

**PERFORMANCE BOND**

Bond No.: \_\_\_\_\_ Amount: \$ \_\_\_\_\_

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

\_\_\_\_\_, as principal (the "Contractor"), and

\_\_\_\_\_, as surety (the "Surety"), are firmly bound to

**COCALICO SCHOOL DISTRICT**

as obligee (hereinafter called the "Owner"), in the sum of \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_), for the payment of which we bind ourselves, our heirs, executors, legal representatives, successors and assigns, jointly and severally, by this Bond.

Background. The Contractor submitted to the Owner a bid (the "Bid") to perform certain \_\_\_\_\_ Work for the Owner in connection with a project known as **MIDDLE SCHOOL RENOVATIONS**, such Work to be performed pursuant to plans, specifications and other related contract documents that are incorporated into the Bid by reference. The Bid and other contract documents shall be deemed a part hereof as fully as if set out herein, and shall together be referred to as the "Contract Documents." The Owner is a "contracting body" under provisions of Act No. 385 of the General Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known and cited as the "Public Works Contractors' Bond Law of 1967" (the "Act"). Under the Contract Documents, it is provided that if the Contractor shall furnish this Bond to the Owner, and if the Owner shall make an award to the Contractor in accordance with the Bid, then the Contractor and the Owner shall enter into an agreement with respect to performance of such work (the "Agreement"), the form of which Agreement is set forth in the Contract Documents. It is a condition of the Contract Documents that this Bond shall be furnished by the Contractor to the Owner.

NOW, THEREFORE, intending to be legally bound, the Contractor and Surety agree as follows:

1. The Contractor and the Surety, jointly and severally, bind themselves for performance of the obligations of the Contractor under the Agreement and other Contract Documents, and to all of the terms of this Performance Bond. The Contractor and Surety understand that time is of the essence in performing their respective obligations under the Contract Documents and this Bond.

2. The Contractor and Surety will be relieved of their obligations under this Bond if and when the Contractor shall perform all of its obligations under the Agreement and other Contract Documents in the manner provided therein, including the making of any payments due to the Owner and its employees, directors or agents, and the Contractor and the Surety shall perform all of their obligations under this Bond. This Bond shall remain in force and effect until all of the foregoing conditions are fulfilled.

3. If the Owner terminates its Agreement with the Contractor for cause pursuant to the Contract Documents or if the Contractor has abandoned its work in violation of the Contract Documents, the Surety will have the following rights and obligations:

a. As Option 1, the Surety shall fulfill the performance of all obligations of the Contractor under the Contract Documents and this Bond. Pursuant to Option 1, any replacement contractor retained by the Surety to fulfill the performance of the obligations of the Contractor must be qualified as a responsible contractor under Pennsylvania law. The original Contractor shall not serve as the Surety's replacement contractor. The Surety shall provide the Owner, upon request, information on the pertinent qualifications of any proposed replacement contractor. The Owner will pay the unpaid contract price to the Surety as work progresses, under the payment terms of the Contract Documents.

b. As Option 2, the Surety may request to enter a written agreement with the Owner, pursuant to which the Owner shall complete all unfulfilled work of the Contractor pursuant to the Contract Documents, with reimbursement from Surety to Owner if the cost of finishing the work, together with all other expenses for which the Surety is liable, exceeds the unpaid balance to the Contractor under the Contract Documents. If the Surety wishes to make a request to the Owner pursuant to Option 2, it must do so within 30 days of receipt of written notice by the Owner that the Agreement with the Contractor has been terminated or that the Contractor has abandoned its work under the Contract Documents. The Owner shall be under no obligation to accept a request by the Surety to utilize Option 2, and if such a request is not timely made or is denied, the Surety shall proceed pursuant to Option 1.

