

RESOLUTION NO. 2015 - 278

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO AWARD RFP NO. 14-51R AND TO EXECUTE AN AGREEMENT FOR SR A1A Scenic & Historic Byway Wayfinding Signs

RECITALS

WHEREAS, the County desires to enter into a contract with EltonAlan, Inc. to provide services for Design-Build Services for SR A1A Scenic & Historic Byway Wayfinding Signs; and

WHEREAS, the scope of the project shall generally include furnishing all labor, materials, equipment and other items necessary for specified services for the design, fabrication and installation of A1A Wayfinding Signs ; and

WHEREAS, through the County's formal bid process, U. S. Water Services Corporation 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 proposed contract (attached hereto and incorporated herein), and finds that entering into the contract serves a public purpose.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA:

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 his designee, is hereby authorized to award RFP No. 14-51R Design-Build Services for SR A1A Scenic & Historic Byway Wayfinding Signs to EltonAlan, Inc. as the lowest responsive, responsible bidder.

Section 3. The County Administrator, or his designee, is further authorized to execute a contract in substantially the same form and format as attached with EltonAlan, Inc. on behalf of the County for the completion of Design-Build Services for SR A1A Scenic & Historic Byway Wayfinding Signs.

Section 4. To the extent that there are typographical 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 15th day of September, 2015.

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

By: [Signature]
Priscilla L. Bennett - Chair

ATTEST: Cheryl Strickland, Clerk

By: [Signature]
Deputy Clerk

DATE September 17, 2015

STANDARD DESIGN-BUILD AGREEMENT

BETWEEN

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

AND

ELTONALAN, INC.

FOR

SR A1A SCENIC & HISTORIC BYWAY WAYFINDING SIGNS

RFP No. 14-51R

This Agreement is made on this _____ day of _____, 20____, by and between **ST. JOHNS COUNTY** ("County"), a political subdivision of the State of Florida, with administrative offices located at 500 San Sebastian View, St. Augustine, Florida 32084, and **ELTONALAN, INC.** ("Design-Build Firm"), a corporation for profit authorized to do business in the state of Florida, with an address of 3653 Regent Boulevard, Unit 606, Jacksonville, FL 32224, to perform all work in connection with RFP 14-51R – Design Build Services for SR A1A Scenic & Historic Byway Wayfinding Signs ("Project"), as said work is set forth in the Plans and Specifications furnished by the Design-Build Firm and other Contract Documents hereinafter specified. For good and valuable consideration, the County and the Design-Build Firm hereby agreeing as follows:

Article 1. INTENTION OF THE COUNTY

It is the intent of the Contract Documents to describe a functionally complete Project to be designed and constructed by the Design-Build Firm in accordance with County-reviewed and fully permitted Contract Documents prepared by the Design-Build Firm and accepted by the County. It is the further intent of the County to require complete, correct and timely execution of the Work described herein. Whether or not specifically expressed, any work, materials or equipment required, implied or inferred by the Contract Documents as being required to produce the intended results shall be provided by the Design-Build Firm for the Contract Price.

Article 2. CONTRACT DOCUMENTS

2.1 Agreement and Contract Documents.

2.1.1 The Contract Documents consist of this Agreement, all Amendments and Exhibits thereto, Change Orders, Work Directive Changes, Field Orders, and the Solicitation Documents, including addenda relating thereto. All of the foregoing Contract Documents are incorporated by reference and made a part of this Agreement (all of said documents, including this Agreement, sometimes being referred to herein as the "Contract Documents" and sometimes as the "Agreement"). A copy of the Contract Documents shall be maintained by Design-Build Firm at the Project site at all times during performance of the Work described herein.

2.1.2 The Contract Documents listed above represent the entire and integrated agreement between the parties hereto, and supersede any prior negotiations, representations or agreements, either written or oral.

2.1.3 This Agreement 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 Agreement.

2.1.4 In case of any inconsistency or conflict among the provisions of the Agreement and any other terms and conditions of any documents comprising the

Contract Documents, the provisions of the Agreement shall control. Concerning the Contract Documents, the order of precedence shall be as follows: 1) the Agreement, including Amendments and Exhibits; 2) Change Orders; 3) Work Directive Changes; 4) Field Orders; 5) the Solicitation Documents, including addenda.

2.1.5 Where there is a conflict between any provisions set forth in this Agreement and a more stringent state or federal provision applicable to the Project, the more stringent state or federal provision shall prevail.

2.1.6 Reference to standard specifications, manuals or codes of any technical society, organization, or association, or to laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the standard specification, manual, code, laws or regulations in effect at the time of the date of the execution of this Agreement.

2.1.7 Dimensions given in figures are to hold preference over scaled measurements on the Drawings and in the Design. The Design-Build Firm shall not proceed when in doubt as to any dimension or measure but shall seek clarification from the County.

2.1.8 Neither the organization of any of the Contract Documents into articles, divisions, sections, paragraphs or other categories, nor the organization or arrangement of the design shall control the Design-Build Firm in dividing the Work or in establishing the extent or Scope of the Work to be performed by subcontractors.

2.1.9 Nothing contained in this Agreement shall create or be interpreted to create, privity or any other contractual agreement between the County and any person or entity other than the Design-Build Firm.

2.1.10 This Agreement shall be effective on the date of full execution by both parties hereto.

2.1.11 The Contract Documents, and each of them, shall remain the property of the County. The Design-Build Firm 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 Design-Build Firm use, or permit to be used, any or all of such Contract Documents on other projects without the County's prior written authorization.

2.2 Interpretation.

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

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

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

2.3 Incorporation of Exhibits.

The following documents are expressly agreed to be incorporated by reference and made part of this Agreement.

Exhibit A: Request for Proposal (RFP) 15-01
Exhibit B: Addendum 1 and 2
Exhibit C: EltonAlan, Inc. Bid Price Proposal
Exhibit D: EltonAlan, Inc. Technical Proposal
Exhibit E: All bonds and insurances
Exhibit F: FHWA 1273 (copy attached)
Exhibit G: Davis Bacon Wage Decisions: St. Johns Co FL150232 01/02/2015 FL232 & Flagler Co FL150196 01/09/2015 FL196 (copies attached)

Article 3. SCOPE OF WORK

3.1 The Design-Build Firm shall perform all of the Work required, implied or reasonably inferable from this Agreement. The Work to be performed by the Design-Build Firm is generally described as follows:

The scope of work for this project shall be to provide Design-Build services for Wayfinding Signs along a 72 mile corridor of State Road A1A that encompasses both St. Johns and Flagler Counties. The boundary lines for St. Johns County portion of the project shall encompass from Duval/St. Johns County line in Ponte Vedra southward to the St. Johns County/Flagler county line with the Flagler County boundaries from the St. Johns County line southward to the Flagler/Volusia county line. The project involves installation of seventy-four (74) directional and custom signs (50 vehicular directional signs and 24 custom place signs). Design-Build of services shall include but may not be limited to development of final design documents, construction consisting of fabrication and installation of wayfinding signs in accordance with the project requirements. All work shall be performed in accordance with all Request for Proposal (RFP) documents.

3.2 The Design-Build Firm hereby agrees to complete the Project described by the Contract Documents including furnishing the architecture, engineering, landscaping architecture and land surveying services, labor, material, equipment and other services necessary to perform all of the Work described in the Contract Documents including Drawings and addenda thereto, to be constructed in accordance with the requirements and provisions of this Agreement, all applicable laws, regulations and standards.

3.3 The Design-Build Firm shall prepare and the County shall approve a design and construction schedule ("Progress Schedule") of the Project as follows:

3.3.1 Final Design Development Phase

3.3.2 Construction Phase

3.4 The Progress Schedule shall include dates for commencement and completion of the various stages of design and construction and shall be revised as required by the conditions of the Work, subject to approval by the County. The Progress Schedule shall be updated monthly based upon the actual percentage of the Project completed and submitted to the County as part of each pay request.

3.5 The Design-Build Firm shall pay all royalties and license fees for materials, methods and systems incorporated in the Work. The Design-Build Firm shall defend all suits or claims for infringement of any patent rights and shall save the County harmless from loss on account thereof except when a particular design process or product is specified by the County. In such case, the Design-Build Firm shall be responsible for such loss only if it has reason to believe that the design, process or product so specified is an infringement of a patent and fails to provide such information to the County.

Article 4. CONTRACT PRICE

4.1 The County shall pay, and the Design-Build Firm shall accept, as full and complete compensation for all of the Work required herein, the fixed sum of \$ Four Hundred Ninety-Nine Thousand Nine Hundred and Ninety-Nine & XX/100 Dollars (\$499,999.00). The amount set forth in this Paragraph 4.1 shall constitute the Contract Price, including all costs, expenses and fees related to completion of the Project, and shall not be modified except as otherwise provided in this Agreement.

4.2 Within **ten (10)** calendar days of the Effective Date of this Agreement, the Design-Build Firm shall submit to the County for review and approval a Schedule of Values allocating the Contract Price to the various phases of the Work. The Design-Build Firm's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the County may require to substantiate its accuracy. The Design-Build Firm shall not imbalance the Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Design-Build Firm shall constitute a material breach of this Agreement. The Schedule of Values shall be used only as a basis for the Design-Build Firm's request for payment ("Application for Payment") and shall only constitute such basis after it has been agreed upon in writing by the County. The County may terminate this Agreement 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.

4.3 Payment Procedure. The County shall pay the Contract Price to the Design-Build Firm as provided below.

4.3.1 Progress Payments. The Design-Build Firm may submit to the County a request for payment ("Application for Payment") for Work completed the 25th day of each month after commencement of the Work. The Application for Payment shall include such detail, together with supporting evidence, as may be required by the County. Such Application for Payment shall be signed by the Design-Build Firm and shall constitute the Design-Build Firm'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 Agreement, and that the Design-Build Firm knows of no reason why payment should not be made as requested. Thereafter, the County 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 Agreement. The County shall determine and certify the amount properly owing to the Design-Build Firm. The County shall make partial payments on account of the Contract Price within twenty five (25) business days following receipt of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the County less such amounts, if any, otherwise owing by the Design-Build Firm to the County or which the County shall have the right to withhold as authorized by this Agreement. The County's certification of the Design-Build Firm's Application for Payment shall not preclude the County from the exercise of any of its rights as set forth in Paragraph 4.4 herein below.

4.3.2 The Design-Build Firm warrants that title to all Work included in an Application for Payment shall pass to the County no later than the time of payment. The Design-Build Firm further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the County shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Design-Build Firm or any other person or entity whatsoever.

4.3.3 The Design-Build Firm shall promptly pay each Subcontractor of the amount paid to the Design-Build Firm on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the County becomes informed that the Design-Build Firm has not paid a Subcontractor as herein provided, the County shall have the right, but not the duty, to issue future checks in payment to the Design-Build Firm of amounts otherwise due hereunder naming the Design-Build Firm and such Subcontractor as joint payees. Such joint check procedure, if employed by the County, 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 County to repeat the procedure in the future.

