FUNDS ADMINISTRATION AND DISBURSEMENT AGREEMENT

This Funds Administration and Disbursement Agreement (the “Agreement”) entered into on this ______ day of ___________________ 20___, between ___________________________________________ (the “Principal”), Indemnity Company of California (the “Surety”), and the funds administration company, Vista Surety Insurance Solutions, LLC (“VSIS”), (Principal, Surety and VSIS, collectively the “Parties”).

WHEREAS:

A. On the______ day of ____________, 20___, the Principal entered into a Contract (the “Contract”) with_____________________________ (the “Obligee”), concerning the construction of a work of improvement designated as______________________________ (the “Project”); and

B. The Contract requires the Principal to provide to Obligee a Surety Bond (the “Bond”) guarantying Principal’s performance of its obligations to Obligee with respect to the Contract and the Project; and

C. Principal has requested that Surety issue payment and/or performance bonds (collectively, the “Bond”) for the benefit of the Obligee and as a requirement for Principal entering into the Contract with the Obligee; and

D. Surety after underwriting and evaluating the application and request of Principal for the Bond, has elected to issue the Bond subject to certain conditions; among which is that all payments due from Obligee to Principal (the “funds”), for work performed under the Contract be deposited into a Disbursement Account, in order to facilitate the proper and expeditious receipt and disbursement of funds pursuant to the terms of this Agreement.

E. Principal acknowledges their obligations under the Indemnity Agreement with the Surety which it has previously executed, and reaffirms all such obligations it has assumed under the terms of the Indemnity Agreement. Specifically, Principal acknowledges that pursuant to Paragraph 4 of the Indemnity Agreement, all funds as referenced herein are held in trust for the Surety; and

F. Principal acknowledges that VSIS is an entity which is related to the Surety, and which has additional separate and independent obligations owed to the Surety. Principal in full knowledge of this relationship between VSIS and the Surety elects to freely and unconditionally enter into this Agreement.

Principal: __________________________  Escrow Amt.: __________________________
Project Name: __________________________  Advance Deposit: __________________________
Contract Amt.: __________________________  Holdback: __________________________
Bond Amt.: __________________________  No. of Draws: __________________________
Fee: __________________________

(The above Section is to be completed by the Surety Only)
NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
TERM

1.1 The term of this Agreement shall begin on the date first shown above and shall continue, unless sooner terminated (according to the terms of Article 6 below), until the final disbursement of funds from the Disbursement Account. After the Project has been completed, or after termination of this Agreement according to the terms of Article 6, and after VSIS has disbursed all funds from the Disbursement Account, VSIS shall not have any further obligations and responsibilities pursuant to this Agreement. However, the Indemnification Provisions contained in Article 5 of this Agreement shall continue to be in effect after the termination of the Agreement.

ARTICLE 2
REPRESENTATIONS AND COVENANTS OF PRINCIPAL

2.1 Principal represents that VSS may rely on documents provided by and verified by the Principal as genuine and VSS may disburse funds based upon such documents.

2.2 The Principal represents and agrees that VSIS may satisfy any demand for funds made by the Surety, including but not limited to, a demand made pursuant to Article 4.3 herein. Any such demand by the Surety must be in writing; and upon receipt of such demand the requested funds will be released to the Surety.

2.3 The Principal represents and agrees that this Agreement and any provisions contained herein, shall not waive any rights of the Surety as provided for in the Indemnity Agreement or any other agreement between Principal and Surety.

2.4 The Principal represents that it has full legal authority to enter into this Agreement and perform all of its obligations under this Agreement.

2.5 The Principal represents and agrees that VSIS shall have the right but not the obligation to contact the Obligee and its representatives, and any subcontractor, supplier, or laborer employed to verify its account or payment status related to the Project.

2.6 The Principal represents and agrees that upon request, it will provide to VSIS and its authorized representatives prompt and full access to: all of its books, records, contracts, and other documents related to the Project.

ARTICLE 3
OBLIGATIONS OF PRINCIPAL

3.1 Principal shall direct Obligee to deliver to VSIS for deposit in the Disbursement Account all payments due from Obligee to Principal under the Contract. The Principal shall obtain a “Letter of Direction” which shall include Obligee’s acknowledgement of the same, in the form and substance set forth on Exhibit “A” and deliver the executed “Letter of Direction” to VSIS. In the event that any such payments under the Contract are delivered directly to the Principal by the Obligee (whether by inadvertence, mistake or otherwise), Principal shall immediately contact VSIS and shall forward such funds to VSIS for deposit into the Disbursement Account. The failure by the Principal to immediately forward such funds shall be deemed to be a default under this Agreement.
3.2 If required by the Surety, the Principal shall make an advanced deposit of __________ dollars ($_________) into the Disbursement Account prior to the issuance of the Bond to the Principal by the Surety. The Surety shall (at its sole discretion) direct VSIS as to how to apply such advance deposit funds; whether to the Project or otherwise, as directed by the Surety. The Principal agrees that the Surety may determine based on the Surety’s underwriting criteria, the disposition of all such advance deposit funds.

3.3 The Principal shall provide VSIS copies of all documents requested by VSIS, related to the Project before Principal commences work on the project.

3.4 The Principal during the course of the Project shall execute and provide VSIS copies of any documents requested by VSIS; and whether requested or not, provide to VSIS, a copy of the CONTRACT (and any exhibits, schedules, notes, amendments or any other attachments to the CONTRACT), all change orders (whether or not approved), revised schedule of values, itemized budget of costs, updated construction schedules, any liens, claims or notices received from suppliers or subcontractors by Principal (to be supplied within five days of receipt by Principal), monthly billings submitted to Obligee by Principal and copies of additional subcontract agreements and purchased order. All such documents whether or not specifically listed herein shall be transmitted to VSIS in a form as required by VSIS.

3.5 The Principal shall, at the request of VSIS, complete the Itemized Budget of Costs (Exhibit “B”) and promptly submit such document to VSIS.

3.6 The Principal shall execute and deliver to VSIS a Disbursement Voucher Summary (“DVS”) (Exhibit “C”) along with the applicable other documents as described below each time the Principal requests a progress payment from VSIS.

3.7 When requesting payments to subcontractors and suppliers for material, equipment and services provided to the Project, Principal in addition to submitting the DVS shall submit a Disbursement Voucher (“Exhibit “D”) authorizing such payments. One Disbursement Voucher shall be submitted for each progress billing for which the Principal is requesting payment. The Principal shall inspect the work performed or material supplied relating to the Disbursement Voucher and certify that payment is appropriate. The Disbursement Voucher shall be executed by an authorized representative of the Principal. Each Disbursement Voucher shall:
   a. Identify the subcontractors or suppliers to be paid;
   b. State the amount to be paid to each subcontractor or supplier;
   c. Identify all applicable CSI codes, line item numbers and their relationship to the Schedule of Values submitted to the Obligee for billing support;
   d. Be accompanied by appropriate supporting documentation, including but not limited to invoices, statements, Subcontractor’s Schedule of Values and progress billings, receipts, delivery tickets, and any other appropriate documents verifying amounts to be paid;
   e. Be accompanied by properly executed Releases and Lien Waivers acceptable to VSIS and the Surety (Exhibits “E” and “F”).

3.8 When requesting reimbursements for the cost of direct labor it has supplied to the Project, the Principal in addition to submitting the DVS, shall submit a Payroll Worksheet (Exhibit “G”) to support every such request to VSIS, and in addition must comply with the following requirements:
   a. Each Payroll Worksheet must indicate applicable Schedule of Values item number;
   b. Reimbursement for direct labor shall be reimbursed based on the Certified Payroll Report or other approved payroll report prepared and certified by the Principal.

3.9 The Principal shall be paid for its overhead and profit based on VSIS’s review of the documents referenced in Section 3.6 through 3.8 herein and as reflected in the DVS; and such overhead and profit (if any) will be paid to Principal after the DVS is processed by VSIS for each progress billing.
3.10 Upon completion of the Project, Principal shall provide VSIS with a copy of Obligee’s acceptance and recorded notice of completion, if any. It shall also provide a final invoice from each subcontractor and supplier along with an executed release which indicates that any and all lien rights or claims against the Project and the Bond have been discharged. The executed release shall indicate that any such future lien rights or claims will be waived upon receipt of final payment. Any appropriate filings or other documentation verifying the release of any liens or claims shall accompany the affidavit.

3.11 The Principal is responsible for all reasonable costs and expenses incurred by VSIS in performing services outside the scope of the services previously specified in this Agreement. Such costs and expenses may include but are not limited to: bank fees; express delivery fees; payroll service fees; claims analysis; handling disputes with the Obligee, subcontractors, suppliers or other parties; attorney fees and consultant fees.

3.12 The Principal will pay to VSIS a fee of $________ based on a contract value of $________. VSIS will invoice the Principal for the service fee based on the original Contract value upon the first funds from the Obligee being deposited into the Disbursement Account. If the Principal has not paid VSIS’s invoice at the time the first funds are ready for disbursement, VSIS’s fees shall be paid out of those funds. VSIS will additionally invoice the Principal for fees due for any increase in the value of the Contract at the rate of __________ percent (%) of any increase. Principal shall be entitled without incurring additional fees to request __________ (__) draws of funds from VSIS; and Principal further agrees to pay VSIS an additional fee for each draw made after the ________ draw. VSIS may utilize funds in the Disbursement Account to pay any and all costs and expenses incurred and fees earned by VSIS in connection with this Agreement.

3.13 Principal agrees to pay an additional fee to VSIS, in the event that the Obligee fails to deposit contract funds with VSIS or such funds are deposited with the Principal who fails to immediately turn over such funds to VSIS. In that event, VSIS shall charge an additional fee in the amount of one-half (1/2) of the percentage fee stated in the preceding Article 3.12 times the amount of funds diverted from the Disbursement Account. Principal acknowledges that the calculation of actual damages to VSIS in collecting wrongfully diverted funds is difficult to quantify and that the additional fee charged in this paragraph is a reasonable fee.

3.14 Principal agrees to promptly provide VSIS with a completed Project Information Sheet (Exhibit “H”), prior to beginning work on the Project.

ARTICLE 4
OBLIGATIONS OF VSS

4.1 VSIS shall notify the Surety immediately of any claim, suit, or circumstance which could, in the opinion of VSIS, give rise to a claim or lawsuit against the Surety. The Principal shall receive a copy of any such notification to the Surety.

4.2 VSIS shall establish the Disbursement Account at a banking institution selected by VSIS. The banking institution may be changed at the discretion of VSIS.

4.3 VSIS shall, upon receipt of written notice from the Surety regarding the default of the Principal, as described in Article 7, a claim being made, loss, costs, or expenses incurred by the Surety on any project bonded by the Surety (on behalf of the Principal); release all funds held in the Disbursement Account upon demand to the Surety. The Principal hereby gives consent to VSIS to satisfy any such demands made by the Surety for funds; and the Principal appoints the Surety as its attorney-in-fact to execute any check or draft needed to allow such disbursements. If VSIS complies with the directions of the Surety, VSIS shall not be in breach of this Agreement, and the Principal specifically releases and
holds VSIS harmless from any claim the Principal may have concerning the release of such funds to the Surety. VSIS shall notify the Principal regarding any such release of funds to the Surety.

4.4 In the event that VSIS receives instructions which it believes are in conflict with either the terms of this Agreement or instructions received from any other party, including the Obligee, the Surety, the Principal, or any subcontractor or supplier, VSIS shall have the right to not take any action regarding the conflicting instructions until such conflict with the Surety is resolved. VSIS will notify the Surety, the Principal, and any other parties involved with the conflicting instructions, upon VSIS identifying such conflict. A demand from the Surety as described in Article 4.3 shall take precedence over any instructions from any other parties, and VSIS shall strictly comply with the terms of Article 4.3 when such demand is made by the Surety.

4.5 VSIS may in its sole discretion, rely upon and comply with (i): any judgment, decree, attachment, garnishment or levy upon any of the funds in the Disbursement Account; or (ii): any court order which stays or enjoins the transfer or delivery of any of the funds in the Disbursement Account; so long as (i) or (ii) are issued by a court of law of competent jurisdiction. Shall VSIS comply with any such orders as described herein, VSIS will not be liable to the Principal or the Surety or any other person or entity by reason of its compliance with such order, even if such order is subsequently reversed, modified, set aside, or otherwise vacated.

4.6 VSIS shall have the right but not the responsibility to inspect the Project for the purpose of reviewing the status of the Project. Principal shall be responsible to pay VSIS for any such inspection of the Project, at the rate of $__________ per ______________. In no event however, shall VSIS be liable to any party for the disclosure or non-disclosure of the results of any such inspection of the Project.

ARTICLE 5
INDEMNIFICATION

5.1 Principal agrees to defend, hold harmless, and indemnify VSIS and its employees, officers and directors from and against any and all liabilities, losses, costs, expenses (including but not limited to attorneys fees), claims actions, or causes of action arising out of or relating to VSIS’s activities pursuant to this Agreement.

5.2 VSIS shall not be liable for, and the Principal waives any claims or remedies the Principal may have against VSIS for direct, indirect, special, consequential, incidental, liquidated, or punitive damages, whether brought by the Principal or any third party, arising out of any breach of this Agreement by VSIS, VSIS’s disbursement or handling of the Disbursement Account, or any other claim or obligation arising out of this Agreement.

ARTICLE 6
TERMINATION

6.1 VSIS may terminate this Agreement upon thirty (30) days written notice to the Principal and Surety. Upon termination, if the Principal is not in default under Article 7, any funds remaining in the Disbursement Account shall be disbursed to the Principal. If the Principal is in default under Article 7 at the time VSIS terminates this Agreement, any funds in the Disbursement Account shall be disbursed to the Surety. Upon VSIS’s termination, VSIS shall provide copies of all of its records relating to the Project to the Surety or to another party as directed by Surety. Upon such disbursement to the Principal or the Surety as provided hereinafore, VSIS shall be discharged from any further obligations related to this Agreement.

6.2 After the Project has been completed, and all funds are disbursed from the Disbursement Account, VSIS shall furnish an itemized final accounting report to the Principal and the Surety, after which VSIS shall be discharged from any further obligations related to the Project.
ARTICLE 7
DEFAULT

7.1 The Principal shall be deemed to be in default under the terms of this Agreement in the event of the occurrence of any of the following:
   a. Failure of the Principal to perform any material obligation in accordance with the Contract or under this Agreement, or under the Indemnity Agreement executed in favor of Surety;
   b. The Principal makes any untrue or misleading statement to VSIS as to any material fact which would reasonably cause VSIS to either disburse Contract Funds, or to take or fail to take any other action;
   c. Failure of the Principal to use and apply within a reasonable time funds paid to the Disbursement Account for the purpose for which such funds were paid;
   d. Diversion to any other use, of materials furnished, earmarked or obtained for use in the Project by the Principal;
   e. Filing of a petition by the Principal, for relief under the provisions of the United States Bankruptcy Code; the Principal's making an assignment for benefit of creditors, the appointment of a receiver for the Principal or Principal's property, or the insolvency of the Principal;
   f. Transfer or assignment by the Principal of any contracts, or of this Agreement, or of any rights, benefits or monies thereunder (except to persons already entitled thereto by having furnished labor, materials, or services in the construction of the Project);
   g. If Principal is an individual, and dies or becomes incapacitated for any reason, thereby preventing Principal from performing their obligations under this Agreement; or if Principal becomes a fugitive from justice or disappears and cannot be found by VSIS.

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 Any and all disputes or claims between VSIS, and the Principal and/or Surety, relating to or arising out of this Agreement, may at the option of the Surety, be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The venue for such arbitration or other judicial proceedings shall be the County of Orange, California.

8.2 This Agreement constitutes the entire understanding among the parties, in regard to the subject matter of this Agreement. This Agreement shall not be amended or modified except in writing and approved and signed by all parties hereto. No covenant, representation or condition not otherwise expressed in this Agreement shall replace, modify, interpret, change or restrict the express provisions of this Agreement.

8.3 The laws of the State of California shall govern all aspects of this Agreement.

8.4 Surety may at any time upon notice to VSIS, inspect and audit any records or documents relating to this Agreement.

8.5 All exhibits (Exhibits A through H) to this Agreement are incorporated into this Agreement.

8.6 The article headings contained in this Agreement are inserted only as a matter of convenience and shall in no way be construed to define, limit, extend or prescribe the scope of this Agreement or the intent of any of its provisions.

8.7 The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of the remaining portions of this Agreement.
8.8 All notices under this Agreement shall be given in writing as follows:
   a. By actual delivery to the respective parties; or
   b. By mailing such notice by certified mail, return receipt requested, in which case the notice
      shall be deemed to be given on the date of mailing; or
   c. By overnight delivery service, in which case the notice shall be deemed to be given on the
      date next succeeding the date of its transmission; or
   d. By facsimile transmission or electronic communication, in which case the notice shall
      be deemed given on the date sent. All notices shall be given using the addresses and
      electronic communication listed below (or to such other address as the Party shall request
      upon proper notice sent to all other Parties).

The parties have executed this Agreement on the date first above written.

Principal:                            Indemnity Company of California
   By:______________________________  By:______________________________

   ________________________________  ________________________________
   Name and Title                  Name and Title

   17771 Cowan, Suite 100
   Irvine, CA 92614-6060

Telephone:                        Telephone:
Email:                            Email:

Vista Surety Insurance Solutions, LLC

   By:______________________________

   ________________________________
   Name and Title

   17771 Cowan, Suite 100
   Irvine, CA 92614-6060

Telephone:                        Telephone:
Email:                            Email:
LIST OF EXHIBITS

A. Letter of Direction
B. Itemized Budget of Costs
C. Disbursement Voucher Summary
D. Disbursement Voucher
E. Conditional and/or Unconditional Waiver & Release Upon Final Payment
F. Conditional and/or Unconditional Waiver & Release Upon Progress Payment
G. Payroll Worksheet
H. Project Information Sheet