

**SECTION 00 52 15****AGREEMENT**

THIS AGREEMENT is dated as of the 8<sup>th</sup> day of April in the year 2013 by and between the **Board of County Commissioners, Nassau County (Owner)** and **Kirby Development, Inc., located at 4312 Pablo Professional Court, Jacksonville, Florida 32224 (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:

This project consists of corridor improvements (milling and resurfacing, right turn lane construction, signalization, pavement marking) for the 14<sup>th</sup> Street & Lime Street Intersection. The work to be performed is generally described as roadway reconstruction and includes:

- Milling and resurfacing of existing asphalt pavement
- Curb and gutter construction.
- Turn lane construction.
- Erosion control.
- Traffic maintenance and protection.
- Seeding and sodding of disturbed areas.
- Signalization improvements.
- Signage and Pavement Markings.

All work shall be in accordance with the construction drawings, specifications, and contract documents.

**ARTICLE 2 - THE PROJECT**

**2.01** The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**14<sup>th</sup> Street at Lime Street Intersection Improvements**  
**Bid Number NC13-005, Nassau County, Florida**

CS-12-159  
CS 13-36

SECTION 00 65 19

CERTIFICATE OF FINAL COMPLETION

Project: 14th Street at Lime Street Intersection Improvements

Purchase Order No.: CM 1954

Contract No.: NC 13-005

This Certificate of Final Completion applies to:

The Work under this Contract has been inspected by authorized representatives of the COUNTY and the CONTRACTOR and all Work is hereby declared to be complete in accordance with the Contract

Documents on: 12/19/2013

DATE

SIGNED:

PARSONS BRINCKERHOFF  
NASSAU COUNTY CONSTRUCTION INSPECTOR

By: Mato J. Buel

DATE: 12-19-2013

NASSAU COUNTY PROJECT MANAGER

By: [Signature]

DATE: 12-19-2013

NASSAU COUNTY ROAD & BRIDGE REPRESENTATIVE

By: [Signature]

DATE: 12-19-2013

ENGINEER OF RECORD:

[Signature]

By: Cannely & Wicker Inc.

DATE: 12-30-2013

CONTRACTOR:

Kings Development Inc

By: Pat B. King

DATE: 12-19-2013

### **ARTICLE 3 - ENGINEER OF RECORD**

- 3.01** The Project has been designed by Connelly & Wicker Inc., who is to act as the County's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer of Record in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

### **ARTICLE 4 - CONTRACT TIMES**

#### **4.01 Time of the Essence**

- A. 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.
- B. The Contractor hereby agrees to commence work under this contract on a date to be specified in written "Notice to Proceed" of the County and to fully complete the project as specified in Section 4.02 of this Agreement.

#### **4.02 Days to Achieve Substantial Completion and Final Payment**

The Work will be substantially completed within 150 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 45 calendar days from the date of substantial completion. Total contract time shall be 195 calendar days; for everyday the work goes beyond substantial completion, a day will be removed from final completion so the total days equal 195 calendar days.

#### **4.03 Milestones**

Contractor must meet the following milestones:

- A. 15 days from NTP: Produce shop drawings to the Structural Engineer
- B. 25 days from NTP: Order the Mast Arm Assembly
- C. 100 days from NTP: Complete all work not associated with the Mast Arm Assembly construction

D. 120 Days from NTP: Complete the drilled shaft

#### **4.04 Liquidated Damages**

A. Contractor and the County recognize that time is of the essence of this Agreement and that the County 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 legal or arbitration proceeding the actual loss suffered by the County if the Work is not completed on time. Accordingly, instead of requiring any such proof, the County and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the County \$1,000.00 for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion and 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 the County, Contractor shall pay the County \$500.00 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** The County 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 Paragraph 25 "Payments to Contractor" of the General Conditions and Paragraphs 5.01A and 5.01 B below:

- A. For all Work, at the prices stated in the Contractor's Bid, attached hereto as an exhibit.
- B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in Contractor's Bid (attached hereto as an exhibit) for a Total of All Unit Prices of:

Two Hundres Nineteen Thousand Two Hundred Thirty Seven Dollars and Thirty Five Cents  
(\$219,237.35)

As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by

Engineer of Record as provided in paragraph 9.07 of the General Conditions. The final payment for all Unit Price Work shall be an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual completed and accepted quantity of each item. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

## **ARTICLE 6 - PAYMENT PROCEDURES**

### **6.01 Submittal and Processing of Payments**

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by the County as provided in the General Conditions.

### **6.02 Progress Payments; Retainage**

- A. The County shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment once 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 as provided 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:
  - 1. 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 of Record may determine or the County may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:
    - a. 90% percent of the Work completed (with the balance being retainage)
    - b. 90% percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
    - c. At 50% completion, no additional amounts will be retained unless the Engineer of Record and the County certifies that the Work is not proceeding satisfactorily, but amounts previously retained will not be paid to Contractor. At 50% completion or any time thereafter when the progress of the Work is not satisfactory, additional amounts may be retained but in no event will total retainage be more than 10 percent of the Work completed and materials and

equipment delivered, suitably stored, and accompanied by required documentation.

2. Upon Substantial Completion, the County shall pay an amount sufficient to increase total payments to Contractor to 95% percent of the Contract Price (with the balance being retainage), less such amounts as Engineer of Record shall determine or the County may withhold, for incomplete work and for other items in accordance with Paragraph 14.02 of the General Conditions.

### **6.03 Final Payment**

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, the County shall pay the remainder of the Contract Price as recommended by Engineer of Record 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 at the rate of 0 percent per annum.

### **ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS**

- 8.01** In order to induce the County 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 Bidding Documents, and safety precautions and programs incident thereto.
- F. Contractor does not consider that any additional 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 the County 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 of Record written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer of Record is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of the Work.

## **ARTICLE 9 - CONTRACT DOCUMENTS**

### **9.01 Contents**

- A. The Contract Documents consist of the following:

1. This Agreement
  2. Addenda, if any
  3. General Conditions
  4. Supplementary Conditions
  5. Technical Specifications
  6. Construction Drawings
  7. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid
    - b. Documentation submitted by Contractor prior to Notice of Award
    - c. Project Manual table of contents
    - d. Construction Drawing index
    - e. Performance Bond
    - f. Payment Bond
  8. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Notice to Proceed
    - b. Work Change Directives
    - c. Change Orders
    - d. Certificate of Substantial Completion
    - e. Certificate of Final Inspection
    - f. Certificate of Engineer
    - g. Certificate of Final Completion
    - h. CONTRACTOR'S release
    - i. Drawings and plans
    - j. Supplemental Agreements
    - k. CONTRACTOR'S Waiver of Lien (Partial)
    - l. CONTRACTOR'S Waiver of Lien (Final and Complete)
    - m. Subcontractor/Vendor's Waiver of Lien (Final and Complete)
    - n. Consent of Surety to Final Payment
    - o. Instructions to Bidders
    - p. Contractor's Insurance Requirements, as set forth in the Bid Documents
- 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 and the Supplementary 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. The County 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 the County 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 Other Provisions**

None

IN WITNESS WHEREOF, the County and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to the County, Contractor, and Engineer of Record. All portions of the Contract Documents have been signed or identified by the County and Contractor or identified by Engineer of Record on their behalf.

This Agreement will be effective on the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver (which is the Effective Date of the Agreement).

OWNER

KIRBY DEVELOPMENT, INC.

Nassau County Board of County Commissioners

Signed: Peter B. Kirby

Signed: [Signature]

Title: President

Title: Chair

Date: 4-8-2013

Date: 04/08/13

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: [Signature]

Attest: Lisa Kirby

Title: Ex-Officio Clerk

Title: Secretary / Treasurer

Address for giving notices:

Address for giving notices:

Nassau County Board of County Commissioners

Kirby Development, Inc

96135 Nassau Place, Suite 1

4312 Pablo Professional Court

Yulee, Florida 32097

Jacksonville, Florida 32224

Phone: 904-491-7380 FAX: 904-321-5784

Phone: 904-821-5010 FAX: 904-821-5011

License CGC056922 / CUC056973

(Where applicable)

Approved as to form by County Attorney

Agent for service of process:

[Signature]  
Signature

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)

FLORIDA DEPARTMENT OF STATE DIVISION OF CORPORATIONS					
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<a href="#">Events</a>	<a href="#">Name History</a>	<input type="text" value="Officer/RA Name Search"/> <input type="button" value="Search"/>			
<b>Detail by Officer/Registered Agent Name</b>					
<b><u>Florida Profit Corporation</u></b>					
KIRBY DEVELOPMENT, INC.					
<b><u>Filing Information</u></b>					
<b>Document Number</b>	P06000112375				
<b>FEI/EIN Number</b>	205877898				
<b>Date Filed</b>	08/28/2006				
<b>State or Country</b>	FL				
<b>Status</b>	ACTIVE				
<b>Last Event</b>	NAME CHANGE AMENDMENT				
<b>Event Date Filed</b>	10/10/2007				
<b>Event Effective Date</b>	NONE				
<b><u>Principal Address</u></b>					
4312 PABLO PROFESSIONAL COURT JACKSONVILLE, FL 32224					
Changed: 04/03/2008					
<b><u>Mailing Address</u></b>					
4312 Pablo Professional Court JACKSONVILLE, FL 32224					
Changed: 01/28/2013					
<b><u>Registered Agent Name &amp; Address</u></b>					
KIRBY, PETER B 4312 PABLO PROFESSIONAL COURT JACKSONVILLE, FL 32224					
Address Changed: 01/06/2012					
<b><u>Officer/Director Detail</u></b>					
<b>Name &amp; Address</b>					
Title P					
KIRBY, PETER B 4312 PABLO PROFESSIONAL COURT JACKSONVILLE, FL 32224					
Title ST					



Performance and Payment Bond

Public Work

**Surety Bond No.: 1000019**

As to the Contractor/Principal:

Name: Kirby Development, Inc.

Principal Business Address: 4312 Pablo Professional Court, Jacksonville, FL 32224

Telephone: (904) 821-5010

As to the Surety:

Name: FCCI Insurance Company

Principal Business Address: 6300 University Parkway, Sarasota, FL 34240

Telephone: (800) 226-3224

As to the Owner of the Property/Contracting Public Entity:

Name: Nassau County Board of County Commissioners

Principal Business Address: 96135 Nassau Place, Suite 1, Yulee, FL 32097

Telephone: (904) 491-7380

**Project Description: 14<sup>th</sup> Street at Lime Street Intersection Improvements**  
**Bid #NC13-005, Nassau County, Florida**

**Legal Description of Project: 14<sup>th</sup> Street at Lime Street Intersection Improvements**  
**Bid #NC13-005, Nassau County, Florida**

This bond has been furnished to comply with the requirements of F.S.A. 255.05. This bond is hereby amended such that All provisions and limitations, including conditions, notice and time limitations of F.S.A. 255.05 are incorporated herein by reference. Any provisions of this bond which conflicts with or purports to grant broader or more expanded coverage in excess of the minimum requirements of the applicable statute shall be deemed herefrom. This bond is a statutory bond, not a common law bond.

*This is the front page of the performance/ payment bond(s) regardless of preprinted numbers on the other pages issued in compliance with Florida Statute 255.05*

SECTION 00 61 15

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):

Kirby Development, Inc.  
4312 Pablo Professional Court, Jacksonville, FL 32224

FCCI Insurance Company  
6300 University Parkway  
Sarasota, FL 34240

OWNER (Name and Address):  
Nassau County Board of County Commissioners  
96135 Nassau Place, Suite 1, Yulee, FL 32097  
CONTRACT

Date: April 8, 2013

Amount: \$219,237.35

Description (Name and Location): 14th Street at Lime Street Intersection Improvements  
Bid #NC13-005, Nassau County, Florida

BOND

Bond Number: 1000019

Date (Not earlier than Contract Date): April 19, 2013

Amount: \$219,237.35

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: Kirby Development, Inc.

Signature: Peter B. Kuzi (Seal)

Name and Title: Resident

SURETY

FCCI Insurance Company (Seal)

Surety's Name and Corporate Seal

By: Walter N. Myers

Signature and Title: Walter N. Myers  
(Attach Power of Attorney) Attorney-In-Fact

Attest: Tina Montañez

Signature and Title: Tina Montañez  
Witness

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

CONTRACTOR AS PRINCIPAL

SURETY

Company:

Signature: \_\_\_\_\_ (Seal)

\_\_\_\_\_ (Seal)

Name and Title:

Surety's Name and Corporate Seal

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

Signature and Title

(Attach Power of Attorney)

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

Signature and Title:

**EJCDC No. C-610 (2002 Edition)**

**Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.**

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the County for the performance of the Contract, which is incorporated herein by reference.
2. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.
3. If there is no the County Default, Surety's obligation under this Bond shall arise after:
  - 3.1 The County has notified Contractor and Surety, at the address described in Paragraph 10 below, that the County is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If the County, Contractor and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the County's right, if any, subsequently to declare a Contractor Default; and
  - 3.2 The County has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 3.1; and
  - 3.3 The County has agreed to pay the Balance of the Contract Price to:
    1. Surety in accordance with the terms of the Contract;
    2. Another contractor selected pursuant to Paragraph 4.3 to perform the Contract.
4. When the County has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:
  - 4.1 Arrange for Contractor, with consent of the County, 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 County for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the County and Contractor selected with the County'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 County the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the County resulting from 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:
1. After investigation, determine the amount for which it may be liable to the County and, as soon as practicable after the amount is determined, tender payment therefore to the County; or
  2. Deny liability in whole or in part and notify the County citing reasons therefore.
5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from the County to Surety demanding that Surety perform its obligations under this Bond, and the County shall be entitled to enforce any remedy available to the County. If Surety proceeds as provided in Paragraph 4.4 and the County refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice the County shall be entitled to enforce any remedy available to the County.
6. After the County has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of Surety to the County shall not be greater than those of Contractor under the Contract, and the responsibilities of the County to Surety shall not be greater than those of the County under the Contract. To a limit of the amount of this Bond, but subject to commitment by the County of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:
- 6.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
  - 6.2 Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions or failure to act of 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 Contractor.
7. Surety shall not be liable to the County or others for obligations of 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 County or its heirs, executors, administrators, or successors.

8. Surety hereby waives notice of any change, including changes of time, to 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 Contractor ceased working or within two years after 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 Surety, the County, or 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 requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a stationary bond and not as a common law bond.

## 12. Definitions

- 12.1 **Balance of the Contract Price:** The total amount payable by the County to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by the County in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
- 12.2 **Contract:** The agreement between the County and Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 12.3 **Contractor Default:** Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- 12.4 **The County Default:** Failure of the County, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

SECTION 00 61 16

PAYMENT BOND

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

CONTRACTOR (Name and Address): Kirby Development, Inc.  
4312 Pablo Professional Court, Jacksonville, FL 32224

SURETY (Name and Address of Principal Place of Business): FCCI Insurance Company  
6300 University Parkway  
Sarasota, FL 34240

OWNER (Name and Address): Nassau County  
Board of County Commissioners  
96135 Nassau Place, Suite 1, Yulee, FL 32097

CONTRACT

Date: April 8, 2013

Amount: \$219,237.35

Description (Name and Location): 14th Street at Lime Street Intersection Improvements  
Bid #NC13-005, Nassau County, Florida

BOND

Bond Number: 1000019

Date (Not earlier than Contract Date): April 19, 2013

Amount: \$219,237.35

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: Kirby Development, Inc.

Signature: *[Signature]* (Seal)

Name and Title: *President*

SURETY

FCCI Insurance Company (Seal)

Surety's Name and Corporate Seal

By: *[Signature]*

Signature and Title: *Walter N. Myers*

(Attach Power of Attorney) Attorney-In-Fact

Attest: *[Signature]*

Signature and Title: *Tina Montanez*

Witness

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

CONTRACTOR AS PRINCIPAL

SURETY

Company:

Signature: \_\_\_\_\_ (Seal)

\_\_\_\_\_ (Seal)

Name and Title:

Surety's Name and Corporate Seal

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

Signature and Title

(Attach Power of Attorney)

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

Signature and Title:

**EJCDC No. C-610 (2002 Edition)**

**Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, the American Institute of Architects, the American Subcontractors Association, and the Associated Specialty Contractors.**

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the County to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to the County, this obligation shall be null and void if Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies, and holds harmless the County from all claims, demands, liens or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided the County had promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits to Contractor and Surety, and provided there is no the County Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the addresses described in Paragraph 12) and sent a copy, or notice thereof, to the County, 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 Contractor:
    1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to the County, 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 or equipment 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 Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which 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 Surety and sent a copy, or notice thereof, to the County, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by the County to Contractor or to Surety, that is sufficient compliance.
6. When a Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at Surety's expense take the following actions:
  - 6.1 Send an answer to that Claimant, with a copy to the County, 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. 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 Surety.
8. Amounts owed by the County to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and the County accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to the County's priority to use the funds for the completion of the Work.
9. Surety shall not be liable to the County, Claimants, or others for obligations of Contractor that are unrelated to the Contract. The County 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. 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, 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 Surety, the County, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the County, or 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 requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory 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, 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 Contractor, or with a first-tier subcontractor of 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 Contractor and 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 County and Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 The County Default: Failure of the County, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.



### GENERAL POWER OF ATTORNEY

Know all men by these presents: That the FCCI Insurance Company, a Corporation organized and existing under the laws of the State of Florida (the "Corporation") does make, constitute and appoint:

Walter N. Myers; Ben Powell; Robert T. Theus

Each, its true and lawful Attorney-In-Fact, to make, execute, seal and deliver, for and on its behalf as surety, and as its act and deed in all bonds and undertakings provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the sum of (not to exceed \$2,500,000):

\$2,500,000.00

This Power of Attorney is made and executed by authority of a Resolution adopted by the Board of Directors. That resolution also authorized any further action by the officers of the Company necessary to effect such transaction.

In witness whereof, the FCCI Insurance Company has caused these presents to be signed by its duly authorized officers and its corporate Seal to be hereunto affixed, this 22<sup>ND</sup> day of September, 2011.

Attest:

*Craig Johnson*  
Craig Johnson, President  
FCCI Insurance Company



*Thomas A. Koval*  
Thomas A. Koval Esq., SVP, General Counsel  
and Corporate Secretary  
FCCI Insurance Company

State of Florida  
County of Sarasota

Before me this day personally appeared Craig Johnson, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 9/25/2012

**ARLENE CUEMAN**  
Notary Public, State of Florida  
My Comm. Expires Sept. 25, 2012  
No. DD826122

*Arlene Cueman*  
Notary Public

State of Florida  
County of Sarasota

Before me this day personally appeared Thomas A. Koval Esq., who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 9/25/2012

**ARLENE CUEMAN**  
Notary Public, State of Florida  
My Comm. Expires Sept. 25, 2012  
No. DD826122

*Arlene Cueman*  
Notary Public

### CERTIFICATE

I, the undersigned Secretary of FCCI Insurance Company, a Florida Corporation, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the February 24, 2011 Resolution of the Board of Directors, referenced in said Power of Attorney, is now in force.

Dated this 19<sup>th</sup> day of April, 2013

*Thomas A. Koval*  
Thomas A. Koval Esq., Corporate Secretary

