

**FOURTH AMENDMENT TO THE AGREEMENT FOR THE THOMAS CREEK RESTORATION PROJECT**

THIS ADDENDUM entered into this 25th day of November, 2014 by and between the **BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA**, a political subdivision of the State of Florida, (hereinafter referred to as "County") and **HAYWARD CONSTRUCTION GROUP, LLC**, 12058 San Jose Boulevard, Suite #1002, Jacksonville, Florida 32223, (hereinafter referred to as "Contractor").

**WHEREAS**, the parties entered into an Agreement dated May 9, 2011 for the Thomas Creek Restoration Project - Phase Two; and

**WHEREAS**, the original agreement provided for additional phases to be added to the scope of work based upon available funding and where it is deemed to be in the best interest of the County; and

**WHEREAS**, the County and Contractor entered into Amendment No. 1 on January 23, 2012 for Phase Three of the Thomas Creek Restoration Project; and

**WHEREAS**, the County and Contractor entered into Amendment No. 2 on August 27, 2012 for Phase Four & Five of the Thomas Creek Restoration Project; and

**WHEREAS**, the initial term of the agreement was extended, upon mutual agreement, for a one (1) year period beginning May 9, 2014 and ending May 8, 2015; and

**WHEREAS**, the County executed a State Financial Assistance Agreement with the State of Florida Department of Environmental Protection, DEP Agreement No. LP45040 (Contract Tracking No. CM2163), to provide funds in the amount of \$567,000.00 for the Thomas Creek Flooding Assistance project; and

**WHEREAS**, the parties agreed to amend the agreement to add the scope of work and fee for the completion of the Thomas Creek Restoration Project - Phase Six.

**NOW, THEREFORE, FOR AND IN CONSIDERATION** of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Work for Phase Six of the Thomas Creek Restoration Project 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 the revised scope of services, attached hereto as Attachment "A".
2. Add the following paragraph to Article 4 - Contract Times as follows:

4.02 E. The Work for Phase Six of the Thomas Creek Restoration Project will begin upon the issuance of the Notice to Proceed and will be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions no later than June 30, 2015.

3. Add the following to Article 5 - Contract Price, Section 5.01.A as follows:

**PHASE SIX - UNIT PRICE WORK**

Description	Unit	Quan.	Unit Price	Amount
Mobilization	LS	1	\$20,000	\$ 20,000
Phase 6	LF	6,011 (*)	\$ 91	\$547,000
Total:				\$567,000

\*Est. quantity (rounded to nearest whole number)

4. Add the following paragraph to Article 6 - Payment Procedures as follows:

6.02 A.3 The Owner shall pay the Contractor for the work performed for Phase Six pursuant to the following draw schedule:

Mobilization	\$20,000
1 <sup>st</sup> Draw (after first 1,000 ft. cleared	\$91,000
2 <sup>nd</sup> Draw (after 2,000 ft. cleared	\$91,000
3 <sup>rd</sup> Draw (after 3,000 ft. cleared	\$91,000
4 <sup>th</sup> Draw (after 4,000 ft. cleared	\$91,000
5 <sup>th</sup> Draw (after 5,000 ft. cleared	\$91,000
6 <sup>th</sup> Draw (upon completion of project	\$92,000

5. All other provisions of said Agreement not in conflict with this Addendum shall remain in full force and effect.
6. Time is of the essence.

**BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA**



PAT EDWARDS  
Its: Chair

Attest to Authenticity of  
Chairman's signature:

  
JOHN A. CRAWFORD  
Its: Ex-Officio Clerk

MES  
11-26-14

Approved as to form and legality:

  
Mollie M. Garrett, Esq.

[Contractor signature on next page]

**HAYWARD CONSTRUCTION GROUP, LLC**

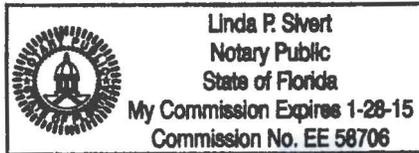
Mark Hayward  
Its: President

STATE OF Florida  
COUNTY OF Duval

Before me personally appeared, Mark Hayward,  
who is personally known  or produced \_\_\_\_\_  
as identification, known to be the person described in and  
who executed the foregoing instrument, and acknowledged to  
and before me that he/she executed said instrument for the  
purposes therein expressed.

