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## **Agreement**

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**THIS AGREEMENT** is by and between INDIAN RIVER COUNTY, a Political Subdivision of the State of Florida organized and existing under the Laws of the State of Florida, (hereinafter called COUNTY) and A. Thomas Construction, Inc. (hereinafter called CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### **ARTICLE 1 – WORK AND PROJECT**

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The construction and anchoring of 15 new shooting stands plus the anchoring of 15 existing stands.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Project Name: Indian River County Shooting Range Stands

Bid Number: 2025059

Project Address: 10455 102<sup>nd</sup> Terrace, Sebastian, FL 32958

### **ARTICLE 2 - CONTRACT TIMES**

#### *2.01 Time of the Essence*

All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the specifications are of the essence of the Agreement. Receipt of a fully executed copy of this agreement by electronic means shall serve as notice to proceed.

#### *2.02 Days to Achieve Substantial Completion, Final Completion and Final Payment*

The Work will be completed and ready for final payment on or before the 90th day after the date when the Contract Times commence to run.

#### *2.03 Liquidated Damages*

CONTRACTOR and COUNTY recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.02 above, plus any extensions thereof allowed in writing as a change order to this Agreement. Liquidated damages will commence for this portion of work. 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. Accordingly, instead of requiring any such proof, COUNTY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay COUNTY \$904 for each calendar day that expires after the time specified in paragraph 3.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

### **ARTICLE 3 - CONTRACT PRICE**

3.01 COUNTY shall pay CONTRACTOR for completion of the Work an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 4.01.A and summarized in paragraph 4.01.B, below:

A. For all Work, at the prices stated in CONTRACTOR's Bid, attached hereto as Exhibit 1.

B. THE CONTRACT SUM subject to additions and deductions provided in the Contract Documents:

Numerical Amount: \$ 87,000.00

Written Amount: Eight-seven thousand dollars and zero cents

#### **ARTICLE 4 - PAYMENT PROCEDURES**

##### ***4.01 Progress Payments.***

A. The COUNTY shall make progress payments to the CONTRACTOR on the basis of the approved partial payment request as recommended by ENGINEER in accordance with the provisions of the Local Government Prompt Payment Act, Florida Statutes section 218.70 et. seq. The COUNTY shall retain five percent (5%) of the payment amount due to CONTRACTOR until substantial completion and acceptance of all work to be performed by CONTRACTOR under the Contract Documents.

B. For construction projects less than \$10 million, at the time the COUNTY is in receipt of the Certificate of Substantial Completion, the COUNTY shall have 30 calendar days to provide a list to the Contractor of items to be completed and the estimated cost to complete each item on the list. COUNTY and Contractor agree that the Contractor's itemized bid shall serve as the basis for determining the cost of each item on the list. For projects in excess of \$10 million, COUNTY shall have up to 45 calendar days following receipt of Certificate of Substantial Completion of the project to provide contractor with said list.

C. Within 20 business days following the creation of the list, COUNTY shall pay Contractor the remaining contract balance including all retainage previously withheld by COUNTY except for an amount equal to 150% of the estimated cost to complete all of the items on the list.

D. Upon completion of all items on the list, the Contractor may submit a payment request for the amount of the 150% retainage held by the COUNTY. If a good faith dispute exists as to whether one or more of the items have been finished, the COUNTY may continue to withhold the 150% of the total cost to complete such items. The COUNTY shall provide Contractor written reasons for disputing completion of the list.

##### ***4.02 Pay Requests.***

A. Each request for a progress payment shall contain the CONTRACTOR'S certification. All progress payments will be on the basis of progress of the work measured by the schedule of values established, or in the case of unit price work based on the number of units completed.

4.03 Paragraphs 5.01 and 5.02 do not apply to construction services work purchased by the County as COUNTY which are paid for, in whole or in part, with federal funds and are subject to federal grantor laws and regulations or requirements that are contrary to any provision of the Local Government Prompt Payment Act. In such event, payment and retainage provisions shall be governed by the applicable grant requirements and guidelines.

4.04 *Acceptance of Final Payment as Release.*

A. The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the COUNTY from all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with the work under this Agreement and for every act and neglect of the COUNTY and others relating to or arising out of the work. Any payment, however, final or otherwise, shall not release the CONTRACTOR or its sureties from any obligations under this Agreement, the Invitation to Bid or the Public Construction Bond.

**ARTICLE 5 - INDEMNIFICATION**

5.01 CONTRACTOR shall indemnify and hold harmless the COUNTY, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of the Work.

**ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS**

6.01 In order to induce COUNTY to enter into this Agreement CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Invitation to Bid documents.

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

E. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

F. CONTRACTOR is aware of the general nature of work to be performed by COUNTY and others at the Site that relates to the Work as indicated in the Contract Documents.

G. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

H. CONTRACTOR has given COUNTY written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by COUNTY 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 is registered with and will use the Department of Homeland Security's E-Verify system ([www.e-verify.gov](http://www.e-verify.gov)) to confirm the employment eligibility of all newly hired employees for the duration of this agreement, as required by Section 448.095, F.S. Contractor is also responsible for obtaining an affidavit from all subcontractors, as required in Section 448.095(5)(b), F.S., stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien.

K. Contractor will comply with all the requirements as imposed by the Americans with Disabilities Act of 1990 ("ADA"), the regulations of the Federal government issued thereunder, and the assurance by the Contractor pursuant thereto.

L. Contractor does not meet any of the criteria in Section 287.138, Florida Statutes, relating to Foreign Entity ownership, that would exclude it from eligibility to enter an agreement which may give access to an individual's personal identifying information.

## **ARTICLE 7 - CONTRACT DOCUMENTS**

### **7.01 *Contents***

A. The Contract Documents consist of the following:

- (1) This Agreement;
- (2) Notice to Proceed;
- (3) Certificate(s) of Liability Insurance;
- (4) Invitation to Bid 2025059;
- (5) Addenda (numbers 1 to 4, inclusive);
- (6) CONTRACTOR'S Bid Form;
- (7) Bid Bond;
- (8) Qualifications Questionnaire;
- (9) Drug Free Workplace Form;
- (10) Sworn Statement Under Section 105.08, Indian River County Code, on Disclosure of Relationships;
- (11) Certification Regarding Prohibition Against Contracting with Scrutinized Companies;
- (12) Certification Regarding Lobbying;
- (13) Anti-Human Trafficking Affidavit;
- (14) The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a) Written Amendments;
  - b) Change Order(s).

## **ARTICLE 8 - MISCELLANEOUS**

### **8.01 *Terms***

A. Terms used in this Agreement will have the meanings indicated in the Invitation to Bid.

### **8.02 *Assignment of Contract***

A. No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

#### 8.03 *Successors and Assigns*

A. COUNTY and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

#### 8.04 *Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon COUNTY 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.

#### 8.05 *Venue*

A. This Agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Indian River County, Florida, or, in the event of a federal jurisdiction, in the United States District Court for the Southern District of Florida.

#### 8.06 *Public Records Compliance*

A. Indian River County is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- (1) Keep and maintain public records required by the County to perform the service.
- (2) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.
- (4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. 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 Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

**B. 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 CUSTODIAN OF PUBLIC RECORDS AT:**

**(772) 226-1424**

**[publicrecords@indianriver.gov](mailto:publicrecords@indianriver.gov)**

**Indian River County Office of the County Attorney**

**1801 27<sup>th</sup> Street**

**Vero Beach, FL 32960**

C. Failure of the Contractor to comply with these requirements shall be a material breach of this Agreement.

#### *8.07 Cooperative Purchasing*

This agreement is available to eligible agencies for cooperative procurement purposes, however, COUNTY is not a party to any agreement or dispute between CONTRATOR and an agency utilizing this provision.

#### *8.08 Availability of Funds*

The obligations of the COUNTY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of County Commissioners of Indian River County.

#### *9.09 Changes*

Any modification to this agreement must be made in writing. The cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

### **Article 9: TERMINATION OF CONTRACT**

A. The occurrence of any of the following shall constitute a default by CONTRACTOR and shall provide the COUNTY with a right to terminate this Contract in accordance with this Article, in addition to pursuing any other remedies which the COUNTY may have under this Contract or under law:

(1) if in the COUNTY's opinion CONTRACTOR is improperly performing work or violating any provision(s) of the Contract Documents;

(2) if CONTRACTOR neglects or refuses to correct defective work or replace defective parts or equipment, as directed by the Engineer pursuant to an inspection;

(3) if in the COUNTY's opinion CONTRACTOR's work is being unnecessarily delayed and will not be finished within the prescribed time;

(4) if CONTRACTOR assigns this Contract or any money accruing thereon or approved thereon;

or

(5) if CONTRACTOR abandons the work, is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for CONTRACTOR or for any of his property.

B. COUNTY shall, before terminating the Contract for any of the foregoing reasons, notify CONTRACTOR in writing of the grounds for termination and provide CONTRACTOR with ten (10) calendar days to cure the default to the reasonable satisfaction of the COUNTY.

C. If the CONTRACTOR fails to correct or cure within the time provided in the preceding Sub-Article B, COUNTY may terminate this Contract by notifying CONTRACTOR in writing. Upon receiving such notification, CONTRACTOR shall immediately cease all work hereunder and shall forfeit any further right to possess or occupy the site or any materials thereon; provided, however, that the COUNTY may authorize CONTRACTOR to restore any work sites.

D. A vendor or service provider that breaches this agreement during an emergency recovery period (1-year period that begins on the date that the governor initially declared a state of emergency for a natural emergency) is to pay a \$5,000 penalty and damages which may be either actual and consequential damages or liquidated damages. Additionally, the CONTRACTOR shall be liable for:

(1) any new cost incurred by the COUNTY in soliciting bids or proposals for and letting a new contract; and

(2) the difference between the cost of completing the new contract and the cost of completing this Contract;

(3) any court costs and attorney's fees associated with any lawsuit undertaken by COUNTY to enforce its rights herein.

E. TERMINATION FOR CONVENIENCE: COUNTY may at any time and for any reason terminate CONTRACTOR's services and work for COUNTY's convenience. Upon receipt of notice of such termination CONTRACTOR shall, unless the notice directs otherwise, immediately discontinue the work and immediately cease ordering of any materials, labor, equipment, facilities, or supplies in connection with the performance of this Contract. Upon such termination Contractor shall be entitled to payment only as follows:

(1) the actual cost of the work completed in conformity with this Contract and the specifications; plus,  
(2) such other costs actually incurred by CONTRACTOR as are permitted by the prime contract and approved by the COUNTY.

Contractor shall not be entitled to any other claim for compensation or damages against the County in the event of such termination.

F. TERMINATION IN REGARDS TO F.S. 287.135: CONTRACTOR certifies that it and those related entities of CONTRACTOR as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, CONTRACTOR certifies that it and those related entities of CONTRACTOR as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria. COUNTY may terminate this Contract if CONTRACTOR, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes. COUNTY may terminate this Contract if CONTRACTOR is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to COUNTY and CONTRACTOR. All portions of the Contract Documents have been signed or identified by COUNTY and CONTRACTOR or on their behalf.

This Agreement will be effective on \_\_\_\_\_, 20\_\_\_\_ (the date the Agreement is approved by the Indian River County Board of County Commissioners, which is the Effective Date of the Agreement).

COUNTY:

INDIAN RIVER COUNTY

By: \_\_\_\_\_  
Joseph E. Flescher, Chairman

By: \_\_\_\_\_  
John A. Titkanich, Jr., County Administrator

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

By: \_\_\_\_\_  
Jennifer W. Shuler, County Attorney

Ryan L. Butler, Clerk of Court and Comptroller

Attest: \_\_\_\_\_  
Deputy Clerk

(SEAL)

Designated Representative:  
Carlos Flores, Project Engineer  
1801 27<sup>th</sup> Street, Vero Beach, FL 32960  
772-226-1229  
cflores@indianriver.gov

CONTRACTOR:

A. Thomas Construction, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(Corporate Seal)  
(If CONTRACTOR is a corporation or partnership,  
attach evidence of authority to sign)

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Designated Representative:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_



**Change Order Form**

No. \_\_\_\_\_

DATE OF ISSUANCE:

EFFECTIVE DATE:

OWNER: Indian River County

OWNER's Bid/RFP No. \_\_\_\_\_

CONTRACTOR:

Project:

You are directed to make the following changes in the Contract Documents:

Description:

Reason for Change Order:

Attachments: (List documents supporting change)

CHANGE IN CONTRACT PRICE:	
Description	Amount
Original Contract Price	\$
Net Increase (Decrease) from previous Change Orders No. ____ to ____:	\$
Contract Price prior to this Change Order:	\$
Net increase (decrease) of this Change Order:	\$
Contract Price with all approved Change Orders:	\$

CHANGE IN CONTRACT TIMES	
Description	Time
Original Contract Time:	(days or dates)
Substantial Completion:	_____
Final Completion:	_____
Net change from previous Change Orders No. ____ to ____:	(days)
Substantial Completion:	_____
Final Completion:	_____
Contract Time prior to this Change Order:	(days or dates)
Substantial Completion:	_____
Final Completion:	_____
Net increase (decrease) this Change Order:	(days or dates)
Substantial Completion:	_____
Final Completion:	_____
Contract Time with all approved Change Orders:	(days or dates)
Substantial Completion:	_____
Final Completion:	_____

ACCEPTED:

By:

CONTRACTOR (Signature)

Date:

RECOMMENDED:

By:

ENGINEER (Signature)

Date:

APPROVED:

By:

OWNER (Signature)

Date: