

TENDER AGREEMENT

This Tender Agreement ("Agreement") is entered into this 6th day of JUNE, 2007 by and between Arch Insurance Company ("Surety") and the Board of County Commissioners of Nassau County, Florida ("Owner").

WHEREAS, on February 27, 2006, the Owner entered in to a Contract ("Original Contract") with Douglas Asphalt Company, a Georgia corporation ("Original Contractor"), for the performance of County Road 121 construction work ("Project"); and

WHEREAS, in conjunction with the Original Contract, the Surety made, executed and delivered to the Owner Performance and Payment Bonds ("Performance and Payment Bonds") each in the amount of \$6,897,954.56; and

WHEREAS, the Owner and Original Contractor on November 8, 2006 entered into an Amendment # One to Original Contract dated February 27, 2006 ("Amendment # One"), which changed the scope of work ("Work") to be performed, which revised Work shall be defined as the "Redefined Project"; and

WHEREAS, on April 16, 2007, the Original Contractor informed the Owner that it would not be able to complete the Project; and

WHEREAS, on April 20, 2007, the Owner declared the Original Contractor in default, formally terminated the Original Contractor's right to complete Amendment # One, agreed to pay the balance of the Amendment # One proceeds to the Surety or a contractor selected to perform the work in accordance with the terms of the Amendment # One and called upon the Surety to complete the Work associated with Amendment # One in compliance with the terms and conditions of its Performance Bond; and

WHEREAS, APAC-Southeast, Inc. ("Completion Contractor") has submitted to the Surety a Bid Form ("Bid Proposal") dated May 18, 2007 in response to the Surety's Request for Quotation ("RFQ") dated May 1, 2007 for completion of the Work; and

WHEREAS, the Surety has tendered the Completion Contractor for completion of the Redefined Project to the Owner who desires to enter into a contract for the completion of Redefined Project ("Completion Contract") with the Completion Contractor; and

WHEREAS, the Surety has agreed to make a cash payment to the Owner in settlement of the Surety's obligations and responsibilities under its Performance Bond.

NOW, THEREFORE, the Surety and the Owner, for and in consideration of the mutual obligations and promises hereinafter set forth, do contract and agree as follows:

1. Recitals. The factual recitals set forth at the beginning of this Agreement are true and correct and are incorporated into this Agreement.

2. Surety's Satisfaction of Performance Bond Obligations and Release.

- (a) Within seven (7) days from the full execution of this Agreement, the Surety agrees to pay the Owner the sum of \$965,000.00.

The Owner expressly agrees that the payment of the foregoing sum to the Owner by the Surety pursuant to this Agreement shall constitute full and complete release satisfaction and discharge of any and all obligations or liability which the Surety now has or might have in the future under the Performance Bond. The Owner acknowledges and agrees that the Surety, except for its continuing liability as set forth in this Agreement, shall have no further or additional obligations or liability under the Performance Bond to make any further or additional payments in the future for any claims, losses or damages of any kind, including, without limitation, liquidated damages and additional engineering and related fees. The Owner will surrender and deliver to the Surety the original Performance Bond simultaneously with the Owner's execution of this Agreement.

- (b) In consideration of Owner accepting the payment being made by the Surety, the Surety hereby fully remise, release, acquit and forever discharge the Owner and its subsidiaries, parent and affiliate companies, agents, legal and other representative, directors, officers, employees, shareholders, attorneys, trustees, successors and assigns of and from any and all rights, claims, liabilities, demands, actions and causes of action, of any nature whatsoever whether arising at law or in equity, which Surety may have had, may now have, or may hereafter have, whether known to it or not, arising out of the Contract.
- (c) In consideration of Owner accepting the payment being made by the Surety, the Owner does hereby: (i) remise, release, acquit and forever discharge the Surety and its subsidiaries, parent and affiliate companies, agents, legal and other representative, directors, officers, employees, shareholders, attorneys, trustees, successors and assigns of and from any and all rights, claims, liabilities, demands, actions and causes of action, of any nature whatsoever whether arising at law or in equity, which Owner may have had, may now have, or may hereafter have, whether known to it or not, arising out of the Contract and Performance Bond; and (ii) assign unto Surety, its successors and assigns, any and all rights, demands, claims, causes of action which Owner has as against the Original Contractor arising out of, as a result of and/or on the basis of the default and breach by the Original Contractor of the Original Contract and/or Amendment # One, and Owner gives Surety, its successor and assigns, full

power and authority for its own use and benefit, but at its own costs, to ask, demand, collect, receive, compound and/or release and its name or otherwise, to prosecute and withdraw any claims, suits or proceedings at law or equity as against the Original Contractor in its efforts to obtain recovery upon its right under this assignment.

- (d) Provided, however, notwithstanding the releases provided and set forth herein, nothing set forth herein shall release the Owner or the Surety for the respective liabilities and obligations arising under and set forth in this Agreement.

3. Surety's Payment Bond Obligations. Nothing contained herein shall constitute a release of Surety's obligations under its Payment Bond. Surety does hereby reaffirm and ratify any and all obligations under its Payment Bond, subject to its penal sum limit, terms and limitations, which include, without limitation, all payment claims certified as due and payable by Owner's representatives as required pursuant to the Contract. All Payment Bond payments properly made by the Surety shall be credited against the penal sum of the Payment Bond. Nothing in this Agreement constitute a waiver of such penal sum or an increase in liability of the Surety under the Payment Bond.

4. Surety's Rights Against Original Contractor. Nothing contained in this Agreement constitutes a waiver by the Surety of any rights which it may have to seek reimbursement or indemnity with respect to the payment which the Surety is making pursuant to this Agreement, with respect to any payments which the Surety makes under the Payment Bond issued, nor with respect to any fees and expenses incurred by the Surety as a result of having issued either the Performance Bond or the Payment Bond. It is expressly understood and agreed that the Surety is reserving all rights, claims and causes of action which it now has or which may arise in the future to seek reimbursement or indemnity with respect to all payments of any kind made by the Surety involving or arising out of the Project or the Performance Bond or Payment Bond and with respect to any and all expenses incurred by the Surety as a result of having issued the Payment Bond or the Performance Bond.

5. Remedies; Governing Law. The remedies provided in this Agreement are nonexclusive and cumulative in nature unless otherwise stated herein. This Agreement shall be construed and governed by the laws of the State of Florida and shall bind the heirs, personal representatives, assignees and successors in interest of the parties hereto.

6. Binding Effect. This Agreement will be binding upon the parties hereto and shall inure to the benefit of their respective heirs, administrators, successors, agents, principals, employees, shareholders, officers, representatives and assigns of the parties hereto. It is further understood that this Agreement is for the benefit of the parties hereto and shall not create any right in any person or entity not a party hereto or increase the obligation of any party hereto to any third person or entity.

7. Severability. In the event that any term or provision of this Agreement, or any portion thereof, shall be determined by a court of competent jurisdiction to be void, invalid or unenforceable for any reason whatsoever, the remaining terms and provisions shall remain in full force and effect as though the void, invalid or unenforceable provision was deleted therefrom.

8. Waiver. The failure of the Owner or Surety to enforce, at any time, any provision of this Agreement shall not be construed to be a waiver of such provision or the right of the Owner, Surety or Completion Contractor thereafter to enforce such provision. No waiver shall be valid and binding against the Owner or Surety unless in writing and signed by the Owner and Surety.

9. Merger: Complete Agreement. The Owner and Surety, as the sole parties to this Agreement, intend that this written Agreement, with any supplemental provisions or addenda as are attached to the Agreement and signed by all parties, along with Completion Contractor's proposal and all Exhibits and Schedules thereto and the agreements referenced in Section 1 hereof, constitute the entire agreement between and among them. Any prior understandings or agreements, and any representations made by either party to the other, including, but not limited to any representations or statements made in any sales or promotional literature or material, not included or specifically addressed in this Agreement, are deemed to be merged herein and not binding as to the parties as this Agreement constitutes the complete understanding and agreement between the parties. This Agreement is for the sole benefit of the parties hereto, their respective successors and assigns, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement.

10. Construction of Agreement. The Owner and Surety acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one the terms, conditions, and restrictions, and as to the effect of all the provisions of this Agreement, and the Owner and Surety agree to the enforcement of any and all of these provisions and execute this Agreement with full knowledge of these provisions. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or constructing the provisions shall not apply the presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the document.

11. Attorneys' Fees. In the event any party files a suit or institutes an adversary proceeding in connection with enforcement of the provisions of this Contract, then the party which prevails in such action or proceeding shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees (including appellate or bankruptcy proceedings) and court costs incurred in such suit from the party from whom enforcement was sought.

12. Notices. All notices, demands, consents, statements, offers, reports and other communications required or permitted under this Agreement shall be in writing, signed by the party making same, and shall be delivered personally (which shall include confirmed receipt of a telecopy facsimile), by nationally recognized overnight courier service, or by registered or certified mail, return receipt requested, to the other parties hereto, at the addresses set forth

below. The date of such notice or communication shall be the date of receipt. In the event any date on which any notice or election is required to be made hereunder falls on a Saturday, Sunday or federal holiday, then, the date on which such notice is required to be given or made hereunder shall, for all purposes, be deemed to be the next following business day. Any notice to Owner shall be addressed as follows:

Board of County Commissioners of Nassau County
P. O. Box 1010
Fernandina Beach, FL 32035-1010
Telephone: (904) 321-7377
Telecopier: (904) 321-2658
Attention: Charlotta Young

with a copy to:

David Hallman, Esquire
County Attorney
Nassau County, Florida
P. O. Box 1010
Fernandina Beach, FL 32035-1010
Telephone: (904) 491-7380
Telecopier: (904) ~~548-4590~~ 321-2658

if given to Surety, shall be addressed as follows:

Gail Latham, Esquire
Senior Claims Attorney
Arch Insurance Company
Three Parkway, Suite 1500
Philadelphia, PA 19102
Telephone: (215) 606-1634
Telecopier: (866) 455-7099

with a copy to:

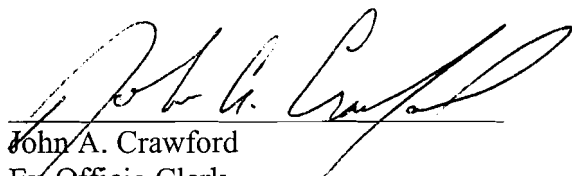
Michael T. Trocke, Esquire
Shumaker, Loop & Kendrick, LLP
101 E. Kennedy Boulevard, Suite 2800
Tampa, FL 33602
Telephone: (813) 229-7600
Telecopier: (813) 229-1660

AND

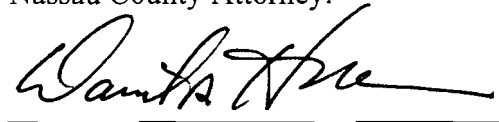
Michael J. Sugar, Jr., Esquire
Forcon International Corp.
P.O. Box 2730
Brandon, FL 33509-2730
Telephone: (813) 684-7686
Telecopier: (813) 654-1481

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals to this Contract the day and year first set forth above, and the individuals who execute this Contract personally represent and warrant that they have full authority to execute this Contract on behalf of the respective parties.

ATTEST as to Chairman's
Signature:

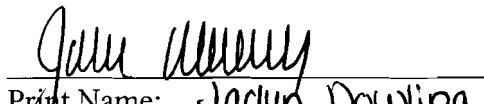

John A. Crawford
Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney:


David A. Hallman

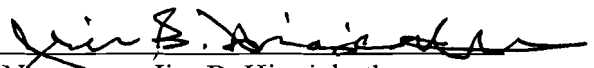
Signed and acknowledged
in the presence of:



Print Name: Peter Apostolides


Print Name: Jacyln Dowling

OWNER:

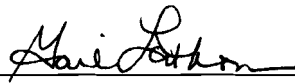
**BOARD OF COUNTY
COMMISSIONERS OF NASSAU
COUNTY, FLORIDA**

By: 
Print Name: Jim B. Higginbotham
Title: Chairman

REVIEWED BY GENE KNAGA
DEPUTY COMPTROLLER
 DATE 4/8/07

SURETY:

ARCH INSURANCE COMPANY

By: 
Gail Latham, Esquire
Senior Claims Attorney