4. Without limiting the obligations otherwise stated in this Bond, the Surety shall be liable under this Bond to pay the Owner the following to the extent the Contractor does not make such payment to the Owner: (a) any money the Contractor is obligated to pay the Owner under the Contract Documents, including any liquidated damages; and (b) any cost, expense, liability or damage incurred by the Owner (including any fees or costs of attorneys, architects, engineers, construction managers or other consultants) arising from (i) any default, failure or termination of the Contractor, (ii) the Owner's enforcement of Contractor or Surety obligations under this Bond, or (iii) any delay in performance of the Contractor's scope of Work caused by the Contractor or Surety that violates a project schedule approved pursuant to the Contract Documents, without regard to whether such delay occurs before or after commencement of the Surety's obligations pursuant to Paragraph 3 of this Performance Bond.

5. Amounts due and not paid to Owner when due under this Bond shall bear interest from the date the payment is due at the legal rate prevailing in Pennsylvania.

6. This Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract Documents not increasing the contract price more than twenty percent (20%), so as to bind the Contractor and the Surety to the performance of the Contract Documents as so amended, and so as to increase the Bond amount by the increased contract price amount. The term "amendment," wherever used in this Bond and whether referring to this Bond, the Contract Documents, or the Agreement shall include any alteration, addition, extension or modification of any character whatsoever.

7. The Contractor and the Surety agree that none of the following will in any way reduce the Surety's obligations under this Bond, and the Surety waives notice of any of the following: (1) any change, alteration or addition to the terms of the Contract Documents or to the work to be performed thereunder; (2) any extension of time; (3) any act of the forbearance of either the Contractor or the Owner toward the other; (4) any acceleration of payments to the Contractor resulting in payments to the Contractor of more than the amount to which the Contractor is entitled under the Contract Documents or in advance of the time required under the Contract Documents.

8. No settlement between the Owner and the Contractor shall abridge the right of any other beneficiary hereunder having a claim not yet asserted or satisfied.

9. Owner's acceptance of the Contractor's work under the Contract Documents or approval of final payment to the Contractor shall not terminate the performance obligations of Contractor and Surety under the Contract Documents and this Bond, and shall not waive any later claim for nonperformance.

10. Owner may at any time, but is not obligated to, notify Surety of Owner's concerns about Contractor performance, and send to Surety copies of any communication to Contractor.

11. This Bond shall be interpreted in accordance with the laws (including the common law) of the Commonwealth of Pennsylvania. Exclusive jurisdiction and venue for any litigation concerning this Bond shall exist in the Court of Common Pleas in the county in which the project is located. The Contractor and the Surety waive a jury trial in any such litigation.

12. This Bond is executed and delivered under the subject to the Act.

IN WITNESS WHEREOF, the Contractor and the Surety cause this Bond to be signed, sealed and delivered this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_.

**(Individual Contractor)**

WITNESS:

\_\_\_\_\_

\_\_\_\_\_(SEAL)  
Signature of Individual  
Trading and Doing Business As

\_\_\_\_\_

**(Partnership Contractor)**

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Name of Partnership

By: \_\_\_\_\_ (SEAL)  
Partner

By: \_\_\_\_\_ (SEAL)  
Partner

By: \_\_\_\_\_ (SEAL)  
Partner

**(Corporation Contractor)**

ATTEST:

\_\_\_\_\_

(Assistant) Secretary

(CORPORATE SEAL)

or (If Appropriate)

\_\_\_\_\_  
Name of Corporation

By: \_\_\_\_\_  
(Vice) President

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Name of Corporation

\*By: \_\_\_\_\_  
Authorized Representative

\*Attach appropriate proof, dated as of the same date as the Bond, evidencing authority to execute in behalf of the corporation.

**(Corporation Surety)**

\_\_\_\_\_  
Name of Corporation

WITNESS:

\_\_\_\_\_  
\*\*  
Attorney-in-Fact

\*\*Attach an appropriate power of attorney, dated as of the same date as the Bond, evidencing the authority of the attorney-in-fact to act in behalf of the corporation.

**PAYMENT BOND FORM**

KNOW ALL MEN BY THESE PRESENTS that we, \_\_\_\_\_, as Principal (the "Principal"), and \_\_\_\_\_, a company organized and existing under the laws of the \_\_\_\_\_ of \_\_\_\_\_, having its principal office at \_\_\_\_\_, and authorized to do business in the Commonwealth of Pennsylvania, as Surety (the "Surety"), are held and firmly bound unto \_\_\_\_\_, as Obligee (the "Obligee"), as hereinafter set forth, in the full and just sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United States of America, for the payment of which we bind ourselves, our heirs, executors administrators, successors and assigns, jointly and severally, firmly by these presents.

