

**DOCUMENT VET SHEET**  
for  
**Karen McConnaughay**  
**Chairman, Kane County Board**



Name of Document: Contract  
Branch Court and Conference Center Trade Package, 27A

Submitted by: Jim Hansen -Purchasing

*Master Contract exclusion*

Date Submitted: 03/16/11

Examined by:

KC SHIPNO  
(Print name)

*LOW  
W/PAID*

[Signature]  
(Signature)

3-22-2011  
(Date)

Comments:  
Please have the Chairman sign the attached contract for the Branch Court Project

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Chairman signed:  Yes  No 3-24-11  
(Date)

Document returned to: J. Hansen

*ORIGINAL*

**KANE COUNTY  
OFFER TO CONTRACT FORM  
For  
Branch Court and Conference Center**

**Bid Due Date & Time:** TUESDAY, DECEMBER 21, 2010 AT 11:00 A.M.

To: Kane County Government Center  
Purchasing Department, Bldg A  
719 S. Batavia Ave.  
Geneva, IL 60134

The following offer is hereby made to the County of Kane, Illinois, hereafter called the Owner.

Submitted By:  
Digital Dynamics Corporation

- I. The undersigned Vendor proposes and agrees, after having examined the specifications, quantities and other contract documents, to irrevocably offer to furnish the materials, equipment and services in compliance with all terms, conditions, specifications and amendments contained in the bid solicitation documents. The items in this Invitation to Bid, including, but not limited to, all required certificates, are fully incorporated herein as a material and necessary part of the contract.
  - A. The bidder shall also include with his bid any necessary literature, samples, etc., as required within the Bidding Specifications (Branch Court and Conference Center) Project Manual, Construction Manager's Supplemental Documents and Drawings Dated November 12, 2010 as prepared by Wight and Company and IHC Construction Companies, LLC.
    1. The Vendor has examined the Contractor Disclosure section of the Instruction to Bidders, and has included or provided a certified document listing all cumulative campaign contributions made within the past twelve months, to any current or county-wide elected officer, and ownership interest in entity greater than five percent.
  - B. For purposes of this offer, the terms Offerer, Bidder, Contractor, and Vendor are used interchangeably.
- II. In submitting this Offer, the Vendor acknowledges:
  - A. All bid documents have been examined: Instructions to Bidder, Special Conditions, Division 0-3, 6-10, 21-23, and 26-27 of the Bidding Specifications Project Manual Construction Manager's Supplemental Documents, and Drawings dated November 12, 2010 and the following addenda:  
  
No.1, No.2, No.3, No.4, (Received Via Email and Disc.)

- B. The site and locality has been examined where the Work is to be performed, the legal requirements (federal, state and local laws, ordinances, rules and regulations) and the conditions affecting cost, progress or performance of the Work and has made such independent investigations, as Contractor deems necessary.
- C. To be prepared to execute a contract within the Owner within ten (10) calendar days after acceptance of the bid by the Owner, and furnish a Performance Bond and Labor Material Bond in accordance with the Instruction to Bidders.
- D. The bidder agrees to perform all work with their trades as specified per attached Bidding Specifications (Branch Court and Conference Center) Project Manual, Construction Manager's Supplemental Documents and Drawings Dated November 12, 2010 for the following cost:

III. COST

A – Trade Bids

1. Trade Package 6b General Trades

The Sum of: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

2. Trade Package 9a Metal Studs and Drywall

The Sum of: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

3. Trade Package 9b Acoustical Ceilings

The Sum of: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

4. Trade Package 9c Flooring and Wall Tile

The Sum of: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

5. Trade Package 9d Epoxy Resinous Flooring

The Sum of: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

6. Trade Package 9e Painting

The Sum of: \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

7. Trade Package 27a Low Voltage/Technology **Partial, Excluding Master Antenna**

The Sum of: Two Hundred-Twenty Four Thousand, Seven Hundred Fifty Dollars (\$224,750)  
This includes the extra \$25,000 for changes.

Unit Price 1: State the amount to be added or deducted from the base bid for the following:

Each work area outlet array type including labor, 150' of cabling, faceplate, jacks and other ancillary equipment required for a complete installation.

\_\_\_\_\_ Add or deduct \$180.00/per each

**B - ALTERNATES**

The bidders agrees to add or deduct from the Base Bid sum the following amount to perform the alternate work described in Section 00300 Bid Scope, including all associated costs.

