



WAREHAM WATER POLLUTION CONTROL FACILITY

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#17-IFB-003

Long Term Disposal of Liquid Sludge From Wareham Water Pollution Control Facility

June 8, 2017

PROJECT: Disposal of Liquid Sludge
DATE ISSUED: June 1, 2017

ADDENDUM NO. 1

The specification documents for the above-referenced project are hereby amended and/or clarified as per the particular listed below:

General Requirements

BIDDER MUST ACKNOWLEDGE RECEIPT OF THIS ADDENDUM BY SIGNING BELOW AND INCLUDING THIS ADDENDUM IN THEIR BID SUBMITTAL.

Signature of Authorized Bidder

Date

CERTIFICATE OF AUTHORITY

At a duly authorized meeting of the Board of Directors of the

(Name of Corporation) held on _____ (Date) it was VOTED.

that:

_____ (Name) (Officer)

of this company, be and he/she hereby is authorized to execute contracts and bonds in the name and on behalf of said company, and affix its corporate seal hereto; and such execution of any contract or obligation in this company's name on its behalf by such _____ under seal of the Company, shall be valid and binding upon this company. (Officer)

A True Copy,

ATTEST: _____

TITLE:

PLACE OF BUSINESS:

DATE OF THIS CONTRACT:

I hereby certify that I am the clerk of the

that _____ is duly elected

of said company, and that the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

(Clerk)

CORPORATE SEAL:

Section 01010

General Requirements

Part 1: General

- 1.01 Liquid sewerage sludge averaging 66,700 gallons per week (weekly average based on FY2016 quantities) with a solids content averaging 4.9 percent total solid (based on 2016 data) will be delivered to the CONTRACTOR in the sludge loading area. Sludge delivery typically occurs on weekdays three to five days per week with the actual disposal schedule to be determined by the Town. The delivery volume on a given day will vary between a minimum amount of 9,000 gallons and a maximum amount of 45,000 gallons.
- 1.02 The CONTRACTOR will be permitted to take samples of the sludge for analysis to verify the sludge quality during regular business hours upon reasonable notice to the Director of the Water Pollution Control Facility (WPCF) at the CONTRACTOR'S sold cost and expense. The CONTRACTOR must submit any necessary applicable permits for transport and processing of WPCF sludge quality in order to obtain the necessary permits. If a program of continuous testing is required to meet permit requirements, the CONTRACTOR shall develop a schedule for taking such samples that shall be approved by the Director of Water Pollution Control Facility.
- 1.03 CONTRACTOR shall, as a condition of award and continuously throughout the Contract duration, maintain compliance with all laws and regulations in place at the time or receipt of bids applicable to removal, transport, processing and use of TOWN sludge at its sole cost and expense.
- 1.04 Changes in federal state, or local laws, regulations, ordinances or if the chemical characteristics of the liquid sludge change that cause the CONTRACTOR a significant cost increase to transport, dispose of, or process sludge, CONTRACTOR shall have the right to request an adjustment of the contract price upon sixty (60) days prior written notice to the TOWN. In the event that the TOWN does not agree to the adjusted price within sixty (60) days written notice is provided for such termination and no such termination shall in any manner relieve the CONTRACTOR or TOWN of their obligations to pay any outstanding amounts then due and owing or which become due and owing hereunder.

Section 01010

General Requirements

Part 1: General

- 1.01 Liquid sewerage sludge averaging 55,000 gallons per week (weekly average based on FY206 quantities) with a solids content averaging 3.7 percent total solid (base on 2006 data) will be delivered to the CONTRACTOR in the sludge loading area. Sludge delivery typically occurs on weekdays three to five days per week with the actual disposal schedule to be determined by the TOWN. The delivery volume on a given day will vary between a minimum amount of 9,000 gallons and a maximum amount of 45,000 gallons
- 1.02 The CONTRACTOR will be permitted to take samples of the sludge for analysis to verify the sludge quality during regular business hours upon reasonable notice to the Director of the Water Pollution Control Facility (WPCF) at the CONTRACTOR'S sole cost and expense. The CONTRACTOR must submit any necessary applicable permits for transport and processing of WPCF sludge quality in order to obtain the necessary permits. If a program of continuous testing is required to meet permit requirements, the CONTRACTOR shall develop a schedule for taking such samples that shall be approved by the Director of Water Pollution Control.
- 1.03 CONTRACTOR shall as a condition of award and continuously throughout the Contract duration, maintain compliance with all laws and regulations in place at the time of receipt of bids applicable to removal, transport, processing, and use of TOWN sludge at its sole cost and expense.
- 1.04 Changes in federal, state, or local laws, regulations, ordinances or if the chemical characteristics of the liquid sludge change that cause the CONTRACTOR a significant cost increase to transport, dispose of, or process sludge, CONTRACTOR shall have the right to request an adjustment of the contract price upon sixty (60) days prior written notice to the TOWN. In the event that the TOWN does not agree to the adjusted price within sixty (60) days written notice is provided for such termination and no such termination shall in any manner relieve the CONTRACTOR or TOWN of their obligations to pay any outstanding amounts then due and owing or which become due and owing hereunder.

