

NO. 47 CONTRACT SECURITY REQUIREMENTS

- 47-1.0 Scope.** This regulation establishes policies with regard to contractor-provided surety bonds and procedures for processing and obtaining approval of such bonds.
- 47-2.0 Purpose.** This regulation is intended to serve as a guide for coordinating the activities of the Department of Procurement Services and the Office of the City Attorney with regard to contractor-provided surety bonds and other aspects of contract security.
- 47-3.0 References.**
- (a) Richmond City Code § 74-4 (“Definitions”)
 - (b) Richmond City Code § 74-54 (“Bid bonds”)
 - (c) Richmond City Code § 74-67 (“Performance and payment bonds”)
 - (d) Richmond City Code § 74-70 (“Alternative forms of security”)
 - (e) Va. Code § 2.2-4343(A)(12)
 - (f) Va. Code § 2.2-4336 (“Bid bonds”)
 - (g) Va. Code § 2.2-4337 (“Performance and payment bonds”)
 - (h) Va. Code § 2.2-4338 (“Alternative forms of security”).
- 47-4.0 Definitions.** For the purposes of this regulation, the terms defined in this section have the meanings ascribed to them in this section unless the context clearly indicates that another meaning is intended.
- 47-4.1** “*Anticipated value*” means the maximum contract amount anticipated by the City for a particular contract and can be derived from a using agency’s budget or the amount encumbered by a using agency for a particular contract.
- 47-4.2** “*City Attorney*” means the City Attorney or the assistant city attorney assigned by the City Attorney to represent the Department of Procurement Services.
- 47-4.3** “*Construction contract*” means a contract awarded by the City for construction as defined in City Code § 74-4, as opposed to a contract for goods or services.
- 47-4.4** “*Contract modification*,” for purposes of this regulation, means a document amending, modifying or supplementing a contract with a contractor in a way that requires an increase or decrease in the penal amount of the performance bond and the payment bond provided by the contractor for that contract and containing (i) the signature of the contractor, (ii) the signature of an authorized Department of Procurement Services representative, (iii) the substance of the change and (iv) the new maximum authorized contract amount resulting from the modification (i.e., the required amount for which the contractor must provide a performance bond and a payment bond).
- 47-4.5** “*Contract Specialist*” means the Department of Procurement Services employee assigned responsibility for a particular solicitation, procurement, and contract.

- 47-4.6** “*Contract signature page*” means the page on which the contractor and the representatives of the City sign and which includes (i) the date of the contract, (ii) the proper name of the contractor, (iii) the contract number, (iv) the description of the project or other subject matter of the contract and (v) the maximum authorized contract amount for the contract (i.e., the required amount for which the contractor must provide a performance bond and a payment bond).
- 47-4.7** “*Contract value*” means the maximum contract amount stated in the contract--i.e., the total amount of money that the City is authorized to pay to the contractor for goods, services or construction provided or performed for the City pursuant to the contract.
- 47-4.8** “*Legal Assistant*” means the employee in the Office of the City Attorney designated by the City Attorney to perform initial reviews of surety bonds submitted pursuant to the City’s procurement law and this regulation.
- 47-4.9** “*Non-construction contract*” means a contract awarded by the City under which the City purchases goods or services, as defined in City Code § 74-4, or a combination of goods or services, as opposed to a contract for construction.
- 47-4.10** “*Power of attorney*” means a legal document executed by the surety that authorizes one or more attorneys-in-fact to execute surety bonds on behalf of the surety.
- 47-4.11** “*Renewal letter*” means a document renewing a contract with a contractor and containing (i) the contract number, (ii) the description of the project or other subject matter of the contract, (iii) the signature of the contractor, (iv) the signature of an authorized Department of Procurement Services representative, (v) the commencement and expiration dates of the renewal period and (vi) the maximum authorized contract amount for the renewal period (i.e., the required amount for which the contractor must provide a performance bond and a payment bond).
- 47-4.12** “*Surety bond*” means a contract with three parties under which a corporate surety assumes a contractor’s obligations to the City if the contractor does not perform those obligations. Examples of surety bonds include bid bonds, payment bonds and performance bonds.
- 47-4.13** “*Surety bond documentation*” means the documentation specified in section 47-8.0 below for bids, new contracts, contract renewals or contract modifications, respectively.
- 47-5.0** **Background.**
- 47-5.1** **Bid Bond.** Va. Code § 2.2-4343(A)(12) mandates that the City comply with Va. Code § 2.2-4336. City Code § 74-54 incorporates the requirements of Va. Code § 2.2-4336 into the City’s procurement law. A bid bond guarantees “that, if the contract is awarded to the bidder, the bidder will enter into the contract for the work

mentioned in the bid.” City Code § 74-54(a). The penal amount of a bid bond may not exceed five percent of the amount of the bidder’s bid. *Id.*

47-5.2 Payment Bond. Va. Code § 2.2-4343(A)(12) mandates that the City comply with Va. Code § 2.2-4337. City Code § 74-67 incorporates the requirements of Va. Code § 2.2-4337 into the City’s procurement law. A payment bond guarantees that the contractor will pay its subcontractors and suppliers. Those subcontractors and suppliers have a right to initiate an action on a payment bond independently of the City. Payment bonds are necessary in part because subcontractors and suppliers cannot obtain a mechanic’s or materialman’s lien on publicly owned property.

