

CONTRACT FORMS for CONSTRUCTION

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we:

\_\_\_\_\_ as Principal,  
(Legal title of the Contractor)

\_\_\_\_\_  
(Street, City, State, Zip Code)

and \_\_\_\_\_ as Surety,  
(Legal title of the Surety)

\_\_\_\_\_  
(Street, City, State, Zip Code)

are held and firmly bound unto the Dormitory Authority, 515 Broadway, Albany, New York 12207, as Oblige, hereinafter called the Owner, for the use and benefit of the claimants as hereinbelow defined, in the amount of:

\_\_\_\_\_ Dollars  
\_\_\_\_\_  
( )  
\_\_\_\_\_

WHEREAS, CONTRACTOR, has by written Agreement dated \_\_\_\_\_

entered into a Contract with the Owner for:

\_\_\_\_\_  
(Title of Project)

in accordance with the Contract Documents and any changes thereto, which are made a part hereof, and are hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise such obligation shall remain in full force and effect, subject, however, to the following conditions:

- A. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
- B. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this Payment Bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.
- C. No suit or action shall be commenced hereunder by any claimant:

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1. Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to the Principal above named, within one hundred twenty (120) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where the Principal maintains an office or regularly conducts the Principal's business, or at Principal's residence or served on Principal in any manner in which legal process may be served in the State of New York.
2. Except as provided in section 220-g of the New York State Labor Law, after the expiration of one (1) year following the date on which the public improvement has been Completed and Accepted by the Owner; however, if any limitation embodied in this Payment Bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
3. Other than in a New York State court of competent jurisdiction in and for the county in which the Contract, or any part thereof, was to be performed, or in the United States District Court for the district in which the Contract, or any part thereof, was to be performed, and not elsewhere.

D. The penal sum of this Payment Bond is in addition to any other bond furnished by the Contractor and in no way shall be impaired or affected by any other bond.

E. The amount of this Payment Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

IN THE PRESENCE OF:

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number & FAX Number)

\_\_\_\_\_  
(Phone Number & FAX Number)

\_\_\_\_\_  
(Email Address)

\_\_\_\_\_  
(Email Address)

CONTRACT FORMS for CONSTRUCTION

PAYMENT BOND

ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING PAYMENT BOND  
IF A CORPORATION

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_, before me personally came \_\_\_\_\_,  
to me known, who, being by me duly sworn, did depose and say that he/she resides at:

\_\_\_\_\_ (street, city, state, zip code)

that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the  
corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by  
authority of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING PAYMENT BOND  
IF A PARTNERSHIP, LIMITED LIABILITY COMPANY OR INDIVIDUAL

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_, before me, the undersigned, a Notary Public in and for said  
State, personally appeared \_\_\_\_\_, personally known or proved to me  
on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their  
signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed  
the instrument.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENT OF SURETY

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_, before me personally came \_\_\_\_\_,  
to me known, who, being by me duly sworn, did depose and say that he/she resides at:

\_\_\_\_\_ (street, city, state, zip code)

that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the  
corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by  
authority of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

CONTRACT FORMS for CONSTRUCTION

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we:

\_\_\_\_\_ as  
Principal,  
(Legal title of the Contractor)

\_\_\_\_\_  
(Street, City, State, Zip Code)

and \_\_\_\_\_ as Surety,  
(Legal title of the Surety)

\_\_\_\_\_  
(Street, City, State, Zip Code)

are held and firmly bound unto the Dormitory Authority, 515 Broadway, Albany, New York 12207, as Obligee, hereinafter called the Owner, in the amount of:

\_\_\_\_\_ Dollars  
(Written Dollar Amount)

\_\_\_\_\_ ()  
(Figure Dollar Amount)

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR, has by written agreement dated \_\_\_\_\_

entered into a Contract with the Owner for:

\_\_\_\_\_  
(Title of Project)

in accordance with the Contract Documents and any changes thereto, which are made a part hereof, and are hereinafter referred to as the Contract.

- A. If the Contractor well and fully performs the Contract, the Surety and the Contractor shall have no obligation under this Performance Bond, except to participate in conferences as provided in paragraph B1.
- B. If there is no Owner Default, the Surety's obligation under this Performance Bond shall arise after:
  - 1. The Owner has notified the Contractor and Surety that the Owner is considering declaring a Contractor Default; and
  - 2. The Owner has declared a Contractor Default.

