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**ConsensusDocs® 261**

**PAYMENT BOND**

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**EMBEDDED INSTRUCTIONS** are provided to help you complete the document. To display or hide instructions select the “¶” button under the “Home” tab to show all formatting marks. Instruction boxes are color coded as follows:

**Red Boxes**: Instructions for fields that are typically required to complete contract.

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**Green Boxes**: Provide general instructions or ConsensusDocs Coalition Guidebook comments, which can be found at [www.ConsensusDocs.org/guidebook](http://www.ConsensusDocs.org/guidebook).

**ENDORSEMENT**.This document was developed through a collaborative effort of organizations representing a wide cross-section of the design and construction industry. The organizations endorsing this document believe it represents a fair allocation of risk and responsibilities of all project participants.

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Blanks embedded in the text indicate provisions that must be filled in by parties.

Any of the text in this electronic document may be edited or excluded from the final contract. New paragraphs may be added, and text may be inserted into standard paragraphs. Supplemental conditions-provisions added to the printed agreement-may also be adopted by reference. It is always best for supplements to be attached to the Agreement, and it is a good practice for both parties to sign and date all supplements.

Fill in the legal names of the Owner (Obligee) and Contractor (Principal). Provide the date of the Contract between the Owner and the Contractor. Fill in the name of the Project.

("Owner") and ("Constructor") have entered into a Contract ("Contract") dated for (the "Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

Fill in the legal name of Surety. Note that the name of the Surety is not the name of surety agent. Provide the amount (the “Bond Sum”), stated in both numerals and words, for which the Contractor and the Surety will be obligated.

By virtue of this Bond, Constructor as Principal and as Surety ("Surety"), are bound to Owner as Obligee in the maximum amount of dollars ($) ("Bond Sum"). Constructor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided in this Bond. Surety represents that its company is lawfully authorized to conduct surety business and has obtained a certificate of authority as an insurer in the jurisdiction of the project.

1. GENERAL CONDITIONS If Constructor promptly makes payment for all labor, materials, and equipment furnished for use in the performance of the work required by the Contract, Surety's obligations pursuant to this Bond are null and void. Otherwise, Surety's obligations remain in full force and effect. Surety waives any requirement to be notified of any change, alteration, or extensions of time made by Owner in the Contract subject to §3.
2. SURETY OBLIGATION A “Claimant” is an individual or entity having a direct contract with Constructor or having a contract with a subcontractor having a direct contract with Constructor to furnish labor, materials, or equipment for use in the performance of the work. A Claimant may have a right of action on this Bond if Claimant has not received full payment and ninety (90) Days have expired from when Claimant last provided or performed work or labor, or furnished the last of the materials for which said claim is made. Surety's aggregate obligation to the Claimant(s) shall not exceed the Bond Sum.
3. The Bond Sum shall automatically increase with additive change orders issued to the Contract; provided, however, that the initial Bond Sum shall not increase more than percent in the aggregate absent Surety's written consent. If a percentage is not indicated in the preceding sentence, then the Bond Sum increase threshold to require Surety’s written consent shall be twenty-five (25) percent. Surety's refusal to consent to an increase in the Bond Sum above the threshold is not a breach of this Bond.
4. LIMITATION OF ACTION No suit or action shall be commenced on this Bond by any Claimant:
5. Unless Claimant, other than one having a direct contract with Constructor, shall have given written notice to Constructor, Owner and Surety within ninety (90) Days after the Claimant provided or performed the last of the work or labor, or furnished the last of the materials for which the claim is made, stating with substantial accuracy the amount claimed and the name to whom the materials were furnished, or for whom the work or labor was provided or performed. Notice shall be served by any means which provides written third-party verification of delivery to Constructor, Owner, and Surety at any place within the United States it maintains an office or conducts business, or served in any manner in which legal process may be served in the Project location.
6. One year after Claimant last performed labor or furnished materials or equipment on the Project. If this provision is prohibited by law, the minimum period of limitation available to sureties in the jurisdiction shall be applicable.
7. Other than in any court of competent jurisdiction in the Project location.
8. NOTICE Notice to Surety regarding a claim shall be to the following address [\_\_\_\_], unless such address is changed in writing. Otherwise, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

This Bond is entered into as of .

SURETY

BY: NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WITNESS: NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In the blanks, provide the date of the bond in the space provided after Article 4 and before the signatures. Fill in the company name of the Surety after “SURETY”. The corporate seal should be affixed. The signature of the person representing the firm should be placed on the line entitled “By”. Below the signature line, enter the name of the person who placed their signature on the signature line. Enter the business title of the person who placed their signature on the signature line. It is most important that the Surety’s Power of Attorney be attached. The signature of the witness should be placed on the line entitled “Witness”.

In the blanks below, fill in the company name of the Contractor after “Contractor”. The corporate seal should be affixed. The signature of the person representing the firm should be placed on the line entitled “By”. Enter the person’s name who placed their signature on the signature line. Enter the business title of the person who placed their signature on the signature line. The signature of the witness to the signature of the Contractor should be placed on the line entitled “Witness”. Additional witness signatures, if any, should be included on an attached sheet and this fact should be noted at the end of this line or in a paragraph below.

CONSTRUCTOR

BY: NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WITNESS: NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

END OF DOCUMENT.