



**CITY OF CHARLES TOWN, WEST VIRGINIA
PERFORMANCE BOND**

BOND NO.	DATE BOND EXECUTED:								
PRINCIPAL(S)/CO-PRINCIPAL(S) (Legal Name(s), Status, and Business Address(es) and <u>Telephone Number(s)</u>) (Hereinafter "Principal" whether one or more than one)	TYPE OF ORGANIZATION: (Check One) <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Corporation <input type="checkbox"/> Other (Specify) _____ _____ STATE OF INCORPORATION OF ORGANIZATION: _____								
SURETY(IES): (Names and Business Address(es) and <u>Telephone Number(s)</u>) (Hereinafter "Surety" whether one or more than one)	SUM OF BOND <table border="1" data-bbox="829 1225 1430 1336"> <thead> <tr> <th data-bbox="829 1225 1029 1261">Million(s)</th> <th data-bbox="1029 1225 1230 1261">Thousand(s)</th> <th data-bbox="1230 1225 1430 1261">Hundred(s)</th> </tr> </thead> <tbody> <tr> <td data-bbox="829 1261 1029 1336"> </td> <td data-bbox="1029 1261 1230 1336"> </td> <td data-bbox="1230 1261 1430 1336"> </td> </tr> </tbody> </table> DATE OF AGREEMENT: PLAN NAME: PLAN NO: Any and all revisions of such plans:			Million(s)	Thousand(s)	Hundred(s)			
Million(s)	Thousand(s)	Hundred(s)							

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety hereto recite and declare that:

1. We are held and firmly bound to the oblige, the **CITY OF CHARLES TOWN, WEST VIRGINIA** (hereinafter called "City"), in the sum written above in lawful money of the United States of America, to be paid to the City, its successors or assigns, for the payment whereof Principal(s), Co-Principal(s) and Surety(ies) bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by this Bond.
2. The condition of this Bond is that if the Principal shall in every respect discharge its obligations under the Agreement identified above, which Agreement is incorporated herein by reference, then this Bond shall be void; otherwise, this Bond shall remain in full force and effect until released by the City.

3. Surety expressly WAIVES any right to receive notice, review, approve any revisions to the plans, profiles, and specifications referred to in the Agreement and no such revision shall in any way affect the obligation of the Surety under this Bond.
4. Surety shall be deemed to consent to any extension of time granted to Principal to permit performance of the obligations of the Agreement, whether or not Surety receives notice of such extension of time, and the liability of Surety under this Bond shall not be discharged or affected by any such extension of time.
5. DEFAULT:
 - A. Default may be deemed to have occurred on the part of the Principal, if Principal shall fail to complete its obligations under the Agreement within the time set forth therein or any time extension thereof;
 - B. Default shall be deemed to have occurred on the part of the Principal prior to the expiration of such time period, or time extension, if, in the judgment of the Zoning Administrator ("ZA"), the Principal has:
 1. Abandoned the performance of its obligations under the Agreement; or
 2. Renounced or repudiated its obligations under the Agreement; or
 3. Demonstrated through in solvency, or otherwise, including the voluntary filing of a bankruptcy, that its obligations under the Agreement cannot be completed within the time allotted under the Agreement. Should the Applicant file bankruptcy, it shall provide notice of filing and obtain Bankruptcy Court permission to maintain any bonds, including this one, in place with the City.
 - C. Default shall be deemed to have occurred on the part of the Principal if Principal shall fail to renew this bond or to have this bond reissued prior to the completion of the Improvements covered by the Agreement.
 - D. The City may elect to provide Principal 30 days to cure any default with the Notice of Default.
 - E. In the event of default, the City may terminate whatever rights the Principal may have to construct or correct construction of facilities.
6. In the event of default by the Principal, the City shall send a Notice of Default to the Principal which may include the 30-day time period to cure the default. A copy of the Notice of Default will be sent to the Surety. Should the Principal fail to cure the default in the time allotted, the City through its City Manager or other agent, shall give written notice of same to the Surety. In the event of such default and notice, the Surety shall have either of the following options:
 - A. Within 21 days of receipt of the default notice, Surety shall pay over the full-face value sum of the Bond to the City or such lesser sum as the City Manager may determine in his sole discretion, and thereafter be relieved of further liability under this Bond. If this option is selected by Surety, then the City will take over or re-let all or any part of the work required by the Agreement but not completed, and will complete the same to the extent of available sums. The cost and expenses of completing the work shall include all items set forth in paragraph 7(B) of this Bond as the measure of damages. If these funds are not enough to complete the work, then the City may proceed against the Principal for any difference. If there are any funds left which are not necessary for completion of the work, then the City will remit this excess to Surety after work is completed.
 - B. Within 21 days of receipt of the default notice, Surety shall give written notice to the City that it will assume the Agreement and the obligations of the Principal and shall complete the Agreement according to its terms and provisions within 180 days of said notice or such other term as may be approved by City and thereafter be relieved of further liability under the terms of this Bond. In the event that Surety elects this option and then fails to faithfully perform all or any part of the work or should it unnecessarily delay completion of all or any part of the work, then the City may proceed as provided in paragraph 6 of this Bond.
 - C. As used in this Bond, completion of the work specifically includes performance of every obligation of the Principal under the Agreement.
 - D. The City shall not be required to institute suit against Principal as a precondition to seeking recovery from Surety.
7. Should Surety fail to elect either option in paragraphs 6 (A) and (B), above, within 21 days of receipt of

default notice, or upon election of either option should then fail to perform, in either such event, then the City may:

