

**TOWN OF BABYLON
TOWN / CONTRACTOR
AGREEMENT**

This **AGREEMENT** made this _____ day of _____, 2008 between the Town of Babylon, 200 East Sunrise Highway, Lindenhurst, New York 11757 (“Town”) and _____, with offices located at _____ (“Contractor”) with respect to the Property located at _____, (“Property” or “Premises”).

For the consideration hereinafter named, the said Town covenants and agrees with said Contractor, as follows:

ARTICLE 1

GENERAL PROVISIONS

§1.1 DEFINITIONS:

§1.1.1 THE CONTRACT: The Contract between the Town and the Contractor (hereinafter “Agreement” or “Contract”) consists of this Agreement, Drawings, Specifications, Addenda, Exhibits and other documents listed in the Agreement and Modifications issued after execution of the Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may only be amended or modified in writing. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Town and the Contractor.

§1.1.2 THE WORK: The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

§1.1.3 THE PROJECT: The Project is the total construction of the Work performed under the Contract.

§1.1.4 THE DRAWINGS: The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§1.1.5 FINAL COMPLETION: Final Completion is the state in the Work when the Work is in accordance with the Agreement documents, the work has been inspected and approved by all proper governmental authorities, including the Town and all necessary certificates approving satisfactory inspection by all applicable governmental agencies have been obtained.

§1.1.6 THE OWNER: The Owner is the individual holding title and ownership of the Premises where the Work is being performed.

§1.2 GENERAL TERMS:

§1.2.1 The Contractor agrees to perform and provide the scope of work described in the Project and materials and act in accord with the schedule that is annexed hereto as Exhibit A. The Contract between the Contractor and the Owner describing the scope of work and payout must be approved by the Town and annexed hereto and referenced.

§1.2.2 The Contractor will begin Work pursuant to the Agreement on or about _____, 2008.

§1.2.3 The date of Final Completion is on or about _____, 2008.

§1.2.4 INITIAL AUDIT: The initial audit fee of two hundred fifty dollars (\$250.00) is to be credited to the Contract sum.

§1.2.5 PROJECT COMPLETION: Contractor will comply with all reasonable time frames set forth by the Town in completing the Project.

§1.3 CONTRACT SUM AND PAYMENT:

§1.3.1 The Town shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. **The Contact Sum shall be _____ Dollars and ____ Cents (\$xx,xxx.xx)**, subject to additions and deletions as provided in the Contract Documents.

§1.3.2 PAYMENT: There shall be one (1) Payment made within sixty (60) calendar days after Final Completion of the Project. The Contractor shall submit a statement of services rendered along with an executed service voucher in accordance with the standard practices of the Town of Babylon Office of the Comptroller. The statement shall include a description of work and a breakdown of the hours worked.

§1.3.3 WAIVER OF CLAIMS: Payment shall constitute a waiver of all claims by the Contractor relating to the Contract Work, but shall in no way relieve the Contractor of liability for warranties, or for nonconforming or defective work or materials discovered after final payment.

§1.3.4 LIEN RELEASE: Simultaneous with final payment, the Contractor shall provide to the Town a General Release from the Contractor and General Release(s) from any subcontractors/material suppliers acknowledging full payment and releasing the Town and Owner from any claim related to the Work performed under this Agreement.

§1.3.5 PAYMENT USE RESTRICTION: The payments received by the Contractor shall be used to satisfy the indebtedness owed by the Contractor to any person furnishing labor and/or materials for use in performing the Contract Work. This provision shall bear on the Agreement only and is not for the benefit of third parties.

§1.3.6 CONTRACTOR PAYMENT FAILURE: Upon payment by the Town, the Contractor shall promptly pay suppliers the amounts to which they are entitled. In the event the Town has reason to believe that labor, material or other obligations incurred in the performance of the Contract Work are not being paid, the Town may give written notice of a potential claim or lien to the Contractor and may take any steps deemed necessary to assure that progress payments are utilized to pay such obligations, including, but not limited to, the issuance of joint checks. If upon receipt of notice, the Contractor does not (a) supply evidence to the satisfaction of the Town that the moneys owing have been paid; or (b) post a bond indemnifying the Owner, the Town, the Town's surety, if any, and the Premises from a claim or lien, the Town shall have the right to withhold from any payments due or to become due to the Contractor a reasonable amount to protect the Town from any and all loss, damage or expense including attorneys' fees that may arise out of or relate to any such claim or lien.

§1.3.7 CONTINUING OBLIGATIONS: The Contractor shall reimburse the Town for costs and expenses including attorneys' fees, incurred by the Town in satisfying, discharging and/or defending against any liens, claims, obligations or complaints including any action brought or judgment recovered.

§1.3.8 ACCEPTANCE OF PAYMENT:

§1.3.8.1 The acceptance by the Contractor, or by anyone claiming by or through it of the final payment whether such payment be made pursuant to any judgment of any Court, or otherwise, shall constitute and operate as a release to the Town from any and all claims of and liability to the Contractor for anything heretofore done or furnished for the Contractor relating to or arising out of this Contract and the Work done

hereunder, and for any prior act, neglect or default on the part of the Town or any of its officers, agents or employees, excepting only a claim against the Town for the amounts deducted or retained in accordance with the terms and provisions of this Contract or by law, and excepting any claims, not otherwise waived, or any pending dispute resolution procedures.

§1.3.8.2 The Contractor is warned that the execution by it of a release, in connection with the acceptance of the final payment, containing language purporting to reserve claims other than those herein specifically excepted from the operation of this Article, or those for amounts deducted by the Town from the final requisition or by the Town from the final payment as certified by the Town and approved by the Town, shall not be effective to preserve such claims, anything stated to the Contractor orally or in writing by any officer, agent or employee of the Town to the contrary notwithstanding.

§1.3.8.3 Should the Contractor refuse to accept the final payment as tendered by the Town, it shall constitute a waiver of any right to interest thereon.

ARTICLE 2

CONTRACTOR'S OBLIGATIONS

§2.1 **REPRESENTATION:** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, has become generally familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§2.2 **RESPONSIBILITIES:** The Contractor agrees to furnish its best skill and judgment in the performance of the contract work and to cooperate with the Town. The Contractor shall furnish all of the labor, materials, equipment, and services, including, but not limited to, an adequate staffing of people, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper and safe performance of the Contract Work.

§2.3 **STANDARDS / REQUIREMENTS:** The Work to be done is in accordance with the standards and requirements set forth in the Town's Long Island Green Homes Program. The Work must be in accordance with all other applicable federal, state, county, and municipal standards and requirements with authority over the jurisdiction.

§2.4 [RESERVED]

§2.5 **CONTRACTOR REPRESENTATIVE:** The Contractor shall designate a person, subject to the Town's approval, who shall be the Contractor's authorized representative. This representative shall be the only person to whom the Town shall issue instructions, orders or directions, except in an emergency. The Contractor's representative is _____, who is agreed to by the Town.

§2.6 **LICENSES:** The Contractor asserts that it is fully and properly licensed by the Town of Babylon, the County of Suffolk and has BPI certification and all other licenses required to perform the work set forth in this Agreement. Contractor agrees to comply in all respects with the laws of New York State respecting labor and compensation with all labor statutes, ordinances, rules and regulations.

§2.7 **FAILURE TO FULFILL OBLIGATIONS:** If the Contractor fails to perform its obligations, the Contractor shall pay such costs and damages to the Town as would have been avoided if the Contractor had performed such obligations.

§2.8 **INDEMNIFICATION/HOLD HARMLESS:** The Contractor shall indemnify to the fullest extent permitted by law, defend and hold harmless the Town and the Town's agents, employees, and consultants against all liabilities, claims, obligations and causes of action that may be asserted against the Town including but not limited to claims, damages, losses and expenses arising out of or relating, including but not limited, to (i) the acts or omissions of the Contractor and/or its officers, directors, agents, employees, or subcontractors; (ii) any improper, illegal, disruptive and/or damaging acts on or to the Premises; and (iii) any acts or omissions of a third party causing or contributing to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property. The Contractor's obligations hereunder are binding upon its successors and assigns and will inure to the Town's benefit and to the benefit of any assign(s) and successor(s) of interest to the Town.

§2.9 **NO LIMITATION TO INDEMNIFY:** With respect to claims against any person or entity indemnified by an employee of the Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the Contractor's indemnification obligations pursuant to this Agreement shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 3

SITE CONDITIONS AND SAFETY

§3.1 **CLEAN UP AND SAFETY:** The Contractor shall at all times during its performance of the Work keep the work site and any adjacent areas clean and free from debris resulting from the Work. The Contractor recognizes and will undertake a heightened duty of care to keep all work areas safe and clean and will further keep all equipment attended and will operate same safely. During the performance of the Contract Work in any area, the Contractor shall regularly clean the area and remove all its rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Contractor shall make provisions to minimize and confine dust and debris resulting from its construction activities.

§3.2 **SAFETY:** The Contractor shall initiate, establish, maintain and supervise a safety program implementing safety measures, policies and standards conforming to those required or recommended by the state, county, and municipal authorities having jurisdiction. The Contractor is required to designate an individual at the site in the employ of the Contractor who shall act as the Contractor's designated safety representative with a duty to prevent accidents. The Contractor shall give prompt written notice to the Town of any accident involving injury or property damage, or any circumstances that could result in serious bodily injury, whether or not such an injury was sustained.

§3.2.1 The Contractor shall strictly observe and comply with all safety laws, rules and regulations (including, but not limited to, the Federal Occupational Safety and Health Act, New York Labor Law and all regulations promulgated pursuant to such laws) and to provide such protection as necessary to protect its workers and the workers of Subcontractors. In the event that additional safety measures are required, the Contractor agrees that it will install or procure such additional safety measures at its sole expense. To the fullest extent permitted by law, the Contractor shall hold harmless, indemnify and defend the Town for Work performed under the Contract and/or Project against all losses, claims, fines or expenses, including, but not limited to, attorneys' fees, resulting from the enforcement of these laws and for related acts of its employees, subcontractors, supplies and materialmen.

§3.3 **PHYSICAL DEFECTS:** If while performing the Work, the Contractor finds any physical defects, including but not limited to, mold, insect damage, wood rot, water damage, oil or any similar condition, material or substance on or in the Property, the Contractor agrees that it will stop work and that it will take no further action under the Contract and will immediately notify the Town of the condition/circumstances. All costs associated with addressing any physical defects pursuant to this provision shall be borne solely by

the Owner. The Town shall not be responsible or liable for any damage or delay caused as a result of the existence of or of any remediation/repair of physical defects on the Property.

§3.4 **HAZARDOUS MATERIALS:** If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, including, but not limited to, mold, asbestos or polychlorinated biphenyl (PCB), the Contractor shall, upon recognizing the condition, immediately stop work and it will take no further action under the Contract until further notice and will immediately notify the Town of the condition/circumstances. All costs associated with addressing any hazardous material conditions pursuant to this provision shall be borne solely by the Owner. The Town shall not be responsible or liable in any respect for any damage or delay caused as a result of the existence of or any discovery or remediation/repair of hazardous materials on the Property.

§3.5 **EXISTING ELECTRICAL/PLUMBING SERVICES:** Pursuant to the inspection, if the existing electrical or plumbing service is inadequate to allow for the performance of the Work, then such work on the Project will immediately stop. The Contractor agrees that it will take no further action under the Contract until further notice and will immediately notify the Town of the condition/circumstances. All costs associated with addressing any electrical or plumbing conditions pursuant to this provision shall be borne solely by the Owner. The Town shall not be responsible or liable in any respect to repair/address any plumbing or electrical services, nor shall the Town be liable in any respect for any damage or delay caused as a result of any inadequacies/deficiencies in the electrical or plumbing services on the Property.

