

RESOLUTION NO. 2012 - 28

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO AWARD BID NO. 12-25 AND TO EXECUTE AN AGREEMENT FOR THE COMPLETION OF CONSTRUCTION RELATED TO THE VILANO BEACH FLOATING DOCK PROJECT.**

**RECITALS**

**WHEREAS**, the County desires to enter into a contract with Yelton Construction Company, Inc. to provide services for the St. Johns County Vilano Beach Floating Dock Project; and

**WHEREAS**, the scope of the project shall consist of construction of a 150 foot by 10 foot Floating Dock system installed with anchor system including all cleats and necessary attachments, and 80 ft by 5 foot ADA Gangway including Gangway Connection System to existing fixed pier; and

**WHEREAS**, through the County's formal bid process, Yelton Construction Company, Inc. was selected as the most qualified respondent to enter into a contract with the County to perform the work referenced above; and

**WHEREAS**, the County has reviewed the terms, provisions, conditions and requirements of the Contract (attached hereto, an incorporated herein) and finds that entering into the Contract serves a public purpose.

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:**

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as finds of fact.

Section 2. The County Administrator, or designee, is hereby authorized to award Bid No. 12-25 to Yelton Construction Company, Inc. ("Yelton Construction").

Section 3. The County Administrator, or designee, is further authorized to execute the attached Contract with Yelton Construction on behalf of the County for the construction a 150 foot by 10 foot Floating Dock system installed with anchor system including

all cleats and necessary attachments, and 80 ft by 5 foot ADA Gangway including Gangway Connection System to existing fixed pier as specifically provided in Bid No 12-25.

Section 4. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 7<sup>th</sup> day of February, 2012.

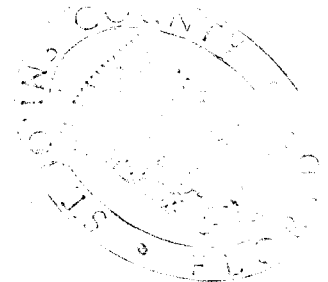
**BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA**

By: *[Signature]*  
Chair

ATTEST: Cheryl Strickland, Clerk

By: *[Signature]*  
Deputy Clerk

RENDITION DATE: 2/13/12





**ST. JOHNS COUNTY**  
**PURCHASING DEPARTMENT**  
2446 Dobbs Road  
St. Augustine, Florida 32086

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**I N T E R O F F I C E M E M O R A N D U M**

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**TO:** Michael Rubin, Director of Construction Services  
**FROM:** Sharon Haluska, Contract Administrator *SH*  
**SUBJECT:** Transmittal of Bids Received for Bid No. 12-25, Vilano Beach Floating Dock  
**DATE:** December 21, 2011

Attached are copies of the bid proposals received for the above mentioned along with a copy of the Bid Tabulation Sheet.

Please review, evaluate and make a written recommendation for this project. Also, indicate the budgeted amount for this item along with the appropriate charge code and return at your earliest convenience. We will prepare the agenda item and contract.

Please let me know if I can assist your department in any other way.

Dept. Approval *[Signature]*

Date February 7, 2012

Budget Amount \$ 320,000

Account Funding Title FBEP Recreation Projects

Funding Charge Code 1107-55306

Award to Yelton Construction Co., Inc.

Award Amount \$ 278,500.00



**ST. JOHNS COUNTY  
BID TABULATION**

BID TITLE VILANO BEACH FLOATING DOCK

ANY BIDDER AFFECTED ADVERSELY BY AN INTENDED

OPENED BY

SHARON HALUSIS

DECISION WITH RESPECT TO THE AWARD OF ANY BID,

TABULATED BY

Barbara Beauchamp

SHALL FILE WITH THE PURCHASING DEPARTMENT FOR

VERIFIED BY

ST. JOHNS COUNTY, A WRITTEN NOTICE OF INTENT

BID NUMBER 12-25

FILE A PROTEST NOT LATER THAN SEVENTY-TWO (72)

OPENING DATE/TIME December 21, 2011 2:00 PM

HOURS (EXCLUDING SATURDAY, SUNDAY AND LEGAL

HOLIDAYS) AFTER THE POSTING OF THE BID TABULATION

UNTIL

12/28/11

PAGE (S) 1 of 1

PROTEST PROCEDURES MAY BE OBTAINED IN THE

PURCHASING DEPARTMENT.

