

CONTRACT OF PURCHASE

On the 15 day of December, 1994, the City of Newberg, a municipal corporation, hereinafter referred to as "City" and Pacific Emergency Vehicles, Inc., hereinafter referred to as "Pacific" enter into the following contract.

RECITALS

1. The City sent out a request for bids for the purchase of two (2) Medtec ambulance vehicles in October of 1994. On November 4, 1994, Pacific submitted its bid to the City of Newberg. The bid was submitted on time with the appropriate bid bond.
2. By Resolution No. 94-1887, the City Council accepted Pacific Emergency Vehicles, Inc. bid as the lowest responsive bid and authorized the City Manager to do all and necessary acts to accomplish the purchase.

NOW THEREFORE, the parties agree as follows:

1. **Acceptance of Bid.** The City accepts the bid offered on November 14, 1994 by Pacific for the two (2) med-tech ambulances. The base bid is one-hundred eighty four thousand, five-hundred fifty and thirty cents (\$184,550.30).
2. **Bound by Conditions in Call for Bids and Response.** Pacific agrees to be bound by all conditions and specifications contained in the City of Newberg Fire Department Call for Bids, including any addendums that were sent out in October of 1994. Pacific agrees to be bound by all conditions in their response to the call for bids which was dated November 14, 1994.
3. **Change Orders.** Any change orders shall be in writing and attached as an addendum to this contract. The change order requires the approval of Pacific and the City by authority of the Fire Chief, Michael Sherman, and the City Manager, Duane R. Cole. No change order or alterations in any specifications will be accepted without written authorization by both parties.
4. **Performance Bond.** Pacific shall furnish to the City a Performance Bond equal to one-hundred (100) percent of the base bid, plus any additional amounts in change orders. The base bid amount is \$184,550.30. Within ten (10) days of the date of this contract the initial Performance Bond shall be issued and sent to the City in the amount of the base bid plus any change orders approved to date. After the initial Performance Bond is issued, any additional amounts shall be added to the Performance Bond within ten (10)

days of authorization of the change order, unless specifically waived in the change order. Such bond must be issued by a surety company authorized to do business within the state. The City Attorney of the City shall approve the surety company and the form of the bond. If the City Attorney rejects the bond, Pacific must provide an acceptable bond within ten (10) days of such rejection.

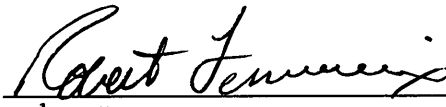
5. **Delivery Date.** The Delivery Date for ambulance vehicles is two-hundred seventy (270) days from acceptance of bid. The City accepted the bid on December 5, 1994, therefore the delivery date is September 4, 1995. The delivery date may be extended due to unavailability of specified parts to Pacific provided Pacific notifies the City in writing as soon as Pacific is aware that parts are unavailable with the length of the delay. The City must approve the delay in writing. Notification must be given prior to the delivery date. Any extension of delivery date must be in writing. Pacific agrees to reduce contract price owed by the City by one-hundred (100) dollars per day beyond the delivery date including any extensions.

IN WITNESS WHEREOF, the parties have affixed their signature.

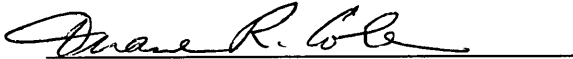
DATED THIS 15th day of December, 1994.



Michael Sherman, Fire Chief
City of Newberg Fire Department



Robert Lemieux
Pacific Emergency Vehicles, Inc.



Duane R. Cole, City Manager
City of Newberg

APPROVED AS TO FORM
AND CONTENT:



Terrence D. Mahr, City Attorney
City of Newberg

Signal
for
Boyle



Pacific Emergency Vehicles, Inc.

319 N.W. Old Orchard Dr.
Vancouver, WA 98665
206-574-1553
206-574-1560 Fax

December 16, 1994

City of Newberg - Fire Department
Chief Michael Sherman
414 E Second Street
Newberg, OR 97132-3006

RE: Change Order for Newberg Fire
Dept. Ambulance Units.

Good Day,

The following is an addendum to the bid submitted by Pacific Emergency Vehicles, Inc., and opened on 11/15/94. These changes shall become a part of the final contract between Pacific Emergency Vehicles, Inc. and the Newberg Fire Department.

*Note, all items listed are - per unit.

1. Installation of a Kussmaul 20 amp Auto Eject Shoreline in lieu of standard.
.....\$ 165.00
2. Installation of a 120 VAC patient compartment heater, including a 2nd Kussmaul 20 amp Auto eject shoreline.
.....\$ 355.00
3. Deletion of a Whelen UPS-64 C Strobe Power Supply.....\$(275.00)
4. Providing a sliding cab to module pass through door in lieu of a swinging door.
.....N/C
5. Module entry doors to have padding on interior panels in lieu of Formica covered aluminum.
.....N/C
6. Remote Controlled locks with 2 hand held transmitters on all cab and module entry and compartment doors
.....\$1,150.00

7. If available, spare tire to be installed under rear of module, on an electric drop down winch at a cost of \$350.00. If unable to fit tire in that area, storage will be in streetside forward compartment, utilizing a cover of smooth aluminum. A credit of \$225.00 to be taken from the \$350.00 figure quoted above in this #7 paragraph.
8. Move oxygen bracket from the curbside rear compartment to the streetside rear, allowing for long backboard storage to be on the curbside. Backboard to have a 75" tall exterior access door, resulting in a 73" compartment opening, and a total compartment height in excess of 77". N/C
9. Add a Ferno Liquid Oxygen System in lieu of the standard M cylinder. (If notified in writing to do so by the City of Newberg prior to April 15, 1995. Otherwise the original as specified shall be supplied at no additional charge per the original bid proposal).\$3,925.00
10. Suction, to provide #65652-617 CDR Flex Hardware Collection System\$ 50.00
11. Interior 12V Outlets, one in action wall and one in the ALS cabinet to be Laerdal. A second 12V outlet in the action wall shall be provided - cigar style for cell phone hook up. N/C
12. Redesign ALS Cabinet to committee's new specification. To include a roll out drawer with dividers running front to rear spaced every 3 inches. \$ 310.00
13. If certified by the time of chassis arrival at factory, the attendant seat to have a built in child safety seat. \$ 500.00
14. Pacific to furnish a Ferno 93ES cot, in lieu of the specified Stryker. \$(500.00)
15. Delete 2 adjustable shelves from SCBA compartment above streetside wheelwell. \$(270.00)
16. Delete adjustable shelf from streetside front compartment. \$(180.00)
17. Chassis furnished to have GMC Sierra name plate in lieu of Chevrolet Silverado. Chassis paint color to be GM #74 Fire Red WA 9260. N/C

18. Change Rear Amber Arrow Turns from Whelen MN21011 to Model 73 Arrow Turns.N/C
19. Delete Chrome Flanges from all 97 series flashing and scene lights. Flanges will be provided on all 73 series lights due to fit tolerance of light head. \$(150.00)
20. There will be a total of two copies of all operations, maintenance, service and parts manuals, in lieu of two per unit.N/C

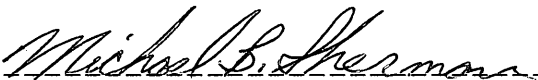
New Ambulance Total (for two vehicles)\$192,504.00

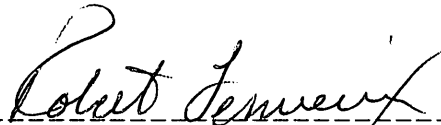
Performance Bond - 1.6%\$ 3,080.00

.....**\$195,584.00**

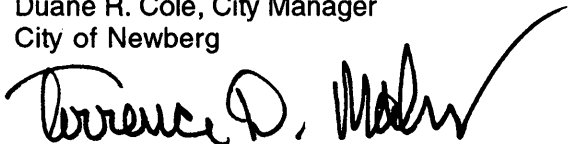
IN WITNESS WHEREOF, the parties have affixed their signature.

DATED THIS 30th day of December, 1994.


Michael Sherman, Fire Chief
City of Newberg Fire Department


Robert Lemieux, Sec. P.E.V. Inc.
Pacific Emergency Vehicles, Inc.


Duane R. Cole, City Manager
City of Newberg


Terrence D. Mahr, City Attorney
City of Newberg

THE AMERICAN INSTITUTE OF ARCHITECTS



BOND NO. 31 0120 12253 94 3

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):

MED TEC AMBULANCE CORPORATION
64697 U.S. 33 EAST
GOSHEN, INDIANA 46527-0821

SURETY (Name and Principal Place of Business):

UNITED STATES FIDELITY AND GUARANTY COMPANY
135 N. PENNSYLVANIA STREET, SUITE 1000
INDIANAPOLIS, INDIANA 46204

OWNER (Name and Address):

CITY OF NEWBERG FIRE DEPARTMENT
414 E. 2ND STREET
NEWBERG, OR 97132-3006

CONSTRUCTION CONTRACT

Date: 12-22-94 (Date stated does not pertain to bond. Bond requirements based upon receipt of chassis and APPROVED order). ***
Amount: ONE HUNDRED NINETY FIVE THOUSAND FIVE HUNDRED THIRTY THREE AND NO/100 -----(\$195,533.00)-----
Description (Name and Location): 2 TYPE I AMBULANCES

BOND

Date (Not earlier than Construction Contract Date): 12-22-94 ***
Amount: ONE HUNDRED NINETY FIVE THOUSAND FIVE HUNDRED THIRTY THREE AND NO/100 -----(\$195,533.00)-----
Modifications to this Bond: ☒ None ☐ See Page 3

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

MED TEC AMBULANCE CORPORATION

Signature: _____

Name and Title: Ken Gingerich
President

(Any additional signatures appear on page 3)

SURETY

Company: (Corporate Seal)

UNITED STATES FIDELITY AND GUARANTY COMPANY

Signature: _____

Name and Title: TIMOTHY J. TAYLOR ATTORNEY IN FACT

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT OF BROKER:

TOBIAS INSURANCE AGENCY, INC.
9247 N. MERIDIAN STREET, SUITE 300
INDIANAPOLIS, IN 46290

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:

UNITED STATES FIDELITY AND GUARANTY COMPANY

POWER OF ATTORNEY

NO. 106744

KNOW ALL MEN BY THESE PRESENTS: That UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint

Nick J. Rutigliano and Timothy J. Taylor

of the City of Indianapolis, State of Indiana its true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety to, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof on behalf of the Company in its business of guaranteeing the fidelity of persons; guaranteeing the performance of contracts; and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, the said UNITED STATES FIDELITY AND GUARANTY COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Senior Vice President and Assistant Secretary, this 22nd day of January, A.D. 1993.



UNITED STATES FIDELITY AND GUARANTY COMPANY

(Signed) By Robert J. Lamendola

Senior Vice President

(Signed) By Paul D. Sims

Assistant Secretary

STATE OF MARYLAND)

SS:

BALTIMORE CITY)

On this 22nd day of January, A.D. 1993, before me personally came Robert J. Lamendola, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said, that they, the said Robert J. Lamendola and Paul D. Sims were respectively the Senior Vice President and the Assistant Secretary of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Senior Vice President and Assistant Secretary, respectively, of the Company.

My Commission expires the 11th day in March, A.D. 1995.

(Signed) Angela P. Fabian

NOTARY PUBLIC

This Power of Attorney is granted under and by authority of the following Resolutions adopted by the Board of Directors of the UNITED STATES FIDELITY AND GUARANTY COMPANY on September 24, 1992:

RESOLVED, that in connection with the fidelity and surety insurance business of the Company, all bonds, undertakings, contracts and other instruments relating to said business may be signed, executed, and acknowledged by persons or entities appointed as Attorney(s)-in-Fact pursuant to a Power of Attorney issued in accordance with these resolutions. Said Power(s) of Attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman, or the President, or an Executive Vice President, or a Senior Vice President, or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the foregoing officers and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Attorney(s)-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and, unless subsequently revoked and subject to any limitations set forth therein, any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attached.

RESOLVED, that Attorney(s)-in-Fact shall have the power and authority, unless subsequently revoked and, in any case, subject to the terms and limitations of the Power of Attorney issued to them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and other writings obligatory in the nature thereof, and any such instrument executed by such Attorney(s)-in-Fact shall be as binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary of the Company.

I, Paul D. Sims, an Assistant Secretary of the UNITED STATES FIDELITY AND GUARANTY COMPANY, do hereby certify that the foregoing is a true excerpt from the Resolution of the said Company as adopted by its Board of Directors on September 24, 1992 and that this Resolution is in full force and effect.

I, the undersigned Assistant Secretary of the UNITED STATES FIDELITY AND GUARANTY COMPANY do hereby certify that the foregoing Power of Attorney is in full force and effect and has not been revoked.

In Testimony Whereof, I have hereunto set my hand and the seal of the UNITED STATES FIDELITY AND GUARANTY COMPANY on this 22nd day of January, A.D. 1993.