47-5.3 Performance Bond. Va. Code § 2.2-4343(A)(12) mandates that the City comply with Va. Code § 2.2-4337. City Code § 74-67 incorporates the requirements of Va. Code § 2.2-4337 into the City’s procurement law. A performance bond guarantees that the contractor will complete the work for which the contract calls on schedule and in accordance with the contract specifications.

47-6.0 Policy.

47-6.1 When Bid Bonds Are Required.

- (a) All Invitations for Bids (IFBs) for construction contracts with an anticipated value of \$100,000 or greater shall require that the bidder provide a bid bond with a penal amount equal to five percent (5%) of the amount of the bidder’s bid.
- (b) No IFB for a construction contract with an anticipated value less than \$100,000 or solicitation for a non-construction contract shall require that the bidder provide a bid bond unless approved in writing by the Director of Procurement Services.

47-6.2 When Performance and Payment Bonds Are Required.

- (a) All construction contracts with a contract value of \$100,000 or greater shall require that the contractor provide both a performance bond and a payment bond, each with a penal amount equal to the contract value, within 15 calendar days after the Department of Procurement Services issues the “Intent to Award” a contract to that contractor. (*A performance bond is different from a payment bond. When both are required, the contractor actually must bond twice the contract value.*)
- (b) No construction contract with a contract value less than \$100,000 shall require that the contractor provide a performance bond or a payment bond unless approved in writing by the Director of Procurement Services.
- (c) No non-construction contract shall require that the contractor provide a performance bond or a payment bond unless approved in writing by the Director of Procurement Services after consultation with the City Attorney. The Director of Procurement Services, with the advice of the City Attorney, may impose such

conditions on bonding requirements for non-construction contracts as he deems appropriate.

47-6.3 Alternative Forms of Security.

- (a) The City shall accept a certified check or a cash escrow in an amount equal to the face amount of a required bond as an alternative to that bond.
- (b) If approved by the City Attorney, the City shall accept a personal bond, a property bond, or a bank's or savings institution's letter of credit on certain designated funds in the face amount of a required bond as an alternative to that bond.

47-6.4 Contracts Not to Commence until Bonds Approved.

- (a) No notice to proceed for a construction contract that requires the contractor to provide a performance bond or a payment bond or both shall be issued until the City Attorney has approved such performance bond or payment bond or both as to form.
- (b) No contractor holding a non-construction contract that requires the contractor to provide a performance bond or a payment bond or both shall provide any goods or perform any services under such contract until the City Attorney has approved such performance bond or payment bond or both as to form.

47-7.0 Discussion.

47-7.1 Advantages. Surety bonds provide the City with a level of assurance that (i) the contractor's financial capacity has been demonstrated, (ii) the contractor's qualifications have been examined and (iii) money is available for recovery by the City or the contractor's subcontractors and suppliers.

47-7.2 Disadvantages. Performance bonds do not ensure that a contract will be completed on schedule. Performance bonds and payment bonds are often difficult for minority business enterprises and emerging small businesses to obtain. Surety bonds are not always easily applicable to non-construction contracts.

47-7.3 Proper Documentation. Surety bond documentation must be properly completed in order to protect the City. Sureties have numerous defenses that enable them to avoid paying claims on surety bonds even where the City suffers damage. The proper completion of surety bond documentation inures to the City's benefit by denying sureties defenses that may arise from incomplete or improperly completed surety bonds.

47-7.4 Timing. The City Attorney's review of surety bonds after receipt of surety bond documentation that is complete and in order generally takes less than 24 hours. However, errors in surety bonds dramatically increase the City Attorney's review time for those surety bonds. Consequently, in order to ensure the speediest possible

review of surety bond documentation by the City Attorney, the Contract Specialist should timely review surety bond documentation as required in the relevant portions of section 47-8.0 in order to make certain that simple errors are corrected before the surety bond documentation is delivered or transmitted to the City Attorney. If the contractor proposes alternative forms of security, the City Attorney will require more time to review the proposed form of security.

47-8.0 Procedures.

47-8.1 Receipt of Bids.

- (a) The surety bond documentation for bids received includes (i) the fully executed, sealed and notarized City of Richmond Bid Bond and (ii) the power of attorney for the bond.
- (b) The City Attorney does not review bid bonds.
- (c) The Contract Specialist shall timely review each bid bond to confirm the following:
 - (1) The name of the “principal” on the bid bond exactly matches the name of the bidder on the bid.
 - (2) The stated penal amount of the bid bond is equal to five percent (5%) of the total amount of the bid.
 - (3) The bid bond states the correct IFB number.
 - (4) The project described on the bid bond matches the project described in the IFB by date and work to be performed.
 - (5) The principal (i.e., the contractor) and the surety have signed and, as appropriate, sealed the bid bond, and a notary has completed the affidavit and acknowledgment portion of the bid bond.
 - (6) The form and language of the bid bond is complete (i.e., all pages are included) and matches the City’s current City of Richmond Bid Bond (refer Attachments to this regulation).
 - (7) The penal amount of the surety bond is equal to or less than the monetary limit, if any, stated in the power of attorney.
 - (8) The date of the bid bond (i.e., the last date before the signatures of the principal and the surety) matches the date (often handwritten or typed at the end) on the power of attorney.