3:00 PM

FROM

12/21/11

3:00 PM

POSTING DATE/TIME

BIDDERS	BASE BID A FLOATING DOCK TOTAL LUMP SUM BID PRICE	BASE BID B ADA GANGWAY TOTAL LUMP SUM BID PRICE	BASE BID TOTAL LUMP SUM BID PRICE	BID ALTERNATE #1 SAFETY LADDERS PER EACH BID PRICE	BID ALTERNATE #2 SAFETY STATION PER EACH BID PRICE	BID BOND	ADDENDUM # 1 & ADDENDUM # 2
D&L CONTRACTING, LLC	\$355,461.72	\$47,768.43	\$403,230.15	\$341.90	\$833.69	YES	YES
YELTON CONSTRUCTION CO., INC.	\$237,435.00	\$41,065.00	\$278,500.00	\$275.00	\$555.00	YES	YES
C&L LANDSCAPE, INC.	\$283,493.00	\$44,500.00	\$327,993.00	\$625.00	\$925.00	YES	YES

BID AWARD DATE -

February 7, 2012

**STANDARD FIXED PRICE AGREEMENT  
BETWEEN  
OWNER AND CONTRACTOR  
BID # 12-25, VILANO BEACH FLOATING DOCK**

This Agreement is made \_\_\_\_\_, 2012, by and between ST. JOHNS COUNTY, 500 SAN SEBASTIAN VIEW, ST. AUGUSTINE, FLORIDA 32084, (hereinafter referred to as the "Owner") and Yelton Construction Company, Inc., 2435 Dobbs Road, St. Augustine, FL 32086 (hereinafter referred to as the "Contractor") under seal for construction of Vilano Beach Floating Dock hereinafter referred to as the "Project"), the Owner and the Contractor hereby agreeing as follows:

**ARTICLE I  
THE CONTRACT AND THE CONTRACT DOCUMENTS**

**1.1 The Contract**

1.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

**1.2 The Contract Documents**

1.2.1 The Contract Documents consist of this Agreement, the Bid Documents and Bid Forms, Specifications, all Change Orders and Field Orders issued hereafter and executed by the parties and the architects, any other amendments hereto executed by the parties hereafter. Documents not enumerated in this Paragraph 1.2.1 are not Contract Documents and do not form part of this Contract.

**1.3 Entire Agreement**

1.3.1 This Contract, together with the Contractor's Public Construction Bond for the Project, constitutes the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents not listed among the Contract Documents described above and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor.

**1.4 No Privity with Others**

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

## **1.5 Intent and Interpretation**

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term, or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study, and compare each of the Contract Documents, the Shop Drawings and the Product Data, and shall give written notice to the Engineer and the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance or the express or implied approval by the Owner or the Engineer of the Contract Documents, Shop Drawings, or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Engineer to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. **HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have

been or are hereby made.

1.5.8 As between numbers and scaled measurements on the Drawings and in the Design, the numbers shall govern; as between larger scale and smaller scale drawings, the larger scale shall govern.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or Scope of the Work to be performed by Subcontractors.

## **1.6 Ownership of Contract Documents**

1.6.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without Owner's prior written authorization.

## **ARTICLE II** **THE WORK**

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

2.2 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project in the manner set forth in the Contract Documents; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:

Furnish all labor, materials, equipment, tools, supervision, transportation, temporary utilities, supplies and all other items as necessary to provide a complete "ready for use by Owner" facility as described in the Bid and Contract Documents, including, but not necessarily limited to the Notice to Bidders; and shall include furnishing the Owner with "as built" drawings for the description of work which County desires "as-builts". As-built drawings shall comply with all requirements of permitting agencies, and all St. Johns County Development Review requirements. As-builts shall be delivered prior to Substantial Completion Certificate and shall be in both paper and (digital) electronic format.

