

**2000 AGREEMENT**  
**FOR**  
**BID NO. NC21-008 SOUTH AMELIA ISLAND**  
**DREDGING & BEACH NOURISHMENT PROJECT**

This Agreement for the SOUTH AMELIA ISLAND DREDGING & BEACH NOURISHMENT PROJECT is entered into by and between the Board of County Commissioners of Nassau County, Florida, a political subdivision of the State of Florida, sitting as the governing board of the South Amelia Island Shore Stabilization Association, Inc., a Municipal Services Benefit Unit, located at 96135 Nassau Place, Suite 1, Yulee, Florida, 32097 (hereinafter "County" or "Owner") and S.J. HAMILL CONSTRUCTION COMPANY, LLC, a South Carolina limited liability company, whose address is 2008 Cherry Lane, Charleston, South Carolina, 29405 (hereinafter "Contractor") as of the date appearing on the signature lines below.

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#### **ARTICLE 1 – WORK**

- 1.01 Contractor shall complete all work as specified or indicated in the County's Invitation to Bid No. NC21-008 (hereinafter "ITB"), Contractor's bid submittal in response to the ITB, all Contract Documents as enumerated herein, the Technical Specifications and Drawings, and as otherwise directed by the County. The work (hereinafter "Work") is generally described as Nassau Sound hydraulic dredging and beach nourishment at Amelia Island or as more fully described in Article 2 of this Agreement.

#### **ARTICLE 2 – THE PROJECT**

- 2.01 The South Amelia Island Dredging & Beach Nourishment Project ("Project"), generally includes the hydraulic dredging, transport, placement, and shaping of approximately one million, eight hundred thousand (1,800,000) cubic yards of beach-quality sand from the approved Nassau Sound ebb shoal borrow area to the Atlantic ocean shoreline of the south end of Amelia Island in Nassau County, Florida.

#### **ARTICLE 3 – ENGINEER**

- 3.01 The Project has been designed by Olsen Associates, Inc., of Jacksonville, Florida (Engineer).

- 3.02 The Owner has retained Engineer to act as Owner's representative, assume all duties and responsibilities related to the Project, 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***

All time limits for Substantial Completion and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- A. Contractor shall initiate dredging and beach fill operations for the Project and shall complete sand placement from the point of initial sand placement to the point of Substantial Completion within one hundred thirty-five (135) days. Initial sand placement is defined by the placement of 1,000 cubic yards of material on the beach from the Nassau Sound borrow area, measured in place within the prescribed beach fill pay template. Substantial Completion of the beach fill is defined by the placement and surveyed acceptance of the volumes established in the Contract Specifications and Drawings.
- B. Final Acceptance is defined as the date when the construction of the project is complete in accordance with the Contract Documents so that the entire project can be utilized for the purposes for which it is intended and all monies due Contractor can be paid in the final Application for Payment.

### **4.02 *Contract Times***

The contract time for this project is a total of one-hundred thirty-five (135) calendar days from the County's issuance of the Notice to Proceed to reach Substantial Completion of the Project and one-hundred sixty-five (165) calendar days from the Notice To Proceed for Final Acceptance of the entire Project.

Completion of the Contract will have been achieved once Final Acceptance has been reached and all final documentation, including final application for payment, has been received and processed.

### **4.03 *Liquidated Damages***

Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and milestones not achieved within the times specified in Paragraphs 4.01 and 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal

proceeding the actual loss suffered by Owner if the Work is not completed on time. The parties confirm that, (i) the assessment of liquidated damages is reasonable and appropriate; (ii) the terms and the amount(s) of the liquidated damages stated below are reasonable; and (iii) the liquidated damages will be assessed as the County's remedy under such circumstances and not as a penalty. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

- A. Substantial Completion: Contractor shall pay Owner Ten Thousand Dollars (\$10,000.00) for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02 above for Substantial Completion of the Project until the Work is substantially complete.
- B. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) to reach the point of Final Acceptance, Contractor shall pay Owner \$10,000.00 for each day that expires after such time until the Work is completed and ready for final payment.
- C. Liquidated damages for failing to timely attain Substantial Completion and Final Acceptance are not additive and will not be imposed concurrently.
- D. This remedy is in addition to and supplements any and all other remedies to Owner as set forth in the Contract Documents or at law or in equity for damages other than delay.

## ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

A. Total of Lump Sum Amounts and Unit Price Work (subject to final quantity adjustments), a contract sum of: fourteen million, five hundred and ninety seven thousand dollars (\$14,597,000.00), pursuant to the following schedule of values.

Item No. & Description	Number of Units	Units	Unit Price	Subtotal
1. Mobilization / Demobilization	1	Job	\$2,844,500.00	\$2,844,500.00
2. Hydraulic Beach Fill	1,800,000.00	cubic yards	\$6.49	\$11,682,000.00
3. Turbidity monitoring	1	Job	\$62,000.00	\$62,000.00
4. Beach Tilling / Decompaction	1	Job	\$8,500.00	\$8,500.00
Total Contract Amount				\$14,597,000.00

- B. The foregoing Total Contract Amount is approximate only, being herein above inserted for the purpose of establishing the face amount of bonds to be provided by the Contractor. Payment of work covered by unit price items will be made only on the basis of the actual quantities of work completed in place as authorized, and as measured and accepted as provided in the Contract Documents. As directed by the Owner, the final quantities actually placed and accepted for payment may vary from the quantities listed herein by  $\pm$  twenty percent (20%). Contractor may not be entitled to any adjustment in unit prices or lump sum prices if quantities vary by  $\pm$  twenty percent (20%), or less.

## **ARTICLE 6 – PAYMENT PROCEDURES**

### **6.01 *Submittal and Processing of Payments***

Contractor shall submit Applications for Payment in accordance with Article 13 of the General Conditions and the determination of eligible payments described in the Specifications and Requirements. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### **6.02 *Progress Payments; Retainage***

Prior to Substantial Completion, Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment in an amount equal to ninety percent (90%) of the Work completed (with the balance being retainage), less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided herein (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

### **6.03 *Final Payment***

Upon final completion and acceptance of the Work in accordance with the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer and as provided in said General Conditions.

## ARTICLE 7 – CONTRACTOR’S REPRESENTATIONS

7.01 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 any data and reference items, including State and Federal permits for the work, identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, 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 can and shall comply with all Federal, State, and local laws and regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Contract Documents, especially with respect to technical data in such reports and drawings, and (2) reports and drawings relating to hazardous environmental conditions, if any, at or adjacent to the Site that have been identified in the Contract Documents, especially with respect to technical data in such reports and drawings. Contractor acknowledges that the Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents, if any, with respect to physical conditions at or contiguous to the Work sites
- E. Contractor has considered the information known to Contractor itself; 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 the Site-related reports and drawings identified 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; and (3) Contractor’s safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no 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.
- G. 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.
- H. 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.

- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.
- K. Contractor has had duly issued and executed all required Payment and Performance Bonds and Certificates of Insurance required by this Contract and the Contract Documents. Insurance requirements are set forth in the General Conditions.

## **ARTICLE 8 – CONTRACT DOCUMENTS**

### **8.01    *Contents***

- A. The Contract Documents consist of the following:
  - 1. This Agreement;
  - 2. The General Conditions attached hereto and incorporated by reference;
  - 3. All Bonds, Certificates of Insurance with endorsements, Notice of Award, and Notice to Proceed;
  - 4. Specifications as listed in the table of contents of the Project Manual;
  - 5. Plans (as defined in the General Conditions of the Contract) consisting of sixteen (16) sheets;
  - 6. Permits (as defined in the General Conditions of the Contract);
  - 7. Any and all Addenda (as defined in the General Conditions of the Contract, including Change Orders and Field Orders);
  - 8. The Invitation to Bid (ITB), Instructions to Bidders, and Contractor's Bid to the ITB; and
  - 9. Technical Appendices as listed in the table of contents of the Project Manual.
- B. The documents listed in Paragraph 8.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. The Contract Documents may only be amended, modified, or supplemented as provided for in the General Conditions.

## **ARTICLE 9 – MISCELLANEOUS**

### **9.01    *Terms***

Terms used in this Agreement will have the meanings stated in the General Conditions.

