

PERFORMANCE BOND

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|---|---|-------------------|--------------------|------------------|--------------|--|--|--|--|
| BOND NO: | DATE BOND EXECUTED: | | | | | | | | |
| <u>PRINCIPAL(S)</u> Legal name(s) | PLAN NAME: PLAN NO.: AGREEMENT DATE: PERFORMANCE DATE: (Agreement Expiration Date) | | | | | | | | |
| <u>SURETY(IES)</u> | <u>AMOUNT OF BOND</u> (IN U.S. DOLLARS) | | | | | | | | |
| | <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Million(s)</td> <td style="width: 25%; text-align: center;">Thousand(s)</td> <td style="width: 25%; text-align: center;">Dollar(s)</td> <td style="width: 25%; text-align: center;">Cents</td> </tr> <tr> <td style="border-top: 1px solid black; border-bottom: 1px solid black;"></td> <td style="border-top: 1px solid black; border-bottom: 1px solid black;"></td> <td style="border-top: 1px solid black; border-bottom: 1px solid black;"></td> <td style="border-top: 1px solid black; border-bottom: 1px solid black;"></td> </tr> </table> | Million(s) | Thousand(s) | Dollar(s) | Cents | | | | |
| Million(s) | Thousand(s) | Dollar(s) | Cents | | | | | | |
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KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety hereto recite and declare that:

1. We are held and firmly bound to the obligee County of York, Virginia (hereinafter called County), in the sum written above in lawful money of the United States of America, to be paid to the County, its successors or assigns, for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by this Bond.

2. The condition of this Bond is that if the Principal shall in every respect perform all of its obligations under the Agreement identified above, which Agreement is incorporated herein by reference, then this bond shall be void; otherwise, the Bond shall continuously remain in full force and effect until discharged in accordance with its terms.

3. Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or to the Work to be performed thereunder, or payment thereunder before the time required therein, or waiver of any provision thereof, or assignment, subletting or transfer thereof or any part thereof, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, addition to the terms of the Agreement or any such payment, waiver, assignment, subcontract or transfer.

4. Default shall be deemed to have occurred on the part of the Principal if Principal shall fail to complete its obligations under the Agreement within the time set forth therein or any extensions thereof; and default shall be deemed to have occurred prior to the expiration of such period if, in the judgment of the County Administrator or his designee, the Principal has:

- (a) abandoned the performance of its obligations under the Agreement; or,
- (b) renounced or repudiated its obligations under the Agreement; or

(c) clearly demonstrated through insolvency, or otherwise, that its obligations under the Agreement cannot be completed within the time allotted under the Agreement.

5. In the event of default by the Principal, as defined in paragraph 4 of this Bond, the Director shall give written notice of such default to the Principal and Surety. In such event, the Surety shall elect either of the following options:

(a) Within 30 days of receipt of the default notice, Surety shall pay over to the County the full face value sum of the Bond or such lesser amount as may be specified by the Director, in his sole discretion, and be relieved of further liability under this Bond. If this option is selected by Surety, the County will take over or relet all or any part of the work required by the Agreement but not completed, and will complete the same to the extent of available funds. The costs and expenses of completing the work shall include all items set forth in Paragraph 6(b) of this Bond. If Bond funds are not sufficient to complete the work, then the County may proceed against the Principal for any difference. If there are any funds left which are not necessary for completion of the work, the County will return this excess to Surety within 30 days after work is completed; or,

(b) Within 30 days of receipt of the default notice, Surety shall give written notice to the County that it will assume the Agreement and the obligations of the Principal and shall complete the Agreement according to its terms and provisions within 180 days of said notice, the time remaining under the Performance Agreement, or such other term as may be approved by Director. In the event that Surety elects this option and then fails to faithfully perform all or any part of the work or should it unnecessarily delay all or any part of the work, then the County may proceed as provided in paragraph 6 of this Bond.

6. Should Surety fail to elect either option in paragraph 5 above within 30 days of receipt of default notice, or having elected option (b), should thereafter fail to perform, then in either event the County may elect among the procedures set forth in this paragraph, in any combination. The County may:

(a) take over or relet all or any part of the work not completed and complete the same for the account and at the expense of the Principal and Surety, who shall be jointly and severally liable to the County for the costs incurred in completion, including all items set forth in paragraph 6 (b) of this Bond as the measure of damages (but not to exceed the amount of Bond in the case of the Surety); the actual cost to obligee as evidenced by the written statement of the Director, shall be conclusive upon Principal and Surety as to the quantum of damages; or

(b) bring suit, action or proceedings to enforce the provisions of this Bond. In such event, it is expressly agreed and understood that, regardless of the date of breach of the underlying Agreement or of the obligations of this bond, the measure of damages recoverable shall be the cost of completion and/or correction of the work required by the Agreement as of the earliest of the following three dates:

(i) when the work is actually completed and/or corrected to local and state approval and acceptance;

- (ii) final judgment of a court of competent jurisdiction;
- (iii) two years from the expiration of the underlying Agreement or last extension thereof.

It is further expressly agreed and understood that the measure of damages shall include in addition to the direct cost of completion or repair, expenses attributable to litigation costs, attorney's fees, procurement costs, and any cost increases arising from delay occasioned by litigation, or other proceedings necessary to enforce the provisions of this Bond, and by delays by Surety under paragraph 5 (b) of this Bond.

7. In any action or proceeding initiated in connection with this Bond, and any and all obligations arising hereunder, the venue shall be the County of York, Commonwealth of Virginia.

8. If any one or more of the provisions of this bond are determined to be illegal or unenforceable by the court of competent jurisdiction, all other provisions shall remain effective.

9. Whenever notice is required, it shall be deemed given if mailed registered, return receipt requested, in the names and to the addresses given below; provided, however, that notice of change of address shall be effective if given in accordance with this paragraph. Any notice to the County shall be so given to the County Administrator, P. O. Box 532, Yorktown, Virginia, 23690, or subsequent address notice of which is given as provided herein.

IN WITNESS WHEREOF, the parties hereto have caused this Bond Agreement to be executed as of the day and year set forth above.

Bond No. _____

PRINCIPAL

Type of organization:
(e.g., corporation, partnership, limited liability company, etc.)

State of incorporation:

Legal Name and Address:

_____ (SEAL)

Signature(s):

By: _____

_____ Title

_____ Phone #

ACKNOWLEDGMENT OF PRINCIPAL

STATE OF _____

CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____.
(name of person signing above and title)

Notary Public

My commission expires: _____

CORPORATE SURETY

State of Incorporation:

Legal Name and Address:

_____ (SEAL)

Signature(s):

By: _____

Name

Title

ACKNOWLEDGMENT OF CORPORATE SURETY

STATE OF _____

CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____.
(name of person signing above and title)

Notary Public

My commission expires: _____

Attach valid Power of Attorney