WITNESS my hand and official seal, this 3th day of  
October, 2014.

Linda P. Sivert  
Notary Signature



Notary-Public-State of Florida at large  
My Commission expires: 1/28/15

11:08 AM OCT 31 2014

**ATTACHMENT “A” –REVISED (Amendment No. 4)**

**Scope of Services for the Thomas Creek Restoration Project – Phases 6  
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 through Phase 5 of the project. Proposed phases shown in 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 2565’ and from the start point of phase 1 southeast, approximately 1000’.*
- 2.1.3 *Phase 3 – From Point A Lat 30.523 Long -81.763 to Point B Lat 30.522 Long -81.764 (Part 3.A). Then, continue from Point B to Point C Lat 30.521 Long -81.764 (Part 3.B). The project limits are generally described as beginning from the southern terminus of Phase 2.A, southwest approximately 1,538’ upstream, for Part 3.A. Then, continue from the southern terminus of Part 3.A approximately 576’ southwest as shown on the attached map.*
- 2.1.4 *Phase 4 - The project limits are generally described as beginning from the southern terminus of Phase 3.B, southwest approximately 818’ upstream, for Part 4.A. Then, continue from the southern terminus of Part 4.A approximately 538’ southwest as shown on the attached map.*
- 2.1.5 *Phase 5 - The project limits are generally described as beginning from the southern terminus of Phase 4.B, southwest approximately 1,154’ upstream, as shown on the attached map.*

*2.1.6 Phase 6 –The project limits are generally described as beginning from the southern terminus of Phase 5, approximately 6,011' upstream, as shown on the attached map.*

### **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. The limits of the project are from bank edge to bank edge of the creek or approximately 15 feet offset from either side of the centerline when the County determines the creek banks to be undefined.
- 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** 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 The contractor must obtain, at its own expense, staging sites and access points for the project. These sites will require approval by both Nassau County and FDEP.

#### 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 approximately 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 seven hundred (3,000) feet the southeast as shown on the attached map.
- 5.1.3 Phase Three: The project shall consist of removing dead trees as well as uprooted trunks, limbs and parts of trees from Thomas

Creek from Point A Lat 30.523 Long -81.763 to Point B Lat 30.522 Long -81.764 (Part 3.A). Then, continue from Point B to Point C Lat 30.521 Long -81.764 (Part 3.B). The project limits are generally described as beginning from the southern terminus of Phase 2.A, southwest approximately 1,538' upstream, for Part 3.A. Then, continue from the southern terminus of Part 3.A approximately 576' southwest as shown on the attached map.

- 5.1.4 Phase Four: The project limits are generally described as beginning from the southern terminus of Phase 3.B, southwest approximately 818' upstream, for Part 4.A. Then for Part 4.B, continue from the southern terminus of Part 4.A approximately 538' southwest as shown on the attached map.
- 5.1.5 Phase Five: The project limits are generally described as beginning from the southern terminus of Phase 4.B, southwest approximately 1,154' upstream, as shown on the attached map.
- 5.1.6 Phase Six: The project limits are generally described as beginning from the southern terminus of Phase 5, southwest approximately 6,011' upstream, as shown on attached map.

**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 for phases 1-3. Phases 4 and 5 shall take place from either creek bank to creek bank or an offset of 15 from the center line of the creek/floodplain on either side. The work area for Phase 4 and 5 shall also be 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.



THE AMERICAN INSTITUTE OF ARCHITECTS

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Pages 7  
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John A Crawford, Nassau County Clerk of Circuit Court  
Rec. Fee \$61.00  
#1



Bond No.: 10009589

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 Boulevard, Suite #1002

Jacksonville, FL 32223

SURETY (Name and Principal Place of Business):

Hudson Insurance Company

100 William Street, 5th Floor

New York, NY 10038

OWNER (Name and Address):

Board of County Commissioners of Nassau County, Florida, a political subdivision of the State of Florida

96160 Nassau Place

Yulee, FL 32097

CONSTRUCTION CONTRACT

Date:

Amount: Five Hundred Sixty Seven Thousand Dollars & 00/100 (\$567,000.00)

Description (Name and Location):

Contract No.: CM1735-A4: Thomas Creek Restoration Project - Phase Six

BOND

Date (Not earlier than Construction Contract Date):

Amount: Five Hundred Sixty Seven Thousand Dollars & 00/100 (\$567,000.00)

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

SURETY

Company: Hudson Insurance Company

(Corporate Seal)

Signature:

Name and Title: Peter A. Kessler, Attorney-in-Fact & Florida Licensed Resident Agent

(Any additional signatures appear on page 4)

(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



Bond No.: 10009589

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 Boulevard, Suite 1002

Jacksonville, FL 32223

SURETY (Name and Principal Place of Business):

Hudson Insurance Company  
100 William Street, 5th Floor  
New York, NY 10038

OWNER (Name and Address):

Board of County Commissioners of Nassau County, Florida, a political subdivision of the State of Florida

96160 Nassau Place

Yulee, FL 32097

Construction Contract

Date:

Amount: Five Hundred Sixty Seven Thousand Dollars & 00/100 (\$567,000.00)

Description (Name and Location): Thomas Creek Restoration Project - Phase Six

BOND

Date (Not earlier than Construction Contract Date):

Amount: Five Hundred Sixty Seven Thousand Dollars & 00/100 (\$567,000.00)

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)

SURETY

Company: Hudson Insurance Company

Signature: Peter A. Kessler

Name and Title: Peter A. Kessler, Attorney-in-Fact  
& Florida Licensed Resident Agent

(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:



POWER OF ATTORNEY

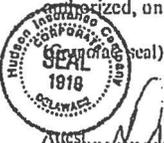
KNOW ALL MEN BY THESE PRESENTS: That HUDSON INSURANCE COMPANY, a corporation of the State of Delaware, with offices at 100 William Street, New York, New York, 10038, has made, constituted and appointed, and by these presents, does make, constitute and appoint

Peter A. Kessler, Sonja Harris, Natalie Ponder, Jessica Renn, Whitney Serabis of the State of Florida

its true and lawful Attorney(s)-in-Fact, at New York, New York, each of them alone to have full power to act without the other or others, to make, execute and deliver on its behalf, as Surety, bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking shall obligate said Company for any portion of the penal sum thereof in excess of the sum of Ten Million Dollars (\$10,000,000.00).

Such bonds and undertakings when duly executed by said Attorney(s)-in-Fact, shall be binding upon said Company as fully and to the same extent as if signed by the President of said Company under its corporate seal attested by its Secretary.

In Witness Whereof, HUDSON INSURANCE COMPANY has caused these presents to be of its Senior Vice President thereunto duly authorized, on this 4th day of February, 2014 at New York, New York.



Attest: [Signature] Dina Daskalakis Corporate Secretary

HUDSON INSURANCE COMPANY By: [Signature] Michael P. Gleeson Senior Vice President

STATE OF NEW YORK COUNTY OF NEW YORK. SS.

On the 4th day of February, 2014 before me personally came Michael P. Gleeson to me known, who being by me duly sworn did depose and say that he is a Senior Vice President of HUDSON INSURANCE COMPANY, the corporation described herein and which executed the above instrument, that he knows the seal of said Corporation, that the seal affixed to 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.



[Signature] ALICIA T. MCKINNEY Notary Public, State of New York No. 01MC6212495 Qualified in New York County Commission Expires October 13, 2017

CERTIFICATION

STATE OF NEW YORK COUNTY OF NEW YORK. SS.

The undersigned Dina Daskalakis hereby certifies: That the original resolution, of which the following is a true and correct copy, was duly adopted by unanimous written consent of the Board of Directors of Hudson Insurance Company dated July 27th, 2007, and has not since been revoked, amended or modified:

"RESOLVED, that the President, the Executive Vice Presidents, the Senior Vice Presidents and the Vice Presidents shall have the authority and discretion, to appoint such agent or agents, or attorney or attorneys-in-fact, for the purpose of carrying on this Company's surety business, and to empower such agent or agents, or attorney or attorneys-in-fact, to execute and deliver, under this Company's seal or otherwise, bonds obligations, and recognizances, whether made by this Company as surety thereon or otherwise, indemnity contracts, contracts and certificates, and any and all other contracts and undertakings made in the course of this Company's surety business, and renewals, extensions, agreements, waivers, consents or stipulations regarding undertakings so made; and

FURTHER RESOLVED, that the signature of any such Officer of the Company and the Company's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seal when so used whether heretofore or hereafter, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed."

THAT the above and foregoing is a full, true and correct copy of Power of Attorney issued by said Company, and of the whole of the original and that the said Power of Attorney is still in full force and effect 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.

Witness the hand of the undersigned and the seal of said Corporation this 6th day of November, 2014.



By: [Signature] Dina Daskalakis, Corporate Secretary

**FOURTH AMENDMENT TO THE AGREEMENT FOR THE THOMAS  
CREEK RESTORATION PROJECT**

THIS ADDENDUM entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between the **BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA**, a political subdivision of the State of Florida, (hereinafter referred to as "County") and **HAYWARD CONSTRUCTION GROUP, LLC**, 12058 San Jose Boulevard, Suite #1002, Jacksonville, Florida 32223, (hereinafter referred to as "Contractor").

**WHEREAS**, the parties entered into an Agreement dated May 9, 2011 for the Thomas Creek Restoration Project - Phase Two; and

**WHEREAS**, the original agreement provided for additional phases to be added to the scope of work based upon available funding and where it is deemed to be in the best interest of the County; and

**WHEREAS**, the County and Contractor entered into Amendment No. 1 on January 23, 2012 for Phase Three of the Thomas Creek Restoration Project; and

**WHEREAS**, the County and Contractor entered into Amendment No. 2 on August 27, 2012 for Phase Four & Five of the Thomas Creek Restoration Project; and

**WHEREAS**, the initial term of the agreement was extended, upon mutual agreement, for a one (1) year period beginning May 9, 2014 and ending May 8, 2015; and

**WHEREAS**, the County executed a State Financial Assistance Agreement with the State of Florida Department of Environmental Protection, DEP Agreement No. LP45040 (Contract Tracking No. CM2163), to provide funds in the amount of \$567,000.00 for the Thomas Creek Flooding Assistance project; and

**WHEREAS**, the parties agreed to amend the agreement to add the scope of work and fee for the completion of the Thomas Creek Restoration Project - Phase Six.

**NOW, THEREFORE, FOR AND IN CONSIDERATION** of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Work for Phase Six of the Thomas Creek Restoration Project 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 the revised scope of services, attached hereto as Attachment "A".
2. Add the following paragraph to Article 4 - Contract Times as follows:

4.02 E. The Work for Phase Six of the Thomas Creek Restoration Project will begin upon the issuance of the Notice to Proceed and will be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions no later than June 30, 2015.

3. Add the following to Article 5 - Contract Price, Section 5.01.A as follows:

**PHASE SIX - UNIT PRICE WORK**

Description	Unit	Quan.	Unit Price	Amount
Mobilization	LS	1	\$20,000	\$ 20,000
Phase 6	LF	6,011 (*)	\$ 91	\$547,000
Total:				\$567,000

\*Est. quantity (rounded to nearest whole number)

4. Add the following paragraph to Article 6 - Payment Procedures as follows:

6.02 A.3 The Owner shall pay the Contractor for the work performed for Phase Six pursuant to the following draw schedule:

Mobilization	\$20,000
1 <sup>st</sup> Draw (after first 1,000 ft. cleared	\$91,000
2 <sup>nd</sup> Draw (after 2,000 ft. cleared	\$91,000
3 <sup>rd</sup> Draw (after 3,000 ft. cleared	\$91,000
4 <sup>th</sup> Draw (after 4,000 ft. cleared	\$91,000
5 <sup>th</sup> Draw (after 5,000 ft. cleared	\$91,000
6 <sup>th</sup> Draw (upon completion of project	\$92,000

5. All other provisions of said Agreement not in conflict with this Addendum shall remain in full force and effect.
6. Time is of the essence.

**BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA**

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PAT EDWARDS  
Its: Chair

Attest to Authenticity of  
Chairman's signature:

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JOHN A. CRAWFORD  
Its: Ex-Officio Clerk

Approved as to form and legality:

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[Contractor signature on next page]

**HAYWARD CONSTRUCTION GROUP, LLC**

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Before me personally appeared, \_\_\_\_\_,  
who is personally known \_\_\_\_\_ or produced \_\_\_\_\_  
as identification, known to be the person described in and  
who executed the foregoing instrument, and acknowledged to  
and before me that he/she executed said instrument for the  
purposes therein expressed.

WITNESS my hand and official seal, this \_\_\_\_\_ day of  
\_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Signature

Notary-Public-State of \_\_\_\_\_ at large  
My Commission expires:

**ATTACHMENT “A” –REVISED (Amendment No. 4)**

**Scope of Services for the Thomas Creek Restoration Project – Phases 6  
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 through Phase 5 of the project. Proposed phases shown in 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 2565’ and from the start point of phase 1 southeast, approximately 1000’.*

2.1.3 *Phase 3 – From Point A Lat 30.523 Long -81.763 to Point B Lat 30.522 Long -81.764 (Part 3.A). Then, continue from Point B to Point C Lat 30.521 Long -81.764 (Part 3.B). The project limits are generally described as beginning from the southern terminus of Phase 2.A, southwest approximately 1,538’ upstream, for Part 3.A. Then, continue from the southern terminus of Part 3.A approximately 576’ southwest as shown on the attached map.*

2.1.4 *Phase 4 - The project limits are generally described as beginning from the southern terminus of Phase 3.B, southwest approximately 818’ upstream, for Part 4.A. Then, continue from the southern terminus of Part 4.A approximately 538’ southwest as shown on the attached map.*

2.1.5 *Phase 5 - The project limits are generally described as beginning from the southern terminus of Phase 4.B, southwest approximately 1,154’ upstream, as shown on the attached map.*

*2.1.6 Phase 6 –The project limits are generally described as beginning from the southern terminus of Phase 5, approximately 6,011' upstream, as shown on the attached map.*

**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. The limits of the project are from bank edge to bank edge of the creek or approximately 15 feet offset from either side of the centerline when the County determines the creek banks to be undefined.
- 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 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 The contractor must obtain, at its own expense, staging sites and access points for the project. These sites will require approval by both Nassau County and FDEP.
- 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 approximately 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 seven hundred (3,000) feet the southeast as shown on the attached map.
    - 5.1.3 Phase Three: The project shall consist of removing dead trees as well as uprooted trunks, limbs and parts of trees from Thomas

Creek from Point A Lat 30.523 Long -81.763 to Point B Lat 30.522 Long -81.764 (Part 3.A). Then, continue from Point B to Point C Lat 30.521 Long -81.764 (Part 3.B). The project limits are generally described as beginning from the southern terminus of Phase 2.A, southwest approximately 1,538' upstream, for Part 3.A. Then, continue from the southern terminus of Part 3.A approximately 576' southwest as shown on the attached map.

- 5.1.4 Phase Four: The project limits are generally described as beginning from the southern terminus of Phase 3.B, southwest approximately 818' upstream, for Part 4.A. Then for Part 4.B, continue from the southern terminus of Part 4.A approximately 538' southwest as shown on the attached map.
- 5.1.5 Phase Five: The project limits are generally described as beginning from the southern terminus of Phase 4.B, southwest approximately 1,154' upstream, as shown on the attached map.
- 5.1.6 Phase Six: The project limits are generally described as beginning from the southern terminus of Phase 5, southwest approximately 6,011' upstream, as shown on attached map.

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 for phases 1-3. Phases 4 and 5 shall take place from either creek bank to creek bank or an offset of 15 from the center line of the creek/floodplain on either side. The work area for Phase 4 and 5 shall also be 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.



Thomas Creek Phasing Map  
 Restoration Project



0 200 400 600 800 1000 Feet