

SECTION I-3
DESIGN-BUILD PAYMENT BOND

DESIGN-BUILDER *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

DESIGN-BUILD CONTRACT

Effective Date of the Contract:

Amount:

Description *(name and location)*:

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Contract)*:

Amount:

Modifications to this Bond Form: None See Paragraph 18

Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative. **[Note: Provide supplemental execution by any additional parties, such as joint venturers.]**

DESIGN-BUILDER AS PRINCIPAL

SURETY

Design-Builder's Name

Surety's Name

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

1. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, services, materials, and equipment furnished for use in the performance of the Design-Build Contract, which is incorporated herein by reference, subject to the following terms.

2. If the Design-Builder promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, services, materials, or equipment furnished for use in the performance of the Design-Build Contract, then the Surety and the Design-Builder shall have no obligation under this Bond.

3. If there is no Owner Default under the Design-Build Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Design-Builder and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, services, materials, or equipment furnished for use in the performance of the Design-Build Contract, and tendered defense of such claims, demands, liens, or suits to the Design-Builder and the Surety.

4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.

5. The Surety's obligations to a Claimant under this Bond shall arise after the following:

5.1 Claimants that do not have a direct contract with the Design-Builder,

5.1.1 have furnished a written notice of non-payment to the Design-Builder, stating with substantial accuracy the amount claimed and the name of the party to which the materials were, or equipment was, furnished or supplied, or for which the labor was done or performed,

within ninety (90) days after having last performed labor or services, or last furnished materials or equipment included in the Claim; and

5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).

5.2 Claimants who are employed by or have a direct contract with the Design-Builder have sent a Claim to the Surety (at the address described in Paragraph 13).

6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Design-Builder that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.

7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

7.2 Pay or arrange for payment of any undisputed amounts.

7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Design-Builder may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

9. Amounts owed by the Owner to the Design-Builder under the Design-Build Contract shall be used for the performance of the Design-Build Contract and to satisfy claims, if any, under any design-build performance bond. By the Design-Builder furnishing and the Owner accepting this Bond, they agree that all funds earned by the Design-Builder in the performance of the Design-Build Contract are dedicated to satisfy obligations of the Design-Builder and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Design-Builder that are unrelated to the Design-Build Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.

11. The Surety hereby waives notice of any change, including changes of time, to the Design-Build Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction where the construction portion of the Project is located, or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Design-Build Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Design-Builder shall be mailed or delivered to the

address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement where the construction portion of the Project is located, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted from this Bond and provisions conforming to such statutory or other legal requirement shall be deemed incorporated here. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Design-Builder and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the individual or entity for which the labor or services were done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, services, materials, or equipment were furnished for use in the performance of the Design-Build Contract;
4. A brief description of the labor, services, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or services, or last furnished materials or equipment, for use in the performance of the Design-Build Contract;
6. The total amount earned by the Claimant for labor, services, materials, or equipment furnished as of the date of the Claim;

7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, services, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Design-Builder or with a subcontractor of the Design-Builder to furnish labor, services, materials, or equipment for use in the performance of the Design-Build Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, services, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Design-Build Contract, architectural and engineering services required for performance of the work of the Design-Builder and the Design-Builder's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Design-Build Contract:** The agreement between the Owner and Design-Builder identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Design-Builder as required under the Design-Build Contract, or to perform and complete or comply with the other material terms of the Design-Build Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Design-Builder.

17. Any singular reference to Design-Builder, Surety, Owner, or other party shall be considered plural where applicable.

18. **Modifications to this Bond are as follows:**