- 1.05 CONTRACTOR shall compile and submit a listing of all regulatory agency authorizations applicable to long-term removal, transport, and disposal of TOWN's residuals. The listing shall identify the effective date and expiration date of all permits; copies of all permits shall be included within this compilation. As a condition of award, CONTRACTOR shall establish to TOWN's satisfaction that he/she possesses for the Contract duration regulatory authorization applicable to the TOWN's project, shall demonstrate they are in good standing, and can accommodate the TOWN's long-term liquid sludge disposal and use conditions within these authorizations.
- 1.06 CONTRACTOR shall notify TOWN of any action(s) potentially or actually altering the status of any of these authorizations. CONTRACTOR shall also notify TOWN at least six months prior to the expiration of any permit applicable to this Contract. CONTRACTOR shall reapply for requisite re-authorization(s) in conformance with law and regulation, shall notify TOWN of the disposition of its reapplication, and shall implement such secondary contingency plans as necessary in providing uninterrupted long-term residuals disposal. CONTRACTOR shall provide TOWN with copies of all transactions conducted from reapplication through disposition and re-issuance.
- 1.07 CONTRACTOR shall diligently make all reasonable efforts to appeal or contest all unfavorable regulatory sanctions or permit disposition affecting TOWN's long-term residuals disposal and/or processing and use at no cost to the TOWN, and shall keep TOWN fully informed as to the status and progress of such appeal(s) or contestation(s).
- 1.08 CONTRACTOR shall ensure that all labor, material and equipment necessary to provide the required services exists, is under his/her direct control, and is in good working order at the effective date of the Contract.
- 1.09 TOWN, as residuals generator, will perform chemical testing as required by the TOWN's National Pollutant Discharge Elimination System (NPDES) permit. If requested by the CONTRACTOR, the results of these tests shall be made available to the CONTRACTOR. However, the TOWN makes no guarantees or representations as to the accuracy of the tests or test results. The CONTRACTOR shall have no right to rely upon the TOWN's test data.
- 1.10 CONTRACTOR shall be solely responsible for all testing required for the removal, transport, processing and/or disposal of TOWN's sludge at no additional cost to the TOWN. Copies of these test results and reports required, prepared and filed by CONTRACTOR incorporating these data shall be forwarded to TOWN within 30 days of the CONTRACTOR's receipt of the results.

1.11 CONTRACTOR shall take custody of, control of, title to and all legal responsibility, including but not limited to liability for sludge spills and pollution remediation, for all liquid sludge delivered to it by the TOWN at the moment the residuals are discharged to the CONTRACTOR's containers or vehicle.

1.12 CONTRACTOR shall employ a chain-of-custody manifest system to record all persons and all equipment involved in removing, transporting, and disposing of TOWN's sludge under this Contract. The sludge manifest system is instituted:

- To ensure traceability and proper transferal of responsibility of all of the TOWN's sludge removed, transported, and disposed under this Contract from its removal from TOWN's site through its acceptance at CONTRACTOR's processing site.
- To document removal, transport, and disposal operations in compliance with law, regulation, and permit authorization and consistent with conditions under which this Contract was awarded.
- To support CONTRACTOR's Application for Payment.

The following information must appear on or with the manifest:

- Assignment of a unique identification number for each load of TOWN's sludge removed from TOWN's site.
- Tanker trailer identification number.
- Date/time loading started and finished.
- Transport vehicle identification number.
- Signed by representatives of both TOWN and CONTRACTOR at each load's pickup and removal.
- Any changes in tanker or transport vehicle between initiation and conclusion of each load's manifesting shall be accompanied by date/time responsibility was transferred, explanation of the circumstances, and signatures of the formerly responsible and newly responsible parties.
- Identification of the disposal facility to which the sludge was delivered, date and time each load was received and signature of representative accepting each load at the disposal facility.

- Sufficient weight (in pounds) and volume determinations (in gallons) to enable CONTRACTOR's reporting of correct dry tons of TOWN's liquid sludge removed, transported, and disposed.

1.13 The CONTRACTOR's hauling cost per load provided in the Bid Form is based on the CONTRACTOR providing a minimum 9,000 gallon tanker suitable for the hauling and disposal of liquid sludge. If the TOWN approves the CONTRACTOR's use of any other volume of tanker, the Bid Price shall be prorated up or down accordingly.

1.14 The TOWN personnel shall operate the sludge pump equipment and the CONTRACTOR shall determine when the tank/vehicle is full. The CONTRACTOR shall determine the approximate volume of a full load. Each of the CONTRACTOR's tanks shall have a device that accurately measures the volume of sludge accepted and the measuring device shall be accessible by TOWN personnel. The CONTRACTOR shall be solely responsible for any overfilling of the tanks/vehicles and any overweight tankers/vehicles. The TOWN SHALL NOT BE RESPONSIBLE FOR ANY OVERWEIGHT/OVERFILLED CONTAINERS/VEHICLES.

1.15 For the determination of dry tonnage of sludge transported, the WPCF operator will take two equal samples of the sludge during loading operations. The samples will be combined and analyzed at the WPCF laboratory for the determination of total solids content. A portion (split) of the combined sample will be made available to the CONTRACTOR at the time of loading for their analysis (at the CONTRACTOR's sole cost and expenses). The TOWN's percent total solids (%TS) concentration analysis will be the basis for determination of dry tonnage shipped. It is the CONTRACTOR's responsibility to retrieve the %TS number from the plant prior to invoicing for the load. In the event that no total solids analysis is available for determining the load's concentration, the CONTRACTOR's determination of %TS will be used or a default value of 6% TS will be utilized for that load whichever is lower.

For determination of sludge gallons transported, the tanker/trailer NET weight will be divided by the weight of water of 8.34 pounds per gallon. If no scale is available at the disposal site, the estimated gallons per load shall be determined by the TOWN but should not be greater than 9,000 gallons (unless a larger or smaller truck is authorized by the TOWN).

All invoices will be accompanied with a copy of the appropriate manifest displaying the loads NET weight (or total gallons if no scale is available), total solids concentration for that load and calculated dry solids tonnage.

1.16 The CONTRACTOR is responsible for managing, handling, and paying for all costs resulting from the emergency event as defined in the Contract.

CONTRACTOR shall submit an Emergency Spill Control Plan identifying how a spill will be contained and cleaned up and including the equipment to be utilized. The plan shall also identify the name and telephone number (24-hr) of any emergency response subcontractor to be used to respond to emergency events, along with written evidence of such CONTRACTOR of its availability to respond to such emergency events. The CONTRACTOR shall submit this spill response plan to the TOWN no more than 30 days after award of the Contract.

The plan shall identify a minimum of three names of individuals employed by the CONTRACTOR who can be contacted by the vehicle operator in the case of a spill. The list shall have both work and home telephone numbers. The TOWN shall be notified of an emergency immediately and no later than two (2) hours for any incident. The plan shall also call for the notification of Department of Environmental Protection (DEP) within 24 hours of a spill. Additionally, written notification must be sent to DEP within five (5) business days after the spill.

The plan shall identify methods of containing the spilled liquid sludge and the method the CONTRACTOR intends to utilize in the cleanup. The method should clearly state the difference in cleaning spills occurring on pervious or impervious areas. It should also state how a waterway is to be protected if the spill occurs next to it, how varying weather conditions will affect the cleanup and the equipment to be used in the cleanup.

It should also identify the state agencies that must be notified if a spill occurs and the response time by the CONTRACTOR in addressing the spill.