§3.6 **PROTECTION OF WORK AND OF PERSONS AND PROPERTY:** During the performance of the Work and up to the date of Final Acceptance, the Contractor shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, injury, theft and/or vandalism and in the event of such damage, loss, injury, theft and/or vandalism, it shall promptly replace or repair such Work, whichever the Town shall determine to be preferable.

§3.6.1 During the performance of the Work and up to the date of Final Acceptance, the Contractor shall take all reasonable precautions to protect the persons and property of the Owner, its employees and others from damage, loss or injury resulting from the Contractor's operations under this Contract. The Contractor's obligation to protect shall include the duty to provide, place or replace and adequately maintain at or about the Site suitable and sufficient protection such as lights, barricades and enclosures.

§3.6.2 The Contractor shall notify the Town, the commercial general liability insurance carrier, and where applicable, the worker's compensation and/or other insurance carrier(s) in writing, of any loss, damage or injury to Work, persons or property arising out of the operations of the Contractor under this Contract, and of any and all accidents on the site, within two (2) days of the occurrence. The Contractor's notice to the insurance carrier must expressly specify that "this notice is being given on behalf of the Town as additional insured as well as [the Contractor] as named insured." Within two (2) days after such notice of the happening of any such loss, damage or injury to Work, persons or property, or any accidents, the Contractor shall make a full and complete report thereof in writing to the Town.

§3.6.2.1 Notice to the Town shall specify the name of the Contractor, the property that is the subject of this Contract, the date of the incident, the location of the incident, the identity of the persons or things injured, damaged or lost, and the name of the insurance carrier that issued the policy.

ARTICLE 4

SUBCONTRACTS AND ASSIGNMENTS

§4.1 **SUBCONTRACTS:** The Contractor understands and agrees that in the event the Contractor should for any reason desire to subcontract for any of the Contracting services herein, even though this is an accepted or usual practice of the profession, the Contractor shall advise the Town, in writing, as to the

name and office address of the sub-contractor and obtain the Town's written approval as to the scope and percentage of work to be referred to the sub-contractor and further, that all sub-contractor work is to be performed at no additional cost to the Town and the Contractor shall bear full responsibility for the payment of the sub-contractor. Sub-contractor may be approved only for electrical and plumbing services.

§4.2 ASSIGNMENTS: The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract, or the right to execute it, or the right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise any of the monies due or to become due under this Contract without previous written consent of the Town.

ARTICLE 5

THE WORK

§5.1 LABOR AND MATERIALS: Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§5.2 MATERIALS OR EQUIPMENT FURNISHED BY OTHERS: In the event the scope of the Contract work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Contractor to exercise proper care in receiving, handling, storing and installing such items, unless otherwise provided in the contract documents.

§5.3 CHANGE ORDERS: There shall be no changes in the Work unless same is specifically stated in a written change order that details the Work and the price for same that is agreed to and executed by the Owner, Contractor and the Town. A properly executed change order shall be incorporated in, and become part of the original Agreement. Payment for all change orders resulting in an increase in costs shall be made at the final completion of the work being performed. The Contractor is only allowed to do work on the Property/Premises that is within the scope of the Contract and any fully executed change orders thereto.

§5.4 SUPERVISION AND CONSTRUCTION PROCEDURES: The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract documents give other specific instructions concerning these matters. The Contractor shall be responsible to the Town for acts and omissions of the Contractor's employees, agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor.

§5.5 DISCIPLINE: The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§5.6 EMPLOYEES: The Contractor shall comply with all Federal, State and local laws with respect to the employment and hiring of all employees.

§5.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS: Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all permits, fees, licenses and inspections by governmental agencies necessary for proper execution and completion of the Work.

§5.7.1 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinance, codes, rules and regulations and lawful orders of public authorities applicable to performance of the Work.

§5.7.2 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§5.8 **TAXES:** The Contractor shall pay any required sales and similar taxes for materials and Work provided pursuant to this Agreement, as applicable.

§5.9 **NO DISCRIMINATION:** In the hiring of employees for the performance of Work under this Contract, neither the Contractor nor any person acting on behalf of such Contractor shall by reason of race, creed, color or national origin discriminate against any citizen who is qualified and available to perform the work to which the employment relates. Neither the Contractor nor any person on its behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Contract on account of race, creed, color or national origin.