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

4.4 Withheld Payment. The County may decline to make payment, may withhold funds in whole or in part, and, if necessary, may demand the return of some or all of the amounts previously paid to the Design-Build Firm, to protect the County from loss because of:

- a. defective Work not remedied by the Design-Build Firm nor, in the opinion of the County, likely to be remedied by the Design-Build Firm;
- b. claims filed or reasonable evidence indicating probable filing of claims by other parties against the County, the County's property or the Design-Build Firm;
- c. failure by the Design-Build Firm 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 this Agreement 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 this Agreement;
- g. damage to the County or a third party to whom the County is, or may be, liable;
- h. Liquidated damages as provided elsewhere in this Agreement;
- i. As-built drawings not being in a current and acceptable state.

In the event that the County makes written demand upon the Design-Build Firm for amounts previously paid by the County as contemplated in this Paragraph 4.4, the Design-Build Firm shall promptly comply with such demand. When the above grounds are removed or resolved, or the Design-Build Firm provides a surety bond or consent of surety to protect the County in the amount withheld, satisfactory to the County, payment may be made in whole or in part, as applicable.

4.5 Unexcused Failure to Pay. If within twenty five (25) business days after the date established herein for payment to the Design-Build Firm by the County, the County, without cause or basis hereunder, fails to pay the Design-Build Firm any amount then due and payable to the Design-Build Firm, then the Design-Build Firm may after seven (7) additional days provide written notice to the County, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the County have been received. Any payment not made within twenty five (25) business days after the date due shall bear interest at the rate of Twelve (12%) percent per annum.

4.6 Retainage. Ten percent (10%) of all monies earned by the Design-Build Firm shall be retained by the County until Final Completion and acceptance by the County in accordance with Paragraph 4.8 hereof, except that after fifty percent (50%) of the Project has been completed, the County shall reduce the retainage to five percent (5%) of all monies previously earned and all monies earned thereafter, and after ninety (90%) of the Work has been completed, the County may reduce the retainage to two and one-half percent (2 ½%) of all monies previously earned and all monies earned thereafter. Any reduction in retainage below five percent (5%) shall be at the sole discretion of the County and the Design-Build Firm shall have no entitlement to a reduction. Any interest earned on retainage shall accrue to the benefit of the County.

4.7 Substantial Completion.

4.7.1 When the Design-Build Firm believes the work is substantially complete, the Design-Build Firm shall submit to the County a list of items to be completed or corrected. When the County 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 Substantial Completion Date, shall state the responsibilities of the County and the Design-Build Firm for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Design-Build Firm shall complete the items listed therein. Guarantees required by this Agreement shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the County and the Design-Build Firm for their written acceptance of the responsibilities assigned to them in such Certificate.

4.7.2 Upon Substantial Completion of the Work, and execution by both the County and the Design-Build Firm of the Certificate of Substantial Completion, and upon delivery to the County appropriate releases and waivers of claims and liens from all Subcontractors and material-men of the Agreement for Work performed and/or materials delivered for the Project to the date of Substantial Completion, the County shall pay the Design-Build Firm an amount sufficient to increase total payments to the Design-Build Firm to one hundred percent (100%) of the Contract Price less three hundred percent (300%) of the reasonable cost as determined by the County 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 County, the Design-Build Firm shall furnish a bond satisfactory to the County to discharge any such lien or indemnify the County from liability.

4.8 Final Completion, Acceptance and Final Payment

4.8.1 Upon receipt of written notice from the Design-Build Firm that the Project is ready for final inspection, the County, within Seven (7) days, shall make an inspection thereof. If the County finds that the Work is complete in full accordance with the Contract Documents and that this Agreement has been fully performed, the County will issue a Final Certificate for Payment. In the event that it is necessary to repeat final inspection of the Work, the Design-Build Firm shall bear the cost of such repeated final inspection(s), which cost may be deducted by the County from the Design-Build Firm's final payment. Final Payment shall not be made until the Project is inspected and accepted by the County and all other Authorities having jurisdiction under Florida Laws or regulations, as applicable.

4.8.2 The Design-Build Firm shall not be entitled to final payment unless and until it submits to the County an affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the County, or the County's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of claims and liens from all subcontractors of the Design-Build Firm and of any and all other parties required by the County; 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 the County, the Design-Build Firm shall furnish a bond satisfactory to the County to discharge any such lien or indemnify the County from liability.

4.8.3 The County shall make final payment of all sums due the Design-Build Firm within twenty-five (25) business days of the County's execution of a final Certificate for Payment.

4.8.4 Acceptance of final payment shall constitute a waiver of all claims against the County by the Design-Build Firm except for those claims previously made in writing against the County by the Design-Build Firm, pending at the time of final payment, and identified in writing by the Design-Build Firm as unsettled at the time of its request for final payment.

Article 5. BONDS

5.1 The Design-Build Firm shall provide Performance and Payment Bonds, in the form provided by the County upon full execution of this Agreement, in the amount of

one hundred percent (100%) of the Contract Price, the costs of which shall be paid by the Design-Build Firm. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to the County; provided however, the surety shall be rated as "A"-(excellent) or better and Class "V" or higher rating as to financial size category and the amount required shall not exceed (2%) of the reported policyholders surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York, 10038.

5.2 If the surety for any bond furnished by the Design-Build Firm is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida or it ceases to meet the requirements imposed by the Contract Documents, the Design-Build Firm shall, within five (5) calendar days thereafter substitute another bond and surety, both of which shall be subject to the County's approval. Failure by the Design-Build Firm to maintain its bonds in full force and effect at all times, including the warranty period, shall be grounds for termination of this Agreement.

5.3 In accordance with § 255.05 of the Florida Statutes, the Design-Build Firm shall be required to execute and record the Performance and Payment Bonds. The bonds must state the name and principal business address of both the Principal and the Surety and a description of the Project sufficient to identify it.

Article 6. CONTACT TIME AND LIQUIDATED DAMAGES

6.1 Time is of the essence in the performance of the Work described herein. The Design-Build Firm shall commence the Work within ten (10) calendar days from the date the County issues a written Notice to Proceed ("Commencement Date"). The Work shall be substantially completed within Two Hundred & Ten (210) consecutive calendar days from the Commencement Date, and shall be fully completed and deemed ready by the County for Final Completion within Thirty (30) consecutive calendar days from the Substantial Completion Date. The Contract Time shall be the time period from the Commencement Date to the date of Final Completion totaling Two Hundred & Forty (240) consecutive calendar days.

6.2 The County and the Design-Build Firm recognize that, since time is of the essence for this Agreement, the County will suffer financial loss if the Work is not fully completed and deemed ready for Final Completion within the time specified. Should the Design-Build Firm fail to achieve Final Completion within the time specified above, the County shall be entitled to assess, as liquidated damages, but not as a penalty, the sum of \$715.00 per day for each calendar day of unexcused delay until Final Completion is achieved.

6.3 The Design-Build Firm hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the County's actual damages at the time of contracting if the Design-Build Firm fails to fully complete the Work in a timely manner as provided herein.

6.4 When any period of time is referenced to by day herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by

law of the applicable jurisdiction, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday of legal holiday.

Article 7. COUNTY'S RIGHTS AND RESPONSIBILITIES

7.1 Upon execution of this Agreement, the County will furnish to the Design-Build Firm any written and tangible materials in its possession concerning conditions below ground at the site of the Project. Such written and tangible materials are furnished to the Design-Build Firm only in order to make complete disclosure of such materials and for no other purpose. By furnishing such materials, the County does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly, or at all, and shall have no liability therefore. The County 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.

7.2 With the exception of any permits and fees normally the responsibility of the Design-Build Firm, the County will obtain all approvals, easements, and the like required for construction of the Project.

7.3 The County will furnish the Design-Build Firm, free of charge, five (5) copies of the Contract Documents for performance of the Work. The Design-Build Firm will be charged, and shall pay the County the cost of reproduction for each additional set of Contract Documents requested.

7.4 The County will provide access to and make all provisions for the Design-Build Firm to enter upon public property as required for the Design-Build Firm to perform the Work described herein.

7.5 Right to Stop Work. If, as deemed by the County, the Design-Build Firm persistently fails or refuses to perform the Work in accordance with the Contract Documents, the County may order the Design-Build Firm to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the County directs that Work be resumed. In such event, the Design-Build Firm shall immediately comply with such directive.

7.6 Right to Perform Work. In the event the County stops the Work as described herein, and the Design-Build Firm fails to, within seven (7) calendar days of that time, provide adequate assurance to the County that the cause of such stoppage is eliminated or corrected, then the County may, without prejudice to any other rights or remedies the County may have against the Design-Build Firm, proceed to perform the Work. Under such circumstances, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting deficiencies in the Work, plus compensation for any additional services and expenses necessitated thereby. If the unpaid portion of the Contract Price is insufficient to cover the amount due the County, the Design-Build Firm shall pay the difference to the County.

Article 8. DESIGN-BUILD FIRM'S RIGHTS AND RESPONSIBILITIES

8.1 The Design-Build Firm 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 County of any inconsistency, ambiguity, error or omission that the Design-Build Firm may discover with respect to such documents before proceeding with the affected Work. The issuance or the express or implied approval by the County of the Contract Documents, the Shop Drawings and the Product Data shall not relieve the Design-Build Firm of the continuing duties imposed herein, nor shall such approval be evidence of the Design-Build Firm's compliance with this Agreement. By execution of this Agreement, the Design-Build Firm acknowledges and represents that it has received, reviewed and carefully examine such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction and that the Design-Build Firm has not, does not and will not rely upon any representation or warranties by the County concerning such documents as no such representation or warranties have been or are hereby made.

8.2 The Design-Build Firm shall perform the Work strictly in accordance with the Contract Documents.

8.3 The Design-Build Firm shall supervise and direct the Work using the Design-Build Firm's best skill, effort and attention. The Design-Build Firm shall be responsible to the County for any and all acts or omissions of the Design-Build Firm, its employees and others engaged in the Work on behalf of the Design-Build Firm.

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

8.5 Design-Build Firm shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Design-Build Firm 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.

8.5 Supervision. The Design-Build Firm shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Design-Build Firm to the contrary, the superintendent shall be deemed the Design-Build Firm's authorized representative at the site and shall be authorized to receive and accept any and all communications from the County or the Engineer.

8.6 Key supervisory personnel assigned by the Design-Build Firm to this Project are as follows:

Name	Function
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Design-Build Firm, they shall perform the functions indicated next to their names unless the County 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 Design-Build Firm shall be bound by the provisions of this Sub-Article 8.6 as though such individuals have been listed above.

8.7 The Design-Build Firm, within fifteen (15) days of commencing the Work, shall submit to the County, the Design-Build Firm's schedule for completing the Work. The Design-Build Firm'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 County. Failure by the Design-Build Firm to strictly comply with the provisions of this Paragraph 8.7 shall constitute a material breach of this Agreement.

8.8 The Design-Build Firm shall continuously maintain at the site, for the benefit of the County, one record copy of this Agreement marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Design-Build Firm shall maintain at the site for the County 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 County.

8.9 Shop Drawings, Product Data and Samples

8.9.1 Shop Drawings, Product Data, Samples and other submittals from the Design-Build Firm do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Design-Build Firm 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 County and shall be delivered, or returned to County, as applicable, prior to Substantial Completion.

8.10 Cleaning the Site and the Project. The Design-Build Firm shall keep the site reasonably clean during performance of the Work. Upon Final Completion of the Work, the Design-Build Firm shall clean the site and the Project and remove all waste, together with all of the Design-Build Firm's property therefrom.

8.11 Access to Work. The County shall have access to the Work at all times from commencement of the Work through Final Completion. The Design-Build Firm shall take whatever steps necessary to provide access when requested.

8.12 Indemnity. The Design-Build Firm shall indemnify and hold harmless the County, its officers, employees, agents and representatives from, and against, any, and all, administrative/legal/equitable liability, claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from performance of the Work noted in either the Scope of Work or the Contract Documents, that are referenced and considered a part of this Agreement. It is specifically noted that such liability, claims, damages, losses or expenses include any of those referenced instances attributable to bodily injury, sickness, disease, or death, or to injury to, or destruction of, personal and/or real property, including the loss of use resulting therefrom or incident to,

connected with, associated with or growing out of direct and/or indirect negligent or intentional acts or omissions by the Design-Build Firm, a Subcontractors, or anyone directly, or indirectly employed by them, or anyone for whose acts the Design-Build Firm or Subcontractors may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by a party indemnified hereunder.

8.12.1 Design-Build Firm hereby acknowledges the receipt of ten dollars and other goods and valuable consideration from the County which has been paid to him as specific consideration for the indemnification provided herein.

8.12.2 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Design-Build Firm, a Subcontractors, 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 Design-Build Firm or a Subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

8.13 Safety

8.13.1 The Design-Build Firm shall be responsible for supervising all safety precautions, including initiating and maintaining such programs in connection with the performance of the Contract.

8.13.2 The Design-Build Firm shall designate a member of the onsite construction team whose duty shall be the prevention of accidents. Unless otherwise designated in writing by the Design-Build Firm to the County and the Engineer, this person shall be the Design-Build Firm's Superintendent.

Article 9. CONTRACT ADMINISTRATION

9.1 The Engineer.

9.1.1 The Engineer for this project is Nick Perpich, P.E., P.M., St. Johns County Engineering Dept. In the event the County should find it necessary or convenient to replace the Engineer, the status of the replacement Engineer shall be that of the former Engineer.

9.2 Engineer's Administration

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

9.2.2. The County and the Design-Build Firm shall communicate with each other in the first instance through the Engineer.

9.2.3 The Engineer shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Design-Build Firm. 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 Design-Build Firm.

9.2.4 The Engineer will review the Design-Build Firm's Applications for Payment and will certify to the County for payment to the Design-Build Firm, those amounts then due the Design-Build Firm as provided in this Agreement.

9.2.5 The Engineer shall have authority to reject Work which is defective or does not conform to the requirements of this Agreement. 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 Design-Build Firm's expense.

9.2.6 The Engineer will review and approve, or take other appropriate action as necessary, concerning the Design-Build Firm'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.

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

9.2.8 The Engineer shall, upon written request from the Design-Build Firm, conduct inspections to determine the date of Substantial Completion and the date of Final Completion, will receive and forward to the County for the County's review and records, written warranties and related documents required by this Agreement and will issue a final Certificate for Payment upon compliance with the requirements of this Agreement.

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

9.3 Claims by the Design-Build Firm

9.3.1 All Design-Build Firm claims shall be initiated by written notice and claim to the County 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.

9.3.2. Pending final resolution of any claim of the Design-Build Firm, the Design-Build Firm shall diligently proceed with performance of this Agreement and the County shall continue to make payments to the Design-Build Firm in accordance with this Agreement. The resolution of any claim under this Paragraph 9.3 shall be reflected by a Change Order executed by the County, the Engineer and the Design-Build Firm.

9.3.3 Claims for Concealed and Unknown Conditions. Should concealed and unknown conditions be 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 Agreement, 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 Agreement, 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 Design-Build Firm prior to the Design-Build Firm 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 County having any liability to the Design-Build Firm for concealed or unknown conditions, the Contractor must give the County and the Engineer written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Design-Build Firm to make the written notice and claim as provided in this Sub-Article shall constitute a waiver by the Design-Build Firm of any claim arising out of or relating to such concealed or unknown condition.

9.3.4 Claims for Additional Costs. If the Design-Build Firm wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the County therefore, the Design-Build Firm 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 Design-Build Firm before proceeding to execute any additional or changed Work. The failure by the Design-Build Firm to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

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

9.3.4.2 The County shall not be liable to the Design-Build Firm for claims of third parties, including Subcontractors, unless and until liability of the Design-Build Firm has been established therefore in a court of competent jurisdiction.

9.3.5 Claims for Additional Time. If the Design-Build Firm 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 County or someone acting in the County'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 Design-Build Firm's control, then the date for achieving Substantial Completion of the work shall be extended upon the written notice and claim of the Design-Build Firm to the County and the Engineer, for such reasonable time as the Engineer may determine. Any notice and claim for an extension of time by the Design-Build Firm 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 Design-Build Firm's basis for requiring additional time in which to complete the Project. In the event the delay to the Design-Build Firm is a continuing one, only one notice and claim for additional time shall be necessary. If the Design-Build Firm fails to make such claims as required in this Sub-Article, 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.