IV. The Contractor guarantees substantial completion work by March 17, 2011 and final completion by March 29, 2011.

V. By signing this Bid, the Offeror hereby certifies that they are not barred from bidding on this contract as a result of a violation of either Section 33E-3 or 33E-4 of the Illinois Criminal Code of 1961, as amended. The awarding of any contract resulting from this Bid will be based upon the funding available to Kane County, which may award all or part of this project. The terms of the Bid and the response shall be incorporated by this reference as though fully set forth into the Contract notwithstanding any language in the contract to the contrary. In the event of any conflict between the terms of the Contract and the terms of the Bid and the response, the terms of the Bid and the response shall govern. Every element or item of the Bid and the response shall be deemed a material and severable item or element of the contract. **THIS SECTION MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE COMPANY OR ENTITY RESPONDING TO THE BID AND THE RESPONSE.**

Signature  Typed Signature Scott D. Florez

Company\_Digital Dynamics Corporation

Address\_23157 S. Thomas Dillon Dr., Suite G, Channahon, IL 60410

Phone # 815-521-0000

Fax # 815-846-2580

Federal I.D./Social Security # 20-2431816

Date 12/6/2010

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#### ACCEPTANCE

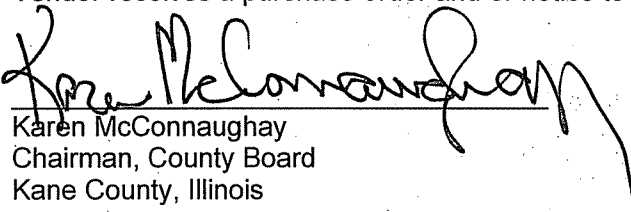
The Offer is hereby accepted for the following services:

- Branch Court and Conference Center

27A PACKAGE

The Vendor is bound to sell the materials and services listed by the attached contract and based upon the Invitation to Bid, including all terms, conditions, specification, amendments, and the Vendor's offer is accepted by the County of Kane.

This contract shall henceforth be referred to as Contract Number 54-010. The Vendor has been cautioned not to commence any billable work or to provide any materials or services until this Vendor receives a purchase order and or notice to proceed.

  
Karen McConnaughay  
Chairman, County Board  
Kane County, Illinois

\_\_\_\_\_  
Date

\_\_\_\_\_  
John A. Cunningham  
Clerk, County Board  
Kane County, Illinois

\_\_\_\_\_  
Date

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID PY  
DIGITA2

DATE (MM/DD/YYYY)  
03/08/11

PRODUCER  HUMBERT INSURANCE AGENCY, LTD. 188 INDUSTRIAL DRIVE STE #430 ELMHURST IL 60126 Phone: 630-279-8300	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED  Digital Dynamics Corp 23157 Thomas Dillon Dr Ste G Channahon IL 60410	INSURER A: <b>General Casualty</b>	18821
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <b>Business Owners</b> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CCS0476731	06/05/10	06/05/11	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 2,000,000 \$ 100,000 \$ 5,000 \$ 2,000,000 \$ 4,000,000 \$ 4,000,000
A	X	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	CBA0694678	06/05/10	06/05/11	COMBINED SINGLE LIMIT (Ea accident)  BODILY INJURY (Per person)  BODILY INJURY (Per accident)  PROPERTY DAMAGE (Per accident)	\$ 1,000,000  \$  \$  \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	NO COVERAGE			AUTO ONLY - EA ACCIDENT  OTHER THAN AUTO ONLY: EA ACC AGG	\$  \$ \$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	CCU0694818	06/05/10	06/05/11	EACH OCCURRENCE AGGREGATE	\$ 5000000 \$ 5000000  \$ \$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	CWC0701171	06/05/10	06/05/11	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input checked="" type="checkbox"/> OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	\$ 1000000 \$ 1000000 \$ 1000000
A		OTHER <b>Business Property</b>	CCS0476731	06/05/10	06/05/11	<b>Property</b>	\$20,000


### DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Project Name: Kane County Randall Road Branch Court and Conference Center.  
 IHC Construction Job Number: 10154.

\*\*See Attached Notes.

