

# TOWN OF DAVIE

## TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Larry Peters/797-1114 by Herb Hyman/797-1016

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** District 4

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH ENGINEER CONTROLS SYSTEMS CORP. FOR VISTA FILARE DRAINAGE IMPROVEMENTS.

**REPORT IN BRIEF:** The Town Council approved the bid by Engineer Controls Systems Corp. for Vista Filare drainage improvements by Resolution R-2004-81. Upon receipt of the approved resolution, the contractor was able to obtain the necessary performance and payment bonds to be included in the contract document. Six (6) copies of the contract are attached for signature by appropriate Town staff.

**PREVIOUS ACTIONS:** Council approved the bid by Resolution R-2004-81.

**CONCURRENCES:** n/a.

**FISCAL IMPACT:**

Has request been budgeted?           yes

If yes, expected cost: \$360,500.00

Account Name: Capital Improvement Program-Drainage Projects Account

Additional Comments: Not applicable

**RECOMMENDATION(S):** Motion to approve the resolution.

**Attachment(s):**

Resolution and contract

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH ENGINEER CONTROLS SYSTEMS CORP. FOR VISTA FILARE DRAINAGE IMPROVEMENTS.

WHEREAS, the Town Council approved Resolution R-2004-81 accepting the bid from Engineer Controls Systems Corp. for Vista Filare drainage improvements; and

WHEREAS, it is in the Town's best interest to execute a contract for such services; and

WHEREAS, after review, the Town Council authorizes the Mayor to execute a contract with Engineer Controls Systems Corp.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council authorizes the Mayor to execute a contract with Engineer Controls Systems Corp. for Vista Filare drainage improvements which is attached hereto and identified as Attachment "A".

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

Attest:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004

**SECTION 00500  
STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
ON THE BASIS OF UNIT PRICE**

THIS AGREEMENT is by and between the Town of Davie, a Florida Municipal Corporation (hereinafter called Owner) and Engineer Controls Systems Corp. (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1 - WORK**

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Vista Filare Drainage Improvements, pursuant to the Project Manual and Specifications for Bid No: B-04-17, opened March 11, 2004 attached hereto and incorporated herein.

**ARTICLE 2 - PROJECT OWNER**

2.01 The Project Owner is the Town of Davie. Mr. Larry Peters, P.E., Town Engineer or designee of the Town of Davie, shall act as Owner's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents. The Town of Davie will be referred to as the OWNER in the Contract Documents.

**ARTICLE 3 - PROJECT ENGINEER**

3.01 The Project has been designed by Chen and Associates Consulting Engineers, Inc., on behalf of the Town of Davie, Florida. Chen and Associates will be referred to as the ENGINEER in the Contract Documents.

**ARTICLE 4 - CONTRACT TIMES**

4.01 *Time of the Essence*

All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

The Work will be substantially completed within 120 days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 150 days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER \$ 500.00 for each day that expires after the time

specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$ 200.00 for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

#### **ARTICLE 5 - CONTRACT PRICE**

- 5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to below: For all Work, at the prices stated in CONTRACTOR's Bid, attached hereto as an exhibit.

#### **ARTICLE 6 - PAYMENT PROCEDURES**

6.01 *Submittal and Processing of Payments*

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the 1st day of each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

- A. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions. Ninety (90) % of Work completed (with the balance being retainage). If the Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be 5% retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 95% of the Work completed less the aggregate of payments previously made; and
- B. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 100 % of the Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 100% of ENGINEER's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

## ARTICLE 7 - INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest in accordance with the provisions of the Florida Prompt Payment Act, Section 218.70, et seq., Florida Statutes.

## ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:
- A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.
  - E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto
  - F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
  - G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
  - H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
  - I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## ARTICLE 9 - CONTRACT DOCUMENTS

### 9.01 *Contents*

- A. The Contract Documents consist of the following:
1. This Agreement (pages 00500-1 to 00500-7, inclusive);
  2. Performance Bond (pages 00610-1 to 00610-2, inclusive);
  3. Payment Bond (pages 00620-1 to 00620-2, inclusive);
  4. Other Bonds (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
  5. General Conditions (pages 00700-1 to 00700-44, inclusive);
  6. Supplementary Conditions (pages 00800-1 to 00800-3, inclusive);
  7. Technical Specifications as listed in the table of contents of the Project Manual;
  8. Drawings consisting of with a cover sheet and sheets numbered 1 through 8 inclusive, with each sheet bearing the following general title: Construction of Vista Filare Drainage Improvements;
  9. Addenda (numbers 1 to 2, inclusive);
  10. Exhibits to this Agreement (enumerated as follows):
    - a. Notice to Proceed (one page, inclusive);
    - b. CONTRACTOR's Bid (pages 00300-1 to 00300-10, inclusive);
    - c. Documentation submitted by CONTRACTOR prior to Notice of Award (\_\_\_ pages, inclusive);
  11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto, which items must be in writing signed by OWNER and CONTRACTOR to be effective:
    - a. Written Amendments;
    - b. Work Change Directives;
    - c. Change Order(s).
- B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04 of the General Conditions.

## ARTICLE 10 - MISCELLANEOUS

### 10.01 *Terms*

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

### 10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 10.03 *Successors and Assigns*

- A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### 10.05 *Indemnification*

- A. The Contractor agrees to indemnify and hold the City and its Agents harmless from any and all claims, suits, actions, damages, causes of action, or attorney fees, arising from any personal injury, loss of life, or damage to person or property sustained by reason of, or as a result of the Work performed.

The Contractor agrees to indemnify and hold the City and its Agents harmless from any and all claims, suits, actions, damages, causes of action, or attorney fees, arising from any personal injury, loss of life, or damage to person or property sustained by reason of, or as a result of the negligence of the Contractor, his employees, agents, or assigns.

(This space left blank intentionally)

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in quadruplicate. One counterpart each has been delivered to Owner, Contractor, Surety and Engineer. All portions of the Contract Documents have been designed or identified by Owner and Contractor or by Engineer on their behalf.

This Agreement will be effective on \_\_\_\_\_, 20 \_\_\_\_\_.

OWNER:

CONTRACTOR:

Town of Davie  
6591 Orange Drive  
Davie, Florida 33314

Engineer Controls Systems Corp  
1175 NE 125<sup>th</sup> Street, Suite #316  
North Miami, Florida 33161

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Print Name

Frank Zayas  
Print Name

Title

President  
Title

(CORPORATE SEAL)

(CORPORATE SEAL)

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

*ADDRESS FOR GIVING NOTICES*

*ADDRESS FOR GIVING NOTICES*

6591 Orange Drive  
Davie, Florida 33314

1175 NE 125<sup>th</sup> Street, Suite #316

North Miami, Florida 33161

Attach evidence of authority to sign and resolution or other document authorizing execution of Agreement.

License No. CUC1223852

Agent for service of process:  
\_\_\_\_\_

(If Contractor is a corporation, complete the certificate of authority to sign, page 00500-7)

APPROVED AS TO FORM:

\_\_\_\_\_  
TOWN ATTORNEY

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in quadruplicate. One counterpart each has been delivered to Owner, Contractor, Surety and Engineer. All portions of the Contract Documents have been designed or identified by Owner and Contractor or by Engineer on their behalf.

This Agreement will be effective on MAY 6, 20 04

OWNER:

CONTRACTOR:

Town of Davie

Engineer Controls Systems Corp

6591 Orange Drive

1175 NE 125<sup>th</sup> Street, Suite #316

Davie, Florida 33314

North Miami, Florida 33161

BY: \_\_\_\_\_

BY: [Signature]

Print Name \_\_\_\_\_

Print Name Frank Zavrs

Title \_\_\_\_\_

Title President

(CORPORATE SEAL)

(CORPORATE SEAL)

Attest: \_\_\_\_\_

Attest: [Signature]

ADDRESS FOR GIVING NOTICES

ADDRESS FOR GIVING NOTICES

6591 Orange Drive  
Davie, Florida 33314

1175 NE 125<sup>th</sup> Street, Suite #316

North Miami, Florida 33161

Attach evidence of authority to sign and resolution or other document authorizing execution of Agreement.