- (9) The signature and typed name of the attorney-in-fact who signed the bid bond exactly matches the name of the attorney-in-fact as stated on the power of attorney.
- (d) The Contract Specialist shall timely contact the City Attorney with any questions about the completeness or accuracy of the bid bond.
- (e) If the Contract Specialist's review finds the surety bond documentation to be complete and in order in accordance with the items set forth in section 47-8.1(c), the Contract Specialist shall retain the surety bond documentation in the contract file and proceed with the award of the contract. If the Contract Specialist's review finds the surety bond documentation to be deficient, the Contract Specialist shall consult with the Contract Specialist's supervisor and the City Attorney to determine whether the bid should be rejected because of the deficiencies.

47-8.2 New Contract.

- (a) The surety bond documentation for new contracts includes (i) the fully executed, sealed and notarized payment bond, (ii) the fully executed, sealed and notarized performance bond, (iii) the power of attorney for the bonds and (iv) the contract signature page for the contract.
- (b) The Contract Specialist shall timely review both the payment bond and the performance bond to confirm the following:
 - (1) The name of the "principal" on the surety bond exactly matches the name of the "contractor" on the contract signature page.
 - (2) The stated penal amount of the bond matches the stated contract amount on the contract signature page.
 - (3) The date of the "written agreement" specified in the bond matches the date at the top of the contract signature page.
 - (4) The project described on the bond matches the project described in the contract by date and work to be performed.
 - (5) The principal (i.e., the contractor) and the surety have signed and, as appropriate, sealed each surety bond.
 - (6) The form and language of each surety bond is complete (i.e., all pages are included) and matches the City's current standard form for that surety bond (attached to this regulation).
 - (7) The penal amount of the surety bond is equal to or less than the monetary limit, if any, stated in the power of attorney.

- (8) The date of the surety bond (i.e., the last date before the signatures of the principal and the surety) matches the date (often handwritten or typed at the end) on the power of attorney.
 - (9) The name of the attorney-in-fact who signed the surety bond exactly matches the name of the attorney-in-fact as stated on the power of attorney.
- (c) If the Contract Specialist's review finds the surety bond documentation to be complete and in order in accordance with the items set forth in section 47-8.2(b), the Contract Specialist shall forward the surety bond documentation to the City Attorney by delivering or transmitting the surety bond documentation to the Legal Assistant. If the Contract Specialist's review finds the surety bond documentation to be deficient, the Contract Specialist shall return the surety bond documentation to the contractor for correction, noting the deficiencies in writing.
- (d) The Legal Assistant shall review the surety bond documentation in order to confirm all of the items set forth in section 47-8.2(b) as well as the following:
- (1) The surety is currently licensed to transact fidelity and surety business in Virginia.
 - (2) The contractor is currently licensed in Virginia.
 - (3) The face amount of each bond does not exceed ten percent (10%) of the surety's surplus including capital.
 - (4) The power of attorney does not restrict the attorney-in-fact's authority to sign surety bonds.
 - (5) The power of attorney has not been revoked.
 - (6) The notary's affidavit and acknowledgement complies with the applicable notarization standards.
- (e) The Legal Assistant shall provide the City Attorney with the surety bond documentation and the results of the Legal Assistant's review.
- (f) The City Attorney shall review the surety bond documentation. If the surety bond documentation is complete and in order, the City Attorney will approve the surety bonds as to form and return the surety bond documentation to the Legal Assistant. If the documentation is not complete and in order, the City Attorney will note the deficiencies in writing and return the surety bond documentation to the Legal Assistant.

- (g) The Legal Assistant shall inform the Contract Specialist that the surety bond documentation is ready for either pick-up or transmittal through interoffice mail, at the Contract Specialist's option.
- (h) Upon receiving surety bond documentation from the City Attorney, the Contract Specialist shall either:
 - (1) If the City Attorney has not approved the surety bond documentation, return all copies of the surety bonds and the power of attorney to the contractor for correction, noting in writing the deficiencies cited by the City Attorney; or
 - (2) If the City Attorney has approved the surety bond documentation, retain one original of the surety bond documentation in the contract file, return one copy of the surety bond documentation to the contractor, and forward one copy of the surety bond documentation to the using agency's manager for that contract.

47-8.3 Contract Renewal.

