

DOCUMENT 00610

CONSTRUCTION PERFORMANCE BOND

This Construction Performance Bond ("**Bond**") is dated _____, is in the penal sum of _____, and is entered into by and between the parties listed below to ensure the faithful performance of the 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 _____ ("**Design-Build Entity**"), ("**Surety**"), SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT ("**District**") or other party shall be considered plural where applicable.

DESIGN-BUILD ENTITY:

SURETY:

Name

Name

Address

Principal Place of Business

SAN MATEO COUNTY COMMUNITY COLLEGE
DISTRICT

Name

3401 CSM Drive
San Mateo, CA 94402

[_____] **PROJECT**

BID NO. 86459
At San Mateo, California

DATED _____, 200[] in
the amount of \$ [_____]

DESIGN-BUILD ENTITY AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp. Seal)

Signature: _____

Signature: _____

Name and Title:

Name and Title:

BOND TERMS AND CONDITIONS

1. The Design-Build Entity and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to District for the complete and proper performance of the Contract, which is incorporated herein by reference.
2. If the Design-Build Entity completely and properly performs all of its obligations under the Contract, the Surety and the Design-Build Entity shall have no obligation under this Bond.
3. If there is no District Default, the Surety's obligation under this Bond shall arise after:
 - 3.1 District has declared a Design-Build Entity Default under the Contract pursuant to the terms of the Contract; and
 - 3.2 District has agreed to pay the Balance of the Contract Sum to:
 - 3.2.1 The Surety in accordance with the terms of this Bond and the Contract; or
 - 3.2.2 To a Design-Build Entity selected to perform the Contract in accordance with the terms of this Bond and the Contract.
4. When District has satisfied the conditions of Paragraph 3, the Surety shall promptly (within thirty (30) days) and at the Surety's expense elect to take one of the following actions:
 - 4.1 Arrange for the Design-Build Entity, with consent of District, to perform and complete the 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 Contract itself, through its agents or through independent Design-Build Entitys; or
 - 4.3 Obtain bids from qualified Design-Build Entitys acceptable to District for a contract for performance and completion of the Contract, and, upon determination by District of the lowest responsible bidder, arrange for a contract to be prepared for execution by District and the Design-Build Entity 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 Contract; and, if the Surety's obligations defined in Paragraph 6, below, exceed the Balance of the Contract Sum, then the 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 Design-Build Entity and with reasonable promptness under the circumstances, and, after investigation and consultation with District, determine in good faith the amount for which it may then be liable to District under Paragraph 6, below, for the performance and completion of the Contract and, as soon as practicable after the amount is determined, tender payment therefor to District with full explanation of the payment's calculation. If District accepts the Surety's tender under this paragraph 4.4, District may still hold Surety liable for future damages then unknown or unliquidated resulting from the Design-Build Entity 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 the Surety's liability under paragraph 6, below.

5. If the Surety does not proceed as provided in Paragraph 4, above, then the Surety shall be deemed to be in default on this Bond ten (10) days after receipt of an additional written notice from District to the Surety demanding that the 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 Contract including, without limitation, and by way of example only, rights to perform work, protect work, mitigate damages, or coordinate work with other consultants or Design-Build Entities.
6. The Surety's monetary obligation under this Bond is limited by the amount of this Bond. Subject to these limits, the Surety's obligations under this Bond are commensurate with the obligations of the Design-Build Entity under the Contract. The Surety's obligations shall include, but are not limited to:
 - 6.1 The responsibilities of the Design-Build Entity under the Contract for completion of the Contract and correction of defective work;
 - 6.2 The responsibilities of the Design-Build Entity under the Contract to pay liquidated damages, and for damages for which no liquidated damages are specified in the Contract, actual damages caused by non-performance of the Contract, including but not limited to, all valid and proper backcharges, offsets, payments, indemnities, or other damages;
 - 6.3 Additional legal, design professional and delay costs resulting from the Design-Build Entity Default or resulting from the actions or failure to act of the Surety under Paragraph 4, above.
7. No right of action shall accrue on this Bond to any person or entity other than District or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, alteration or addition to the Contract or to related subcontracts, purchase orders and other obligations, including changes of time. The Surety consents to all terms of the 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 thereunder, 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 the Design-Build Entity regarding the 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.
10. Notice to the Surety, District or the Design-Build Entity shall be mailed or delivered to the address shown on the signature page.
11. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.
12. Definitions.
 - 12.1 District Default: Material failure of District, which has neither been remedied nor waived, to pay the Design-Build Entity progress payments due under the Contract or to perform other material terms of the Contract, if such failure is the cause of the asserted Design-Build Entity Default and is sufficient to justify Design-Build Entity termination of the Contract.
 - 12.2 Balance of the Contract Sum: The total amount payable by District to the Design-Build Entity pursuant to the terms of the Contract after all proper adjustments have been made under the Contract, for example, deductions for progress payments made, and increases/decreases for approved modifications to the Contract.

- 12.3 Contract: The agreement between District and the Design-Build Entity identified on the signature page, including all Contract Documents and changes thereto.
- 12.4 Design-Build Entity Default: Material failure of the Design-Build Entity, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract, including but not limited to, the provisions of Paragraph 1.13.G of Document 00700 General Conditions.

END OF DOCUMENT