§5.10 **WORKING CONDITIONS:** No part of the Work, labor or services shall be performed or rendered by the Contractor under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this Contract. The Contractor shall have the full responsibility to ensure the safety of the work environment and the individual working thereat.

§5.11 **SITE VISITATION/INSPECTION:** The Town reserves the right to conduct a site visitation and/or inspection of the Work at any time on behalf of the Town. Such inspection shall include the right to uncover the Contractor's Work, if necessary. The Contractor agrees and acknowledges that it will not be entitled to an increase in the Contract time or price based upon, or as a result of, any inspection unless explicitly agreed to by the Town, the Owner and the Contractor in a written change order.

§5.12 **COMMUNICATIONS:** Unless otherwise provided in the contract documents and except for emergencies, the Contractor shall direct all communications related to the Work to the Town.

ARTICLE 6

INSURANCE

§6.1 **CONTRACTOR'S INSURANCE:** The Contractor shall purchase from and maintain insurance from a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor and the Town from claims as set forth below in Exhibit B.

ARTICLE 7

CONTRACTOR'S DEFAULT

§7.1 **TERMINATION FOR CAUSE:** The Town may terminate the Contract if the Contractor:

§7.1.1 Refuses or fails to supply enough properly skilled workers or proper materials;

§7.1.2 Disregards applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of a public authority; or

§7.1.3 Breaches a provision of the Contract Documents.

§7.2 REMEDIES: When any of the above reasons exist, the Town may, without prejudice to any other rights or remedies of the Town and after giving the Contractor and the Contractor's surety, if any, three (3) days written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

§7.2.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

§7.2.2 Finish the Work by whatever reasonable method the Town may deem expedient. Upon written request of the Contractor, the Town shall furnish to the Contractor a detailed accounting of the costs incurred in finishing the Work; and

§7.2.3 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Town.

§7.3 EXERCISE OF THE RIGHT TO DECLARE DEFAULT:

§7.3.1 The right to declare the Contractor in default for any of the grounds specified shall be exercised by sending the Contractor a notice, signed by the Town, setting forth the ground or grounds upon which such default is declared (hereinafter referred to as a "Notice of Default").

§7.3.2 The Town's determination that the Contractor is in default shall be conclusive, final and binding on the parties and such a finding shall preclude the Contractor from commencing a plenary action for any damages relating to the Contract.

§7.4 SUSPENSION FOR CONVENIENCE:

§7.4.1 The Town may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Town may determine. In the event of such suspension, the Contractor agrees to suspend work immediately upon notice from the Town. The Contractor further agrees to resume the Work, pursuant to the Contract, within one (1) week of a written notice to resume from the Town

§7.5 TERMINATION FOR CONVENIENCE:

§7.5.1 Prior to commencement of the Work, the Town reserves the right to rescind and/or cancel this Agreement without any liability at any time prior to the actual commencement of the work by written notice to the Contractor.

§7.5.2 After commencement of the Work, upon receipt of written notice from the Town, the Contractor shall:

§7.5.2.1 Cease operations as directed by the Town in the notice;

§7.5.2.2 Take actions necessary, or that the Town may direct, for the protection and preservation of the Work; and

§7.5.2.3 Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing purchase orders and enter into no further purchases.

§7.5.3 In case of such termination for the Town's convenience, the Contractor's right to payment/recovery shall be limited to payment for Work actually executed.

ARTICLE 8

DAMAGES

§8.1 **CONSEQUENTIAL DAMAGES:** The Contractor waives claims against the Town and the Owner for consequential damages arising out of or relating to this Contract. The waiver is applicable, without limitation, to all consequential damages due to the termination of the Contract by the Town.

