

REQUEST FOR PROPOSALS FOR CONSTRUCTION OF
AFFORDABLE HOMES
ON BRUSH HOLLOW ROAD, THIRD ST, COVERT ST &
BROOKLYN AVENUE IN WESTBURY, NY 11590
June 18, 2015

TOWN OF NORTH HEMPSTEAD
COMMUNITY DEVELOPMENT AGENCY
51 ORCHARD STREET
ROSLYN HEIGHTS NEW YORK 11577

APPENDX C

ADDITIONAL CONTRACT DOCUMENTS

Contract Attachment Owner Contractor Plans Permits and Approvals Schedule

Town of North Hempstead Community Development Agency Construction of Affordable Homes Westbury New York 11590

Item	Description	Brooklyn	Brush Hollow	Covert	3 RD
<p>O= Owner obtains documentation, files application receives permit pending notice. Contractor provides insurance and bonding.</p> <p>C= Contractor obtains documentation, files application receives permit pending notice. Contractor provides insurance and bonding.</p>					
1 Licensed Surveyor Certified Survey Documents:					
1.2	Boundary Survey	O	O	O	O
1.3	Permit Application Survey	O	O	O	O
1.4	Foundation Location Survey	C	C	C	C
1.5	Final Survey	C	C	C	C
2 Licensed Architects Certified Plans and Specifications:					
2.1	Same plans and specifications as 3 RD Street of sufficient form and context for obtaining permits from departments and agencies having jurisdiction over the work.	O	O	O	O
2.2	As Built Plans of changes, if any, during construction of sufficient form and context .	C	C	C	C
3 HERS:					
Certified HERS Rating of architects plans for building permit application.					
3.1	Certified HERS inspection reports during and upon completion of construction.	C	na	C	C
4 Utility's:					
4.1	Certified Electrical Inspectors Certification of all electrical work.	C	C	C	C
4.2	Electric account and house service.	C	C	C	C
4.3	Gas account and house service.	C	na	C	C
4.4	Water account and house service	C	na	C	C
5 Building Permits:					
5.1	Building Permit	O	O	O	O
5.2	Plumbing Permit	O	O	O	O
5.3	Drainage Permit	O	O	O	O
5.4	Air Conditioning and Heating Permit	O	O	O	O
5.5	Gas House Permit	O	O	O	O
5.6	Water House Line Permit	O	O	O	O
5.7	Demo Permit	na	O	na	O
6 Public Works Permits:					
6.1	Sidewalk Permit	O	O	O	O
6.2	Curb Permit	O	O	O	O
6.3	Curb Cut Permit	O	O	O	O
6.4	Water Road Opening Permit	O	na	O	O
6.5	Sewer Road Opening Permit	O	na	O	O
6.6	Oil Tank Abandonment and Removal	na	C	na	na
6.7	Sewer Permit	C	na	C	C
6.8	Health Department Rat Letter	na	C	na	na

IRREVOCABLE STANDBY LETTER OF CREDIT

[Date of Issue]

Beneficiary:	Applicant:
Name: _____	Name: _____
Address: _____	Address: _____
_____	_____
_____	_____

LOC
Number: _____
Amount
(USD): _____
Expiration
Date: _____
TLD: _____

We hereby establish this irrevocable standby letter of credit no. _____ (LOC), by order of, for the account of, and on behalf of the named Applicant, and in favor of you, the named Beneficiary, for unconditional drawings, in one or more drafts, up to an aggregate amount not exceeding the Amount of this LOC first stated above. The term 'Beneficiary' shall include any assigned designee and any successor of interest of the named Beneficiary.

We hereby undertake to promptly honor your draft(s) drawn on us, for all or partial amounts of this LOC. This LOC is issued, presentable and payable and we guaranty to the drawers, endorsers, and bona fide holders of this LOC that drafts under and in compliance with its terms will be honored. This LOC may not be transferred or assigned by us. We agree to replace an original LOC in the event it is lost, stolen, mutilated or destroyed with one marked as a true copy or replacement.

Subject to the express terms and conditions herein, funds under this LOC are **unconditionally** available to you upon presentation or delivery to our offices, in a manner described below, of written notice bearing the original signature of an officer of the Beneficiary certifying "we are hereby authorized to draw under the LOC," and to be accompanied by the original of this LOC. We hereby agree that the form of any draw certificate required by us, if any, shall not itself require conditions for draw, other than those as herein identified. Any partial draws against this LOC shall reduce the amount available hereunder. The Applicant will pay all commissions and charges relating to any draw or the transfer of this LOC to any successor in interest of the Beneficiary.

