

CITY

29217

# DESIGN-BUILD CONTRACT

R-6697

This **Contract ("Contract")** is made as of July 1, 2005, by and between the following parties, for services in connection with the Project identified below.

**OWNER:** City of Long Beach  
333 West Ocean Boulevard  
Long Beach, CA 90802

**DESIGN-BUILDER:** General Physics Corporation  
2430 Vineyard Avenue  
Suite 103  
Escondido, CA 92029

**PROJECT:** LNG/LCNG Fuel Station

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

## Article 1 Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

## Article 2 Contract Documents

2.1 The Contract Documents are comprised of the following:

- .1 All written modifications, amendments and change orders to this Contract issued in accordance with the General Conditions of Contract Between Owner and Design-Builder ("General Conditions of Contract") attached hereto;
- .2 This Contract, including all exhibits and attachments, executed by Owner and Design-Builder;
- .3 Written Supplementary Conditions, if any, to the General Conditions of Contract attached hereto as Exhibit "A" and incorporated herein by reference;
- .4 The General Conditions of Contract;

- .5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;
- .6 Owner's Project Criteria attached hereto as Exhibit "B" and incorporated herein by reference.
- .7 Design-Builder's Proposal submitted in response to Owner's Project Criteria, attached hereto as Exhibit "C."

### **Article 3** **Interpretation and Intent**

3.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

3.2 Terms, words and phrases used in the Contract Documents, including this Contract, shall have the meanings given them in the General Conditions of Contract.

3.3 The Contract Documents form the entire Contract between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other Contracts have been made by the parties except as specifically stated in the Contract Documents.

### **Article 4** **Ownership of Work Product**

4.1 **Property of Owner.** All Design Documents prepared or furnished by or for Design-Builder or its Subcontractors or Design Consultants in connection with the Project's specific layout shall be the property of Owner, whether or not the Project is completed. Design-Builder and its Subcontractors and Design Consultants are hereby granted by Owner a limited license, revocable at any time by the Owner, to copy and use the design documents for the purposes of completing the project only. However, nothing in this Section 4.1 is intended to grant to Owner any rights to Design-Builder's intellectual property contained in the Design Documents, or to preclude Design-Builder from using any design concepts in other work. The restrictions on Design-Builder's use contained in this Section are limited to the specific Design Documents prepared for this project.

4.2 **Delivery to Owner.** Design-Builder shall deliver all Design Documents to Owner no later than the earlier of: (a) the date of Final Completion of the Project, or (b) the date this Contract is terminated for any reason prior to Final Completion of the Project. If this Contract is terminated for any reason, Owner and its agents, employees, representatives and/or assigns may use the Design Documents, in whole or in part, or in modified form, at Owner's sole discretion to complete the Project and without further employment of, or payment of further compensation to, Design-Builder or any third party. Owner acknowledges that the Design Documents are not intended or represented to be suitable for use on other projects or with modifications that have not been approved by Design-Builder; Design-Builder shall have no liability for use of Design Documents other than as intended in connection with the Project or for use of incomplete Design Documents.

4.3 **Indemnity.** To the fullest extent allowed by law, in the event Owner terminates this Contract pursuant to Section 8 or General Conditions Article 11.2, Owner shall defend, indemnify and hold Design-Builder and its employees and agents harmless from and against any and all loss arising out of the Owner's misuse or modification of the Design Documents following such termination.

4.4 **Official Submissions.** Submissions or distribution of documents to meet official regulatory requirements or for other purposes in connection with the Project shall not be deemed as publication in derogation of copyrights or other reserved rights.

4.5 **Inclusion in Contracts.** Design-Builder shall include the provisions of Sections 4.1 through 4.6 of this Contract in all contracts it enters with its Subcontractors and Design Consultants and shall require such Subcontractors and Design Consultants to include such provisions in all contracts with lower tier

## **Article 5** **Contract Time**

**5.1 Date of Commencement.** The Work shall commence within five (5) days after Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

### **5.2 Substantial Completion and Final Completion.**

**5.2.1** Substantial Completion of the entire Work shall be achieved no later than one hundred eighty (180) calendar days after the Design-Builder's receipt from the Owner of Notice to Proceed ("Scheduled Substantial Completion Date").

**5.2.2** There are no interim milestones or Substantial Completion of identified portions of the Work as of the date of execution of this Contract. However, interim milestones shall be mutually agreed upon by Owner and Design-Builder as a Notice to Proceed is issued for each phase of the Work.

**5.2.3** Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable.

**5.2.4** All of the dates set forth in this Article 5 are collectively referred to as Contract Times or individually referred to as a Contract Time and shall be subject to adjustment in accordance with the General Conditions of Contract.

**5.3 Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

**5.4 Damages.** Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages. Design-Builder agrees that if Substantial Completion is not attained by fifteen (15) days after the Scheduled Substantial Completion Date (the LD Date), Designer-Builder shall pay to Owner Five Hundred Dollars (\$500) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion.

## **Article 6** **Contract Price**

**6.1 Contract Price.** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of Nine Hundred Eight Thousand Three Hundred Dollars (\$908,300) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

**6.2 Markups for Changes.** If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

**A.** For Work performed by the Design-Builder's own forces, the Design-Builder shall be entitled to 5% markup for overhead and 4% markup as its fee, for a total markup not to exceed 9%.

**B.** For Work performed by consultants or subcontractors, the Design-Builder shall be entitled to a markup of 4% as its fee.

**C.** Notwithstanding anything to the contrary herein, in cases where there are multiple tier consultants or subcontractors, the Owner shall not be obligated to pay more than 20% combined markup for all tiers over and above the actual cost of the work.

## Article 7 Procedure for Payment

### 7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner periodically, based upon milestones achieved as indicated in Exhibit "D" attached and incorporated by reference, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

### 7.2 Retainage on Progress Payments.

7.2.1 Owner will retain ten percent (10%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been completed by Design-Builder, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payments. Owner will also reasonably consider retainage for Subcontractors completing their work early.

#### 7.2.2 Deposits in Lieu of Withholding Retainage.

**.1 Substitution of Securities.** At the request and expense of Design-Builder, a substitution of securities may be made as found in Government Code Section 16430 and as authorized by the Public Contract Code Section 22300 in lieu of monies retained by Owner to ensure performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract Documents for each Application for Payment shall be deposited by Design-Builder with a state or federally chartered bank in the State of California ("Escrow Agent"), which shall hold such securities pursuant to the escrow Contract until Final Payment is due in accordance with the Contract Documents. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. Design-Builder shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.

**.2 Escrow Deposit.** Alternatively to Paragraph 7.2.2.1 above, and at the request and expense of Design-Builder, Owner shall deposit retention directly with Escrow Agent. Design-Builder may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by Escrow Agent upon the same terms provided for securities deposited by Design-Builder.

**.3 Escrow Contract.** A prerequisite to the substitution of securities in lieu of retention or the deposit of retention into escrow shall be the execution by Design-Builder, Owner and Escrow Agent of an Escrow Contract for Deposit of Securities in Lieu of Retention and Deposit of Retention form provided by Owner. The terms of such escrow Contract are incorporated into the requirements of Paragraph 7.2.2 of this Contract.

7.2.3 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

7.3 **Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 **Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final

payment, shall bear interest commencing 30 days after payment is due at the rate of ten percent (10%).

**7.5 Record Keeping and Finance Controls.** With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's Auditor or his representatives be afforded access from time to time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment.

## **Article 8**

### **Termination for Convenience**

**8.1** On ten (10) days prior notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Contract. In such event, Owner shall pay Design-Builder for the following:

- .1 All Work executed for which Design-Builder has not yet been paid and for proven loss, cost or expense in connection with the Work but excluding overhead;
- .2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and
- .3 Overhead and profit in the amount of nine percent (9%) on the sum of items .1 and .2 above.

**8.2** If Owner terminates this Contract pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Article 4 hereof.

## **Article 9**

### **Representatives of the Parties**

**9.1 Owner's Representatives.**

**9.1.1** Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Mark Christoffels  
Owner's Engineer  
Department of Public Works  
333 West Ocean Boulevard  
Long Beach, CA 90802  
562/570-6771

**9.1.2** Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

As of the date of execution of this Contract, Owner has not designated any other representatives. All duties of the Owner's Representative shall be performed by the Owner's Senior Representative unless and until an Owner's Representative is designated by the Owner.

**9.2 Design-Builder's Representatives.**

**9.2.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving

disputes under Section 10.2.3 of the General Conditions of Contract:

Michael W. Mackey  
Principal Engineer  
General Physics Corporation  
2430 Vineyard Avenue  
Suite 103  
Escondido, CA 92029  
760/233-9880

**9.2.2** Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

As of the date of execution of this Contract, Design-Builder has not designated any other representatives. All duties of the Design-Builder's Representative shall be performed by the Design-Builder's Senior Representative unless and until an Owner's Representative is designated by the Owner.

## **Article 10** **Bonds and Insurance**

**10.1 Insurance.** As a condition precedent to the effectiveness of this Contract, Design-Builder shall procure and maintain at Design-Builder's expense for the duration of this Contract from insurance companies that are admitted to write insurance in California or from authorized non-admitted insurance companies that have ratings of or equivalent to A:VIII by A.M. Best Company the following insurance:

(a) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than Two Million Dollars (\$2,000,000) per each occurrence and Four Million Dollars (\$4,000,000) general aggregate. Such coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. The Owner, its officials, employees, and agents shall be named as additional insureds by endorsement (on Owner's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall contain no special limitations on the scope of protection given to the Owner, its officials, employees and agents.

(b) Workers' Compensation insurance as required by the Labor Code of the State of California and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000).

(c) Professional liability or errors and omissions insurance in an amount not less than One Million Dollars (\$1,000,000) per claim.

(d) Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount no less than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident.

Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by Owner's Risk Manager or designee and shall protect Owner, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed, or canceled except after thirty (30) days prior written notice to Owner, and shall be primary and not contributing to any other insurance or self-insurance maintained by Owner. Design-Builder shall notify the Owner in writing within five (5) days after any insurance required herein have been voided by the insurer or cancelled by the insured. Design-Builder hereby waives all rights of subrogation against the Owner with respect to general liability and workers' compensation insurance.

Design-Builder shall require that all contractors and subcontractors which Design-Builder uses in the performance of services hereunder maintain insurance in compliance with parts (a), (b) and (d) of this Section, unless otherwise agreed in writing by Owner's Risk Manager or designee.

Design-Builder shall require that all consultants and subconsultants which Design-Builder uses in the performance of services hereunder maintain insurance in compliance with parts (a), (b), (c) and (d) of this Section, unless otherwise agreed in writing by Owner's Risk Manager or designee.

Prior to the start of performance, Design-Builder shall deliver to Owner certificates of insurance and required endorsements for approval as to sufficiency and form. The certificate and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. In addition, Design-Builder shall, within thirty (30) days prior to expiration of the insurance required herein, furnish to Owner certificates of insurance and endorsements evidencing renewal of such insurance. Owner reserves the right to require complete certified copies of all policies of Design-Builder and Design-Builder's contractors and subcontractors, at any time. Design-Builder shall make available to Owner's Risk Manager or designee all books, records and other information relating to the insurance coverage required herein, during normal business hours.

Any modification or waiver of the insurance requirements herein shall only be made with the approval of Owner's Risk Manager or designee. Nor more frequently than once a year, the Owner's Risk Manager or designee may require that Design-Builder, Design-Builder's contractors and subcontractors change the amount, scope or types of coverages required herein if, in his or her sole opinion, the amount, scope, or types of coverages herein are not adequate. Any additional cost resulting from a change in insurance requirements will be compensable as a change under Article 9 of the General Conditions.

The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Design-Builder's performance or as full performance of or compliance with the indemnification provisions of this Contract.

## 10.2 Bonds.

Design-Builder shall, coincidentally with the execution of this Contract, execute and deliver to the Owner a good and sufficient corporate surety bond, in the form attached hereto as Exhibit "E", in the amount of 100% of the Contract Price, conditioned upon the faithful performance of this Contract by Design-Builder, and a good and sufficient corporate surety bond, in the form contained in Exhibit "F" and attached hereto and in the amount of 100% of the Contract Price, conditioned upon the payment of all labor and material claims incurred in connection with this Contract.

## Article 11 Other Provisions

**11.1 Tax Reporting.** As required by federal and state law, Owner is obligated to report the payment of compensation to Design-Builder on Form 1099-Misc. Design-Builder shall be solely responsible for payment of all federal and state taxes resulting from payments by Owner to Design-Builder under this Contract. Design-Builder's Social Security Number or Employer Identification Number is [REDACTED].

**11.2 Audit.** If payment of any part of the consideration for this Contract is made with federal, state, or county funds and a condition to the use of those funds by Owner is a requirement that the Owner render an accounting or otherwise account for said funds, then Owner, the U.S. Department of Housing and Urban Development, and the U.S. Comptroller General shall have the right at all reasonable times to examine, audit, make excerpts and transcriptions from any books, records, documents, and papers of Design-Builder that are directly pertinent to this Contract. Design-Builder must retain all books, records, documents, and papers that are directly pertinent to this Contract for three (3) years after Owner makes final payment.

**11.3 No Peculiar Risk.** Design-Builder acknowledges and agrees that the work to be performed hereunder does not constitute a peculiar risk of bodily harm and that no special precautions are required to perform said work.

**11.4 No Duty to Inspect.** No language in this Contract shall create and Owner shall not have any duty to inspect, correct, warn of, or investigate any conditions arising from Design-Builder's work hereunder, or to insure compliance with laws, rules or regulations relating to said work. If Owner does inspect or investigate, the results thereof shall not be deemed compliance with or a waiver of any requirements of the Contract Documents.

**11.5 Nondiscrimination.** In connection with performance of this Contract and subject to applicable rules and regulations, Design-Builder shall not discriminate against any employee or applicant for employment on the basis of race, religion, national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap, or disability. Design-Builder shall ensure that applicants are employed, and that employees are treated during their employment without regard to these bases. Such actions shall include but not be limited to employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay and selection for training. It is the policy of the Owner to encourage the participation of Disadvantaged, Minority and Women-owned Business Enterprises and the Owner encourages Design-Builder to use its best efforts to carry out this policy in the award of all subcontracts.

**11.6 Default.** Default shall include but not be limited to Design-Builder's failure to perform in accordance with the Plans and Specifications, failure to comply with any Contract Document, failure to pay any penalties, fines or charges assessed against the Design-Builder by any public agency, failure to pay any charges or fees for municipal services performed by the Owner, and if Design-Builder has substituted any security in lieu of retention, then default shall also include Owner's receipt of a stop notice. If default occurs and Design-Builder has substituted any security in lieu of retention, then in addition to Owner's other legal remedies, Owner shall have the right to draw in the security in accordance with Public Contract Code Section 22300 and without further notice to Design-Builder. If default occurs and Design-Builder has not substituted any security in lieu of retention, then Owner shall have all legal remedies available to it. Owner acknowledges that this Section is to be read in conjunction with Article 11 of the General Conditions and that Owner's rights with respect to matters described in Section 11.2.1 are subject to the provisions of Section 11.2.2.

**11.7 Tax Cooperation.** Design-Builder shall cooperate with the City in all matters relating to taxation and the collection of taxes, particularly with respect to the self-accrual of use tax. Design-Builder shall cooperate as follows: (i) for all leases and purchases of materials, equipment, supplies, or other tangible personal property totaling over \$100,000 shipped from outside California, Design-Builder shall complete and submit to the appropriate governmental entity the application forms for a Use Tax Direct Payment Permit contained in Exhibit "G" attached hereto; and (ii) for construction contracts and subcontracts totaling \$5,000,000 or more, Design-Builder shall obtain a sub-permit from the State Board of Equalization for the work site. In completing these forms, Design-Builder shall use the address of the work site as its business address and may use any address for its mailing address. Copies of these forms shall also be delivered to the City Engineer. These forms must be submitted as soon as Design-Builder receives a Notice to Proceed. Design-Builder shall not order any materials, equipment, supplies or other tangible personal property over \$100,000 from vendors outside California until these forms are submitted and, if Design-Builder does so, it shall be a material breach of this Contract. Design-Builder shall insert this language in all subcontracts for the Project. Design-Builder shall not be entitled to and hereby waives any claim or damages for delay against the Owner if Design-Builder does not timely submit these forms to the appropriate governmental entity. Design-Builder may contact the City Controller for assistance with these forms.

In addition, Design-Builder shall make all purchases from its vendors' Long Beach sales office if its vendors have a Long Beach office. All purchases under this Contract by Design-Builder and its subcontractors which are subject to use tax of \$500,000 or more shall be allocated to the City of Long Beach. If Design-Builder fails to comply with this Section, it shall be a material breach of this Contract.

**11.9 No Political Purpose.** Design-Builder shall not use any Community Development Block Grant funds received under this Contract for political campaign contributions, promotion of political candidates, or any other political purpose.

In executing this Contract, Owner and Design-Builder each individually represents that it has the necessary

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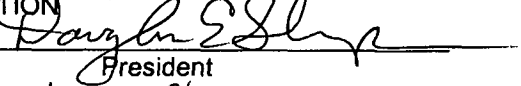
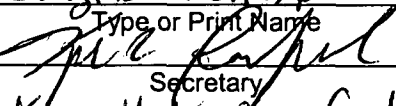


financial resources to fulfill its obligations under this Contract, and each has the necessary corporate approvals to execute this Contract, and perform the services described herein.


**OWNER: CITY OF LONG BEACH**

By   
City Manager  
Gerald R. Miller  
Type or Print Name  
Date: 8-15-05

**DESIGN-BUILDER: GENERAL PHYSICS CORPORATION**

By   
President  
Douglas E. Sharp  
Type or Print Name  
By   
Secretary  
Kenneth E. Crawford  
Type or Print Name  
Date: July 28, 2005

APPROVED AS TO FORM

8/11, 2005  
ROBERT E. SHANNON, City Attorney  
BY   
SENIOR DEPUTY CITY ATTORNEY

DFG:rjr7-7-05(LNG/LCNG)04-01600 (CLEAN VERSION)  
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# GENERAL CONDITIONS OF CONTRACT R-6697

## Article 1

### General

#### 1.1 Mutual Obligations

Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

#### 1.2 Basic Definitions

**1.2.1** Day or Days shall mean calendar days unless otherwise specifically noted in the Contract Documents.

**1.2.2** Design Consultant is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

**1.2.3** Hazardous Conditions are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

**1.2.4** Legal Requirements are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

**1.2.5** Owner's Project Criteria as shown on Exhibit "B" are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

**1.2.6** Site is the land or premises on which the Project is located.

**1.2.7** Subcontractor is any person or entity

retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

**1.2.8** Sub-Subcontractor is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

**1.2.9** Substantial Completion is the date on which the Work, or an agreed upon portion of the Work, is completed and accepted, subject only to correction of punch list items that do not prevent Owner from using the Project or a portion (phase) thereof for its intended purposes.

**1.2.10** Work is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

**1.2.11** Design documents are all drawings, specifications and calculations prepared by the Design-Builder, its Design Consultants or Subcontractors, in the performance of this Contract whether prepared before or after the execution of this Contract.

**1.2.12** Final completion is the date when the Design-Builder has completed all of the obligations of the Contract including the satisfactory completion of all punch list items, and furnishing to the Owner all items required by Section 6.7.2.

## Article 2

### Design-Builder's Services and Responsibilities

#### 2.1 General Services

**2.1.1** Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

**2.1.2** Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that

require resolution, (iii) health and safety issues exist in connection with the Work, and (iv) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Times.

**2.1.3** Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Times. The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Times, as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**2.1.4** The parties shall meet within seven (7) days after execution of the Contract to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

## **2.2 Design Professional Services**

Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

## **2.3 Standard of Care for Design Professional Services**

The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, in the

event that the Contract Documents specify that portions of the work be performed in accordance with a specific performance standard, the design services shall be performed so as to achieve such standards.

## **2.4 Design Development Services**

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

**2.4.2** Design-Builder shall submit to Owner Contract Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Contract Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Contract Documents in accordance with the procedures set forth Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Contract Documents and shall submit one set of approved Contract Documents to Owner prior to commencement of construction.

**2.4.3** Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. With the exception of the existing pile capacities and the existing CNG/gasoline/diesel refueling station, neither Owner's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

**2.4.4** To the extent not prohibited by the Contract

Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

## **2.5 Legal Requirements**

**2.5.1** Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

**2.5.2** The Contract Price and/or Contract Times shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Contract affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Contract, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

## **2.6 Government Approvals and Permits**

**2.6.1** Except for permits issued by Owner in its municipal capacity and the environmental and geotechnical work by Owner stated in Owner's Project Criteria, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

**2.6.2** Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

## **2.7 Design-Builder's Construction Phase Services**

**2.7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents. Design-Builder shall provide the first fill of all chemicals and lubricants necessary to operate the Project; however, Owner shall provide chemicals and lubricants to replenish those consumed during start-up, testing and commissioning of the Project.

Owner shall also provide all liquefied natural gas required for initial tank fill/cool-down, start-up, testing and commissioning activities.

**2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

**2.7.3** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Times shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

**2.7.4** Design-Builder assumes responsibility for and shall ensure the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

**2.7.5** Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder shall reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

**2.7.6** Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

## **2.8 Design-Builder's Responsibility for**

## **Project Safety**

**2.8.1** Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder shall implement and monitor all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. Once construction activities have begun and while they are ongoing, the Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

**2.8.2** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

**2.8.3** Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

## **2.9 Design-Builder's Warranty**

Design-Builder warrants to Owner that the design shall be performed in accordance with the Contract Documents and that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and

workmanship for a period of one (1) year after Substantial Completion. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable, normal degradation in the performance of equipment and operation of the Project in a manner inconsistent with the Design-Builder's operating instructions by persons not under Design-Builder's control. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.10 Correction of Defective Work**

**2.10.1** Design-Builder shall correct any Work that does not conform to the Contract Documents, including that part of the Work subject to Section 2.9 hereof, of which Design-Builder is notified within a period of one year after the date of Substantial Completion of the Work or any portion of the Work, or where manufacturers' warranties for specific equipment afford a longer warranty period within such longer period to the extent required by the Contract Documents if such warranty rights have not been assigned to Owner.

**2.10.2** Design-Builder shall, within seven (7) days after receipt of notice from Owner that the Work does not conform to the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall pay for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

**2.10.3** The one year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

## 2.11 Existing Refueling Station

Design-Builder makes no warranty and shall have no responsibility or liability regarding the Owner's existing compressed natural gas (CNG), gasoline and diesel refueling station.

## Article 3

### Owner's Services and Responsibilities

#### 3.1 Duty to Cooperate

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

#### 3.2 Furnishing of Services and Information

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely on in performing the Work:

- .1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- .2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- .3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;
- .4 A legal description of the Site;

.5 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 Owner will obtain and execute all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner will pay for all costs, including attorneys's fees, incurred in obtaining these necessary agreements.

#### 3.3 Owner's Representative

Owner's Representative shall provide Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

#### 3.4 Government Approvals and Permits

Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

#### 3.5 Owner's Separate Contractors

Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

## Article 4

### Hazardous Conditions and Differing Site Conditions

#### 4.1 Hazardous Conditions

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any suspected Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and immediately notify Owner within 12 hours and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

**4.1.2** Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include retaining qualified independent experts to ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

**4.1.3** Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides Design-Builder with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

**4.1.4** Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

**4.1.5** To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

**4.1.6** Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, employees and agents from and against all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

## **4.2 Differing Site Conditions**

**4.2.1** Concealed or latent physical conditions or

subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

**4.2.2** Upon encountering a Differing Site Condition, Design-Builder shall provide prompt notice to Owner of such condition, which notice shall not be later than fourteen (14) days after a Differing Site condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

### **4.2.3 Archaeological Finds**

Upon the discovery of any article of value or antiquity of archaeological or geotechnical interest, Design-Builder shall (a) promptly cease work in the affected area and notify Owner of such discovery, and (b) follow any and all directions of Owner with respect to such discoveries. Design-Builder will be entitled, in accordance with these General Conditions, to an adjustment in its Contract Price and/or Contract Time to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of such valuables or antiquities.

## **Article 5**

### **Insurance and Bonds**

#### **5.1 Design-Builder's Insurance Requirements**

**5.1.1** Design-Builder's liability insurance set forth in the Contract shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

**5.1.2** Any professional liability insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

## **Article 6**

## Payment

### 6.1 Schedule of Values

Within ten (10) days after execution of the Contract, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

### 6.2 Monthly Progress Payments

**6.2.1** On or before the date established in the Contract, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

**6.2.2** The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

**6.2.3** The Application for Payment shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

### 6.3 Withholding of Payments

**6.3.1** On or before the date established in the Contract, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and

Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

**6.3.2** Except for stop notices and for amounts withheld pursuant to the California Labor Code, the Owner will notify Design-Builder when the Owner receives any third party claims relating to this Contract, in accordance with Section 9201 of the Public Contract Code.

**6.3.3** Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Contract.

### 6.4 Right to Stop Work and Interest

If Owner fails to pay Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate of 10% per annum.

### 6.5 Design-Builder's Payment Obligations

Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.1 hereof.

### 6.6 Substantial Completion

**6.6.1** Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete. Within five (5) days after Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's



security, maintenance, utilities and insurance pending final payment and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

**6.6.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**6.6.3** Owner, at its option, may use a portion of the Work which has been determined to be substantially complete provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

## **6.7 Final Payment**

**6.7.1** After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has completed all of the Work in conformance with the Contract Documents.

**6.7.2** At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

- .1 an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
- .2 a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

- .3 consent of Design-Builder's surety, if any, to final payment;
- .4 all operating manuals, warranties and other deliverables required by the Contract Documents; and
- .5 certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.
- .6 As-built/Record Drawings completed in accordance with the Owner's standards.

**6.7.3** Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion, (iii) the terms of any special warranties required by the Contract Documents, and (or) Design-Builder's negligence.

## **Article 7**

### **Indemnification**

Design-Builder shall, with respect to its services performed in connection with this Contract, indemnify and hold harmless the City, its Boards, Commissions, and their officials, employees, agents and Concept Marine Associates (collectively in this Section, "City") from and against any and all liability, claims, demands, damage, loss, causes of action, proceedings, penalties, costs and expenses related to or arising out of Design-Builder's work on the Project (including reasonable attorney's fees, court costs, and expert witness fees) (collectively "Claims" or individually "Claim"). Claims include allegations and include by way of example but are not limited to: Claims for property damage, personal injury or death arising in whole or in part from any negligent act or omission of Design-Builder, its officers, employees, agent, sub-consultants, or anyone under Design-Builder's direct control (collectively "Indemnitor"); Design-Builder's breach of this Agreement; misrepresentation by Design-Builder's officers or employees' willful misconduct by Design-Builder's officers or employees; and Claims by any employee of Indemnitor relating in any way to worker's compensation. Independent of the duty to indemnify and as a free-standing duty on the part of Design-Builder, Design-Builder shall defend City and shall continue such defense until the Claim is resolved, whether by settlement, judgment or

otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Indemnitor shall be required for the duty to defend to arise. Design-Builder shall notify the City of any claim within ten (10) days. Likewise, City shall notify Design-Builder of any claim, shall tender the defense of such claim to Design-Builder and shall assist Design-Builder as may be reasonably requested, in such defense.

## **Article 8**

### **Time**

#### **8.1 Obligation to Achieve the Contract Times**

Design-Builder shall commence performance of the Work and achieve the Contract Times in accordance with Article 5 of the Contract.

#### **8.2 Delays to the Work**

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Times for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Times include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price excluding overhead and fee as set forth in Article 6 of the Contract, provided, however, that the Contract Price shall not be adjusted for those events set forth in Section 8.2.1 above that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

## **Article 9**

### **Changes to the Contract Price and Time**

#### **9.1 Change Orders**

9.1.1 A Change Order is a written instrument issued after execution of the Contract signed by Owner and Design-Builder, stating their agreement upon all of the following:

- .1 The scope of the change in the Work;
- .2 The amount of the adjustment to the Contract Price, if any; and
- .3 The extent of the adjustment to the Contract Times, if any.

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

#### **9.2 Work Change Directives**

9.2.1 A Work Change Directive is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

#### **9.3 Minor Changes in the Work**

Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

#### **9.4 Contract Price Adjustments**

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

- .1 Unit prices set forth in the Contract

as subsequently agreed to between the parties;

- .2 A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
- .3 Costs, fees and any other markups set forth in the Contract; and
- .4 If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including overhead and fee as set forth in Article 6 of the Contract. If the net result of both additions and deletions to the Work is an increase in the Contract Price, overhead and profit shall be calculated on the basis of the net increase to the Contract Price. If the net result of both additions and deletions to the Work is a decrease in the Contract Price, there shall be no overhead or profit adjustment to the Contract Price. Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

**9.4.2** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

**9.4.3** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the

disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. Payment shall be as later determined by mediation or arbitration, if the Owner and Design-Builder agree thereto, or as fixed in a court of law. Although not to be construed as proceeding under extra work provisions, the Contractor shall keep and furnish records of disputed work. The basis for establishing costs shall be as stated in the 2003 Greenbook Section 3-3.3.2.

## **9.5 Emergencies**

In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

## **Article 10**

### **Contract Adjustments and Disputes**

#### **10.1 Requests for Contract Adjustments and Relief**

If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, notice shall be given within a reasonable time, not to exceed ten (10) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

#### **10.2 Dispute Avoidance and Resolution**

**10.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so

as to avoid unnecessary losses, delays and disruptions to the Work.

**10.2.2** Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative.

**10.2.3** If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

**10.2.4** If, after meeting, the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, within ten days after selection of the mutually acceptable mediator, then by procedures established by the mediator.

### **10.3 Duty to Continue Performance**

Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

### **10.4 CONSEQUENTIAL DAMAGES**

**10.4.1** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.4.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL OR OTHER INDIRECT LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

**10.4.2** The consequential damages limitation set forth in Section 10.4.1 above is not intended to

affect the payment of liquidated damages, if any, set forth in Section 5 of the Contract, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed as consequential.

## **Article 11**

### **Stop Work and Termination for Cause**

#### **11.1 Owner's Right to Stop Work**

**11.1.1** Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

**11.1.2** Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Times if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of work by Owner.

#### **11.2 Owner's Right to Perform and Terminate for Cause**

**11.2.1** If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

**11.2.2** Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide notice to Design-Builder that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within seven (7) days after Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Contract terminated for default by providing notice to Design-Builder of such declaration.

**11.2.3** Upon declaring the Contract terminated

pursuant to Section 11.2.2 above, Owner may enter the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including reasonable attorneys' fees and expenses, incurred by Owner in connection with the re-procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.4 hereof.

**11.2.4** If Owner improperly terminates the Contract for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Contract.

## **11.5 Bankruptcy of Design-Builder**

**11.5.1** If Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

- .1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and
- .2 The Bankrupt Party shall file an appropriate action within the

bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days after the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

**11.5.2** The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

## **Article 12**

### **Miscellaneous**

#### **12.1 Assignment**

Neither Design-Builder nor Owner shall without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

#### **12.2 Successorship**

Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their heirs, successors and assigns.

#### **12.3 Governing Law**

The Contract and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

#### **12.4 Severability**

If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts or the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

## **12.5 No Waiver**

The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

## **12.6 Headings**

The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

## **12.7 Notice**

Whenever the Contract Documents require that notice be provided to the other party, notice shall be in writing and deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice or, (ii) by registered mail, return receipt, postage prepaid to the address indicated in the Agreement on the date shown on the return receipt. Notice shall be deemed given on the date personal delivery is made or on the date shown on the return receipt, whichever is earlier.

## **12.8 Amendments**

The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

04-01600 GENERAL CONDITIONS - CLEAN VERSION (7-7-05)  
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**EXHIBIT "A"**  
**SUPPLEMENTARY CONDITIONS**

**A.1 Work Day**

A.1.1 Contractor shall comply with Sections 1810 through 1815 of the California Labor Code regarding hours of work. Contractor shall forfeit, as a penalty to the City, the sum of Twenty-five Dollars (\$25) for each worker employed by Contractor or any subcontractor for each calendar day such worker is required or permitted to work more than eight (8) hours unless that worker receives compensation in accordance with Section 1815.

**A.2 Prevailing Wage Rates**

A.2.1 Contractor is directed to the prevailing wage rates. Contractor shall forfeit, as a penalty to the City, Fifty Dollars (\$50) for each laborer, worker or mechanic employed for each calendar day, or portion thereof, that such laborer, worker or mechanic is paid less than the prevailing wage rates for any work done by Contractor, or any subcontractor, under this Contract.