§8.2 **LIQUIDATED DAMAGES:** In the event the Contractor fails to complete the Project or is deemed to be in default pursuant to this Contract, the Town at its sole option may assess liquidated damages in the amount of 20% of the Contract against the Contractor, plus reasonable attorneys' fees, costs and disbursements relative to any measures taken to remedy/address any default. It is understood that the aforesaid liquidated damages do not constitute a penalty, but rather, a fair and reasonable amount representing the damage to the Town in the event of default, in which the parties agree is fair and reasonable.

§8.3 **NO DAMAGE FOR DELAY:** The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the Town, the Owner or any of their representatives, and agrees that all it may be entitled to on account of any such delay is an extension of time to complete performance of the Work as provided herein.

ARTICLE 9

ESTOPPEL

§9.1 **NONESTOPPEL:** Neither the Town nor any agency, officer, agent or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Contract by the Town, either before or after the final completion and acceptance of the Work and payment therefor:

§9.1.1 From showing the true and correct classification, amount, quality or character of the Work actually done; or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made in any particular, or that the Work, or any part thereof, does not in fact conform to the requirements of this Contract; and

§9.1.2 From demanding and recovering from the Contractor any overpayment to it, or such damages as the Town may sustain by reason of the Contractor's failure to perform each and every part of its Contract.

ARTICLE 10

DISPUTES

§10.1 **CLAIMS RELATING TO THE TOWN:** The Contractor shall give the Town written notice of all claims within ninety (90) calendar days of Contractor's knowledge of facts giving rise to the event for which claim is made; otherwise, such claims shall be deemed waived. All unresolved claims, disputes and other matters in question between the Town and the Contractor shall be resolved in the manner provided in this Agreement.

§10.2 **DIRECT DISCUSSION:** If a dispute arises out of or relates to this Agreement, the parties shall endeavor to settle the dispute through direct discussion.

§10.3 GOVERNING LAW, COURTS AND JURY WAIVER: This Agreement shall be deemed to be made in the State of New York and shall be governed by the laws of the State of New York. If direct discussion does not successfully resolve this dispute, any dispute between the parties shall be addressed before any State or local court of competent jurisdiction in the State of New York, County of Suffolk. The right of a trial by jury in any action wherein this Agreement may be involved or the basis of a suit is hereby waived by the Contractor.

§10.4 THIRD PARTIES: The provisions of this Contract shall not be deemed to create any new right of action in favor of third parties against the Contractor or the Town.

ARTICLE 11

CONTRACTOR'S WARRANTIES

§11.1 WARRANTIES: In consideration of the award of this Contract to the Contractor, the Contractor represents and warrants:

§11.1.1 That it is financially solvent, sufficiently experienced and competent to perform the Work; and

§11.1.2 That it has read and complied with all requirements set forth in the Contract.

§11.2 The Contractor warrants and represents to the Town and the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Town, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§11.3 The Contractor warrants to the Town and the Owner that the Work performed and the material provided hereunder shall be free from defects for a period of, at a minimum, twelve (12) months from the date of Final Completion. Contractor agrees to repair or replace, at the Town's sole discretion, any such defective work or materials on condition that written notice of any claimed defect was not ascertainable within said period, not for any reason whatsoever.

ARTICLE 12

MISCELLANEOUS

§12.1 ANTI-LOBBYING: Contractor may not lobby the Owner and the Owner must choose the Contractor off the Town's approved Licensed Contractors list.

§12.2 SIGN: Contractor agrees during the performance of the Contract Work to place and maintain a sign on the premise indicating that the work being done is part of and in accordance with the Town's Long Island Green Homes Program. The said sign will be provided by the Town.

§12.3 FAILURE TO PERFORM: Should the Contractor fail to correct contractual deficiencies or to commence and continue satisfactory correction of a default with diligence and promptness within three (3) calendar days from receipt of the Town's written notice, then the Town may terminate the Contractor or,

without prejudice to any of the Town's rights or remedies, shall have the right to take whatever steps it deems necessary to correct deficiencies and charge the cost thereof to the Contractor, who shall be liable for such payment, including costs, expenses, reasonable overhead, profit and attorneys' fees. In the event of an emergency affecting safety of persons or property, the Town may proceed as above without notice. All costs, expenses, reasonable overhead, profit and/or attorneys' fees for which the Contractor is liable shall be deducted from any money due or to become due to the Contractor. The Contractor shall be liable for payment of any amount by which such expense may exceed the unpaid balance of the Contract amount.