6 years from effective date of Registry Agreement or auto-renewal/evergreen required

Minimum of 30-day notification prior to expiration, termination or non-renewal required.

This clause establishes unconditional right to draw on LOC.

To Be Issued on Official Bank Letterhead

This LOC expires with our close of business on the Expiration Date first stated above, however, it is a condition of this LOC that it shall be deemed automatically extended without amendment for additional one (1) year terms upon expiration the then current term, unless at least thirty (30) days before any such Expiration Date we notify you by registered mail that we elect not to renew this letter for such additional period.

TIP: Term here is "X" plus auto-renew. Language represents "best practice" to avoid issues arising for insufficient LOC Term.

ICANN consent required

This LOC cannot be amended, modified or revoked without the prior written consent the Beneficiary. The Beneficiary shall not be deemed to have waived any rights under this LOC, unless an officer of the Beneficiary shall have signed a written waiver expressly referencing the right to be waived. No such waiver shall be effective as to any transaction that occurs subsequent to the date of the waiver or as to any continuance of a breach after the waiver.

This LOC is issued subject to International Standby Practices 1998 (ISP 98), International Chamber of Commerce Publication No. 590.

ISP 98 should govern, and must not be supplanted by reference to any other law.

Sincerely,

[ENTER BANK NAME]

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

COMPLETION GUARANTY

Westbury, New York
_____, 2015

The following terms used in this Guaranty shall have the following meanings:

Agreement: Contract dated this ___ day of _____, 2015 by and between the Contractor and the Agency/Owner.

Agency: TOWN OF NORTH HEMPSTEAD COMMUNITY DEVELOPMENT AGENCY, a Municipal Corporation that maintains its offices at 51 Orchard Street, Roslyn Heights, New York 11577.

Contractor: _____, a New York corporation having its principal office at _____, _____, New York _____.

Improvements: Site work and improvements for four (4) affordable homes (the “Homes “or “Home”) at the following locations: 876 Brush Hollow Road, Westbury, New York Section 11, Block 167, Lot 31 (Formerly Section 11, Block 167, Part of Lots 8, 9 and 10) Third Street, Westbury, New York Section 11, Block 167, Lot 32 (Formerly Section 11, Block 167, Lot 11 and P/O Lots 8, 9 and 10) 265 Covert Street, Westbury, New York Section 11, Block 97, Lots 40, 41 and 42 216 Brooklyn Avenue, Westbury, New York Section 11, Block 122, Lots 18 and CDA will retain ownership of lot 20 and will be responsible for the subdivision.

All other defined terms shall have the meaning given to them in the Agreement unless otherwise defined herein.

The Contractor and the Agency are executing the Agreement for the construction of the Improvements simultaneously herewith and the Agency is willing to enter into said if it receives this Guaranty from the undersigned Guarantors.

NOW, THEREFORE, in consideration of the premises and of other valuable consideration and to induce the Agency to execute the Agreement, the Guarantors agree with the Agency as follows:

1. The Guarantors unconditionally guarantee that:
 - (a) The Contractor shall construct, equip, complete and pay for the Improvements in accordance with the Agreement;
 - (b) The Contractor shall keep the premises free and clear of all liens connected with or arising from the construction, equipping, and completion of the Improvements.

- (c) The Contractor shall promptly and completely observe, fulfill and perform all conditions, covenants and other agreements of the Contractor contained in the Agreement or any or any other instrument relative thereto, it being expressly understood and agreed that this is a continuing guaranty and that the obligations of the Guarantors are and shall be absolute under any and all circumstances, without regard to the validity, regularity or enforceability of the Agreement or any other instrument executed in connection therewith between Agency and Contractor, a true copy of each said documents the Guarantors hereby acknowledge having received, reviewed and approved.
 - (d) The Contractor shall fully and punctually pay and discharge any and all costs, expenses and liabilities for or in connection with the construction, equipping and completion of the improvement to be made pursuant to the Agreement, as the same may become due and payable, and also pay and discharge all proper claims and demands for labor, materials and services used for or in the construction, equipping and completion of the improvements to be made pursuant to the Agreement.
 - (e) In the event the improvements to be made pursuant to the Agreement are not completed and paid for as aforesaid or are not free of all such liens, claims and demands upon the completion thereof the Guarantors will fully indemnify and save the Agency harmless from all cost and damages that the Agency may suffer by reason thereof.
 - (f) In the event the Agency shall cause any construction, equipping or completion of the Improvements to be made pursuant to the Agreement to be done, pay any costs in connection with the construction, equipping or completion of said improvements other than the sums paid to the Contractor in accordance with the Agreement, or cause any such liens, claim or demand to be released or paid, then the Guarantors shall immediately reimburse the Agency for all sums paid and all costs and expenses incurred thereby in connection therewith
 - (g) Obtain certificate(s) of occupancy and any other municipals or governmental approvals and certificates relating to or evidencing the construction and completion of the Improvement.
2. If the Contractor does not do the matters specified paragraphs 1(a), (b), (c), (d), (e), (f) and (g).

On or before the times such matters are to be done by the Contractor, the Guarantors shall:

- (a) Construct, equip, complete and pay for the Improvements in accordance with the Agreement;
- (b) Remove any lien arising from the construction of the Improvements;

- (c) Obtain certificate(s) of occupancy and any other municipal or governmental approvals and certificates relating to or evidencing the construction and completion of the Improvement; and
- (d) Pay all costs and expenses incurred in doing (a), (b), (c) (d), (e), (f) and (g) of this paragraph 2 and pay to or reimburse the Agency for all expenses incurred by, or other monies due, the Agency pursuant to the Agreement.

3. The Agency may without the consent of, or notification to the Guarantors at any time and from time to time, (a) amend any provision of the Agreement, (b) make any agreement with the Contractor of the extension, payment, compounding, compromise, discharge or release of any provision of the Agreement, or for any modifications of the terms thereof, without notice to or the consent of the Guarantors and (c) without limiting the generality of the foregoing, the Agency is expressly authorized to surrender to the Contractor, or to deal with or modify the form of, any security which the Agency may at any time hold to secure the performance of any obligation hereby guaranteed, and the guarantees herein made by the Guarantors shall not be impaired or affected by any of the foregoing.

4. Any notice or demand given or made under this Guaranty shall be given or made by mailing the same by registered mail to the party to whom the notice or demand is given or made at the address of such party set forth in this Guaranty, or such other address as such party may hereafter designate by notice given as provided in this paragraph 4.

5. The obligations of the Guarantors hereunder are joint and several.

6. The Guaranty shall inure to the benefit of the Agency and its successors and assigns and shall be binding upon the heirs, personal representatives, successors and assigns of the Guarantors.

7. The Guaranty may be executed in counterparts and shall inure to the benefit of the Agency and its successors and assigns and shall be binding upon the heirs, personal representatives, successors and assigns of the Guarantors.

8. This Guaranty is, and shall be deemed to be, a contract entered into under the laws of the State of New York and shall be in all respects governed, construed, applied and enforced in accordance with the laws of said state; and no defense given or allowed by the laws of any other state or country shall be interposed in any action hereon unless such defense is also given or allowed by the laws of the State of New York. The Guarantors agree to submit to personal jurisdiction in the State of New York in any action or proceeding arising out of this Guaranty and, in furtherance of such agreement, the Guarantors agree that personal jurisdiction may be obtained over them in any such action or proceeding brought in any New York State Court by mailing by registered mail or by personal service of a summons in such action or proceeding to the last known

address of the Guarantors, whether such addresses be within or without the jurisdiction of such Court.

9. This Guaranty guarantees completion of the Improvements. All remedies afforded to the Agency, its successors and assigns, by reason of this Guaranty are separate and cumulative and no one of such remedies, whether or not exercised by the Agency, its successors and assigns, shall be deemed to be an exclusion of any one of the other remedies available to the Agency either at the time same is exercised or thereafter arising, and shall in no way limit or prejudice any other legal or equitable remedies which the Agency, its successors or assigns may have pursuant to this Guaranty and/or any of and all of the Other Loan Documents. The Guarantors hereby waive any and all legal requirements that the Agency, its successors or assigns, institute any action or proceeding at law or in equity against the Contractor, or anyone else, or exhaust its or their remedies against the Contractor, or anyone else, with respect to any other security held by the Agency, as a condition precedent to bringing any action or actions against the Guarantors upon this Guaranty.

10. Until 369 days after all of the Contractor's obligations under the Agreement are completed, and no Act of Bankruptcy committed by a guarantor (including but not limited to the filing petition in bankruptcy), this guarantee shall remain in full force and effect. The Guarantors shall not be released by any act or thing which might, but for this provision of this Guaranty, be deemed a legal or equitable discharge of a guarantor or surety, or by reason of any waiver, extension, modification, forbearance or delay or other act or omission of the Agency, its successors and assigns, or its or their failure to proceed promptly or otherwise, or by reason of any further obligation or agreement between the Contractor, or by reason of any action taken or omitted or circumstances which may or might vary the risk of or affect the rights of the Guarantors, or by reason of any further dealings between the Contractor and the Agency, or its successors or assigns relating to the Agreement or otherwise, and the Guarantors hereby expressly waive and surrender any defense to their liability hereunder based upon any of the foregoing acts, omissions, things, agreements or waivers or any of them (other than completion), it being the purpose and intent of the parties hereto that the obligations of the undersigned hereunder are absolute and unconditional under any and all circumstances.

11. The Guarantor hereby waives the right to seek payment, claim, subrogation, and/ or reimbursement from the Contractor in the event the Guarantor makes payment to the Agency or otherwise specifically performs pursuant to the terms hereof. The Guarantor shall have no right of subrogation, and waives any right to enforce any remedy that the Agency now has or may hereafter have against the Contractor, and waives any benefit of and any right to enforce any remedy that the Agency now has or may hereafter have against the Contractor, and waives any benefit of and any right to participate in any security now or hereafter held by the Agency. This guaranty shall be a continuing, absolute and unconditional guaranty regardless of the validity, regularity or enforceability of any of said obligations or purposed obligations or the fact that a security interest, as a

lien on any collateral security may not be granted to, conveyed to, or created in favor of Agency or that collateral security may be subject to equities or defenses or claims in favor of others or may be invalid or defective in any way and for any reason including any action, or failure to act, by Agency.

12. In the event any one or more of the provisions contained in this Guaranty shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall at the option of the Agency not affect any other provision of this Guaranty, but this Guaranty shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

13. Guarantor hereby waives any right which it may have to a trial by jury and/or the right to assert any counterclaims, offsets or defenses (other than payment) in connection with any litigation arising out of this Guaranty.

14. Guarantor shall pay to Agency all reasonable sums as and for attorney's fees and disbursements and such costs and expenses as may be incurred by Agency in the enforcement of this Guaranty, including, without limitation, any bankruptcy or insolvency proceeding brought by or against Borrower and/or Guarantor to the extent that Guarantor's liability under, or the enforceability of, this Guaranty shall be an issue or otherwise litigated.

IN WITNESS WHEREOF, the Guarantors have executed this Guaranty as of the date first above written.

GUARANTOR

GUARANTOR

 **AIA**® Document A312™ – 2010

Performance Bond

CONTRACTOR:

(Name, legal status and address)

Sample

Sample

Sample

OWNER:

(Name, legal status and address)

Sample

Sample

Sample

CONSTRUCTION CONTRACT

Date:

Amount:

Description:

(Name and location)

Sample

Sample

BOND

Date:

(Not earlier than Construction Contract Date)

Amount:

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

SURETY

Company: *(Corporate Seal)*

Signature: _____

Name

and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature: _____

Name

and Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312–2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .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.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the 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 or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 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. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____

Name and Title: _____

Address: _____

Signature: _____

Name and Title: _____

Address: _____

Init.



AIA[®] Document A312[™] – 2010

Payment Bond

CONTRACTOR:

(Name, legal status and address)

Sample

Sample

Sample

OWNER:

(Name, legal status and address)

Sample

Sample

Sample

CONSTRUCTION CONTRACT

Date:

Amount:

Description:

(Name and location)

Sample

Sample

BOND

Date:

(Not earlier than Construction Contract Date)

Amount:

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

SURETY

Company: *(Corporate Seal)*

Signature: _____

Name
and Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature: _____

Name
and Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312–2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form.

This is not a single combined Performance and Payment Bond.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 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. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____

Name and Title: _____

Address: _____

Signature: _____

Name and Title: _____

Address: _____