9.3.5.1 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, Design-Build Firm shall present complete records and averages referred to above, and such requests shall document how weather conditions delays progress of the Work.

9.4 Field Orders

9.4.1 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 Design-Build Firm. The Design-Build Firm shall carry out such Field Orders promptly.

Article 10. SUBCONTRACTORS

10.1 Definition

10.1.1 A Subcontractor is an entity which has a direct contract with the Design-Build Firm to perform a portion of the Work.

10.2 Award of Subcontracts

10.2.1 Upon execution of the Design-Build Firm, the Design-Build Firm shall furnish to the County, in writing, the names of persons or entities proposed by the Design-Build Firm to act as a Subcontractors on the Project. The County shall promptly reply to the Design-Build Firm, in writing, stating any objections the County may have to such proposed Subcontractors. The Design-Build Firm shall not enter into a contract with a proposed Subcontractor with reference to whom the County has made timely objection.

10.2.2 All subcontracts shall afford the Design-Build Firm rights against the Subcontractors which correspond to those rights afforded to the County against the Design-Build Firm herein.

Article 11. CHANGES IN THE WORK

11.1 Changes Permitted

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

11.1.2 Changes in the Work shall be performed under applicable provisions of this Agreement and the Design-Build Firm shall proceed promptly with such changes.

11.2 Change Order Defined

11.2.1 Change Order shall mean a written order to the Design-Build Firm executed by the County and the Engineer, issued after execution of this Agreement, 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.

11.3 Changes in the Contract Price

11.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the County and the Design-Build Firm 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 Design-Build Firm's execution of the Change Order, or (b) if no mutual agreement occurs between the County and the Design-Build Firm, then, as provided in Sub-Article 11.3.2 below.

11.3.2 If no mutual agreement occurs between the County and the Design-Build Firm as contemplated in Sub-Article 11.3.1 above, the change in the Contract Price, if any, shall then be determined by the Engineer 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 Design-Build Firm shall present, in such form and with such content as the County 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 Design-Build Firm 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 Design-Build Firm, 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 Design-Build Firm'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 County, payments on account shall be made to the Design-Build Firm on the Engineer's Certificate for Payment.

11.3.3 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 County or to the Design-Build Firm, the applicable unit prices shall be equitably adjusted.

11.4 Minor Changes

11.4.1 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 Agreement. Such minor changes shall be made by written Field Order, and shall be binding upon the County and the Design-Build Firm. The Design-Build Firm shall promptly carry out such written Field Orders.

11.5 Effect of Executed Change Order

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

11.6 Notice to Surety; Consent

11.6.1 The Design-Build Firm shall notify and obtain the timely consent and approval of the Design-Build Firm's surety with reference to all Change Orders if such notice, consent or approval is required by the Design-Build Firm's surety or by law. The Design-Build Firm's execution of the Change Order shall constitute the Design-Build Firm's warranty to the County 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 12. UNCOVERING AND CORRECTING WORK

12.1 Uncovering Work

12.1.1 If any of the work is covered contrary to the Engineer's request or to any provisions of this Agreement, it shall, if required by the Engineer or the County, be uncovered for the Engineer's inspection and shall be properly replaced at the Design-Build Firm's expense without change in the Contract Time.

12.1.2 If any of the Work is covered in a manner not described in Sub-Article 12.1.1 above, it shall, if required by the Engineer or County, be uncovered for the Engineer's inspection. If such Work conforms strictly with this Agreement, costs of uncovering and proper replacement shall by Change Order be charged to the County. If such Work does not strictly conform with this Agreement, the Design-Build Firm shall pay the costs of uncovering and proper replacement.

12.2 Correcting Work

12.2.1 The Design-Build Firm shall immediately proceed to correct Work rejected by the Engineer as defective or failing to conform to this Agreement. The Design-Build Firm shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the County for the Engineer's services and expenses made necessary thereby.

12.2.2 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 Agreement, the Design-Build Firm shall correct it within 7 days at Design-Build Firm's expense upon receipt of written notice from the County. This obligation shall survive final payment by the County and termination of this Agreement. 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.

12.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Design-Build Firm has under this Agreement. Establishment of the one year time period in Sub-Article 11.2.2 relates only to the duty of the Design-Build Firm 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.

12.3 County May Accept Defective or Nonconforming Work

12.3.1 If the County chooses to accept defective or nonconforming Work, the County 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 County for its acceptance of defective or nonconforming Work, the Design-Build Firm shall, upon written demand from the County, pay the County such remaining compensation for accepting defective or nonconforming Work.

Article 13. CONTRACT TERMINATION

13.1 Termination by the Design-Build Firm

13.1.1 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 Design-Build Firm or any person or entity working directly or indirectly for the Design-Build Firm, the Design-Build Firm may, upon ten (10) days' written notice to the County and the Engineer, terminate performance under this Agreement and recover from the County payment for the actual reasonable expenditures of the Design-Build Firm (as limited in Sub-Article 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.

13.1.2 If the County shall persistently or repeatedly fail to perform any material obligation to the Design-Build Firm for a period of fifteen (15) days after receiving written notice from the Design-Build Firm of its intent to terminate if such failure is not substantially corrected within fifteen (15) days, the Design-Build Firm may terminate performance under this Agreement by written notice to the Engineer and the County. In such event, the Design-Build Firm shall be entitled to recover from the County as though the County had terminated the Design-Build Firm's performance under this Agreement for convenience pursuant to Sub-Article 13.2.1 hereunder.

