

**JEFFERSON COUNTY SCHOOL DISTRICT NO. R-1**

**PERFORMANCE BOND**

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS that \_\_\_\_\_,  
as Principal (the "Principal"), and \_\_\_\_\_, a corporation  
organized and existing under the laws of the State of \_\_\_\_\_, and authorized  
to transact business in the State of Colorado, as Surety (the "Surety"), jointly and severally, bind  
themselves, their heirs, personal representatives, successors, and assigns to the JEFFERSON  
COUNTY SCHOOL DISTRICT NO. R-1, 1829 Denver West Drive, Building 27, Golden,  
Colorado 80401, as Obligee (the "Owner"), in the principal amount of  
\_\_\_\_\_ (\$ \_\_\_\_\_)

as adjusted by approved change orders (not to exceed 10 percent of the principal amount of this  
Bond unless expressly approved by the Surety, which approval shall not be unreasonably  
withheld) and interest as provided by law (collectively referred to herein as the "Penal Sum"), for  
the performance of the Construction Agreement between the Principal and the Owner, dated  
\_\_\_\_\_, for the following project: \_\_\_\_\_

together with the obligations of the Contract Documents, as defined in the Construction  
Agreement, all of which documents are collectively referred to herein as the "Contract" and are  
incorporated by this reference.

The condition of this obligation is such that, if the Principal shall at all times duly,  
promptly, and properly perform all the terms and conditions of the Contract and any authorized  
modifications thereof during the original term of the Contract, any extensions thereof that may  
be granted by the Owner, and during the term of any guarantee or warranty required under the  
Contract, the Principal and Surety shall have no obligation under this Bond, otherwise it shall  
remain in full force and effect.

The Surety for value received agrees that no extension of time, change in, addition to, or  
other alteration or modification of the terms of the Contract or work to be performed thereunder,  
or any other forbearance on the part of either the Owner or the Principal to the other shall in any  
way release or affect the Surety's liability or obligation on this Bond, and the Surety hereby  
waives notice of any such extension of time, change, addition, modification, alteration, or  
forbearance.

Whenever the Owner terminates the Contract in accordance with the terms thereof, the  
Surety shall, within fifteen (15) calendar days after written notice of such termination, notify the  
Owner in writing of its election to complete the Contract in accordance with its terms, or notify  
the Owner that the Surety elects not to complete the Contract. If the Surety fails to give the  
written notice so required within such fifteen (15) calendar day period, then it will be deemed to  
have elected not to complete the Contract. Should the Surety elect to complete the Contract, then  
it shall, within fifteen (15) additional calendar days following written notice of such election,  
obtain a contractor, subject to approval by the Owner in writing, to complete the original  
Contract in accordance with its terms and conditions and thereafter proceed with the work with

due diligence and make available as the work progresses sufficient funds to pay the cost of completion less the balance of the Contract price.

The Surety may not engage the Principal to complete the Contract, without the prior written consent of the Owner, which consent may be withheld in the Owner's sole discretion. If the Surety elects to complete the Contract, then it shall be entitled to receive the balance of the Contract price, less (i) any amounts paid by the Owner to the Principal; (ii) costs incurred by the Owner in correcting any defective work; (iii) any additional legal, design professional, and other costs incurred by the Owner resulting from the Principal's default; and (iv) liquidated damages caused by delayed performance or nonperformance of the Principal. Any progress payments, less retainage, due but not paid at the date of termination shall be paid to the Surety so long as the Surety has agreed to indemnify the Owner for the amount thereof and no other claims have been made to such funds by subcontractors or suppliers in accordance with the Contract or applicable law.

In the event the Surety elects not to complete the Contract, the Owner may then have the work completed by such means and in such manner, by contract with or without public bidding, or otherwise, as it may deem advisable. The Surety in such event shall at all times make available, as work progresses under the Contract between the Owner and its new contractor, sufficient funds, not to exceed the Penal Sum, to pay the cost of the completion of the Contract pursuant to its terms, together with the other amounts set forth in (i) through (iv) above, but in no event shall the Surety be responsible for the payment of any sums to the Owner until the Owner has paid in full its total obligation under the terms of the original Contract, plus change orders, less deductions and claims chargeable by law or by the Contract, if any, and less the retainage which will be disbursed as provided by the Contract Documents and applicable law.

The procedures set forth herein shall apply should there be a default and termination or a succession of defaults and terminations in fulfilling the terms and conditions of the work under the original Contract.

In the event there are negotiations between the Principal and/or the Surety and the Owner subsequent to the date of termination, each party shall appoint an authorized representative with authority to represent it during the negotiations. All written communications and official discussions between the parties shall be conducted by these authorized representatives. Any notice which any party desires or is required to provide another shall be in writing and shall be effective upon receipt when delivered or transmitted by personal delivery, certified (return receipt) mail, or express mail service to the addresses set forth herein.

Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work is located and shall be instituted before the expiration of three (3) years from the date on which final payment under the contract is made; provided, however, that this period may be extended by one (1) additional year by the Owner's giving written notice to the Surety within the three (3) year period of a potential claim. Any judgment recovered hereunder by the Owner shall include interest at the legal rate, together with reasonable attorneys' fees and costs.

No right action shall accrue under this Bond to or for the use of any person or entity other than the Owner or its successors and assigns.

IN WITNESS WHEREOF, the Principal and Surety have signed this Performance Bond as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

ATTEST: \_\_\_\_\_  
(Principal)

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

\_\_\_\_\_  
Print Name

(SEAL) Address: \_\_\_\_\_  
\_\_\_\_\_

ATTEST: \_\_\_\_\_  
(Surety)

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

\_\_\_\_\_  
Print Name

(SEAL) Address: \_\_\_\_\_  
\_\_\_\_\_

Claims Telephone No.: \_\_\_\_\_

Claims Fax No.: \_\_\_\_\_

Best's Rating: \_\_\_\_\_

Best's Financial Rating: \_\_\_\_\_

Date: \_\_\_\_\_

This Bond will be acceptable only if issued by an insurer rated no less than A-, Best's Insurance Guide, or have a Best's Financial Rating of at least class X. The fully executed bond form must be accompanied by a current Power of Attorney.

END OF PERFORMANCE BOND