§12.4 CHANGES REQUIRED BY MUNICIPLAITIES: Any and all changes required by Building Codes, Ordinances or Statutes relating to the Property for which there may be additional costs are the responsibility of the Contractor.

§12.5 BANKRUPTCY: If the Contractor files a petition under the Bankruptcy Code, this Agreement shall terminate if the Contractor or the Contractor's trustee rejects the Agreement or, if there has been a default, the Contractor is unable to give adequate assurance that the Contractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

§12.6 DAMAGE CAUSED BY CONTRACTOR: The Town shall not be liable for any interior or exterior damage by the Contractor to the aforesaid Property/Premises, personal injury, or any other damage to the premises, or to any property affected or allegedly affected by the Contractor.

§12.7 SEVERABILITY: In the event that any of the provisions contained herein shall be held invalid or unenforceable, the same shall not effect the other provisions of this Agreement which shall continue to remain in full force and effect.

§12.8 ENTIRE AGREEMENT: This Agreement constitutes the entire Agreement between the Town and Contractor, and nothing in this Agreement shall be construed to create a contractual relationship between persons or entities other than the Town and the Contractor. All oral discussions pertaining to the work are merged in the Agreement and no representation not included in writing bind either of the parties, and this Agreement may not be modified, enlarged or altered other than in a written document signed by the parties.

§12.9 COPY OF AGREEMENT: The Contractor represents that it has read this Agreement and received a duplicate original of this Agreement.

§12.10 NO WAIVERS: Failure of the Town to insist upon the strict performance/compliance of any provisions or to exercise any option or enforce any rule or regulation shall not be construed as a waiver for the future of any such provision, rule or regulation.

§12.11 NOTICES: All notices and communications required or permitted under this Agreement shall be in writing and shall be deemed duly given only if delivered personally or by express delivery service for next Business Day delivery (such as UPS Next Day Air and Federal Express), or if sent by registered or certified United States mail, return receipt requested, first class, postage prepaid, to the following addresses (or to another address of a party that such party elects to designate in writing to all other addresses listed below):

(a) If to Town:

Town of Babylon
Town Attorney's Office
200 East Sunrise Highway
Lindenhurst, NY 11757

with one copy for informational purposes to:

Long Island Green Homes Program
Town of Babylon
Town Hall Annex
281 Phelps Lane, Room 19
North Babylon, NY 11703

(b) If to Contractor:

Attn: _____

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, and such are as corporations have caused these present to be signed by their duly authorized officer.

