

CALIFORNIA TRANSPORTATION COMMISSION

**DESIGN-BUILD DEMONSTRATION PROGRAM
STANDARD FORM OF PAYMENT AND PERFORMANCE BOND**



- 1.1. WHEREAS the Design-Build Demonstration Program was established in Chapter 6.5 (commencing with Section 6800) of Part 1 of Division 2 of the Public Contract Code, as added by Chapter 2 of the Statutes of 2009 (Senate Bill 4, Second Extraordinary Session), and
- 1.2. WHEREAS subject to the limitations of Chapter 6.5, a local transportation entity, if authorized by the California Transportation Commission, may utilize the design-build method of procurement for up to five projects that may be for local street or road, bridge, tunnel, or public transit projects within the jurisdiction of the entity, and
- 1.3. WHEREAS, subject to the limitations of Chapter 6.5, the Department of Transportation (Department), if authorized by the Commission, may utilize the design-build method of procurement for up to 10 state highway, bridge, or tunnel projects, and
- 1.4. WHEREAS the Commission is required to develop a standard form of payment and performance bond, and in developing the bond form, the commission shall consult with entities authorized to use the design-build procurement method and with representatives of the surety industry to achieve a bond form that is consistent with surety industry standards and practices, while protecting the public interest, and
- 1.5. WHEREAS the Commission has requested the support of the Department, pursuant to Government Code Section 14512, to develop these forms of payment and performance bond,
- 2.1. NOW THEREFORE BE IT RESOLVED that the Department has developed the attached forms for payment and performance bond for design-build contracts based on existing bond provisions already in use by the Department for conventional contracts, and
- 2.2. NOW THEREFORE BE IT RESOLVED that the Department has coordinated with the transportation engineering, construction and surety industries, and
- 2.3. BE IT FURTHER RESOLVED that the Commission has made these forms available to regional transportation agencies for review and comment prior to the Commission's action, and
- 2.4. BE IT FURTHER RESOLVED that the Commission hereby approves these forms and requests that the Department continue to take all steps necessary to keep these forms or payment and performance bond up-to-date, ensuring consistency with surety industry standards and practices, while protecting the public interest, and
- 2.5. BE IT FURTHER RESOLVED that the Commission requests that the Department make the updated forms of payment and performance bond available for use by all agencies authorized to utilize the design-build method of procurement.

PAYMENT BOND FOR DESIGN-BUILD CONTRACTS

(To Accompany a Design-Build Contract)

[Public Contract Code § 6806]

(REV. 2/2010)

Contract No. _____

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS,

THAT WHEREAS, The State of California (State), acting by and through the Department of Transportation, has awarded to _____ (Principal), a Design-Build Contract (Contract), which contract is specifically incorporated by reference herein, as a contract for the design and construction described as follows:

AND WHEREAS, The Principal is required by Section 6806 of the Public Contract Code to furnish a payment bond (Bond) in connection with said Contract to secure the payment of claims of laborers, mechanics, material men, and other persons as provided by law;

NOW THEREFORE, We the undersigned _____ (Principal) and _____ (Surety) are held and firmly bound unto the State, in the sum of _____ Dollars (\$ _____), to be paid to the said State or its certain attorney, its successors and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH:

1. That if said Principal, or its heirs, executors, administrators successors or assigns or subcontractors, shall fail to pay any of the persons named in California Civil Code Section 3181, or anyone required to be paid by law, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by such claimant, or any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Principal and his subcontractors pursuant to Revenue and Taxation Code Section 18662 *et seq.* with respect to such work and labor, that the Surety herein will pay for the same in an amount not exceeding the sum specified in this Bond, otherwise the above obligation shall be null and void. In case suit is brought upon this Bond, the Surety will pay reasonable attorney's fee to be fixed by the court.
2. This Bond shall inure to the benefit of any of the persons named in Civil Code Section 3181 or anyone required to be paid by law under said contract so as to give a right of action to such persons or their assigns in any suit brought upon this Bond.
3. The said Surety agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the work to be performed with respect to the project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any recession or attempted recession of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.
4. When this Bond had been furnished to comply with a statutory or other legal requirement in the location where the construction is to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not a common law bond.
5. This Bond shall cover all payment obligations for the said design-build work, including warranty payment obligations unless a separate warranty bond is provided by the Principal, but shall not cover any payment obligations covered by the Principal's errors and omissions insurance for the design elements of the work

required pursuant to the contract or by Section 6806(b) of the Public Contract Code or by any professional liability insurance whether or not such insurance is provided in an amount sufficient to cover such damages.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this _____ day of _____.

Correspondence or claims relating to this Bond should be sent to the Surety at the following address: _____

(Principal's name, title, and signature)

Surety
By _____
Attorney-in-Fact

NOTE: Signatures of those executing for the surety must be properly acknowledged, and a Power of Attorney attached.

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of _____

County of _____ On this _____ day of _____ in the year of _____

before me, a notary public in and for the county and state aforesaid, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal:

(SEAL)

Signature of Notary Public

ADA Notice: For individuals with sensory disabilities, this document may be available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

Contract No. _____

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS,

THAT WHEREAS, The State of California (State), acting by and through the Department of Transportation, has awarded to _____ (Principal), a design-build contract (Contract) for the design and construction work described as follows:

AND WHEREAS, The Principal is required by Section 6806 of the Public Contract Code to furnish a bond in connection with said Contract guaranteeing the faithful performance of its obligations under the Contract thereof:

NOW THEREFORE, We the undersigned Principal and _____ (Surety) are held and firmly bound unto the State, in the sum of _____ Dollars (\$ _____), to be paid to the said State or its certain attorney, its successors and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH:

1. That if the above bound Principal, or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing Contract, including any and all amendments, supplements, and alterations thereto made as therein provided, on his or their part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the State, its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and virtue.
2. This Bond shall cover the cost to complete the said design and construction work, but shall not cover any damages of the type specified to be covered by the Principal's errors and omissions insurance for the design elements of the work required pursuant to the Contract and Section 6806(b) of the Public Contract Code or by any professional liability insurance, whether or not such insurance is provided in an amount sufficient to cover such damages.
3. The said Surety agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the work to be performed with respect to the project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any recession or attempted recession of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover from this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications. The Surety agrees that payments made to contractors and suppliers to satisfy claims on the payment bond do not reduce the Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the work to satisfy this Bond will not be considered payment bond claims.

WITNESS WHEREOF, We have hereunto set our hands and seals on this _____ day of _____, 20____.

Correspondence or claims relating to this Bond should be sent to the Surety at the following address: _____ _____ _____ _____
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_____ _____ (Principal's name, title, and signature) _____ _____ Surety By _____ Attorney-in-Fact
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NOTE: Signatures of those executing for the Surety must be properly acknowledged, and a Power of Attorney attached.

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of _____

County of _____ On this _____ day of _____ in the year of _____

before me, a notary public in and for the county and state aforesaid, personally appeared _____

_____ who proved to me on the basis of satisfactory evidence to be the person(s)

whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal:

_____(SEAL)_____

Signature of Notary Public

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