

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 – Phase Seven, Nassau County, Florida, Bid No. NC6-004, 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 Seven of the project. However, upon satisfactory completion of Phase Seven, 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, Director of Public Works (Engineer), who will 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 150 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 195 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 Work other than Unit Price Work, a lump sum of: \$ _____

All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

- B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

UNIT PRICE WORK

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
1	Mobilization Fee	LS	1	\$12,500.00	\$12,500.00
2	Phase Seven	LF	5,540	\$88.00	\$487,500.00
Total of all Bid Prices (Unit Price Work):					\$500,000.00

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.

- C. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

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 within forty-five (45) calendar days of receipt of invoice, 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 below:

Mobilization	\$ 12,500.00
1 st Draw (after first 1,000 ft. cleared)	\$ 88,000.00
2 nd Draw (after 2,000 ft. cleared)	\$ 88,000.00
3 rd Draw (after 3,000 ft. cleared)	\$ 88,000.00
4 th Draw (after 4,000 ft. cleared)	\$ 88,000.00
5 th Draw (after 5,000 ft. cleared)	\$ 88,000.00
6 th Draw (upon completion of project)	\$ 47,500.00

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. General Conditions.
 - 3. Scope of Work, Attachment “A”
 - 4. Cost Proposal, Attachment “B”
 - 5. Request for Proposals (RFP), Bid No. NC16-004
 - 6. Addenda.
 - 7. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor’s Bid.
 - b. Documentation submitted by Contractor prior to Notice of Award.
 - c. Cost Proposal/Draw Schedule Proposal, dated March 9, 2016.
 - 8. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
- 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 Rural Economic Development Initiative Community & Innovative Projects Cost-Share Funding Program (REDIC&IP) through St. Johns River Water Management District (SJRWMD) to provide funding for the Thomas Creek Restoration Project, Phase 7. The REDIC&IP Cost-Share funding Program agreement 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 REDIC&IP Cost-Share Funding Program, and all applicable state and federal laws and regulations.
 2. Contractor shall hold the SJRWMD 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 SJRWMD, 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.
- C. **Public Records Requirement:** The County is a public agency subject to Chapter 119, Florida Statutes. Under this agreement, to the extent that the contractor is providing services to the County, and pursuant to Section 119.0701, Florida Statutes, the contractor shall;
 1. Keep and maintain public records required by the public agency to perform the service.
 2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to

be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

[Remainder of page intentionally left blank]

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 4-20-16.

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

CONTRACTOR
Hayward Construction Group, LLC
By: Scott F. Bedford
Title: V.P.

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

Attest: [Signature]
Title: Office Clerk
Address for giving notices:
Contract Management
96161 Nassau Place, Suite 6
Yulee, Florida 32097

MES
04.22.16

Attest: [Signature]
Title: Mgr
Address for giving notices:
12058 San Jose Blvd #1003
Jax FL 32223

License No.: CBC 1255145

Approved as to form and legality by the Nassau County Attorney:
[Signature]
By: Michael Mullin

ATTACHMENT "A"

Scope of Services for the Thomas Creek Restoration Project Phase 7 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, aid in storm water management and to reduce the flooding of adjacent properties.

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 perform the services to complete Phase 7 of the project. Proposed phases shown in Exhibit "1" are for estimating purposes only. Project Phase limits to be determined based upon unit cost, permit limits 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 7 - From the westerly side of the intersection of US Route 1 and Thomas Creek approximately 6000' southwest
- 2.1.2 Phase 8 - From the end point of Phase 7, southwest approximately ,5000'

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** The removal of fallen trees crossing over the creek shall be from access shore side. 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** Construction, use, or operation of the structure or activity shall not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004, and 68A-27.005, F.A.C. 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.

The Contractor shall obtain staging site(s) to use for the removal of debris from Thomas Creek. These sites will require approval by both Nassau County and FDEP. Please note that one staging site that may be considered, located next to US Route 1, may possibly be obtained through the North Region of the St. Johns River Water Management District (SJRWMD) by contacting Heather Venter, Land Manager at (904) 529-2381 or at hventer@sjrwmd.com. If approved, SJRWMD would write a Special Use Authorization, meet with the contractor on site and a

security deposit would be required. Please contact Ms. Venter if there are any questions.

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 Seven: 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 30.517, Long -81.792 and Point B- Lat 30.494, Long - 81.801. The project limits are generally described as beginning at the intersection of Thomas Creek and US Route 1 and proceeding six thousand (6,000) feet to the southwest as shown on the 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. 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.



**12058 San Jose Blvd #1003
Jacksonville, FL 32223**

**COST PROPOSAL
SUBMITTAL #2**

FOR THE

**THOMAS CREEK RESTORATION PROJECT
PHASE SEVEN**

BID No. NC16-004

Bid Date : March 9, 2016 @ 4:00pm

ATTACHMENT "B" - COST PROPOSAL

THOMAS CREEK RESTORATION PROJECT
PHASE SEVEN
BID NO. NC16-004

Company Name Hayward Construction Group, LLC
 Contact Name Scot Bedingfield
 Address 12058 San Jose Blvd #1003
 City, State, Zip Jax, 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 as required by the construction documents, mobilization of equipment, etc.	1	LS	\$ <u>12,500</u>	\$ <u>12,500</u>
2	Phase Seven: Removing dead trees as well as uprooted trunks, limbs and parts of trees from Thomas Creek between Point A Lat 30.517 Long -81.792 and Point B Lat 30.494 Long -81.801 (upstream) From US Route 1, southwest	6,000	LF	\$ <u>88⁰⁰</u>	\$ <u>528,000</u>
Total Cost:					\$ <u>540,500⁰⁰</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 Group
Company Name

Kathleen J Hayward / mgr
Signature

Kathleen J Hayward - Mgr Mbn
Name (Typed)

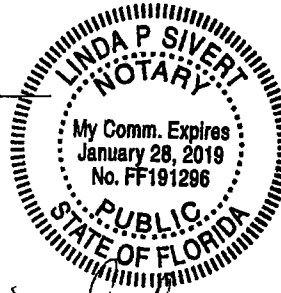
Sworn to and subscribed before me this 8 day of March, 2016.

Personally known
or Produced identification _____
(Type of identification)

Notary Public, State of Florida

My commission expires: 1/28/2019

Linda P. Sivert
(Printed, typed, or stamped commissioned
Name of Notary Public



Linda P. Sivert
Signature

NOTICE TO PROCEED

TO: Hayward Construction Group, LLC
12058 San Jose Blvd. #1003
Jacksonville, Florida 32223

PROJECT: **Thomas Creek Restoration Project – Phase 7**
Bid Number NC16-004
Contract Number: CM2309
Nassau County, Florida

NASSAU COUNTY
ENGINEERING SERVICES
DEPARTMENT

2016 OCT 14 PM 1:22

RECEIVED

You are hereby notified to commence work in accordance with the Agreement dated April 20, 2016.

The Contract time for Substantial Completion is 150 consecutive calendar days from the date of commencement.

The Contract time for Final Completion is 45 consecutive calendar days from the date of Substantial Completion.

The Contract time commences to run on September 6th, 2016.

The date of Substantial Completion is February 2, 2017.

The date of Final Completion is March 19, 2017.

Nassau County Board of County Commissioners (or designee)

BY: [Signature]

TITLE: Public Works Director

DATE: 9/23/16

16 OCT 17 PM 9:08

RECEIVED

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, Suite 456, Yulee, Florida 32097.

ACCEPTANCE OF NOTICE

Receipt of the above Notice to Proceed is hereby acknowledged

this 6th day of September 2016

BY: [Signature]

TITLE: V.P.