License No. CUC1223852

Agent for service of process: \_\_\_\_\_

(If Contractor is a corporation, complete the certificate of authority to sign, page 00500-7)

APPROVED AS TO FORM:

\_\_\_\_\_  
TOWN ATTORNEY

**CERTIFICATE  
(Sample)**

STATE OF FLORIDA)

COUNTY OF \_\_\_\_\_)

ss

**I HEREBY CERTIFY** that a meeting of the Board of Directors of \_\_\_\_\_  
\_\_\_\_\_, a  
corporation under the laws of the State of \_\_\_\_\_, held on \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_\_, the following resolution was duly passed and adopted:

**"RESOLVED**, that \_\_\_\_\_, as \_\_\_\_\_ President of the  
corporation, be and is hereby authorized to execute the Contract dated \_\_\_\_\_ 20\_\_\_\_\_  
between the Town of Davie, a municipal corporation, and this corporation, and that this execution thereof, attested  
by the Secretary of the corporation and with corporate seal affixed, shall be the official act and deed of this  
corporation."

I further certify that said resolution is now in full force and effect.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official seal of the corporation this \_\_\_\_\_  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Secretary

END OF DOCUMENT

SECTION 00610  
**Performance Bond**

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

---

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place  
of Business):

OWNER (Name and Address):

**CONTRACT**

Date:

Amount:

Description (Name and Location):

**BOND**

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_  
Name and Title:

**SURETY**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_  
Name and Title:  
(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_  
Name and Title:

**SURETY**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_  
Name and Title:

CERTIFICATE  
(Sample)

STATE OF FLORIDA)

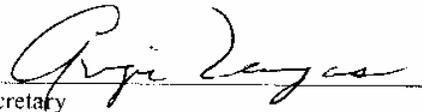
COUNTY OF MIAMI DADE  
SS

I HEREBY CERTIFY that a meeting of the Board of Directors of ENGINEER CONTROLS  
SYSTEMS CORP. a  
corporation under the laws of the State of FLORIDA, held on MAY  
06, 20 04, the following resolution was duly passed and adopted:

"RESOLVED, that FRANK ZAYAS, as \_\_\_\_\_ President of the  
corporation, be and is hereby authorized to execute the Contract dated MAY 06, 20 04  
between the Town of Davie, a municipal corporation, and this corporation, and that this execution thereof, attested  
by the Secretary of the corporation and with corporate seal affixed, shall be the official act and deed of this  
corporation."

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the corporation this \_\_\_\_\_  
6<sup>TH</sup> day of MAY, 20 04.

  
Secretary

END OF DOCUMENT

**This is the *front page* of the performance/payment bond issued in compliance with  
Florida Statute Chapter 255.05**

Surety Name: Great American Insurance Company  
2701 Maitland Center Parkway, Ste. 125  
Maitland, FL 32751  
407-667-0022

Bond Number: 4175325

Contractor Name: Engineer Controls Systems Corp  
1175 N.E. 125th Street, #316  
Miami, FL 33161  
305-895-4376

Owner Name: Town of Davie  
6591 Orange Drive  
Davie, FL 33314

Project Number: Bid No. B-04-17

Project Description: Town of Davie, Vista Filare Drainage Improvements, \$360,500.00

Project Address: Town of Davie, Broward County, FL

Legal Description of Property: Vista Filare Drainage Improvements

**This is the *front page* of the bond. All other pages are subsequent regardless of the  
pre-printed numbers.**

SECTION 00610

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.  
Bond No. 4175325

CONTRACTOR (Name and Address):  
Engineer Controls Systems Corp.  
1175 N.E. 125th Street, Ste. 316  
North Miami, FL 33161

SURETY (Name and Address of Principal Place  
of Business):  
Great American Insurance Company  
2701 Maitland Center Parkway, Ste. 125  
Maitland, FL 32751

OWNER (Name and Address):  
Town of Davie  
6591 Orange Drive  
Davie, FL 33314

CONTRACT

Date:

Amount: Three Hundred Sixty Thousand Five Hundred and XX/100 (\$360,500.00)

Description (Name and Location): Vista Filare Drainage Improvements

BOND

Date (Not earlier than Contract Date):

Amount: Three Hundred Sixty Thousand Five Hundred and XX/100 (\$360,500.00)

Modifications to this Bond Form: NONE

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR AS PRINCIPAL

Company: \_\_\_\_\_ (Corp. Seal)  
Engineer Controls Systems Corp.  
Signature: [Signature]  
Name and Title: FRANK ZAYAS, President

SURETY

Company: \_\_\_\_\_ (Corp. Seal)  
Great American Insurance Company  
Signature: [Signature]  
Name and Title: Michael Bonet, Attorney-In-Fact & Florida Resident Agent  
(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: \_\_\_\_\_ (Corp. Seal)  
Signature: \_\_\_\_\_ N/A  
Name and Title: \_\_\_\_\_

SURETY

Company: \_\_\_\_\_ (Corp. Seal)  
Signature: \_\_\_\_\_ N/A  
Name and Title: \_\_\_\_\_

SECTION 00620  
Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.  
Bond No. 4175325

CONTRACTOR (Name and Address):  
Engineer Controls Systems Corp.  
1175 N.E. 125th Street, Ste. 316  
North Miami, FL 33161

SURETY (Name and Address of Principal Place  
of Business):  
Great American Insurance Company  
2701 Maitland Center Parkway, Ste. 125  
Maitland, FL 32751

OWNER (Name and Address):

CONTRACT

Date:  
Amount: Three Hundred Sixty Thousand Five Hundred and XX/100 (\$360,500.00)  
Description (Name and Location):  
Vista Filare Drainage Improvements

BOND

Date (Not earlier than Contract Date):  
Amount: Three Hundred Sixty Thousand Five Hundred and XX/100 (\$360,500.00)  
Modifications to this Bond Form:

**THIS BOND IS AMENDED SO THAT THE PROVISIONS AND  
LIMITATIONS OF SECTION 255.05, FLORIDA STATUTES,  
IS INCORPORATED HEREIN BY REFERENCE.**

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature: Frank Zayas  
Name and Title: FRANK ZAYAS, PRESIDENT

SURETY

Company: (Corp. Seal)

Signature: Michael Bonet  
Name and Title: Michael Bonet, Attorney-In-Fact  
(Attach Power of Attorney) & Florida Resident  
Agent

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature: N/A  
Name and Title:

SURETY

Company: (Corp. Seal)

Signature: N/A  
Name and Title:

## **TERRORISM COVERAGE RIDER**

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

The Terrorism Risk Insurance Act of 2002 establishes a program within the Department of the Treasury, under which the federal government shares, with the insurance industry, the risk of loss from future terrorist attacks. The Act applies when the Secretary of the Treasury certifies that an event meets the definition of an Act of Terrorism. The Act provides that, to be certified, an Act of Terrorism must cause losses of at least five million dollars and must have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest to coerce the government or population of the United States.

To be attached to and form part of Bond No. 4175325, effective \_\_\_\_\_.

In accordance with the Terrorism Risk Insurance Act of 2002, we are providing this disclosure notice for bonds on which Great American Insurance Company, its affiliates (including, but not limited to Great American Alliance Insurance Company, Great American Insurance Company of New York and Great American Assurance Insurance Company) is the surety.

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the terms of the Act. The federal share equals 90% of that portion of the amount of such insured losses that exceeds the applicable insurer retention.

This Coverage Part/Policy covers certain losses caused by terrorism. In accordance with the Federal Terrorism Risk Insurance Act of 2002, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to the coverage arising from losses for Terrorist Acts Certified under that Act.

The portion of your annual premium that is attributable to coverage for Terrorist Acts Certified under the Act is : \$:00.

# GREAT AMERICAN INSURANCE COMPANY®

Administrative Office: 580 WALNUT STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by  
this power of attorney is not more than THREE

No. 017672

## POWER OF ATTORNEY

**KNOW ALL MEN BY THESE PRESENTS:** That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below its true and lawful attorney-in-fact, for it and in its name, place and stead to execute in behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

| Name              | Address                 | Limit of Power |
|-------------------|-------------------------|----------------|
| MICHAEL A. HOLMES | ALL OF                  | ALL            |
| GERALD J. ARCH    | FT. LAUDERDALE, FLORIDA | UNLIMITED      |
| MICHAEL BONET     |                         |                |

This Power of Attorney revokes all previous powers issued in behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 31ST day of JANUARY, 2003  
Attest  
GREAT AMERICAN INSURANCE COMPANY

STATE OF OHIO, COUNTY OF HAMILTON - ss:

DOUGLAS R. BOWEN (513-369-3811)

On this 31ST day of JANUARY, 2003, before me personally appeared DOUGLAS R. BOWEN, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is the Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated March 1, 1993.

*RESOLVED: That the Division President, the several Division Vice Presidents and Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.*

*RESOLVED FURTHER: That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract or suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.*

## CERTIFICATION

I, RONALD C. HAYES, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of March 1, 1993 have not been revoked and are now in full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Contract, which is incorporated herein by reference.
2. If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.
3. If there is no OWNER Default, the Surety's obligation under this Bond shall arise after:
  - 3.1. The OWNER has notified the CONTRACTOR and the Surety at the addresses described in paragraph 10 below, that the OWNER is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the OWNER, the CONTRACTOR and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the OWNER's right, if any, subsequently to declare a CONTRACTOR Default; and
  - 3.2. The OWNER has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Contract. Such CONTRACTOR Default shall not be declared earlier than twenty days after the CONTRACTOR and the Surety have received notice as provided in paragraph 3.1; and
  - 3.3. The OWNER has agreed to pay the Balance of the Contract Price to:
    - 3.3.1. The Surety in accordance with the terms of the Contract;
    - 3.3.2. Another contractor selected pursuant to paragraph 4.3 to perform the Contract.
4. When the OWNER has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 4.1. Arrange for the CONTRACTOR, with consent of the OWNER, to perform and complete the Contract; or
  - 4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
  - 4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the OWNER and the contractor selected with the OWNER's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the OWNER the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the OWNER resulting from the CONTRACTOR Default; or
  - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances;
    - 4.4.1. After investigation, determine the amount for which it may be liable to the OWNER and, as soon as practicable after the amount is determined, tender payment therefore to the OWNER; or
    - 4.4.2. Deny liability in whole or in part and notify the OWNER citing reasons therefore.
5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER. If the Surety proceeds as provided in paragraph 4.4, and the OWNER refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the OWNER shall be entitled to enforce any remedy available to the OWNER.
6. After the OWNER has terminated the CONTRACTOR's right to complete the Contract, and if the Surety elects to act under paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Contract. To a limit of the amount of this Bond, but subject to commitment by the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:
  - 6.1. The responsibilities of the CONTRACTOR for correction of defective Work and completion of the Contract;
  - 6.2. Additional legal, design professional and delay costs resulting from the CONTRACTOR's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and
  - 6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the CONTRACTOR.
7. The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after CONTRACTOR Default or within two years after the CONTRACTOR ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
  - 12.1. Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR under the Contract after all proper adjustments have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other Claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Contract.
  - 12.2. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.
  - 12.3. CONTRACTOR Default: Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
  - 12.4. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

(End of Section)

**SECTION 00620**  
**Payment Bond**

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

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CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place  
of Business):

OWNER (Name and Address):

**CONTRACT**

Date:

Amount:

Description (Name and Location):

**BOND**

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

**SURETY**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

**SURETY**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the OWNER to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to the OWNER, this obligation shall be null and void if the CONTRACTOR:
  - 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2. Defends, indemnifies and holds harmless the OWNER from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the CONTRACTOR and the Surety, and provided there is no OWNER Default.
3. With respect to Claimants, this obligation shall be null and void if the CONTRACTOR promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
  - 4.1. Claimants who are employed by or have a direct contract with the CONTRACTOR have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - 4.2. Claimants who do not have a direct contract with the CONTRACTOR:
    1. Have furnished written notice to the CONTRACTOR and sent a copy, or notice thereof, to the OWNER, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
    2. Have either received a rejection in whole or in part from the CONTRACTOR, or not received within 30 days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR had indicated the claim will be paid directly or indirectly; and
    3. Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR.
5. If a notice required by paragraph 4 is given by the OWNER to the CONTRACTOR or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
  - 6.1. Send an answer to the Claimant, with a copy to the OWNER, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - 6.2. Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the Work.
9. The Surety shall not be liable to the OWNER, Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the OWNER or the CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.
14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS
  - 15.1. Claimant: An individual or entity having a direct contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
  - 15.2. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.
  - 15.3. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

(End of Section)