



PUBLIC CONSTRUCTION PERFORMANCE AND GUARANTEE BOND

KNOW ALL PERSONS BY THESE PRESENTS THAT

(Legal Title and Address of Contractor, Design-Build Firm, CM)

as Principal (hereinafter referred to as "Principal"), and

(Legal Title and Address of Surety)

as Surety (hereinafter referred to as "Surety"), are held and firmly bound unto THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, as Obligee (hereinafter referred to as "Obligee"), in the amount of _____
(insert Contract Price)

_____ Dollars (\$ _____), to which payment Principal and Surety (hereinafter referred to collectively as "Obligors") bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal and Obligee have entered into a written contract dated _____ (hereinafter referred to as the "Contract"), to perform certain work for _____

(Insert Name of Job/Project)

(hereinafter referred to as the "Project"), as evidenced by the Agreement (Contract) between the parties incorporated therein, all of which is hereby referred to and made a part hereof.

NOW, THEREFORE THE CONDITION OF THIS BOND is such that

1. If Principal shall:
 - a) Promptly and faithfully perform at the times and in the manner prescribed each and all of the terms, conditions, and provisions of the Contract, in strict accordance with its terms, as those terms may be modified or amended from time to time, and timely complete the Project in accordance with the terms thereof; and
 - b) Indemnify, save and hold harmless Obligee and all of its officers, agents and employees from any and all losses, liability and damages, claims, judgments, liens, costs, and fees of every description, whether in contract or in tort, whether imposed by law or equity, which may be caused Obligee by reason of the failure or default on the part of Principal to perform any or all of the terms of the Contract, including all modifications and amendments thereto, and any warranties or guarantees required thereunder; and
 - c) Promptly and faithfully perform each and all of the obligations of the guarantees of all work and materials as set forth herein at paragraphs 11 & 12, in strict accordance with its terms, as those terms may be modified or amended from time to time, then this obligation shall be void; otherwise, it shall be and remain in full force and effect.

2. If all duties owing to Obligee under the Contract and the guarantees provided herein are not performed, which shall include, but not limited to, Principal's breach of default of the Contract, then, upon delivery of written notice from Obligee to Surety, Surety shall either remedy the default or breach of Principal or shall take charge of the Project and complete the Contract or any remedial work required under the Contract or the guarantee provided herein at its own expense provided, however, that the procedure by which Surety undertakes to discharge its obligations under this bond shall be subject to the advance written approval of Owner.

3. Surety shall give an unequivocal notice in writing to Oblige (the "Notice of Election") within twenty (20) days after receipt of written notice from Oblige to Surety of Surety's election either to remedy the default or defaults promptly or to perform the contract promptly as provided herein, time being of the essence of this bond. In the Notice of Election, Surety shall state the date on which the remedy or performance will commence. Surety shall also give prompt notice in writing to Oblige immediately upon the completion of the remedy and/or correction of each breach or default and completion of the Contract.

4. Surety shall not assert solvency of its Principal or its Principal's denial of default as justification for its failure to give the Notice of Election or for its failure to promptly remedy the breach or to complete the Contract. Surety shall not assert Oblige's failure to notify Surety of Principal's breach or respond to the Notice of Election in a timely manner as a basis for denying its liability to Oblige under this bond or for denying its liability for any portion of the damages claimed hereunder, including any delay damages.

5. Surety, for value received, hereby estimates and agrees that no changes, substitutions, extensions of time, alterations or additions to the terms of the Contract or to the work to be performed thereunder, or the specifications or drawings accompanying same, or any over-payments or premature payment made by Oblige to Principal, or any forbearance whatsoever on the part of either Oblige or Principal, or either of any of them to the other, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, substitutions, extensions of time, alterations or additions to the terms of the Contract or to work to be performed thereunder, or to the specifications or drawings and agrees that these changes, substitutions, and additions shall become provisions of the Contract. Surety further agrees that compliance and noncompliance with any formalities connected with the Contract or change does not affect the Surety's obligation under this bond.

6. If Surety fails to act promptly, then Oblige may give notice of such failure, both to Principal and Surety, and after the expiration of ten (10) days, Oblige may cause the work to be done. When the cost of performance by Oblige is estimated, Obligors shall pay any and all estimated costs of work to Owner within thirty (30) days of receipt of the estimate. Any actual costs in excess of the estimated price shall be paid to Owner on demand. Additionally, Obligors shall be liable for any applicable liquidated and/or delay damages that accrue up through and including the time of completion of the Project and Contract performance by Surety.

7. Surety further agrees, as part of this obligation, to pay all damages of any kind to person or property that may result from a failure in any respect to perform and complete the Contract in a timely manner, including but not limited to, all repair and replacement costs necessary to rectify construction errors, all delay damages, architectural and engineering costs and fees, all consultant fees, all testing and laboratory fees and all interest. Additionally, pursuant to § 627.428, Fla. Stat., the Oblige shall be entitled to recover from Surety all attorney's and other legal fees and litigation costs, including the cost of any appeal, incurred by Oblige.

8. The penal amount of this bond shall be increased to the extent that change orders are issued after execution of the Contract increasing the Contract sum.

9. Surety agrees that, other than as provided in this bond, it may not demand of Oblige that Oblige shall: a) perform any thing or act, b) give any notice, c) furnish any clerical assistance, d) render any service, e) furnish any papers or documents, or f) take any other action of any nature or description which is not required of Oblige to be done under the Contract and related documents.

10. This performance bond is a common law bond and the notice and time limits of § 95.11(2)(b), Fla. Stat., apply to actions for performance of this contract.

11. **Guarantee of materials and workmanship:** Principal guarantees all materials and workmanship installed and performed under the Contract for the maximum time allowed by law after final acceptance of the Project by Oblige.

12. **Guarantee of successful operation:** Principal guarantees the successful operation of all mechanical and electrical equipment and all other devices and equipment having working parts installed in the Project or supplied pursuant to the Contract for the maximum time allowed by law after final acceptance of the Project by Oblige.

Construction Manager/Design Builder/Contractor shall execute and provide one (1) of the following:

- signature, corporate seal, attesting secretary; or
- signature, two (2) witnesses; or
- signature, Notary.

Attest Secretary or Witness

Name of Firm

Witness

President, Owner/Partner
(Sign as on contract) (SEAL)

State of _____

County of _____

On this _____ day of _____, 20____, _____
Print name(s) of signer(s)

personally appeared before me, as the signer(s) of the attached instrument, and he/she/they acknowledged that he/she/they signed the instrument voluntarily for the purpose expressed in it, who is personally known to me or has produced _____

Type of Identification ID#/Expiration Date

Signature of Notary

(Seal)

Printed Name of Notary

IN THE PRESENCE OF:

By: _____ (SEAL)
Attorney-In-Fact

As to Surety

Florida Resident Agent

State of _____

County of _____

On this _____ day of _____, 20____, _____
Print name(s) of signer(s)

personally appeared before me, as the signer(s) of the attached instrument, and he/she/they acknowledged that he/she/they signed the instrument voluntarily for the purpose expressed in it, who is personally known to me or has produced _____

Type of Identification ID#/Expiration Date

Signature of Notary

(Seal)

Printed Name of Notary

NOTE: If both Principal and Surety are corporations, the respective corporate seals shall be affixed and attached.

Power of Attorney to be attached.

APPROVED: (as to form and legal sufficiency)

Attorney for The School Board of Miami-Dade County, Florida

(Attach Power of Attorney)