

AIA® Document A312® – 2010

Performance Bond

VENDOR:

(Name, legal status and address)

SURETY:

(Name, legal status and principal place of business)

OWNER:

(Name, legal status and address)

Town of Sherman / Sherman Board of Education
9 Route 39 North, Sherman, Connecticut 06478

CONTRACT

Date:

Amount: \$

Description:

(Name and location)

Sherman School

2 Route 37 East, Sherman, Connecticut 06478

BOND

Date:

(Not earlier than Contract Date)

Amount: \$

Modifications to this Bond:

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

VENDOR AS PRINCIPAL

Company: *(Corporate Seal)*

Signature: _____

Name and

Title:

SURETY

Company: *(Corporate Seal)*

Signature: _____

Name and

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:**OWNER'S REPRESENTATIVE:**

(Architect, Engineer or other party:)

Antinozzi Associates, PC

271 Fairfield Avenue

Bridgeport, Connecticut

06604

ADDITIONS AND DELETIONS:

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

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

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

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

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

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

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

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

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

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

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

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the Owner and a vendor 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 Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Vendor Default; or

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

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

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

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

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the Vendor.

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

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Vendor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

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

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

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

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

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

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

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

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

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

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

§ 16 Modifications to this bond are as follows:

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

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