

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

THIS AGREEMENT is by and between BOARD OF COUNTY COMISSIONERS,
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:

		<u>UNIT PRICE WORK</u>			
<u>Item</u>	<u>Description</u>	<u>Unit</u>	Estimated	Bid Unit	<u>Bid Price</u>

<u>No.</u>			<u>Quantity</u>	<u>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 performance period under this provision shall be in one (1) year increments. Total contract length and individual

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 May 9, 2011 (which is the Effective Date of the Agreement).

OWNER:
Walter J. Boatright
By: Walter J. Boatright
Title: Chairman

CONTRACTOR
HAYWARD CONSTRUCTION GROUP, LLC
By: Scott F. Bednarski
Title: V.P.

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

Attest: [Signature]
Title: Ex-Officio Clerk

Attest: [Signature]
Title: DIRECTOR BUSINESS DEV.

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

Address for giving notices:
12058 SAN JOSE BLVD #1002
JACKSONVILLE, FL 32223
haywardconstruct@bellsouth.net

AS 5/10/11 EBL 5/10/11

License No.: CBC1255145

Approved as to form and legality by the Nassau County Attorney:
[Signature]
By: David H. 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 MARK 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



[Handwritten mark]

NOTICE TO PROCEED

TO: HAYWARD CONSTRUCTION
 CONTRACTOR
12058 SAN JOSE BLVD. #1002
 ADDRESS
JACKSONVILLE FL 32223
 CITY STATE ZIP

PROJECT: **Thomas Creek De-snag Phase II**
 Bid Number NC11-003
 Nassau County, Florida

You are hereby notified to commence work in accordance with the Agreement dated MAY 9, 2011.

The Contract time for Substantial Completion is **125** consecutive calendar days from the date of commencement.

The Contract time for Final Completion is **21** consecutive calendar days from the date of Substantial Completion.

The Contract time commences to run JUNE 8, 2011.

The date of Substantial Completion is OCTOBER 11, 2011.

The date of Final Completion is NOVEMBER 1, 2011.

Nassau County Board of County Commissioners

BY: Shawn Whitaker
 TITLE: Engineer II
 DATE: 6/7/11

You are required to return an acknowledged copy of the Notice to Proceed to The Nassau County Board of County Commissioners, c/o John A. Crawford, Ex-Officio Clerk, 76347 Veterans Way, Yulee, Florida 32097.

ACCEPTANCE OF NOTICE

Receipt of the above Notice to Proceed is hereby acknowledged

this 6 day of July, 20 11
 BY: Mark H. [Signature]
 TITLE: President