### **9.02    *Assignment of Contract***

Unless expressly agreed to elsewhere in the Contract, 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, money that may become due and money that is 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.

9.03 *Successors and Assigns*

Contractor binds itself, its successors, assigns, and legal representatives to the Owner, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Choice of Law and Forum Selection*

The laws of the State of Florida shall govern all provisions of this Contract. Venue for any dispute shall be Nassau County, Florida.

9.05 *Contract Modifications or Amendments*

This Contract shall not be modified or amended except in writing with the same degree of formality with which this Agreement is executed.

9.06 *Waiver*

A waiver of any breach of any provision of this Contract shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provisions.

9.07 *Severability*

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.

9.08 *Dispute Resolution*

The laws of the State of Florida shall govern all provisions of this Contract. In the event the parties to this Contract cannot resolve a difference with regard to any matter arising herefrom, the disputed matter will be referred to court-ordered mediation pursuant to Section 44.102, F.S. If no agreement is reached, any party may file a civil action and/or pursue all available remedies whether at law or equity. Venue for any dispute shall be Nassau County, Florida.

9.09 *Public Records*

Pursuant to applicable Florida law, the Contractor's records associated with this Contract may be subject to Florida's public records laws, Section 119.01, F.S., et seq, as amended



from time to time. The Contractor agrees to comply with Florida's public records law by keeping and maintaining public records required by the County in order to perform the Work. Upon request from the County's Custodian of Public Records, the Contractor shall provide the County with copies of or allow access to the requested public records at a cost that does not exceed the cost provided for under Chapter 119, Florida Statutes, or as otherwise provided for by Florida law. The Contractor shall 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 term of the Contract and following completion of the Contract if the Contractor does not transfer the records to the County. Upon completion of the Contract the Contractor shall transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain all public records required by the County to perform the Work. If the Contractor transfers all public records to the County 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 County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT [RECORDS@NASSAUCOUNTYFL.COM](mailto:RECORDS@NASSAUCOUNTYFL.COM).**

#### 9.10 *Contractor's Certifications*

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 9.10:

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.



9.11 *Notice*

All notices required under this Contract shall be sent by e-mail, registered mail, or certified mail with receipt requested, and if sent to the Owner, shall be mailed:

To OWNER:

Taco Pope, County Manager  
96135 Nassau Pl.  
Suite 6  
Yulee, FL 32097  
(904) 321-5784 (fax)  
*tpope@nassaucountyfl.com*

With copies to:

Brian Simmons, Procurement Manager  
96135 Nassau Pl.  
Suite 2  
Yulee, FL 32097  
*procurement@nassaucountyfl.com*

Albert E. Browder, Ph.D., P.E., D.CE  
Olsen Associates, Inc.  
2618 Herschel St.  
Jacksonville, FL 32204  
(904) 384-7368 (fax)  
*abrowder@olsen-associates.com*

To CONTRACTOR:

Contractor's Contact \_\_\_\_\_

Contractor's Name \_\_\_\_\_

Contractor's Address \_\_\_\_\_

Contractor's E-Mail \_\_\_\_\_

Contractor's FAX # \_\_\_\_\_

[Signatures on next page.]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year last written below. Owner and Contractor have signed this Agreement in two originals in counterpart. One counterpart each has been delivered to the County Purchasing Manager and the Contractor. All portions of the Contract Documents have been signed, initialed or identified by County and Contractor or identified by Engineer on their behalf.

**ATTEST:**

As to (NAME OF CONTRACTOR)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Print or Type Title)

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

Seal:

**CONTRACTOR**

(NAME OF CONTRACTOR)

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

Its \_\_\_\_\_  
(Title of Authorized Representative)

\_\_\_\_\_  
(Print or Type Title)

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

**ATTEST:**

As to Authenticity of the Chairman's Signature

\_\_\_\_\_  
John C. Crawford, County Clerk

Date \_\_\_\_\_

Seal:

**SAISSA GOVERNING BOARD:**

Nassau County, Florida

By: \_\_\_\_\_  
Thomas R. Ford, as its Chairman

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

Review of Contract as to Form

By: \_\_\_\_\_  
Michael S. Mullin, Esq., County Attorney