- A. Take over, or re-let all or any part of the work not completed and complete the same for the account and at the expense of the Principal and Surety, who shall be jointly and severally liable to the City for the costs incurred in completion, including all items set forth in paragraph 7(B) of this Bond as the measure of damages chargeable against Principal and Surety for their breach; or
 - B. Bring suit, action, or proceeding to enforce the provisions of this Bond. In the event that any such suit, action, or proceeding is brought by the City, it is expressly agreed and understood that, regardless of when the breach of the underlying Agreement occurs, or the breach of the obligations of this Bond, the measure of damages recoverable shall be computed as the costs of completion or correction, or both, of the work required by the Agreement (1) at the time the work is actually completed *and or* corrected to local and state approval and acceptance or (2) at the time of final judgment of a Court of competent jurisdiction; it is further expressly agreed and understood that the measure of damages shall include expenses attributable, but not limited, to administrative costs, litigation costs, attorney's fees, maintenance, deterioration, inflation, and any cost increases arising from delay occasioned by litigation, action, or proceedings necessary to enforce the provisions of this Bond, and delays by Surety under paragraph 6(B) of this Bond.
 - C. Should the City complete the work, the City shall not be bound by the Principal's approved construction plans if unforeseen conditions require the City to deviate from the approved plans. Such deviations shall be reasonable with regard to costs, time, and exigency and shall be at the sole discretion of the Zoning Administrator.
8. Nothing in this Bond shall be construed as creating an obligation upon the City to pay for the completion or correction of the work guaranteed under the provisions of this Bond.
 9. By signatures hereto the Principal and the Surety do hereby expressly WAIVE any objection that they, or either of them, might interpose to the authority of the City to require each and every provision of the foregoing Bond.
 10. If any provision of this Bond is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reason, such provision shall be fully severable and this Bond shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of this Bond, and the remaining provisions of this Bond shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from this Bond.
 11. The failure or refusal of the City to take any action, proceeding, or step to enforce any remedy or exercise any right under the Agreement or the taking of any action, proceeding, or step by City, acting in good faith upon the belief that same is permitted, shall not in any way release Principal or Surety, or any of them, or their respective executors, administrators, successors or assigns from liability under this Bond. Surety hereby WAIVES notice of any amendment, indulgence, or forbearance, made, granted or permitted by the City.
 12. In any action or proceeding initiated in connection with this Bond and any and all obligations arising hereunder, the venue shall be the County of Jefferson, West Virginia and it is hereby further understood and agreed that this Bond shall be governed by the laws of the State of West Virginia, both as to interpretation and performance.
 13. All notices sent to the Principal and Surety shall be sent to the addresses set forth on page 1 of 7 of this bond unless said Principal or Surety notify the Zoning Administrator in writing of any change. If an address of either Principal or Surety as shown on the signature page hereof is different from the address for that party as shown on page 1 of 7, notices shall be effective if sent to either address. If the addresses of any Principal or Surety change, the said Principal or Surety shall immediately notify the City Manager of such change. Failure to notify the City Manager of any change in address is deemed to be a waiver of any requirement of notice under this Bond to the Principal and Surety. All written notice to the City under this Bond shall be sent certified or registered mail, return receipt requested and addressed to the City Manager.

[REMAINDER OF THIS PAGE PURPOSELY BLANK. SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, under seal, as of the day and year on the date set forth above.

PRINCIPALS(S) / CO-PRINCIPAL(S)

TYPED, PRINTED NAME: SIGNATURE:

_____ (SEAL)

NAME AND TITLE: _____
(Typed/Printed) _____

SIGNATURE: _____ (SEAL)

NAME AND TITLE: _____
(Typed/Printed) _____

STATE OF _____
COUNTY OF _____, to wit:

I, _____ a Notary
Public in and for the State and County aforesaid, do hereby certify that

_____ and _____
as _____
and _____
respectively of the _____,

whose names are signed to the foregoing, this day personally appeared before me in my State and County aforesaid and acknowledged their signatures affixed above, and the Corporate Seal as the genuine seal of the said corporation.

Given under my hand this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

Notary Registration Number: _____

PRINCIPALS(S) / CO-PRINCIPAL(S)

NAME, ADDRESS, AND
TELEPHONE NUMBER:

STATE OF INCORPORATION OR ORGANIZATION:

SIGNATURES:

1. _____ (SEAL)
2. _____ (SEAL)

1. NAME AND TITLE: _____
(Typed/Printed) _____

2. NAME AND TITLE: _____
(Typed/Printed) _____

STATE OF _____
COUNTY OF _____, to wit:

I, _____ a Notary
Public in and for the State and County aforesaid, do hereby certify that

_____ and _____

as _____

and _____

respectively of the _____,

whose names are signed to the foregoing, this day personally appeared before me in my State and
County aforesaid and acknowledged their signatures affixed above, and the Corporate Seal as the
genuine seal of the said corporation.

Given under my hand this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____

Notary Registration Number: _____