Prime Contractor to perform Warranted Work for the project, but that any failure to have properly done so, or any breach or failure in the performance of that subcontract, shall not diminish or otherwise affect the obligations of the Warranty Contractor to the Department under this warranty contract. Nor shall the obligations of the Warranty Contractor to the Department under this warranty contract be diminished or affected if the Prime Contractor or some other person performs some or all of the Warranted Work or warranty obligations for the project, unless the Department consents to, and executes, a written amendment to this warranty contract.

Insofar as they pertain to the warranty rights and obligations, the terms of the contract are hereby incorporated by reference into this warranty contract and, for purposes of this warranty contract, references in the contract to the contractor shall be deemed to refer to the Warranty Contractor.

The Warranty Contractor hereby agrees to fulfill and perform, without qualification or exception, all of the warranty obligations under the terms of the contract, as if they were the Prime Contractor. Until acceptance of the Warranted Work, the Prime Contractor will be responsible to the Department for ensuring completion of the Warranted Work and for fulfilling the terms of the warranty for that work. Upon acceptance of the Warranted Work, the Warranty Contractor shall have full responsibility for the warranty obligations and the Prime Contractor will be relieved of further obligation for performing those warranty obligations.

The Warranty Contractor agrees that its obligations to the Department under this warranty contract are the same as if the Warranty Contractor was the Prime Contractor; the Warranty Contractor can assert no rights, defenses or qualifications to the warranty obligations under the contract that would have been unavailable to the Prime Contractor, if the Prime Contractor had retained contractual responsibility for the warranty. The Warranty Contractor may assert the same rights under the terms of the warranty as could have been asserted by the Prime Contractor, if the Prime Contractor had retained contractual responsibility for the warranty.

This warranty contract may be executed prior to execution of the contract with the Prime Contractor, provided that if the Department fails to execute the contract with the Prime Contractor this warranty contract shall be null and void.

By: _____ By: _____

Title: _____ Title: _____

By: _____

Typed name _____

Local agency _____

Date: _____

<local agency name>

LOCAL AGENCY

PASS THROUGH WARRANTY BOND

Bond Number:

KNOWN ALL MEN BY THESE PRESENTS:

That we, _____ (hereinafter called the "Principal" and _____ (hereinafter called "Surety") a corporation duly organized under the laws of the State of _____ and duly licensed to transact business in the State of Michigan, are held and firmly bound unto the <local agency name> (hereinafter called the "Obligee"), in the sum of \$ _____ dollars for the payment of which sum well and truly to be made, we, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal has heretofore entered into a contract with the Obligee, under Contract ID _____, and;

WHEREAS, the said Principal is required to guarantee the:

installed under said contract, against defects in materials or workmanship which may develop during the period of _____ years beginning the date of the Acceptance Date of Warranted Work by the Obligee.

In no event shall losses paid under this bond aggregate more than the amount of the bond.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal shall faithfully carry out and perform the said guarantee, and shall, on due notice, repair and make good at its own expense any and all defects in materials or workmanship in the said work which may develop during the period specified above or shall pay over, make good and reimburse to the said Obligee all loss and damage which said Obligee may sustain by reason of failure or default of said Principal so to do, then this obligation shall be null and void; otherwise shall remain in full force and effect.

PROVIDED HOWEVER, that in the event of any default on the part of said Principal, a written statement of the particular facts showing such default and the date thereof shall be delivered to the Surety by registered mail, promptly in any event within ten (10) days after the Obligee or his representative shall learn of such default and that no claim, suit or action by reason of any default of the Principal shall be brought hereunder after the expiration of thirty (30) days from the end of the warranty period as herein set forth.

Signed this _____ day of _____ 20_____.

Contractor _____

By _____

Surety _____

By _____