

payment on the Warrant and then actually have payment issued.] [Jonathan: I cannot agree to your proposed language regarding no set-off because of the fact that additional backcharges may arise after the execution of the Agreement. Similarly, demands for direct payment may be asserted after the execution of the Agreement. If you want to try to craft language where both sides agree to waive claims of which they knew of should have known at the time of this Agreement, I will consider such language.]

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Deleted: Framingham agrees not to set-off from such payments any sums not agreed to be set-off by USF&G at the time of the execution of this Agreement.

11. Framingham and USF&G agree to continue to work towards a negotiated resolution of the following Outstanding Change Proposals in the amount of \$678,156.50:

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**PENDING OPEN CORs**

<u>COR NO.</u>	<u>ORIGINAL AMOUNT</u>
97R	\$191,293.00
146R	\$145,410.00
162R	\$23,764.00
164	\$(3,614.00)
181R	\$7,371.00
207R	\$18,581.00
237	\$35,301.00
248	\$3,975.00
255	\$5,036.00
285RB	\$8,831.00
301	\$19,234.00
366R	\$7,788.00
410	\$8,033.00
↓	
455	\$(14,638.00)
	<u>\$461,256.00</u>

Comment [CJ1]: Per Gary Ainslie, COR 416 should be deleted from the list of Pending Open CORs because the parties agreed to a sum of \$3,000 for this COR and it will be included in the next change order.

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**ASBESTOS PENDING OPEN CORs**

<u>COR NO.</u>	<u>ORIGINAL AMOUNT</u>
13	\$57,183.00
38	\$34,440.00
121	\$64,609.50
122	\$60,668.00
	<u>\$216,900.50</u>

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TOTAL OPEN CORs: \$678,156.50

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Framingham and USF&G hereby reserve their respective rights with respect to the foregoing Outstanding Change Proposals.

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12. Framingham and USF&G agree to continue to work towards a negotiated resolution of the following outstanding backcharges and credit proposal requests submitted by Framingham:

[INSERT LIST OF BACKCHARGES AND CREDIT PROPOSAL REQUESTS HERE; WE NEED TO INCLUDE ADDITIONAL FEES FOR PROJECT ARCHITECT, CLERK OF WORKS AND ATTORNEY'S FEES, WHICH ARE ONGOING.]

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5. 13. Framingham agrees that the total liability of USF&G under this

Agreement and under the Performance Bond is limited to and shall not exceed the bond penalty of \$42,000,000.00 as set forth in the Performance Bond. All payments made by USF&G for performance of the Scope of Work shall be credited against the bond penalty of the Performance Bond. Nothing in this Agreement constitutes a waiver of such bond penalty, or an increase in the liability of USF&G under the Performance Bond.

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14. USF&G's Payment Bond shall remain in full force and effect in accordance with its terms and provisions. Framingham agrees that the total liability of USF&G under its Payment Bond is limited to and shall not exceed the bond penalty of \$42,000,000.00 as set forth in the Payment Bond. All payments made by USF&G under its Payment Bond shall be credited against the bond penalty of the Payment Bond. Nothing in this Agreement constitutes a waiver of the bond penalty under the Payment Bond, or an increase of the liability of USF&G under the Payment Bond. Framingham acknowledges that USF&G, in accordance with

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the terms of the Payment Bond, has the discretion to settle or compromise and otherwise independently handle any and all claims under the Payment Bond.

15. By execution of this Agreement, Framingham agrees that USF&G does not waive the rights of USF&G or Eastern, if any, to contest whether items of work are properly on the Scope of Work, or of any other claims that Eastern may have against Framingham or any other person, corporation or entity; and Framingham likewise reserves all claims, rights and defenses which it may have against Eastern and USF&G.

Comment [CJP2]: Jonathan: I think that there is no issue whatsoever with respect to the validity of Framingham's termination and USF&G has in fact acknowledged it. This reservation of rights seems inconsistent with USF&G's proposal that we wrap up and resolve as many issues as possible in this Agreement.

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Comment [CJP3]: See comment 2 above.

Deleted: If it is determined by an appropriate forum that Eastern's termination was not proper, USF&G reserves all of its rights against Framingham as may arise from such determination.

16. Except for the reservation of rights as set forth herein, this Agreement shall inure solely to the benefit of USF&G and Framingham. Framingham and USF&G do not intend for this Agreement to confer or increase any rights or benefits on any third-party (with the exception of Vertex as noted herein) including, but not limited to Eastern, its subcontractors, suppliers and/or materialmen. Framingham and USF&G acknowledge that nothing in this Agreement shall extend or increase the rights, if any, of any third-party claimants under the Performance Bond or Payment Bond.

17. Framingham agrees to provide USF&G and its representatives, including but not limited to Vertex, upon reasonable request, access to the Project and to all non-privileged documents and other non-privileged information relating to the Original Contract and Project, including without limitation all documents and other information relating to the work performed to date, the work unperformed to date, Eastern and/or claimants who submit claims for direct payment or against the Payment Bond. USF&G agrees to provide Framingham with access

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to non-privileged documents in its possession or in the possession of its agents, including but not limited to Vertex, relating to the Project and other non-privileged information relating to the Original Contract and Project, including without limitation all documents and other information relating to the work performed by Vertex under this Agreement, the work unperformed by Vertex, Eastern and/or claimants who submit claims for direct payment or against the Payment Bond.

