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# PERFORMANCE BOND FOR DESIGN-BUILD PROJECTS

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**Document No. 620**

First Edition, 2015

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Washington, D.C.



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- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings, or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgement.** You acknowledge that you have read this agreement, understand it, and agree to be bound by its terms and conditions, and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.



# PERFORMANCE BOND FOR DESIGN-BUILD PROJECTS

*This bond form has been endorsed by The National Association of Surety Bond Producers and  
The Surety & Fidelity Association of America*

<b>DESIGN-BUILDER/PRINCIPAL:</b> <i>(Name and address)</i>	<b>SURETY:</b> <i>(Name and contact information)</i>
<b>OWNER/OBLIGEE:</b> <i>(Name and address)</i>	<b>PROJECT:</b> <i>(Name and location)</i>
<b>DESIGN-BUILD AGREEMENT:</b> Dated: Amount:	<b>BOND DATE:</b> <i>(Not earlier than date of Design-Build Agreement)</i> <b>BOND AMOUNT:</b>

**MODIFICATIONS TO THIS BOND:**  
*(List modifications to this Bond below. If none, write "None")*

## BOND TERMS AND CONDITIONS

**1 Binding Effect.** The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Design-Build Agreement, which is incorporated herein by reference.

**2 Intent of Bond.** If the Design-Builder performs its obligations under the Design-Build Agreement, then the Surety's obligations under this Bond are null and void, except to participate in meetings as provided in Section 4.

**3 Waiver of Notice.** The Surety hereby waives notice of changes to the Design-Build Agreement, including changes within the general scope, or of time or price, or to related subcontracts or purchase orders.

**4 Owner's Obligations.** If there is no default in Owner's obligations under the Design-Build Agreement, then the Surety's obligation under this Bond shall arise after the following steps have been taken by Owner, as a condition precedent to a Bond claim:

**4.1** The Owner has first provided written notice to the Design-Builder and Surety at the addresses listed on page 1 of this Bond, that Owner is considering declaring the Design-Builder in default and has requested and attempted to arrange a meeting with the Design-Builder and Surety, to be held not later than fourteen (14) days after receipt of Owner's notice, to discuss methods of performing the Design-Builder's obligations under the Design-Build Agreement. If the Owner, Design-Builder and Surety agree, the Design-Builder shall be allowed a reasonable time to perform its obligations under the Design-Build Agreement, but such an agreement shall not waive the Owner's right, if any, subsequently to declare the Design-Builder in default;

**4.2** The Owner declares the Design-Builder to be in default, terminates the Design-Build Agreement and notifies the Surety in writing; and

**4.3** The Owner has agreed to pay the balance remaining under the Design-Build Agreement (i.e., the total amount payable by the Owner to the Design-Builder thereunder less amounts properly paid by the Owner to the Design-Builder, the "Contract Balance") to:

**.1** The Surety, in accordance with the terms of the Design-Build Agreement; or

**.2** Another design-builder selected pursuant to Section 5.3 to perform the remaining obligations under the Design-Build Agreement.

**5 Surety's Obligations.** When Owner has satisfied the conditions of Section 4, the Surety shall promptly take one of the following actions, at the Surety's expense:

**5.1** Arrange for the Design-Builder to perform and complete the remaining obligations under the Design-Build Agreement, with consent of Owner;

**5.2** Undertake to perform and complete the remaining obligations under the Design-Build Agreement itself, through its agents or through independent contractors;

**5.3** Obtain bids or negotiated proposals from qualified design-builders acceptable to Owner for a contract for performance and completion of the Design-Build Agreement, arrange for a contract to be prepared for execution by Owner and a design-builder selected with Owner's concurrence, to be secured by performance and payment bonds equivalent to those for the Design-Build Agreement, issued by a qualified surety. The Surety shall: a. make available as Work progresses sufficient funds to pay the cost of completion of the Design-Build Agreement; and, b. pay to Owner the amount of damages as described in Section 7;

**5.4** Waive its right to complete the Work under Sections 5.2 or 5.3, and reimburse the Owner the amount of its reasonable costs to complete the Work; or

**5.5** Deny liability, in whole or in part, and notify the Owner in writing, citing reasons therefor.

**6 Owner's Rights.** If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven (7) days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond and stating that the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, under Section 5.5, the Owner shall be entitled without further notice to enforce any remedy available to it.

**7 Damages Covered.** In any event, the Surety's obligations to the Owner, and the Owner's obligations to the Surety, shall not be greater than those of the Owner and Design-Builder to each other, respectively, under the Design-Build Agreement. Subject to commitment by Owner to payment of the Contract Balance, the Surety is obligated without duplication for:

**7.1** The responsibilities of Design-Builder for correction of defective Work and completion of the Project;

**7.2** Additional legal, design professional and delay costs resulting from Design-Builder's default, and resulting from the actions or failure to act of Surety under Section 5; and

**7.3** Liquidated damages, or if no liquidated damages are specified in the Design-Build Agreement, actual damages caused by delayed performance or non-performance of Design-Builder.

**8 Bond Liability.** If the Surety elects to act under Sections 5.1, 5.3 or 5.4, the Surety's total liability shall not exceed the Bond Amount.

**8.1** The Surety shall not be liable to the Owner or others for obligations of the Design-Builder that are unrelated to the Design-Build Agreement, and the Contract Balance shall not be reduced or set off on account of any such unrelated obligations.

**9 Beneficiaries.** No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors, unless some other party is named in this Bond as a dual obligee.

**10 Dispute Resolution.** All disputes related to this Bond shall be instituted in any court of competent jurisdiction in the location in which the Project is located and shall be commenced within two (2) years after: a. the Owner declares the Design-Builder in default under Section 4.2; or, b. Substantial Completion of the Project, whichever occurs first. If the provisions of this Section 10 are prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.

**10.1** In the event of bankruptcy of the Design-Builder, the Surety agrees that the Design-Builder is not a necessary or indispensable party to any legal action by Owner against Surety to enforce the Surety's obligations under this Bond.

**11 Notice.** Unless otherwise noted below, written notice under this Bond to Surety, Owner or Design-Builder shall be mailed or delivered electronically or by hard mail to the contact information shown on page 1.

*(List any alternate contact information below for notice to the Surety of any claim on this Bond. If none, then use the contact information on page 1)*

For Claims on this Bond:

*(check appropriate box)*

Use the contact information shown on page 1; or

Use the following alternate contact information:

*(fill in Surety claims administrator contact information below)*

**12 Statutory Compliance.** If this Bond has been furnished to comply with a statutory requirement in the location where the Project is located, then any provision herein that conflicts with a statutory

requirement shall be deemed deleted and replaced by provisions conforming to such statutory requirement. The intent is that this Bond shall be construed as a statutory bond conforming to the applicable statutes.

**13 Warranty Obligation.** The Surety's obligations to the Owner for warranties of the Design-Builder shall be the same as those required of the Design-Builder under the Design-Build Agreement, subject to the time limitation in Section 10. Unless otherwise stated below, the Surety's obligation for such warranties excludes: a) products, materials or equipment covered by a manufacturer's separate warranty; and b) claims by the Owner first noticed to Surety in writing more than one year after the effective date of such warranty as specified under the Design-Build Agreement.  
*(List below any exceptions to the above limitations on Surety's warranty obligation, if any)*

**14 Authorization.** The Surety represents that it is admitted to act as an authorized corporate surety in the state in which the Project is located. Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set out above, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

<b>DESIGN-BUILDER (AS PRINCIPAL)</b> Company:	<b>SURETY</b> Company:
Signature:	Signature:
Name and Title:	Name and Title:
	Corporate Seal
	(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title