**A.3 Certified Payroll Records**

A.3.1 Contractor shall keep and cause each subcontractor to keep an accurate payroll record in accordance with Division 2, Part 7, Article 2 of the California Labor Code. Contractor's failure to furnish such record to City in the manner provided herein for notices shall entitle City to withhold the penalty prescribed by law from progress payments due to Contractor.

**A.4 Notices**

A.4.1 Any notice required hereunder shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid, to Contractor at the address first stated herein, and to the City at 333 West Ocean Boulevard, Long Beach, California, 90802, Attention: City Manager. Notice of change of address shall be given in the same manner as stated herein for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever first occurs.

A.4.2 Except for stop notices and claims made under the Labor Code, the City will notify Contractor when the City receives any third party claims relating to this Contract in accordance with Section 9201 of the Public Contract Code.

**EXHIBIT "B"**  
**OWNER'S PROJECT CRITERIA**

The following are the Owner Project Criteria upon which the LNG fueling station shall be designed and constructed.

B.1 "Request For Proposal," Owner of Long Beach Department of Public Works dated September 2, 2004, and its attachments.

The criteria were modified by the City in May 2005 to eliminate the CNG component and the need for public access. In addition, the project location was changed to the City's Fleet Service Yard, located at the northeast corner of Willow and Temple Streets in Long Beach. Proposal attached hereto as Exhibit C reflects these changes.



**EXHIBIT "C"**

**DESIGN-BUILDER'S PROPOSAL**



May 23, 2005  
GP-L-SD-131648 – Rev 3

Mr. Mark Christoffels  
City Engineer  
City of Long Beach  
333 West Ocean Blvd,  
Long Beach, CA 90802

**Leading the World to Better Performance**

Training • Engineering • Technical Services • Consulting

*Reference 1 Request for Proposal LNG and LCNG Refueling Station, City of Long Beach, Sept. 2, 2004*  
*2 LNG/LCNG Fuel Station Design Build Proposal, GP letter GP-L-SD-131648, Nov 3, 2004*  
*3 GP letter GP-L-SD-131648-Rev 1, Nov 23, 2004*  
*4 GP letter GP-L-SD-131648-Rev 2, Dec 13, 2004*

Dear Mr. Christoffels:

### **LNG Fuel Station Design Build Proposal – Rev 3**

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REV 1: Based on discussion with the City of Long Beach, we have made the following modifications to our proposal:

- LNG dispenser configuration has been modified such that two LNG hose can be used simultaneously. Both hoses to have JC Carter nozzles. This resulted in twice the amount of mass flow meters, dispenser valves, dispenser cabinets and displays.
- Deleted geotechnical report since City of Long Beach to provide.
- We have included an option price for 100% performance and payment bond

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REV 2: Based on discussion with the City of Long Beach, we have made the following modifications to our proposal:

- Optional price for increasing foundation to accommodate future LNG storage vessel.
- Added statement that the odorant injection system failure will result in a station control alarm.

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REV 3: Based on discussion with the City of Long Beach, we have made the following modifications to our proposal:

- Change site location to the City's Maintenance yard at
- Deleted requirement for LCNG equipment and CNG dispensing

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General Physics Corporation (GP), with our LNG teaming partner NorthStar, Inc., is pleased to submit this firm fixed price cost proposal for the City of Long Beach's liquefied natural gas (LNG) fueling station to be located at the City's 2929 East Willow Drive Yard. This proposal complies with the City of Long Beach's specification (Reference 1) as modified per our meeting on May 3, 2005.

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*Given the design/build nature of this proposal, the information contained in this document constitutes information that is trade secret. It is furnished to the City of Long Beach in confidence with the understanding that it will not, without the expressed written permission of General Physics Corporation, be used or disclosed for any reason other than for purposes of evaluation.*

General Physics Corporation  
2430 Vineyard Ave., Suite 103  
Escondido, CA 92029-1226 USA  
760.233.9880  
fax: 760.233.9881  
www.gpworldwide.com

Our firm fixed price cost for the scope of work outlined in this proposal is shown below. Due to steel price volatility, this price is valid for 20 days from the date of this proposal. Two optional prices have been provided per your request as shown below.

\$25,000.	Engineering / HAZOP
\$7,000.	Demo
\$66,000.	Vessel Foundation, Containment, and Misc. Concrete
734,000.	LNG Vessel, LNG Equipment
<u>\$52,000.</u>	<u>Electrical</u>
\$884,000.	Total Price – Base Bid
\$21,000.	Optional Price for Performance and Payment Bond on Base Bid
<u>\$3,300.</u>	<u>Optional Price for Geotechnical Report</u>
\$908,300	Total Price with all options.

The proposed fueling station will meet all requirements of the specification and the requirements of the California Building and Electric Codes, NFPA 52 and 57, and California Title 8. Our offer is based on the successful experience we have gained in the design, construction, and commissioning of LNG/LCNG fuel stations, high pressure gas systems, and cryogenic systems throughout California and the U.S.

## 1.0 Design and Construction Specifications

1.1 Bulk Storage Vessel: We propose to use a 16,400 gallon, 10 ft diameter vertical LNG storage vessel.

Tank specifications are as follows:

Tank Configuration	Vertical
Color	White
Gross Working Volume	16,400 gallons
Net Working Volume	14,750 gallons
Maximum Allowable Working Pressure	175 psig
Inner Vessel Material	SA-353 9% Nickel Steel
Inner Vessel Design Code	ASME Section VIII Division 1
Outer Vessel Material	A-36 Carbon Steel
Outer Vessel Design Code	CGA-341
Insulation	Vacuum & Perlite
Piping and Plumbing Components	All Stainless Steel with automatic fire block valves provided by plastic control air tubing to valves.
Piping Design Code	ANSI B31.3
Seismic Design Code	1997 UBC Zone 4
Warranty	12 Months

1.2 LNG Trailer Offloading Station: We propose to use an ACD model TC-34 1.5x2.5x6 (or equal) two-stage pump submerged in an ASME Section VIII coded vacuum insulated pump pot. This will be a multi-purpose pump and will also serve as the LNG dispensing pump. Both the LNG pump and motor are flooded with LNG, precluding the need for a mechanical shaft seal.

Specifications for the LNG fuel supply and LNG offload pump is:

Quantity	1 each
Nominal Flow Rate	90-100 gallons per minute
Nominal Head Pressure	125 psi in LNG service
Motor Horsepower	25 HP
Warranty	1000 hours or 12 Months

1.3 Saturation Control (Conditioning): We propose to utilize a vertical, fan assisted, aluminum, fin-tube ambient vaporizer manufactured by Thermax model #CD40HF (or equal).

The proposed station will saturate the entire contents of the storage tank immediately upon refill. This is accomplished by circulating LNG through an ambient vaporizer and back into the tank. The station operator can select variable saturation set points between 25 and 125 psig (whole numbers only). This system will be able to saturate a 10,000-gallon delivery in less than 30 minutes.

LNG Saturation Vaporizer specifications are as follows:

Configuration	Vertical fan assisted
Design Pressure	250 psig
Approach Temperature	20 deg F
Duty Cycle	8 hours continuous

1.4 LNG Dispensing Pump: The LNG dispensers will utilize the same LNG pump as is used for trailer offloading as described in section 1.2.

1.5 LNG Dispenser: Two single hose non-weights and measures approved LNG dispensers will be wall mounted on opposite sides of the LNG storage vessel containment walls as shown on the attached drawings. The dispensers include a 10 ft fill hose and a 10 ft vapor return hose. The LNG hose will have a JC Carter nozzle. The vapor return hose will be provided with a Macrotech nozzle and will vent the vehicle tank either into the bulk LNG storage vessel or to the atmosphere through the vessel vent stack. A breakaway device will be provided on the fill hoses.

The dispensing system has been designed with the station operator in mind, featuring "one-button" fueling. The user interface consists of start, stop, and emergency stop buttons. The LNG dispensers will be authorized to begin fueling by one new fuel management terminal.

1.6 LNG Fueling Authorization: The new E.J. Ward key reader will be utilized for authorizing LNG dispensing. This reader will tie into the City of Long Beach networked EJ Ward fuel management system via Ethernet cable. GP will provide Ethernet cable to the City of Long Beach network inside the Maintenance Building. Connection to the network shall be provided by City of Long Beach due to potential security issues.

1.7 LNG Dispensing Hose: See description in Section 1.5

1.8 LNG Vapor Return Hose: See description in Section 1.5

1.9 Vapor Management: Several key design features of a proposed LNG station preclude the release of vapor. A majority of the total system heat leak is into the process piping, so re-circulation through the pump

and back to the tank is kept to a minimum. Piping distances are kept to a minimum and vacuum-jacketed piping is used where appropriate.

Vehicle tanks that cannot be filled by ullage pressure collapse due to high vehicle tank pressure will need to be vented. The station will allow for the vehicle tank to be vented to the bottom of the bulk tank, thus eliminating the need to vent the vehicle tank to atmosphere.

Understanding that proper station design is essential, the most important operating strategy to minimize venting is to use the fuel. An underutilized station vents a small amount of vapor each day to prevent the saturation pressure of the product from going too high. Limiting the tank pressure also facilitates the rapid offloading of an LNG transport, as large amounts of vapor do not need to be removed from the bulk tank. Stations that use sufficient amounts of fuel have no venting.

1.10 LNG Station Controls: We offer a superior control system in terms of reliability and ease of operation. The control system is built around an Allen-Bradley programmable logic controller (PLC). Local technical support and spare components are readily available.

The PLC will automatically operate valves and the LNG pump to perform bulk tank saturation and LNG dispensing operations. The PLC also monitors the offload of an LNG transport as performed by either the transport operator or by the station operator. The PLC will prevent overfilling of the storage tank by automatically closing the fill valve and shuts off the pump when the level controller detects a full tank condition.

Alarm conditions are held on the operator's interface until acknowledged. An optional auto dialer device provides for telephone notification of station faults or alarm conditions.

Control system specifications are:

Programmable Logic Controller	Allen-Bradley SLC 5/03
Panel Listing	UL 508
PLC Power Requirements	110 VAC 30 Amps
LNG System Power Requirements	480VAC, 3 ph, 3 W, 150 amp feed (Preliminary)
Warranty	12 Months

1.11 – 1.18 CNG related equipment deleted

1.19 Safety Systems: Safety systems for the proposed LNG station include the following:

- All Engineering will be performed under the direction of in-house California registered Professional Engineers with extensive cryogenic and high pressure gas experience and experience in the design and installation of LNG and LCNG fuel stations in California.
- Methane detection in the process piping and transport offload area and the LNG dispensing area. At 20% of the lower flammability limit (LFL), these detectors will trigger a visual and audible alarm. At 40% LFL, the detectors will initiate an emergency shut down (ESD) of the station.
- Fire detection using dual-sensor ultraviolet/infrared (UV/IR) heads covers the LNG containment and LNG transfer areas. Fire detection automatically initiates an ESD of the station.
- Manual push buttons at the dispensing area, at the exits from the containment area, and at a remote location such as the control panel, that will allow for an immediate ESD.
- Maximum flow rates through the meter system, plus a limit on cumulative gallons dispensed, will provide for automatic emergency shutdown of fueling in the event of a fill hose rupture.

