

**Texas Commission on Environmental Quality (TCEQ)**

**PAYMENT BOND**

for

Contractors, Landowners, or other LPST Remediating Parties Who Hire Subcontractors or Incur  
Other Labor or Supplier Obligations in Performing Site Remediation Services in Connection  
with the Leaking Petroleum Storage Tank Reimbursement Program  
(This Bond Not For Public Works)

**Total penal sum of bond: \$ \_\_\_\_\_**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ), an agency of the State of Texas, formerly known as the Texas Natural Resource Conservation Commission (TNRCC):**

P. O. Box 13087, MC-102

Austin, TX 78711-3087

512.239.1000

Attn: Financial Administration Division, Procurement and Contracts Section

**PRINCIPAL. (Name and Address):**

**SURETY (Name and Principal Place of Business):**

The persons whose signatures appear below hereby certify that they are authorized to execute this payment bond on behalf of the Principal and Surety and that the wording of this bond fulfils the requirements of 30 Tex. Admin. Code § 334.306(b)(7) as such regulations were constituted on the date this bond was executed. All endorsements and acknowledgments necessary to make this bond effective must be made and attached.

**PRINCIPAL**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**SURETY**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**Principal and Surety, agree as follows:**

Know All Persons By These Presents, That we, Principal and Surety, jointly and severally, bind ourselves, our heirs, executors, administrators, successors and assigns to the Texas Commission on Environmental Quality (TCEQ), an agency of the state of Texas, in the penal sum of the amount shown on the face of this Bond, to pay for labor, materials and equipment furnished.

With respect to these obligations, Principal and Surety also agree as follows:

**Whereas** a Principal (who may be either a contractor, landowner, or other party eligible for reimbursement for remediation of a Site) contracts with Claimants, (contractors, subcontractors, or suppliers, as the case may be) in order to perform and/or procure performance of remediation services at a Site; and,

**Whereas** the TCEQ conducts the PST Reimbursement Program under which TCEQ may provide reimbursement of some remediation costs to a Principal who complies with all applicable Texas statutes and regulations, specifically, Chapter 334, Subchapter H of the TCEQ Petroleum Storage Tank rules, 30 Tex. Admin. Code §§ 334.301– 334.322; and,

**Whereas** 30 Tex. Admin. Code § 334.306(b)(7) conditions State reimbursement of Principal's costs on a certification that subcontractors have been paid, or upon a showing that Principal has secured a payment bond of a licensed surety guaranteeing the payment of subcontractors and suppliers providing labor, materials and equipment at a Site:

**Now, therefore,**

1. The Surety's obligation under this bond shall be null and void if the Principal:
  - 1.0. Pays all sums due Claimants for work performed at a Site.
  
2. The Surety shall have no obligation to Claimants under this Bond until:
  - 2.0. Principal has been reimbursed (fully or partially) by TCEQ for work performed under 30 TAC 334 and has failed to pay sums due Claimants (to the extent that the work was reimbursed) within 60 days of reimbursement. This time period begins when TCEQ makes payment of any amount in response to a reimbursement application; disputes over the amount reimbursed will not toll the period.
  - 2.1. Claimants who are employed by or have a direct contract with the Principal have given notice to the Surety and sent a copy, or notice thereof, to the TCEQ stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim. Note, failure to send a copy to TCEQ shall not defeat any Claim under this Bond.
  - 2.2. Claimants who do not have a direct contract with the Principal:
    - 2.2.1. Have furnished written notice to the Principal and sent a copy, or notice thereof, to the TCEQ, stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and either
    - 2.2.2. Have received a rejection in whole or in part from the Principal, or
    - 2.2.3. Not having been paid in full within 60 days of furnishing labor and/or supplies, have sent a written notice to the Surety; and have sent a copy, or notice thereof, to the TCEQ,

stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Principal.

3. If a notice required by Paragraph 2 is given by the TCEQ to the Principal or to the Surety, that is sufficient compliance.
4. Upon satisfaction of the conditions of Paragraph 2, the Surety shall promptly and at the Surety's expense take the following actions:
  - 4.1. Send a response to the Claimant, with a copy to the TCEQ and the Principal, within 45 days after receipt of the claim, stating the amounts that are not disputed and the basis for challenging any amounts that are disputed.
  - 4.2. Pay any undisputed amounts within 30 days of sending the response to Claimant.
5. Principal and Surety may not dispute a claim or amounts in a claim unless the claim is unreasonable and without merit.
6. The maximum aggregate liability of the Surety is limited to the penal sum of this Bond.
7. The TCEQ shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
8. Notice to the Surety, the TCEQ or the Principal shall be mailed, certified mail return receipt requested, or delivered to the address shown on the face of this Bond. Actual receipt of notice by Surety, the TCEQ or the Principal, however accomplished, shall be sufficient compliance as of the date received.
9. If this Bond has been furnished to comply with a statutory or other legal requirement in the location where the work was to be performed, then any provision in the Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein.
10. The Principal shall provide prominent written notices of the Bond to all subcontractors and suppliers. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Principal shall promptly furnish a copy of this Bond or shall permit a copy to be made.
11. This Bond and any claims, demands, liens or suits related to the Bond are governed by the laws of the state of Texas.
12. Surety certifies that it is authorized by the laws of the state of Texas to act as surety for Principal on this Bond.
13. Nothing in this Bond and no claim by a Claimant shall work to defeat any other claim or remedy under law or contract pursued by a Claimant for payment for labor, materials or equipment.
14. No agreement between the Claimant and Principal or other entity to delay payment for labor, materials or equipment will act as a waiver of a claim under this Bond.

15. If one or more sureties are corporations acting as co-sureties, we the sureties bind ourselves in the full amount of the penal sum "jointly and severally."

## 16. DEFINITIONS

- 16.1. "Claimant": An individual or entity having a direct or indirect contract with the Principal or with a subcontractor or supplier or any lower level of subcontracting to furnish labor, materials or equipment for use at the Site. Claimant includes without limitation employees of any subcontractor or supplier.
- 16.2. "Principal": The party who may seek reimbursement under the Petroleum Storage Tank Reimbursement Program rules of the TCEQ, 30 TAC 334, Subchapter H. The principal may be a contractor, landowner, or other person eligible for reimbursement of a Leaking Petroleum Storage Tank Site remediation under 30 TAC 334.
- 16.3. "Site": The location of leaking petroleum storage tank contamination which is being remediated under the rules of TCEQ, 30 TAC 334, and the laws of the State of Texas.
- 16.4. "Contractor," "Subcontractor," "Supplier": These terms refer to persons or business organizations providing labor, materials or equipment at a Site in direct contract with the Principal or to any other contractor directly or indirectly in contract with the Principal at any lower level of subcontracting.
- 16.5. "Surety" includes all sureties signing this bond.