- (a) The surety bond documentation for contract renewals includes the following:
 - (1) Either:
 - (i) The fully executed, sealed and notarized continuation certificate and any increase/decrease rider necessary; or
 - (ii) Both (A) a fully executed, sealed and notarized payment bond and (B) a fully executed, sealed and notarized performance bond;
 - (2) The power of attorney for the bonds, continuation certificate or increase/decrease rider; and
 - (3) The renewal letter for the renewal of the contract.
- (b) If the contractor has provided a replacement payment bond and a replacement performance bond instead of a continuation certificate, the Contract Specialist shall timely review the payment bond and the performance bond as provided in section 47-8.2(b) above with reference to the renewal letter instead of the contract signature page.
- (c) If the contractor has provided a continuation certificate instead of a replacement payment bond and a replacement performance bond, the Contract Specialist shall timely review the continuation certificate and any increase/decrease rider submitted with the continuation certificate to confirm the following:
 - (1) For a continuation certificate:

- (i) The name of the surety in the continuation certificate exactly matches the name of the surety in the original performance bond and the original payment bond.
 - (ii) The name of the “principal” in the continuation certificate exactly matches the name of the “contractor” in the renewal letter.
 - (iii) The continuation certificate states the correct contract number.
 - (iv) The commencement and expiration dates of the renewal period (i.e., the “New Term” on the City’s continuation certificate form) stated in the continuation certificate match the commencement and expiration dates of the renewal period stated in the renewal letter.
 - (v) The principal (i.e., the contractor) and the surety have signed and, as appropriate, sealed the continuation certificate.
 - (vi) The form and language of the continuation certificate is complete (i.e., all pages are included) and matches the City’s current standard form for a continuation certificate (attached to this regulation).
 - (vii) The date of the continuation certificate (i.e., the last date before the signatures of the principal and the surety) matches the date (often handwritten or typed at the end) on the power of attorney.
 - (viii) The name of the attorney-in-fact who signed the continuation certificate exactly matches the name of the attorney-in-fact as stated on the power of attorney.
- (2) For an increase/decrease rider:
- (i) The name of the surety in the increase/decrease rider exactly matches the name of the surety in the original performance bond and the original payment bond.
 - (ii) The name of the “principal” in the increase/decrease rider exactly matches the name of the “contractor” in the renewal letter.
 - (iii) The increase/decrease rider states the correct contract number.
 - (iv) The increase/decrease rider correctly states whether the penal amounts of the performance bond and the payment bond are being increased or decreased.
 - (v) The stated old penal amount of the performance bond and the payment bond in the increase/decrease rider matches the stated contract amount

on the contract signature page or in the last renewal letter or contract modification, as appropriate.

- (vi) The stated new penal amount of the performance bond and the payment bond in the increase/decrease rider matches the stated contract amount in the renewal letter (or contract modification, as appropriate).
 - (vii) The new penal amount of the surety bond is equal to or less than the monetary limit, if any, stated in the power of attorney.
 - (viii) The date of the increase/decrease rider (i.e., the last date before the signatures of the principal and the surety) matches the date (often handwritten or typed at the end) on the power of attorney.
 - (ix) The name of the attorney-in-fact who signed the increase/decrease rider exactly matches the name of the attorney-in-fact as stated on the power of attorney.
- (d) After conducting the review called for by section 47-8.3(b) or section 47-8.3(c), as appropriate, the Contract Specialist, the Legal Assistant, and the City Attorney shall follow the same steps as set forth in section 47-8.2(c) through section 47-8.2(h) (provided that, for continuation certificates and increase/decrease riders, the Legal Assistant shall review the surety bond documentation with reference to the items set forth in section 47-8.3(c) instead of section 47-8.2(b)).

47-8.4 Contract Modification.

- (a) The surety bond documentation for contract modifications includes the following:
- (1) Either:
 - (i) The fully executed, sealed and notarized increase/decrease rider; or
 - (ii) Both (A) a fully executed, sealed and notarized payment bond and (B) a fully executed, sealed and notarized performance bond;
 - (2) The power of attorney for the bonds or increase/decrease rider; and
 - (3) The contract modification.
- (b) If the contractor has provided a replacement payment bond and a replacement performance bond instead of an increase/decrease rider, the Contract Specialist shall timely review the payment bond and the performance bond as provided in section 47-8.2(b) with reference to the contract modification instead of the contract signature page.

- (c) If the contractor has provided an increase/decrease rider instead of a replacement payment bond and a replacement performance bond, the Contract Specialist shall timely review the increase/decrease rider as provided in section 47-8.3(c)(2).
- (d) After conducting the review called for by section 47-8.4(b) or section 47-8.4(c), as appropriate, the Contract Specialist, the Legal Assistant and the City Attorney shall follow the same steps as set forth in section 47-8.2(c) through section 47-8.2(h) (provided that the Legal Assistant shall review the surety bond documentation with reference to the items set forth in section 47-8.3(c)(2) instead of section 47-8.2(b)).

47-8.5 Alternative Forms of Security.

- (a) Va. Code § 2.2-4338, City Code § 74-70 and the City's standard contract documents permit bidders or contractors to submit alternative forms of security.
- (b) The Contract Specialist is authorized and required to accept either a certified check or a cash escrow in the required surety bond amount if provided by a bidder or contractor.
- (c) The City Attorney must review and approve personal bonds, property bonds and letters of credit submitted by bidders or contractors on a case-by-case basis. This review requires significantly more time to complete than a review of the City's standard surety bond forms.

