

## PERFORMANCE BOND TO ACCOMPANY CONTRACT

**Contractors must use this form, not a Surety Company form.**

KNOW ALL MEN BY THESE PRESENTS: that where, the San Pasqual Valley Unified School District (hereinafter designated as "District") has awarded to \_\_\_\_\_ (hereinafter designated as "Principal" or "Contractor") a contract for the work described as follows: the \_\_\_\_\_ Project.

WHEREAS, Principal is required to furnish a bond in connection with the contract, guaranteeing the faithful performance of the contract;

NOW, THEREFORE, we, the undersigned Principal and Surety are held and firmly bound unto the District in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), lawful money of the United States of America, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

The **condition** of this obligation is such,

That if the Contractor, his/her/it's heirs, executors, administrators, successors or assigns, shall abide by and in well and truly keep and perform the covenants, conditions and agreements in the foregoing contract and any alteration thereof as therein provided, on his/her/their part to be kept and performed at the time and in the manner therein specified, the Surety shall have no obligation pursuant to this bond except to participate in conferences provided in subparagraph 1.1, otherwise, the Surety's obligation under this bond shall arise after:

1. The Surety's obligation:

1.1 The District has notified the Contractor and the Surety that the District is considering declaring the Contractor in default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than seven (7) calendar days after receipt of such notice to discuss methods of performing the construction contract. If the District, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the construction contract, but such agreement shall not waive the District's right to subsequently declare the Contractor in default; and

1.2 The District has declared the Contractor in default and formally terminated the Contractor's right to complete the contract. Default shall not be declared early than seven (7) calendar days after the Contractor and the Surety have received notice as provided in subparagraph 1.1; and

1.3 The District has agreed to pay the balance of the contract price to the Surety in accordance with the terms of the construction contract or to a contractor selected to perform the construction contract in accordance with the terms of the contract with the District.

2. When the District has satisfied the conditions of paragraph 1, the Surety shall

immediately and at the Surety's expense take the following actions:

2.1 Undertake to perform and complete the construction contract itself, through its agents or through independent contractors. Surety shall not undertake to perform and complete the construction contract by employing, authorizing or utilizing the services of the principal contractor or affiliated organization without the written consent of the District; or

2.2 Retain a qualified contractor acceptable to the District for performance and completion of the construction project/contract. The contractor shall be selected with the District's concurrence and his/her/its performance shall be secured with performance and payment bonds executed by a qualified Surety equivalent to the bonds issued for the original construction contract, and sufficient to pay to District the amount of damages as described in paragraph 4 et seq. resulting from the Contractor's default; or

2.3 Waive its right to perform and complete, arrange for completion, or obtain a new contractor by determining the amount of which it may be liable to the District and as soon as practicable after the amount is determined, tender payment thereof to the District.

2.4 Surety shall proceed in accordance with paragraph 2 not later than fifteen (15) calendar days after written notice that Contractor is declared to be in default. In an emergency situation, or if time is of the essence in the underlying contract, District may take all reasonable actions necessary to protect the work of improvement and/or to continue the construction process pending Surety's investigation and action pursuant to paragraph 2. Cost incurred by District in protecting the work of improvement or continuing the construction process pending Surety action shall be the joint and several responsibility of Surety and Contractor.

3. If Surety does not proceed as provided in paragraph 2 et seq., Surety shall be in default on this bond and the District shall be entitled to enforce any remedy available to District. In the event suit is brought upon this bond, Surety or Sureties will pay all court costs, expenses, and reasonable attorney fees fixed by the court.

4. After District terminates the Contractor's right to complete the construction contract,

the responsibilities of the Surety to the District shall not be greater than those of the contractor under the construction contract, and responsibilities of the District to the Surety shall not be greater than those of the District under the construction contract. To the limit of the amount of this bond, but subject to commitment by the District of the balance of the contract price to mitigation of costs and damages on the construction contract, the Surety is obligated without duplication for:

4.1 The responsibilities of the Contractor for correction of defective work and completion of the construction contract.

4.2 Additional legal, design professional and delay costs resulting from the

Contractor's default, and resulting from the actions or failure to act as required in paragraphs 2 and 3.

4.3 Liquidated damages, or if no liquidated damages are specified in the construction contract, then actual damages caused by the delayed performance or non-performance of the Contractor.

5. Surety hereby waives notice of any change, including changes of time, to the construction contract or to related subcontracts, purchase orders and other obligations.

6. Notice to the Surety, the District or the Contractor shall be mailed or delivered to the address shown on the signature page.

7. This bond, the rights and obligations hereunder and the interpretation of any provision contained herein, shall be governed by the laws of the State of California and Surety, by submission of this bond to District, shall be deemed to have submitted to the jurisdiction of California courts. Surety's obligations to District pursuant to this bond are subject to the covenant of good faith and fair dealing and Surety's breach of said covenant shall give rise to a cause of action by District for damages caused by Surety's breach of said covenant.

8. For the purposes of this bond, the construction contract shall be defined as all of the documents in the agreement between District and Contractor.

9. Surety, for value received, hereby stipulates and agrees that in accordance with California Civil Code Section 8152 no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same or payment for non-conforming or defective work or materials, except for final payment upon contract completion shall in any way affect Surety's obligations or exonerate Surety on this bond, and Surety hereby waives notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications, or of payment for defective work or non-conforming work or materials.

IN WITNESS WHEREOF, identical counterparts of this bond, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above-named on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

To be signed by Principal and Surety and Notarial Acknowledgment and Seal attached.

CONTRACTOR (Name and Address)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DISTRICT:

San Pasqual Valley Unified School District  
676 Baseline Rd.  
Winterhaven, CA 92283

SURETY (Name and Principal place of business)

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONTRACTOR AS PRINCIPAL  
COMPANY: \_\_\_\_\_

(Corporate Seal)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SURETY COMPANY: \_\_\_\_\_

(Corporate Seal)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attorney in Fact

THIS IS A REQUIRED FORM

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:  
(Name and Address of Surety)

(Name and Address of agent or  
representative for service of process  
in California)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

State of California  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument as the Attorney-in-Fact of the \_\_\_\_\_ (Surety) and acknowledged to me that he/she/they subscribed the name of the \_\_\_\_\_ (Surety) thereto and his/her own name as Attorney-in-Fact on the executed instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Seal)  
Notary Public in and for said State

Commission expires: \_\_\_\_\_

Note: A copy of the power-of-attorney to local representative of the bonding company must be attached hereto.