WITNESSETH THAT:

WHEREAS, the Principal heretofore has submitted to the Obligee a certain Bid, dated \_\_\_\_\_, 20\_\_\_\_\_(the "Bid"), to perform certain \_\_\_\_\_ Work for the Obligee, in connection with \_\_\_\_\_ (Name of Contract) \_\_\_\_\_, (Name of Project and Location Municipality, County and State)

pursuant to Drawings, Specifications and other related documents constituting the Bid Documents, which are incorporated into the Bid by reference (the "Contract Documents"), as prepared by AEM Architects, Inc., Registered Architect(s) of 3700 Perkiomen Ave., Reading, Pennsylvania; and

WHEREAS, the Obligee is a "contracting body" under provisions of Act No. 385 of the General Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known and cited as the "Public Works Contractors' Bond Law of 1967" (the "Act"); and

WHEREAS, the Act, in Section 3(a), requires that, before an award shall be made to the Principal by the Obligee in accordance with the Bid, the Principal shall furnish this Bond to the Obligee, with this Bond to become binding upon the award of a contract to the Principal by the Obligee in accordance with the Bid; and

WHEREAS, it also is a condition of the Contract Documents that this Bond shall be furnished by the Principal to the Obligee, and..."

WHEREAS, under the Bidding Documents, it is provided, inter alia, that if the Principal shall furnish this Bond to the Obligee, and if the Obligee shall make an award to the Principal in accordance with the Bid, then the Principal and the Obligee shall enter into an agreement with respect to performance of such work (the "Agreement"), the form of which Agreement is set forth in the Contract Documents.

NOW, THEREFORE, the terms and conditions of this Bond are and shall be that if the Principal and any subcontractor of the Principal to whom any portion of the work under the Agreement shall be subcontracted, and if all assignees of the Principal and of any such subcontractor, promptly shall pay or shall cause to be paid, in full, all money which may be due any claimant supplying labor or materials in the prosecution and performance of the Work in accordance with the Agreement and in accordance with the Contract Documents, including any amendment, extension or addition to the Agreement and/or to the Contract Documents, for material furnished or labor performed, then this Bond shall be void; otherwise, this Bond shall be and shall remain in force and effect.

This Bond, as provided by the Act, shall be solely for the protection of claimants supplying labor or materials to the Principal or to any subcontractor of the Principal in the prosecution of the Work covered by the Agreement, including any amendment, extension or addition to the Agreement and is conditioned for the prompt payment of all such materials furnished and labor supplied or performed in the prosecution of any portion of the work. The term "claimant", when used herein and as required by the Act, shall mean any individual, firm, partnership, association or corporation. The phrase "labor or materials", when used herein and as required by the Act, shall include, without limitation, public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site of the work covered by the Agreement. As required by the Act, the provisions of this Bond shall be applicable whether or not the material furnished or labor performed enters into and becomes a component part of the public building, public work or public improvement contemplated by the Contract Documents and the Agreement.

As provided and required by the Act, the Principal and the Surety agree that any claimant, who has performed labor or furnished material in the prosecution of the Work in accordance with the Agreement and in accordance with the Contract Documents, including any amendment, extension or addition to the Agreement and/or to the Contract Documents, and who has not been paid therefore, in full, 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 payment is claimed, may institute an action upon this Bond, in the name of the claimant, in assumpsit, to recover any amount due the claimant for such labor or material, and may prosecute such action to final judgment and may have execution upon the judgment; provided, however, that: (a) any claimant who has a direct contractual relationship with any subcontractor of the Principal, but has no contractual relationship, express or implied, with the Principal, may institute an action upon this Bond only if such claimant first shall have given written notice, served in the manner provided in the Act, to the Principal within (90) days from the date upon which such claimant performed the last of the labor or furnished the last of the materials for which payment is claimed, 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; and (b) no action upon this Bond shall be commenced after the expiration of one (1) year from the day upon which the last of the labor was performed or material was supplied, for the payment of which such action is instituted by the claimant; and (c) every action upon this Bond shall be instituted either in the appropriate court of the County where the Agreement is to be performed or of such other County as Pennsylvania statutes shall provide, or in the United States district court for the District in which the project, to which the Agreement related, is situated, and not elsewhere.