18. This Agreement constitutes the whole of the understandings, discussions and agreements by and between Framingham and USF&G. Framingham and USF&G acknowledge that there have been no oral, written or other agreements of any kind as a condition precedent to, or to induce the execution and delivery of, this Agreement. [JONATHAN: WE MAY HAVE TO ADJUST THIS IF

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VERTEX DOES NOT COMPLETE THE EMERGENCY WORK PRIOR TO EXECUTION OF THIS AGREEMENT. ONE OF THE INDUCEMENTS TO RESOLVING THIS QUICKLY FROM FRAMINGHAM'S PERSPECTIVE IS THE FACT THAT THE EMERGENCY WORK NEEDS TO BE COMPLETED AND COMPLETED IMMEDIATELY.] Any written or oral discussions

conducted prior to the effective date of this Agreement shall not in any way vary or alter the terms of this Agreement.

19. This Agreement may not be changed, amended or altered in any way except by a writing executed by both Framingham and USF&G.

20. This Agreement shall be governed and controlled by the laws of the Commonwealth of Massachusetts.

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21. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. If Framingham must consent before USF&G may replace Vertex as Construction Manager at the Project, and such consent by Framingham may not be unreasonably withheld.

22. All notices under this Agreement shall be provided via hand delivery or facsimile to the following individuals:

As to USF&G: Thomas McAuley  
St. Paul Travelers  
One Tower Square, 251A  
Hartford, CT 06183.

\_\_\_\_\_ [ADD FAX NO.]

With a copy by facsimile and first class mail to USF&G's counsel, Jonathan Burwood, Hinshaw & Culbertson, et al. [Insert address]

As to Framingham: Mr. George L. Drummey

\_\_\_\_\_ c/o Ms. Nancy Starr-Ferguson, Administrative Assistant  
Town of Framingham  
High School Building Committee  
150 Concord Street  
Framingham, MA 01702

\_\_\_\_\_ Facsimile No. (508) 626-9119

With a copy by facsimile and first class mail to Framingham's counsel, Christopher J. Petrini, Esq., Petrini & Associates, P.C., 161 Worcester Rd., Suite 304, Framingham, MA 01701, Facsimile no. (508) 665-4313.

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23. This Agreement may be executed in counterparts and shall be effective when both Framingham and USF&G have executed their respective counterparts.

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24. Framingham and USF&G warrant, represent and covenant that each has the authority to execute this Agreement, and that the signatories to this Agreement are specifically authorized to sign such an agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as a sealed instrument:

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Deleted: the day set forth on the first page of this Agreement.

TOWN OF FRAMINGHAM  
HIGH SCHOOL BUILDING COMMITTEE

By:

Printed Name:

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Title:

Dated: November , 2006

APPROVED AS TO FORM:

Christopher J. Petrini  
Town Counsel

Dated: November , 2006

CERTIFICATION AS TO AVAILABILITY  
OF FUNDS:

Richard Howarth  
Town Accountant

Dated: November , 2006

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UNITED STATES FIDELITY &  
GUARANTY COMPANY

By:

Printed Name:

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Title:

Dated: November , 2006

2006.11.21 Takeover Agreement (Ver. 2) (600-33)

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# EXHIBIT C



May 24, 2005

**BY CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED (ADD CERTIFIED MAIL NO.)  
AND BY REGULAR FIRST CLASS MAIL**

Centennial Insurance Company  
22 Grove Street  
Winchester, MA 01890

and

Centennial Insurance Company  
c/o Atlantic Mutual Insurance Company  
Three Giralda Farms Road  
Madison, NJ 07940-1004

Re: Tri-Town Board of Water Commissioners—Centennial Insurance and C&B Construction  
Performance Bond #447-401224

**PARAGRAPH FIVE “ADDITIONAL WRITTEN NOTICE” TO SURETY  
OF PENDING SURETY DEFAULT**

Dear Sir/Madam:

Pursuant to Paragraph Five of the Performance Bond #447-401224 (“Performance Bond”) between Centennial Insurance Company (“Surety”) and C & B Construction Management, Inc. (“Contractor”), Tri-Town Board of Water Commissioners (“Owner”) serves this additional written notice to the Surety and demands again that the Surety perform its obligations under the Paragraph Four of the Performance Bond.

Paragraph Five of the Bond states in pertinent part:

If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety will 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.

May 23, 2005

Page 2

Pursuant to the Notice of Default letter dated April 15, 2005 served upon the Contractor and the Surety (additional copy enclosed), the Surety is required to take the actions outlined in Paragraph Four of the Performance Bond. To date, the surety has taken no such action. If the Surety does not proceed as provided in Paragraph Four within fifteen (15) days of receipt of this additional notice, the Surety will be in default on the Performance Bond and the Owner reserves all rights to enforce any remedy available to it.

Should you have any questions about this notice, please contact the undersigned or Attorney Christopher J. Petrini of Petrini & Associates, P.C., 161 Worcester Road, Suite 304 Framingham, MA 01701, tel. (508) 665-4310; fax (508) 665-4313, counsel for the Owner.

Very truly yours,

Charles Kokoros, Chairman  
Tri-Town Board of Water Commissioners

cc: C & B Construction Management, Inc., P.O. Box 1326, Gloucester, MA 01930  
(by certified mail return receipt requested and by regular mail)  
J.J. Mocko, Surety Administrator, Atlantic Mutual Companies (by regular mail)  
Bert J. Capone, Esq. (by regular mail)  
Christopher J. Petrini, Esq. (by regular mail)