

**Performance Bond -
Dual Obligee
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:

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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):

OWNER (Name and Address):

LENDER (Name and Address):

SURETY (Name and Principal Place of Business):

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

CONSTRUCTION CONTRACT or CONSTRUCTION MANAGER AGREEMENT:

Date:

Amount:

BOND:

Date:

Amount:

RIDERS TO THIS BOND: Yes No

This Performance Bond-Dual Obligee is issued simultaneously with a Payment Bond (“**Payment Bond**”) issued with respect to 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**”). The Contract (as

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

2. Lender has agreed to lend to Owner a sum of money to be secured by a mortgage between Owner and Lender (“**Security Instrument**”) on the Project that provides for advances under that certain note executed by Owner and payable to Lender (“**Note**”), in part, to make payment under the Contract, and desires protection as its interest appears, in event of default by Contractor under the Contract.
3. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns, to Owner and to Lender, its successors and assigns, as their respective interests appear, as Obligees, in the sum of _____ Dollars (\$ _____), for the performance of the Contract. Any approved increase in the total Contract price shall increase the obligation of Obligor accordingly.
4. If the Contractor performs the Contract and fully indemnifies and saves harmless Obligees from all costs and damages which they may suffer by reason of failure to do so, and fully reimburse and repay Obligees all expenses which any Obligee may incur in making good any such default, then this obligation shall be null and void; otherwise it shall remain in full force and effect.
5. Surety shall not be liable under this Performance Bond to Obligees, or any of them, unless Obligees make payments to Contractor in accordance with the terms of the Contract as to payments, and/or perform any of the other obligations under the Contract. However, Surety shall not assert a failure by Obligees to make payments or perform obligations under the Contract unless each Obligee has been given written notice by Surety of any such failure and a reasonable period of time (but in no event less than thirty (30) days from receipt of said notice), in which to cure such failure.
6. Surety agrees that any right of action that any of Obligees herein may have under this Performance Bond may be assigned, without the consent of Contractor or Surety, to HUD, and that such assignment will in no manner invalidate or qualify this instrument.
7. The aggregate liability of Surety hereunder to Obligees or their assigns is limited to the penal sum above stated, and Surety, upon making any payment hereunder, shall be subrogated to, and shall be entitled to an assignment of, all rights of the payee, either against Contractor or against any other party liable to the payee in connection with the loss which is the subject of the payment. Notwithstanding the foregoing, no amounts paid to Owner without the written consent of Lender shall reduce the liability of Surety to Lender under this Performance Bond.
8. Any suit, action or proceeding by reason of any default whatever shall be instituted within two years after the date Owner declares Contractor in default under the Contract. If this limitation is deemed to be in contravention of any controlling law, this Performance Bond is deemed amended so as to substitute the minimum period of limitation permitted by such controlling law for the above limitation.

9. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.
10. 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 Performance 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 Performance Bond and all supporting documentation provided by such signatory are true, accurate, and complete. This Performance 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 Number: _____

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 Performance 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 Performance Bond are hereby incorporated herein by this reference as if fully set forth herein.
3. All defined terms as set forth in the Performance Bond shall have the same meanings herein.
4. _____ is hereby added to the Performance Bond as an additional named Obligee.
5. Nothing herein shall alter or affect any of the terms, conditions and other provisions of the Performance Bond, including especially but without limitation, the aggregate liability of Surety as described in paragraph 3 of the Performance 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: _____

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 Performance 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 Performance Bond are hereby incorporated herein by this reference as if fully set forth herein.
3. Except as set forth in paragraph 5 below, all defined terms as set forth in the Performance Bond shall have the same meanings herein.
4. _____ (“**Additional Surety**”) is hereby added to the Performance Bond as an additional named 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 actions against any or all of them in the full amount of this Performance Bond and for all other purposes each Surety binds itself, jointly and severally with Contractor, for the payment of the full sums above stated. All references in the Performance Bond to Surety shall include Additional Surety.
6. Nothing herein shall alter or affect any of the terms, conditions and other provisions of the Performance Bond, including especially but without limitation, the aggregate liability of Surety as described in paragraph 3 of the Performance Bond.

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

Witness as to Contractor:

CONTRACTOR:

By: _____

Name and Title (Printed)

SURETY:

By: _____

Name and Title (Printed)