**The Contractor shall be required to comply with all St. Johns County Development Review/Ordinance included, but not limited to specific requirements for T.V. inspection of the underground pipe and construction of all A.D.A. ramps.**

**ARTICLE III**  
**CONTRACT TIME**

**3.1 Time and Liquidated Damages**

3.1.0 The Contractor shall have ten (10) days to return Contract originals from the time the Contractor receives a "Notice of Award". St. Johns County will return a "fully executed" Contract to the Contractor no later than seven (7) days after return of the executed Contract originals (but no later than seventeen (17) days from the Notice of Award).

The Contractor will furnish a recorded original of the Public Construction Bond three (3) business days after receipt of the fully executed Contract (the Public Construction Bond must be recorded after the Contract is fully executed by all parties including the County Clerk). Upon receipt of the recorded Public Construction Bond, the County will issue a Notice to Proceed. If the Contractor fails to meet any of the dates and timeframes set forth in this section, or fails to execute the Contract, or to provide a Public Construction Bond, the County may elect at it's option to consider the Contractor non-responsive and Contract with the next best Bidder

3.1.1 The Contractor shall commence the Work within ten (10) days of written Notice to Proceed and shall achieve Substantial Completion of the Work no later than Sixty (60) consecutive calendar days from the date on which the **Notice to Proceed is issued. The time and days from the date on which the Notice to Proceed is issued, through the date set forth for Substantial Completion, shall constitute the "Contract Time."**

3.1.2 The Contractor shall pay the Owner the sum of **\$715.00** per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusable delayed, the Owner shall be entitled but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.



### **3.2 Substantial Completion**

3.2.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use or occupancy of the Work and can utilize the work for its intended purpose.

### **3.3 Time is of the Essence**

3.3.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

3.3.2 **Contract Start Date** - The date this Contract is made and shall be effective shall be the last date of execution of the Contract by any of the parties to the Contract. Execution of parties and dates thereof shall appear on page 28 of this Contract.

## **ARTICLE IV** **CONTRACT PRICE**

### **4.1 The Contract Price**

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of **Two-Hundred Thirty-Seven Thousand Four-Hundred Thirty-Five and 00/100 Dollars (\$237,435.00) Base Bid A, plus Forty-One Thousand Sixty-Five and 00/100 Dollars (\$41,065.00) for Base Bid B, for a Total Lump Sum Bid Price of Two-Hundred Seventy-Eight Thousand Five-Hundred and 00/100 Dollars (\$278,500.00)** The sum set forth in this Paragraph 4.1 shall constitute the Contract Price which shall not be modified except by Change Order as provided in this Contract.

## **ARTICLE V** **PAYMENT OF THE CONTRACT PRICE**

### **5.1 Schedule of Values**

5.1.1 Within **ten (10)** calendar days of the effective date hereof, the Contractor shall submit to the Owner and to the Engineer a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Engineer or the Owner may require, to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been agreed upon in writing

by the Engineer and the Owner. The Owner may terminate this Contract without liability of any kind if the Schedule of Values is not agreed upon within **twenty-five (25)** calendar days of the effective date hereof.

## **5.2 Payment Procedure**

5.2.1 The Owner shall pay the Contract Price to the Contractor as provided below.

5.2.2 Progress Payments - Based upon the Contractor's Applications for Payment submitted to the Engineer and upon Certificates for Payment subsequently issued to the Owner by the Engineer, the Owner shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 On or before the **10th** day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the **25th** day of the month to the Architect in such form and manner, and with such supporting data and content, as the Owner or the Architect may require. Therein, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials, and equipment properly incorporated in the Work plus ninety percent (90%) of that portion of the Contract Price properly allocable to materials or equipment that was not purchased or provided directly by Owner and is properly stored onsite (or elsewhere if approved in advance in writing by the Owner) for subsequent incorporation in the Work, less than the total amount of previous payments received from the Owner. Payments for stored materials and equipment shall be conditioned upon the Contractor's proof satisfactory to the Owner, that the Owner has title to such materials and equipment and shall include proof of required insurance.

Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full accordance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Engineer will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Engineer shall determine and certify to the Owner the amount properly owing to the Contractor. The Owner shall make partial payments on account of the Contract Price within **thirty (30)** days following the Engineer's receipt of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Engineer less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Engineer's certification of the Contractor's Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 5.3 herein below.

5.2.4 The Contractor warrants that title to all Work covered by an Application will pass to the Owner no later than time of payment. The Contractor further warrants that upon submittal of an

Application for Payment, all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

5.2.6 No progress payment, nor any use or occupancy of the Project by the Owner, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

### **5.3 Withheld Payment**

5.3.1 Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

- (a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;
- (b) claims of third parties against the Owner or the Owner's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the Owner or a third party to whom the Owner is, or may be, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand.

### **5.4 Unexcused Failure to Pay**

5.4.1 If within **thirty (30)** days after the date established herein for payment to the Contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after **seven (7)**

additional days a written notice to the Owner and the Engineer, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner have been received. Any payment not made within **thirty (30)** days after the date due shall bear interest at the rate of **12 percent (12%)** per annum.

## **5.5 Substantial Completion**

5.5.1 When the Contractor believes the work is substantially complete, the Contractor shall submit to the Engineer a list of items to be completed or corrected. When the Engineer on the basis of an inspection determines that the work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

Upon Substantial Completion of the Work, and execution by both the Owner and the Contractor of the Certificate of Substantial Completion, and upon delivery to the Owner appropriate release and waivers of claims and liens from all subcontractors and material-men of the Contract for work performed and/or materials delivered for the Project to the date of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less three hundred percent (300%) of the reasonable cost as determined by the Owner and the Engineer for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims. If any Subcontractor or material-man fails or refuses to provide an appropriate release and waiver of claims and liens as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

## **5.6 Final Completion and Final Payment**

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Engineer will promptly issue a final Certificate for Payment and if required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment. Final Payment shall not be made until the project is inspected and accepted by the Owner and all other Authorities having jurisdiction under Florida Laws or regulations.

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed therefor by the

Engineer in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum of **\$250.00** per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be unexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

The Contractor shall not be entitled to final payment unless and until it submits to the Engineer its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of claims and lien from all Subcontractors of the Contractor and of any and all other parties required by the Engineer or the Owner; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.6.3 The Owner shall make final payment of all sums due the Contractor within **thirty (30)** days of the Engineer's execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

## **ARTICLE VI** **THE OWNER**

### **6.1 Information, Services and Things Required from Owner**

6.1.1 The Owner shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly, or at all, and shall have no liability therefor. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site. Copies may be provided

instead of originals.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the Owner shall obtain all approvals, easements, and the like required for construction.

6.1.3 The Owner shall furnish the Contractor, free of charge, (5) copies of the Contract Documents for execution of the Work. The Contractor will be charged, and shall pay the Owner Cost of Reproduction per additional set of Contract Documents which it may require.

## **6.2 Right to Stop Work**

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

## **6.3 Owner's Right to Perform Work**

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within **seven (7)** days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work.

In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, plus compensation for the Engineer's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner.

## **ARTICLE VII** **THE CONTRACTOR**

7.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work where Contractor knows or should know that such work involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Engineer and the Owner, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

7.2 The Contractor shall perform the Work strictly in accordance with this Contract.

**7.3** The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

**7.4 Warranty**

**7.4.1** The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality, free from faults and defects and in strict conformance with this Contract. This warranty shall survive termination of this Contract and shall not be affected by Final Payment hereunder. All work not conforming to these requirements may be considered defective.

**7.5** Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

**7.6 Supervision**

**7.6.1** The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Engineer.

**7.6.2** Key supervisory personnel assigned by the Contractor to this Project are as follows:

<b>Name</b>	<b>Function</b>
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals have been listed above.

**7.7** The Contractor, within fifteen (15) days of commencing the Work, shall submit to the Owner and the Engineer for their information, the Contractor's schedule for completing the Work. The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner and the Engineer. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7 shall constitute a material breach of this contract.