13.2 Termination by the County

13.2.1 For Convenience

13.2.1.1 The County may for any reason whatsoever terminate performance under this Agreement by the Design-Build Firm for convenience. The County shall give written notice of such termination to the Design-Build Firm specifying when termination becomes effective.

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

13.2.1.3 The Design-Build Firm shall transfer title and deliver to the County such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Design-Build Firm has.

13.2.1.4 (a) The Design-Build Firm shall submit a termination claim to the County 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 Design-Build Firm fails to file a termination claim within one (1) year from the effective date of termination, the County shall pay the Design-Build Firm, an amount derived in accordance with Sub-Article (c) below.

(b) The County and the Design-Build Firm may agree to the compensation, if any, due to the Design-Build Firm hereunder.

(c) Absent agreement to the amount due to the Design-Build Firm, the County shall pay the Design-Build Firm the following amounts:

(i) Contract prices for labor, materials, equipment and other services accepted under this Agreement.

(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 Design-Build Firm'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 Design-Build Firm 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 Sub-Article 13.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Design-Build Firm under this Sub-Article 13.2.1 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.

13.2.2 For Cause

13.2.2.1 If the Design-Build Firm 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 Agreement, then the County may by written notice to the Design-Build Firm, without prejudice to any other right or remedy, terminate the employment of the Design-Build Firm and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Design-Build Firm and may finish the Work by whatever methods it may deem expedient. In such case, the Design-Build Firm shall not be entitled to receive any further payment until the Work is finished.

13.2.2.2 If the unpaid balance of the Contract Price less any liquidated damages due under this Agreement 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 Design-Build Firm. If such cost exceeds the unpaid balance, the Design-Build Firm shall pay the difference to the County. This obligation for payment shall survive the termination of the Contract.

13.2.2.3 In the event the employment of the Design-Build Firm is terminated by the County for cause pursuant to Sub-Article 13.2.2 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 Sub-Article 13.2.1 and the provisions of Sub-Article 13.2.1 shall apply.

Article 14. INSURANCE

14.1 The DESIGN-BUILD FIRM shall not commence work under this Agreement until it has obtained all insurance required under this article and such insurance has been approved by the COUNTY. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The DESIGN-BUILD FIRM shall furnish proof of Insurance to the COUNTY prior to the commencement of operations. The Certificate(s) shall clearly indicate the DESIGN-BUILD FIRM has obtained insurance of the type, amount, and classification as required by contract and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the COUNTY. Certificates shall specifically include the COUNTY as Additional Insured for all lines of coverage except Workers' Compensation and Professional Liability. A copy of the endorsement must accompany the certificate. A brief description of operations referencing the Bid Number, Contract Title, Location, and/or Agreement/Resolution Number shall also be listed as a description on the certificate. Compliance with the foregoing requirements shall not relieve the DESIGN-BUILD FIRM of its liability and obligations under this Agreement. Certificate Holder Address:

St. Johns County, a political subdivision of the State of Florida
500 San Sebastian View
St. Augustine, FL 32084

14.2 Insurance Requirements - Standard Contract for Service

14.2.1 The DESIGN-BUILD FIRM shall maintain during the life of this Agreement, Comprehensive General Liability Insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate, to protect the DESIGN-BUILD FIRM from claims for damages for bodily injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the DESIGN-BUILD FIRM or by anyone directly employed by or contracting with the DESIGN-BUILD FIRM.

14.2.2 The CONTRACTOR shall maintain during the life of the contract, Professional Liability or Errors and Omissions Insurance with minimum limits of \$1,000,000, if applicable.

14.2.3 The CONTRACTOR shall maintain during the life of this Contract, Comprehensive Automobile Liability Insurance with minimum limits of \$2,000,000 combined single limit for bodily injury and property damage liability to protect the CONTRACTOR from claims for damages for bodily injury, including the ownership, use, or maintenance of owned and non-owned automobiles, including rented/hired automobiles whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by a CONTRACTOR.

14.2.4 The CONTRACTOR shall maintain Umbrella or Excess Liability Insurance covering workers compensation, commercial general liability and business auto liability with minimum limits of liability of \$1,000,000.

14.2.5 The DESIGN-BUILD FIRM shall maintain during the life of this Agreement, adequate Workers' Compensation Insurance in at least such amounts as are required by the law.

14.2.6 The DESIGN-BUILD FIRM shall purchase and maintain Builders Risk insurance, property insurance written on an "all risk" policy form including coverage for Earthquake, Flood, Windstorm, Debris Removal, Hot and Cold Testing in the amount of the initial contract sum, plus the value of subsequent contract modification and cost of material supplied or installed by others, comprising total value for the entire project at the site on replacement cost basis. The named insured should include Owner, General Contractor and Subcontractors. The policy should waive any co-insurance penalties. Covered Property to include Permanent Works: Materials, supplies, equipment, machinery and property of others, if the insured is contractually responsible and the value is included in the total project, Temporary Work: scaffolding, form work, fences, shoring, falsework, temporary buildings, Offsite Locations, Offsite Storage and Transit.

The Contractor shall be responsible for the deductible. Such property insurance shall be maintained until final payment has been made. If the policy is terminated for any reason, notice should be provided to the owner within a minimum of thirty days by the carrier. The Owner, contractors and subcontractors waive their rights of subrogation against one another.

In the event of unusual circumstances, the County Administrator or his designee may adjust these insurance requirements.

