

**MODIFIED FORM A: STANDARD AGREEMENT FOR  
ARCHITECT/ENGINEER DESIGNED CONSTRUCTION**

**THIS AGREEMENT** is made and entered into by and between Escambia County, a political subdivision of the State of Florida ("County"), with administrative offices at 221 South Palafox Place, Pensacola, Florida 32502, and \_\_\_\_\_, a [foreign **OR** Florida] for-profit [corporation **OR** limited liability company] authorized to conduct business in the State of Florida ("Contractor"), FEI/EIN \_\_\_\_\_, with a principal address of \_\_\_\_\_, relating to the Contractor's performance of all work ("Work") in connection with \_\_\_\_\_, P.D. \_\_\_\_\_ ("Project"), as detailed in the Contract Documents hereafter specified.

**WITNESSETH:**

**NOW, THEREFORE**, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the County and the Contractor agree as follows:

**SECTION 1. CONTRACT DOCUMENTS.**

1.1 The "Contract Documents" include this Agreement, including Amendments, the Exhibits described in **Section 22** hereof, Change Orders, Work Directive Changes, Field Orders, and the solicitation documents, including addenda. The foregoing Contract Documents are incorporated by reference and made a part of this Agreement. A copy of the Contract Documents shall be maintained by Contractor at the Project site at all times during the performance of the Work.

1.2 In case of any inconsistency or conflict among the provisions of the Agreement and any other terms and conditions of any documents comprising the Contract Documents, the provisions of the Agreement shall control. Concerning the Contract Documents, the order of precedence shall be as follows: 1) the Agreement, including Amendments; 2) Exhibits; 3) Change Orders; 4) Work Directive Changes; and 5) Field Orders. The Contract Documents listed above represent the entire and integrated agreement between the parties hereto, and supersede prior negotiations, representations, or agreements, either written or oral.

1.3 LAP Agreement Required Contract Provisions.

This Project is funded, in whole or in part, with funding provided by the Florida Department of Transportation pursuant to a Local Agency Program (LAP) Agreement (FPN # \_\_\_\_\_), the terms of which are incorporated by reference herein, and is subject to the requirements set forth therein. By executing this Agreement, Contractor acknowledges it has received a copy of the LAP Agreement as part of the solicitation documents and agrees to comply with all applicable provisions of the LAP Agreement, including, but not limited to, the "LAP Agreement Required Contract Provisions" set forth in **Exhibit H**, attached hereto and incorporated herein. Contractor shall also comply with all applicable procedures, guidelines, manuals, standards, and directives as described in the FDOT Local Agency Program Manual.

1.4 Form FHWA-1273 Required Contract Provisions.

This project is funded, in whole or in part, with Federal-aid funds and is subject to the requirements of Federal Highway Administration (FHWA) revised Form FHWA-1273 "Required Contract Provisions for Federal-Aid Construction Contracts," attached hereto and incorporated herein as **Exhibit I**. By executing this Agreement, Contractor agrees to comply with all applicable provisions and include these requirements in all contracts with subcontractors performing work on the project.

**SECTION 2. SCOPE OF WORK.** Contractor agrees to furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely, and fully perform and complete in a good workmanlike manner the Work required by the Contract Documents.

**SECTION 3. CONTRACT AMOUNT.** In consideration of the faithful performance by Contractor of the covenants in this Agreement to the full satisfaction and acceptance of County, County agrees to pay, or cause to be paid, to Contractor in accordance with the terms of this Agreement the following amount (herein "Contract Amount"): [Contract Amount]

**SECTION 4. BONDS.**

4.1 Contractor shall provide Performance and Payment Bonds, in the form prescribed in **Exhibit B**, in the amount of 100% of the Contract Amount, the cost of which to be paid by Contractor. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to County; provided, however, the surety shall be rated as "A-" (excellent) or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holder's surplus, all as reported by A.M. Best Company, Inc. at [ambest.com](http://ambest.com).

4.2 If the surety for any bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, the Contractor shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the County's approval. Failure by Contractor to maintain the Performance and Payment Bonds in full force and effect at all times, including the warranty period, shall be grounds for termination of this Agreement.

4.3 Pursuant to §255.05, Florida Statutes, the Contractor shall be required to execute and record the Performance and Payment Bonds. The bonds must state the name and principal business address of both the Principal and the Surety and a description of the Project sufficient to identify it.

**SECTION 5. CONTRACT TIME AND LIQUIDATED DAMAGES.**

5.1 Time is of the essence in the performance of the Work under this Agreement. The "Commencement Date" shall be established in the Notice to Proceed to be issued by the County. Contractor shall commence the Work within ten (10) calendar days from the Commencement Date. Contractor shall provide not less than 48 hours' notice prior to beginning the Work. No Work shall be performed by the Contractor at the Project site prior to the Commencement Date. Any Work performed by Contractor prior to the Commencement Date shall be at the sole risk of Contractor. No Work under this Agreement shall commence until certificates of insurance are approved by the County. (See **Exhibit A**, ¶13.2)

5.2 The Work shall be substantially complete within \_\_\_\_\_ ( ) calendar days from the Commencement Date. The Work shall be fully completed and deemed ready by the County for final completion within \_\_\_\_\_ ( ) calendar days from the Substantial Completion Date. The Contract Time shall be the time period from the Commencement Date to the date of final completion totaling \_\_\_\_\_ ( ) calendar days (herein "Contract Time").

5.3 County and Contractor recognize that, since time is of the essence for this Agreement, the County will suffer financial loss if the Work is not substantially complete within the time specified above. Should Contractor fail to substantially complete the Work within the time period specified

above or any authorized extension thereof granted by County, County shall be entitled to assess, as liquidated damages, but not as a penalty, \$\_\_\_\_\_ for each calendar day thereafter until substantial completion is achieved. The Project shall be deemed substantially complete by the County on the date the County's Architect/Engineer issues a *Certificate of Substantial Completion*.

5.4 Contractor hereby expressly waives and relinquishes any right it may have to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the County's actual damages at the time of contracting if Contractor fails to substantially complete the Work in accordance with the progress schedule.

5.5 When any period of time is referenced to by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday, or legal holiday.

**SECTION 6. NOTICES.**

6.1 Unless otherwise notified in writing of a new address, notices, applications for payment, and payments shall be sent to each party at the below listed addresses. Rejection, or other refusal by the addressee to accept, or the inability of the courier service, or the United States Postal Service to deliver because of a changed address of which no notice was given, shall be deemed to be receipt of the notice sent.

6.2 All notices required or made pursuant to this Agreement by either party shall be in writing and delivered by hand or by United States Postal Service, first class mail, postage pre-paid, return receipt requested, or by other private courier service such as Federal Express.

6.3 Notices to the County shall be sent to:  
Escambia County  
Attn: County Administrator  
221 Palafox Place, Suite 420  
Pensacola, FL 32502

Applications for Payment to the County shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

With copy to:  
[enginvoices@myescambia.com](mailto:enginvoices@myescambia.com) [or relevant department]

6.4 Payments and Notices to the Contractor shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

6.5 Either party may change its above noted address by giving the other party at least ten (10)

calendar days prior written notice in accordance with the requirements of this Section.

**SECTION 7. INDEPENDENT CONTRACTOR.** In the performance of this Agreement hereunder, Contractor is an independent contractor. Contractor shall not hold itself out as an employee, agent, or servant of the County; and Contractor shall not have the power or authority to bind the County in any promise, agreement, or representation, other than as specifically provided in the Agreement or as may be expressly provided hereafter in writing by an authorized official of the County.

**SECTION 8. MODIFICATION.** No modification or change to the Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

**SECTION 9. SUCCESSORS AND ASSIGNMENT.** This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by Contractor without the prior written consent of the County. However, the Agreement shall run with the Escambia County Board of County Commissioners and its successors.

**SECTION 10. GOVERNING LAW.** The Agreement shall be interpreted under and its performance governed by the laws of the State of Florida and the parties agree that venue shall be in Escambia County, Florida for any matter which is the subject of this Agreement.

**SECTION 11. NO WAIVER.** The failure of the County to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

**SECTION 12. ENTIRE AGREEMENT.** The parties hereto agree and represent that the Agreement comprises the full and entire agreement between the parties affecting the Work, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged, integrated, and superseded by the Agreement.

**SECTION 13. SEVERABILITY.** Should any provision of the Agreement be determined by a court of competent jurisdiction to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

**SECTION 14. SURVIVAL.** The respective obligations of the parties which, by their nature, would continue beyond the termination or expiration of this Agreement, including, without limitation, the Contractor's obligations regarding public records, bonding, warranties, and indemnification, shall survive any such termination or expiration of the Agreement.

**SECTION 15. PUBLIC RECORDS.** The Contractor acknowledges that this Agreement and any related financial records, audits, reports, plans correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes. Contractor shall maintain all such public records and, upon request, provide a copy of the requested records or allow the records to be inspected within a reasonable time. Contractor shall also ensure that any public records that are exempt or exempt and confidential from disclosure are not disclosed except as authorized by law. Upon the expiration or termination of the Agreement, Contractor agrees to maintain all public records for a minimum period of five (5) fiscal

years in accordance with the applicable records retention schedules established by the Florida Department of State. In the event the Contractor fails to abide by the provisions of Chapter 119, Florida Statutes, the County may, without prejudice to any other right or remedy and after giving the Contractor and surety, if any, seven days written notice, during which period the Contractor still fails to allow access to such documents, terminate the contract. In such case, the Contractor shall not be entitled to receive any further payment. Reasonable terminal expenses incurred by the County may be deducted from any payments left owing the Contractor (excluding monies owed the Contractor for subcontractor work).

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**Escambia County  
Office of the County Administrator  
221 Palafox Place, Suite 420  
Pensacola, Florida 32502  
(850) 595-4947**

**SECTION 16. EMPLOYMENT ELIGIBILITY VERIFICATION.** In accordance with §448.095, Florida Statutes, Contractor shall register with and utilize the E-Verify System operated by the United States Department of Homeland Security (DHS) to verify the employment eligibility of all new employees hired during the term of the Agreement and shall expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the E-Verify System to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement. If Contractor enters into a contract with a subcontractor performing work or providing services on its behalf, Contractor shall also require the subcontractor to provide an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Information on registration for and use of the E-Verify Program can be obtained via the internet at the DHS website: <http://www.dhs.gov/E-Verify>.

**SECTION 17. PROHIBITION AGAINST CONTRACTING WITH SCRUTINIZED COMPANIES.** In accordance with §287.135, Florida Statutes, if the Contract Amount is \$100,000 or more, by executing this Agreement, Contractor hereby certifies that Contractor is not on the *Scrutinized Companies or Other Entities that Boycott Israel List* created pursuant to §215.4725, Florida Statutes, and is not engaged in a *boycott of Israel* as defined in §215.4725, Florida Statutes. Further, Contractor acknowledges that if Contractor is found to have submitted a false certification, has been placed on the *Scrutinized Companies or Other Entities that Boycott Israel List*; or has been engaged in a *boycott of Israel* then the County reserves the right to immediately terminate this Agreement.

If the Contract Amount is \$1 million dollars or more, by executing this Agreement, Contractor further certifies that Contractor is not on the *Scrutinized Companies with Activities in Sudan List* or the *Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List*, created pursuant to §215.473, Florida Statutes; and Contractor is not engaged in *business operations* in Syria as defined in §287.135(1)(c), Florida Statutes. Further, Contractor acknowledges that if

Contractor is found to have submitted a false certification, has been placed on the *Scrutinized Companies with Activities in Sudan List* or the *Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List*, or has been engaged in *business operations* in Syria then the County reserves the right to immediately terminate this Agreement.

**SECTION 18. FOREIGN GIFTS/CONTRACTS.**

In accordance with §286.101, Florida Statutes, if the Contract Amount is \$100,000 or more, by executing this Agreement, Contractor certifies it has timely disclosed to the County and the Florida Department of Financial Services (DFS) any current or prior interest of, contract with, or grant or gift received from a “foreign country of concern” as defined in §286.101(1)(b), Florida Statutes, if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in effect during the previous five (5) years. Reporting information can be obtained via the internet at the DFS website: <http://www.myfloridacfo.com/Transparency>.

**SECTION 19. THIRD PARTY BENEFICIARIES.** This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties hereto.

**SECTION 20. CONFLICT OF INTEREST.** No member, officer, or employee of the Contractor may enter into any contract, subcontract, or arrangement in connection with the Project or any property included or planned to be included in the Project in which any member, officer, or employee of the County or the locality during his tenure or for two years thereafter shall have any interest, direct or indirect. Contractor agrees to include the following provision in all contracts with subcontractors who perform work in connection with this Agreement:

“No member, officer, or employee of the County or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.”

**SECTION 21. INSPECTOR GENERAL.** Contractor shall comply with and require its subcontractors to comply with Section 20.055(5), Florida Statutes, which requires every contractor and subcontractor to cooperate with state agency inspectors general in any investigation, audit, inspection, review, or hearing pursuant to this provision. The Contractor shall provide access by the Florida Department of Transportation, Agency, Federal Highway Administration, U.S. Department of Transportation’s Inspector General, Comptroller General of the United States, or any other duly authorized representatives to any books, documents, papers, and records of the Contractor that are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

**SECTION 22. AUTHORITY.** Any individual executing this Agreement on behalf of a corporate or governmental party represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of said party, in accordance with any duly adopted action of the governing board of said party, as may be applicable and in accordance with applicable law, and that this Agreement is binding upon said party in accordance with its terms.

**SECTION 23. ANNUAL APPROPRIATION.** Pursuant to the requirements of Florida law and Article II of Chapter 46, Escambia County Code of Ordinances, the County’s performance and obligation to fund this Agreement shall be contingent upon an annual appropriation by the Escambia County Board of County Commissioners.

**SECTION 24. EXHIBITS INCORPORATED.** The following documents are expressly agreed

to be incorporated by reference and made a part of this Agreement.

- Exhibit A: General Terms and Conditions
- Exhibit B: Form of Performance and Payment Bonds
- Exhibit C: Insurance and Safety Requirements
- Exhibit D: Form of Application for Payment
- Exhibit E: Form of Release and Affidavit
- Exhibit F: Form of Change Order
- Exhibit G: Owner Direct Purchases- FORM OF 0205
- Exhibit H: LAP Agreement Required Contract Provisions
- Exhibit I: Form FHWA-1278 Required Contract Provisions
- Exhibit J: Solicitation Documents

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the respective dates under each signature:

**COUNTY:**  
**BOARD OF COUNTY COMMISSIONERS**  
**ESCAMBIA COUNTY, FLORIDA**

Witness: \_\_\_\_\_

By: \_\_\_\_\_  
County Administrator

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

BCC Approved: \_\_\_\_\_

**CONTRACTOR:**

\_\_\_\_\_

[LLC]  
Witness: \_\_\_\_\_

By: \_\_\_\_\_

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

**OR**

[CORPORATION]

By: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Corporate Secretary

Its: President

[SEAL]

Date: \_\_\_\_\_

**EXHIBIT A**  
**GENERAL TERMS AND CONDITIONS**

**Section 1. INTENT OF CONTRACT DOCUMENTS.**

1.1. It is the intent of the Contract Documents to describe a functionally complete Project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials, or equipment that may be reasonably inferred from the Contract Documents as being required to produce the intended result shall be supplied whether specified or not. When words that have a well-known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law, or regulation in effect at the time the Work is performed, except as may be otherwise specifically stated herein.

1.2. During the performance of the Work, if Contractor discovers a conflict, error, or discrepancy in the Contract Documents, Contractor shall immediately report same to the County or Architect/Engineer in writing and, before proceeding with the Work affected thereby, shall obtain a written interpretation or clarification from the County or Architect/Engineer. Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing any portion of the Work.

1.3. Drawings are intended to show general arrangements, design, and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts, or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications, or other Contract Document provisions, Contractor shall be required to comply with the provision that is the more restrictive or stringent requirement upon the Contractor, as determined by the County or Architect/Engineer. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim, and other parts required in connection with any portion of the Work to make a complete, serviceable, finished, and first quality installation shall be furnished and installed as part of the Work, whether specified or not.

1.4. "Architect/Engineer", where referenced in the Contract Documents, shall mean the County's Architect/Engineer or designated representative thereof.

**Section 2. INVESTIGATION AND UTILITIES.**

2.1. Contractor shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling, and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the Project area as a whole; topography and ground surface conditions; nature and quality of the surface materials to be encountered; subsurface conditions; equipment and facilities needed prior to and during performance of the Work; and all other costs associated with such performance. The failure of Contractor to acquaint itself with any applicable conditions shall not relieve Contractor from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

2.2. Contractor shall locate all existing roadways, railways, drainage facilities, and utility services above, upon, or under the Project site, said roadways, railways, drainage facilities, and utilities being referred to as the "Utilities". Contractor shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Contractor shall schedule and coordinate its Work around any such relocation or temporary service interruption. Contractor shall be responsible for properly shoring, supporting, and protecting all Utilities at all times during the course of the Work.

**Section 3. SCHEDULE(S).**

3.1. Within ten (10) calendar days after receipt of the Notice of Award, Contractor shall prepare and submit to the County for its review and approval a progress schedule for the Project (herein "Progress Schedule"). The Progress Schedule may be provided in an electronic format. The Progress Schedule shall relate to all Work required by the Contract Documents and shall provide for expeditious and practicable execution of the Work within the Contract Time. The Progress Schedule shall indicate the dates for starting and completing the various stages of the Work and dates of Shop Drawing Submittals. Contractor shall also submit a complete list of all its proposed subcontractors and materialmen, showing the work and materials involved and the dollar amount of each proposed subcontract and purchase order.

3.2. The Progress Schedule shall be updated monthly by Contractor. All monthly updates to the Progress Schedule shall be subject to the County's review and approval. Contractor shall submit the updates to the Progress Schedule with its Applications for Payment as noted below. The County's review and approval of the Progress Schedule updates shall be a condition precedent to the County's obligation to pay Contractor.

3.3. Prior to submitting its first Application for Payment, Contractor shall submit to the County for its review and approval a schedule of values for the Project (herein "Schedule of Values") based upon the Contract Amount and Progress Schedule listing the major elements of the Work and the dollar value for each element, which shall be used as the basis for the Contractor's Applications for Payment. This Schedule of Values shall be updated as necessary and approved by the County to reflect approved adjustments to the Contract Amount and Contract Time. The Schedule of Values shall be submitted with each Application for Payment as noted below. Unless otherwise agreed to in writing, no voluntary acceleration or early completion of the Work shall modify the time of payments to Contractor as set forth in the approved Schedule of Values.

**Section 4. PROGRESS PAYMENTS.**

4.1. Contractor may request payment by the submission of an Application for Payment in the form attached as **Exhibit D**. Contractor shall submit a completed and notarized copy of each Application for Payment on or before the 25th day of each month for work performed during the previous month. Applications received after the 25th day of each month shall be considered for payment as part of the next month's Application. The first Application for Payment shall be submitted no earlier than thirty (30) calendar days after the Commencement Date.

4.2. Each Application for Payment shall be accompanied by the Schedule of Values, Progress Schedule, and an executed and notarized Release and Affidavit in the form attached as **Exhibit E**, showing that all materials, labor, equipment, and other bills associated with that portion of the Work for which payment is being requested have been paid in full. The County shall not be required to make payment until and unless the required documentation is furnished by Contractor.

4.3. If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site or at another location agreed to by the County in writing, the Application for Payment will subdivide the work into component parts in sufficient detail to serve as the basis for a progress payment and shall also be accompanied by a bill of sale, invoice, or other documentation warranting that upon payment by County, the County shall receive the materials and equipment free and clear of all liens, charges, security interests, and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the County's interest therein, all of which shall be subject to the County's prior written approval.

4.4. If an Application for Payment is approved, in whole or in part, the County will remit payment within twenty-five (25) business days after the date the Application is stamped as received. Provided, however, in no event will the County be obligated to pay an amount greater than that portion of the Application for Payment approved by the County.

If an Application for Payment does not meet the requirements of the Contract Documents, the County will reject the Application, in whole or in part, within twenty (20) business days after the date the Application is stamped as received indicating, in writing, the reason for refusing to approve payment. In the event of a total or partial rejection, the Contractor may make the necessary corrections and resubmit the Application for Payment.

If the revised Application is approved, in whole or in part, the County will remit payment within ten (10) business days after the date the revised Application is stamped as received. If the revised Application does not meet the requirements of the Contract Documents, the County will reject the revised Application, in whole or in part, within ten (10) business days after the date the revised Application is stamped as received indicating, in writing, the reason for refusing to approve payment. In the event of a total or partial rejection, the Contractor may make the necessary corrections and resubmit the Application for Payment as provided above.

4.5. Dispute Resolution Procedure. If a revised Application for Payment is rejected by the County, in whole or in part, the Contractor may submit a written request to the County Administrator, 221 Palafox Place, Suite 420, Pensacola, Florida 32502, for an administrative decision within two (2) business days of receiving notice of rejection. Within five (5) business days after receiving the request, the County Administrator will render a decision and provide written notice to the Contractor.

If the administrative decision is disputed, the Contractor may submit a written request to the County Administrator, 221 Palafox Place, Suite 420, Pensacola, Florida 32502, for an administrative hearing before the Dispute Resolution Committee (DRC) within two (2) business days of receiving said decision. A hearing shall be scheduled within ten (10) business days from the date the request is received, and the Contractor will be provided with written notice of the hearing date. The DRC may, within its discretion, render a decision at the hearing or may elect to mail a written decision to the Contractor within a period not to exceed two (2) business days from the hearing date. The DRC's decision shall be considered administratively final.

4.6. Retainage.

a) If the Contract Amount is \$200,000.00 or less, the following shall apply: County shall retain ten percent (10%) of the gross amount of each monthly payment request or ten percent (10%) of the portion thereof approved by the County for payment, whichever is less. Such sum shall be accumulated and not released to Contractor until completion of the Project as provided in **Section 19**. Any interim interest on such sums shall accrue to County. At the County's sole discretion, a percentage of the amount retained from the gross amount of each monthly payment may be reduced prior to completion of the Project and said percentage released to the Contractor upon receiving a certificate of substantial completion and approval from the Architect/Engineer.

b) If the Contract Amount is in excess of \$200,000.00, the following shall apply: County shall retain five percent (5%) of the gross amount of each monthly payment request or five percent (5%) of the portion thereof approved by the County for payment, whichever is less. Such sum shall be accumulated and not released to Contractor until completion of the Project as provided in **Section 19**. Any interim interest on such sums shall accrue to County. At the County's sole discretion, a percentage of the amount retained from the gross amount of each monthly payment may be reduced prior to completion of the Project and said percentage released to the Contractor upon receiving a certificate of substantial completion and approval from the Architect/Engineer. This subsection shall not apply if the Project is paid, in whole or in part, with federal funds and subject to federal grantor laws and regulations or requirements that are contrary to any provision of the Local Government Prompt Payment Act.

4.7. Monthly payments to Contractor, including the release of any portion or percentage of sums retained prior to final completion of the Project, shall in no way imply approval or acceptance of Contractor's Work. The County shall not pay or release any amounts that are the subject of a good faith dispute, claim, or demand.

4.8. Applications for Payment will not be approved unless all submittals required by the Contract documents, up to that point, are provided and "As-Built" record documents are maintained as required by **Section 8** herein.

4.9. All payments under this Agreement and interest on any late payments shall be governed by the Local Government Prompt Payment Act, §§ 218.70, et seq., Florida Statutes, as amended.

**Section 5. PAYMENTS WITHHELD.** The Architect/Engineer or County may decline to approve any Application for Payment, or portions thereof, because of subsequently discovered evidence or subsequent inspections. The Architect/Engineer or County may nullify the whole or any part of any approval for payment previously issued and County may withhold any payments otherwise due Contractor under this Agreement or any other agreement between County and Contractor, to such extent as may be necessary in the County's opinion to protect it from loss because of: (a) defective Work not remedied; (b) third party claims filed or reasonable evidence indicating probable filing of such claims; (c) failure of Contractor to make payment properly to subcontractors or for labor, materials, or equipment; (d) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount; (e) reasonable indication that the Work will not be completed within the Contract Time; (f) unsatisfactory prosecution of the Work by the Contractor; or (g) any other material breach of the Contract Documents. If these conditions are not remedied or removed, County may, after seven (7) calendar days written notice, rectify the same at Contractor's expense. County also may offset against any sums due Contractor the amount of any liquidated or unliquidated obligations of Contractor to County, whether relating to or arising out of this Agreement or any other agreement between Contractor and County.

**Section 6. FINAL PAYMENT.**

6.1. County shall issue final payment to Contractor within thirty (30) calendar days after the Work is finally inspected and accepted by County and the Architect/Engineer in accordance with **Section 19** herein, provided that Contractor first, and as an explicit condition precedent to the accrual of Contractor's right to final payment, shall have furnished County with all documentation that may be required by the Contract Documents or the County.

6.2. Contractor's acceptance of final payment shall constitute a full waiver of any and all claims by Contractor against County arising out of this Agreement or otherwise relating to the Project, except those previously made in writing and identified by Contractor as unsettled at the time of the final Application for Payment. Neither the acceptance of the Work nor payment by County shall be deemed to be a waiver of County's right to enforce any obligations of Contractor hereunder or to the recovery of damages for defective Work not discovered by the Architect/Engineer or County at the time of final inspection.

**Section 7. SUBMITTALS AND SUBSTITUTIONS.**

7.1. Contractor shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules, and samples. When submitted for the County's review, Shop Drawings shall bear the Contractor's certification that the Contractor has reviewed, checked, and approved the Shop Drawings and that they are in conformance with the requirements of the Contract Documents. Contractor shall submit all such materials at its own expense and in such form as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof.

7.2. Prior to submitting its first Application for Payment, Contractor shall provide the County with digital photographs via electronic mail, USB flash drive, secure file sharing link, or other form of electronic transmission showing any pre-existing conditions located within the worksite and the Project area as a whole.

7.3. When materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by County if sufficient information is submitted by Contractor to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted from anyone other than Contractor, and all such requests must be submitted by Contractor within thirty (30) calendar days after the Contractor receives the Notice to Proceed.

7.4. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make application to the County for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified, and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of substantial completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with County for the Project) to adapt the design to the proposed substitute, and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available

maintenance, repair, and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the County in evaluating the proposed substitute. The County may require Contractor to furnish at Contractor's expense additional data about the proposed substitute.

7.5. When a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, sequence, technique, or procedure of construction acceptable to the County, if Contractor submits sufficient information to allow the County to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the County shall be the same as those provided herein for substitute materials and equipment.

7.6. The County shall be allowed a reasonable time within which to evaluate each proposed substitute. The County shall be the sole judge of acceptability, and no substitute will be ordered, installed, or utilized without the County's prior written acceptance, which shall be evidenced by either a Change Order or an approved Shop Drawing. The County may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

#### **Section 8. DAILY REPORTS, AS-BUILTS, AND MEETINGS.**

8.1. Unless waived in writing by the County, along with each Application for Payment, Contractor shall submit to the County, on a monthly basis, a daily log of the Contractor's Work for the preceding month in a format approved by the County. The daily log shall document all activities of Contractor at the Project site including, but not limited to, the following:

- a) Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the Project site, and any other weather conditions which adversely impact the Work;
- b) Soil conditions which adversely impact the Work;
- c) The hours of operation by Contractor's personnel and subcontractor's personnel;
- d) The number of Contractor's and subcontractor's personnel present and working at the Project site, by subcontract and trade;
- e) All equipment on the Project site, description of equipment use, and designation of time equipment was used (specifically indicating any down time);
- f) Description of Work being performed at the Project site;
- g) Any unusual or special occurrences at the Project site;
- h) Materials received at the Project site; and
- i) A list of all visitors to the Project site.

The daily log shall not constitute or take the place of any notice required by Contractor to County or Architect/Engineer pursuant to the Contract Documents.

8.2. Contractor shall maintain in a safe place at the Project site one record copy of the Contract Documents, as well as all shop drawings and other Contractor submittals and all written interpretations and clarifications issued by the County or the Architect/Engineer, in good order and annotated to show all changes made during the Project. The annotated drawings shall be continuously updated by the Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Work Directive Changes and Field Orders, and all concealed and buried

installations of piping, conduit, and utility services. All buried and concealed items, both inside and outside the Project site, shall be accurately located on the annotated drawings as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The annotated drawings shall be clean, and all changes, corrections, and dimensions shall be given in a neat and legible manner in a contrasting color. The "As-Built" record documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to County for reference. Upon completion of the Work, and as a condition precedent to Contractor's entitlement to final payment, Contractor shall deliver the "As-Built" record documents, samples, and shop drawings to the County.

8.3. Contractor shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. County, or any duly authorized agents or representatives of County, shall have the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above; provided, however, such activity shall be conducted only during normal business hours.

**Section 9. CONTRACT TIME AND TIME EXTENSIONS.**

9.1. Contractor shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and materialmen, as well as coordinating its Work with all work of others at the Project Site, so that its Work or the work of others shall not be delayed or impaired by any act or omission of Contractor. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents.

9.2. Should Contractor be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Contractor, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulations, strikes or lockouts, Contractor shall notify the County in writing within forty-eight (48) hours after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Contractor may have had to request a time extension. Any additional supporting data with specific details of Work which was delayed shall be submitted to the County within ten (10) business days after the occurrence of the delay, unless the County grants additional time in writing for such submittals, or else the Contractor shall be deemed to have waived any right which Contractor may have had to request a time extension.

9.3. No interruption, interference, inefficiency, suspension, or delay in the commencement or progress of the Work from any cause whatsoever, including those for which County may be responsible, in whole or in part, shall relieve Contractor of its duty to perform or give rise to any right to damages or additional compensation from County. Contractor expressly acknowledges and agrees that it shall receive no damages for delay. Contractor's sole remedy, if any, against County will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion.

9.4. Requests for delays due to adverse weather conditions must meet all of the following conditions:

- a) Contractor notified the County in writing within forty-eight (48) hours of the delay;

- b) The weather was unusual as documented by supporting data;
- c) The weather had an adverse impact on the Contractor's schedule (critical path only); and
- d) The Contractor and inspector's daily logs corroborate the adverse impact. Where a conflict exists between the weather data and the daily reports, the daily reports will take precedence.

**Section 10. CHANGES IN THE WORK.**

10.1. The County shall have the right at any time during the progress of the Work to increase or decrease the Work. After being notified of a change, Contractor shall promptly submit an itemized estimate of any cost or time increases or decreases it foresees as a result of the change. The County will approve or deny the estimate and provide written notice to the Contractor. Except in an emergency endangering life or property or as expressly set forth herein, no addition or changes to the Work shall be made except upon written order of County. No officer, employee, or agent of the County is authorized to orally direct any changes in the Work.

10.2. A Change Order, in the form attached as **Exhibit F** to this Agreement, shall be issued and executed after an agreement is reached between the Contractor and County. Contractor shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount shall be adjusted in the Change Order as mutually agreed to by the parties.

10.3. If the County and Contractor are unable to agree on a Change Order for the requested change, Contractor shall, nevertheless, promptly perform the change as directed by County in a written Work Directive Change. In that event, the Contract Amount and Contract Time shall be adjusted as directed by the County. If Contractor disagrees with the County's adjustment determination, Contractor must make a claim pursuant to **Section 11** herein or else be deemed to have waived any claim on this matter.

10.4. In the event a requested change results in an increase to the Contract Amount, the amount of the increase shall be limited to the Contractor's reasonable direct labor and material costs and reasonable actual equipment costs as a result of the change (including allowance for labor burden costs) plus a maximum ten percent (10%) markup for all overhead and profit. In the event such Work is performed by a subcontractor, a maximum ten percent (10%) markup for all overhead and profit for all subcontractors' and sub-subcontractors' direct labor and material costs and actual equipment costs shall be permitted, with a maximum five percent (5%) markup thereon by the Contractor for all of its overhead and profit, for a total maximum markup of fifteen percent (15%). All compensation due Contractor and any subcontractor or sub-subcontractor for field and home office overhead is included in the markups noted above.

10.5. The County shall have the right to conduct an audit of Contractor's books and records to verify the accuracy of the Contractor's claim with respect to Contractor's costs associated with any Change Order.

10.6. The County shall have the authority to order minor changes in the Work not involving an adjustment to the Contract Amount and not inconsistent with the intent of the Contract Documents. Such changes may be affected by Field Order or by other written order. Such changes shall be binding on the Contractor.

**Section 11. CLAIMS AND DISPUTES.**

11.1. A Claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the Contract Documents, extension of time, or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes

and matters in question between County and Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim shall rest with the party making the Claim.

11.2. Claims by the Contractor shall be made in writing to the County within two (2) business days after the first day of the event giving rise to such Claim or else the Contractor shall be deemed to have waived the Claim. Written supporting data shall be submitted to the County within ten (10) business days after the occurrence of the event, unless the County grants additional time in writing, or else the Contractor shall be deemed to have waived the Claim. All Claims shall be priced in accordance with the provisions of **Section 10.4** herein.

11.3. The Contractor shall proceed diligently with its performance as directed by the County, regardless of any pending Claim, action, suit, or administrative proceeding, unless otherwise agreed to by the County in writing. During the pendency of any such claim, the County shall continue to remit payments for approved payment requests in accordance with the Contract Documents.

## **Section 12. OTHER WORK.**

12.1. County may perform other work related to the Project at the site by County's own forces, have other work performed by utility owners, or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, notice thereof will be given to Contractor. Contractor shall provide written notice to the County within forty-eight (48) hours after receiving notice of the other work, stating the cause or causes thereof and anticipated delay and/or additional expense. If the Contractor fails to provide forty-eight (48) hour notice, the Contractor will be deemed to have waived any right it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Amount. Any additional supporting data evidencing a delay or additional expense due to the performance of such other work shall be submitted to the County within ten (10) business days after completion of other work, unless the County grants additional time in writing, or else the Contractor shall be deemed to have waived any right which Contractor may have had to request an extension to the Contract Time or adjustment to the Contract Amount.

12.2. Contractor shall afford each utility owner and other contractor (or County, if County is performing the additional work with County's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the County's written consent and the others whose work will be affected.

12.3. If any part of Contractor's Work depends for proper execution or results upon the work of any other contractor or utility owner (or County), Contractor shall inspect and promptly report to the County in writing any delays, defects, or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Contractor's failure to report will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work.

## **Section 13. INDEMNIFICATION AND INSURANCE.**

13.1. Indemnification. To the extent provided by law, Contractor shall indemnify, defend, and hold harmless the County and the State of Florida, Department of Transportation, including the Department's officers, agents, and employees against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of Contractor, or any of its officers,

agents or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by Contractor.

The foregoing indemnification shall not constitute a waiver of the Department's or County's sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes. Nor shall the same be construed to constitute agreement by the Contractor to indemnify the County for the negligent acts or omissions of the County, or its officers, agents, employees or third parties. Nor shall the same be construed to constitute agreement by the Contractor to indemnify the Department for the negligent acts or omissions of the Department, or its officers, agents, employees or third parties. This indemnification shall survive the termination of the Agreement.

County and Contractor agree one percent (1%) of the Contract Amount paid by County to Contractor shall be given as separate consideration for this indemnification, and any other indemnification of County by Contractor provided for within the Contract Documents, the sufficiency of such separate consideration being acknowledged by Contractor by Contractor's acceptance and execution of the Agreement.

Contractor agrees to include the following indemnification provision in all contracts with subcontractors who perform work in connection with this Agreement:

"To the extent provided by law, subcontractor shall indemnify, defend, and hold harmless the County and the State of Florida, Department of Transportation, including the Department's officers, agents, and employees against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of subcontractor, or any of its officers, agents or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by subcontractor. The foregoing indemnification shall not constitute a waiver of the County's or Department's sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes. Nor shall the same be construed to constitute agreement by the subcontractor to indemnify the County for the negligent acts or omissions of the County, its officers, agents, employees, or third parties. Nor shall the same be construed to constitute agreement by the subcontractor to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, employees, or third parties. This indemnification shall survive the termination of the Agreement."

**13.2 Duty to Provide Legal Defense.** Contractor shall pay for and provide a legal defense for the County, which shall include attorneys' fees and costs, both of which will be done only if and when requested by the County, for all liabilities, damages, losses, and costs as described in **Section 13.1** above. Such payment on the behalf of the County shall be in addition to any and all other legal remedies available to the County and shall not be considered to be the County's exclusive remedy.

**13.3 Insurance.**

Contractor shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in Exhibit C to the Agreement. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies or trusts which are registered with the State of Florida. All commercial insurance carriers providing the Contractor with required insurance shall be rated as "A-" (excellent) or better as to general policy holders rating and a financial size category of Class VII or higher according to the AM Best Rating Guide, latest edition. Within ten (10) calendar days after Notice of Award is received by Contractor and prior to the commencement of Work, Contractor shall provide County with properly executed Certificates of Insurance to evidence Contractor's compliance with the insurance requirements of

the Contract Documents. Said Certificates of Insurance shall be on forms approved by County, such as "Acord Form 25". The Certificates of Insurance shall be personally, manually signed by the authorized representatives of the insurance company/companies shown on the Certificates of Insurance with proof that they are authorized representatives thereof. All liability insurance policies, other than professional liability, worker's compensation and employer's liability policies, obtained by Contractor to meet the requirements of the Contract Documents shall name Escambia County and the State of Florida Department of Transportation as additional insureds and shall contain Severability of Interest provisions. Escambia County and the State of Florida Department of Transportation shall also be designated as certificate holders.

The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice by registered or certified mail shall be provided to the County and the State of Florida Department of Transportation of any cancellation, intent not to renew, or reduction in the policies or coverages, except in the application of the aggregate limits provisions. In the event of a reduction in the aggregate limit of any policy, Contractor shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.

Certificates of Insurance reflecting the required coverage(s) and endorsement(s) and any notices of change/cancellation will be provided to shall be mailed to the following addresses:

Escambia County, Florida  
Attn: Purchasing Manager  
P.O. Box 1591  
Pensacola, Florida 32597-1591

Florida Department of Transportation  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In addition, certified, true and exact copies of all insurance policies required hereunder shall be provided to County, on a timely basis, when requested by County.

All insurance coverages of the Contractor shall be primary to any insurance or self-insurance program carried by the County applicable to this Project. The acceptance by County of any Certificate of Insurance does not constitute approval or agreement by the County that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of the Contract Documents. No Work shall commence at the Project site unless and until the required Certificates of Insurance are received by the County.

Contractor shall require each of its subcontractors to procure and maintain, until the completion of the subcontractor's work, insurance of the types and to the limits specified in **Exhibit C**, unless such insurance requirements for the subcontractor is expressly waived in writing by the County.

If any insurance provided pursuant to the Contract Documents expires prior to the completion of the Work, renewal Certificates of Insurance and, if requested by County, certified, true copies of the renewal policies shall be furnished by Contractor within thirty (30) days prior to the date of expiration.

All liability policies shall be underwritten on the "occurrence" basis, unless otherwise approved in writing by the County Division of Risk Management. "Claims made" policies, if approved by the Risk Manager, and subsequent insurance certificates shall provide a "retro-date" which shall include the effective date of the contract. "Claims-made" renewals or carrier and policy replacements shall reflect the original "retro-date."

Should at any time the Contractor not maintain the insurance coverages required herein, the County may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the Contractor for such coverages purchased. The County shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the County to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

13.4. Contractor shall submit to County a copy of all accident reports arising out of any personal injuries or property damages arising or alleged to have arisen on account of any Work by Contractor or subcontractor(s) under the Contract Documents.

**Section 14. COMPLIANCE WITH LAWS.** Contractor agrees to comply, at its own expense, with all federal, state, and local laws, codes, statutes, ordinances, rules, regulations, and requirements applicable to the Project, including, but not limited to, those dealing with taxation, worker's compensation, equal employment, and safety. If Contractor observes that the Contract Documents are at variance therewith, it shall promptly provide written notice to the County and Architect/Engineer. Compliance with the above laws shall include but is not limited to: (1) the Occupational Safety and Health Act, 29 C.F.R. 1910 and 1926, respectively, General Industry Standards and Construction Industry Standards, including regulations regarding Trenching and Shoring; (2) the Florida Workers' Compensation Law, Chapter 440, Florida Statutes; (3) Rules 38F and 38I, Florida Administrative Code; and (4) Florida Department of Transportation Manual of Traffic Control and Safe Practices. Failure to adhere to the requirements of the above-mentioned laws and regulations regarding safety and traffic control shall be grounds for an immediate work stoppage either by County staff or the Contractor until the deficiency is corrected.

**Section 15. CLEANUP AND PROTECTIONS.**

15.1. Contractor agrees to keep the Project site clean at all times of debris, rubbish, and waste materials arising out of the Work. At the completion of the Work, Contractor shall remove all debris, rubbish, and waste materials from and about the Project site, as well as all tools, appliances, construction equipment, machinery, and surface materials and shall leave the Project site clean and ready for occupancy by County.

15.2. Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees, and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Contractor from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Contractor to the condition equal to that existing at the time of Contractor's commencement of the Work.

15.3. Non-compliance with directives of this **Section 15** may serve as a basis for withholding payment(s).

**Section 16. PERMITS, LICENSES AND TAXES.**

16.1. All permits and licenses necessary for the prosecution of the Work shall be procured and paid for by Contractor. All permits or fees, including but not limited to, all license fees, permit fees, impact fees, or inspection fees payable by Contractor to County have been disclosed to Contractor in the bidding documents or other request for proposal at the time the Project was solicited. If Contractor performs any Work without obtaining, or contrary to, such permits or licenses, Contractor shall bear all costs arising therefrom. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work.

16.2. Contractor shall pay all sales, consumer, use, and other similar taxes associated with the Work, or portions thereof, which are applicable during the performance of the Work.

**Section 17. TERMINATION FOR DEFAULT.**

17.1 Contractor shall be considered in material default of the Agreement and such default shall be considered cause for County to terminate the Agreement, in whole or in part, as further set forth in this Section, if Contractor: (1) fails to begin the Work under the Contract Documents within the time specified herein; (2) fails to properly and timely perform the Work as directed by the County or Architect/Engineer or as provided for in the approved Progress Schedule; (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; (4) discontinues the prosecution of the Work; (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; (6) becomes insolvent, is declared bankrupt, or commits any act of bankruptcy; (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; (8) makes an assignment for the benefit of creditors; (9) fails to obey any applicable codes, laws, ordinances, rules, or regulations with respect to the Work; or (10) materially breaches any other provision of the Contract Documents.

17.2 County shall notify Contractor in writing of Contractor's default(s). If County determines that Contractor has not remedied and cured the default(s) within seven (7) calendar days following receipt by Contractor of said written notice then County, at its option, without releasing or waiving its rights and remedies against the Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Contractor's right to proceed under the Agreement, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Contractor, take assignment of any of Contractor's subcontracts and purchase orders, and complete all or any portion of Contractor's Work by whatever means, method, or agency which County, in its sole discretion, may choose.

17.3 If County deems any of the foregoing remedies necessary, Contractor agrees that it shall not be entitled to receive any further payments hereunder until after the Project is completed. All monies expended and all of the costs, losses, damages, and extra expenses, including all management, administrative and other overhead, and other direct and indirect expenses (including Architect/Engineer and attorneys' fees) or damages incurred by County incident to such completion, shall be deducted from the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, Contractor agrees to promptly pay to County on demand the full amount of such excess, including costs of collection, attorney's fees (including appeals), and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures, and damages incurred by the County to complete the Work, such excess shall be paid to the Contractor. The amount to be paid to the Contractor or County, as the case may be, shall be certified by the Architect/Engineer, upon application, and this obligation for payment shall survive termination of the Agreement.

17.4 The liability of Contractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by County in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefore or re-letting the Work, in settlement, discharge, or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder.

17.5 If, after notice of termination of Contractor's right to proceed pursuant to this Section, it is

determined for any reason that Contractor was not in default, that its default was excusable, or that County is not entitled to the remedies against Contractor provided herein, Contractor's remedies against County shall be the same as and limited to those afforded Contractor below under **Section 18.1**, Termination for Convenience.

17.6 If the Contractor refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction with this Agreement then the County may, without prejudice to any right or remedy and after giving the Contractor and its surety, if any, seven (7) calendar days' written notice, during which period Contractor still fails to allow access, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Contractor, and may finish the Project by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Project is finished. Reasonable terminal expenses incurred by the County may be deducted from any payments left owing the Contractor (excluding monies owed the Contractor for subcontract work).

17.7 Suspension or debarment proceedings brought by the County pursuant to Chapter 46, Article II, Division 3, Section 46-101, Escambia County Code of Ordinances, shall be grounds for immediate termination of this Agreement.

**Section 18. TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION.**

18.1. County shall have the right to terminate this Agreement without cause upon seven (7) calendar days' written notice to Contractor. In the event of such termination for convenience, Contractor's recovery against County shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but Contractor shall not be entitled to any other or further recovery against County, including, but not limited to, damages or any anticipated profit on portions of the Work not performed.

18.2. County shall have the right to suspend all or any portions of the Work upon giving Contractor two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Contractor's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in the Contract Documents. In no event shall the Contractor be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds three (3) months, the Contractor shall have the right to terminate the Agreement with respect to that portion of the Work that is subject to the ordered suspension.

**Section 19. COMPLETION.**

19.1. Upon receipt of written notice from the Contractor, the County and the Architect/Engineer will perform the substantial completion inspection. The County will issue a *Certificate of Substantial Completion* on the date the County's Architect/Engineer certifies in writing that the Project is substantially complete in accordance with the Contract Documents. *Substantial Completion* shall mean the time at which the Project has progressed, and the Work completed, so that the Project can be utilized for the purposes for which it is intended without material impairment of function.

19.2. Within thirty (30) calendar days after the date of Substantial Completion, the Architect/Engineer will compile a "punch list" with the estimated cost to complete any remaining exceptions that do not adversely affect the use of the Project. The County will deliver the list of

items to the Contractor within five (5) calendar days after the list has been developed and reviewed. Completion of these items will be required prior to final completion and acceptance. Failure to include any corrective work of pending items not yet completed on the list will not relieve the Contractor of the responsibility to complete all Work in accordance with the Contract Documents. Within twenty (20) business days after the punch list is created, the Contractor may submit an Application for Payment of the remaining contract balance, including any retainage previously withheld, less an amount equal to 150% of the estimated cost to complete the items on the list.

19.3. Upon receipt of written notice that the Work is ready for final inspection and acceptance, the County and the Architect/Engineer will perform the final inspection and, if the Work is acceptable and fully performed under the Contract Documents, the County shall promptly issue a *Certificate of Final Completion and Recommendation for Payment*, stating that, on the basis of observations and inspections, the Work has been fully, finally, and properly completed in accordance with the terms and conditions of the Contract Documents.

19.4. The final payment shall not become due and payable until the Contractor submits: 1) the final application for payment; 2) the Release and Affidavit in the form attached as **Exhibit E**; 3) consent of surety to final payment; 4) if required by County, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by County; 5) a published copy of the Notice of Completion as provided for in this section; and 6) all required close out documents as provided in the Contract Documents. The County reserves the right to inspect the Work and make an independent determination as to the Work's acceptability. Unless and until the County is completely satisfied, the final payment shall not become due and payable.

19.5. After the Work is ready for final inspection and acceptance by the County, a legal advertisement must be published by the Contractor in a local newspaper of a general countywide circulation at least thirty (30) days before final payment shall be made. Example of such publication is as follows:

Legal Notice of Completion

Notice is hereby given that the undersigned Contractor has completed and has ready for acceptance by the Board of County Commissioners of Escambia County, Florida, the following construction project:

\_\_\_\_\_  
(Project Name and Address)

\_\_\_\_\_  
(Legal Name and Address of the Contractor)

Subcontractors, material men, and other persons having payment claims against the Contractor relating to this project should govern themselves accordingly.

**Section 20. WARRANTY.** Contractor shall obtain and assign to County all express warranties given to Contractor or any subcontractors by any material men supplying materials, equipment, or fixtures to be incorporated into the Project. Contractor warrants to County that any materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from all defects, and in conformance with the Contract Documents. Contractor further warrants to County that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents.

If, within **one (1) year** after substantial completion and acceptance, any Work is found to be defective or not in conformance with the Contract Documents, Contractor shall correct it promptly after receipt of written notice from County. Contractor shall also be responsible for and pay for replacement or repair of adjacent materials or Work that may be damaged as a result of such replacement or repair. These warranties are in addition to those implied warranties to which County is entitled as a matter of law. The Performance Bond shall remain in full force and effect throughout the Warranty Period. Nothing contained within this provision shall be construed to establish a period of limitation with respect to the Contractor's obligations under the Agreement.

**Section 21. TESTS AND INSPECTIONS.**

21.1. The County, Architect/Engineer, their respective representatives, agents and employees, and any governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project site, for their observation, inspection and testing. Contractor shall provide proper, safe conditions for such access. Contractor shall provide the County with timely notice of readiness of the Work for all required inspections, tests or approvals.

21.2. If the Contract Documents or any codes, laws, ordinances, rules, or regulations of any public authority having jurisdiction over the Project requires any portion of the Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith, and furnish the County the required certificates of inspection, testing, or approval. All inspections, tests, or approvals shall be performed in a manner and by organizations acceptable to the Architect/Engineer and County.

21.3. If any Work that is to be inspected, tested, or approved is covered without written concurrence from the County, such Work must, if requested, be uncovered for observation. Such uncovering shall be at Contractor's expense. If any Work is covered contrary to written directions from the County or the Architect/Engineer, such Work must, if requested, be uncovered for observation and be replaced at Contractor's sole expense.

21.4. The County shall charge to Contractor and may deduct from any payments due Contractor all engineering and inspection expenses incurred by County in connection with any overtime work. Such overtime work consisting of any work during the construction period beyond the regular eight (8) hour day and for any work performed on Saturday, Sunday, or holidays.

21.5. Neither observations by the County nor inspections, tests, or approvals by others shall relieve Contractor from Contractor's obligations to perform the Work in accordance with the Contract Documents.

21.6. Prior to payment for any Work for which testing is specified, Contractor shall provide the County a copy of acceptable test results relating to such Work as required by the technical specifications of the solicitation.

**Section 22. DEFECTIVE WORK.**

22.1. Work not conforming to the requirements of the construction plans or Contract Documents or work conforming to the construction plans or Contract Documents containing errors or omissions, including, but not limited to, design flaws shall be deemed Defective Work. If required by County or Architect/Engineer, Contractor shall, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Defective Work has been rejected by County or Architect/Engineer, remove it from the site and replace it with acceptable Work. Contractor shall bear all direct, indirect and consequential costs of such correction or removal

(including, but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby, and shall hold County harmless for same.

22.2. If the County or Architect/Engineer considers it necessary or advisable that covered Work be observed or inspected or tested by others, Contractor shall uncover, expose, or otherwise make available for observation, inspection or tests as the County or the Architect/Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals), and County shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Amount and/or an extension of the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

22.3. If any portion of the Work is defective, or Contractor fails to supply sufficient skilled workers with suitable materials or equipment, or fails to finish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the County may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of County to stop the Work shall not give rise to any duty on the part of County to exercise this right for the benefit of Contractor or any other party.

22.4. Should the County determine, at its sole opinion, it is in the County's best interest to accept Defective Work, the County may do so. Contractor shall bear all direct, indirect and consequential costs attributable to the County's evaluation of and determination to accept Defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such Defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Amount. If the County accepts such Defective Work after final payment, Contractor at the discretion of the County shall promptly pay County an appropriate amount to adequately compensate County for its acceptance of the Defective Work or shall increase in the Work's warranty period beyond two (2) years.

22.5. If Contractor fails, within a reasonable time after the written notice from the County, to correct Defective Work or to remove and replace rejected Defective Work as required by the County, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any of the provisions of the Contract Documents, County may, after seven (7) calendar days' written notice to Contractor, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, the County may exclude Contractor from any or all of the Project site, take possession of all or any part of the Work, and suspend Contractor's services related thereto, take possessions of Contractor's tools, appliances, construction equipment and machinery at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which County has paid Contractor but which are stored elsewhere. Contractor shall allow County or Architect/Engineer, and their respective representatives, agents, and employees such access to the Project site as may be necessary to enable County to exercise the rights and remedies under this Section. All direct, indirect, and consequential costs of County in exercising such rights and remedies shall be charged against Contractor, and a Change Order shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect and consequential costs shall include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work or others destroyed or damaged by correction, removal,

or replacement of Contractor's Defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by County of County's rights and remedies hereunder.

**Section 23. SUPERVISION AND SUPERINTENDENTS.** Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents. At all times during the performance of the Work, Contractor shall provide at the Project site a competent resident superintendent, who shall not be replaced without prior written notice to County except under extraordinary circumstances. The superintendent shall be Contractor's representative at the Project site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor. The County shall have the right to direct Contractor to remove and replace its Project superintendent, with or without cause.

**Section 24. PROTECTION OF WORK.**

24.1. Contractor shall fully protect the Work from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. If Contractor, or any one for whom Contractor is legally liable, is responsible for any loss or damage to the Work, or other work or materials of County or County's separate contractors, Contractor shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Contractor.

24.2. Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

**Section 25. EMERGENCIES.** In the event of an emergency affecting the safety or protection of persons or the Work or property at the Project site or adjacent thereto, Contractor, without special instruction or authorization from County or Architect/Engineer is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give the County written notice within forty-eight (48) hours after the occurrence of the emergency, if Contractor believes that any significant changes in the Work or variations from the Contract Document have been caused thereby. If the County determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Contractor fails to provide the forty-eight (48) hour written notice noted above, the Contractor shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time.

**Section 26. USE OF PREMISES.**

26.1. Contractor shall confine all construction equipment, the storage of materials and equipment, and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other lands and areas permitted by law, rights of way, permits, and easements, and shall not unreasonably encumber the Project site with construction equipment or other material or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or any land or areas contiguous thereto, resulting from the performance of the Work.

26.2. Contractor shall provide and maintain in a neat, sanitary condition such accommodation

for the use of its employees as may be necessary to comply with the regulations of the State Board of Health or other bodies having jurisdiction. Contractor shall commit no public nuisance.

**Section 27. SAFETY.**

27.1. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

- a) All employees performing the Work and other persons and/or organizations who may be affected thereby;
- b) All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site; and
- c) Other property on the Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and any underground structures or improvements not designated for removal, relocation, or replacement in the Contract Documents.

27.2 Contractor shall comply with all applicable codes, laws, ordinances, rules, and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of underground structures and improvements and utility owners when performance of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, or replacement of their property. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by County has occurred.

27.3 Contractor shall designate a responsible representative at the Project site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by the Contractor to the County.

27.4 Contractor shall adhere at all times to the minimum safety guidelines for construction and renovation projects as set out in **Exhibit C** of this Agreement.

**Section 28. PROJECT MEETINGS.** Prior to the commencement of Work, the Contractor shall attend a preconstruction conference with the County and the Architect/Engineer to discuss the Progress Schedule, procedures for handling shop drawings and other submittals, and processing Applications for Payment, and to establish a working understanding as to the Work. During the performance of the Work, the Contractor shall attend all meetings convened by the Architect/Engineer or County with respect to the Project, when directed to do so by County or Architect/Engineer. Contractor shall have its subcontractors and suppliers attend all such meetings (including the preconstruction conference) as may be directed by the County or the Architect/Engineer.

**EXHIBIT B**  
**PERFORMANCE AND PAYMENT BONDS**

**BOND NO.** \_\_\_\_\_

**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS THAT:**

\_\_\_\_\_  
\_\_\_\_\_  
(Insert name, address, and phone number of contractor), as Principal, and

\_\_\_\_\_  
\_\_\_\_\_  
(Insert full name, home office address and phone number of surety) as Surety, are held and firmly bound unto the Board of County Commissioners for Escambia County, Florida, 221 Palafox Place, Pensacola, Florida 32597-1591, (850) 595-4900, as Obligee in the sum of

\_\_\_\_\_  
Dollars (\$ \_\_\_\_\_), for the payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly and severally, firmly by these present.

**WHEREAS**, Principal has entered into a contract dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with Obligee for Contract No. \_\_\_\_\_,

\_\_\_\_\_  
\_\_\_\_\_  
(Insert name of project, including legal description, street address of property and general description of improvement) in accordance with drawings and specifications, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

**THE CONDITION OF THIS BOND** is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract; and
2. Pays Obligee any and all losses, damages, costs and attorneys' fees that Obligee sustains because of any default by Principal under the Contract; and
3. Performs the guarantee of all work and materials furnished under the Contract applicable to the work and materials, then this bond is void; otherwise it remains in full force; and
4. Principal understands and agrees that this bond shall remain in full force and effect throughout the warranty period after substantial completion of the work.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specifications referred to therein shall in anywise affect its obligation under this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions to the terms of the Contract or to work or to the specifications.

This instrument shall be construed in all respects as a common law bond.

In no event will the Surety be liable in the aggregate to Obligee for more than the penalty sum of this Performance Bond, regardless of the number of suits that may be filed by Obligee.

**IN WITNESS WHEREOF**, the above parties have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these premises duly signed by its undersigned representative, pursuant to authority of its governing body.

ATTEST:

PRINCIPAL:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**STATE OF FLORIDA  
COUNTY OF ESCAMBIA**

The foregoing instrument was acknowledged before me by means of \_\_\_ physical presence OR \_\_\_ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ for \_\_\_\_\_.

Personally Known \_\_\_ OR Produced Identification \_\_\_  
Type of Identification Produced \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary Public State of Florida)

Name: \_\_\_\_\_  
(Printed Name of Notary Public)  
(AFFIX OFFICIAL SEAL)

ATTEST:

SURETY: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Business Address)

\_\_\_\_\_

(Authorized Signature)

\_\_\_\_\_

(Printed Name)

OR

\_\_\_\_\_

As Attorney In Fact (Attach Power-of-Attorney)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Business Address)

\_\_\_\_\_  
(Printed Name)

**STATE OF FLORIDA**

**COUNTY OF ESCAMBIA**

The foregoing instrument was acknowledged before me by means of \_\_\_ physical presence OR \_\_\_ online notarization, this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ for \_\_\_\_\_.

Personally Known \_\_\_ OR Produced Identification \_\_\_  
Type of Identification Produced \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary Public State of Florida)

Name: \_\_\_\_\_  
(Printed Name of Notary Public)

(AFFIX OFFICIAL SEAL)

SAMPLE

BOND NO. \_\_\_\_\_

**PAYMENT BOND**

**BY THIS BOND**, We, \_\_\_\_\_  
(Insert name, address and phone number of contractor)  
\_\_\_\_\_ (hereinafter called the "Principal")

and \_\_\_\_\_ (hereinafter called the "Surety"),  
(Insert name)

located at \_\_\_\_\_, a surety insurer  
(Insert address and phone number)

chartered and existing under the laws of the State of \_\_\_\_\_ and authorized to do business

in the State of Florida, are held and firmly bound unto the Board of County Commissioners for Escambia

County, Florida, 221 Palafox Place, Pensacola, Florida 32597-1591, (850) 595-4900, (hereinafter called

the "County") in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) for

payment of which we bind ourselves, our heirs, our personal representatives, our successors and our assignees, jointly and severally.

**WHEREAS**, Principal and County have reached a mutual agreement relating to Contract No. \_\_\_\_\_

(hereinafter referred to as the "Contract") as of \_\_\_\_\_ (the bid award date for projects thereto) for the \_\_\_\_\_ purpose of \_\_\_\_\_

(Insert name of project, including legal description, street address of property and general description of improvement.)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

said Contract being made a part of this Bond by this reference.

**NOW, THEREFORE, THE CONDITION OF THIS BOND IS THAT IF THE PRINCIPAL:**

1. Performs the contract dated \_\_\_\_\_, \_\_\_\_\_, between Principal and County for construction of \_\_\_\_\_, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays County all loses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that the County sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any action instituted by a claimant under this bond for payment must be in accordance with

the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

**BE IT FURTHER KNOWN:**

1. Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the said Contract or alterations which may be made in the terms of the said Contract, or in the work to be done under it, or the giving by the County of any extension of time for the performance of the said Contract, or any other forbearance on the part of the County or Principal to the other, shall not in any way release the Principal and the Surety, or either of them, their heirs, personal representatives, successors or assigns from liability hereunder, notice to the Surety of any such changes, alterations, extensions or forbearance being hereby waived.
2. Certain claimants seeking the protection of this Bond must timely comply with the strict requirements set forth in Section 255.05, Florida Statutes, and as otherwise provided by law.
3. As concerns payment for labor, materials and supplies, as affects certain claimants, no legal action shall be instituted against the Principal or Surety on this Bond after one (1) year from the performance of labor or the completion of delivery of the materials or supplies as is specifically mandated pursuant to Section 255.05, Florida Statutes.

**THIS BOND DATED THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_** (the date of issue by the Surety or by the Surety's agent and the date of such agents power-of-attorney).

ATTEST:

PRINCIPAL:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**STATE OF FLORIDA  
COUNTY OF ESCAMBIA**

The foregoing instrument was acknowledged before me by means of \_\_\_ physical presence OR \_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ for \_\_\_\_\_.

Personally Known \_\_\_ OR Produced Identification \_\_\_  
Type of Identification Produced \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary Public State of Florida)

Name: \_\_\_\_\_  
(Printed Name of Notary Public)

(AFFIX OFFICIAL SEAL)

ATTEST:

SURETY: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Business Address)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Printed Name)

OR

\_\_\_\_\_  
As Attorney In Fact (Attach Power-of-Attorney)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Business Address)

\_\_\_\_\_  
(Printed Name)

**STATE OF FLORIDA**  
**COUNTY OF ESCAMBIA**

The foregoing instrument was acknowledged before me by means of \_\_\_ physical presence OR \_\_\_ online notarization, this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ for \_\_\_\_\_.

Personally Known \_\_\_ OR Produced Identification \_\_\_  
Type of Identification Produced \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary Public State of Florida)

Name: \_\_\_\_\_  
(Printed Name of Notary Public)  
(AFFIX OFFICIAL SEAL)

**EXHIBIT C**  
**INSURANCE AND SAFETY**

**INSURANCE - BASIC COVERAGES REQUIRED**

The Contractor shall procure and maintain the following described insurance, except for coverages specifically waived by the County. All commercial insurance carriers providing the Contractor with required insurance shall be rated as "A-" (excellent) or better as to general policy holders rating and a financial size category of Class VII or higher according to the AM Best Rating Guide, latest edition. Such on policies shall provide coverages for any or all claims which may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of the Contract Documents, whether such services, work and operations be by the Contractor, its employees, or by subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

The Contractor shall require and shall be responsible for ensuring throughout the term of the Agreement that any and all of its subcontractors obtain and maintain until the completion of that subcontractor's work, such of the insurance coverages described herein as are required by law to be provided on behalf of their employees and others.

The required insurance shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.

These insurance requirements shall not limit the liability of the Contractor. The County does not represent these types or amounts of insurance to be sufficient or adequate to protect the Contractor's interests or liabilities but are merely minimums.

Except for workers compensation and professional liability, the Contractor's insurance policies shall be endorsed to name Escambia County and the State of Florida Department of Transportation as an additional insured to the extent of its interests arising from this agreement.

The Contractor waives its right of recovery against the County, to the extent permitted by its insurance policies.

The Contractor's deductibles/self-insured retentions shall be disclosed to the County and may be disapproved by the County. They shall be reduced or eliminated at the option of the County. The Contractor is responsible for the amount of any deductible or self-insured retention.

Insurance required of the Contractor or any other insurance of the Contractor shall be considered primary, and insurance of the County, if any, shall be considered excess, as may be applicable to claims obligations, which arise out of this agreement, contract or lease.

**Workers' Compensation Coverage**

The Contractor shall purchase and maintain workers' compensation insurance for all workers compensation obligations imposed by state law and with employer's liability limits of at least \$1,000,000 each accident and \$1,000,000 each employee/\$1,000,000 policy limit for disease, or a valid certificate of exemption issued by the State of Florida, or an affidavit in accordance with the provisions of Florida's Workers' Compensation Law.

Contractor shall also purchase any other coverages required by law for the benefit of employees.

**General, Automobile and Excess or Umbrella Liability Coverage**

The Contractor shall purchase and maintain coverage on forms no more restrictive than the latest editions of the Commercial General Liability and Business Auto policies of the Insurance Services Office. Minimum limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate for all liability must be provided, with excess or umbrella insurance making up the difference, if any, between the policy limits of underlying policies (including employers' liability required in the Workers' Compensation Coverage section) and the total amount of coverage required.

**General Liability Coverage - Occurrence Form Required**

Coverage A shall include bodily injury and property damage liability for premises, operations, products and completed operations, independent contractors, contractual liability covering this agreement, contract or lease, broad form property damage coverages, and property damage resulting from explosion, collapse or underground (x,c,u) exposures.

Coverage B shall include personal injury.

Coverage C, medical payments, is not required.

The Contractor is required to continue to purchase products and completed operations coverage, at least to satisfy this agreement, contract or lease, for a minimum of three years beyond the County's acceptance of renovation or construction projects.

**Business Auto Liability Coverage**

Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

**Excess or Umbrella Liability Coverage**

Umbrella Liability insurance is preferred, but an Excess Liability equivalent may be allowed. Whichever type of coverage is provided, it shall not be more restrictive than the underlying insurance policy coverages. Umbrella coverage shall drop down to provide coverage where the underlying limits are exhausted.

**Evidence/Certificates of Insurance**

Required insurance shall be documented in Certificates of Insurance. If and when required by the County, Certificates of Insurance shall be accompanied by documentation that is acceptable to the County establishing that the insurance agent and/or agency issuing the Certificate of Insurance has been duly authorized, in writing, to do so by and on behalf of each insurance company underwriting the insurance coverages(s) indicated on each Certificate of Insurance.

New Certificates of Insurance are to be provided at least 30 days prior to coverage renewals. Failure of the Contractor to provide such renewal certificates may be considered justification for the County to terminate this agreement.

Certificates should contain the following additional information.

1. Indicate that Escambia County and the State of Florida Department of Transportation as additional insureds on the general liability policy.

2. Include a reference to the project and the Office of Purchasing number.
3. Disclose any self-insured retentions in excess of \$1,000.
4. Designate Escambia County and the State of Florida Department of Transportation as the certificate holders.
5. Indicate that the County shall be notified at least 30 days in advance of cancellation.

Receipt of certificates or other documentation of insurance or policies or copies of policies by the County, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Contractor's obligation to fulfill the insurance requirements herein.

If requested by the County, the Contractor shall furnish complete copies of the Contractor's insurance policies, forms and endorsements, and/or such additional information with respect to its insurance as may be requested.

For Commercial General Liability coverage the Contractor shall, at the option of the County, provide an indication of the amount of claims payments or reserves chargeable to the aggregate amount of liability coverage.

#### **ENDORSEMENTS/ADDITIONAL INSURANCE**

If checked below, the County requires the following endorsements or additional types of insurance.

**TERMINATION/ADVERSE CHANGE ENDORSEMENT**

All of Contractor's policies, except for professional liability and workers compensation insurance, are to be endorsed, and the Contractor's Certificate(s) of Insurance shall state, that the County shall be notified at least 30 days in advance of cancellation, non-renewal or adverse change.

**PROPERTY COVERAGE FOR LEASES**

The Contractor shall procure and maintain for the life of the lease, all risk/special perils (including sinkhole) property insurance (or its equivalent) to cover loss resulting from damage to or destruction of the building and personal property/contents. The policy shall cover 100% replacement cost and shall include an agreed value endorsement to waive coinsurance.

Coverage shall also include continued full payment of rents to the County for up to one year after damage or destruction of the property

**COMMERCIAL GENERAL LIABILITY COVERAGE PROJECT AGGREGATE**

Because the Commercial General Liability form of coverage includes an annual aggregate limitation on the amount of insurance provided, a separate project aggregate limit of \$\_\_\_\_\_ is required by the County for this agreement or contract.

**LIQUOR LIABILITY**

In anticipation of alcohol being served, the Contractor shall provide evidence of coverage for liquor liability in an amount equal to the general/umbrella/excess liability coverage. If the general liability insurance covers liquor liability (e.g. host or other coverage), the Contractor's agent or insurer should provide written documentation to confirm that coverage already applies to this agreement, contract or lease. If needed coverage is not included in the general/umbrella/excess liability policy(ies), the policy(ies) must be endorsed to extend

coverage for liquor liability, or a separate policy must be purchased to provide liquor liability coverage in the amount required.

**OWNERS PROTECTIVE LIABILITY COVERAGE**

For renovation or construction contracts the Contractor shall provide for the County an owners protective liability insurance policy (preferably through the Contractor's insurer) in the name of the County.

This is redundant coverage if the County is named as an additional insured in the Contractor's Commercial General Liability insurance policy. However, this separate policy may be the only source of coverage if the Contractor's liability coverage limit is used up by other claims.

**BUILDERS RISK COVERAGE**

Builders Risk insurance is to be purchased to cover subject property for all risks of loss, subject to a waiver of coinsurance, and covering off-site storage, transit and installation risks as indicated in the Installation Floater and Motor Truck Cargo insurance described hereafter, if such coverages are not separately provided.

The Builders Risk insurance is to be endorsed to cover the interests of all parties, including the County and all contractors and subcontractors. The insurance is to be endorsed to grant permission to occupy.

**INSTALLATION FLOATER COVERAGE**

Installation Floater insurance is to be purchased when Builder's Risk insurance is inappropriate, or when Builder's Risk insurance will not respond, to cover damage or destruction to renovations, repairs or equipment being installed or otherwise being handled or stored by the Contractor, including off-site storage, transit and installation. The amount of coverage should be adequate to provide full replacement value of the property, repairs, additions or equipment being installed, otherwise being handled or stored on or off premises. All risks coverage is preferred.

**MOTOR TRUCK CARGO COVERAGE**

If the Installation Floater insurance does not provide transportation coverage, separate Motor Truck Cargo or Transportation insurance is to be provided for materials or equipment transported in the Contractor's or other vehicles from place of receipt to building sites or other storage sites. All risks coverage is preferred.

**CONTRACTOR'S EQUIPMENT COVERAGE**

Contractor's Equipment insurance is to be purchased to cover loss of equipment and machinery utilized in the performance of work by the Contractor. All risks coverage is preferred.

**FIDELITY/DISHONESTY COVERAGE - FOR EMPLOYER**

Fidelity/Dishonesty insurance is to be purchased to cover dishonest acts of the Contractor's employees, including but not limited to theft of vehicles, materials, supplies, equipment, tools, etc., especially property necessary to work performed.

**FIDELITY/DISHONESTY/LIABILITY COVERAGE - FOR COUNTY**

Fidelity/Dishonesty/Liability insurance is to be purchased or extended to cover dishonest acts of the Contractor's employees resulting in loss to the County.

**GARAGE LIABILITY COVERAGE**

Garage Liability insurance is to be purchased to cover the Other Party and its employees for its garage and related operations while in the care, custody and control of the County's vehicles.

**GARAGEKEEPER'S COVERAGE (LEGAL LIABILITY FORM)**

Garagekeeper's Liability insurance is to be purchased to cover the Other Party's liability for damage or other loss, including comprehensive and collision risks, to the County's vehicles while in the care, custody and control of the Other Party. This form of coverage responds only when the Other Party is legally liable for the loss.

**GARAGEKEEPER'S COVERAGE (DIRECT-EXCESS FORM)**

Garagekeeper's Liability insurance is to be purchased to cover damage or other loss, including comprehensive and collision risks, to the County's vehicles while in the care, custody and control of the Other Party. This form of coverage responds on a legal liability basis, and also without regard to legal liability on an excess basis over any other collectible insurance.

**WATERCRAFT LIABILITY COVERAGE**

Because the Contractor's provision of services involves utilization of watercraft, watercraft liability coverage must be provided to include bodily injury and property damage arising out of ownership, maintenance or use of any watercraft, including owned, non-owned and hired.

Coverage may be provided in the form of an endorsement to the general liability policy, or in the form of a separate policy covering Watercraft Liability or Protection and Indemnity.

**UNITED STATES LONGSHOREMEN AND HARBOR WORKERS' ACT COVERAGE**

The Workers Compensation policy is to be endorsed to include United States Longshoremen and Harbor Workers' Act Coverage for exposures, which may arise from this agreement or contract.

**JONES ACT COVERAGE**

The Workers' Compensation policy is to be endorsed to include Jones Act Coverage for exposures, which may arise from this agreement or contract.

**AIRCRAFT LIABILITY COVERAGE**

Because the Contractor's provision of services involves utilization of aircraft, aircraft liability coverage must be provided to include bodily injury and property damage arising out of ownership, maintenance or use of any aircraft, including owned, non-owned and hired.

The minimum limits of coverage shall be \$\_\_\_,000,000 per occurrence, Combined Single

Limit for Bodily Injury (including passenger liability) and Property Damage.

☐ **POLLUTION/ENVIRONMENTAL IMPAIRMENT LIABILITY COVERAGE**

Pollution/environmental impairment liability insurance is to be purchased to cover pollution and/or environmental impairment, which may arise from this agreement or contract.

☐ **PROFESSIONAL LIABILITY/MALPRACTICE/ERRORS OR OMISSIONS INSURANCE**

Contractor shall purchase and maintain Professional Liability or malpractice or errors or omissions insurance coverage with a minimum limit of \$1,000,000, except where the estimated construction contract price for the project described in the Agreement is greater than \$5 million dollars, the minimum limit of professional liability coverage shall be equal to 25% of the estimated construction contract price for the project. Said coverage shall be continuously maintained and in effect for a period of not less than **five (5) years** from the effective date of this Agreement. The policy limit of liability shall not include legal fees and other defense costs. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the effective date of this Agreement and shall not be advanced.

If at any time during the aforementioned policy period there should be a cancellation, non-renewal, or lapse in coverage, professional liability coverage shall be extended for the remainder of the five-year period with a supplemental extended reporting period (SERP) endorsement to take effect upon expiration of the policy period referenced above. The limits of liability applicable to the SERP coverage shall be equal to the limits of liability applicable to the policy referenced above and to which the endorsement attaches.

## **MINIMUM PROJECT SAFETY REQUIREMENTS**

The following safety requirements represent the minimum condition, which shall be met by all Contractors and subcontractors performing work for Escambia County: Reported or observed violations of Federal and State laws and regulations, or County ordinances shall be brought to the attention of the County project manager and County's Department of Safety and Risk Services and shall be immediately corrected by the Contractor. Additionally, the County may order work to be stopped if conditions exist that present immediate danger to persons or property. The Contractor acknowledges that any such stoppage will not shift responsibility for any damages from the Contractor to the County. Failure to comply with required safety procedures shall result in the suspension of the Work of the Contractor until such time as his operations are brought into compliance. Items which are not corrected or that are disputed by the Contractor may be referred by the County's Department of Safety and Risk Services for inspection or interpretation. The Contractor shall take reasonable precautions for work place safety and shall provide reasonable protection to prevent damage, injury, or loss to employees on the work site and to other persons who may be affected by the Work.

- (1) Prior to the commencement of the project, the Contractor and all subcontractors shall provide to the County a written copy of their respective safety and health plans for review as part of the pre-submittal bid package.
- (2) The Contractor shall establish and maintain an access control system at the work site, including a daily sign-in log, for all visitors, including County and regulatory personnel. Prior to commencement of construction, the project manager may designate specific individuals for routine access so that their duties are not impeded. All visitors that are not pre-approved for admittance shall be escorted through the project by either a Contractor representative or by the project manager or designee.
- (3) The Contractor shall provide all necessary safety equipment for County staff, employees, and visitors to enter the work site. This equipment may include hard hats, hearing protection, safety glasses, or any other safety items deemed necessary by the Contractor or required by State or Federal safety regulations.
- (4) Construction vehicles on the work site shall always be operated in a safe manner. The Contractor shall take appropriate action to ensure the safety of County staff, visitors, and the general public while operating work vehicles at a "controlled" construction site. Where conditions warrant, or at the request of the County, temporary barriers shall also be established for these traffic areas.
- (5) The Contractor shall prominently mark the work site and ensure its security. Site security shall include appropriate fencing, barricades, warning tape, covered walkways and warning signs. In no instance shall a work site be accessible, without obvious warning, to County staff, visitors, or the general public. At a minimum, the project site shall be posted with the appropriate trespass warning signs as specified in Section 810.09(2)(d), Florida Statutes: THIS AREA IS A DESIGNATED CONSTRUCTION SITE; ANYONE TRESPASSING ON THIS PROPERTY SHALL, UPON CONVICTION, BE GUILTY OF A FELONY; "A DANGER, CONSTRUCTION SITE. AUTHORIZED PERSONNEL ONLY," and other general safety warning signs, i.e., "HARD HAT AREA," as are deemed necessary by the Contractor and project manager.

- (6) In the event barricading of a work site is not feasible, alternative measures may be used upon prior approval by the County safety Office. Alternative measures may include, but are not limited to, working during "off" hours such as nights, weekends, or holidays, or the providing of temporary accommodations for building occupants (to be prearranged, if necessary, at the discretion of the County).
- (7) The Contractor shall ensure compliance with all fire safety codes at the work site, especially as to egress, during the construction phase of an occupied facility. In no instance, (except where impractical and with the prior approval of the County's Department of Safety and Risk Services and the appropriate life safety code inspector), shall the life safety code components of an occupied facility be reduced or otherwise compromised.

A set of these construction plans, with a signature of approval by the appropriate life safety code inspector, shall be kept at each construction site and available for routine inspection. The Contractor shall communicate with each subcontractor and County's Department of Safety and Risk Services as to scheduling of events that may pose hazards or inconveniences to building occupants. The Contractor shall also ensure that appropriate scheduling information is also conveyed to the project manager.

- When a project alters a building's fire protection compartment features, such as fire barriers, smoke barriers, or corridor walls, exits must provide free and unobstructed egress. Employees shall receive notice if any alternative exits have been designated. Buildings or areas under construction must maintain escape egress for construction workers at all times. These means of egress shall be inspected daily by the Contractor.
  - When a project affects fire alarms, fire detection, or fire suppression systems, of a building that is occupied, the Contractor must ensure that such systems are not functionally impaired. Any temporary systems, which are installed, must be inspected and tested monthly by the Contractor. Employees must be notified when such temporary systems are in place.
  - When any sources of ignition are present, such as welding torches, smoking by all persons shall be prohibited on any construction site and in any County facility.
- (8) Noise, dust, and the use of chemical products may create inside health hazards at the work site to building occupants requiring that the Contractor to adhere to the following guidelines at a minimum:
- (a) The Contractor shall initiate construction and engineering safety controls to minimize exposure of dusts, noise, and chemical odors to building occupants. These controls may involve the construction or use of temporary walls, plastic barriers, mechanical ventilation, elimination of make-up air returns from work areas, pressurizing occupied areas, or a combination of several methods. The Contractor shall coordinate all such engineering efforts with the project manager, and these control measures shall require prior approval by the County's

Department of Safety and Risk Services. In cases where these efforts may not be feasible, alternative work schedules on evenings and weekends may be instituted as a part of this process.

- (b) Material Safety Data Sheets (MSDS) shall be provided to the County's Department of Safety and Risk Services for all hazardous substances used on the project or brought on the job site. These products include, but are not limited to, paints, solvents, roofing compounds, and cleaning compounds.
- (c) Appropriate precautions shall be taken to prevent occupant exposure to hazardous respirable dusts, contaminants, and fumes from welding, cutting, or drilling of concrete and masonry, or the operation of internal combustion engines. The Contractor shall also determine whether respirable crystalline silica, which is a potential carcinogen contained in many building products, is present at the work site. Control of dusts from these types of products and operations shall be an essential safety requirement for the Contractor.
- (d) The Contractor should be aware of other buildings adjacent to his work areas and shall be prepared to take necessary actions to prevent the spread of dusts and fumes to those facilities.
- (9) The Contractor shall ensure that all emergency notifications, including those for fires and medical needs, shall be promptly made by dialing County 911 dispatchers. The Caller should state the exact location of the work site emergency, the nature of the emergency, and specifically indicate if medical or fire services are needed.
- (10) The Contractor agrees and understands that all County construction/renovation sites shall be subject to periodic inspection by life safety code inspectors, Florida Department of Labor and Employment Security, Division of Safety, Occupational Safety and Health Administration, Florida Department of Environmental Protection, Environmental Protection Agency, and other Federal, State, or County regulatory agencies.
- (11) The Contractor shall provide adequate refuse containers for the disposal of construction debris. Refuse shall not be allowed to accumulate on the project site grounds, and the Contractor shall ensure that these containers are subsequently emptied on a regular basis.
- (12) Water runoff and soil erosion from the project site shall be controlled by the Contractor pursuant to the regulations of the Florida Department of Environmental Protection.
- (13) Water-based paint and stain products shall be used by the Contractor in the place of solvent-based products where the application so permits. Use of organic solvent-based products shall be used only where absolutely necessary and with the prior approval of the project manager. Lead-containing paints shall not be normally used or specified for any application. If the use of lead-containing paint is essential for a specific application, prior written approval from the County's Department of Safety and Risk Services shall be obtained before their use.

- (14) The use of any products containing toxic metals, especially those regulated by Resource Conservation and Recovery Act (RCRA), (i.e. lead, chromium, barium, silver, arsenic, cadmium, mercury, selenium), on the work site shall be avoided. Prior written approval for use of these metals shall be obtained by the Contractor from the County's Department of Safety and Risk Services.
- (15) The use of any radioactive materials by the Contractor on project sites shall require pre-approval. Copies of appropriate certifications, licenses, testing, and inspection records shall be provided by the Contractor to the project manager and County's Department of Safety and Risk Services for review.
- (16) The County contracts out the identification and abatement of asbestos containing building materials. Asbestos abatement can only be performed by state licensed asbestos abatement contractors. General contractors, therefore, shall not be authorized to remove or disturb any asbestos containing materials. Although efforts are made to identify or remove such asbestos containing materials prior to renovations, the possibility exists that asbestos materials may be encountered at a work site. If so, Contractors who encounter such materials shall immediately stop work and notify the project manager and the County's Department of Safety and Risk Services.
- (17) The above-cited guidelines represent minimum expectations and actions, which shall be taken by Contractors while under contract for County construction and renovation projects. These guidelines are not all inclusive and will be revised as necessary. In the event these guidelines conflict with other contract documents, the most stringent application shall apply. Any questions or disputes should be brought to the immediate attention of the project manager and County's Department of Safety and Risk Services.

**EXHIBIT D**  
**RELEASE AND AFFIDAVIT**

**COUNTY OF ESCAMBIA**  
**STATE OF FLORIDA**

Before me, the undersigned authority, personally appeared \_\_\_\_\_, who after being duly sworn, deposes and says:

- (1) In accordance with the Contract Documents and in consideration of \$\_\_\_\_\_ paid, \_\_\_\_\_ ("Contractor") releases and waives for itself and its subcontractors, material men, successors and assigns, all claims demands, costs and expenses, whether in contract or in tort, against the Board of County Commissioners of Escambia County, Florida, ("County") relating in any way to the performance of the Agreement between Contractor and County dated \_\_\_\_\_, 20\_\_\_\_, for the period from \_\_\_\_\_ to \_\_\_\_\_.
- (2) Contractor certifies for itself and its subcontractors, material men, successors and assigns, that all charges for labor, materials, supplies, lands, licenses and other expenses for which County might be sued or for which a lien or a demand against any payment bond might be filed, have been fully satisfied and paid.
- (3) Contractor agrees to indemnify, defend and save harmless County from all demands or suits, actions, claims of liens or other charges filed or asserted against the County arising out of the performance by Contractor of the Work covered by this Release and Affidavit.
- (4) This Release and Affidavit is given in connection with Contractor's (monthly/final) Application for Payment No. \_\_\_\_\_.

CONTRACTOR:

By: \_\_\_\_\_  
Its: President

Date: \_\_\_\_\_  
[Corporate Seal]

**STATE OF FLORIDA**  
**COUNTY OF ESCAMBIA**

The foregoing instrument was acknowledged before me by means of \_\_\_ physical presence OR \_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ for \_\_\_\_\_.

Personally Known \_\_\_ OR Produced Identification \_\_\_  
Type of Identification Produced \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary Public State of Florida)

Name: \_\_\_\_\_  
(Printed Name of Notary Public)  
(AFFIX OFFICIAL SEAL)

**EXHIBIT E**  
**FORM OF CONTRACT APPLICATION FOR PAYMENT**

- AIA DOCUMENT #G702, 1992 EDITION
- AIA DOCUMENT #G703, 1992 EDITION

SAMPLE

**EXHIBIT F**  
**CONSTRUCTION CHANGE ORDER**

Change Order Number \_\_\_\_\_ Contract Number \_\_\_\_\_ PD \_\_\_\_\_  
Date: \_\_\_\_\_ Dated \_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project Name: \_\_\_\_\_

You hereby are authorized and directed to make the following changes in accordance with terms and conditions of the Agreement: *(Describe changes here)*

	Dollars	Time in Calendar Days
Original Contract Amount	\$ _____	_____
Sum of Previous Changes	\$ _____	_____
This Change Order	\$ _____	_____
-----		
Adjusted Agreement Amount	\$ _____	_____

The contract substantial completion date will be **increased/decreased** by \_\_\_ calendar days due to this Change Order. The new contract substantial completion date is \_\_\_\_\_. Your acceptance of this Change Order shall constitute a modification to our Agreement and will be performed subject to all the same terms and conditions in our Agreement indicated above, as fully as if the same were repeated in this acceptance.

The adjustment, if any, to this Agreement shall constitute a full and final settlement of any and all claims arising out of or related to the change set forth herein, including claims for impact and delay cost.

The Contract Administrator has directed the Contractor to increase the penal sum of the existing Performance and Payment Bonds or to obtain additional bonds on the basis of a \$25,000.00 or greater value Change Order.

Check if applicable and provide written confirmation from the bonding company/agent (attorney-in-fact) that the amount of the Performance and Payment bonds have been adjusted to 100% of the new contract amount.

Accepted: \_\_\_\_\_, 20\_\_\_\_

By: \_\_\_\_\_  
*Contractor*

By: \_\_\_\_\_  
*Engineer*

By: \_\_\_\_\_  
*Owner*