

SECTION 00900

PERFORMANCE BOND (FOR PROPOSALS OVER \$ 100,000.00)

KNOW ALL PERSONS BY THESE PRESENTS:

THAT _____
(Name or Contractor)

(Address of Contractor)

a _____, hereinafter called PRINCIPAL, and
(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

a corporate surety duly authorized and admitted to do business in the State of Texas and licensed by the State of Texas to issue surety bonds, hereinafter called SURETY, are held and firmly bound unto, herein after called OWNER, in the total aggregate penal sum of _____ **DOLLARS**

(\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that, whereas PRINCIPAL entered into a certain agreement with OWNER dated the _____ day of _____, 20 _____, a copy of which is hereunto attached and made a part hereof, for the construction of:

NOW, THEREFORE, IF PRINCIPAL shall well, truly, and faithfully perform his duties, all the undertakings, covenants, terms, conditions, and agreements of said CONTRACT and in accordance with the PLANS AND SPECIFICATIONS AND CONTRACT DOCUMENTS during the original term thereof, and any extension thereof which may be granted by OWNER, with or without notice to SURETY, and during the one-year guaranty period, and if PRINCIPAL shall satisfy all claims and demands incurred under such contract shall fully indemnify and save harmless OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay OWNER all outlay and expense which OWNER may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the CONTRACT and CONTRACT DOCUMENTS or to WORK to be performed thereunder or to PLANS AND

SPECIFICATIONS accompanying same shall be any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the CONTRACT, the CONTRACT DOCUMENTS, the WORK, or the PLANS AND SPECIFICATIONS.

PROVIDED, FURTHER, that it is expressly agreed that the BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the CONTRACT, the CONTRACT DOCUMENTS, or the PLANS AND SPECIFICATIONS not increasing the contract price more than twenty percent (20%), so as to bind PRINCIPAL and SURETY to the full and faithful performance of CONTRACT as so amended. The term "amendment", wherever used in this BOND and whether referring to this BOND, the CONTRACT, the CONTRACT DOCUMENTS, or the PLANS AND SPECIFICATIONS, shall include any alteration, addition, extension, or modification of any character what so ever.

PROVIDED, FURTHER, that no final settlement between OWNER and PRINCIPAL shall abridge the right of the other beneficiary hereunder whose claim may be unsatisfied. OWNER is the only beneficiary hereunder.

PROVIDED, FURTHER, that,

- (1) SURETY'S obligation under this BOND shall arise after:
 - (a) OWNER has notified CONTRACTOR and SURETY, at the address shown on the signature page hereof, that OWNER is considering declaring a CONTRACTOR DEFAULT and has requested and attempted to arrange a conference with CONTRACTOR and SURETY to be held not later than fifteen (15) days after receipt of such notice to discuss methods of performing the CONTRACT. If OWNER, CONTRACTOR, and SURETY agree, CONTRACTOR shall be allowed a reasonable time to perform the CONTRACT, but such an agreement shall not waive OWNER'S right, if any, subsequently to declare a CONTRACT DEFAULT; and,
 - (b) OWNER has declared a CONTRACTOR DEFAULT and formally terminated CONTRACTOR'S right to complete the CONTRACT. Such CONTRACTOR DEFAULT shall not be declared earlier than twenty (20) days after CONTRACTOR and SURETY have received notice as provided in Subparagraph (1) (a) ; and,
 - (c) OWNER has agreed to pay the BALANCE OF THE CONTRACT PRICE to SURETY in accordance with the terms of the CONTRACT or to a contractor selected to perform the CONTRACT in accordance with the terms of the contract with OWNER.
2. When OWNER has satisfied the conditions of Paragraph (1), SURETY shall promptly and at the SURETY'S expense take one of the following actions:

- (a) Arrange for CONTRACTOR, with consent of OWNER, to perform and complete the CONTRACT; OR,
 - (b) Undertake to perform and complete the CONTRACT itself, through its agents or through independent contracts; or,
 - (c) Obtain bids or negotiated proposals from qualified contractors acceptable to OWNER for a contract for performance and completion of the CONTRACT, arrange for a contract to be prepared for execution of OWNER and the contractor selected with OWNER'S concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the CONTRACT, and pay to OWNER the amount of damages in excess of the BALANCE OF THE CONTRACT PRICE incurred by OWNER resulting from CONTRACTOR'S default; or,
 - (d) Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
 - (i) After investigation, determine the amount for which it may be liable to OWNER and, as soon as practicable after the amount is determined, tender payment therefore to OWNER; or
 - (ii) Deny liability in whole or in part and notify OWNER citing reasons therefor.
- (3) If SURETY does not proceed as provided in Paragraph (1) with reasonable promptness, SURETY shall be deemed to be in default on this BOND fifteen (15) days after receipt of an additional written notice from OWNER to SURETY demanding that SURETY perform its obligations under this BOND, and OWNER shall be entitled to enforce any remedy available to OWNER. If SURETY proceeds as provided in Subparagraph (2) (d) and OWNER refuses the payment tendered or SURETY has denied liability, in whole or in part, without further notice OWNER shall be entitled to enforce any remedy available to OWNER.
- (4) After OWNER has terminated CONTRACTOR'S right to complete the CONTRACT, and if SURETY elects to act under Subparagraphs (2) (a), (b), or (c) above, then the responsibilities of SURETY to OWNER shall not be greater than those of CONTRACTOR under the CONTRACT, and the responsibilities of OWNER to SURETY shall not be greater than those of the OWNER under the CONTRACT. To the limit of the amount of this BOND, but subject to commitment by OWNER of the BALANCE OF THE CONTRACT PRICE to mitigation of costs and damages on the CONTRACT, SURETY is obligated without duplication for:
- (a) The responsibilities of CONTRACTOR for correction of defective work and completion of the CONTRACT;

- (b) Additional legal, design, professional, and delay costs resulting from CONTRACTOR'S Default, and resulting from the actions or failure to act of SURETY under Paragraph 4; and,
 - (c) Liquidated damages, or if no liquidated damages are specified in the CONTRACT, actual damages caused by delayed performance or non-performance of CONTRACTOR.
- (5) 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 four (4) years after CONTRACTOR DEFAULT or within four (4) years after CONTRACTOR ceased working or within four (4) years after SURETY refuses or fails to perform its obligations under this BOND, whichever occurs last.
- (6) Notice to SURETY, OWNER, or CONTRACTOR shall be mailed or delivered to the address shown on the signature page.
- (7) 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, and provision in this BOND conflicting with said statutory or legal requirement shall be deemed deleted here from, 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.
- (8) Definitions:
 - (a) **BALANCE OF THE CONTRACT PRICE:** The total amount payable by OWNER to CONTRACTOR under the CONTRACT after all proper adjustments have been made, including allowance to CONTRACTOR of any amounts received or to be received by OWNER in settlement of insurance or other claims for damages to which CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of CONTRACTOR under the CONTRACT.
 - (b) **CONTRACT:** The agreement between OWNER and CONTRACTOR identified on the signature page, including all CONTRACT DOCUMENTS, NOTICE TO BIDDERS, GENERAL CONDITIONS, SPECIAL CONDITIONS, SUPPLEMENTAL CONDITIONS, and the PLANS AND SPECIFICATIONS, and changes there to.
 - (c) **CONTRACTOR DEFAULT:** Failure of CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the CONTRACT.

This BOND shall be performed in _____ County, Texas

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this _____ day of _____, 20____.

ATTEST:

Principal

Witness as to Principal

Address

Address

ATTEST:

Surety

BY _____
Attorney-in-fact

Witness to Surety

Address

Approved as to form:

Owner

Date _____

NOTE:

1. Date of BOND must not be prior to date of CONTRACT. If CONTRACTOR is a partnership, all partners should execute BOND.
2. IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Texas.

PAYMENT BOND (FOR PROPOSALS OVER \$ 25,000.00)

KNOW ALL PERSONS BY THESE PRESENTS:

THAT _____
(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called PRINCIPAL, and
(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

a corporate surety duly authorized and admitted to do business in the State of Texas and licensed by the State of Texas to issue surety bonds, hereinafter called SURETY, are held and firmly bound unto, hereinafter called OWNER, and unto all persons, firm, and corporations who or which may furnish materials to perform as described under the CONTRACT and to their successors and assigns in the total aggregate penal sum of _____ DOLLARS (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION is such that, whereas PRINCIPAL entered into a certain agreement with OWNER dated the _____ day of _____, 20 , a copy of which is here into attached and made a part hereof, for the construction of :

NOW, THEREFORE, IF PRINCIPAL shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such CONTRACT and any authorized extensions or modification thereof, including all amounts due for materials, and repair on machinery and equipment, and tools consumed or used in connection with construction of such WORK, and for all labor costs incurred in such WORK including that by a SUBCONTRACTOR, and to any mechanic or materialman lien holder whether he acquired his lien by operation of state or federal law, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to SUBCONTRACTORS, and persons, firms, and corporations having a direct contract with PRINCIPAL or its SUBCONTRACTORS.

PROVIDED, FURTHER, that SURETY, for the value received hereby, stipulated and agrees that no change, extension of time, alteration, or addition to the terms of the CONTRACT, CONTRACT DOCUMENTS, or to WORK to be performed thereunder or to the PLANS AND SPECIFICATIONS accompanying same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the CONTRACT or to the WORK or to the PLANS AND SPECIFICATIONS.

PROVIDED, FURTHER, that any suit or action commenced hereunder by any claimant shall be in accordance with and subject to Texas Revised Civil Statutes, Article 5160.

PROVIDED, FURTHER, that it is expressly agreed that the BOND shall be deemed amended automatically and immediately, without formal and Separate amendments hereto, upon amendment to the CONTRACT not increasing the contract price more than twenty percent (20%), so as to bind PRINCIPAL and SURETY to the full and faithful performance of the CONTRACT as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, the CONTRACT, CONTRACT DOCUMENTS, or the PLANS AND SPECIFICATIONS, shall include any alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between OWNER and CONTRACTOR shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied.

PROVIDED, FURTHER, that:

- (1) Amounts owed by OWNER to CONTRACTOR under the CONTRACT shall be used for the performance of the CONTRACT and to satisfy claims, if any, under any construction performance bond. By CONTRACTOR furnishing and OWNER accepting this BOND, they agree that all funds earned by CONTRACTOR in the performance of the CONTRACT are dedicated to satisfy obligations of CONTRACTOR and SURETY under this BOND, subject to OWNER'S priority to use the funds for the completion of the WORK.
- (2) Notices to SURETY, OWNER, or CONTRACTOR shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by SURETY, OWNER, or CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
- (3) Any provision in this BOND conflicting with statutory or legal requirements shall be deemed deleted here from and provisions confirming 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.

- (4) Upon request by any person or entity appearing to be a potential beneficiary of this BOND, CONTRACTOR shall promptly furnish a copy of this bond or shall permit a copy to be made.

This BOND shall be performed in REAL County, Texas.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20 .

ATTEST:

Principal

Witness as to Principal

Address

Address

ATTEST:

Surety
BY _____
Attorney-in-fact

Witness to Surety

Address

Approved as to form:

Owner

Date _____

1. Date of BOND must not be prior to date of CONTRACT. If CONTRACTOR is a partnership all partners should execute BOND.
2. IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Texas.