- All process valves are air-to-open, spring-to-close for fail-safe operation. The release of control air in an ESD will close all process valves. For extra safety, the actuators on the tank valves will be supplied with plastic control air tubing. In the event of a fire, the tubing will fail and cause the valves to close.
- An ESD will disconnect power from all high voltage devices (such as electric motors) in the containment area.
- Since the facility is not staffed 24 hours a day, an auto-dialer device can be configured to send an alarm message to maintenance personnel or to an alarm monitoring company.
- Our Team has Registered California Professional Engineers on staff that will certify compliance with current and pending California Title 8 requirements and all design documents as required by the state and local regulations.

In addition to these safety systems, a failure modes and effects analysis will be performed to insure the safety of the system. An abbreviated failure modes and effects analysis for the proposed LNG/LCNG fueling facility is given below.

Item.	Incident	Prevention	Detection	Containment	Emergency Actions
1	LNG leak at transport connection or piping	<ul style="list-style-type: none"> <li>• Proof and leak test system</li> <li>• Cold shock system prior to putting in service</li> <li>• System designed and certified to ANSI B31.3</li> </ul>	<ul style="list-style-type: none"> <li>• Two (2) methane detectors at LNG storage tank area</li> </ul>	<ul style="list-style-type: none"> <li>• Secondary containment wall surrounding LNG storage tank</li> </ul>	<ul style="list-style-type: none"> <li>• Controls will shutdown system and close critical valves</li> <li>• Auto-dialer alerts appropriate personnel</li> <li>• ESD push buttons if required</li> </ul>
2	LNG leak and fire at transport connection or piping	<ul style="list-style-type: none"> <li>• LNG leak prevention</li> <li>• Electrical grounding of all equipment</li> <li>• Ignition source control</li> </ul>	<ul style="list-style-type: none"> <li>• Two (2) UV-IR flame detectors at LNG storage tank area</li> </ul>	<ul style="list-style-type: none"> <li>• Secondary containment wall surrounding LNG storage tank</li> </ul>	<ul style="list-style-type: none"> <li>• Same as above</li> </ul>
3		SYSTEM DELETED			
4	LNG Storage Tank Leak	<ul style="list-style-type: none"> <li>• ASME Certified Pressure Vessel</li> <li>• Piping designed and certified to ANSI B31.3</li> <li>• Relief valves to relief overpressure conditions</li> </ul>	<ul style="list-style-type: none"> <li>• Two (2) methane detectors at LNG storage tank area</li> </ul>	<ul style="list-style-type: none"> <li>• Secondary containment wall surrounding LNG storage tank</li> </ul>	<ul style="list-style-type: none"> <li>• Same as above</li> </ul>
5	Loss of Power	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Loss of power signal on controller</li> </ul>	<ul style="list-style-type: none"> <li>• Battery backup on controller</li> </ul>	<ul style="list-style-type: none"> <li>• Controls will shutdown system and close critical valves</li> </ul>
6	Cryogenic liquid entrapment	<ul style="list-style-type: none"> <li>• Proper automatic sequencing of valves</li> </ul>	<ul style="list-style-type: none"> <li>• Venting from pressure relief valves</li> </ul>	<ul style="list-style-type: none"> <li>• Pressure relief valves installed</li> </ul>	<ul style="list-style-type: none"> <li>• None</li> </ul>
7	Pump failure	<ul style="list-style-type: none"> <li>• Acceptance of pump operations prior to putting facility in service</li> <li>• Routine inspection and maintenance</li> </ul>	<ul style="list-style-type: none"> <li>• No LNG flow</li> </ul>	<ul style="list-style-type: none"> <li>• Pumps located within secondary containment area</li> </ul>	<ul style="list-style-type: none"> <li>• Isolate and repair</li> </ul>

*Given the design/build nature of this proposal, the information contained in this document constitutes information that is trade secret. It is furnished to the City of Long Beach in confidence with the understanding that it will not, without the expressed written permission of General Physics Corporation, be used or disclosed for any reason other than for purposes of evaluation.*

## 2.0 Contractor's Responsibilities

2.1 Final Design Engineering: All engineering design, engineering calculations, and design package preparation will be prepared in-house under the direction of our California Registered Professional Engineers. Our staff has extensive experience in the design and installation of LNG and LCNG facilities.

We currently use AutoCAD 2004 for a design packages. If required by the City, we can save the design package in a \*.pdf electronic format for your records.

2.2 Electrical Service: We will install a new breaker in the existing electrical distribution panel inside the maintenance building. The new service will be run overhead inside the maintenance building to the edge of the building where the new LNG station control panel will be located. Electrical trenching from the control panel to the new LNG station will be a direct line. Backup power generation will not be provided.

2.3 Civil Improvements: Our proposal includes the following as shown on the Reference 1 drawing.

- Provide and install LNG storage foundation and secondary containment
- Bollards

2.4 Permits: Our in house staff will identify, apply and acquire all required permits for this project. It is assumed that the City of Long Beach permit fees are waived for this project.

The GP team has designed LNG and LCNG stations that have been successfully permitted with the following California agencies:

County of Fresno	California Title 8
County of Riverside	Riverside County Fire Department
City of Tulare	Tulare Fire Department
City of Montclair	Montclair Fire Department
City of San Bernardino	San Bernardino County Fire Department
City of Corona	Corona Fire Department
City of Palmdale	LA County Fire Department

We will begin coordinating with local authorities early in the design phase to ensure the permitting process will go as smoothly as possible. Many local authorities, including the Fire Marshall and building inspectors may not be familiar with cryogenic and high-pressure fuel systems. In the past, working closely with local authorities early in the project phase has resulted in successful permitting of fuel stations in California.

A complete drawing package is available for a single tank foundation, electrical equipment, process & instrumentation diagram, and fire protection equipment. With minor site-specific changes, this same drawing package has been successfully permitted and installed in Fresno, Tulare, Corona, Thousand Palms California, Baldwin Park, and Carson.

2.5 Codes: In addition to the Codes listed, our offer includes notification to California Department of Occupational Safety and Health (DOSH) that LNG fueling station meets current Title 8 regulations. Based on conversations with Mr. Don Cook, DOSH approval is not required.

2.6 Warranty: A 1 year warranty will be per provided.

2.7 Service: We can offer a minimum 4 hour call back and will provide a technician within 24 hours notice.

2.8 Training: GP will provide training for the City of Long Beach employees that meet the requirements of NFPA and California Title 8.

### **3.0 Optional Items**

3.1 Performance and Payment Bonds: GP will 100% performance and payment bonds if required.

3.2 Foundation for Future LNG Storage Vessel: DELETE.

3.3 Geotechnical Report: GP will subcontractor with local geotechnical engineering firm to provide soil borings and geotechnical report to support the LNG storage vessel foundation and associated foundation design.

### **OFFER EXCLUSIONS:**

We exclude the following items from our cost estimate:

1. Relocation of underground utilities.
2. Design and installation of fire suppression systems, if required by the local authority having jurisdiction since a fire suppression system is typically not required for an LNG fuel stations such as that described in the specification.
3. Any cleanup or soil work that may be caused by underground contamination not already identified in the RFP documents.
4. Over-excavation, imported fill, and compaction of any kind (soils report not available during bid).
5. Plan Check and building permit fees (Assumed waived by City of Long Beach).
6. Liquidated damages (none specified).
7. We look forward to the opportunity to provide periodic maintenance of the facility under a long-term contract. These costs are not included in our pricing.



**SUMMARY**

Thank you for your interest in GP. We look forward to supporting the City of Long Beach on this important fuel station project. We believe the GP team is the best team available to design, fabricate, install, and commission your LNG fuel station project. We encourage the City of Long Beach to call our References.

If you have any questions regarding this proposal or require additional information, please call me at (760) 233-9880 extension 204 or email me at [mmackey@genphysics.com](mailto:mmackey@genphysics.com).

Sincerely,



Mike Mackey, PE  
Manager, South West Operations  
General Physics Corporation.  
CA Contractors License A-759845

cc: *Proposal File*



# CITY OF LONG BEACH LNG FUEL STATION LONG BEACH, CALIFORNIA

PREPARED FOR CITY OF LONG BEACH  
2928 EAST WILLOW DRIVE  
LONG BEACH, CALIFORNIA 90808-2303

### PROJECT DATA

PROJECT DESCRIPTION: PLACEMENT OF A LEACHED NATURAL GAS (LNG) MOBILE FUELER

PROPERTY OWNER: LONG BEACH

PROPERTY ADDRESS: 2929 EAST WILLOW DRIVE  
LONG BEACH, CALIFORNIA 90808-2303

OCCUPANCY: U-2 (TANK & CONTAINMENT PI)

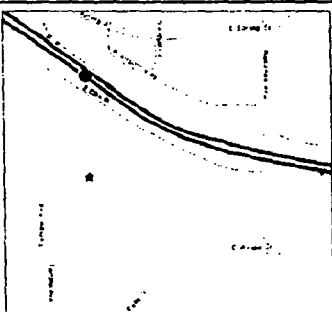
PROJECT AREA: 640 SQ FT OPEN AREA WITH TANK AND CONTAINMENT

OCCUPANT LOAD: EXTERIOR SPACE, NO OCCUPANT LOAD

TYPE OF CONSTRUCTION: TYPE II-3 (HEAVY INDUSTRIAL)  
TYPE 2N (TANK & CONTAINMENT PI)

PARKING: EXISTING ON-SITE PARKING - RELOCATE EXISTING PARKING SPACES

SHEET INDEX		
SHEET	DRAWING	DRAWING TITLE
1	GD1	GENERAL SITE PLAN
2	GD2	LNG STATION PLAN
3	GD3	LNG STATION ELEVATION



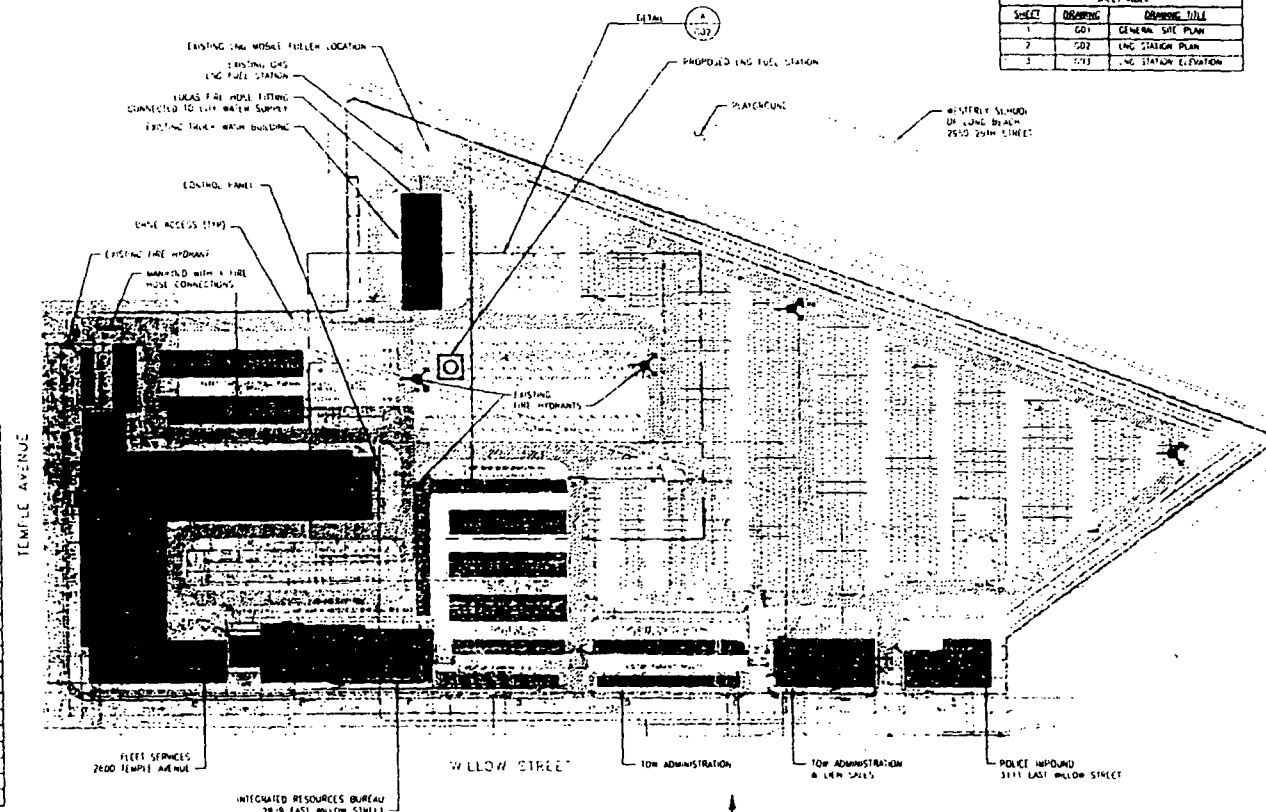
**SITE MAP**  
SCALE: NONE

1	1/4" = 1'-0"	CONCEPTUAL LAYOUT
---	--------------	-------------------

CITY OF LONG BEACH 2928 EAST WILLOW DRIVE LONG BEACH, CALIFORNIA 90808
--

GENERAL PRINCIPALS CORPORATION  
San Diego Office  
3840 La Jolla Village Drive, Suite 100  
San Diego, CA 92161  
Tel: 619.594.8800  
Fax: 619.594.8804

GENERAL SITE PLAN
GD1
1



**SITE PLAN**  
SCALE: NONE

Signature \_\_\_\_\_ Date \_\_\_\_\_

DECLARATION BY OWNER OR ARCHITECT/ENGINEER OF RECORD  
I, the undersigned, Register of L. Architect or Engineer declare that the above stated Special Inspection(s) is/are need by me.



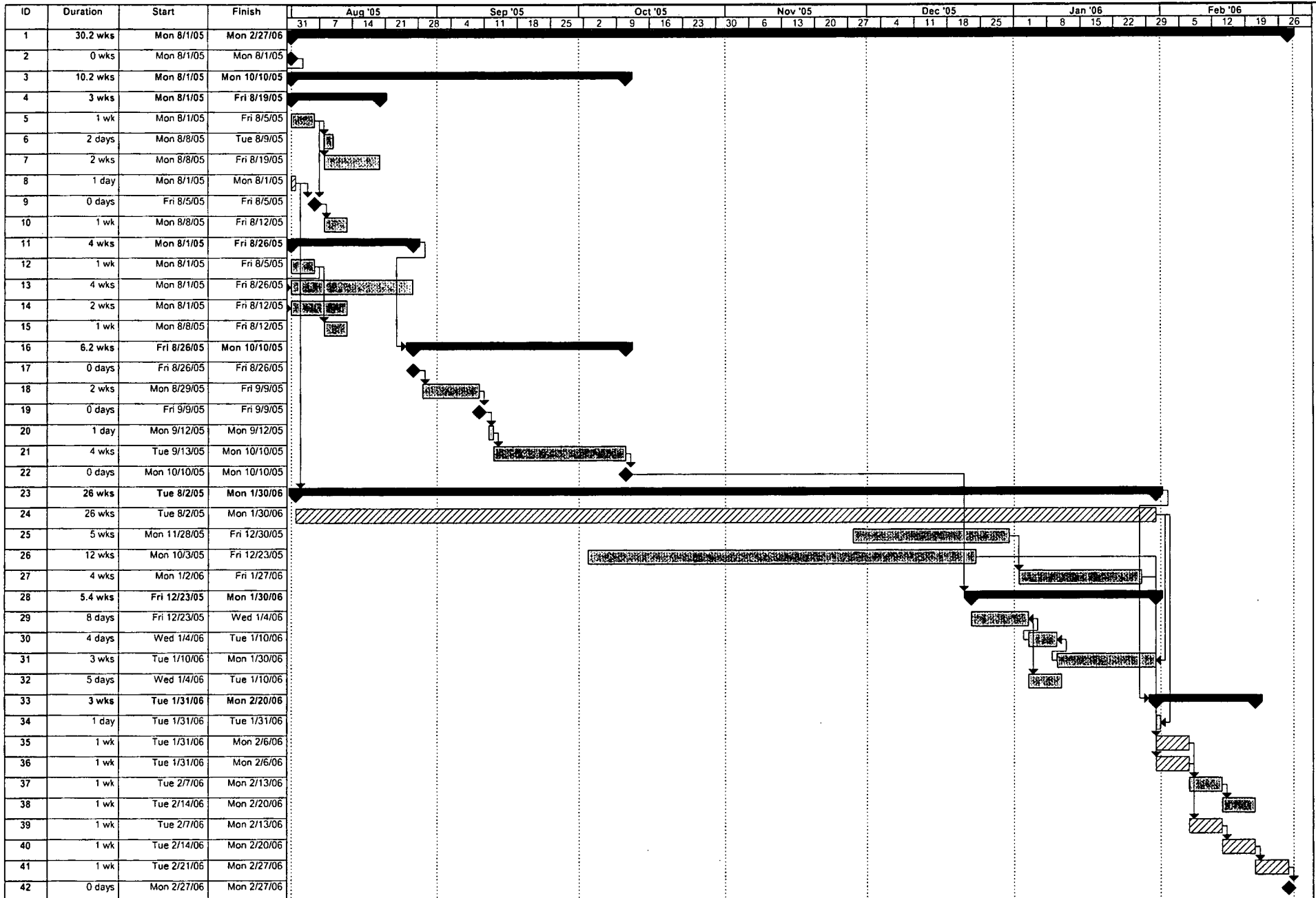
**EXHIBIT "D"**

**MILESTONES**

## Exhibit "D"

### Milestones

item	Amount	Description
1	\$ 69,900	Award of contract
2	\$ 21,000	Execution of performance bond
3	\$ 3,300	Geotechnical Report
4	\$ 25,000	Submit design for permitting
5	\$ 66,000	Complete LNG foundation and containment system
6	\$ 200,000	Set LNG Vessel
7	\$ 417,200	Set LNG pump and vaporizer
8	\$ 15,000	Installation complete
9	\$ 90,900	10% retention
	\$ 908,300	



Project: City of Long Beach Revision: Proposed Schedule Date: Fri 7/29/05	Task		Milestone		Rolled Up Critical Task		External Tasks		Rolled Up Split	
	Critical Task		Summary		Rolled Up Milestone		Project Summary		External Milestone	
	Progress		Rolled Up Task		Rolled Up Progress		Split		Deadline	

**EXHIBIT "E"**

**BOND FOR FAITHFUL PERFORMANCE**



KNOW ALL MEN BY THESE PRESENTS: That we, General Physics Corporation, as PRINCIPAL, and RLI Insurance Company, located at 9025 North Lindbergh Dr., Peoria, IL 61615

Illinois, a corporation, incorporated under the laws of the State of Illinois, admitted as a surety in the State of California and authorized to transact business in the State of California, as SURETY, are held and firmly bound unto the CITY OF LONG BEACH, CALIFORNIA, a municipal corporation, in the sum of Nine-Hundred Eight Thousand Three Hundred & 00/100 DOLLARS (\$908,300.00), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, our respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, said Principal has been awarded and is about to enter the annexed contract, (incorporated herein by this reference) with said City of Long Beach for the Design-Build Contract R-6697: LNG/LCNG Fuel Station and is required by said City to give this bond in connection with the execution of said contract;

NOW, THEREFORE, if said Principal shall well and truly keep and faithfully perform all of the covenants, conditions, agreements and obligations of said contract on said Principal's part to be kept, done and performed, at the times and in the manner specified therein, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect;

PROVIDED, that any modifications, alterations, or changes which may be made in said contract, or in the work to be done, or in the services to be rendered, or in any materials or articles to be furnished pursuant to said contract, or the giving by the City of any extension of time for the performance of said contract, or the giving of any other forbearance upon the part of either the City of the Principal to the other, shall not in any way release the Principal or the Surety, or either of them, or their respective heirs, administrators, executors, successors or assigns, from any liability arising hereunder, and notice to the Surety of any such modifications, alterations, changes, extensions or forbearances is hereby waived. No premature payment by said City to said Principal shall release or exonerate the Surety, unless the officer of said City ordering the payment shall have actual notice at the time the order is made that such payment is in fact premature, and then only to the extent that such payment shall result in actual loss to the Surety, but in no event in an amount more than the amount of such premature payment.

IN WITNESS WHEREOF, the above-named Principal and Surety have executed, or caused to be executed, this instrument with all of the formalities required by law on this 25th day of July, 2005.

General Physics Corporation  
(CONTRACTOR/PRINCIPAL)  
By: Douglas E. Sharp  
Name: Douglas E. Sharp  
Title: President

RLI Insurance Company  
SURETY, admitted in California  
By: Richard A. Jacobus  
Name: Richard A. Jacobus  
Title: Attorney-in-Fact  
Telephone: 215-255-2000

By: Kenneth Crawford  
Name: Kenneth Crawford  
Title: Secretary

Approved as to form this 11th day of Aug, 2005.  
ROBERT E. SHANNON, City Attorney  
By: Robert E. Shannon  
Senior Deputy

Approved as to sufficiency this 16 day of August, 2005.  
By: [Signature]  
City Manager/City Engineer

- NOTE: 1. Execution of this bond must be acknowledged by both PRINCIPAL and SURETY before a Notary Public and a Notary's certificate of acknowledgment must be attached.  
2. A corporation must execute the bond by 2 authorized officers and, if executed by a person not listed in Sec. 313, Calif. Corp. Code, then a certified copy of a resolution of its Board of Directors authorizing execution must be attached.

## Company Profile

### RLI INSURANCE COMPANY

9025 N LINDBERGH DR

PEORIA, IL 61615

800-331-4929

#### Former Names for Company

Old Name: UNITED FOUNDERS NAT'L INS CO

Effective Date: 10-19-1973

#### Agent for Service of Process

JOHN R. COLEMAN, 801 S. FIGUEROA STREET SUITE 200 LOS ANGELES, CA 90017

Unable to Locate the Agent for Service of Process?

### Reference Information

NAIC #:	13056
NAIC Group #:	<u>0783</u>
California Company ID #:	2027-1
Date authorized in California:	December 09, 1970
License Status:	UNLIMITED-NORMAL
Company Type:	Property & Casualty
State of Domicile:	ILLINOIS

### Lines of Insurance Authorized to Transact

The company is authorized to transact business within these lines of insurance. For an explanation of any of these terms, please refer to the glossary.

AIRCRAFT  
 AUTOMOBILE  
 BOILER AND MACHINERY  
 BURGLARY  
 COMMON CARRIER LIABILITY  
 CREDIT  
 DISABILITY  
 FIRE  
 LIABILITY  
 MARINE  
 MISCELLANEOUS

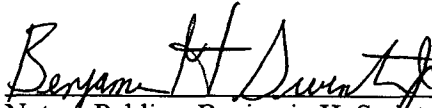
**CORPORATE ACKNOWLEDGEMENT – SURETY**

STATE OF PENNSYLVANIA

ss.

COUNTY OF PHILADELPHIA

On this 25th day of July, 2005, before me came Richard A. Jacobus, to me known, who, being by me duly sworn, did depose and say that he/she resides in Philadelphia, PA that he/she is Attorney-in-Fact of RLI Insurance Company the corporation described in and which executed the foregoing instrument as principal; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.



Notary Public: Benjamin H. Swinton, Jr.

My commission expires: November 4, 2007.

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal  
Benjamin H. Swinton, Jr., Notary Public  
City Of Philadelphia, Philadelphia County  
My Commission Expires Nov. 4, 2007

Member, Pennsylvania Association Of Notaries

**CORPORATE ACKNOWLEDGEMENT - PRINCIPAL**

STATE OF Maryland

ss.

COUNTY OF Howard

On this 27<sup>th</sup> day of July, 2005 before me came Douglas E. Sharp to me known, who, being by me duly sworn, did depose and say that he/she resides at Elkridge, Maryland that he/she is President of General Physics Corporation the corporation described in and which executed the foregoing instrument as principal; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Treva L. Beland  
Notary Public  
My commission expires: 12/1/2007

**CORPORATE ACKNOWLEDGEMENT – PRINCIPAL**

STATE OF Maryland

ss.

COUNTY OF Howard

On this 29<sup>th</sup> day of July, 2005 before me came Kenneth Crawford to me known, who, being by me duly sworn, did depose and say that he/she resides at Elkridge, Maryland that he/she is Secretary of General Physics Corporation the corporation described in and which executed the foregoing instrument as principal; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Treva L. Beeland

Notary Public

My commission expires: 12/1/2007



RLI Surety  
 A Division of RLI Insurance Company  
 P.O. Box 3967 Peoria, IL 61612-3967  
 Phone: 309-692-1000 Fax: 309-692-8637

# POWER OF ATTORNEY

## RLI Insurance Company

**Know All Men by These Presents:**

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That **RLI Insurance Company**, an Illinois corporation, does hereby make, constitute and appoint:

DARELLA E. WHITE, DOUGLAS R. WHEELER, NEIL C. DONOVAN, RICHARD A. JACOBUS, MARY C. O'LEARY,  
SANDRA E. BRONSON, MAUREEN MC NEILL, ANNETTE M. LEUSCHNER, MARISA THIELEN, JOINTLY OR SEVERALLY

in the City of Philadelphia, State of Pennsylvania its true and lawful Agent and Attorney-in-Fact, with full power and authority hereby conferred, to sign, execute, acknowledge and deliver for and on its behalf as Surety, the following described bond.

**Any and all bonds provided the bond penalty does not exceed Ten Million Dollars (\$10,000,000).**

The acknowledgment and execution of such bond by the said Attorney-in-Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

All authority hereby conferred shall expire and terminate, without notice, unless used before midnight of May 13, 2007, but until such time shall be irrevocable and in full force and effect.

The **RLI Insurance Company** further certifies that the following is a true and exact copy of the Resolution adopted by the Board of Directors of **RLI Insurance Company**, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer, may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the **RLI Insurance Company** has caused these presents to be executed by its President with its corporate seal affixed this 13th day of May, 2005.

State of Illinois }  
 County of Peoria } SS



**RLI Insurance Company**

By: Jonathan E. Michael  
 Jonathan E. Michael President

**CERTIFICATE**

On this 13th day of May, 2005, before me, a Notary Public, personally appeared Jonathan E. Michael, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and acknowledged said instrument to be the voluntary act and deed of said corporation.

I, the undersigned officer of **RLI Insurance Company**, a stock corporation of the State of Illinois, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** this 25th day of July, 2005.

By: Jacqueline M. Bockler  
 Jacqueline M. Bockler Notary Public

**RLI Insurance Company**

By: Jonathan E. Michael  
 Jonathan E. Michael President





RLI Surety  
 A Division of RLI Insurance Company  
 P.O. Box 3967 Peoria, IL 61612-3967  
 Phone: 309-692-1000 Fax: 309-692-8637

# RLI Insurance Company

December 31, 2004

## Admitted Assets

Investments:	
Fixed maturities .....	\$ 551,856,161
Equity securities .....	545,525,741
Short-term investments .....	12,447,504
Real estate .....	5,604,304
Cash on hand and on deposit .....	-1,675,709
Other invested assets .....	2,000,000
Agents' balances .....	60,210,489
Investment income due and accrued .....	7,443,307
Funds held .....	11,407
Reinsurance recoverable on paid losses .....	18,040,137
Federal income taxes receivable .....	0
Electronic data processing equipment, net of depreciation .....	2,570,820
Receivable from affiliates .....	0
Other admitted assets .....	11,999,399
<b>Total Admitted Assets .....</b>	<b>\$ 1,216,033,560</b>

## Liabilities and Surplus

Liabilities:	
Reserve for unpaid losses and loss adjustment expenses .....	\$ 345,554,480
Unearned premiums .....	135,645,884
Accrued expenses .....	32,338,718
Funds held .....	1,113,094
Amounts withheld .....	19,383,218
Ceded reinsurance premium payable .....	13,562,643
Statutory penalties .....	2,555,400
Federal income tax payable .....	20,441,698
Borrowed money and accrued interest .....	32,241,219
Drafts outstanding .....	-552,337
Payable to affiliate .....	6,098,172
Other liabilities .....	1,684,568
<b>Total Liabilities .....</b>	<b>\$ 610,066,757</b>
Surplus:	
Common stock .....	\$ 10,000,375
Additional paid-in capital .....	242,422,846
Unassigned surplus .....	353,543,582
<b>Total Surplus .....</b>	<b>\$ 605,966,803</b>
<b>Total Liabilities and Surplus .....</b>	<b>\$ 1,216,033,560</b>

State of Illinois }  
 County of Peoria }

The undersigned, being duly sworn, says: That he is the President of **RLI Insurance Company**, that said Company is a corporation duly organized, in the State of Illinois, and licensed and engaged in business in the State of California and has duly complied with all the requirements of the laws of said State applicable of said Company and is duly qualified to act as Surety under such laws; that said Company has also complied with and is duly qualified to act as Surety under the Act of Congress approved July 1947, 6U.S.C sec. 6-13; and that to the best of his knowledge and belief the above statement is a full, true, and correct statement of the financial condition of the said Company on the 31st day of December 2004.

Attest:



{ Corporate Seal Affixed }

Michael J. Stone President  
Camille J. Hensey Corporate Secretary

Sworn to before me this 10th day of February 2005.



{ Notarial Seal Affixed }

Jacqueline M. Bockler Notary Public, State of Illinois

# **TERRORISM RIDER**

## **NOTICE - FEDERAL TERRORISM INSURANCE COVERAGE AND DISCLOSURE OF PREMIUM**

Any loss applicable to a peril covered under this bond that is caused by a certified act of terrorism pursuant to the terms of the Terrorism Risk Insurance Act of 2002 ("the Act"), will be partially reimbursed by the United States under a formula established by federal law. Under this formula, the United States pays 90% of covered terrorism losses exceeding a statutorily established deductible to the insurance company providing this bond. The portion of your annual premium attributable to certified acts of terrorism under this bond is \$1.00.

### **COVERAGE LIMITATIONS:**

Payment for a loss will not exceed the limit of liability under this bond. This bond will not pay for any portion of certified terrorism loss beyond any applicable annual liability cap set forth in the Act. The terms of this rider do not provide coverage for any loss that would otherwise be excluded by the terms of this bond.



**EXHIBIT "F"**

**LABOR AND MATERIALS BOND  
(AKA PAYMENT BOND)**

LABOR AND MATERIAL BOND

KNOW ALL MEN BY THESE PRESENTS: That we, General Physics Corporation, as PRINCIPAL, and RLI Insurance Company, located at 9025 North Lindbergh Dr., Peoria, IL 61615, a corporation, incorporated under the laws of the State of Illinois, admitted as a surety in the State of California, and authorized to transact business in the State of California, as SURETY, are held and firmly bound unto the CITY OF LONG BEACH, a municipal corporation, in the sum of Nine Hundred Eight Thousand Three Hundred 00/100 DOLLARS (\$908,300.00), lawful money of the United States of America, for the payment of which sum, well and truly be made, we bind ourselves, our respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, said Principal has been awarded and is about to enter the annexed contract (incorporated herein by this reference) with said City of Long Beach for the Design-Build Contract R-6697: LNG/LONG Fuel and is required by law and by said City to give this bond in connection with the execution of said contract; Station

NOW, THEREFORE, if said Principal, as Contractor of said contract, or any subcontractor of said Principal, fails to pay for any materials, provisions, equipment, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon, of any kind, or for amounts due under the Unemployment Insurance Act, during the original term of said contract and any extensions thereof, and during the life of any guaranty required under the contract, or shall fail to pay for any materials, provisions, equipment, or other supplies, used in, upon, for or about the performance of the work to be done under any authorized modifications of said contract that may hereafter be made, or for any work or labor done of any kind, or for amounts due under the Unemployment Insurance Act, under said modification, said Surety will pay the same in an amount not exceeding the sum of money hereinabove specified and, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court; otherwise this obligation shall be void;

PROVIDED, that any modifications, alterations, or changes which may be made in said contract, or in any of the work or labor required to be done thereunder, or in any of the materials, provisions, equipment, or other supplies required to be furnished pursuant to said contract, or the giving by the City of any extension of time for the performance of said contract, or the giving of any other forbearance upon the part of either the City or the Principal to the other, shall not in any way release the Principal or Surety, or either of them, or their respective heirs, administrators, executors, successors or assigns, from any liability arising hereunder, and notice to the Surety of any such modifications, alterations, changes, extensions or forbearances is hereby waived. No premature payment by said City to said Principal shall release or exonerate the Surety, unless the officer of the City ordering the payment shall have actual notice at the time the order is made that the payment is in fact premature, and then only to the extent that such payment shall result in actual loss to the Surety, but in no event in an amount more than the amount of such premature payment.

This bond shall inure to the benefit of any and all persons, companies and corporations entitled by law to file claims so as to give a right of action to them or their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, the above-named Principal and Surety have executed, or caused to be executed, this instrument with all of the formalities required by law on this 25th day of July, 2005.

General Physics Corporation
(CONTRACTOR/PRINCIPAL)
By: Douglas E. Sharp
Name: Douglas E. Sharp
Title: President

RLI Insurance Company
SURETY, admitted in California
By: Richard A. Jacobus
Name: Richard A. Jacobus
Title: Attorney-in-Fact
Telephone: 215-255-2000

By: Kenneth Crawford
Name: Kenneth Crawford
Title: Secretary

Approved as to form this 11th day of Aug, 2005.

Approved as to sufficiency this 16 day of August, 2005.

ROBERT E. SHANNON, City Attorney
By: Senior Deputy

By: City Manager/City Engineer

- NOTE: 1. Execution of the bond must be acknowledged by both PRINCIPAL and SURETY before a Notary Public and a Notary's certificate of acknowledgment must be attached.
2. A corporation must execute the bond by 2 authorized officers and, if executed by a person not listed in Sec. 313, Calif. Corp. Code, then a certified copy of a resolution of its Board of Directors authorizing execution must be attached.

## Company Profile

### RLI INSURANCE COMPANY

9025 N LINDBERGH DR

PEORIA, IL 61615

800-331-4929

**Former Names for Company****Old Name:** UNITED FOUNDERS NAT'L INS CO**Effective Date:** 10-19-1973**Agent for Service of Process**

JOHN R. COLEMAN, 801 S. FIGUEROA STREET SUITE 200 LOS ANGELES, CA 90017

Unable to Locate the Agent for Service of Process?

---

### Reference Information

NAIC #:	13056
NAIC Group #:	<u>0783</u>
California Company ID #:	2027-1
Date authorized in California:	December 09, 1970
License Status:	UNLIMITED-NORMAL
Company Type:	Property & Casualty
State of Domicile:	ILLINOIS

---

### Lines of Insurance Authorized to Transact

The company is authorized to transact business within these lines of insurance. For an explanation of any of these terms, please refer to the [glossary](#).

AIRCRAFT  
AUTOMOBILE  
BOILER AND MACHINERY  
BURGLARY  
COMMON CARRIER LIABILITY  
CREDIT  
DISABILITY  
FIRE  
LIABILITY  
MARINE  
MISCELLANEOUS

**CORPORATE ACKNOWLEDGEMENT – SURETY**

STATE OF PENNSYLVANIA

ss.

COUNTY OF PHILADELPHIA

On this 25th day of July, 2005, before me came Richard A. Jacobus, to me known, who, being by me duly sworn, did depose and say that he/~~she~~ resides in Philadelphia, PA that he/she is Attorney-in-Fact of RLI Insurance Company the corporation described in and which executed the foregoing instrument as principal; that he/~~she~~ knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/~~she~~ signed his/~~her~~ name thereto by like order.



Notary Public: Benjamin H. Swinton, Jr.  
My commission expires: November 4, 2007

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal  
Benjamin H. Swinton, Jr., Notary Public  
City Of Philadelphia, Philadelphia County  
My Commission Expires Nov. 4, 2007

Member, Pennsylvania Association Of Notaries

**CORPORATE ACKNOWLEDGEMENT – PRINCIPAL**

STATE OF Maryland

ss.

COUNTY OF Howard

On this 27<sup>th</sup> day of July, 2005 before me came Kenneth  
Crawford to me known, who, being by me duly sworn, did depose and say that he/she resides at \_\_\_  
Elkridge, Maryland that he/she is Secretary  
of General Physics Corporation the corporation described in and which  
executed the foregoing instrument as principal; that he/she knows the seal of said corporation; that the  
seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of  
Directors of said corporation, and that he/she signed his/her name thereto by like order.

Trevor L. Buelard  
Notary Public  
My commission expires: 12/1/2007

**CORPORATE ACKNOWLEDGEMENT – PRINCIPAL**

STATE OF Maryland

ss.

COUNTY OF Howard

On this 27<sup>th</sup> day of July, 2005 before me came Douglas E. Sharp to me known, who, being by me duly sworn, did depose and say that he/she resides at Elkridge, Maryland that he/she is President of General Physics Corporation the corporation described in and which executed the foregoing instrument as principal; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Teeva L. Bueland

Notary Public

My commission expires: 12/1/2007



RLI Surety  
 A Division of RLI Insurance Company  
 P.O. Box 3967 Peoria, IL 61612-3967  
 Phone: 309-692-1000 Fax: 309-692-8637

# POWER OF ATTORNEY

## RLI Insurance Company

**Know All Men by These Presents:**

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That **RLI Insurance Company**, an Illinois corporation, does hereby make, constitute and appoint:

DARELLA E. WHITE, DOUGLAS R. WHEELER, NEIL C. DONOVAN, RICHARD A. JACOBUS, MARY C. O'LEARY,  
SANDRA E. BRONSON, MAUREEN MC NEILL, ANNETTE M. LEUSCHNER, MARISA THIELEN, JOINTLY OR SEVERALLY

in the City of Philadelphia, State of Pennsylvania its true and lawful Agent and Attorney-in-Fact, with full power and authority hereby conferred, to sign, execute, acknowledge and deliver for and on its behalf as Surety, the following described bond.

**Any and all bonds provided the bond penalty does not exceed Ten Million Dollars (\$10,000,000).**

The acknowledgment and execution of such bond by the said Attorney-in-Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

All authority hereby conferred shall expire and terminate, without notice, unless used before midnight of May 13, 2007, but until such time shall be irrevocable and in full force and effect.

The **RLI Insurance Company** further certifies that the following is a true and exact copy of the Resolution adopted by the Board of Directors of **RLI Insurance Company**, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer, may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the **RLI Insurance Company** has caused these presents to be executed by its President with its corporate seal affixed this 13th day of May, 2005.



State of Illinois }  
 County of Peoria } SS

**RLI Insurance Company**

By: Jonathan E. Michael  
 Jonathan E. Michael President

**CERTIFICATE**

On this 13th day of May, 2005, before me, a Notary Public, personally appeared Jonathan E. Michael, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and acknowledged said instrument to be the voluntary act and deed of said corporation.

I, the undersigned officer of **RLI Insurance Company**, a stock corporation of the State of Illinois, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** this 25th day of July, 2005.

By: Jacqueline M. Bockler  
 Jacqueline M. Bockler Notary Public

**RLI Insurance Company**

By: Jonathan E. Michael  
 Jonathan E. Michael President





RLI Surety  
 A Division of RLI Insurance Company  
 P.O. Box 3967 Peoria, IL 61612-3967  
 Phone: 309-692-1000 Fax: 309-692-8637

# RLI Insurance Company

December 31, 2004

## Admitted Assets

Investments:	
Fixed maturities .....	\$ 551,856,161
Equity securities .....	545,525,741
Short-term investments .....	12,447,504
Real estate .....	5,604,304
Cash on hand and on deposit .....	-1,675,709
Other invested assets .....	2,000,000
Agents' balances .....	60,210,489
Investment income due and accrued .....	7,443,307
Funds held .....	11,407
Reinsurance recoverable on paid losses .....	18,040,137
Federal income taxes receivable .....	0
Electronic data processing equipment, net of depreciation .....	2,570,820
Receivable from affiliates .....	0
Other admitted assets .....	11,999,399
<b>Total Admitted Assets .....</b>	<b>\$ 1,216,033,560</b>

## Liabilities and Surplus

Liabilities:	
Reserve for unpaid losses and loss adjustment expenses .....	\$ 345,554,480
Unearned premiums .....	135,645,884
Accrued expenses .....	32,338,718
Funds held .....	1,113,094
Amounts withheld .....	19,383,218
Ceded reinsurance premium payable .....	13,562,643
Statutory penalties .....	2,555,400
Federal income tax payable .....	20,441,698
Borrowed money and accrued interest .....	32,241,219
Drafts outstanding .....	-552,337
Payable to affiliate .....	6,098,172
Other liabilities .....	1,684,568
<b>Total Liabilities .....</b>	<b>\$ 610,066,757</b>
Surplus:	
Common stock .....	\$ 10,000,375
Additional paid-in capital .....	242,422,846
Unassigned surplus .....	353,543,582
<b>Total Surplus .....</b>	<b>\$ 605,966,803</b>
<b>Total Liabilities and Surplus .....</b>	<b>\$ 1,216,033,560</b>

State of Illinois }  
 County of Peoria }

The undersigned, being duly sworn, says: That he is the President of **RLI Insurance Company**, that said Company is a corporation duly organized, in the State of Illinois, and licensed and engaged in business in the State of California and has duly complied with all the requirements of the laws of said State applicable of said Company and is duly qualified to act as Surety under such laws; that said Company has also complied with and is duly qualified to act as Surety under the Act of Congress approved July 1947, 6U.S.C sec. 6-13; and that to the best of his knowledge and belief the above statement is a full, true, and correct statement of the financial condition of the said Company on the 31st day of December 2004.

Attest:



{ Corporate Seal Affixed }

Michael J. Stone President  
  
 Camille J. Hensey Corporate Secretary

Sworn to before me this 10th day of February 2005.



{ Notarial Seal Affixed }

Jacqueline M. Bockler Notary Public, State of Illinois



## **TERRORISM RIDER**

### **NOTICE - FEDERAL TERRORISM INSURANCE COVERAGE AND DISCLOSURE OF PREMIUM**

Any loss applicable to a peril covered under this bond that is caused by a certified act of terrorism pursuant to the terms of the Terrorism Risk Insurance Act of 2002 ("the Act"), will be partially reimbursed by the United States under a formula established by federal law. Under this formula, the United States pays 90% of covered terrorism losses exceeding a statutorily established deductible to the insurance company providing this bond. The portion of your annual premium attributable to certified acts of terrorism under this bond is \$1.00.

### **COVERAGE LIMITATIONS:**

Payment for a loss will not exceed the limit of liability under this bond. This bond will not pay for any portion of certified terrorism loss beyond any applicable annual liability cap set forth in the Act. The terms of this rider do not provide coverage for any loss that would otherwise be excluded by the terms of this bond.

**EXHIBIT "G"**

**USE TAX DIRECT PAYMENT FORMS**