

# CONSTRUCTION PERFORMANCE BOND

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

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**CONTRACTOR (Name and Address):**

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

**OWNER (Name and Address):**

## CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

## BOND

Date (Not earlier than Construction

Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the following two pages, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

### CONTRACTOR AS PRINCIPAL

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

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

Name and Title:

### SURETY

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

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

Name and Title:  
(Attach Power of Attorney)

Space provided below for signatures of additional parties, if required)

### CONTRACTOR AS PRINCIPAL

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

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

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Name and Title:

\_\_\_\_\_

### SURETY

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

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

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Name and Title:

\_\_\_\_\_

(Attach Power of Attorney)

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 Subparagraph 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 Paragraph 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 Subparagraph 3.1; and
  - 3.3 The OWNER has agreed to pay the Balance of the Contract Price to:
    - 3.3.1 The Surety in accordance with the terms of the Contract;
    - 3.3.2 Another contractor selected pursuant to paragraph 4.3 to perform the Contract.
4. When the OWNER has satisfied the conditions of Paragraph 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 Paragraph 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:
    - 4.4.1. 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
    - 4.4.2. Deny liability in whole or in part and notify the OWNER citing reasons therefor.
5. If the Surety does not proceed as provided in paragraph 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 paragraph 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 paragraph 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:
  - 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 paragraph 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. 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.

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. 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. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

## 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.