

FILED

2013 NOV 25 P 12: 03

Head of the DIC
Patricia D. Petersen
Chief Hearing Officer

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In re the Matter of

EDMUND C. SCARBOROUGH, and
WALTER W. WOLF,

Respondents.

No. 13-0084

RESPONDENT SCARBOROUGH'S
OPPOSITION TO REQUEST TO ISSUE
SUBPOENA DUCES TECUM TO
WELLS FARGO BANK NORTHWEST,
N.A. (AMENDED)

I. INTRODUCTION

The threshold issue in this proceeding is whether the sale and issuance of fully collateralized individual surety bonds, authorized by law and accepted by public entities, requires a certificate of authority issued by the OIC. In the event a code violation is found, a secondary issue is the appropriate monetary penalty, which depends largely on whether the vast majority of the bonds at issue are outside the OIC's jurisdiction because they were accepted by the federal government under federal law, for work on federal projects. Even though the threshold issues are legal and any fact issues are narrow, the OIC has served extensive and broad discovery requests upon Respondent Edmund C. Scarborough and has now requested that the presiding officer issue a broad subpoena duces tecum to Wells Fargo Bank Northwest, N.A., which acted solely as a trustee holding security interests as collateral for the bonds. The subpoena requests documents that are irrelevant or that Scarborough has

RESPONDENT SCARBOROUGH'S
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produced. It also encompasses communications protected by the common-interest doctrine. The presiding officer should therefore decline to issue the subpoena.

II. STATEMENT OF FACTS

A. The Scarborough Bond Program.

Individual surety bonds are an alternative to corporate surety bonds, authorized under Washington law. *See* RCW 19.72.020 through .040; RCW 39.08.010(4); RCW 48.28.010. Corporate surety bonds are often unavailable to smaller contractors, many of which are minority-owned.¹ Mr. Scarborough operates the Scarborough Bond Program, through which he issues fully collateralized individual surety bonds.² The Scarborough Bond Program is designed to meet the strict requirements of the Federal Acquisition Regulation, which requires that individual surety bonds for a federal public works contract be fully collateralized, such as by a security interest granted in property with a value at least equal to the amount of the contract, as verified by the government contracting officer.³

B. The Skyline-Clarkston Bond.

This matter arose from a complaint to the OIC relating to a bond that Scarborough issued together with Walter W. Wolf.⁴ The bond guaranteed performance and payment by Skyline Contractors, Inc., under a contract with the City of Clarkston, Washington, for remodeling and construction work on the City of Clarkston Public Safety Building.⁵ Scarborough and Wolf executed performance and payment bond documents dated May 11, 2011, valid for one year with a single limit of \$754,543.09.⁶ The City of Clarkston accepted the bond after what the City's counsel described as "legal review on a number of fronts."⁷

¹ *Scarborough Decl.*, ¶ 2.

² *Id.*

³ *Id.*; *see* 48 C.F.R. §§ 28.203, 28.203-1.

⁴ *Scarborough Decl.*, ¶ 3

⁵ *Id.*

⁶ *Id.*, ¶ 4 & Exh. A.

⁷ *Scarborough Decl.*, ¶ 4.

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The terms and conditions of the bond specifically state that the bond is a guarantee and not an insurance policy.⁸ Attached to the bond was an irrevocable trust receipt (ITR) executed by Wells Fargo Bank Northwest, N.A., as “indenture trustee.”⁹ The bond states that the exclusive source of funds available to the City to pay any claims available under the terms of the bond is the assets represented by the ITR.¹⁰ The ITR is evidence that Scarborough granted to Wells Fargo a first-priority security interest in those specific assets, to be foreclosed upon in the event of a default by Scarborough.¹¹ While the City has never declared a default on the bond, if Scarborough were to default, Wells Fargo is authorized to exercise the rights and remedies of a secured party as to the designated assets, for the benefit of the bondholder and ultimately the claimant.¹²

A dispute arose between the City of Clarkston and Skyline Contractors, which is now in bankruptcy, relating to the Public Safety Building project.¹³ The City of Clarkston filed suit against Skyline Contractors, alleging that it failed to perform certain items of work on the construction contract completely and it failed to pay for certain of the labor, materials, and equipment furnished for use in the construction, resulting in claims against the City totaling \$135,215.59.¹⁴ The City also filed suit against Scarborough, Wolf, and Wells Fargo, seeking relief based on the bond issued to Skyline Contractors.¹⁵ Skyline Contractors answered the City’s suit and filed a counterclaim for damages it alleged were caused by the City.¹⁶ Skyline Contractors further demanded arbitration as provided for in the contract between the City and

⁸ *Id.* & Exh. A.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*, ¶ 5.

¹² *Id.*

¹³ *Scarborough Decl.*, ¶ 6.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

Skyline Contractors and moved for a stay of the City's lawsuit.¹⁷ The City acknowledged that its claim under the payment bond is subject to arbitration.¹⁸ An order was issued staying the lawsuit pending the outcome of the arbitration.¹⁹ The arbitration is being held in abeyance pending action by the bankruptcy trustee.²⁰

Scarborough issued a total of 22 bonds in Washington, all during the years 2009-2012.²¹ Twelve of those related to work procured by the federal government.²² Of the remaining 10 bonds, eight related to non-federal public projects (including the Clarkston PSB project discussed above), one project was for Boeing, and one was for a private mining company.²³ All projects are now completed, and except as explained above with respect to the Skyline-Clarkston bond, all bonds and claim-filing periods have expired.²⁴

C. OIC Investigation and Cease and Desist Order.

The OIC commenced an investigation in September 2012. Scarborough's attorneys provided information regarding bonds he had issued in Washington.²⁵ The OIC completed its investigation and issued a cease and desist order dated March 8, 2013. The order characterized the sale of individual surety bonds as an unauthorized transaction of insurance and directed Scarborough and Wolf to cease and desist immediately from such transactions. Simultaneous with the cease and desist order, the OIC issued a notice of request for hearing for imposition of fines. In response to the order and notice, Scarborough formally denied that he violated the insurance code and that any fine should be imposed, and requested a hearing.

¹⁷ *Scarborough Decl.*, ¶ 6.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Scarborough Decl. (Amended)*, ¶ 8.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Scarborough Decl.*, ¶ 8 & Exh. C.

D. OIC Discovery Requests and Request to Issue Subpoena.

The hearing in this matter was originally set to take place in June 2013 but was continued by stipulation. In September 2013, the OIC served Scarborough with 74 discovery requests, including 44 interrogatories and 30 requests for production, most of which are broad and have multiple subparts. On October 28, 2013, Scarborough timely responded with answers and production of documents, but objected to many of the requests on the basis that they are overly broad and unduly burdensome and seek information and documents not relevant to the complained issues, particularly considering the relatively narrow issues involved in this proceeding. On November 1, 2013, the OIC requested (1) a CR 26(i) conference regarding the discovery requests and (2) a prehearing conference to request issuance of a subpoena duces tecum directed to Wells Fargo Bank Northwest, N.A.

The CR 26(i) conference was held on November 13, 2013. The OIC agreed that certain discovery requests would be withdrawn or narrowed based on (1) representations by Scarborough regarding the limited number of bonds issued in Washington and the status of those bonds and (2) supplemental production of bond documents. However, no agreement was reached regarding the proposed subpoena duces tecum. The subpoena would direct Wells Fargo to produce documents falling within eleven broad categories, likely encompassing *every* document relating to Scarborough's entire history of dealings with the bank, including all communications, all agreements, all reports, etc. Among the documents encompassed by the subpoena are communications between representatives of Scarborough and the bank regarding the litigation in they share common interests as co-defendants. Scarborough opposes issuance of the subpoena.

III. AUTHORITY AND ARGUMENT

Discovery in administrative proceedings is discretionary with the presiding officer. RCW 34.05.446(3). When discovery is permitted, the presiding officer "may condition use of discovery on a showing of necessity and unavailability by other means." *Id.* Discovery is

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presumptively permitted in OIC hearings because the commissioner has by regulation adopted CR 26 through 37, such that discovery may be had under those rules without first obtaining the presiding officer's permission. WAC 284-02-070(2)(e)(i). Nevertheless, the rule preserves the presiding officer's discretion and authority to condition or limit discovery to require a showing of necessity and unavailability by other means as provided in RCW 34.05.446(3). WAC 284-02-070(2)(e)(iii). The factors properly considered by the presiding officer in ruling on discovery requests include whether the discovery would result in undue expense or delay. RCW 34.05.446(3).

The commissioner has not adopted CR 45 regarding subpoenas. *See* WAC 284-02-070(e). The presiding officer has discretion to issue subpoenas and protective orders. RCW 34.05.446(1). The permissible scope of a subpoena duces tecum is limited by CR 26(b), which limits the scope of discovery to information that is "relevant to the subject matter involved in the pending action." A court will properly quash or refuse to issue a subpoena duces tecum that is overly broad or burdensome. *See Eugster v. City of Spokane*, 121 Wn. App. 799, 813-14, 91 P.3d 117 (2004).

Wells Fargo's involvement with the Scarborough Bond Program is not relevant to any issue in this proceeding. This proceeding involves two primary issues: (1) whether the sale and issuance of fully collateralized individual surety bonds, authorized by law and accepted by public entities, requires a certificate of authority issued by the OIC and (2) if so, what is the appropriate monetary penalty. The latter issue depends on sub-issues including whether the OIC has jurisdiction to regulate bonds accepted by the federal government under 48 C.F.R. § 28.203, *et seq.*, for work procured by the government. Wells Fargo acted only as a trustee and bore no risk on any Scarborough bonds. Wells Fargo's role is limited to holding the security interests granted by Scarborough in specific assets and to foreclose on those interests in the event of a default by Scarborough. No default has been declared. While the

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ITRs and agreements executed by Wells Fargo relating to the Scarborough Bond Program may be relevant for discovery purposes, Scarborough has produced those documents, making it unnecessary to burden Wells Fargo with producing those same documents.

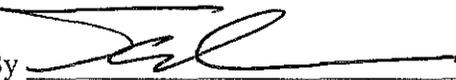
Scarborough further opposes the proposed subpoena duces tecum because it encompasses confidential communications between him and his legal representatives and those of Wells Fargo. "The 'common interest' doctrine provides that when multiple parties share confidential communications pertaining to their common claim or defense, the communications remain privileged as to those outside their group." *Sanders v. State*, 169 Wn.2d 827, 853, 240 P.2d 120 (2010). Confidential communications between Scarborough and Wells Fargo or their legal representatives concerning their common interests as co-defendants in the Clarkston-Skyline litigation fall within the common-interest doctrine and are thus protected from discovery.

IV. CONCLUSION

The presiding officer should decline to issue the proposed subpoena to Wells Fargo because it seeks irrelevant documents and communications protected by the common-interest doctrine.

DATED this 18th day of November, 2013.

CARNEY BADLEY SPELLMAN, P.S.

By 

Timothy J. Parker, WSBA No. 8797
Jason W. Anderson, WSBA No. 30512
Attorneys for Edmund C. Scarborough

RESPONDENT SCARBOROUGH'S
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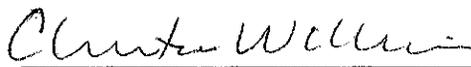
DECLARATION OF SERVICE

I, Christine Williams, under oath hereby declare as follows: I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, and not a party to nor interested in this action. On November 18, 2013, I caused to be delivered via e-mail and U.S. mail a copy of the foregoing document on the following parties at the last known address as stated:

Judge Patricia Petersen – ORIGINAL Chief Hearing Officer Office of the Insurance Commissioner 5000 Capitol Boulevard Tumwater, WA 98501 kellyc@oic.wa.gov	<u>Attorney for OIC</u> Alan Michael Singer, Staff Attorney Legal Affairs Division Office of Insurance Commissioner P.O. Box 40255 Olympia, WA 98504-0255 alans@oic.wa.gov
<u>Attorney for Walter W. Wolf</u> James A. McPhee Workland & Witherspoon, PLLC 601 W Main Avenue, Suite 714 Spokane, WA 99201 jmcphee@workwith.com	<u>Attorneys for Edmund C. Scarborough</u> Michael M. Miles Duane Morris LLP 100 North City Parkway, Suite 1560 Las Vegas, NV 89106-4617 mmmiles@duanemorris.com

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 18th day of November, 2013.



Christine Williams, Legal Assistant

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PAUL D. FETTER
Paul D. Fetter
Chief Hearing Officer

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In re the Matter of

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WALTER W. WOLF,

Respondents.

No. 13-0084

DECLARATION OF EDMUND C.
SCARBOROUGH (*AMENDED*)

EDMUND C. SCARBOROUGH declares:

1. I am over the age of eighteen and competent to testify. I am a resident of the state of Florida.

2. I operate the Scarborough Bond Program, which involves issuance of fully collateralized individual surety bonds. Individual surety bonds are authorized under the Federal Acquisition Regulation and under the laws of many states, including Washington.¹ Corporate surety bonds are often unavailable to smaller contractors, many of which are minority-owned. Individual surety bonds are an alternative to such bonds. The Scarborough Bond Program is designed to meet the strict requirements of the Federal Acquisition Regulation, which requires that individual surety bonds for a federal public works contract be fully collateralized, such as by a security interest granted in property with a value at least equal to the amount of the contract, as verified by the government contracting officer.² I have

¹ See RCW 19.72.020-.040; RCW 39.08.010(4); RCW 48.28.010.

² See 48 C.F.R. §§ 28.203, 28.203-1.

DECLARATION OF EDMUND C.
SCARBOROUGH (*AMENDED*) - 1

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issued individual surety bonds in other jurisdictions for as much as \$16 million. The Scarborough Bond Program is administered by ICBS Fidelity, Inc.

3. This matter arose from a complaint to the Washington Office of Insurance Commissioner (OIC) relating to a performance and payment bond that I issued, together with Walter W. Wolf, to guarantee performance and payment by Skyline Contractors, Inc., under a contract with the City of Clarkston, Washington, for remodeling and construction work on the City of Clarkston Public Safety Building (PSB). Attached as **Exhibit A** is a true and correct copy of the bond with attachments.

