

EXHIBIT A

CONSTRUCTION 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):

City of Lincoln
555 South 10th St.
Lincoln, NE 68508

CONSTRUCTION CONTRACT

Date:
Amount: \$
Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date)
Amount: \$

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp. Seal)

Signature: _____
Name and Title:

Signature: _____
Name and Title:

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp. Seal)

Signature: _____
Name and Title:

Signature: _____
Name and Title:

EJCDC NO. 1910-28a (1984 Edition)
Prepared through the joint efforts of The Surety Assoc. of America, Engineers' Joint Contract Documents Committee, The Associated General Contractors of America, and the American Institute of Architects.

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 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 sub-contracts, 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 available 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 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.
 - 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.

EXHIBIT B

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TAKEOVER AGREEMENT

This Takeover Agreement ("Agreement") is made, in duplicate, this ____ day of November, 2006, by and between the Town of Framingham High School Building Committee ("Framingham") and United States Fidelity & Guaranty Company, a wholly-owned subsidiary of Travelers Indemnity Company ("USF&G").

RECITALS

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WHEREAS, Framingham entered into a General Contract with Eastern Contractors, Inc. ("Eastern") dated February 28, 2002 entitled "Framingham High School Additions and Renovations, 115 'A' Street, Framingham, MA 01702" (hereinafter the "Original Contract") to perform certain renovations and additions to the Framingham High School (the "Project"), all as more fully described in the Contract Documents as that term is defined in Article 1 of AIA Document A101-1997 entered into between Framingham and Eastern; and

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WHEREAS, USF&G, as surety, executed and delivered to Framingham Performance and Payment Bond Nos. SN3721 dated March 5, 2002 (collectively, the "Bonds"), each in the penal sum of \$42,000,000.00, in connection with the Original Contract; and

WHEREAS, by way of letters from the Project Architect, DiNisco Design Partnership, LLP ("Project Architect") dated August 16, 18 and 25, 2006, Framingham terminated Eastern's right to proceed with the Original Contract and has made a demand on USF&G to complete the Original Contract;

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WHEREAS, by letter dated October 6, 2006, USF&G, by and through its counsel, Bradford R. Carver, Esq. of Hinshaw & Culbertson, LLP, acknowledged the default and

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termination of Eastern under the Original Contract by Framingham and did not contest or dispute the same;

WHEREAS, USF&G acknowledges Framingham’s demand upon USF&G, as surety, to arrange for completion of the Original Contract; and

WHEREAS, Framingham and USF&G desire to effect completion of the Original Contract, to preserve continuity of performance, and to expedite completion of the Project; and

WHEREAS, USF&G is ready, willing and able to perform its obligations under its Bonds in accordance with the terms of this Agreement; and

WHEREAS, USF&G has retained the services of Vertex Construction Services, Inc. (“Vertex”) to act as a Construction Manager to arrange for completion of the Original Contract in accordance with the terms set forth herein; and

WHEREAS, Framingham is willing to accept Vertex as the Construction Manager to complete the Original Contract in accordance with the terms set forth herein; and

WHEREAS, USF&G and Framingham desire to enter into this Agreement pursuant to its terms.

NOW, THEREFORE, in consideration of the agreements and undertakings set forth in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Framingham and USF&G agree as follows:

1. USF&G, under its Performance Bond, agrees to perform and complete the Original Contract either itself or through its agents or independent contractors in accordance with the terms of the Original Contract, as it may have been amended and/or modified, including but not limited to all warranty and other obligations

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required of Eastern under the Original Contract. Framingham acknowledges that USF&G, by its execution of this Agreement, and by arranging for completion of the Original Contract, is acting in its capacity as the surety for Eastern, and not as a completing contractor.

