

DOCUMENT 00610

CONSTRUCTION PERFORMANCE BOND

THIS CONSTRUCTION PERFORMANCE BOND ("Bond") is dated _____, is in the penal sum of _____ [which is one hundred percent of the Contract Price], and is entered into by and between the parties listed below to ensure the faithful performance of the Construction Contract listed below. This Bond consists of this page and the Bond Terms and Conditions, paragraphs 1 through 12, attached to this page. Any singular reference to _____ ("Contractor"), _____ ("Surety"), San Mateo County Community College District ("District") or other party shall be considered plural where applicable.

CONTRACTOR:

Name

Address

City/State/Zip

SURETY:

Name

Principal Place of Business

City/State/Zip

CONSTRUCTION CONTRACT:

THE [_____] PROJECT
BID NUMBER [____]

at San Mateo, California.

DATED _____, 20____ in the Amount of \$ _____ (the "Penal Sum")

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp. Seal)

Signature: _____

Signature: _____

Name and Title: _____

Name and Title: _____

BOND TERMS AND CONDITIONS

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to District for the complete and proper performance of the Construction Contract, which is incorporated herein by reference.
2. If Contractor completely and properly performs all of its obligations under the Construction Contract, Surety and Contractor shall have no obligation under this Bond.
3. If there is no District Default, Surety's obligation under this Bond shall arise after:
 - 3.1 District has declared a Contractor Default under the Construction Contract pursuant to the terms of the Construction Contract; and
 - 3.2 District has agreed to pay the Balance of the Contract Sum:

- 3.2.1 To Surety in accordance with the terms of this Bond and the Construction Contract; or
 - 3.2.2 To a contractor selected to perform the Construction Contract in accordance with the terms of this Bond and the Construction Contract.
4. When District has satisfied the conditions of paragraph 3, Surety shall promptly (within 30 days) and at Surety's expense elect to take one of the following actions:
- 4.1 Arrange for Contractor, with consent of District, to perform and complete the Construction Contract (but District may withhold consent, in which case the Surety must elect an option described in paragraphs 4.2, 4.3 or 4.4, below); or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; provided, that Surety may not select Contractor as its agent or independent contractor without District's consent; or
 - 4.3 Undertake to perform and complete the Construction Contract by obtaining bids from qualified contractors acceptable to District for a contract for performance and completion of the Construction Contract, and, upon determination by District of the lowest responsible bidder, arrange for a contract to be prepared for execution by District and the contractor selected with District'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, if Surety's obligations defined in paragraph 6, below, exceed the Balance of the Contract Sum, then Surety shall pay to District the amount of such excess; 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, and, after investigation and consultation with District, determine in good faith its monetary obligation to District under paragraph 6, below, for the performance and completion of the Construction Contract and, as soon as practicable after the amount is determined, tender payment therefore to District with full explanation of the payment's calculation. If District accepts Surety's tender under this paragraph 4.4, District may still hold Surety liable for future damages then unknown or unliquidated resulting from the Contractor Default. If District disputes the amount of Surety's tender under this paragraph 4.4, District may exercise all remedies available to it at law to enforce Surety's liability under paragraph 6, below.
5. If Surety does not proceed as provided in paragraph 4, above, then Surety shall be deemed to be in default on this Bond ten days after receipt of an additional written notice from District to Surety demanding that Surety perform its obligations under this Bond. At all times District shall be entitled to enforce any remedy available to District at law or under the Construction Contract including, without limitation, and by way of example only, rights to perform work, protect work, mitigate damages, advance critical work to mitigate schedule delay, or coordinate work with other consultants or contractors.
6. Surety's monetary obligation under this Bond is limited by the Amount of this Bond identified herein as the Penal Sum. This monetary obligation shall augment the Balance of the Contract Sum. Subject to these limits, Surety's obligations under this Bond are commensurate with the obligations of Contractor under the Construction Contract. Surety's obligations shall include, but are not limited to:
- 6.1 The responsibilities of Contractor under the Construction Contract for completion of the Construction Contract and correction of defective work;
 - 6.2 The responsibilities of Contractor under the Construction Contract to pay liquidated damages, and for damages for which no liquidated damages are specified in the Construction Contract, actual damages caused by non-performance of the Construction Contract including, but not limited to, all valid and proper back charges, offsets, payments, indemnities, or other damages;

- 6.3 Additional legal, design professional and delay costs resulting from Contractor Default or resulting from the actions or failure to act of the Surety under paragraph 4, above (but excluding attorney's fees incurred to enforce this Bond).
7. No right of action shall accrue on this Bond to any person or entity other than District or its successors or assigns.
8. Surety hereby waives notice of any change, alteration or addition to the Construction Contract or to related subcontracts, purchase orders and other obligations, including changes of time. Surety consents to all terms of the Construction Contract, including provisions on changes to the Contract. No extension of time, change, alteration, modification, deletion, or addition to the Contract Documents, or of the work required there under, shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond.
9. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between District and Contractor regarding the Construction Contract, or in the courts of the County of San Mateo, or in a court of competent jurisdiction in the location in which the work is located. Communications from District to Surety under paragraph 3.1 of this Bond shall be deemed to include the necessary agreements under paragraph 3.2 of this Bond unless expressly stated otherwise.
10. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to District shall be mailed or delivered as provided in Document 00520 (Agreement). Actual receipt of notice by Surety, District or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
11. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted here from and provisions conforming to such statutory requirement shall be deemed incorporated herein.
12. Definitions.
 - 12.1 Balance of the Contract Sum: The total amount payable by District to Contractor pursuant to the terms of the Construction Contract after all proper adjustments have been made under the Construction Contract, for example, deductions for progress payments made, and increases/decreases for approved modifications to the Construction Contract.
 - 12.2 Construction Contract: The agreement between District and Contractor identified on the signature page of this Bond, including all Contract Documents and changes thereto.
 - 12.3 Contractor Default: Material failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract including, but not limited to, "default" or any other condition allowing a termination for cause as provided in Document 00700 (General Conditions).
 - 12.4 District Default: Material failure of District, which has neither been remedied nor waived, to pay Contractor progress payments due under the Construction Contract or to perform other material terms of the Construction Contract, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Construction Contract.

END OF DOCUMENT