4. Bond number SKYLINEPP05112011 was executed by Skyline Contractors, Inc., as principal, by me through my attorney in fact, Steven A. Golia, as an individual surety, and by Mr. Wolf as a second individual surety. The bond documents were dated May 11, 2011, and the performance and payment guarantees were valid for one year with a single limit of \$754,543.09. The performance bond guaranteed performance of the construction contract only and provided no coverage for consequential damages. It allowed filing of claims within two years of the contractor's failure to perform or completion of work, or the surety's refusal to perform its obligations, whichever occurred first. The payment bond guaranteed payment for labor, materials, and equipment furnished for use in the performance of the construction contract. It allowed filing of claims within one year from when notice of a claim was given or from the last date any labor or service was performed or materials or equipment were furnished, whichever occurred first. The City accepted Bond number SKYLINEPP05112011 after what the City's counsel described as "legal review on a number of fronts." Had the City not accepted the bond, I would not have issued it. The terms and conditions of the bond specifically state that the bond is a guarantee and not an insurance policy. Further, by accepting the bond, the City of Clarkston agreed that the assets represented by the Irrevocable

DECLARATION OF EDMUND C.
SCARBOROUGH (AMENDED) - 2

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Trust Receipt (ITR) attached to the bond were the City's exclusive source of funds to pay any available claim under the terms of the bond.

5. The ITR was executed by Wells Fargo Bank Northwest, N.A., as "indenture trustee." The ITR is evidence that I granted to Wells Fargo a first-priority security interest in specific assets, to be foreclosed upon in the event of a default. The specific assets were 23,391.44 gross tons of surface mine tailings at a coal mine owned by me in West Virginia, with a net value of \$829,997.40 after processing costs, or 110% of the amount of the bonds, based on reports of coal spot market prices issued by the United States Department of Energy on the date of bond issuance. If I were to default on a bond obligation, the trustee is authorized to exercise the rights and remedies of a secured party as to the designated assets under the procedure described in the ITR. The City of Clarkston never declared a default on the bond.

6. A dispute arose between the City of Clarkston and Skyline Contractors, which is now in bankruptcy. The City of Clarkston filed suit against Skyline Contractors, alleging that it failed to perform certain items of work on its construction contract and to pay for certain of the labor, materials, and equipment furnished for use in the construction, resulting in claims against the City totaling \$135,215.59, some of which appear to be duplicative. The City also filed suit against me, Mr. Wolf, and Wells Fargo, seeking relief based on the performance and payment bond issued to Skyline Contractors. Skyline Contractors answered the City's suit and filed a counterclaim for damages it alleged were caused by the City. Skyline Contractors further demanded arbitration as provided for in the contract between the City and Skyline Contractors and a moved for a stay of the City's lawsuit. The City has acknowledged that its claim under the payment bond is subject to arbitration. An order was issued staying the lawsuit pending the outcome of the arbitration. The arbitration is being held in abeyance pending action by the bankruptcy trustee. I am ready, willing, and able to

DECLARATION OF EDMUND C.
SCARBOROUGH (*AMENDED*) - 3

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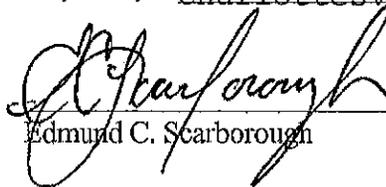
satisfy my obligations, if any, under the bonds issued to Skyline Construction once the disputes are resolved whether by adjudication or settlement.

7. In March 2013, due to the pending claims on the Skyline-Clarkston bond, Mr. Golia executed on my behalf a surety rider extending the bond and ITR through May 2014, for work performed or materials supplied during the period the original bond was effective. Wells Fargo Bank Northwest executed a replacement ITR acknowledging my granting of a security interest in assets of equivalent value to those that secured the original bond. A true and correct copy of the Surety Rider and replacement ITR is attached as **Exhibit B**.

8. I issued a total of 22 bonds in Washington, all during the years 2009-2012. Twelve of those related to work procured by the federal government. Of the remaining 10 bonds, eight related to non-federal public projects (including the Clarkston PSB project discussed above), one project was for Boeing, and one was for a private mining company. All projects are now completed, and except as explained above with respect to the Skyline-Clarkston bond, all bonds and claim-filing periods have expired.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

DATED this 17 day of November, 2013, at Charlottesville, VA.



Edmund C. Scarborough

DECLARATION OF EDMUND C.
SCARBOROUGH (AMENDED) -- 4

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DECLARATION OF SERVICE

I, Christine Williams, under oath hereby declare as follows: I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, and not a party to nor interested in this action. On November 18, 2013, I caused to be delivered via *e-mail and U.S. mail* a copy of the foregoing document on the following parties at the last known address as stated:

Judge Patricia Petersen – ORIGINAL Chief Hearing Officer Office of the Insurance Commissioner 5000 Capitol Boulevard Tumwater, WA 98501 kellyc@oic.wa.gov	<u>Attorney for OIC</u> Alan Michael Singer, Staff Attorney Legal Affairs Division Office of Insurance Commissioner P.O. Box 40255 Olympia, WA 98504-0255 alans@oic.wa.gov
<u>Attorney for Walter W. Wolf</u> James A. McPhee Workland & Witherspoon, PLLC 601 W Main Avenue, Suite 714 Spokane, WA 99201 jmcphee@workwith.com	<u>Attorneys for Edmund C. Scarborough</u> Michael M. Miles Duane Morris LLP 100 North City Parkway, Suite 1560 Las Vegas, NV 89106-4617 mmmiles@duanemorris.com

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 18th day of November, 2013.



Christine Williams, Legal Assistant

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In re the Matter of

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WALTER W. WOLF,

Respondents.

NO. 13-0084

DECLARATION OF ELECTRONIC
SIGNATURE ON DOCUMENT

I, Jason W. Anderson, under penalty of perjury under the laws of the State of Washington declare: I have personally examined the foregoing document consisting of 5 pages; the signature of Edmund C. Scarborough on the foregoing document is a complete and legible image; and it was received by me via email at the following address: anderson@carneylaw.com.

DATED this 18th day of November, 2013.

CARNEY BADLEY SPELLMAN, P.S.

By



Jason W. Anderson, WSBA # 30512
Attorneys for Edmund C. Scarborough

DECLARATION OF ELECTRONIC
SIGNATURE ON DOCUMENT - 1

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Performance Bond

Bond No. SKYLINEPP05112011

CONTRACTOR (Name, Legal Status and Address):

Skyline Contractors, Inc.
12402 N. Division St.
suite 209
Spokane, WA 99218

OWNER (Name, Legal Status and Address):

City of Clarkston
829 5th St., Clarkston, WA
99403

SURETIES (Name, Legal Status and Principal Place of Business):

Edmund Scarborough & Walter W. Wolf, Individual Sureties
944 Glenwood Station Lane 7903 E. Broadway
Suite 104 Spokane Valley, WA 99212
Charlottesville, VA 22901

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contract, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT

Date: April 28, 2011

Amount: \$ 754,543.09

Description (Name and Location):

City of Clarkston Public Safety Building Improvements
at 826, 830, 832, 5th Street, Clarkston, WA

Includes: Base Bid, Bid Item #1, Bid Item #2, Bid Item #3, Bid Item #5

BOND

Date (Not earlier than Construction Contract Date): May 11, 2011

Amount: \$ 754,543.09

Modifications to this Bond: None See Section 13

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company:
Edmund Scarborough, Individual
Surety

Signature: _____

Name and

Title:

(Any additional signatures appear on the last page)

Signature: _____

Name and

Title:

Steven A. Golla,
Attorney in Fact

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

Walter Wolf
Wolf-Majeskey-Rapp, Inc.
7903 E. Broadway Ave.
Spokane Valley, WA 99212

OWNER'S REPRESENTATIVE

(Architect, Engineer or other party):

Jerry Brotnov
Brotnov Architecture & Planning
724 1/2 6th Street, Clarkston, WA 99403

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User Notes:

(1432776290)

§ 1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Section 3.1.

