

PERFORMANCE BOND

A performance bond is required on the following contracts for construction or facility improvements:

--If the borrower is a public body and the contract exceeds \$100,000, the form is required.

--If the borrower is not a public body and the contract exceeds \$100,000, the form is required.

If a performance bond is not required, a borrower may nevertheless elect to use a performance bond in order to obtain the protections and benefits afforded under state law.

Procedure Reference: RUS Instruction 1780, §§ 1780.61 and 1780.75

Prepared by: _____

Number of Copies: Multiple originals may be created.

Signatures Required: Multiple originals may be created. All must be signed by contractor, surety and borrower.

Distribution: One original is placed in the borrower's loan file after it has been signed. Other originals or copies to borrower and contractor.

COMPLETION OF THE FORM:

1. Insert the name and address of the Contractor in the appropriate blanks.
2. Insert the type of entity which the Contractor is, i.e., corporation, partnership, individual, etc.
- 3-6. **SELECTION OF THE SURETY**: This is a *very important* requirement. The surety must satisfy *each* of the following requirements:
 - (a) The surety must be a corporate surety. [§ 2253.201(d), Texas Government Code];
 - (b) The surety must be authorized, licensed and admitted to do or transact business in the State of Texas. [RUS Instruction 1780, § 1780.75(c); § 2253.201(d), Texas Government Code];
 - (c) The surety must be licensed by the State of Texas to execute bond as a surety. [2253.201(d), Texas Government Code]; and

(d) The surety must hold a certificate of authority as an acceptable surety on Federal Bonds as listed in Treasury Circular 570, as amended. [RUS Instruction 1780, § 1780.75(c).]

If the surety does not satisfy *each* of these requirements, the surety may not be used for the payment bond.

3. Insert the complete and correct name of the surety. The name should be in all capital letters and should be in bold print.
4. Insert the complete mailing address of the surety. The mailing address should be in all capital letters and should be in bold print.
5. Insert the complete physical address of the surety. The physical address should be in all capital letters and should be in bold print.
6. Insert the complete telephone number (with area code) of the surety. The telephone number (with area code) should be in bold print.
7. Insert the name and address of the borrower in the appropriate blanks.
8. Insert the amount of the bond. The amount should not be less than the original amount of the contract.

The amount should be expressed in words (in the appropriate blank) and then in numbers in the appropriate blank.
9. Insert the date of the contract. The date of the contract must be a date before or the same date as the date of the bond.
10. Insert a general description of the work to be done under the contract.
11. Insert the number of bonds being signed.
12. Insert the date of the bond. The date of the bond must be a date after or the same date as the date of the contract.
13. Insert the name and signature of the contractor (principal). The contractor's name and address should be typed below the signature line.
14. If the contractor is a corporation, the signature, name and title of the official signing the bond for the corporation should be inserted in the appropriate blanks.
15. If the contractor is a corporation, insert the signature, name and title of the person attesting the signature of the contractor. Also, the corporate seal should be placed at the appropriate location.

16. Insert the signature, name and address of the person witnessing the contractor's signature.
17. Insert the name and address of the surety.
18. The signature, name and title of the official signing the bond for the surety should be inserted in the appropriate blanks.
19. Insert the signature, name and title of the person attesting the signature of the surety. Also, the corporate seal should be placed at the appropriate location.
20. Insert the date that the borrower approves the payment bond.
21. Insert the name and address of the borrower.
22. The signature, name and title of the official signing the bond for the borrower should be inserted in the appropriate blanks.
23. Insert the signature, name and title of the person attesting the signature of the borrower. Also, the corporate seal, if appropriate, should be placed at the appropriate location.

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PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS: that

_____ (1)
(Name of Contractor)

_____ (1)
(Address of Contractor)

a _____ (2), hereinafter called **PRINCIPAL**, and
(Corporation, Partnership, or Individual)

_____ (3)
(Name of Surety)

_____ (4)
(Mailing Address of Surety)

_____ (5)
(Physical Address of Surety)

_____ (6)
(Telephone Number, including area code, of Surety)

hereinafter called **SURETY**, are held and firmly bound unto

_____ (7)
(Name of Owner)

_____ (7)
(Address of Owner)

hereinafter called **OWNER** in the total aggregate penal sum of

_____ (8) DOLLARS
(\$ _____ (8)) in lawful money of the United States, for the payment of which
sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and
assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the **PRINCIPAL** entered into a
certain contract with the **OWNER**, dated the _____ day of _____ (9), _____, a copy
of which is hereto attached and made a part hereof for the construction of:

_____ (10)

NOW, THEREFORE, if the **PRINCIPAL** shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the **OWNER** with or without notice to the **SURETY** and during the one year guaranty period and if the **PRINCIPAL** shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the **OWNER** from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the **OWNER** all outlay and expense which the **OWNER** may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said **SURETY**, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to **WORK** to be performed thereunder or the **SPECIFICATIONS** accompanying same shall in any way affect its obligation on this **BOND**, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the **WORK** or to the **SPECIFICATIONS**.

PROVIDED, FURTHER, that it is expressly agreed that the **BOND** shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the **PRINCIPAL** and the **SURETY** to the full and faithful performance of the **CONTRACT** as so amended. The term "Amendment," wherever used in this **BOND**, and whether referring to this **BOND**, the Contract or the Loan Documents shall include any alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the **OWNER** and the **PRINCIPAL** shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied. The **OWNER** is the only beneficiary hereunder.

IN WITNESS WHEREOF, this instrument is executed in __ (11) __ counterparts, each one of which shall be deemed an original, this the _____ day of __ (12) _____, _____.

PRINCIPAL:

_____(13)_____
Name: _____
Address: _____

If a Corporation

By: _____(14)_____
Name: _____
Title: _____

ATTEST:

_____(15)_____
Name: _____
Title: _____

(SEAL)

Witness:
_____(16)_____
Name: _____
Address: _____

SURETY:

Name: _____(17)_____
Address: _____

ATTEST:

_____(19)_____
Name: _____
Title: _____

By: _____(18)_____
Name: _____
Title: _____

(SEAL)

OWNER APPROVAL:

The OWNER approves the form of this Performance Bond.

Date: _____(20)_____

Name: _____(21)_____
Address: _____

ATTEST:

_____(23)_____
Secretary

By: _____(22)_____
Name: _____
Title: _____

(SEAL)

NOTES:

1. The date of the Bond must not be prior to the date of the Contract.
2. The amount of the Bond must not be less than the amount of the Contract.
3. If the contractor is a partnership, all partners should execute the Bond.

If the contractor is a corporation, the Bond must be executed by an authorized official of the corporation. Authorization should be evidenced by a corporate resolution.

4. The surety must:

- (a) be a corporation which is authorized to conduct business in the State of Texas;
- (b) be a corporation which is licensed by the State of Texas to execute bonds as a surety; and
- (c) must appear on the Treasury Department's most current list (Circular 570 as amended).
See the FMI.

5. The Bond must be executed by an authorized representative of the surety. Ordinarily, Bonds are signed by an attorney-in-fact or agent of the surety. The person signing the Bond for the surety should provide a copy of the power of attorney or other evidence of their authority to act on behalf of the surety.
6. [For public bodies only] The contractor may not be required to obtain a surety bond from any specific insurance or surety company.