

COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
DIVISION OF CONSTRUCTION PROCUREMENT
FRANKFORT, KENTUCKY

THIS CONTRACT is made and entered into this _____ day of _____, A. D. _____, between the Commonwealth of Kentucky by and through its agent, Department of Highways, acting in its official capacity, party of the first part, hereinafter referred to as Department and party of the second part.

WITNESSETH, That the party of the second part, for and in consideration of the payment or payments hereinafter specified, hereby agrees to furnish and deliver all materials and do and perform all the work or labor required and to pay in full all legal claims for labor, unemployment compensation contributions, materials and supplies furnished in connection herewith, in the construction, improvement or maintenance of the following described project:

All work performed and all materials furnished shall be in accordance with the Department of Highway's Standard Specifications for Road and Bridge Construction, edition of 2012 as revised, and as provided in subsection 105.01 of said Specifications. These Specifications are made a part of this contract the same as if expressly in full herein.

The party of the second part shall carry insurance of the types and in the amounts shown on the bid proposal referred to hereinafter.

It is further agreed by the parties hereto that the work herein contracted for shall, in good faith, be commenced within the time set forth in the 2008 Standard Specifications and be completed not later than _____ the date stated.

It is mutually agreed by and between the parties hereto that time is of the essence of this contract, and that there will be sustained by the Department considerable monetary damages in the event of failure or delay in the completion of the work hereby contracted for, which damages will be difficult to definitely ascertain or establish, and the sum of _____ dollars per day is hereby agreed upon by the parties hereto as the liquidated damages for each and every day after the fixed date of completion in which the work hereby contracted for remains incomplete. Said amount shall in no event be considered a penalty or otherwise than as liquidated damages. The party of the second part hereby agrees that said sum for each and every day in which the work hereby contracted for remains incomplete, may be deducted from any current or final estimate after date said liquidated damages begin to accrue. Said liquidated damages shall cease to accrue from and after the date when the work provided for in this contract has been completed as determined by the Department.

If this contract is financed in whole or in part with Federal-aid highway funds referenced in 29 CFR 26.3, the parties agree to the following assurance: The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S.D.O.T.-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department of Highways deems appropriate. Each contract signed with a subcontractor shall include this assurance.

The party of the second part shall pay all subcontractors, including Disadvantaged Business Enterprises (DBEs) within ten (10) working days after he or she has received payment from the Department for work performed or materials furnished on U.S.D.O.T.-assisted contracts. Further, the party of the second part shall not hold retainage from any subcontractor, including DBEs on U.S.D.O.T-assisted contracts.

If the party of the second part shall fail to commence in good faith or to otherwise faithfully perform this contract, then the party of the second part together with the surety or sureties upon the bond herein provided for shall be liable for and shall pay to the Department for its use and benefit all damages sustained by reason of such failure or breach of contract, and said Department may immediately complete the same as provided by law.

As a part of the consideration and to assure the faithful performance of this contract in every respect, the party of the second part attaches hereto as a part hereof, a performance bond and a payment bond each with surety or sureties or securities in a sum not less than one (1) times the amount of this contract. Such bonds, when approved by the Department shall be for the use and benefit of the Department, and each person furnishing materials, labor and supplies for use in the performance of this contract.

IN CONSIDERATION WHEREOF, the Department agrees to pay the party of the second part for all services actually performed in accordance with the unit prices set forth in the bid proposal submitted in the letting of _____ which is attached hereto and made a part of this contract as if copied in full herein.

The total estimated cost based on the unit prices herein is: \$

However, this contract shall not be construed to be an obligation of the Department to expend any sum in excess of the estimated cost stated herein; and provided further that this contract shall not be deemed an obligation of the Department to pay any sum stipulated herein and approved by the Secretary, Finance and Administration Cabinet, as required by law.

This contract is subject to there being adequate and sufficient road funds available under the contract for the payment of invoices for work on the project as they come due. In the event this contract is suspended or terminated, in part or in whole, or payment is delayed due to inadequate or insufficient road funds, the contractor waives any and all rights to bring any claim for damages, losses, expenses, including but not limited to attorneys' fees, as a result of suspension, termination or delayed payment. In the event the contract is suspended, the contractor may, upon request, continue performance after receipt of a work notice from the Cabinet to proceed. Payments shall resume at such time as the Cabinet has adequate and sufficient road funds for payment under the project.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____.

TRANSPORTATION CABINET
Department of Highways

By:

Director, Construction Procurement for Commissioner

ATTEST:

Name of contractor or contracting firm

By: _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That we

in the State of

KY

as PRINCIPAL,

and _____
of _____ in the State of _____
as SURETY, are held and firmly bound unto the DEPARTMENT OF HIGHWAYS in its official capacity as agent of the Commonwealth of Kentucky, hereinafter called the DEPARTMENT, in the sum of one (1) times the total estimated cost listed in the contract; said contract and any documents incorporated therein by reference being incorporated by reference and adopted hereby as if copied at length herein, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas the principal entered into a certain contract, hereto attached, with the Department, dated _____, for for work described in said contract.

NOW THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract and any extensions thereof that may be granted by the Department, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice to the surety of such modifications being hereby waived, and if reimbursement is made to the Department for overpayment, if any, made on said contract, then this obligation to be void, otherwise to remain in full force and virtue.

All notices of default or non-performance under the contract shall be mailed by the Department via Certified Mail, Return Receipt Requested, to the Principal and to the Home Office Claims Department of the Surety at the following address _____.

Upon receipt of a notice of default or non-performance under the contract, the surety shall acknowledge receipt of said notice in writing within 14 calendar days and shall promptly commence an investigation of said notice.

In the event that the Department declares the Contractor in default, the Surety shall provide the Department with a proposal for remedying the default, or the basis on which they are disputing the default, within 60 calendar days. The proposed remedy shall be subject to the written approval of the Department. This approval shall be provided within 14 calendar days of receipt of the proposed remedy and such approval shall not to be unreasonably withheld.

WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____.

PRINCIPAL

ATTEST:

By: _____
Title _____

ATTEST:

SURETY (Seal)

By: _____
ATTORNEY-IN-FACT

Commission for this Performance Bond is due and payable to:

(Name and Address of Agents or Agencies receiving the Commission)

AUTHORITY OF ATTORNEY-IN-FACT
DULY FILED:

APPROVED FORM AND
LEGALITY:

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, That we

in the State of

KY

as PRINCIPAL,

and _____
 of _____ in the State of _____
 as SURETY, are held and firmly bound unto the DEPARTMENT OF HIGHWAYS in its official capacity as agent of the Commonwealth of Kentucky, hereinafter called the DEPARTMENT, and to each and every person, firm, or corporation who may furnish labor, materials or supplies for use on the project hereinafter identified in the sum of one (1) times the total estimated cost listed in the contract; said contract, and any documents incorporated therein by reference, being incorporated by reference and adopted hereby as if copied at length herein, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas the principal entered into a certain contract, hereto attached, with the Department, dated _____, for
 for work described in said contract.

NOW THEREFORE, if the principal shall promptly make payment to all persons supplying the principal with labor, supplies and materials in the prosecution of the work provided for in said contract and any such duly authorized extension or modification that may hereafter be made, notice of modifications to sureties being hereby waived, then this obligation to be void, otherwise to remain in full force and virtue.

All claims for non-payment must be made within 90 days after having last performed labor or last provided supplies or materials to the project.

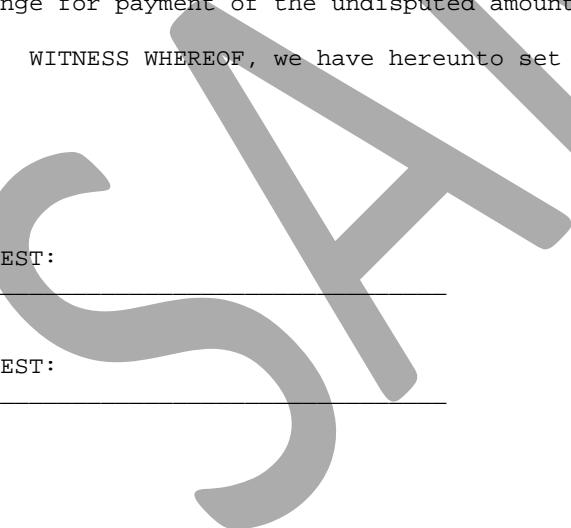
All such claims for non-payment must be mailed via Certified Mail, Return Receipt Requested to the Principal, the Department and the Surety, with the Surety's notice being mailed to their Home Office Claims Department at _____

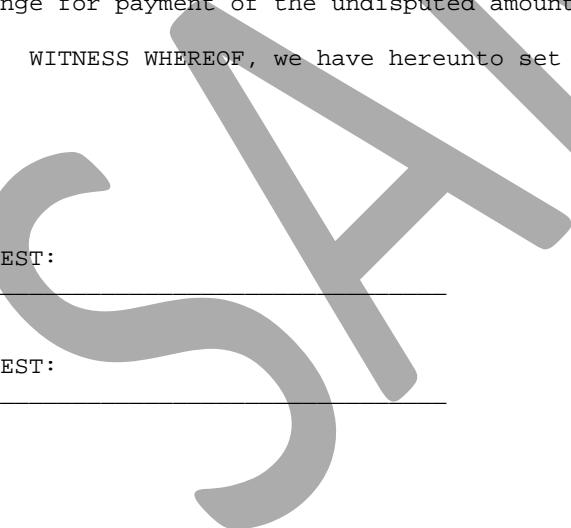
Upon receipt of a claim for non-payment, the surety shall acknowledge receipt of said notice in writing within 14 calendar days, with a copy also going to the Department, and shall promptly commence an investigation of said notice.

When a Claimant has fully documented their claim, including providing all supporting documentation to the surety, the surety shall within 60 calendar days send an answer to the Claimant, with a copy to the Department, stating the amounts which are undisputed and the amounts which are disputed and the basis on which they are disputed. Further, the surety shall pay, or arrange for payment of the undisputed amounts.

WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____.

PRINCIPALATTEST:

By: _____
Title _____ATTEST:

_____
SURETY (Seal)By: _____
ATTORNEY-IN-FACT

Commission for this Performance Bond is due and payable to:

(Name and Address of Agents and Agencies receiving the Commission)

SAMPLE