

**SECTION 00 52 15**

**AGREEMENT**

THIS AGREEMENT is dated as of the 26th day of July in the year 2010 by and between the BOARD OF COUNTY COMMISSIONERS, NASSAU COUNTY (Owner) and UNITED BROTHERS DEVELOPMENT CORPORATION, 6924 Distribution Avenue South, Jacksonville, Florida 32256 (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 the pavement improvements (milling and resurfacing, pavement widening and minor drainage improvements) for the intersection of US 301 and Ford Road. These improvements include a northbound right turn lane on US 301 at Ford Road and milling, resurfacing and widening at Ford east of US 301. The work to be performed is generally described as construction of a right turn lane and improvements to a two lane rural road and includes:

- Existing Travel Lane widening, milling and resurfacing of the existing asphalt pavement. (Ford Road)
- Construction of a right turn lane with shoulder. (US 301)
- Drainage Improvements.
- 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:

**US 301 at Ford Road Intersection Improvement Project  
Bid Number NC10-013  
Nassau County, Florida**

**ARTICLE 3 - ENGINEER OF RECORD**

- 3.01** The Project has been designed by PBS&J, 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 124 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 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:  
One hundred forty-two thousand seven hundred eight dollars and forty-six cents \$142,708.46

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: 07/26/10

[CORPORATE SEAL]

Attest: [Signature]  
Title: Ex-Officio Clerk

Address for giving notices:

Nassau County Contract Management

96135 Nassau Place, Suite 6

Yulee, Florida 32097

Phone: 904-491-737 FAX: 904-321-2658

CONTRACTOR

United Brothers Development Corporation

Signed: [Signature]

Title: President

Date: 8/2/2010

[CORPORATE SEAL]

Attest: [Signature]  
Title: Estimator

Address for giving notices:

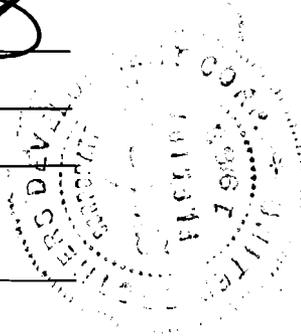
6924 Distribution Ave. S.

Jacksonville, FL 32256

Phone: 904-262-3227 FAX: 904-262-5505

License CUC051680

(Where applicable)



*err  
8/4/10*

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.)

RECEIVED  
CONTRACT MANAGEMENT

SECTION 00 65 16

2010 DEC 22 AM 10: 31

CERTIFICATE OF SUBSTANTIAL COMPLETION

Project: United Brothers Development Corporation

Purchase Order No.: 10000598-00

Contract Date: July 26, 2010

This Certificate of Substantial Completion applies to:

All work under Contract      Portion of work described as follows:

The Work to which this Certificate applies has been inspected by authorized representatives of the COUNTY and the CONTRACTOR and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on : December 15, 2010.

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within 45 days of the above date of Substantial Completion.

The date of Substantial Completion is the date upon which all guarantees and warranties begin.

SIGNED:

**NASSAU COUNTY CONSTRUCTION INSPECTOR ( England Thims & Miller, Inc.)**

By: [Signature]

DATE: 12/15/10

**NASSAU COUNTY PROJECT MANAGER**

By: [Signature]

DATE: 12/15/10

**NASSAU COUNTY OPERATIONS DIRECTOR**

By: [Signature]

DATE: 12-15-10

**CONSULTING ENGINEER/ARCHITECT, ETC.:**

PBS & J [Signature]

DATE: 12-15-10

**CONTRACTOR:**

United Brothers Development Corporation

By: [Signature]

DATE: 12/15/2010





**England-Thims & Miller, Inc.**  
14775 Old St. Augustine Rd.  
Jacksonville, FL 32258  
Tel: (904) 642-8990  
Fax: (904) 646-9485

# LETTER OF TRANSMITTAL

To: Nassau County Engineering Services Dept.  
ATTN: Jonathan Page, Engineer III  
Address: 96161 Nassau Place  
Yulee, FL 32097

Date: February 1, 2011  
Job No: 10-014-99  
Reference: Project Certifications  
  
VIA: Mail

- WE ARE SENDING YOU  Attached  Under separate cover via \_\_\_\_\_ the following items:
- Shop Drawings  Prints  Plans  Samples  Specifications
  - Copy of Letter  Change Order  Work Order  S.A.  Invoice

COPIES	DATE	NO.	DESCRIPTION
1	10/19/2010	1	Sandy Ford at US-301 Project Certification.
1	12/22/2010	1	CR-121 Pond Construction Project Certification.
1	1/24/2011	1	Ford Road at US-301 Project Certification.
1	2/01/2011	1	Citrona at Sadler Road Project Certification.

THESE ARE TRANSMITTED AS CHECKED BELOW:

- For Approval  Approved as Submitted  Resubmit \_\_\_\_\_ Copies for Approval
- For Your Use  Approved as Noted  Submit \_\_\_\_\_ Copies for Distribution
- As Requested  Returned for Corrections  Return \_\_\_\_\_ for Corrected Prints
- Review and Comment  \_\_\_\_\_
- FOR BIDS DUE \_\_\_\_\_, 2011  PRINTS RETURNED AFTER LOST TO \_\_\_\_\_

Remarks Please find the attached for your records.

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2011 FEB -3 AM 11:22

COPY TO: S. Herring, B. Williams, C. Smithheart, File

SIGNED: *Kent A. Ponder*  
Kent A. Ponder, P. E.

Cm 1603



14775 Old St. Augustine Road • Jacksonville, Florida 32258  
tel 904.642.8990 • fax 904.646.9485 • www.etminc.com

**PRINCIPALS**

Douglas C. Miller, PE., CEO  
N. Hugh Mathews, PE., President  
Joseph A. Tarver, Exec. VP  
Juanitta Bader Clem, PE., V.P.  
Scott A. Wild, PE., PSM, V.P.  
Samuel R. Crissinger, CFO, V.P.  
Robert A. Mizell, Jr., PE., V.P.  
Thomas N. Fallin, PE., V.P.  
Buckley K. Williams, C.C.C.A., V.P.  
K.T. Peter Ma, PE., V.P.

January 24, 2011

Mr. Jonathan Page, P.E.  
Nassau County Engineering Services Dept.  
96161 Nassau Place  
Yulee, FL 32097

**EMERITUS**

James E. England, PE.  
Robert E. Thims

Subject: Ford Road at US-301 Intersection  
Nassau County Bid No.: 10-013  
**Project Closeout**

Dear Jonathan,

To the best of my knowledge and belief, all work on the US-1 at Ford Road Intersection Improvement project has been completed and is in reasonable conformance with the plans, specifications, and designer's intent. Any significant deviations have been documented and approved.

If you have any question, please feel free to call me or Carrie Smithheart at (904) 509-9007.

Sincerely,

Kent A. Ponder, P.E.  
Senior Project Engineer

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Cc: S. Herring – Nassau County  
C. Smithheart – ETM  
B. Williams – ETM  
File: