

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between BOARD OF COUNTY COMMISSIONERS,
NASSAU COUNTY, FLORIDA (“Owner”) and
Hayward Construction Group, LLC (“Contractor”).

Owner and Contractor hereby 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:

Contractor shall perform all work and furnish all necessary labor, equipment, material, and transportation for the Thomas Creek Restoration Project, Nassau County, Florida, Bid No. NC11-003, hereinafter referred to as the “Work”.

Work includes, but is not limited to, the restoration and de-snagging of Thomas Creek; removing dead trees as well as uprooted trunks, limbs and parts of trees and debris in accordance with scope of services, attached hereto as an exhibit.

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:

The Thomas Creek Restoration Project will be performed in phases based upon available funding. Contractor shall perform the services to complete Phase Two of the project. However, upon satisfactory completion of Phase Two, additional phases may be added. Nassau County reserves the right to add additional phases to the scope of work for this contract were it is deemed to be in the best interest of the County.

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Scott Herring, Engineering Services (Engineer), which is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the 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.

4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed within one hundred twenty-five (125) 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 one hundred forty-six (146) days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner 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 a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$300.00 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion 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 Owner, Contractor shall pay Owner \$300.00 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner 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 Paragraphs 5.01.A and 5.01.B below:

- A. 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 actual quantity of that item:

UNIT PRICE WORK

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Estimated Quantity</u>	<u>Bid Unit Price</u>	<u>Bid Price</u>
1	Mobilization	LS	1	\$36,000	\$36,000
2	Phase 2 – Part A	LF	1,000	\$91	\$91,000
3	Phase 2 – Part B	LF	2,565 *	\$91	\$233,400

* Est. quantity (rounded to nearest whole number)

\$ 360,400

Total of all Bid Prices (Unit Price Work)

The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

B. For all Work, at the prices stated in Contractor’s Bid, attached hereto as an exhibit.

1. The estimated quantity for the bid item #3, Part B of Phase 2 has been adjusted from 3,000 LF to approximately 2,565 LF due to available funding.

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 Engineer as provided in the General Conditions.
- B. Owner shall pay Contractor pursuant to and in accordance with the promulgations set forth by the State of Florida’s Prompt Payment Act. (Florida Statutes Section 218.70).

6.02 Progress Payments

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor’s Applications for Payment during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the following:

1. The Owner shall pay the Contractor for the Work performed pursuant to the draw schedule submitted by the Contractor, dated September 15, 2010, attached hereto as an exhibit

Mobilization	\$ 36,000
1 st Draw (after first 1,000 ft. cleared)	\$ 91,000
2 nd Draw (after 2,000 ft. cleared)	\$ 91,000
3 rd Draw (after 3,000 ft. cleared)	\$ 91,000
4 th Draw (upon completion of project)	\$ 51,400

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer 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 zero percent (0%) per annum.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner 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 considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and other Site-related information provided in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.

- E. Based on the information and observations referred to in Paragraph 8.01.D above, Contractor does not consider that further 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.
- F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement.
 - 2. Performance bond.
 - 3. Payment bond.
 - 4. General Conditions.
 - 5. Scope of Work, Attachment “A”
 - 6. Cost Proposal, Attachment “B”
 - 7. Request for Proposals (RFP), Bid No. NC11-003
 - 8. Addenda.
 - 9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor’s Bid.
 - b. Documentation submitted by Contractor prior to Notice of Award.
 - 10. 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.
- 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 stated 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. Owner 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 Owner 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 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. The Owner entered into a FFY 2008 Disaster Recovery Program Agreement with the State of Florida, Department of Community Affairs (hereinafter referred to as "Department"), Contract No. 10DB-K4-11-54-01-K 25 (hereinafter referred to as "CDBG-DRPA"), to provide funding under a Community Development Block Grant Program. The CDBG-DRPA is incorporated into this Agreement herein by reference and made a part hereof.
1. Contractor agrees to adhere to all of the terms of the CDBG-DRPA, and all applicable state and federal laws and regulations.
 2. Contractor shall hold the Department and the Owner harmless against all claims of whatever nature arising out of the Contractor's performance under this Agreement, to the extent allowed by law.
 3. Contractor shall allow access to its records at a reasonable time to the Owner and the Department, its employees, and agents. "Reasonable" shall ordinarily mean during normal business hours of 8:00 a.m. to 5:00 p.m. local time, on Monday through Friday.
- B. The Term of this Agreement shall be for three (3) years beginning on the effective date of the agreement. The performance period of this Agreement may be extended upon mutual agreement between both parties. Any extension of

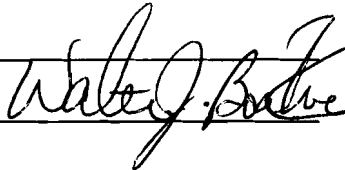
one (1) year extensions shall be in the County's best interest and sole discretion. Any Agreement or amendment to the Agreement shall be subject to fund availability and mutual written agreement between the County and Consultant.

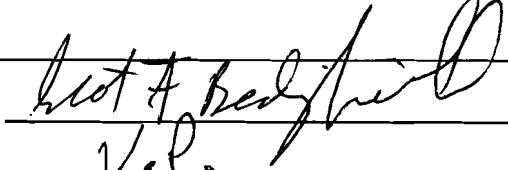
IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on March 14, 2011 (which is the Effective Date of the Agreement).

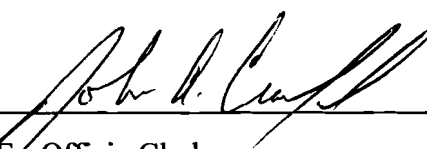
OWNER:

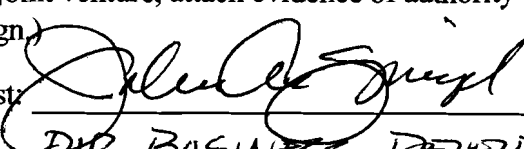
CONTRACTOR

By: Walter J. Boatright 
Title: Chairman

By: Robert A. Bedford 
Title: V.P.

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

Attest: 
Title: Ex-Officio Clerk

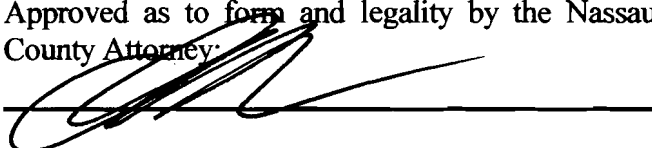
Attest: 
Title: DIRECTOR BUSINESS DEVELOPMENT

Address for giving notices:
Contract Management
96161 Nassau Place, Suite 6
Yulee, Florida 32097

Address for giving notices:
HAYWARD CONSTRUCTION GROUP, LLC
12058 SAN JOSE BLVD # 1002
JACKSONVILLE, FL 32223

EBK 3/14/11 AS 3/10/11

License No.: CBC1255145

Approved as to form and legality by the Nassau County Attorney:


By: David A. Hallman

ATTACHMENT "A"

**Scope of Services for the Thomas Creek Restoration Project
Board of County Commissioners, Nassau County, FL**

The following work and services are presented as an indication of the work that may be required under the contract, but may not necessarily be all inclusive of the work under this contract.

1.0 PROJECT SUMMARY:

- 1.1 The project consists of the restoration and de-snagging of Thomas Creek. The intent is to restore the functionality of the creek in order to aid in the conveyance of storm water from the watershed of Thomas Creek.

2.0 PROJECTS PHASES:

- 2.1 The Thomas Creek Restoration Project will be performed in phases based upon available funding (See map - Exhibit 1). Contractor shall initially perform the services to complete Phase 2 of the project. Proposed phases shown Exhibit "1" are for estimated purposes only. Project Phase limits to be determined based upon unit cost and available funding. Nassau County reserves the right to add additional phases to the scope of work for this contract were it is deemed to be in the best interest of the County.

The phases are anticipated as follows:

- 2.1.1 *Phase 1 - From the intersection of Funks and Thomas Creek approximately 3000' southwest. This phase has or will be completed under a separate contract and is not a part of this agreement.*
- 2.1.2 *Phase 2 - From the end point of Phase 1, southwest approximately 1,000' and from the start point of phase 1 southeast approximately 2,565'*
- 2.1.3 *Phase 3 - To be determined based on funding*

3.0 SCOPE OF WORK – THOMAS CREEK RESTORATION

- 3.1 The project shall consist of removing dead trees as well as uprooted trunks, limbs and parts of trees from Thomas Creek.
- 3.2 Only deadfall trees that have fallen over or into the creek shall be removed. All activities performed shall take care that active vegetation in the canopy over the creek and its banks, along the littoral shelf and the littoral/riparian interface, and bottom habitat are not harmed. Impacts to adjacent wetlands shall be minimized using Best Management Practices, including but not limited to the use of mats under vehicles or heavy equipment and regarding any rutting to natural contours, such that

temporary impacts would readily re-recruit and return to un-impacted conditions within one growing season. The use of overhead booms or other heavy equipment shall be limited such that there is no damage to canopy vegetation.

- 3.3 There shall be no filling of wetlands for vehicle access or other purposes. There shall be no dredging of wetlands or other surface waters other than the removal of the woody materials.
- 3.4 An initial phase of removing fallen trees crossing over the creek shall be access shore side beginning at the Richard Ray property. In water work shall be conducted by floating vessels limited in size such that no side or bottom vegetation is contacted or harmed. If activity is conducted by vessel and the creek narrows to a point where the vessel may no longer safely be used without such contact, advancement shall be reduced to waders with hand tool removal.
- 3.5 Both the DACS Division of Forestry and the FDEP Northeast District office shall be notified upon selection of contractors and methodologies shall be discussed with both agency's staff, and amended to meet the criteria above if necessary. Both agencies shall further be accommodated for shore side and vessel based inspections during the work performed as a means of quality control/quality assurance.
- 3.6 Contractor shall be responsible for removal of all fallen loose and semi loose debris, and any construction type fencing as shown in the attached picture within the limits of work, as defined below. Any questions about the bank to bank limits or debris removal that extends beyond the limits of work shall be directed to the Nassau County representative for clarification. Any questions on whether or not to remove a piece of debris shall be resolved by the County's on site inspector. However, in no case shall any dredging be performed by the Contractor under this contract.
- 3.7 The work described above shall be accomplished by hand removal or limited mechanical clearing. Contractor shall be responsible for the disposal of all debris removed from the Creek. The cost for the disposal shall be included in the overall project cost and shall not be a separate cost to be reimbursed to the Contractor. Method and location of the disposal shall be approved by the County and FDEP prior to work beginning.
- 3.8 County shall provide one (1) access point/staging area, which is a county-owned easement, for Contractor to use for the removal of debris from Thomas Creek. The contractor can obtain, at its own cost, additional staging sites should the contractor choose to do so. These sites will require approval by both Nassau County and FDEP. *Note: During Phase One access was granted by Anheiser Bush to access Thomas Creek from*

their property as well as allowing the area to be used for staging. It will be the Contractor's responsibility to request authorization for this or future phases.

4.0 SPECIAL CONDITIONS:

- 4.1** County shall have the right to temporarily suspend the Contract due to unforeseen weather conditions or any other conditions that in the sole opinion of the County may cause the work to not proceed in an expeditious manner as determined by the County.

5.0 LIMITS OF WORK:

5.1 Project Phases Limits

- 5.1.1** Phase One: The project shall consist of removing dead trees as well as uprooted trunks, limbs and parts of trees from Thomas Creek between Point A Lat 30.54 Long -81.76 and Point B Lat 30.52 Long -81.76. The project limits are generally described as beginning at the intersection of Thomas Creek and Funks Creek and proceeding three thousand (3,000) feet to the southwest as shown on the attached map.
- 5.1.2** Phase Two: The project shall consist of removing dead trees as well as uprooted trunks, limbs and parts of trees from Thomas Creek between Point B Lat 30.52 Long -81.76 and Point C Lat 30.53 Long -81.76 and between Point A Lat 30.54 Long -81.76 and Point D Lat 30.53 Long -81.76. The project limits are generally described as beginning at the end of phase 1 and proceeding one thousand (1,000) feet to the southwest and beginning at the intersection of Thomas Creek and Funks Creek which is the beginning of phase 1 and proceeding two thousand and five hundred sixty-five (2,565) feet the southeast as shown on the attached map.
- 5.1.3** Phase Three: To be determined based on funding
- 5.2** Work shall take place from creek bank to creek bank with the work area delineated with white PVC pipes topped with orange tape on a spacing of 500 feet. Any questions about the bank to bank work area limits shall be directed to the Nassau County and FDEP representative(s) for clarification.

6.0 COMPENSATION:

6.1 As part of this contract, the Contractor shall propose a payment methodology for the debris removal to be covered under this project (see Attachment "B").

7.0 PRECONSTRUCTION MEETING:

7.1 A preconstruction meeting shall be required. Contractor to have all subcontractors and necessary equipment inspected (or previously) present and be prepared to explain method of work. Division of Forestry and FDEP Northeast District staff shall be invited to the preconstruction meeting.

ATTACHMENT "B" - COST PROPOSAL

THOMAS CREEK RESTORATION PROJECT
PHASE TWO
BID NO. NC11-003

Company Name HAYWARD CONSTRUCTION GROUP, LLC
 Contact Name MARIL G. HAYWARD
 Address 12058 SAN JOSE BLVD #1002
 City, State, Zip JACKSONVILLE, FL 32223
 Phone Number: 904.886.7122 Fax Number: 904.886.7992
 Email: haywardconstruct@bellsouth.net

Bidder agrees to perform all the work described in the Contract document for the unit price sum as follows:

Item #	Description	Est. Quan.	Unit	Unit Cost	Extended Cost
1	Mobilization Fee (not to exceed 10% of the total contract amount). Lump Sum bid price to include, but not limited to, all insurance and bonds as required by the construction documents, mobilization of equipment, etc.	1	LS	\$ <u>36,000⁰⁰</u>	\$ <u>36,000⁰⁰</u>
2	Phase Two - Part A: Removing dead trees as well as uprooted trunks, limbs and parts of trees from Thomas Creek between Point B Lat 30.52 Long -81.76 and Point C Lat 30.53 Long -81.76 (upstream) <i>From the end point of Phase 1, southwest</i>	1,000	LF	\$ <u>91.00</u>	\$ <u>91,000⁰⁰</u>
3	Phase Two - Part B: Removing dead trees as well as uprooted trunks, limbs and parts of trees from Thomas Creek between Point A Lat 30.54 Long -81.76 and Point D Lat 30.53 Long -81.76 (downstream) <i>From the start point of Phase 1 southeast</i>	3,000	LF	\$ <u>91.00</u>	\$ <u>273,000⁰⁰</u>
Total Cost:					\$ <u>400,000⁰⁰</u>

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids. Final payment of all Unit Price Bid Items will be based on actual quantities as determined in the Contract Documents.

Hayward Construction
Company Name Group, LLC

[Signature]
Signature

Mark Hayward
Name (Typed)

Sworn to and subscribed before me this 3rd day of February, 2011.

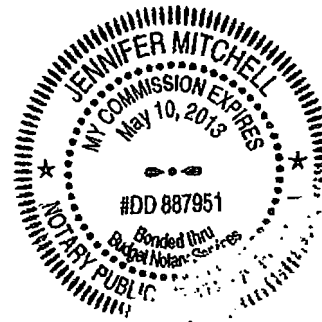
Personally known X
or Produced identification _____
(Type of identification)

Notary Public, State of Florida

My commission expires: May 10, 2013

Jennifer Mitchell
(Printed, typed, or stamped commissioned
Name of Notary Public

[Signature]
Signature



CS-10-236
(altered
- 2011/06/06)

Performance and Payment Bond No. 20-SUR-210561

As to Contractor/Principal: Hayward Construction Group, LLC

Name: Mark Hayward

Principal Business Address:
12058 San Jose Blvd
Jacksonville, FL 32223

As to the Surety: American Safety Casualty Insurance Company

Principal Business Address:
1515 CR 210 W. Suite 211
Jacksonville, FL 32259

As to the Owner of the Property/Contracting Public Entity:
Board of County Commissioners, Nassau County, Florida

Principal Business Address:
96161 Nassau Place Suite 1
Yulee, FL 32097

Description of project including address and description of improvements:
Contract No. CM1735 Thomas Creek Restoration Phase II

INSTR # 201113639, Book 1741, Page 431
Pages 8
Doc Type UNK, Recorded 06/06/2011 at 11:35 AM,
John A Crawford, Nassau County Clerk of Circuit Court
Rec. Fee \$69.50
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CONTRACT MANAGEMENT
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THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No.: 20-SUR-210561

AIA Document A312

Performance Bond

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

CONTRACTOR (Name and Address):

Hayward Construction Group, LLC

12058 San Jose Blvd

Jacksonville, FL 32223

OWNER (Name and Address):

Board of County Commissioners, Nassau County, Florida

96161 Nassau Place Suite 1

Yulee, FL 32097

SURETY (Name and Principal Place of Business):

American Safety Casualty Insurance Company

1515 CR 210 W. Suite 211

Jacksonville, FL 32259

CONSTRUCTION CONTRACT

Date: 5/9/2011

Amount: Three Hundred Sixty Thousand Four Hundred & 00/100 (\$360,400.00)

Description (Name and Location):

Contract No. CM1735 Thomas Creek Restoration Project Phase II

BOND

Date (Not earlier than Construction Contract Date): 5/23/2011

Amount: Three Hundred Sixty Thousand Four Hundred & 00/100 (\$360,400.00)

Modifications to this Bond:

None

See Page 3

CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)

Hayward Construction Group, LLC

Signature:

Name and Title: Mark Hayward, Managing Member

(Any additional signatures appear on page 4)

SURETY Company

(Corporate Seal)

American Safety Casualty Insurance Company

Signature:

Name and Title: Jessica P. Reno, Attorney-in-Fact

(FOR INFORMATION ONLY - Name, Address and Telephone)

OWNER'S REPRESENTATIVE (Architect, Engineer or other party).-

BONDS ONLY, INC.
(904) 429-0555

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such **notice to discuss methods of performing the Construction Contract**. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default-, and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions.-

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract-, or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors-, or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 In excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's 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 Owner and, as soon as practicable after the amount is determined, **tender payment therefore to the Owner-**, or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefore.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract-,

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if not liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction 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 Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction 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 the Contractor ceased working or within two years after the 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 avail-

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the 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 or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal 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.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by The Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

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

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

THE AMERICAN INSTITUTE OF ARCHITECTS

THIS BOND HEREBY IS AMENDED SO THAT THE PROVISIONS AND LIMITATIONS OF SECTION 255.05 OR SECTION 713.23, FLORIDA STATUTES, WHICHEVER IS APPLICABLE, ARE INCORPORATED HEREIN BY REFERENCE.



Please be advised that additional bond fees will be invoiced on any increases in the contract price; thus include bond fees in all additive change orders. If project completion time exceeds 12 months, a time surcharge of 1% of total project cost shall also be due and payable.

AIA Document A312

Payment Bond

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

CONTRACTOR (Name and Address):

Hayward Construction Group, LLC

12058 San Jose Blvd

Jacksonville, FL 32223

OWNER (Name and Address):

Board of County Commissioners, Nassau County, Florida

96161 Nassau Place Suite 1

Yulee, FL 32097

Construction Contract

Date: 5/9/2011

Amount: Three Hundred Sixty Thousand Four Hundred & 00/100 (\$360,400.00)

Description (Name and Location): Contract No. CM1735 Thomas Creek Restoration Project Phase II

SURETY (Name and Principal Place of Business):

American Safety Casualty Insurance Company

1515 CR 210 W. Suite 211

Jacksonville, FL 32259

BOND

Date (Not earlier than Construction Contract Date): 5/23/2011

Amount: Three Hundred Sixty Thousand Four Hundred & 00/100 (\$360,400.00)

Modifications to this Bond.-

None

See Page 6

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Hayward Construction Group, LLC

Signature: *Mark Hayward*

Name and Title:

Mark Hayward, Managing Member

(Any additional signatures appear on page 6)

American Safety Casualty Insurance

SURETY Company

Company: (Corporate Seal)

Signature: *Jessica P. Reno*

Name and Title: Jessica P. Reno, Attorney-in-Fact

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

BONDS ONLY, INC.

(904) 429-0555

successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies; and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, 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 the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, 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 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 the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has 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 the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, 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 The 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 the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner 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 The Surety hereby waives notice of any change, including changes of time, to the Construction 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 Subparagraph 4.1 or Clause 4.2.3, 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 the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the 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 or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirements shall be deemed deleted here from and provisions conforming to such statutory or other legal 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 by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of thousand or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the 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 Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the 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 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

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

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

THIS BOND HEREBY IS AMENDED SO THAT THE PROVISIONS AND LIMITATIONS OF SECTION 255.05 OR SECTION 713.23, FLORIDA STATUTES, WHICHEVER IS APPLICABLE, ARE INCORPORATED HEREIN BY REFERENCE.

Please be advised that additional bond fees will be invoiced on any increases in the contract price, thus include bond fees in all additive change orders. If project completion time exceeds 12 months, a time surcharge of 1% of total premium per month shall also be due and payable.



POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that American Safety Casualty Insurance Company has made, constituted and appointed, and by these presents does make, constitute and appoints

Jessica P. Reno

its true and lawful attorney-in-fact, for it and its name, place, and stead to execute on behalf of the said Company, as surety, bonds, undertaking and contracts of suretyship to be given to

ALL OBLIGEEES

provided that a bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of
Three Hundred Sixty Thousand Four Hundred Dollars (\$360,400.00)

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company of the 6th day of August, 2009.

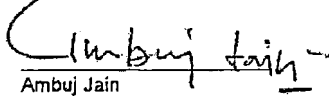
RESOLVED, that the President in conjunction with the Secretary or any Assistant Secretary may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the Company, to execute and deliver and affix the seal of the Company to bonds, undertakings, recognizances, and suretyship obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any power of attorney previously granted to such persons.

RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the company when:
(i) when signed by the President or any Vice-President and attested and sealed (if a seal is required) by any Secretary or Assistant Secretary or (ii) when signed by the President or any Vice-President or Secretary or Assistant Secretary, and counter-signed and sealed (if a seal is required) by a duly authorized attorney-in-fact or agent; or (iii) when duly executed and sealed (if a seal is required) by one or more attorney-in-fact or agents pursuant to and within the limits of the authority evidenced by the power of attorney issued by the Company to such person or persons.

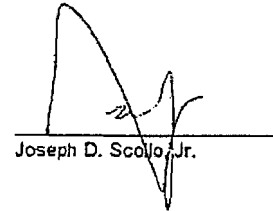
RESOLVED FURTHER, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company; and such signature and seal when so used shall have the same force and effects as though manually affixed.

IN WITNESS WHEREOF, American Safety Casualty Insurance Company has caused its official seal to be hereunto affixed, and these presents to be signed by its President and attested by its Secretary this 6th day of August, 2009

Attest:


Ambuj Jain

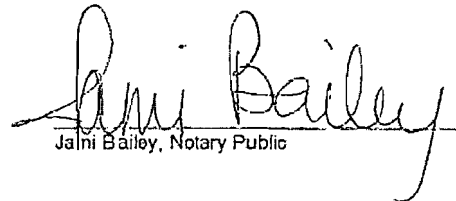



Joseph D. Scollo, Jr.

STATE OF GEORGIA)
COUNTY OF COBB)

On this 6th day of August, 2009, before me personally came Joseph D. Scollo, Jr., to me known, who, being by me duly sworn, did depose and say that he is the President of American Safety Casualty Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

JAMI BAILEY
Notary Public, Hall Co., GA
My Commission Expires Aug. 13, 2012.

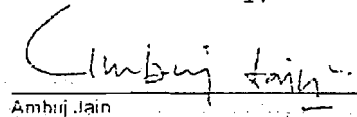

Jami Bailey, Notary Public

I, the undersigned, Secretary of American Safety Casualty Insurance Company, an Oklahoma corporation, DO HEREBY CERTIFY, that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney, is now in force.

Signed and sealed in the City of Atlanta, in the State of Georgia

Dated this 23 day of May, 2011




Ambuj Jain

ORIGINALS OF THIS POWER OF ATTORNEY ARE PRINTED WITH RED NUMERICAL NUMBERS
DUPLICATES SHALL HAVE THE SAME FORCE AND EFFECT AS AN ORIGINAL ONLY WHEN ISSUED IN CONJUNCTION WITH THE ORIGINAL

CS-10-237
Attached
Contract
CS10-170

INSTR # 201113682, Book 1741, Page 584
Pages 1
Doc Type NOC, Recorded 06/06/2011 at 02:21 PM,
John A Crawford, Nassau County Clerk of Circuit Court
Rec. Fee \$10.00
#1

NOTICE OF COMMENCEMENT
FS 713.13 REVISED 04/29/08

AFTER RECORDING RETURN TO:

Property Appraisers Parcel Identification:

RECEIVED
PROJECT MANAGEMENT
JUN -6 PM 3:13

NOTICE OF COMMENCEMENT

State of Florida
County of Nassau

The undersigned hereby given notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes the following information is provided in this **Notice of Commencement**.

Legal description of property (include street address, if available)

THOMAS CREEK RESTORATION PROJECT BID # NC11-003
CONTRACT # CM1735

General description of improvements RESTORATION AND DE-SNAGGING THOMAS CREEK

Owner's Name BOARD OF COUNTY COMMISSIONERS - NASSAU COUNTY

Address 96101 NASSAU PLACE - #1, YULLE, FL 32097

Owner's Interest in site of the improvement _____

Fee Simple Title holder (if other than owner) _____

Address _____ Phone: _____ Fax: _____

Contractor HAYWARD CONSTRUCTION GROUP LLC

Address 1205B SAN JOSE BLVD #1002 Phone: 904-886-7122 Fax: 904-886-7992

Surety AMERICAN SAFETY CASUALTY INS. CO Phone: 904-429-0555 Fax: 904-429-0888

Address 1515 CR 210 W - SUITE 211 Amount of Bond \$ 360,400

Lender's Name _____

Address _____ Phone: _____ Fax: _____

Expiration date of notice of commencement (the expiration date is 1 year from the date of recording unless a different date is specified): _____, _____, 20____

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART 1, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

[Signature]
Signature of Owner, or
Owner's Authorized Officer/Director/Partner/Manager

MARK HAYWARD, MANAGING MEMBER
Print Name and Provide Signatory's Title/Office

State of Florida
County of Nassau

I have relied upon the following identification of the Affiant John H 30-547-69-106-Q

Sworn to and subscribed before me this 6th day of June 2011

[Signature]
Notary Signature