TOWN OF BABYLON

CONTRACTOR

By: Steven Bellone, SUPERVISOR

By: _____

Dated: _____

Dated: _____

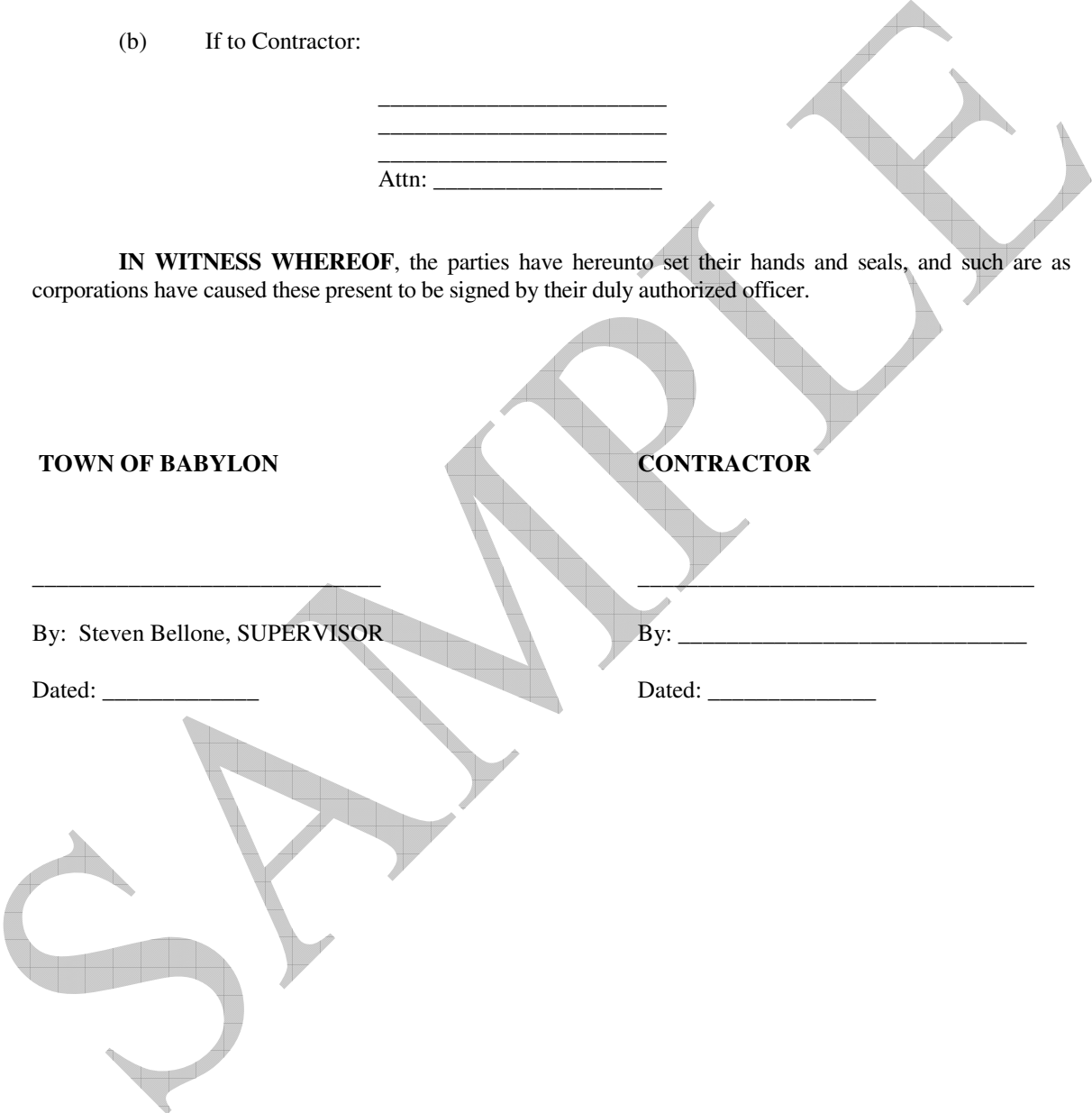


EXHIBIT A: SCOPE of WORK

PREMISES:

CONTRACT:

**QUALIFIED WORK ITEMS UNDER THE
LONG ISLAND GREEN HOMES PROGRAM:**

1. Air seal all accessible areas of attic..... \$600.00
2. Install 8 inches of loose fill cellulose to lower attic flat..... \$315.00
3. Install ½ inch of polyiso to attic kneewall..... \$700.00
4. Install 4 inches high density foam insulation under front window... \$650.00
5. Install 2 inches of polyiso to exterior foundation in rear
crawl space..... \$700.00
6. Install 4 inches high density foam insulation to rim joist in
crawl space..... \$490.00
7. Install 4 inches high density foam insulation to rear basement
rim joist..... \$300.00
8. Install 1 inch of polyiso to rear garage wall and cover with
type 'X' 5/8-inch drywall tape and spackle..... \$1,075.00
9. Replace existing boiler with 93% AFUE gas-fired Boiler
and 30-gallon indirect tank..... \$6,500.00

TOTAL **\$11,330.00**

LESS: Applied Energy Audit Fee **(\$250.00)**

NET CONTRACT AMOUNT **\$11,080.00**

EXHIBIT B: CONTRACTOR'S INSURANCE

PREMISES:

CONTRACT:

SAMPLE