47-9.0 Responsibilities.

47-9.1 Director of Procurement Services. The Director of Procurement Services is ultimately responsible for deciding whether surety bonds will be required in instances where contractor-provided surety bonds are not legally mandated.

47-9.2 City Attorney. The City Attorney is ultimately responsible for approving or not approving performance bonds, payment bonds, and most alternative forms of security. The City Attorney is also responsible for answering questions about surety bonds raised by representatives of the Department of Procurement Services and advising the Director of Procurement Services on whether surety bonds should be required in instances where contractor-provided surety bonds are not legally mandated.

47-9.3 Contract Specialist. The Contract Specialist is responsible for:

- (a) Receiving the surety bond documentation from the contractor;
- (b) Performing a timely initial review of the surety bond documentation to ascertain whether it is in order;
- (c) Transmitting the surety bond documentation to the Legal Assistant; and

D. Either processing the approved surety bond documentation or returning deficient surety bond documentation to the contractor for correction.

47-9.4 Legal Assistant. The Legal Assistant is responsible for performing the review of the surety bond documentation and providing the surety bond documentation and the results of the Legal Assistant's review to the City Attorney.

47-10.0 Solicitation and Contract Language. The City's standard solicitation and contract language applicable to contract security is subject to modification from time to time by the Director of Procurement Services with the advice of the City Attorney.

47-11.0 Forms.

(a) The City Attorney has provided the following standard forms, attached to this regulation, for use in complying with this regulation:

- (1) City of Richmond Bid Bond (Attachment A)
- (2) City of Richmond Labor and Materials Payment Bond (Attachment B)
- (3) City of Richmond Performance Bond (Attachment C)
- (4) City of Richmond Continuation Certificate (Attachment D)
- (5) City of Richmond Increase/Decrease Rider (Attachment E)
- (6) Performance and Payment Bond Checklist (used by Legal Assistant) (Attachment F)

(b) Bond forms are write-protected and structured as forms to be filled out by contractors and their sureties. Consequently, these forms must be provided electronically to bidders and contractors.

47-12.0 Modification of Regulation. This regulation and any modifications thereto must be jointly issued by the Director of Procurement Services and the City Attorney.

**CITY OF RICHMOND
BID BOND**

KNOW ALL MEN BY THESE PRESENTS: That _____, the Contractor (“Principal”), whose principal place of business is located at _____, and _____ (“Surety”), whose address for delivery of ‘Notices’ is located at _____, are held and firmly bound unto the City of Richmond, Virginia, the Owner (“Obligee”) in the amount of five percent of the Total Amount Bid by the Principal, for the payment of which sum the Principal and the Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid in response to Invitation for Bids No. _____ for _____;

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are as follows:

1. This Bid Bond shall guarantee that:
 - a. The Principal will not withdraw its bid during the period of 60 days following the opening of bids.
 - b. If the Obligee accepts the Principal’s bid, the Principal will enter into a formal contract with the Obligee in the form of the Construction Contract included as part of the Invitation for Bids.
 - c. The Principal will submit the required Certificate of Insurance, any other required insurance documents and, if required by the Invitation for Bids, a properly executed Performance Bond and Labor and Material Payment Bond on the forms for such bonds included as part of the Invitation for Bids or such alternative forms of security as may be permitted under the Contract Documents.
 - d. In the event the Principal either (i) withdraws its bid during the period specified in subsection (a) above or (ii) fails, refuses or neglects to enter into the contract specified in subsection (b) above and give the insurance documents and bonds specified in subsection (c) above within 15 days after the Principal has received notice of the Obligee’s acceptance of its bid, the Principal and the Surety shall be jointly and severally liable to the Obligee for the difference between the amount specified in the Principal’s bid and such larger amount for which the Obligee may contract with another party to perform the work covered by said bid, up to the amount of the bid guarantee.
2. The Obligee, the Principal and the Surety agree that the amount for which the Principal and the Surety shall be jointly and severally liable to the Obligee pursuant to section 1(d) above represents the damage to the Obligee on account of the default of the Principal in any particular of section 1 above.
3. The Surety represents to the Obligee and the Principal that it is legally authorized to transact surety business in the Commonwealth of Virginia.

SIGNATURES AND SEALS ON FOLLOWING PAGE

Attachment A

Signed and sealed this ____ day of ____.

Contractor / Principal (SEAL)

Witness

By: _____

Title: _____

Surety (SEAL)

By: _____

Attorney-in-Fact

Typed Name: _____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH OF _____

CITY of _____

I, the undersigned notary public, do certify that _____, whose name is signed to the foregoing bid bond in the amount of five percent of the Total Amount Bid and which names the City of Richmond, Virginia, as Obligee, personally appeared before me today in the above jurisdiction and made oath that such individual (i) is the attorney-in-fact of _____, a _____ corporation which is the Surety in the foregoing bond, (ii) is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the Power of Attorney noted above, and (iii) acknowledged, on behalf of the above Surety, the foregoing bond before me as the above Surety's act and deed. Such individual has further certified that such individual's Power of Attorney has not been revoked.