Section 01020

Loading and Removal Requirements

Part 1: General

- 1.01 Liquid sludge in an amount ranging from a minimum of 9,000 gallons to a maximum of 45,000 gallons per day will be available for removal from the TOWN's Water Pollution Control Facility five days per week. Normal removal operations will typically take place Monday through Friday. However, during weeks containing a holiday, normal "day" operations will be on a day designated by the chief operator. If it is deemed necessary by the TOWN that a fifth or sixth day is required for removal, the CONTRACTOR shall abide to this request with no extra cost to the TOWN above the prices bid in the Bid Form. Based on FY2006 data, the annual average thickened liquid sludge concentration is 3.7 percent total solids with the actual thickened concentration more or less.

The Town will specify the weekly delivery schedule and volume of delivery. Table 1 in the Information for Bidders which summarizes sludge disposal for fiscal year 2006 is an example of the monthly and seasonal variations in daily sludge shipment volumes and number of delivery days per week. CONTRACTOR should be aware that the volume of sludge and number of delivery days increases in July and August due to summer population increases in WPCF flow and sludge generation.

- 1.02 Liquid sludge will be pumped by the TOWN from their sludge storage tanks into the CONTRACTOR's containers/vehicles. The loading of the CONTRACTOR's hauling container/vehicle shall not begin before 7:30 am or after 3:30 pm unless arranged in advance with the TOWN. Vehicles are prohibited from parking on Tony's Lane and no vehicle shall sit idling outside the WPCF gate before 7:30 am. The CONTRACTOR shall remove all container/vehicles filled from the Wareham Water Pollution Control Facility (WPCF) site. The CONTRACTOR'S vehicle shall be positioned and secured just outside of the sludge loading bay. The CONTRACTOR shall secure the WPCF's existing 6-inch fitting and hose from the sludge pump to the tanker and open the tanker valve. The TOWN shall open the valve at the sludge pump and start the pump. The CONTRACTOR shall monitor the pumping in the tanker and determine when the tanker has reached its acceptable capacity. During filling of the tanker, the CONTRACTOR shall be responsible for ensuring that the sludge pump is stopped in time and the TOWN will not be responsible for any damage to the tanker or for any spills as a result of overfilling of the tanker. The CONTRACTOR shall close the tanker valve and open the sludge line drain valve prior to disconnecting the sludge discharge hose.

The TOWN's operators will not participate in any activity that requires a labor-intensive activity as it relates to the CONTRACTOR's equipment.

The CONTRACTOR shall provide sufficient labor and means to remove the full tankers/vehicles from the TOWN's site and to provide additional tanker trucks/containers, ready to receive liquid sludge at the sludge loading area of the Sludge Building.

Liquid sludge tankers shall be of sufficient type, size, and number to efficiently and safely move TOWN's liquid sludge and transport it to the designated disposal facility(ies). The construction of CONTRACTOR's containers shall enable complete compliance with requirements of all regulatory agencies exercising jurisdiction. They shall enable lawful transport of TOWN's liquid sludge loads within applicable weight restrictions and will prevent loss of vapors or liquid from all loads. The CONTRACTOR's trucks and containers shall be such that no odors from the liquid sludge shall emanate from the container/vehicles.

CONTRACTOR will not be permitted to store full or partially full tanks/vehicles overnight on the TOWN's site.

- 1.03 If the TOWN is unable to deliver any liquid sludge to the CONTRACTOR's tank/vehicle that is waiting at the WPCF site because of a failure of TOWN equipment including but not limited to sludge feed pumps or piping, the CONTRACTOR shall be entitled to compensation of one-half of the hauling cost per load. The CONTRACTOR shall immediately suspend all pending deliveries until the problem is corrected and no additional compensation shall be made for scheduled containers/vehicles in route to the WPCF after suspension of services.
- 1.04 If, for reasons beyond the CONTRACTOR's control (i.e., weather conditions, impassable roads, etc.), the amount of liquid sludge removed from the plant is significantly below the average daily production or below the amount requested to be removed by plant personnel, then this amount must be made up. On the next calendar day this left-over amount must be removed in addition to that day's normal or requested amount removed. The CONTRACTOR shall do this at no additional cost to the TOWN even if the total amount for this day exceeds the maximum volume noted in the Information for Bidders. The CONTRACTOR must demonstrate their transport and storage or processing capabilities to perform at this level. This information must be attached to the Bid Proposal.
- 1.05 Certified volume of the full tankers removed will be tabulated daily by CONTRACTOR and weekly summaries will be delivered to the WPCF Director. Monthly totals of sludge loads, volumes, and total dry tons for billings must be delivered to the WPCF Director by the fourth day of the next month or at some other arranged schedule. Billings will be done on a calendar month schedule.