This Bond is executed and delivered under and subject to the Act, to which reference hereby is made.

The Principal and the Surety agree that any alterations, changes and/or additions to the Contract Documents, and/or any alterations, changes and/or additions to the work to be performed under the Agreement in accordance with the Contract Documents, and/or any alterations, changes and/or additions to the Agreement, and/or any giving by the Obligee of any extensions of time for the performance of the Agreement in accordance with the Contract Documents and/or any act of forbearance of either the Principal or the Obligee toward the other with respect to the Contract Documents and the Agreement, and/or the reduction of any percentage to be retained by the Obligee as permitted by the Contract Documents and by the Agreement, shall not release, in any manner whatsoever, the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors and assigns, from liability and obligations under this Bond; and the Surety, for value received, does waive notice of any such alterations, changes, additions, extensions of time, acts of forbearance and/or reduction of retained percentage.

If the Principal is a foreign corporation (incorporated under any laws other than those of the Commonwealth of Pennsylvania) then further terms and conditions of this Bond are and shall be that the Principal and the Surety shall not be discharged from liability on this Bond, nor this Bond surrendered until such Principal files with the Obligee a certificate from the Pennsylvania Department of Revenue evidencing the payment in full of all bonus taxes, penalties and interest, and a certificate from the Bureau of Employment and Unemployment Compensation of the Pennsylvania Department of Labor and Industry, evidencing the payment of all unemployment compensation, contributions, penalties and interest due the Commonwealth of Pennsylvania from said Principal or any foreign corporation, subcontractor thereunder or for which liability has accrued but the time for payment has not arrived, all in accordance with the provisions of the Act of June 10, 1947, P.L. 493, of the Commonwealth of Pennsylvania.

Any dispute resolution proceeding, legal or equitable, under this Payment Bond, shall be instituted in the Court of Common Pleas of Lancaster County and in such dispute resolution proceeding, Obligee may join both Principal and Surety as parties, and Principal and Surety hereby consent to such joinder, jurisdiction and venue. This Payment Bond shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, the Principal and the Surety cause this Bond to be signed, sealed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Individual Principal) \_\_\_\_\_(SEAL)  
(Signature of Individual)  
Trading and doing business as:

Witness:

\_\_\_\_\_

(Partnership Principal) \_\_\_\_\_  
(Name of Partnership)

Witness:

\_\_\_\_\_ BY: \_\_\_\_\_(SEAL)

Partner

\_\_\_\_\_ BY: \_\_\_\_\_(SEAL)

Partner

\_\_\_\_\_ BY: \_\_\_\_\_(SEAL)

Partner

(Corporation Principal) \_\_\_\_\_  
(Name of Corporation)

ATTEST:

\_\_\_\_\_ BY: \_\_\_\_\_  
Secretary (Assistant Secretary) (Vice President)

CORPORATE SEAL

or (if appropriate)

Witness:

\_\_\_\_\_ \*BY: \_\_\_\_\_

Authorized Representative

\*Attach appropriate proof, with raised corporate seal, dated as of the same date as the Payment Bond, evidencing authority to execute in behalf of the corporation.

(Corporation Surety) \_\_\_\_\_  
(Name of Corporation)

Witness:

\_\_\_\_\_ \*\*BY: \_\_\_\_\_

Attorney-in-fact

\*\*Attach an appropriate power of attorney with raised corporate seal, dated as of the same date as the Bond, evidencing the authority of the Attorney-In-Fact to act on behalf of the Corporation Surety. The Power of Attorney must show that the Attorney-in-Fact is a Pennsylvania Resident.

END OF DOCUMENT