

**ROAD IMPROVEMENTS CONSTRUCTION AGREEMENT**

**By and Between**

**NASSAU COUNTY, FLORIDA**

**AND**

**PIRATE'S WOOD ASSOCIATION, INC.**

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**ROAD IMPROVEMENTS CONSTRUCTION AGREEMENT**

**THIS ROAD IMPROVEMENTS CONSTRUCTION AGREEMENT** is made and entered into as of March 19, \_\_\_\_\_, 2001, by and between Nassau County, a political subdivision of the State of Florida (the "County") and Pirate's Wood Association, Inc. (the "Association").

**WITNESSETH:**

**WHEREAS**, the County has heretofore duly adopted Resolution No. 2000-201 and Resolution No. \_\_\_\_\_ imposing special assessments to construct Road Improvements in the Pirates Wood Assessment Area (as such terms are hereinafter defined); and

**WHEREAS**, the Association desires to take responsibility for expediting the construction of the Road Improvements; and

**WHEREAS**, the County Commission has determined that it is in the County's best interest to enter into this Agreement and to allow the Association to coordinate the construction of the Road Improvements by selecting and entering into a Road Construction Contract with a Contractor and monitoring its performance thereunder.

**NOW THEREFORE**, in consideration of the mutual promises, covenants and agreements contained herein, the County and the Association mutually undertake, promise and agree for themselves, their successors and assigns as follows:

**SECTION 1. DEFINITIONS.** As used in this Agreement, the following terms shall have the following meanings, unless the context hereof otherwise requires.

**"Agreement"** means this Road Improvements Construction Agreement.

**"Board"** means the Board of County Commissioners of Nassau County, Florida.

**"County"** means Nassau County, a political subdivision of the State of Florida.

**"County Coordinator"** means the person designated by the Board to be responsible for coordinating assessments, or such person's designee.

**"Contractor"** means any firm entering into a Road Construction Contract with the Association.

**"Association"** means the Pirate's Wood Association, Inc., a Florida corporation duly organized and validly existing under the laws of the State of Florida.

**"Association's Engineer"** means a registered professional engineer retained by the Association to prepare Plans and Specifications for, supervise the construction of, and inspect the Road Improvements.

**"Pirates Wood Assessment Area"** means the assessment area created pursuant to the County's Resolution No. \_\_\_\_\_ in which special assessments are imposed for the construction of the Road Improvements.

**"Plans and Specifications"** means the plans and specifications for construction of the Road Improvements.

**"Road Construction Contracts"** means all contracts entered into by the Association for construction of the Road Improvements.

**"Road Improvements"** means the following road improvements to be constructed pursuant to the Construction Agreement: a roadway cross section approved by the County Public Works Department based on the County's 20-year standard or equivalent.

**SECTION 2. INTERPRETATION.** Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Agreement; the term "heretofore" shall mean before the date this Agreement is executed; and the term "hereafter" shall mean after the date this Agreement is executed.

**SECTION 3. SECTION HEADINGS.** Any headings preceding the texts of the Sections of this Agreement and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

**SECTION 4. PERMITS.** The Association shall obtain all necessary approvals from any and all other governmental agencies requisite to construction of the Road Improvements.

**SECTION 5. ROAD IMPROVEMENTS.** The Association shall be responsible for design and construction of the Road Improvements, at its sole cost and expense, in accordance with the Plans and Specifications prepared by the Association's Engineer and approved by the County. The Association agrees to diligently pursue construction of the Road Improvements in accordance with sound engineering practices and in compliance with all state and local laws,

ordinances and regulations applicable thereto. Licensed, insured and bonded contractors shall be used for all work to be performed on the construction of the Road Improvements.

**SECTION 6. INSURANCE.** The Association will enter into Road Construction Contracts that require each Contractor to provide insurance coverage in accordance with the following requirements:

(A) General liability insurance shall be provided on an "occurrence" basis and shall be written for the following limits of liability as a minimum: (1) bodily injury, \$1,000,000 each occurrence and \$2,000,000 each aggregate, and (2) property damage, \$250,000 each occurrence and \$500,000 each aggregate.

(B) Comprehensive automobile liability insurance coverage shall be provided for all owned, hired or non-hired vehicles, including loading or unloading thereof with the following limits of liability: (1) automobile bodily injury, \$1,000,000 each person and \$2,000,000 each occurrence, and (2) automobile property damage, \$1,000,000 each occurrence.

(C) All policies shall provide that they cannot be canceled or materially altered except after thirty (30) days advance written notice to the County and shall name the County as an additional insured.

**SECTION 7. INSPECTION.** At the Association's sole cost and expense, the Association's Engineer shall supervise construction of the Road Improvements to ensure compliance with accepted civil engineering practices and the approved Plans and Specifications. Upon completion of the Road Improvements, the Association's Engineer shall certify in writing that the construction of the Road Improvements comply with accepted civil

engineering practices and are in substantial conformance with the approved Plans and Specifications. The County shall have the right but not the obligation to make inspections of all the construction work performed by or for the Association under the terms of this Agreement. Such inspections shall not be construed to constitute any guarantee on the part of the County as to materials or workmanship, nor shall they relieve the Association of the responsibility for the proper construction of said Road Improvements in accordance with the approved Plans and Specifications nor shall the inspections, if undertaken, abrogate any warranties made by the Association as to the quality and condition of the materials and workmanship.

**SECTION 8. WARRANTIES AND SURETY.**

(A) The Association warrants that the Road Improvements shall be free from any and all defects in materials and workmanship. The Association also warrants that it shall be solely responsible for the repair of any damages to said Road Improvements caused by persons in its employment. Said warranties shall remain in effect for a period of one (1) year from the date of completion of the Road Improvements. In the event it becomes necessary to repair and/or replace any of the Road Improvements during the initial one (1) year period, then the warranty as to those items repaired and/or replaced shall remain in effect for an additional period of one (1) year from the date of County approves those repairs and/or replacements.

(B) Upon completion of the Road Improvements, the Association shall deliver to the County an executed surety bond in an amount equal to 125 percent of the amount paid by the Association under the Road Construction Contracts, guaranteeing all work performed under

the Road Construction Contracts against any and all defects in material, equipment or construction for a period of one (1) year following the date of completion of the Road Improvements, as hereinabove described. The surety bond shall be posted with a surety company acceptable to the County and which is authorized to write bonds of such character and amount under the laws of the State of Florida. The attorney-in-fact or other officer who signs a bond must file with such bond a certified copy of the power of attorney authorizing such person to do so. A bond must also be countersigned by the surety's Florida agent. In all such bonds, the County shall be named an "obligee." The surety company must have a Best's Key Rating Guide General Policyholder's Rating of "A" or better and a Financial Category of Class "V" or better to be acceptable to the County.

(C) As an alternative to the surety bond, the Association may deliver a letter of credit acceptable to the County in an amount equal to 25 percent of the amount paid by the Association under the Road Construction Contracts, guaranteeing all work performed under the Road Construction Contracts against any and all defects in material, equipment or construction for a period of one (1) year following the date of completion of the Road Improvements, as hereinabove described.

**SECTION 9. TERM OF AGREEMENT.** The term of this Agreement shall commence on the date first above written, and expire on the date on which all obligations of the County and the Association hereunder have been discharged.

**SECTION 10. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior



and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein.

**SECTION 11. AMENDMENTS AND WAIVERS.** No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by all of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

**SECTION 12. NOTICES.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when (a) personally delivered, (b) sent by certified or registered mail, return receipt requested, postage prepaid, (c) sent by a nationally recognized overnight delivery service, with delivery confirmed, or (d) telexed or telecopies, with receipt confirmed, addressed as follows:

County: Nassau County Board of County Commissioners  
191 Nassau Place  
Yulee, Florida 32097  
Attention: County Attorney

Association: Pirate's Wood Association, Inc.  
P.O. Box 345  
Yulee, Florida 32097  
Attention: President

Any of the foregoing parties may, by notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other

communications shall be sent. Any notice shall be deemed to have been given as of the date when (a) personally delivered, (b) three days after it is sent by United States mail, (c) when receipt of a Notice sent by an overnight delivery service is confirmed by such overnight delivery service, or (d) when receipt of the telex or telecopy is confirmed, as the case may be, unless the sending party has actual knowledge that a notice was not received by the intended recipient.

**SECTION 13. BINDING EFFECT.** This Agreement shall be binding upon the parties, their respective successors and assigns and shall inure to the benefit of the parties, their respective successors and assigns.

**SECTION 14. SEVERABILITY.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 15. EXECUTION IN COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.


**SECTION 16. APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

**SECTION 17. JURISDICTION AND VENUE.** The parties to this Agreement expressly consent to the jurisdiction of and agree to suit in any court of general jurisdiction in the State of Florida, whether state, local or federal, and further agree that venue shall lie in Yulee County, Florida.

IN WITNESS WHEREOF, the County and the Association have caused this Agreement to be executed and delivered as of the day and year first above written.

(SEAL)

BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA



MARIANNE MARSHALL

Its: Chairman

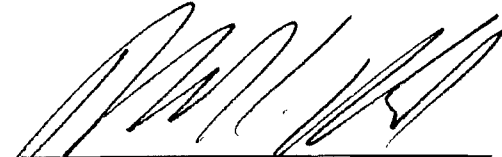
ATTEST:



J. M. "CHIP" OXLEY, JR.

Its: Ex-Officio Clerk to the  
Board of County Commissioners of  
Nassau County, Florida

Approved as to form by the  
Nassau County Attorney:



MICHAEL S. MULLIN

**PIRATE'S WOOD ASSOCIATION, INC.**

Witnesses:

Joyce T. Bradley  
Joyce T. Bradley

Printed Name

Joni J. Branan  
Joni J. Branan

Printed Name

Walter D. Eling  
President