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### PERFORMANCE BOND

- C. When the Owner has satisfied the conditions of paragraph B, the Surety shall, at the Owner's option, and at the Surety's expense take one the following actions within twenty (20) days after written notice is sent by the Owner to the Surety declaring a Contractor Default:
1. Arrange for the Contractor, with consent of the Owner, to perform and complete the Contract.
  2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors.
  3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Payment Bond and Performance Bond issued on the Contract, with a contract price between the Owner and contractor equal to the Balance of the Contract Price, and pay to the Owner the amount of damages as described in paragraph E in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor Default.
  4. Tender to the Owner the amount of this Performance Bond.
- D. If the Surety does not proceed within the time prescribed in paragraph C , the Surety shall be deemed to be in default on this Performance Bond, and the Owner shall be entitled to enforce any remedy available to the Owner.
- E. After the Owner has declared a Contractor Default, and when the Surety acts under paragraph C1, C2, or C3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Contract. When the Surety acts under paragraph C1, C2 or C3 above, the Owner will agree to pay the Balance of the Contract Price to the Surety in accordance with and subject to the terms of the Contract or to a contractor selected to perform and complete the Contract in accordance with and subject to the terms of the contract between the Owner and contractor. When the Surety acts under paragraph C1 or C2 above, the Surety's obligation to perform and complete the Contract is not limited by the amount of this Performance Bond and the Balance of the Contract Price. When the Surety acts under paragraph C1, C2 or C3 above or fails to act under paragraph C, the Surety, in addition to its other obligations, is obligated without duplication for:
1. Additional legal, Design Professional, Consultant and delay costs resulting from the Contractor Default, or resulting from the actions or failure to act of the Surety under paragraph C.
  2. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages for loss of beneficial use of the Work caused by delayed performance or non-performance of the Contractor.
- F. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Performance Bond to any person or entity other than the Owner or its successors or assigns.
- G. This Performance Bond and the Surety's obligations shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the Contract or the Work to be performed thereunder, or by the payment thereunder before the time required therein, or by any waiver of any provision or condition precedent or subsequent thereof, or by settlement or compromise of any claim or dispute related there to, or by assignment, subcontract or other transfer of the Work or any part thereof, or of any monies due or to become due thereunder; and the Surety hereby waives notice of any

## CONTRACT FORMS for CONSTRUCTION

### PERFORMANCE BOND

and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers.

- H. Any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to the Surety as though done or omitted to be done by or in relation to the Principal.
- I. The obligations of the Surety under this Performance Bond shall be in no way impaired or affected by any winding up, insolvency, bankruptcy, or reorganization of the Principal or by any other rearrangement of the Principal for the benefit of creditors.
- J. The Owner's acceptance of this Performance Bond shall in no way, for any purpose, limit or be claimed to limit the liability of the Principal under the Contract, but such liability shall remain in all respects to the same extent as is provided for in the Contract.
- K. Notice to the Surety and the Contractor shall be mailed or delivered to the address shown on the signature page. Notice to the Owner shall be mailed or delivered to the address shown in the preamble.
- L. Definitions:
  - 1. **Balance of the Contract Price** - The total amount payable by the Owner to the Contractor under the Contract after all proper adjustments (increases and reductions) allowed by the Contract have been made, including, but not limited to, allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Contract.
  - 2. **Contract** - The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents as defined in the General Conditions of the Contract and all changes, modifications, amendments, additions, and alterations thereto after the date of this Performance Bond.
  - 3. **Contractor Default** - Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
  - 4. **Owner Default** - Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Contract or to perform and complete or comply with the other material terms thereof.
- M. The penal sum of this Performance Bond is in addition to any other bond furnished by the Contractor and in no way shall be impaired or affected by any other bond.

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N. Any suit under this Performance Bond must be instituted before the expiration of two (2) years from the date on which Final Payment is made under this Contract.

Signed as of this \_\_\_ day of \_\_\_\_\_ 20\_\_

IN THE PRESENCE OF:

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number & FAX Number)

\_\_\_\_\_  
(Phone Number & FAX Number)

\_\_\_\_\_  
(Email Address)

\_\_\_\_\_  
(Email Address)

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PERFORMANCE BOND

ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING PERFORMANCE BOND  
IF A CORPORATION

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_, before me personally came \_\_\_\_\_,  
to me known, who, being by me duly sworn, did depose and say that he/she resides at:

\_\_\_\_\_  
(street, city, state, zip code)

that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the  
corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by  
authority of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING PERFORMANCE BOND  
IF A PARTNERSHIP, LIMITED LIABILITY COMPANY OR INDIVIDUAL

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_, before me, the undersigned, a Notary Public in and for said  
State, personally appeared \_\_\_\_\_, personally known or proved to me  
on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their  
signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed  
the instrument.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENT OF SURETY

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_, before me personally came \_\_\_\_\_,  
to me known, who, being by me duly sworn, did depose and say that he/she resides at:

\_\_\_\_\_  
(street, city, state, zip code)

that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the  
corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by  
authority of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public