### CERTIFICATE HOLDER

### CANCELLATION

KANECO  IHC Construction Companies LLC c/o IHC Certificate Program Assurance Agency, Ltd. 1750 E Golf Rd., Ste 1100 Schaumburg IL 60173	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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**NOTEPAD:**

HOLDER CODE: KANECO  
INSURED'S NAME: Digital Dynamics Corp

DIGITA2  
OP ID PY

PAGE 2  
DATE 03/08/11

Including Kane County, IL, Its members, officers, employees, and agents, Wight Company, members, officers, employees, and agents, and IHC Construction Companies, Its members, officers, employees, and agents, and Wight & Company as Primary/Non-Contributory Additional Insured (per Form CS 1355) as it pertains to the General Liability coverage and for work performed by the Named Insured. The above companies are Additional Insured as it pertains to the Auto Liability coverage. A Waiver of Subrogation applies to the General Liability coverage and Workers Compensation coverage in favor of the Additional Insured's.

# GNA SURETY

## Performance Bond

Bond No. 7' 068693

**CONTRACTOR:**

(Name, legal status and address)  
Digital Dynamics Corporation

Corporation

23157 S. Thomas Dillion Dr., Ste. G  
Channahon, IL 60410

**OWNER:**

(Name, legal status and address)  
County of Kane

Governmental Entity  
719 Franklin Ave.,

Geneva, IL 60134

**CONSTRUCTION CONTRACT**

Date:

Two Hundred Twenty-Four Thousand Seven Hundred Fifty and  
Amount: 00/100  
\$224,750.00

Description:

(Name and location)

Kane County Circuit Court H2c Job #10151 - Trade Package 2Aa-Low Voltage - Technology Work For  
The Branch Court and Conference Center

**SURETY:**

(Name, legal status and principal place  
of business)

WESTERN SURETY COMPANY  
South Dakota Corporation  
333 South Wabash Avenue  
41st Floor  
Chicago, IL 60604

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

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

AIA Document A312-2010  
combines two separate bonds, a  
Performance Bond and a  
Payment Bond, into one form.  
This is not a single combined  
Performance and Payment Bond.

**BOND**

Date: February 25, 2011

(Not earlier than Construction Contract Date)

Two Hundred Twenty-Four Thousand Seven Hundred Fifty and  
Amount: 00/100  
\$224,750.00

Modifications to this Bond:  None

See Section 16

**CONTRACTOR AS PRINCIPAL**

Company: Digital Dynamics Corporation (Corporate Seal)

**SURETY**

Company: WESTERN SURETY COMPANY (Corporate Seal)

Signature: Scott Flores

Name: Scott Flores  
and Title: President

(Any additional signatures appear on the last page of this Performance Bond.)

Signature: Valerie Ann Aker

Name: Valerie Ann Aker  
and Title:

Attorney-in-Fact

(FOR INFORMATION ONLY — Name, address and telephone)

**AGENT or BROKER:**

Worldwide Insurance Specialists, Inc.

2424 W. Missouri Ave.

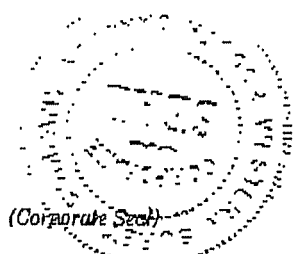
Phoenix, AZ 85015

(602) 749-0702

**OWNER'S REPRESENTATIVE:**

(Architect, Engineer or other party;)

Wight & Company





§ 1 The Contractor and 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 when applicable to participate in a conference as provided in Section 3.

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

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. 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;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 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:

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

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

§ 5.3 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 a 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 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 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, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven 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 5.4, and the Owner refuses the payment 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.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, 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. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .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 5; and
- .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.

§ 9 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 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, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 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 a declaration of 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.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this 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. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 **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.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

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

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company:

*(Corporate Seal)*

Company:

*(Corporate Seal)*

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

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

Name and Title:

Name and Title

Address

Address

**CAUTION:** You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

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*Printed in cooperation with the American Institute of Architects (AIA).*

*The language in this document conforms exactly to the language used in AIA Document A312 - Performance Bond - 2010 Edition.*

# CNA SURETY

## Payment Bond

Bond No. 71068693

### CONTRACTOR:

(Name, legal status and address)  
Digital Dynamics Corporation

Corporation

22157 S. Thomas Dillion Dr., Ste. G  
Channahon, IL 60410

### OWNER:

(Name, legal status and address)  
County of Kane

Governmental Entity  
719 Batavia Ave.,

Geneva, IL 60134

### CONSTRUCTION CONTRACT

Date:

Two Hundred Twenty-Four Thousand Seven Hundred Fifty and

Amount: 00/100

\$224,750.00

Description:

(Name and location)

Kane County Circuit Court HC Job #10154 - Trade Package 2As-Low Voltage - Technology Work for  
The Branch Court and Conference Center

### BOND

Date: February 25, 2011

(Not earlier than Construction Contract Date)

Two Hundred Twenty-Four Thousand Seven Hundred Fifty and

Amount: 00/100

\$224,750.00

Modifications to this Bond:  None

See Section 18

### CONTRACTOR AS PRINCIPAL

Company:  
Digital Dynamics Corporation

(Corporate Seal)

### SURETY

Company:  
WESTERN SURETY COMPANY

(Corporate Seal)

Signature: Scott Flores

Name Scott Flores  
and Title: President

(Any additional signatures appear on the last page of this Payment Bond.)

Signature: Valerie Arn Aber

Name Valerie Arn Aber  
and Title:

Attorney-in-Fact

(FOR INFORMATION ONLY - Name, address and telephone)

### AGENT or BROKER:

Worldwide Insurance Specialists, Inc.

2424 W. Missouri Ave.

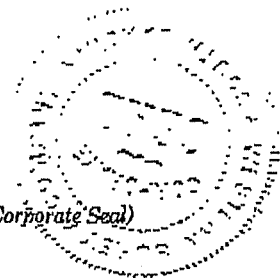
Phoenix, AZ 85015

(602) 749-0702

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party)

Wight & Company



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

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

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

**§ 1** The Contractor and 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, subject to the following terms.

**§ 2** If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

**§ 3** If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

**§ 4** When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

**§ 5** The Surety's obligations to a Claimant under this Bond shall arise after the following:

**§ 5.1** Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

**§ 5.2** Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13)

**§ 6** If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

**§ 7** When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

**§ 7.1** Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

**§ 7.2** Pay or arrange for payment of any undisputed amounts.

**§ 7.3** The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fee the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

**§ 8** The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fee provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

**§ 9** 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 Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

**§ 10** 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 the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

**§ 11** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**§ 12** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, 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.

**§ 13** Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

**§ 14** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this 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. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

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

#### **§ 16 Definitions**

**§ 16.1 Claim.** A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

**§ 16.2 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 Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. 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.

**§ 16.3 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

**§ 16.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

**§ 16.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

**§ 17** If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

**§ 19** Modifications to this bond are as follows:

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

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company:

*(Corporate Seal)*

Company:

*(Corporate Seal)*

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

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

Name and Title:

Name and Title

Address

Address

**CAUTION:** You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

*Printed in cooperation with the American Institute of Architects (AIA).*

*The language in this document conforms exactly to the language used in AIA Document A312 - Payment Bond - 2010 Edition.*





# Western Surety Company

## POWER OF ATTORNEY - CERTIFIED COPY

Bond No. 71068693

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint Valerie Ann Aber

its true and lawful attorney(s)-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, bonds for:

Principal: Digital Dynamics Corporation

Obligee: County of Kane

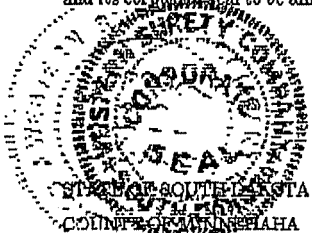
Amount: \$500,000.00

and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the Senior Vice President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorney(s)-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect.

"Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

All authority hereby conferred shall expire and terminate, without notice, unless used before midnight of June 30, 2011, but until such time shall be irrevocable and in full force and effect.

In Witness Whereof, Western Surety Company has caused these presents to be signed by its Senior Vice President, Paul T. Bruffat, and its corporate seal to be affixed this 25th day of February, 2011.



WESTERN SURETY COMPANY  
Paul T. Bruffat  
Paul T. Bruffat, Senior Vice President

On this 25th day of February, in the year 2011, before me, a notary public, personally appeared Paul T. Bruffat, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.



My Commission Expires November 30, 2012

D. Krell  
Notary Public - South Dakota

I the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereunto set my hand and seal of Western Surety Company this 25th day of February, 2011.

WESTERN SURETY COMPANY  
Paul T. Bruffat  
Paul T. Bruffat, Senior Vice President