14.2.7 Special Requirements - Prior to execution of this Agreement, 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.
- c. It is the responsibility of the Design-Build Firm to insure that all Subcontractors comply with all insurance requirements.
- d. These are minimum requirements which are subject to modification in response to high hazard operations.

14.2.8 Certificate of Insurance

The Design-Build Firm 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 14.1 and 14.2 naming the County as additionally insured. The Design-Build Firm shall furnish to the County copies of any endorsements that are subsequently issued amending coverage or limits.

Article 15. MISCELLANEOUS

15.1 Governing Law/Venue. This Agreement 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.

15.2 Successors and Assigns. The County and Design-Build Firm 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 Agreement. The Design-Build Firm shall not assign this Agreement without written consent of the County.

15.3 Surety Bonds. The Design-Build Firm shall furnish a separate Public Construction Bond to the County. Such bond shall set forth a penal sum in an amount not less than the Contract Price. The bond furnished by the Design-Build Firm shall incorporate by reference the terms of this Agreement 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 Design-Build Firm, the penal sum of the bond shall be deemed increased by like amount. The Public Construction Bond furnished by the Design-Build Firm shall be in form suitable to the County and shall be executed by a surety, or sureties, reasonably suitable to the County.

15.4 Safety of Persons and Property. When existing utility lines shown on the Drawings are to be removed or relocated, the Design-Build Firm 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 Design-Build Firm damages any existing utility line not shown on the Drawings, the location of which is not

known to the Design-Build Firm, report thereof shall be made immediately to the Engineer.

15.5 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 Design-Build Firm knows, or is aware of one or more utility lines not shown on the Drawings, the Design-Build Firm shall notify the Engineer, so that such utility lines may be added to the Drawings.

15.6 Design-Build Firm 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 Design-Build Firm's operations shall be repaired at no cost to the County.

15.7 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 Agreement, and any attached and incorporated Exhibits and/or Attachments shall be considered public records and subject to disclosure.

15.8 To the extent necessary to satisfactorily perform and complete the terms, provisions, conditions, and obligations set forth in this Agreement, the Design-Build Firm shall adhere to, and comply with all applicable Federal, State, and local laws, rules, and regulations.

15.9 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 Agreement, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force, and effect.

Article 16. EQUAL EMPLOYMENT OPPORTUNITY

16.1 Design-Build Firm's Employment Opportunity

16.1.1 The Design-Build Firm and all Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or age. The Design-Build Firm 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 Design-Build Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

16.1.2 The Design-Build Firm 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 17. APPRENTICESHIP LAW REQUIREMENTS

17.1 Apprenticeship Law (Chapter 446, Florida Statutes)

17.1.1 The Design-Build Firm 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.

17.1.2 The Design-Build Firm 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.

17.1.3 The Design-Build Firm, during the performance of the Contract, shall make diligent efforts to employ the number of apprentices or trainees necessary to meet requirements of Sub-Articles 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.

17.1.4 The Design-Build Firm 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.

17.1.5 The Design-Build Firm 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.

17.1.6 The Design-Build Firm agrees to insert in any subcontract under this Agreement the requirements contained in this section. The term "Design-Build Firm" as used in such clauses and any Subcontract shall mean the Subcontractors.

17.1.7 Anything herein to the contrary notwithstanding, Design-Build Firm 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

Article 18. PUBLIC RECORDS

18.1 The access to, cost of reproduction, disclosure, non-disclosure and exemption of records, data, documents, and/or materials associated with this Agreement 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.

18.2 As a condition of entering into this Agreement, and to ensure compliance, especially as it relates to any applicable law, rule, or regulation, the Design-Build Firm 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 Local, State, or Federal law.

18.3 In accordance with Florida law, to the extent that Contractor's performance under this Agreement constitutes an act on behalf of the County, the Contractor shall provide access to all public records made or received by Contractor in conjunction with this Agreement. Specifically, if Contractor is expressly authorized, and acts on behalf of the County under this Agreement, Contractor shall:

- (1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services described herein;
- (2) provide the public with access to public records related to this Agreement on the same terms and conditions that the County would provide the records, and at a cost that does not exceed the costs provided in Chapter 119, Florida States, or as otherwise provided by applicable law;
- (3) ensure that public records related to this Agreement that are exempt or confidential and exempt from public disclosure are not disclosed except as authorized by applicable law; and
- (4) meet all requirements for retaining public records, and transfer at Contractor's sole cost and expense, all public records in the possession of Contractor upon termination of this Agreement. Contractor shall destroy any duplicate records that are exempt or confidential and exempt from public disclosure requirements in accordance with applicable State and Federal provisions. Any public records stored electronically must be provided to the County in a format that is compatible with information technology systems maintained by the County.

18.4 Failure by Contractor to grant such public access shall be grounds for immediate, unilateral termination of this Agreement by the County. Contractor shall promptly provide the County notice of any request to inspect or copy public records related to this Agreement in Contractor's possession and shall promptly provide the County a copy of Contractor's response to each such request.

RFP No. 14-51R A1A Scenic & Historic Coastal Byway Wayfinding Signs

Owner
St. Johns County (Seal)

Contractor
ELTONALAN, INC. (Seal)

(Typed Name)

(Typed Name)

By: _____

By _____

Signature

Signature

Printed Name & Title

Printed Name & Title

Date of Execution

Date of Execution

Cheryl Strickland, Clerk of Courts

By: _____
Deputy Clerk

Date of Execution

Legally Sufficient:

Senior Assistant County Attorney

Date: _____