**7.8** The Contractor shall continuously maintain at the site, for the benefit of the Owner and the Engineer, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Owner and Engineer the approved Shop Drawings, Product Data, Samples and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the Owner.

**7.9 Shop Drawings, Product Data and Samples**

**7.9.1** Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents. All Shop Drawings, Product Data, Samples and other submittals shall belong to Owner and shall be delivered, or returned to Owner, as applicable, prior to Substantial Completion.

**7.10 Cleaning the Site and the Project**

**7.10.1** The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, together with all of the Contractor's property therefrom.

**7.11 Access to Work**

**7.11.1** The Owner and the Engineer shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested.

**7.12 Indemnity**

**7.12.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, its officers, agents, engineers, consultants, servants and employees from and against liability, claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from performance of the Work but only to the extent caused in whole or in part by willful or negligent acts or omissions of the Contractor, a Subcontractor, or anyone directly or indirectly



employed by them or anyone for whose acts they may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by a party indemnified hereunder.

7.12.1.1 Contractor hereby acknowledges the receipt of ten dollars and other goods and valuable consideration from the Owner and the Engineer which has been paid to him as specific consideration for the indemnification provided herein.

7.12.2 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, any one directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

### **7.13 Safety**

7.13.1 The Contractor shall be responsible for supervising all safety precautions, including initiating and maintaining such programs in connection with the performance of the Contract.

7.13.2 The Contractor shall designate a member of the on site construction team whose duty shall be the prevention of accidents. Unless otherwise designated in writing by the Contractor to the Owner and the Engineer, this person shall be the Contractor's Superintendent.

## **ARTICLE VIII** **CONTRACT ADMINISTRATION**

### **8.1 The Engineer**

8.1.1 **The Engineer for this project is Rob A. Matthews III, P.E., Matthews Design Group, Inc., 7 Waldo Street, St. Augustine, FL 32084 (904) 826-1334.**

In the event the Owner should find it necessary or convenient to replace the Engineer, the status of the replacement Engineer shall be that of the former Engineer.

### **8.2 Engineer's Administration**

8.2.1 The Engineer, unless otherwise directed by the Owner in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the Owner's representative from the effective date of this Contract until final payment has been made. The Engineer shall be authorized to act on behalf of the Owner only to the extent provided in this Contract.

8.2.2. The Owner and the Contractor shall communicate with each other in the first instance through the Engineer.

8.2.3 The Engineer shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Engineer shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Engineer will review the Contractor's Applications for Payment and will certify to the Owner for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Engineer shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements at Contractor's expense.

8.2.6 The Engineer will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

8.2.7 The Engineer will prepare Change Orders and may authorize minor changes in the Work by field Order as provided elsewhere herein.

8.2.8 The Engineer shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2.9 The Engineer's decision in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

8.2.10 The word "ENGINEER" whenever used in this Project Manual shall be synonymous with the word "ARCHITECT" when the word ARCHITECT is used.

### **8.3 Claims by the Contractor**

8.3.1 All Contractor claims shall be initiated by written notice and claim to the Owner and the Engineer. Such written notice and claim must be furnished within **seven (7)** days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.

8.3.2. Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the Owner shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim under this Paragraph 8.3 shall be reflected by a Change Order executed by the Owner, the Engineer and the Contractor.

8.3.3 Claims for Concealed and Unknown Conditions - Should concealed and unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, wherein the Contract Documents or Standard Construction industry practice have not placed the responsibility of discovering such concealed and unknown conditions upon the Contractor prior to the Contractor submitting his bid for the Work, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Contractor for concealed or unknown conditions, the Contract must give the Owner and the Engineer written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

8.3.4 Claims for Additional Costs - If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefor, the Contractor shall give the Engineer written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

8.3.4.1 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor.

The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors, unless and until liability of the Contractor has been established therefor in a court of competent jurisdiction.

