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**ConsensusDocs® 260**

**PERFORMANCE BOND**

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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.

The Owner,, ( "Owner") and Constructor, , ("Constructor") have entered into a Contract (the "Contract") dated for ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond"). Constructor may also be referenced as the Contractor or General Contractor in the Contract Documents.

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 Arabic numerals and words, for which the Contractor and the Surety will be obligated.

By virtue of this Bond, the Constructor as Principal and as Surety ("Surety"), are bound to the 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 It is the condition of this Bond that if Constructor performs its Contract obligations ("Work"), Surety's obligations under this Bond are null and void. Otherwise, Surety's obligations shall remain in full force and effect. Subject to §2, Surety agrees that no change, alteration, or extension of time of the Contract shall affect its obligations under this Bond. Surety waives any requirement to be notified of any such change, alteration, or extension of time made by Owner in the Contract. Owner may not invoke the provisions of this Bond unless the Owner has performed its obligations pursuant to the Contract. Upon making a demand on this Bond, and upon election by Surety to remedy a default by the Constructor pursuant to §3, Owner shall make the total amount payable by Owner to Constructor pursuant to the Contract less amounts properly paid by Owner to Constructor (“Contract Balance”) available to Surety for completion of the Work.
2. 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 the 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 above the threshold in the Bond Sum is not a breach of this Bond.
3. SURETY OBLIGATIONS If Owner has declared the Constructor in default and Owner has provided written notice of such declaration of default to Surety at the address set forth in §5, Surety shall after receiving notice immediately commence an independent investigation of the default. Such investigation shall be completed within [\_\_] Days. If nothing is indicated above the timeframe shall be thirty (30) Days. In the event Surety determines that (a) Constructor is in default, (b) Owner is not in default, and (c) after Owner terminates Constructor for cause, Surety shall:
	1. Complete the Work, with the consent of Owner, through Constructor;
	2. Enter into a takeover agreement with the Owner to undertake Contract Work completion;
	3. Arrange for the completion of the Work by a contractor acceptable to Owner and secured by performance and payment bonds equivalent to those for the Contract issued by a qualified surety. Surety shall make available as the Work progresses sufficient funds to pay the cost of completion of the Work less the Contract Balance up to the Bond Sum; or
	4. Waive its right to complete the Work and reimburse Owner the amount of its reasonable costs, not to exceed the Bond Sum, to complete the Work less the Contract Balance.

4. DISPUTE RESOLUTION Any dispute pursuant to this Bond shall be instituted in any court of competent jurisdiction in the Project location and commenced within two years after termination of Constructor or Substantial Completion of the Work, whichever occurs first. If this provision is prohibited by law, the minimum period of limitation available to sureties in the jurisdiction shall be applicable.

5. NOTICE Notice to Surety regarding termination or a declaration of default 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.

Provide the date of the bond in the space provided after Article 3 and before the signatures. Fill in the company name of the Surety after “SURETY” (the corporate seal should be affixed). Include 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”.

This Bond is entered into as of .

SURETY

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

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

Fill in the company name of the Contractor after “Contractor” (the corporate seal should be affixed). Include 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.