2. Framingham represents to USF&G and agrees that, through Payment Application No. 53, and as of the date of this Agreement:

a. The authorized amount of the Original Contract is \$42,000,000.00;

b. Approved Change Orders 1 through 37 total \$1,932,555.00 JONATHAN: PLEASE NOTE THAT I HAVE BACKED OUT THE \$346,311 APPROVED BUT UNPROCESSED CHANGE ORDER NO. 28. I ALSO HAVE BACKED OUT YOUR PROPOSED REVERSAL OF \$195,000 IN LIQUIDATED DAMAGES PURSUANT TO CHANGE ORDER NO. 15, SUBJECT TO FURTHER DISCUSSION WITH THE HSBC. BASED ON CONVERSATIONS WITH MSSRS. AINSLIE AND KOCZERA, IT APPEARS THAT THE TOWN IS ON SOLID GROUND WITH RESPECT TO THE ASSESSMENT OF THESE LIQUIDATED DAMAGES. FINALLY, I NEED TO CONFIRM CONTRACT ACCOUNTING GENERALLY WITH HSBC AND MSSRS. AINSLIE AND KOCZERA];

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c. Approved but unprocessed Change Order No. 38 totals \$346,311;

d. The value of Outstanding Change Proposals is \$678,156.50 [NEED TO CONFIRM CONTRACT ACCOUNTING WITH HSBC AND MSSRS. AINSLIE AND KOCZERA]

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e. The Adjusted Contract Amount is \$43,932,555.00, exclusive of pending approved Change Order No. 38 [NEED TO CONFIRM CONTRACT ACCOUNTING WITH HSBC AND MSSRS. AINSLIE AND KOCZERA];

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f. Framingham has previously made payments on the Original Contract in the aggregate amount of \$42,785,313.36 [NEED TO CONFIRM CONTRACT ACCOUNTING WITH HSBC AND MSSRS. AINSLIE AND KOCZERA];

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g. Subject to the terms of this Agreement, the remaining Contract Balance of \$1,493,552.64 [JONATHAN: I HAVE DEDUCTED THE

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\$195,000 OF LIQUIDATED DAMAGES EFFECTED BY CHANGE ORDER NO. 15 FROM THE REMAINING CONTRACT BALANCE; NEED TO CONFIRM CONTRACT ACCOUNTING WITH HSBC AND MSSRS. AINSLIE AND KOCZERA is hereby recommitted by Framingham for the completion of the Project. Framingham agrees to pay the remaining Contract Balance to USF&G as work is completed on the Original Contract and in accordance with this Agreement [NEED TO CONFIRM REMAINING CONTRACT BALANCE].

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h. Framingham has received Demands for Direct Payment from various subcontractors on the project in the following amounts:

<u>Subcontractor</u>	<u>Date(s) of Demand</u>	<u>Amount Claimed</u>
<u>A&A Windows</u>	<u>6/20/06 and 7/12/06</u>	<u>\$99,816.00</u>
<u>Costa Brothers Masonry</u>	<u>6/21/06</u>	<u>\$\$75,680.64</u>
<u>Grassechi Plumbing</u>	<u>8/9/06</u>	<u>\$74,598.00</u>
<u>K&K Acoustical Ceilings</u>	<u>4/7/06</u>	<u>\$48,773.14</u>
<u>NESCO</u>	<u>8/29/06</u>	<u>\$24,946.88</u>
<u>Signet</u>	<u>7/20/06</u>	<u>\$14,000.00</u>
<u>Titan Roofing, Inc.</u>	<u>11/2/05</u>	<u>\$76,908.00</u>
<u>W.D. Fowler, Inc.</u>	<u>8/28/06</u>	<u>\$74,550.10</u>
	<u>TOTAL DEMANDS:</u>	<u>\$489,272.76</u>

The parties agree that Framingham is entitled to withhold payment of \$489,272.76 from the remaining Contract Balance of \$1,493,552.64 until such times as USF&G makes payment of said amounts or partial amounts and the subcontractor(s) listed herein provide Framingham with Waivers and Releases of Lien or Partial Waivers and Releases of Lien in a form satisfactory to Framingham.

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i. Within the remaining Contract Balance of \$1,493,552.64 is \$768,545.00 in Monetized Punch List work. [N.B.: NEED TO UPDATE MONITIZED PUNCH LIST];

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j. Within the remaining Contract Balance of \$1,493,552.64 is \$235,734.88 in earned but unpaid Contract Funds.

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3. Framingham agrees to pay USF&G within twenty-one (21) days of the date of the execution of this Agreement the earned but unpaid Contract Funds of \$235,734.88, [JONATHAN: 10 DAYS IS NOT SUFFICIENT TIME TO OBTAIN ALL OF THE REQUISITE APPROVAL SIGNATURES, PROCESS PAYMENT AND OBTAIN PAYMENT FROM THE TOWN OF FRAMINGHAM ACCOUNTING OFFICE. I HAVE INSERTED 21 DAYS AS THE PROPOSED NUMBER BUT WILL DISCUSS WHETHER WE CAN AGREE TO A SHORTER TIME WITH THE HSBC ON MONDAY, 11/27.]

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4. Framingham and USF&G acknowledge and agree that the scope of work required for completion of the Original Contract is set forth in the Monetized Punch List incorporated herein to this Agreement by reference and attached hereto as Exhibit A (the "Scope of Work"). [N.B.: NEED TO UPDATE MONITIZED PUNCH LIST].

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5. The time of performance for the Scope of Work set forth in this Agreement shall be ninety (90) calendar days from the date of this Agreement. [JONATHAN: NEED TO CONFIRM REASONABLENESS OF PROPOSED TIME TO COMPLETE WITH HSBC] Time is of the essence in this Agreement. Framingham shall not assess liquidated damages for the Scope of Work that is the subject of this Agreement up to and including ninety (90) days after the date of execution of this Agreement. Thereafter, Framingham shall be entitled to assess liquidated damages for the Scope of work of this Agreement pursuant to the terms of the Original Contract.

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6. Framingham hereby consents to the use of Vertex as Construction Manager for completion of the Original Contract. Framingham agrees to work with Vertex with respect to day-to-day construction issues in connection with the Project, including reasonable preparation and review of all paperwork that Vertex may prepare for the benefit of USF&G for submission to Framingham. Vertex agrees to perform the Scope of Work set forth in Exhibit A in the priority order established by Framingham, to the extent reasonably practicable.

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7. USF&G agrees to ensure that Vertex, in its capacity as Construction Manager, procures and maintains all insurance coverages for its work on the Project equivalent to that required of Eastern under the Original Contract (including all types of coverage in all required insurance amounts, and the naming of Framingham as an additional insured as required). USF&G further agrees to ensure that Vertex provide Framingham with Certificate(s) of Insurance within five (5) days of the execution of this Agreement establishing that Vertex has obtained all insurance coverages required by Eastern under the Original Contract, and that Framingham has been named as an additional insured for all coverages required under the Original Contract.

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8. USF&G will be represented at the Project by Steven Kirby of Vertex. Mr. Kirby will represent USF&G on a day-to-day basis as work progresses at the Project. However, Mr. Kirby will not have any authority to negotiate changes to the Scope of Work without the express written consent of USF&G.

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9. Framingham will be represented at the Project by its clerk, Peter Koczera. Mr. Koczera shall be present at the Project on a day-to-day basis as work progresses and shall represent Framingham in dealing with USF&G. Framingham and USF&G acknowledge and agree that the Project Architect shall have ultimate authority on behalf of Framingham to make determinations whether Scope of Work items have been completed.

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10. On a bi-monthly basis, USF&G will submit a written request to Framingham for inspection of those Scope of Work items USF&G claims are complete. Framingham, through the Project Architect, shall conduct an inspection of those items within ten (10) days of receipt of such written request. If Framingham fails to conduct said inspection within ten (10) days of receipt of such written request, the items identified by USF&G as complete in the written request shall be deemed complete and USF&G shall be entitled to payment therefore, subject to appropriate backcharges and withholdings for additional backcharges and Demands for Direct Payment that have arisen subject to the date of execution of this Agreement. Upon approval by the architect of the completed items of work, USF&G shall submit to Framingham a request for payment in an amount equal to the value of the items certified as complete by the architect. Framingham shall make payment to USF&G within thirty (30) days of receiving the request for payment. Jonathan: The Original Contract provides for thirty (30) days to process payment and I would prefer that we keep this number because of the number of signatures needed (including Project Architect, HSBC vote and signature, Town Counsel and Town Accountant, and the time it takes to get a

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