Paul D. Sims

Assistant Secretary

THE AMERICAN INSTITUTE OF ARCHITECTS



BOND NO. 31 0120 12253 94 3

AIA Document A312

Payment Bond

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

CONTRACTOR (Name and Address):

MED TEC AMBULANCE CORPORATION
64697 U.S. 33 EAST
GOSHEN, INDIANA 46527-0821

SURETY (Name and Principal Place of Business):

UNITED STATES FIDELITY AND GUARANTY COMPANY
135 N. PENNSYLVANIA STREET, SUITE 1000
INDIANAPOLIS, INDIANA 46204

OWNER (Name and Address):

CITY OF NEWBERG FIRE DEPARTMENT
414 E. 2ND STREET
NEWBERG, OR 97132-3006

CONSTRUCTION CONTRACT

Date: 12-22-94 (Date stated does not pertain to bond. Bond requirements based upon receipt of chassis and APPROVED order). ***

Amount: ONE HUNDRED NINETY FIVE THOUSAND FIVE HUNDRED THIRTY THREE AND NO/100 ----- (\$195,533.00)-----

Description (Name and Location): 2 TYPE 1 AMBULANCES

BOND

Date (Not earlier than Construction Contract Date): 12-22-94 ***

Amount: ONE HUNDRED NINETY FIVE THOUSAND FIVE HUNDRED THIRTY THREE AND NO/100. ---- (\$195,533.00)-----

Modifications to this Bond: ☒ None ☐ See Page 6

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

MED TEC AMBULANCE CORPORATION

Signature: _____

Name and Title: Ken Gingerich
President

(Any additional signatures appear on page 6)

SURETY

Company: (Corporate Seal)

UNITED STATES FIDELITY AND GUARANTY COMPANY

Signature: _____

Name and Title: TIMOTHY J. TAYLOR ATTORNEY IN FACT

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

TOBIAS INSURANCE AGENCY, INC.
9247 N. MERIDIAN STREET, SUITE 300
INDIANAPOLIS, IN 46290

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:

UNITED STATES FIDELITY AND GUARANTY COMPANY

POWER OF ATTORNEY

NO. 106744

KNOW ALL MEN BY THESE PRESENTS: That UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint

Nick J. Rutigliano and Timothy J. Taylor

of the City of Indianapolis, State of Indiana its true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety to, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof on behalf of the Company in its business of guaranteeing the fidelity of persons; guaranteeing the performance of contracts; and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, the said UNITED STATES FIDELITY AND GUARANTY COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Senior Vice President and Assistant Secretary, this 22nd day of January, A.D. 1993.



UNITED STATES FIDELITY AND GUARANTY COMPANY

(Signed) By... *Robert J. Lamendola*

Senior Vice President

(Signed) By... *Paul D. Sims*

Assistant Secretary

STATE OF MARYLAND)

SS:

BALTIMORE CITY)

On this 22nd day of January, A.D. 1993, before me personally came Robert J. Lamendola, Assistant Senior Vice President of the UNITED STATES FIDELITY AND GUARANTY COMPANY and Paul D. Sims, Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said, that they, the said Robert J. Lamendola and Paul D. Sims were respectively the Senior Vice President and the Assistant Secretary of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Senior Vice President and Assistant Secretary, respectively, of the Company.

My Commission expires the 11th day in March, A.D. 1995.

(Signed) *Angela P. Fabian*

NOTARY PUBLIC

This Power of Attorney is granted under and by authority of the following Resolutions adopted by the Board of Directors of the UNITED STATES FIDELITY AND GUARANTY COMPANY on September 24, 1992:

RESOLVED, that in connection with the fidelity and surety insurance business of the Company, all bonds, undertakings, contracts and other instruments relating to said business may be signed, executed, and acknowledged by persons or entities appointed as Attorney(s)-in-Fact pursuant to a Power of Attorney issued in accordance with these resolutions. Said Power(s) of Attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman, or the President, or an Executive Vice President, or a Senior Vice President, or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the foregoing officers and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Attorney(s)-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and, unless subsequently revoked and subject to any limitations set forth therein, any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attached.

RESOLVED, that Attorney(s)-in-Fact shall have the power and authority, unless subsequently revoked and, in any case, subject to the terms and limitations of the Power of Attorney issued to them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and other writings obligatory in the nature thereof, and any such instrument executed by such Attorney(s)-in-Fact shall be as binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary of the Company.

I, Paul D. Sims, an Assistant Secretary of the UNITED STATES FIDELITY AND GUARANTY COMPANY, do hereby certify that the foregoing is a true excerpt from the Resolution of the said Company as adopted by its Board of Directors on September 24, 1992 and that this Resolution is in full force and effect.

I, the undersigned Assistant Secretary of the UNITED STATES FIDELITY AND GUARANTY COMPANY do hereby certify that the foregoing Power of Attorney is in full force and effect and has not been revoked.

In Testimony Whereof, I have hereunto set my hand and the seal of the UNITED STATES FIDELITY AND GUARANTY COMPANY on this day of 19



Paul D. Sims

Assistant Secretary