8.3.5 Claims for Additional Time - If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for

achieving Substantial Completion of the work shall be extended upon the written notice and claim of the Contractor to the Owner and the Engineer, for such reasonable time as the Engineer may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than **seven (7)** days after the occurrence of the event or the first appearance of the condition giving rise to the claims and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claims as required in this Subparagraph, any claim for an extension shall be waived. This paragraph shall not be deemed to waive any damage for delay that is covered by insurance.

8.3.5.1 Delays and Extensions of Time – An extension of Contract Time will not be given due to weather conditions unless such weather conditions (wind and rain) for any 30 day period are, on the average for that 30 days, more severe than average for the same 30 days for the previous ten years, and caused delay. In requesting extensions of time for weather conditions, Contractor shall present complete records and averages referred to above, and such requests shall document how weather conditions delays progress of the Work.

#### **8.4 Field Orders**

8.4.1 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

### **ARTICLE IX** **SUBCONTRACTORS**

#### **9.1 Definition**

9.1.1 A Subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work.

#### **9.2 Award of Subcontracts**

9.2.1 Upon execution of the Contract, the Contractor shall furnish the Owners, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owners against the Contractor herein, including those

rights afforded to the Owner by Subparagraph 12.2.1 below.

## ARTICLE X CHANGES IN THE WORK

### **10.1 Changes Permitted**

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

### **10.2 Change Order Defined**

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner and the Engineer, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by Change Order.

### **10.3 Changes in the Contract Price**

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Architect on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner or the Engineer requires, an itemized accounting of such expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by pre-existing agreement or by custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or

other taxes related to the Work and paid by Contractor, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the Owner, payments on account shall be made to the Contractor on the Engineer's Certificate for Payment.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or to the Contractor, the applicable unit prices shall be equitably adjusted.

#### **10.4 Minor Changes**

10.4.1 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the Owner and the Contractor. The Contractor shall promptly carry out such written Field Orders.

#### **10.5 Effect of Executed Change Order**

10.5.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

#### **10.6 Notice to Surety; Consent**

10.6.1 The Contractor shall notify and obtain the timely consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

### **ARTICLE XI** **UNCOVERING AND CORRECTING WORK**

#### **11.1 Uncovering Work**

11.1.1 If any of the work is covered contrary to the Engineer's request or to any provisions of this Contract, it shall, if required by the Engineer or the Owner, be uncovered for the Engineer's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered in a manner not described in Subparagraph 11.1.1 above, it shall, if required by the Engineer or Owner, be uncovered for the Architect's inspection. If such Work conforms strictly with this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform with this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

## **11.2 Correcting Work**

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Engineer as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for the Engineer's services and expenses made necessary thereby.

11.2.2 If within one (1) year after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it within 7 days at Contractor's expense upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work, and has no relationship to the time which the obligation to comply with the Contract Documents may be sought to be enforced.

## **11.3 Owner May Accept Defective or Nonconforming Work**

11.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

**ARTICLE XII**  
**CONTRACT TERMINATION**

**12.1 Termination by the Contractor**

12.1.1 If the Work is stopped for a period of **ninety (90)** days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon **ten (10)** days' written notice to the Owner and the Engineer, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of **fifteen (15)** days after receiving written notice from the Contractor of its intent to terminate if such failure is not substantially corrected within **fifteen (15)** days, the Contractor may terminate performance under this Contract by written notice to the Engineer and the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

**12.2 Termination by the Owner**

**12.2.1 For Convenience**

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4 (a) The Contractor shall submit a termination claim to the Owner and the Engineer specifying the amounts due because of the termination for



convenience together with costs, pricing or other data required by the Engineer. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

- (b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.
- (c) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:
  - (i) Contract prices for labor, materials, equipment and other services accepted under this Contract.
  - (ii) Reasonable costs incurred in preparing to perform and in performing a portion of the work prior to termination, and not included in (i) or (ii), and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
  - (iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

## 12.2.2 For Cause

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of either a substantial violation, or a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of

all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price less any liquidated damages due under this Contract exceeds the cost of finishing the work, including compensation for the Engineer's additional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such cost **exceeds** the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

### ARTICLE XIII INSURANCE

#### **13.1 Insurance Requirements - Standard Contract for Service**

The contract price will not exceed \$500,000 and there are no unusual hazards present.

#### **Insurance Requirements**

- a) Workers' compensation – to meet statutory limits in compliance with the Workers Compensation Law of Florida. This policy must include Employer Liability with a limit of \$100,000 for each accident, \$500,000 disease policy limit and \$100,000 disease each employee limit.
- b) Commercial general liability – coverage shall provide minimum limits of liability of \$1,000,000 per occurrence, \$2,000,000 Aggregate, for bodily injury and property damage. This shall include coverage for:
  - a. Premises/operations
  - b. Products/complete operations
  - c. Contractual liability
  - d. Independent contractors
- c) Business auto liability – coverage shall provide minimum limits of liability of \$100,000 per occurrence, \$300,000 aggregate for bodily injury and property damage. This shall include coverage for:
  - a. Owned autos
  - b. Hired autos
  - c. Non-owed autos

### Special Requirements

- a) Prior to execution of a contract, a certificate of insurance will be provided that shall provide for the following:
  - a. **St. Johns County will be named as additional insured on both the commercial general liability and business auto liability policies.**
  - b. St. Johns County will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance.
- b) It is the responsibility of the contractor to insure that all subcontractors comply with all insurance requirements.
- c) It should be remembered that these are minimum requirements which are subject to modification in response to high hazard operations.

### 13.2 Property Insurance

Contractor shall purchase and maintain property insurance with the form of policy for this coverage shall be a Completed Value. The Contractor shall provide this coverage and shall be in the amount of the initial Contract Price as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles.

### 13.3 Certificate of Insurance

The Contractor shall furnish one copy of each Certificate of Insurance herein required for each copy of the Agreement which shall specifically set forth evidence of all coverage required by paragraphs 13.1 and 13.2 naming the Owner as additionally insured.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits.

## ARTICLE XIV MISCELLANEOUS

### 14.1 Governing Law/Venue

14.1.1 The Contract shall be governed and construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be St. Johns County, Florida.

### 14.2 Successors and Assigns

14.2.1 The Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

### **14.3 Surety Bonds**

14.3.1 The Contractor shall furnish a separate Public Construction Bond to the Owner. Such bond shall set forth a penal sum in an amount not less than the Contract Price. The bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bond. The Public Construction Bond shall provide that in the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of the bond shall be deemed increased by like amount. The Public Construction Bond furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably suitable to the Owner.

### **14.4 Safety of Persons and Property**

14.4.1 When existing utility lines shown on the Drawings are to be removed or relocated, the Contractor shall notify the Engineer in ample time for taking measures for prevention of the interruption of any required services prior to the beginning of operations. In the event that the Contractor damages any existing utility line not shown on the Drawings, the location of which is not known to the Contractor, report thereof shall be made immediately to the Engineer.

14.4.2 Locations of existing utility lines shown on the Drawings are based on best information available to the Engineer, but shall not be considered exact either as to location or number of such lines. To the extent that a Contractor knows, or is aware of one or more utility lines not shown on the Drawings, the Contractor shall notify the Engineer, so that such utility lines may be added to the Drawings.

14.4.3 Contractor shall protect utility lines constructed under terms of the agreement and those discovered or shown on Drawings to be existing. Damage occurring to utility lines due to Contractor's operations shall be repaired at no cost to the Owner.

### **14.5 Contract is a Public Record Unless Exempted or Excluded by Law**

14.5.1 Unless exempted or excluded by Federal law, or exempted or excluded by one or more applicable provisions State law (including an applicable provision of the Florida Public Records Law (Chapter 119, Florida Statutes, as revised from time-to-time), then this Contract, and any attached and incorporated Exhibits and/or Attachments shall be considered public records and subject to disclosure.

### **14.6 Adherence to, and Compliance with Applicable Laws**

14.6.1 To the extent necessary to satisfactorily perform and complete the terms, provisions, conditions, and obligations set forth in this Contract, the Contractor shall adhere to, and comply with all applicable Federal, State, and local laws, rules, and regulations.

**14.7 Severability**

14.7.1 If any word, phrase, sentence, part, subsection, section, or other portion of this Contract, or any application thereof, to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Contract, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force, and effect.

**ARTICLE XV**  
**EQUAL EMPLOYMENT OPPORTUNITY**

**15.1 Contractor's Employment Opportunity**

15.1.1 The Contractor and all Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or age. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, national origin or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertisement, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

15.1.2 The Contractor and all Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

**ARTICLE XVI**  
**APPRENTICESHIP LAW REQUIREMENTS**

**16.1 Apprenticeship Law (Chapter 446, Florida Statutes)**

16.1.1 The Contractor shall make a diligent effort to hire for Performance of the Contract a number of apprentices in each occupation which bears to the average number of journeyman in that occupation to be employed in the performance of the Contract, the ratio of at least one apprentice or trainee to every five journeymen.

16.1.2 The Contractor shall, when feasible and except when the number of apprentices or trainees to be hired is fewer than four, assure that 25 percent of such apprentices or trainees are in their first year of training. Feasibility here involves a consideration of the availability of training opportunities for first year apprentices or trainees, the hazardous nature of the work for beginning

workers, and excessive unemployment of apprentices or trainees in their second or subsequent years of training.

16.1.3 The Contractor, during the performance of the Contract, shall make diligent efforts to employ the number of apprentices or trainees necessary to meet requirements of Subparagraphs a. and b. However, on-the-job-training programs shall only be established in non-apprenticeable trades or occupations to meet the requirements of this section.

16.1.4 The Contractor agrees to return records of employment, by trade, of the number of apprentices or trainees, the number of apprentices or trainees by first year of training, and the number of journeymen and the wages paid, and hours of work, of such persons on a form as prescribed by the Bureau of Apprenticeship of the Division of Labor at three month intervals. Submission of duplicate copies of forms submitted to the United States Department of Labor shall be sufficient compliance with the provisions of the section.

16.1.5 The Contractor agrees to supply the Bureau of Apprenticeship of the Division of Labor, at three months intervals, a statement describing steps taken toward making a diligent effort and containing a breakdown by craft or hours worked and wages paid for first year apprentices or trainees, other apprentices or trainees and journeymen.

16.1.6 The Contractor agrees to insert in any subcontract under this Contract the requirements contained in this section. The term "Contractor" as used in such clauses and any Subcontract shall mean the Subcontractor.

16.1.7 Anything herein to the Contrary notwithstanding, Contractor agrees to comply with all of the provisions of Florida Statutes 446 and all regulations prescribed by the Bureau of Apprenticeship of the Division of Labor.

## **ARTICLE XVII** **RECORDS ACCESS / REVIEW**

### **17. Access to Records.**

17.1 The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials associated with this Agreement/Contract shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes). Access to such public records may not be blocked, thwarted, or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

### **18. Review of Records.**

18.1 As a conditions of entering into this Agreement/Contract, and to ensure compliance, especially as it relates to any applicable law, rule, or regulation, the (insert name of other party) authorizes the County to examine, review, inspect, and/or audit the books and records, in order to determine whether compliance has been achieved with respect to the terms, conditions, provisions, rights, and responsibilities noted in this Agreement. It is specifically noted that (insert name of party) is under no duty to provide access to documentation not related to this Agreement, and/or is otherwise protected by County, State, or Federal law.

**CONTRACTOR**

**OWNER**

Yelton Construction Company, Inc.  
(Typed Name)

ST. JOHNS COUNTY  
(Typed Name)

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

Doran Dean Yelton, President  
Printed Name & Title

Jerry Cameron, Assistant County Administrator  
Printed Name & Title

\_\_\_\_\_  
Date of Execution

\_\_\_\_\_  
Date of Execution

**CHERYL STRICKLAND  
CLERK OF COURT**

By: \_\_\_\_\_  
Deputy Clerk

**Legally Sufficient:**

\_\_\_\_\_  
Date of Execution

\_\_\_\_\_  
Assistant County Attorney

**Date:** \_\_\_\_\_