Given under my hand this ____ day of ____.

Notary Public (SEAL)

My name (printed) is: _____.

My Notary Registration No. is: _____.

My commission expires: _____.

CITY OF RICHMOND
LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That _____, the Contractor ("Principal") whose principal place of business is located at _____ and _____ ("Surety") whose address for delivery of 'Notices' is located at _____ are held and firmly bound unto the City of Richmond, Virginia, the Owner ("Obligee"), in the amount of _____ Dollars (\$_____) for the payment whereof the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has by written agreement dated _____ entered into Contract No. _____ with Obligee for _____ which contract (the "Contract") is by reference expressly made a part hereof;

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly make payment to all claimants as hereinafter defined, for labor performed and material furnished in the prosecution of the Work provided for in the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions.

The Principal and the Surety, jointly and severally, hereby agree with Obligee as follows:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both for use in the performance of the Contract. A "subcontractor" of the Principal, for the purposes of this bond only, includes not only those subcontractors having a direct contractual relationship with the Principal, but also any other contractor who undertakes to participate in the Work which the Principal is to perform under the aforesaid Contract, whether there are one or more intervening subcontractors contractually positioned between it and the Principal (for example, a subcontractor). "Labor" and "material" shall include, but not be limited to, public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the work site.
2. Subject to the provisions of paragraph 3, any claimant who has performed labor or furnished material in accordance with the Contract documents in the prosecution of the Work provided in the Contract, who has not been paid in full therefor before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on this bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The Obligee need not be a party to such action and shall not be liable for the payment of any costs, fees or expenses of any such suit.

3. Any claimant who has a direct contractual relationship with any subcontractor of the Principal from whom the Principal has not required a subcontractor payment bond, but who has no contractual relationship, express or implied, with the Principal, may bring an action on this bond only if he has given written notice to the Principal within one hundred eighty (180) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the Work was performed or to whom the material was furnished. Notice to the Principal shall be served by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished shall not be subject to the time limitations stated in this paragraph 3.
4. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, the limitation embodied within this bond shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - b. Other than in a Virginia court of competent jurisdiction, with venue as provided by statute, or in the United States District Court for the district in which the project, or any part thereof is situated.
5. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder. The Surety understands and agrees that the penal amount of the bond shall be increased or decreased by any changes to time and amount incorporated into any change orders.
6. The Surety represents to the Principal and to the Obligee that it is legally authorized to do business in the Commonwealth of Virginia.

SIGNATURES AND SEALS ON FOLLOWING PAGE

Signed and sealed this ____ day of ____.

Contractor / Principal (SEAL)

Witness

By: _____

Title: _____

Surety (SEAL)

By: _____

Attorney-in-Fact

Typed Name: _____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH OF _____

CITY of _____

I, the undersigned notary public, do certify that _____, whose name is signed to the foregoing labor and material payment bond in the sum of \$_____ and dated _____ and which names the City of Richmond, Virginia, as Obligee, personally appeared before me today in the above jurisdiction and made oath that such individual (i) is the attorney-in-fact of _____, a _____ corporation which is the Surety in the foregoing bond, (ii) is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the Power of Attorney noted above, and (iii) acknowledged, on behalf of the above Surety, the foregoing bond before me as the above Surety's act and deed. Such individual has further certified that such individual's Power of Attorney has not been revoked.

Given under my hand this ____ day of ____.

Notary Public (SEAL)

My name (printed) is: _____.

My Notary Registration No. is: _____.

My commission expires: _____.

APPROVED:

Assistant City Attorney Date

**CITY OF RICHMOND
PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: That _____, the Contractor (“Principal”) whose principal place of business is located at _____ and _____ (“Surety”) whose address for delivery of ‘Notices’ is located at _____ are held and firmly bound unto the City of Richmond, Virginia, the Owner (“Obligee”), in the amount of _____ Dollars (\$_____) for the payment whereof the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has by written agreement dated _____ entered into Contract No. _____ with Obligee for _____ which contract (the “Contract”) is by reference expressly made a part hereof;

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly and faithfully perform said Contract in strict conformity with the plans, specifications and conditions of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Provided, that any alterations which may be made in the terms of the Contract, or in the Work to be done under it, or the giving by the Obligee of any extension of time for the performance of the Contract, or any other alterations, extensions or forbearance on the part of either or both of the Obligee or the Principal to the other shall not in any way release the Principal and the Surety, or either of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the Surety of any such alterations, extension, or forbearance being hereby waived.

No action shall be brought on this bond unless brought within one year after: (a) completion of the Contract and all Work thereunder, including expiration of all warranties and guarantees, or (b) discovery of the defect or breach of warranty or guarantee if the action be for such.

The Surety represents to the Principal and to the Obligee that it is legally authorized to do business in the Commonwealth of Virginia.

SIGNATURES AND SEALS ON FOLLOWING PAGE

Signed and sealed this ____ day of ____.

Contractor / Principal (SEAL)

Witness

By: _____

Title: _____

Surety (SEAL)

By: _____

Attorney-in-Fact

Typed Name: _____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH OF _____
CITY of _____

I, the undersigned notary public, do certify that _____, whose name is signed to the foregoing performance bond in the sum of \$_____ and dated _____ and which names the City of Richmond, Virginia, as Obligee, personally appeared before me today in the above jurisdiction and made oath that such individual (i) is the attorney-in-fact of _____, a _____ corporation which is the Surety in the foregoing bond, (ii) is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the Power of Attorney noted above, and (iii) acknowledged, on behalf of the above Surety, the foregoing bond before me as the above Surety's act and deed. Such individual has further certified that such individual's Power of Attorney has not been revoked.

Given under my hand this ____ day of ____.

Notary Public (SEAL)

My name (printed) is: _____.
My Notary Registration No. is: _____.
My commission expires: _____.

APPROVED:

Assistant City Attorney Date

TERMS AND CONDITIONS OF THE PERFORMANCE BOND

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the prompt and faithful performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor promptly and faithfully performs the Construction Contract in strict conformity with the plans, specifications and conditions of the Construction Contract, the Surety and the Contractor shall have no obligations under this Bond.
3. In the event of the Contractor's Default, and subsequent notification to the Surety pursuant to Section 8.1 of the General Conditions of the Construction Contract, the Surety shall, within fourteen (14) days of receipt of such notice, contact the Owner in writing, and arrange a meeting with the Owner to discuss methods of completing the Construction Contract. Paragraph 4, below, sets forth the options to be discussed. If the Surety fails to arrange a meeting or fails to attend such meeting, the Surety shall be deemed to be in default on this Bond and the Owner may, at its sole discretion, take what measures it deems necessary to protect the Owner's interests, without further notice to the Surety, and the Owner shall be entitled to enforce any remedy available to the Owner under the Construction Contract or under Virginia law.
4. Within thirty (30) days after such meeting, during which time the Surety may investigate and otherwise analyze the project, and which period shall neither toll any Construction Contract time periods nor operate as a waiver of any of the Owner's rights, the Surety shall, at its own expense, notify the Owner in writing that it is taking one of the following actions, which shall be acceptable to the Owner, at the Owner's sole discretion:
 - 4.1. By written takeover agreement with the Owner, the Surety itself shall undertake to perform and complete the Construction Contract, which it may do through its licensed agents or through licensed independent contractors. If the Owner, at its sole discretion, consents, the Contractor may serve as the Surety's independent contractor; however, due to conflicts with the City Procurement Code and the Virginia Public Procurement Act, the Owner may not directly contract with an otherwise qualified independent contractor produced by the Surety; or
 - 4.2. The Surety may, if acceptable to the Owner and at the Owner's sole discretion, waive its right to perform and complete the Construction Contract, and with reasonable promptness under the circumstances:
 - 4.2.1. Pay to the Owner all amounts for which it may be liable to the Owner as surety on this Performance Bond, including the damages described in Paragraph 6 below; or
 - 4.2.2. Deny liability, in whole or in part, and provide written notice thereof to the Owner, citing reasons therefor.

5. If, after the meeting described in Paragraphs 3 and 4, above, the Surety does not proceed with reasonable promptness with one of the options provided in Subparagraphs 4.1 or 4.2 (including its subparts) above, the Owner may send additional written notice to the Surety demanding that the Surety perform its obligations under the Bond. If the Surety does not proceed to perform its obligations under the Bond within fifteen (15) days after receipt of said notice, the Surety shall be deemed to be in default on this Bond. Thereafter, the Owner shall be entitled to enforce any remedy available to the Owner under the Bond, the Construction Contract or Virginia law. If the Surety proceeds as provided in Subparagraph 4.2, and the Surety and the Owner are unable to agree as to the amount for which the Surety may be liable to the Owner, or if the Surety has denied liability, in whole or in part, the Owner, without further notice, shall be entitled to enforce any remedy available to the Owner under the Bond, the Construction Contract or Virginia law. In such event, the Owner may immediately proceed to complete the work in any manner authorized by law.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1 or 4.2.1, above, then the responsibilities of the Surety to the Owner shall not be greater or less than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than or less than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, plus the increased cost of any change orders under the Construction Contract, provided the Owner commits the Balance of the Construction Contract Price to the prompt and faithful completion of the Construction Contract, the Surety is obligated without duplication for:
 - 6.1. The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 6.2. Additional legal, design professional and delay costs resulting from (i) the Contractor's Default and (ii) the actions or failure to act of the Surety under Paragraph 4; and
 - 6.3. Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor. The Owner, at its sole discretion, may waive its claim to delay costs and liquidated damages, either or both.
7. The Surety shall not be liable to the Owner for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Construction Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner, its officers, agencies, administrators, successors or assigns.
8. The Surety hereby waives notice of any changes, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations. The

Surety understands and agrees that the penal amount of the bond shall be increased or decreased by any changes to time and amount incorporated into any change orders.

9. The Owner may institute any proceeding, legal or equitable, under this Bond in any court of competent jurisdiction located in the city of Richmond, Virginia, as permitted under the Construction Contract, City Code § 74-67 (Virginia Code § 2.2-4337) and City Code § 74-68 (Virginia Code § 2.2-4340). The Contractor or the Surety may institute any proceeding, legal or equitable, under this Bond in any court of competent jurisdiction located in the city of Richmond, Virginia, as permitted under the Construction Contract or under Virginia law.
10. Notice to the Surety shall be mailed or delivered to the address shown on the Performance Bond in the space for Surety address for delivery of Notices.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was 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 as a common law bond when furnished to comply with statutory requirements.
12. For purposes of these Terms and Conditions, the following words and phrases have the meanings ascribed to them by this paragraph:
 - 12.1. **“Balance of the Construction Contract Price”**: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 12.2. **“Construction Contract”**: The agreement between the Owner and the Contractor identified on first page of the Performance Bond, including all contract documents and duly executed modifications and change orders thereto.
 - 12.3. **“Contractor’s Default”**: Failure of the Contractor, as defined under Section 8.1 of the General Conditions of the Construction Contract, which has neither been remedied, as permitted under Section 8.1 at the Owner’s sole discretion, nor expressly waived by the Owner, to perform or otherwise to comply with the terms of the Construction Contract.
13. Nothing in these Terms and Conditions shall prevent a surety from becoming involved in the Construction Contract prior to termination, upon notice from the Owner of the Contractor’s failure to promptly and faithfully perform the Construction Contract in strict conformity with the plans, specifications and conditions of the Construction Contract.

**CITY OF RICHMOND
PERFORMANCE AND PAYMENT BOND
CONTINUATION CERTIFICATE**

WHEREAS, _____ (the "Surety") signed and sealed as of _____ two surety bonds (the "Performance Bond" and the "Payment Bond") on behalf of _____ (the "Principal") in favor of the City of Richmond, Virginia (the "Obligee") with reference to Contract No. _____ (the "Contract") between the Principal and the Obligee; and

WHEREAS, the City has elected to extend or renew the Contract for a period beginning _____ and ending _____ (the "New Term");

NOW, THEREFORE, the Surety continues in force both the Performance Bond and the Payment Bond for the New Term subject to all of the covenants and conditions of each such bond.

Signed and sealed this _____ day of _____.

Surety (SEAL)

By: _____
Attorney-in-Fact

Typed Name: _____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH OF _____
CITY of _____

I, the undersigned notary public, do certify that _____, whose name is signed to the foregoing continuation certificate for a new term beginning _____ and ending _____ and dated _____ and which names the City of Richmond, Virginia, as Obligee, personally appeared before me today in the above jurisdiction and made oath that such individual (i) is the attorney-in-fact of _____, a _____ corporation which is the Surety in the foregoing certificate, (ii) is duly authorized to execute on the above Surety's behalf the foregoing certificate pursuant to the Power of Attorney noted above, and (iii) acknowledged, on behalf of the above Surety, the foregoing certificate before me as the above Surety's act and deed. Such individual has further certified that such individual's Power of Attorney has not been revoked.

Given under my hand this _____ day of _____.

Notary Public (SEAL)

My name (printed) is: _____.
My Notary Registration No. is: _____.
My commission expires: _____.

**CITY OF RICHMOND
PERFORMANCE AND PAYMENT BOND
INCREASE/DECREASE RIDER**

WHEREAS, _____ (the "Surety") signed and sealed as of _____ two surety bonds (the "Performance Bond" and the "Payment Bond") on behalf of _____ (the "Principal") in favor of the City of Richmond, Virginia (the "Obligee") with reference to Contract No. _____ (the "Contract") between the Principal and the Obligee; and

WHEREAS, the City and the Principal have agreed to increase or decrease the penal amount of each bond;

NOW, THEREFORE, the Surety hereby **increases** the penal amount of both the Performance Bond and the Payment Bond from _____ to _____ subject to all of the covenants and conditions of each such bonds.

Signed and sealed this _____ day of _____.

Surety (SEAL)

By: _____
Attorney-in-Fact

Typed Name: _____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH OF _____
CITY of _____

I, the undersigned notary public, do certify that _____, whose name is signed to the foregoing increase/decrease rider **increasing** the penal amount of both the Performance Bond and the Payment Bond from _____ to _____ and dated _____ and which names the City of Richmond, Virginia, as Obligee, personally appeared before me today in the above jurisdiction and made oath that such individual (i) is the attorney-in-fact of _____, a _____ corporation which is the Surety in the foregoing bonds and rider, (ii) is duly authorized to execute on the above Surety's behalf the foregoing rider pursuant to the Power of Attorney noted above, and (iii) acknowledged, on behalf of the above Surety, the foregoing rider before me as the above Surety's act and deed. Such individual has further certified that such individual's Power of Attorney has not been revoked.

Given under my hand this _____ day of _____.

Notary Public (SEAL)

My name (printed) is: _____.
My Notary Registration No. is: _____.
My commission expires: _____.