§ 3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

§ 3.1 The Owner has notified the Contractor and the Surety at its address described in Section 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

§ 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Section 3.1; and

§ 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

§ 4 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

§ 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

§ 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner'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 pay to the Owner the amount of damages as described in Section 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; 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:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

§ 5 If the Surety does not proceed as provided in Section 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Section 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

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§ 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

§ 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 4; and

§ 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

§ 8 Section not used.

§ 9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

§ 11 Section not used.

§ 12 DEFINITIONS

§ 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

§ 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

§ 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

§ 13 MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

The fee for this bond is fully earned upon receipt of this instrument by Principal and Oblige. A "Consent of Surety" is required for release of all Progress Payments including retainage. The surety reserves the right to implement Funds Control at its sole discretion, and the Oblige(s) are bound by this condition. This Bond is a guarantee, it is not an insurance policy. Seek qualified and licensed insurance companies for all Workers Compensation and General Liability exposures. Nothing in this performance bond shall be deemed to include coverage for or assurance of payment of delay damages, whether liquidated or actual, or any other form of consequential damages. Such damages are specifically excluded from the scope of this performance bond.

Void without attached IRREVOCABLE TRUST RECEIPT. The Owner agrees that the exclusive source of funds to pay any available claim under the terms of this bond is the assets represented by the attached Irrevocable Trust Receipt. This bond is valid only for one year from the date indicated on its face. Any renewal or extension of that term will be at the sole discretion of the surety upon request of the obligee and subject to payment of additional fees. For

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Labor and Materialmen's Payment Bonds, payment for work performed outside the term of this bond is not protected by this bond.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

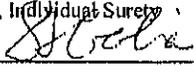
CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

Signature: _____
Name and Title:
Address: 12402 N. Division St., Suite
209
Spokane, WA 99218

SURETY

Company: Edmund Scarborough, Individual Surety

Signature: 
Name and Title: Steven A. Golia, Attorney in Fact
Address: 944 Glenwood Station Lane Suite
104
Charlottesville, VA 22901

SURETY

Company: Walter W. Wolf, Individual Surety

Signature: _____
Name and Title: Walter W. Wolf
Address: 7903 E. Broadway Ave.
Spokane Valley, WA 99212

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Payment Bond

Bond No. SKYLINHP05112011

CONTRACTOR (Name, Legal Status and Address):
 Skyline Contractors, Inc.
 12402 N. Division St.
 Suite 209
 Spokane, WA 99218

SURETIES (Name, Legal Status and Principal Place of Business):
 Edmund Scarborough & Walter W. Wolf, Individual Sureties
 944 Glenwood Station Lane 79013 B. Broadway
 Suite 104 Spokane Valley, WA 99212
 Charlottesville, VA 22901

OWNER (Name, Legal Status and Address):
 City of Clarkston
 829 5th St., Clarkston, WA
 99403

CONSTRUCTION CONTRACT

Date: April 28, 2011
 Amount: \$ 754,543.09

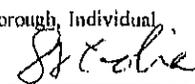
Description (Name and Location):
 City of Clarkston Public Safety Building Improvements
 at 826, 830, 832, 5th Street, Clarkston, WA

Includes: Base Bid, Bid Item #1, Bid Item #2, Bid Item #3, Bid Item #5
BOND

Date (Not earlier than Construction Contract Date): May 11, 2011
 Amount: \$ 754,543.09

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL
 Company: (Corporate Seal)

SURETY
 Company:
 Edmund Scarborough, Individual,
 Surety


Signature: _____
 Name and Title:

Signature: _____
 Name and Title: Steven A. Golia,
 Attorney in Fact

(Any additional signatures appear on the last page)

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:
 Walter Wolf
 Wolf-Majeskey-Rapp, Inc.
 7903 E. Broadway Ave.
 Spokane Valley, WA 99212

OWNER'S REPRESENTATIVE
 (Architect, Engineer or other party):
 Jerry Bratnov
 Bratnov Architecture & Planning
 724 1/2 6th Street, Clarkston, WA 99403

(Row deleted)

ADDITIONS AND DELETIONS:
 The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contract, Surety, Owner or other party shall be considered plural where applicable.

Inlt.

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§ 1 The Contractor and the Surety, jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns to the Owner 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 the Owner, this obligation shall be null and void if the Contractor:

§ 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

§ 2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Section 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

§ 3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

§ 4 The Surety shall have no obligation to Claimants under this Bond until:

§ 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

§ 4.2 Claimants who do not have a direct contract with the Contractor:

- .1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim 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
- .2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
- .3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

§ 5 If a notice required by Section 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

§ 6 When the Claimant has satisfied the conditions of Section 4, the Surety shall promptly and at the Surety's expense take the following actions:

§ 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

§ 6.2 Pay or arrange for payment of any undisputed amounts.

§ 7 The 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 the Surety.

§ 8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses 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.

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§ 10 Section not used.

§ 11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Section 4.1 or Section 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

§ 13 Section not used.

§ 14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 15 DEFINITIONS

§ 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. 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 the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

§ 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

§ 16 MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

The fee for this bond is fully earned upon receipt of this instrument by Principal and Obligor. A "Consent of Surety" is required for release of all Progress Payments including retainage. The surety reserves the right to implement Funds Control at its sole discretion, and the Obligor(s) are bound by this condition. This Bond is a guarantee, it is not an insurance policy. Seek qualified and licensed insurance companies for all Workers Compensation and General Liability exposures. Nothing in this performance bond shall be deemed to include coverage for or assurance of payment of delay damages, whether liquidated or actual, or any other form of consequential damages. Such damages are specifically excluded from the scope of this performance bond.

Void without attached IRREVOCABLE TRUST RECEIPT. The Owner agrees that the exclusive source of funds to pay any available claim under the terms of this bond is the assets represented by the attached Irrevocable Trust Receipt. This bond is valid only for one year from the date indicated on its face. Any renewal or extension of that term will be at the sole discretion of the surety upon request of the obligee and subject to payment of additional fees. For Labor and Materialmen's Payment Bonds, payment for work performed outside the term of this bond is not protected by this bond.

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(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

Signature: _____
Name and Title:

Address: 12402 N. Division St., Suite
209
Spokane, WA 99218

SURETY

Company: Edmund Scarborough, Individual Surety

Signature: _____
Name and Title: Steven A. Golia, Attorney in
Fact

Address: 944 Glenwood Station Lane
Suite 104
Charlottesville, VA 22901

SURETY

Company: Walter W. Wolf, Individual Surety

Signature: _____
Name and Title: Walter W. Wolf
Address: 7903 E. Broadway Ave.
Spokane Valley, WA 99212

init.

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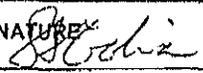
4

**AFFIDAVIT OF INDIVIDUAL SURETY
SCARBOROUGH BOND & GUARANTEE PROGRAM**

I, the undersigned being duly sworn, depose and say that I am one of the sureties to the attached bond, that I am a citizen of the United States (or a permanent resident of the place where the contract and bond are executed), and of full age and legally competent; that I am not a partner in any business of the principal on the Bonds on which I appear as surety, that the information herein below furnished is true and complete to the best of my knowledge. The affidavit is made to induce City of Clarkston to accept me as surety to the attached bond.

- | | |
|---|---|
| 1. Name of Individual Surety
Edmund Scarborough, Individual Surety | 2. Address:
944 Glenwood Station Lane, Suite 104,
Charlottesville, VA 22901 |
| 3. Business Address (No., Street City, State, Zip Code)
944 Glenwood Station Lane, Suite 104,
Charlottesville, VA 22901 | 4. Telephone Numbers:
(434) 974-9777 (Office)
(434) 974-5610 (Fax) |

5. IRREVOCABLE TRUST RECEIPT OF \$754,543.09 from Wells Fargo Bank Northwest, N.A.
Receipt Number: **SKYLINEPP05112011**

6. SIGNATURE 
Steven A. Golia, Attorney in Fact

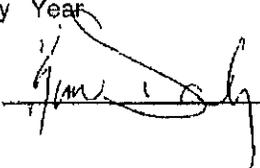
7. CONTRACTOR: Skyline Contractors, Inc.
BOND: SKYLINEPP05112011
BOND NAME: City of Clarkston

PROJECT: City of Clarkston Public Safety Building
Improvements at 826, 830, 832, 5th Street, Clarkston, WA
Includes: Base Bid, Bid Item #1, Bid Item #2, Bid Item #3,
Bid Item #5

Walter W. Wolf, Individual Surety

CONDITIONS ON THE BID BOND and/or PAYMENT & PERFORMANCE BOND and/or MAINTENANCE BOND:

The fee for this bond is fully earned upon receipt of this instrument by Principal and Obligor. A "Consent of Surety" is required for release of all Progress Payments including retainage. The surety reserves the right to implement Funds Control at its sole discretion, and the Obligor(s) are bound by this condition. This Bond is a guarantee, it is not an insurance policy. Seek qualified and licensed insurance companies for all Workers Compensation and General Liability exposures. Nothing in this performance bond shall be deemed to include coverage for or assurance of payment of delay damages, whether liquidated or actual, or any other form of consequential damages. Such damages are specifically excluded from the scope of this performance bond. Void without attached IRREVOCABLE TRUST RECEIPT. The Owner agrees that the exclusive source of funds to pay any available claim under the terms of this bond is the assets represented by the attached Irrevocable Trust Receipt. This bond is valid only for one year from the date indicated on its face. Any renewal or extension of that term will be at the sole discretion of the surety upon request of the obligor and subject to payment of additional fees. For Labor and Materialmen's Payment Bonds, payment for work performed outside the term of this bond is not protected by this bond.

			Subscribed & Sworn to before me
DATE OATH ADMINISTERED May/11/2011 Month Day Year	CITY: Cherry Hill	STATE: New Jersey	NOTARY PUBLIC
SIGNATURE: 	RYAN K. DALY NOTARY PUBLIC OF NEW JERSEY Commission Expires 8/15/2013		

INSTRUCTIONS

1. This form shall be used whenever sureties on hands to execute in connection with Government contracts are individual sureties, as provided in governing regulations (see 41CFR 1-10.203, 1-16.801, 101-45.3). There shall be no deviation from this form except as so authorized (see 41 CFR 1-1.009, 101-1.110).
2. A corporation, partnership, or other business association or firm, as such, will not be accepted as a surety, nor will a partner be accepted as a surety for co-partners or for a firm of which he is a member. Stockholders of a corporation principal may be accepted, as sureties provided their qualifications as such are independent of their qualifications as such are independent of their stockholdings therein. In arriving at the net worth figure in Item 7 on the face of this affidavit an individual surety will not include any financial interest he may have in the assets of the principal on the bond, which this affidavit supports.
3. An individual surety shall be a citizen of the United States, except that if the contract and bond are executed in any foreign country, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam or any other territory or possession of the United States, such surety need only be a permanent resident of the place of execution of the contract and bond.
4. The individual surety shall show net worth in a sum not less than the penalty of the bond by supplying the information required on the Notary Public or some other officer having authority to administer oaths generally. If the officer has an official seal, it shall be affixed; otherwise the proper certification as to his official character shall be furnished.

All claims will be handled thru the offices of The IBCS Group, Inc., the risk management company for Edmund Scarborough, Individual Surety. In order to expedite any and all settlements and claims, please follow the steps below.

- 1) Contact The IBCS Group Inc. immediately for any suspected claims at (434) 974-9777 on the bonded project.
- 2) E-Mail, fax or mail any and all documents pertaining to said claim to: IBCS Group, Inc., 944 Glenwood Station Lane, Suite 104, Charlottesville, VA 22901 and/or
- 3) Jones Day LLP, 555 California Street Suite 2600, San Francisco, CA. 94104, to the attention of:
David Buoncristiani (fax) (415) 875-5700

ORIGINAL E 1110

POWER OF ATTORNEY FOR EDMUND SCARBOROUGH
944 Glenwood Station Lane Suite 104 Charlottesville, VA 22901
www.ibcs.com

KNOW ALL MEN BY THESE PRESENTS that, EDMUND SCARBOROUGH, Individual Surety ("Principal"), hereby makes, constitutes and appoints:

STEVEN A. GOLIA

to be Principal's true and lawful attorney-in-fact ("Attorney-in-Fact"), for him and in his name, place and stead to deliver and acknowledge, for and on behalf of Principal, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as Principal could do, and all of the acts of said Attorney-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

That the signature of the Attorney-in-Fact, either original or facsimile, affixed to any such document relating to the purpose of this Power of Attorney as authorized herein shall be valid and binding upon the Principal with respect to any bond, undertaking or contract of suretyship to which it is attached.

The undersigned hereby ratifies and confirms all that said Attorney-in-Fact shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this Limited Power of Attorney as of this 21 day of Sept., 2010.

By: [Signature]
Edmund Scarborough

Specimen signature of Attorney-in-Fact:
[Signature]
Steven A. Golia

STATE OF VIRGINIA)
COUNTY OF ALBEMARLE)

Be it Known, That on the 21 day of Sept., 2010, before me Cornie F. Souleyrette Notary Public in and for the State of Virginia, duly commissioned and sworn, appeared Ed. Scarborough who executed the within Power of Attorney, and he/she acknowledged the within Power of Attorney to be true and deed.

SWORN TO AND SUBSCRIBED before me this 21 day of Sept., 2010.

[Signature]
SIGNATURE OF NOTARY PUBLIC
Printed Name Cornie F. Souleyrette

Personally Known Produced Identification _____
Type of Identification Produced: _____



"NOTICE: This document is automatically VOIDED if there are any erasures, cross-outs or corrections of any kind."

Edmund Scarborough, Individual Surety

Dedicated Asset Calculation for Bond No. | **SKYLINEPP05112011**

Based on the most current information available from the U.S. Department of Energy, the estimated value of the asset dedicated in connection with this specific surety bond is: **\$829,997.40**

The Trustee has provided the attached Irrevocable Trust Receipt as evidence of the dedicated asset held in trust for the benefit of obligees on this bond. See the attached instrument issued by Wells Fargo Bank Northwest N.A. for further details.

Principal	Skyline Contractors, Inc.
Project Name	City of Clarkston Public Safety Building Improvements
Calculation Date	5/11/2011
Required Guarantee Amount	\$ 754,543.09
1.) Required guarantee amount plus 10%	\$ 829,997.40
2.) Current Coal Spot Price	\$ 78.85
3.) Net Tons Required	\$ 10,526.28
4.) Gross Tons Required (Net Tons, x Two)	21,052.57
5.) Finishing Expense (Number of Gross Tons, x \$4.38)	\$ 92,210.24
6.) Additional Net Tons to Offset Processing Costs	1,169.44
7.) Additional Gross Tons to Defray Processing Costs	2,338.88
8.) Total Tonnage of Coal to be Referenced in ITR	23,391.44
9.) Total Value of Processed Coal Included in Total Tonnage	\$ 922,207.64

Methodology:

- Step 1.) Required bond guarantee amount, plus ten percent additional for benefit of obligee, (Required Guarantee Amount x 1.1)
- Step 2.) "Current Coal Spot Price" is based on information published by the Federal Energy Information Administration on their web site: <http://www.eia.doe.gov/cneaf/coal/page/coalnews/coalmar.htm>
- Step 3.) Tons of processed coal needed to meet 110% of obligation, (Step 1 / Step 2)
- Step 4.) Total tons of unprocessed coal needed to make net tons of processed coal, (Step 3 x two). Two or less gross tons are required to produce one net ton.
- Step 5.) Cost of processing coal to get tonnage in Step 3, (Step 4 x \$4.38)
- Step 6.) Additional net tons to offset processing costs, (Step 5 / Step 2)
- Step 7.) Additional gross tons to defray processing costs, (Step 6 x two). Two or less gross tons are required to produce one net ton.
- Step 8.) Total tonnage of coal to be referenced in the ITR, (Step 4 + Step 7)
- Step 9.) Total value of processed coal included in total tonnage, ((Step 3 + Step 6), x Step 2)

Wells Fargo Bank Northwest, N.A.
Corporate Trust Lease Group

MAC U1228-120
299 South Main Street, 12th Floor
Salt Lake City, UT 84111

Tel: 801 246 5630
Fax: 801 246 5053
www.wellsfargocorptrust.com

Corr-45392

Writers Direct Number:
(801) 246-5828
E-Mail: jonathan.r.warner@wellsfargo.com

May 27, 2011

VIA Fed Ex

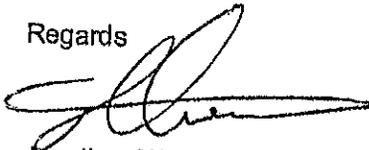
Attn: Ryan Daly
IBCS
1814 Marlton Pike East (Rte 70)
Cherry Hill, NJ 08003

RE: ITR SKYLINEPP05112011

Ryan:

Enclosed please find executed signed ITR referenced above.

Regards



Jonathan Warner
Relationship Specialist

Enclosures

Wells Fargo Bank Northwest, N.A.



EXHIBIT A
Page 13 of 17

IRREVOCABLE TRUST RECEIPT NO. SKYLINEPP05112011

IRREVOCABLE TRUST RECEIPT No. SKYLINEPP05112011, dated as of May 11, 2011 (this "ITR"), of Wells Fargo Bank Northwest, N.A. ("Indenture Trustee").

WITNESSETH:

WHEREAS, the Trust Indenture and Security Agreement (Surety Bond Trust No. 1), dated as of October 29, 2008 (the "Indenture"), between Edmund C. Scarborough, an individual ("Owner"), and Indenture Trustee, provides for the execution and delivery of Irrevocable Trust Receipts, including this Irrevocable Trust Receipt (this "ITR").

WHEREAS, the Indenture relates to the property described in Schedule A hereto and made a part hereof, which property is a portion of the Trust Indenture Estate (as defined in the Indenture).

NOW, THEREFORE, THIS ITR WITNESSETH that, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment by Owner of all amounts payable to or for the benefit of the Beneficiary specified on Schedule A hereto ("Beneficiary") under the Bond specified on Schedule A hereto (the "Bond") outstanding from time to time, and to secure the performance by Owner of its obligations under the Bond (collectively, such amounts and obligations, the "Obligations"), Indenture Trustee hereby, for the benefit and security of Beneficiary respecting the Obligations, confirms that it holds for Beneficiary and its successors and assigns, a first priority security interest in and mortgage and charge on, all of Owner's estate, right, title and interest in and to the following described property, whether now owned or hereafter acquired (other than Excepted Property (as defined in the Indenture):

all of the property described on Schedule A hereto;

all substitutions, renewals or replacements of the property described on Schedule A hereto whether the same are now owned or hereafter acquired by Owner; and

all property insurance proceeds related thereto. This ITR is governed by the laws of the State of Utah.

AND, FURTHER, Indenture Trustee hereby acknowledges that all Property referred to in this ITR is subject to the security interest, and the terms and conditions, of the Indenture. A copy of the Indenture has been given to Beneficiary.

IN WITNESS WHEREOF, Indenture Trustee has caused this ITR to be duly executed on the day and year first above written.

Wells Fargo Bank Northwest, N.A., as
Indenture Trustee

By: 

Name: Alan D. Doty

Title: Assistant Vice President

Address for notices:

MACX: U 1228-120
299 South Main Street, 12th Floor
Salt Lake City, UT 84111
Telecopy No.: (801) 246-5053

SCHEDULE A
to
Irrevocable Trust Receipt No. SKYLINEPP05112011

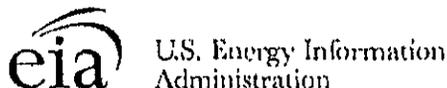
DESCRIPTION OF PROPERTY

Description	Quantity	Location
surface, previously mined, coal	23,391.44 gross tons	that certain 115.4 acre tract in Nicholas County, West Virginia, owned by Owner

Obligee/Beneficiary: City of Clarkston

Obligee/Beneficiary's address for notices: 829 5th St., Clarkston, WA 99403

Bond: **SKYLINEPP05112011**



Home > Coal > Coal News and Markets

Coal News and Markets

Report Released: May 8, 2011
 Next Release Date: May 16, 2011

"Coal News and Markets Report" summarizes spot coal prices by coal commodity regions (i.e., Central Appalachia (CAP), Northern Appalachia (NAP), Illinois Basin (ILB), Power River Basin (PRB), and Uinta Basin (UB)) in the United States. The report includes data on average weekly coal spot market prices, monthly coal production, Eastern coal production trends, and average cost of metallurgical coal at coke plants and export docks. The historical data for coal commodity spot market prices are proprietary and not available for public release.

Average weekly coal commodity spot prices (dollars per short ton)

Previous Coal News and Markets Reports

Week Ended	Central Appalachia 12,500 Btu, 1.2 SO2	Northern Appalachia 13,000 Btu, <3.0 SO2	Illinois Basin 11,800 Btu, 5.0 SO2	Powder River Basin 8,800 Btu, 0.8 SO2	Uinta Basin 11,700 Btu, 0.8 SO2
28-Mar-11	\$75.20	\$76.15	\$47.60	\$13.45	\$41.00
01-Apr-11	\$78.85	\$78.15	\$47.75	\$13.25	\$41.00
08-Apr-11	\$78.85	\$78.15	\$47.75	\$12.75	\$41.00
15-Apr-11	\$78.85	\$78.15	\$47.75	\$12.55	\$41.00
22-Apr-11	\$78.85	\$78.15	\$47.75	\$12.50	\$41.00
29-Apr-11	\$78.85	\$78.15	\$47.75	\$12.45	\$41.00
06-May-11	\$78.85	\$78.15	\$47.75	\$12.35	\$41.00

¹Coal prices shown are for a relatively high-Btu coal selected in each region, for delivery in the "prompt quarter." The prompt quarter is the quarter following the current quarter. For example, from January through March, the 2nd quarter is the prompt quarter. Starting on April 1, July through September define the prompt quarter.
 Source: With permission, selected prices in Plains Coal Outlook, "Weekly Price Survey."
 Note: The historical data file of spot prices is proprietary and cannot be released by EIA; see Coal News and Prices.

- View the Weekly Coal Production Report for the most recent week.
- View the NYMEX Report for the most recent week.
- View the Quarterly Coal Report for the most recent quarter.
- View the most recent issue of the Annual Coal Report.
- View an on-line summary of U.S. Coal Supply and Demand.
- Sign up to automatically receive via Email.

Contact:

Tejasvi Raghuvver
 Phone: 202 - 586 - 8926
 Email: Tejasvi.Raghuvver
 Fax: 202 - 287 - 1944

 ORIGINAL

Edmund Scarborough, Individual Surety
944 Glenwood Station Lane Suite 104
Charlottesville, VA 22901-1480

SURETY RIDER

To be attached to and form a part of Bond Number SKYLINEPP05112011 executed by
Skyline Contractors, Inc.

as Principal and by Edmund Scarborough, Individual Surety, as Surety in favor of the
City of Clarkston, as Oblige and effective as of May 11, 2011.

In consideration of the mutual agreements herein contained, the Principal and Surety
hereby consent to the following changes:

1. Bond Number SKYLINEPP05112011 and the Irrevocable Trust Receipt which
secured the Bond expired on May 11, 2012, pursuant to Section 13 of both the
Performance and Payment Bonds
2. As timely claims were made on Bond Number SKYLINEPP05112011, said Bond
and the Irrevocable Trust Receipt, which secures the above noted Bond, are
hereby extended through May 11, 2014
3. Extension of Bond Number SKYLINEPP05112011 does not cover potential
claims for work performed or materials supplied after May 11, 2012
4. Extension of Bond Number SKYLINEPP05112011 only protects claims timely
and properly brought prior to this Rider being executed
5. This Rider does not support or deny the legitimacy of the various timely claims
made against Bond Number SKYLINEPP05112011
6. Issuance of replacement Irrevocable Trust Receipt SKYLINEPP05112011-2
terminates and replaces ITR SKYLINEPP05112011

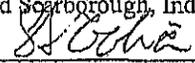
Nothing herein contained shall vary, alter or extend any provision or condition of this
bond except as herein expressly stated.

Signed, sealed & dated on March 12, 2013

Skyline Contractors, Inc., Principal

By: _____

Edmund Scarborough, Individual Surety

By:  _____

Steven Golia, Attorney-in-fact

ORIGINAL
E1255

POWER OF ATTORNEY FOR EDMUND SCARBOROUGH

944 Glenwood Station Lane Suite 100 Charlottesville, VA 22901
www.jeb.com

KNOW ALL MEN BY THESE PRESENTS that EDMUND SCARBOROUGH, Individual Surety (Principal) hereby makes, constitutes and appoints:

STEVEN A. GOLJA

to be Principal's true and lawful attorney-in-fact (Attorney-in-Fact), for him and in his name, place and stead to deliver and acknowledge, for and on behalf of Principal, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as Principal could do, and all of the acts of said Attorney-in-Fact, pursuant to these presents are hereby ratified and confirmed.

That the signature of the Attorney-in-Fact, either original or a similar, affixed to any such document relating to the purpose of this Power of Attorney as authorized herein shall be valid and binding upon the Principal with respect to any bonds, undertakings or contracts of suretyship to which it is attached.

The undersigned hereby ratifies and confirms all that said Attorney-in-Fact shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this Limited Power of Attorney as of this 15th day of January, 2013.

[Signature]
Edmund Scarborough

Signature of Attorney-in-Fact:

[Signature]
Steven A. Golja

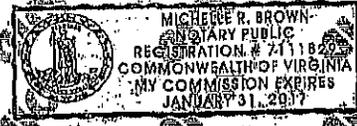
STATE OF VIRGINIA)
COUNTY OF ALBEMARLE)

Be It Known, That on the 15th day of January, 2013, before me, *Michelle Brown*, a Notary Public in and for the State of Virginia, duly commissioned and sworn, appeared *Edmund Scarborough*, personally known to the undersigned Notary Public, who produced the within Power of Attorney, and he acknowledged the within Power of Attorney to be his act and deed.

SWORN TO AND SUBSCRIBED before me this 15th day of January, 2013.

[Signature]
SIGNATURE OF NOTARY PUBLIC
Printed Name: *Michelle Brown*

Personally Known Produced Identification
Type of Identification Produced: _____





Wells Fargo Bank Northwest, N.A.

ORIGINAL
Corporate Trust & Finance Group
MA# 01240-026
260 N. Charles Lindbergh Drive
Salt Lake City, UT 84116-2812

Tel: 801 246 6000
Fax: 801 246 7142
wellsfargo.com/cor/corporate-trust/leas

CORR 45429

Writers Direct Number:
(801) 246-7035
E-Mail jnester@wellsfargo.com

March 12, 2013

VIA FedEx

Steven Golia
112 West End Avenue
Haddonfield NJ, 08033

RE: ITR No. SKYLINEPP05112011-2

Steven,

Enclosed please find the signed above referenced ITR.

Regards,

Johnny Nester
Account Associate

Enclosures

Wells Fargo Bank Northwest, N.A.



 ORIGINAL

IRREVOCABLE TRUST RECEIPT NO. SKYLINEPP05112011-2
(Terminates and replaces ITR No. SKYLINEPP05112011)

IRREVOCABLE TRUST RECEIPT No. SKYLINEPP05112011-2 dated as of
March 11, 2013 (this "ITR"), of Wells Fargo Bank Northwest, N.A. ("Indenture Trustee").

WITNESSETH:

WHEREAS, the Trust Indenture and Security Agreement (Surety Bond Trust No. 2),
dated as of April 16, 2009, as amended (the "Indenture"), between IBCS Mining Inc., Kentucky
Division ("IBCS"), and Indenture Trustee, provides for the execution and delivery of Irrevocable
Trust Receipts, including this Irrevocable Trust Receipt (this "ITR").

WHEREAS, the Indenture relates to the assets described on Schedule A hereto and made
a part hereof, which assets are a portion of the Trust Indenture Estate (as defined in the
Indenture)

NOW, THEREFORE, THIS ITR WITNESSETH that, in consideration of the premises
and other good and valuable consideration, the receipt of which is hereby acknowledged, and in
order to secure the payment by Edmund C. Scarborough ("Surety") of all amounts payable to or
for the benefit of the Beneficiary specified on Schedule A hereto ("Beneficiary") under the Bond
specified on Schedule A hereto (the "Bond") outstanding from time to time, and to secure the
performance by Surety of its obligations under the Bond (collectively, such amounts and
obligations, the "Obligations"), Indenture Trustee hereby, for the benefit and security of
Beneficiary respecting the Obligations, acknowledges that pursuant to the terms of the Indenture,
the Indenture Trustee is granted, for the benefit of Beneficiary and its successors and assigns, a
security interest in all of IBCS's estate, right, title and interest in and to the following described
assets, whether now owned or hereafter acquired (other than Excepted Property as defined in the
Indenture):

the security interest for the allocated assets described on Schedule A hereto;

all substitutions, renewals or replacements of the allocated assets described on
Schedule A hereto whether the same are now owned or hereafter acquired by Owner; and

all property insurance proceeds related thereto.

Any moneys received or held by Indenture Trustee with respect to the allocated
assets described on Schedule A hereto shall be distributed by Indenture Trustee to Beneficiary as
specified in Section 5.03 of the Indenture.

This ITR is governed by the laws of the State of Utah.

AND, FURTHER, Beneficiary (together with all those who may claim by, through or
under Beneficiary) is hereby notified of the terms and conditions of the Indenture, including
Section 7.05 thereof, which reads as follows:

SKYLINEPP05112011-2

 ORIGINAL

Section 7.05 Limitation on Responsibility of Indenture Trustee.

(a) The recitals contained herein shall be taken as the statements of Owner, and Indenture Trustee assumes no responsibility for their correctness. Indenture Trustee makes no representation as to the value or condition of the Trust Indenture Estate or any part thereof, as to the title of Owner thereto or as to the security afforded thereby or hereby, as to the validity or genuineness of any securities at any time pledged or deposited with Indenture Trustee hereunder or as the validity or sufficiency of this Indenture or the Lien created hereunder or any of the Operative Documents. Indenture Trustee shall not be responsible for the performance or nonperformance by Owner under the Bonds.

(b) Indenture Trustee (except in accordance with Section 6.03 or 7.02(b) and subject to Sections 7.02(c) and 7.04) shall have no duty (i) to see to any insurance on the Trust Indenture Estate or to effect or maintain any such insurance, whether or not Owner shall be in default with respect thereto, (ii) to see to the payment or discharge of any tax, assessment or other governmental charge or any Lien owing with respect to or assessed or levied against any of the Trust Indenture Estate, (iii) to inspect the Trust Indenture Estate at any time or ascertain or inquire as to the performance or observance of any of the covenants of Owner with respect to the Trust Indenture Estate, or (v) except as set forth herein, to see to any filing or recording or see to the maintenance of any such filing or recording with any governmental agency or office.

The Indenture contains other disclaimers and limitations of the responsibilities of Indenture Trustee. A copy of the Indenture has been given to Beneficiary. Beneficiary is advised to carefully review the Indenture.

IN WITNESS WHEREOF, Indenture Trustee has caused this ITR to be duly executed on the day and year first above written.

Wells Fargo Bank Northwest, N.A., as
Indenture Trustee

By: 
Name: Alan D. Doty
Title: Assistant Vice President

Address for notices:

MAC: U1240-026
260 North Charles Lindbergh Drive
Salt Lake City, UT 84116
Telecopy No.: (801) 246-7142

 ORIGINAL

SCHEDULE A

To

Irrevocable Trust Receipt No. SKYLINEPP05112011-2

DESCRIPTION OF ALLOCATED ASSETS SUBJECT TO THE ITR

Description	Quantity	Location
Surface, previously mined, coal ¹	29,000.14 gross tons	Those certain six tracts of land in Pike County, Kentucky, owned by Owner (Kentucky Berwind tracts 1006, 1272, 173, 540 1007 and a portion of certain Kentucky Berwind tracts described in Deed Book 607, page 647, of the Pike County Clerk's office)

Obligee/Beneficiary: City of Clarkston -

Obligee/Beneficiary's address for notices: 829 5th St., Clarkston, WA 99403

Bond Number: SKYLINEPP05112011-2

Contract Amount: \$754,543.09

Project: City of Clarkston Public Safety Building Improvements

#11349589_v3

¹ The described collateral is unprocessed waste material, including gob piles, from prior mining operations, and includes coal which is commingled with coarse material and fines.

SKYLINEPP05112011-2

80 ORIGINAL

Edmund Scarborough, Individual Surety

Dedicated Asset Calculation for Bond No. | SKYLINEPP05112011-2

Based on the most current information available from the U.S. Department of Energy, the estimated value of the asset dedicated in connection with this specific surety bond is: \$829,997.40

The Trustee has provided the attached Irrevocable Trust Receipt as evidence of the dedicated asset held in trust for the benefit of obligees on this bond. See the attached instrument issued by Wells Fargo Bank Northwest N.A. for further details.

Principal	Skyline Contractors, Inc.
Project Name	City of Clarkston Public Safety Building Improvements
Calculation Date	3/11/2013
Required Guarantee Amount	\$ 754,543.09
1.) Required guarantee amount plus 10%	\$ 829,997.40
2.) Current Coal Spot Price	\$ 64.96
3.) Net Tons Required	\$ 12,777.05
4.) Gross Tons Required (Net Tons, x Two)	25,554.11
5.) Finishing Expense (Number of Gross Tons, x \$4.38)	\$ 111,926.99
6.) Additional Net Tons to Offset Processing Costs	1,723.01
7.) Additional Gross Tons to Defray Processing Costs	8,446.03
8.) Total Tonnage of Coal to be Referenced in ITR	29,000.14
9.) Total Value of Processed Coal Included in Total Tonnage	\$ 941,924.39

Methodology:

- Step 1.) Required bond guarantee amount, plus ten percent additional for benefit of obligee, (Required Guarantee Amount x 1.1)
- Step 2.) "Current Coal Spot Price" is based on information published by the Federal Energy Information Administration on their web site: <http://www.eia.doe.gov/cneaf/coal/page/coalnews/coalmar.html>
- Step 3.) Tons of processed coal needed to meet 110% of obligation, (Step 1 / Step 2)
- Step 4.) Total tons of unprocessed coal needed to make net tons of processed coal, (Step 3 x two). Two or less gross tons are required to produce one net ton.
- Step 5.) Cost of processing coal to get tonnage in Step 3, (Step 4 x \$4.38)
- Step 6.) Additional net tons to offset processing costs, (Step 5 / Step 2)
- Step 7.) Additional gross tons to defray processing costs, (Step 6 x two). Two or less gross tons are required to produce one net ton.
- Step 8.) Total tonnage of coal to be referenced in the ITR, (Step 4 + Step 7)
- Step 9.) Total value of processed coal included in total tonnage, ((Step 3 + Step 6), x Step 2)



U.S. Energy Information
Administration

Coal

Coal News and Markets

Release Date: March 11, 2013 | Next Release Date: March 18, 2013

"Coal News and Markets Report" summarizes spot coal prices by coal commodity regions (i.e., Central Appalachia (CAP), Northern Appalachia (NAP), Illinois Basin (IB), Powder River Basin (PRB), and Uinta Basin (UB)) in the United States. The report includes data on average weekly coal commodity spot prices, total monthly coal production, eastern monthly coal production, and average cost of metallurgical coal at coke plants and export docks. The historical data for coal commodity spot market prices are proprietary and not available for public release.

Average weekly coal commodity spot prices (dollars per short ton)

Week Ended	Central Appalachia 12,500 Btu, 1.2 SO2	Northern Appalachia 13,000 Btu, <3.0 SO2	Illinois Basin 11,800 Btu, 5.0 SO2	Powder River Basin 8,800 Btu, 0.8 SO2	Uinta Basin 11,700 Btu, 0.8 SO2
08-February-13	\$66.50	\$62.10	\$47.90	\$10.15	\$35.85
15-February-13	\$66.50	\$62.10	\$47.90	\$10.25	\$35.85
22-February-13	\$66.50	\$62.10	\$45.15	\$10.25	\$35.85
01-March-13	\$64.96	\$62.10	\$45.15	\$10.25	\$35.85
08-March-13	\$64.96	\$62.10	\$45.15	\$10.25	\$35.85

Source: With permission, SNL Energy

Note: Coal prices shown are for a relatively high-Btu coal selected in each region, for delivery in the "prompt quarter." The prompt quarter is the quarter following the current quarter. For example, from January through March, the 2nd quarter is the prompt quarter. Starting on April 1, July through September define the prompt quarter. The historical data file of spot prices is proprietary and cannot be released by EIA; see SNL Energy.