

Payment Bond
Section 242

**U.S. Department of Housing
and Urban Development**
Office of Hospital Facilities

OMB Approval No. 2502-0602
(Exp. 11/30/2022)

Public Burden Statement:

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 1 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information requested is required in order to receive the benefits to be derived. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Housing and Urban Development, Office of the Chief Data Officer, Attention: Departmental Clearance Officer, 451 7th Street SW. Room, Washington, DC 20410 or email Hospitals@hud.gov. HUD collects this information, pursuant to Section 242 of the National Housing Act and regulations at 24 CFR Part 242, in order to review Section 242 applications to determine eligibility, underwrite insured hospital loans, ensure adequate collateral, process initial/final endorsement, manage FHA's hospital portfolio, monitor and manage risk, and ensure ongoing compliance with regulations. No confidentiality is assured.

Warning: Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.

CONTRACTOR (CONSTRUCTION MANAGER)/PRINCIPAL (Name and Address):

LENDER (Name and Address):

OWNER (Name and Address):

SURETY (Name and Principal Place of Business):

PROJECT (Name, FHA Project Number, Location and Brief Description):

CONSTRUCTION CONTRACT or CONSTRUCTION MANGER AGREEMENT:

Date:

Amount:

BOND:

Date:

Amount:

RIDERS TO THIS BOND: ___ Yes ___ No

This Payment Bond is issued simultaneously with a Performance Bond-Dual Obligee (**Performance Bond**) issued in connection with the Project. As used herein, "**Obligees**" shall mean Owner, Lender, Secretary of Housing and Urban Development ("**HUD**") and the additional obligee(s), if any, identified in a Rider to this Bond and "**Obligee**" shall mean any of the Obligees.

1. Contractor has entered into the Construction Contract or Construction Manager Agreement (select one) with Owner for the construction of the Project ("**Contract**"), which as the same

may now or hereafter be amended by change order or otherwise, is made a part hereof by reference.

2. Contractor and Surety, jointly and severally (“**Obligors**”), bind themselves, their heirs, executors, administrators, successors and assigns, to Obligees, for the use and benefit of Claimants as hereinafter defined in paragraph 3, in the sum of
Dollars (\$ _____), to pay for labor, materials and equipment furnished for use in the performance of the Contract. Any approved increase in the total Contract price shall increase the monetary obligation of Obligors accordingly.
3. A Claimant (“**Claimant**”) is defined as one having a direct contract with Contractor or with a subcontractor of Contractor for labor, materials or equipment used in the performance of the Contract, including without limitation in the terms “labor, materials or equipment” that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract, architectural and engineering services required for performance of the work of Contractor and Contractor’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials or equipment was furnished.
4. This obligation shall be null and void if Contractor promptly makes payment to all Claimants for all labor, material, or equipment used in the performance of the Contract.
5. Contractor and Surety hereby jointly and severally agree with Obligees that every Claimant, who has not been paid in full before the expiration of a period of ninety (90) days after having last performed labor or last furnished materials or equipment, 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. No Obligee shall be liable for the payment of any costs or expenses of any such suit.
6. Surety shall have no obligation to Claimants under this Payment Bond unless:
 - a. Claimants, who do not have a direct contract with Contractor, have given notice to any two (2) of the above-named parties, those being Contractor, Owner or Surety, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the claim, stating that a claim is being made under this Payment Bond and, with substantial accuracy, the amount claimed and the name of the party to whom the materials or equipment were furnished, or for whom the work or labor was done or performed.
 - b. Any suit, action or proceeding brought by Claimants under this Payment Bond shall be instituted within one (1) year from the later of the date on which (i) Claimants gave the notice required by paragraph 6a, or (ii) the later of the date that Claimants either perform the last labor and/or service or furnish the last materials or equipment under the Contract. If this limitation is deemed to be in contravention of any controlling law, this provision of the Payment Bond is deemed amended so as to

substitute the minimum period of limitation permitted by such controlling law for the above limitation.

7. The amount of this Payment Bond shall be reduced by any payment(s) made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens that may be filed of record against Project, whether or not the claim for the amount of such lien is presented under and against this Payment Bond. Notwithstanding the foregoing, no amounts paid without the written consent of Lender shall reduce the liability of Surety to Lender under this Payment Bond.
8. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.
9. Notice to Surety, Owner, or Contractor shall be served by mailing the same by registered mail or certified mail, postage prepaid, to the address shown on this Payment Bond or to such other address as may have been previously specified by the recipient in a notice given in accordance herewith.

Each signatory below hereby certifies under penalty of perjury such signatory's statements and representations contained in this Payment Bond and all supporting documentation provided by such signatory are true, accurate, and complete. This Payment Bond has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

SIGNED and SEALED this _____ day of _____, 20__.

Witness as to Contractor:

CONTRACTOR:

By: _____

Name and Title (Printed)

SURETY:

By: _____

Name and Title (Printed)

Project Name: _____
FHA Project No.: _____

ADDITIONAL OBLIGEE RIDER

(Additional obligee only allowed with prior HUD approval.)

1. This Additional Obligee Rider is attached to and made a part of that certain Payment Bond, dated _____, 20__ executed and delivered by _____, as Contractor, and _____, as Surety, in favor of Obligees, in the sum of _____ (\$_____) with respect to the Project referenced above.
2. All of the terms, conditions and provisions of the Payment Bond are hereby incorporated herein by this reference as if fully set forth herein.
3. All defined terms as set forth in the Payment Bond shall have the same meaning herein.
4. _____ is hereby added to the Payment Bond as an additional named Obligee.
5. Nothing herein shall alter or affect any of the terms, conditions and other provisions of the Payment Bond, including especially but without limitation, the aggregate liability of Surety as described in paragraph 2 of the Payment Bond.

SIGNED and SEALED this _____ day of _____, 20__.

Witness as to Contractor: _____ CONTRACTOR: _____

_____ By: _____

Name and Title (Printed)

SURETY: _____

By: _____

Name and Title (Printed)

Project Name: _____
FHA Project Number: _____

ADDITIONAL SURETY RIDER

(Additional surety only allowed with prior HUD approval.)

1. This Additional Surety Rider is attached to and made a part of that certain Payment Bond, dated _____, 20__executed and delivered by _____, as Contractor, and _____, as Surety, in favor of Obligees, in the sum of _____ (\$_____) with respect to the Project referenced above.
2. All of the terms, conditions and provisions of the Payment Bond are hereby incorporated herein by this reference as if fully set forth herein.
3. All defined terms as set forth in the Payment Bond shall have the same meaning herein.
4. _____ (“**Additional Surety**”) is hereby added to the Payment Bond as an additional named Surety, and all references in the Payment Bond to “Surety” shall include the Additional Surety.
5. Each Surety and Additional Surety (collectively, “**Surety**”) is held and firmly bound, jointly and severally, onto Obligees. Further, each undersigned Surety binds itself in the aforesaid full sum jointly and severally, as well as severally, for the purpose of allowing joint action or singular action against any or all of them in the full amount of this Payment Bond and for all other purposes each Surety binds itself, jointly and severally with Contractor, for the payment of the full sums above stated.
6. Nothing herein shall alter or affect any of the terms, conditions and other provisions of the Payment Bond, including especially but without limitation, the aggregate liability of Surety as described in paragraph 2 of the Payment Bond.

SIGNED AND SEALED this _____ day of _____, 20__.

Witness as to Contractor:

CONTRACTOR:

By: _____

Name and Title (Printed)

SURETY

By: _____

Names and Title (Printed)

ADDITIONAL SURETY:

By: _____

Name and Title (Printed)