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

(SIGNATURE OF PERSON SIGNING BID OR PROPOSAL)

(NAME OF BUSINESS)

(This sheet must accompany your bid proposal)

CERTIFICATION TO PAYMENT OF TAXES BY CONTRACTOR

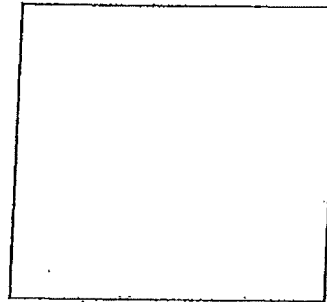
Pursuant to G.L.c.62C, paragraph 49A, I hereby certify that _____
Legal Name of Bidder's Business Entity

has complied with all laws of the Commonwealth of Massachusetts relating to the payment of taxes. Signed under the penalties of perjury.

Authorized Signature

Name and Title (Print or Type)

Date



Corporate Seal Here (if applicable)

IDENTIFICATION OF PRIMARY DISPOSAL FACILITY

The liquid sludge to be removed by the CONTRACTOR under this Contract will be processed at the following location:

Name of Disposal Site: _____

Location of Disposal Site: _____

City/Town/Village

State

DATED _____

(Seal of Corporation)

Legal Name of Person, Firm, or Corporation

Business Address of Person, Firm, or Corporation

By _____ Title _____

IDENTIFICATION OF BACKUP DISPOSAL FACILITY

The liquid sludge to be removed by the CONTRACTOR under this Contract will be processed at the following location:

Name of Disposal Site: _____

Location of Disposal Site: _____

City/Town/Village

State

DATED _____

(Seal of Corporation)

Legal Name of Person, Firm, or Corporation

Business Address of Person, Firm, or Corporation

By _____ Title _____

Name of Bidder

BID FORM

Itemized Proposal

This itemized proposal is for hauling, and disposal of liquid sewage sludge from Wareham Water Pollution Control Facility (WPCF).

Furnish all labor, material, and equipment necessary for the removal and vehicle transport of liquid sludge as described in Article 9 of the Information for Bidders. Liquid sludge will be brought to either Primary Disposal Facility or Backup Facility, the same pricing being applicable to both primary and backup sites. Contractor must submit prices for three (all years) years.

Pricing

Three Year Contract

<i>Contract Period</i>	<i>Liquid Sludge Hauling Cost in Amount per Load</i>	<i>Liquid Sludge Disposal Cost in Amount per Dry Ton</i>
Year 1	Year One \$ _____ Price in Figures \$ _____ Price in Words	Year One \$ _____ Price in Figures \$ _____ Price in Words
Year 2	Year Two \$ _____ Price in Figures \$ _____ Price in Words	Year Two \$ _____ Price in Figures \$ _____ Price in Words
Year 3	Year Three \$ _____ Price in Figures \$ _____ Price in Words	Year Three \$ _____ Price in Figures \$ _____ Price in Words

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AIA Document A312

Performance Bond

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

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond:

None

See Page 3

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the 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 to participate in conferences as provided in Subparagraph 3.1.

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

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. 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; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

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

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

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

4.3 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 the 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 Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 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, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen 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 Subparagraph 4.4, and the Owner refuses the payment tendered 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.

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, 4.2, or 4.3 above, 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. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on 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 the Contractor's Default, and resulting from 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.

7 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 or successors.

8 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.

9 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 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 avail-

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

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.

12 DEFINITIONS

12.1 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 Con-

tractor 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.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

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
Company:

(Corporate Seal)

SURETY
Company:

(Corporate Seal)

Signature: _____
Name and Title:
Address:

Signature: _____
Name and Title:
Address:

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Payment Bond

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

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond:

None

See Page 6

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

(Any additional signatures appear on page 6)

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the 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.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 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 the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 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 payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

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 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, 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.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

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. The intent is that this

Bond shall be construed as a statutory bond and not as a common law bond.

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

15 DEFINITIONS

15.1 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 Contract. 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.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

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
Company:

(Corporate Seal)

SURETY
Company:

(Corporate Seal)

Signature: _____
Name and Title:
Address:

Signature: _____
Name and Title:
Address: