

SECTION 00 52 15

AGREEMENT

THIS AGREEMENT is dated as of the 24th day of May in the year 2010 by and between the **Nassau County Board of County Commissioners (Owner)** and **W.R. Townsend Contracting, Inc.**, 1465 County Road 210 W., Jacksonville, Florida 32259, (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 consist of the following:

Chester Road: Pavement improvements (milling and resurfacing, pavement widening and sidewalk construction) from SR 200 Intersection north approximately 1800 feet and includes:

- Pavement widening on both sides of the road, milling and resurfacing of the existing asphalt pavement.
- Curb and gutter with storm sewer system as shown
- Re-Construction of existing driveways.
- Erosion control.
- Traffic maintenance and protection.
- Seeding or sodding of disturbed areas.
- Signage and Pavement Markings.

Amelia Concourse: Pavement improvements (milling and resurfacing, pavement widening and sidewalk construction) from SR 200 Intersection south approximately 600 feet and includes:

- Pavement widening on the northbound approach to create a dual left turn lane, one through lane and one right turn lane, milling and resurfacing of the existing asphalt pavement. The first 300 feet will require removal of all asphalt and reworking the base.
- Curb and gutter with storm sewer system as shown
- Re-Construction of existing driveway.
- Erosion control.
- Traffic maintenance and protection.
- Seeding or sodding of disturbed areas.

- Signage and Pavement Markings.

SR 200: New Traffic Signal and Pavement improvements (pavement widening to create dual left turn lanes in each direction) includes:

- Traffic Signal including mast arm structures
- Curb and gutter
- Erosion control.
- Traffic maintenance and protection.
- Seeding or sodding of disturbed areas.
- 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:

Chester Road / Amelia Concourse / SR 200 Intersection Improvement Project
Bid Number NC10-011
Nassau County, Florida

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 180 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.

4.03 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 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.
- B. Contractor recognizes that timely completion of the work is essential to avoid damages to a third party, Villages of Amelia, LLC, a Florida limited liability company. Contractor and County acknowledge the existence of an agreement between County and Villages of Amelia, LLC, which is attached hereto and incorporated as Appendix E. Contractor further recognizes that the County and Contractor intend that in addition to the aforementioned liquidated damages, Contractor will be liable to said third party for liquidated damages in the amount of \$1,375.00 per day for the first ninety (90) days between the Opening Date, April 4, 2011, and the Substantial Completion Date, and \$2,750.00 per day from the ninety-first (91st) day after the Opening Date, April 4, 2011, until the Substantial Completion Date has occurred. Contractor agrees to require a similar provision requiring subcontractors to pay such liquidated damages in each of their subcontracts involving the Work. Contractor acknowledges that the price bid for

the Work is in contemplation of this Liquidated Damages provision and the potential third party liability.

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:

<u>One million four hundred and two thousand nine hundred forty-seven dollars and forty-eight cents</u>	<u>(\$1,402,947.48)</u>
(use words)	(figures)

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

Nassau County Board of County Commissioners

Signed: Michael H. Boyle

Title: Chairman

Date: 5-24-10

[CORPORATE SEAL]

Attest: John A. Crawford

Title: Ex-Officio Clerk

Address for giving notices:

96135 Nassau Place

Suite 1

Yulee, Florida 32097

Phone: 904-4917380 FAX: 904-321-5784

CONTRACTOR

W.R. Townsend Contracting, Inc.

Signed: Bonnie M. Keene

Title: Vice President

Date: 5-19-10

[CORPORATE SEAL]

Attest: Paul E. O'Leary

Title: Project Manager

Address for giving notices:

1465 County Road 210 W

Jacksonville, FL 32259

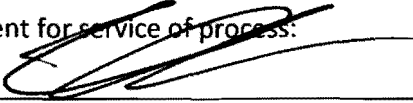
Phone: 904-829-8020 FAX: 904-829-1613

License CU056717

(Where applicable)

Approved as to form by County Attorney

Agent for service of process:



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.)

2010 FOR PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# 575919

FILED
Apr 23, 2010
Secretary of State

Entity Name: W.R. TOWNSEND CONTRACTING, INC.

Current Principal Place of Business:

1465 COUNTY ROAD 210 W
JACKSONVILLE, FL 32259 US

New Principal Place of Business:

Current Mailing Address:

1465 COUNTY ROAD 210 W
JACKSONVILLE, FL 32259 US

New Mailing Address:

FEI Number: 59-1831397 FEI Number Applied For () FEI Number Not Applicable () Certificate of Status Desired (X)

Name and Address of Current Registered Agent:

AYCOCK, LYNDA
1301 RIVER PLACE DR
SUITE 1500
JACKSONVILLE, FL 32207 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

Election Campaign Financing Trust Fund Contribution ().

OFFICERS AND DIRECTORS:

Title: PD
Name: TOWNSEND, W. R.
Address: 1465 C.R. 210 WEST
City-St-Zip: JACKSONVILLE, FL 32259

Title: VPD
Name: KRONE, BONNIE M VICE PR
Address: 1465 C.R. 210 WEST
City-St-Zip: JACKSONVILLE, FL 32259

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: WILLIAM R. TOWNSEND

P

04/23/2010

Electronic Signature of Signing Officer or Director

Date