

**ONE TIME DREDGING AND DREDGE MATERIAL DISPOSAL LICENSE
AGREEMENT FOR BARTRAM ISLAND**

THIS LICENSE AGREEMENT (the “License”) made and entered into this, February 7, 2012, is by and between the **Jacksonville Port Authority**, a body politic and corporate, (hereinafter called the “JPA”), and **Harbour Waterway Association, Inc.**, a Florida corporation not-for-profit, whose business address is 4636 Harbour North Court, Jacksonville, FL 32225, and the **Harbour Waterway Special District**, a special district created by Florida Statutes, Chapter 189, whose business address is 11554 Starboard Dr., Jacksonville, FL. 32225 (hereinafter collectively called “Licensee”).

RECITALS:

WHEREAS, the JPA has certain monetary interests in Bartram Island, being more particularly described in this License (the “Property”); and

WHEREAS, the JPA also owns certain property rights in and to the Property and has certain liabilities with respect thereto; and

WHEREAS, the Licensee, in connection with the dredging of its canals and channel in the Harbour Subdivision areas, wants to use a portion of the Property, solely for the purpose of depositing excavated dirt, silt, sands, or rock found in its canals into containment areas on the Property; and

WHEREAS, the Licensee, Harbour Waterway Association, Inc., is able and willing to indemnify, defend and hold the JPA harmless from all loss, damages, claims, expenses and certain other conditions that may occur or expose JPA to risk of loss as a direct or indirect result of Licensee’s use of the Property; and

WHEREAS, the Licensee, Harbour Waterway Special District, to the extent permitted by law is able and willing to indemnify, defend and hold the JPA harmless from all loss, damages, claims, expenses, and certain other conditions that may occur or expose JPA to risk of loss as a direct or indirect result of Licensee’s use of the Property; and

WHEREAS, the United States of America, by and through the District Engineer, Corps of Engineers, Jacksonville District, has certain paramount rights and interests in, on, and adjacent to, the Property by virtue of its federal authority over navigable waters and certain perpetual easement rights granted to it by the State of Florida;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the benefits that will accrue to the Licensee as a result of the use of the Property for the deposit of dredged material, and for other good and valuable consideration, the legal sufficiency of which being hereby acknowledged, the parties hereto covenant and agree as follows:

1. **Incorporation of Recitals.** The above stated Recitals are true and correct and, by this reference are incorporated herein and made a part hereof.

2. **Identification of Relevant Documents.** As used in this License, the following exhibit designations relate to relevant documents:

(a) **Exhibit A** - Those certain portions of and features on the Property developed as the Disposal Area, described as "Cell F" (hereinafter referred to as the "Disposal Area").

(b) **Exhibit B** - Licensee Notification. This document provides relevant information from the Licensee to JPA concerning potential dredging/disposal activities, including but not limited to the submission of a drawing showing the dredge limits of the area, to include channels and canals that Licensee plans to dredge.

(c) **Exhibit C** - Dredger Notification. This document provides relevant information from the dredging contractor to JPA on dredging/disposal activities, including but not limited to a brief description of the dredging plan, size of dredge, dredge rates, hours of operation, location of discharge site, monitoring plan, and turbidity controls.

3. **Incorporation of Exhibits.** **Exhibits A** through **C**, inclusive, are by this reference, incorporated into this License, as if set out herein in their entirety.

4. **Acknowledgment of JPA's Rights.** Licensee acknowledges JPA's interests and rights as set forth above and hereby agrees that Licensee will at all times abide by and comply with the requirements, conditions and limitations set forth in this License.

5. **Waiver of Right, Title or Interest in Materials.** Licensee hereby waives, releases and relinquishes forever any right, title, or interest in or to any and all materials which Licensee shall, from time to time, deposit on or in the Disposal Area, and agrees that any works, structures, or equipment of any nature, installed, constructed, or placed by Licensee on or in the Disposal Area shall be promptly removed by Licensee upon completion of its use thereof. In the event that the parties to this License mutually agree that certain works, structures, equipment, or construction by Licensee may be abandoned in-place for future use by others, Licensee shall forever waive, release and relinquish any right, title, claims or interest therein. Licensee does not waive any environmental liability or responsibility that may be associated with the materials that Licensee deposits in the Disposal Area.

6. **Acknowledgment of Permit Requirements.**

(a) Licensee acknowledges that if any permits are required to dispose of spoil material, Licensee shall, at its sole cost and expense, complete all applications and submit to JPA for review and approval prior to submittal to any permitting agency, and shall obtain such permits and provide copies to JPA before conducting work pursuant to this License. Moreover, Licensee agrees to conduct its activities in accordance with the conditions of the permits identified herein and any other permits it may obtain hereafter. If Licensee intends to dredge by some authority other than a permit obtained through the United States and the State of Florida, the Licensee shall furnish evidence of such authorization to JPA for approval prior to any disposition of sediment material under this

License. JPA has no responsibility or liability for any permits that Licensee must secure for its use of the Disposal Area.

(b) Licensee shall be granted the use of Disposal Area only during the effective term of dredging permits if such permits are required by the District Engineer, Corps of Engineers, Jacksonville District and by the State of Florida and only for a single dredge event. Licensee shall furnish JPA a copy of any dredging permits Licensee may obtain and a copy of any extension, revision, or reissuance made thereto before commencing work. Licensee agrees that if any permit is terminated or revoked for any cause, Licensee shall immediately stop all work subject to such affected permits and notify JPA forthwith, whereupon this License shall be appropriately amended or terminated.

7. Environmental Sampling Required. Prior to the dredging of any material or placement of any dredge materials on the Property, at the Licensee's expense, an environmental sampling plan will be submitted and approved by JPA as evidence that the dredge spoils do not contain constituents in excess of the cleanup standards promulgated by FDEP or any other agency. Licensee shall develop a sampling plan to characterize the excavated material with respect to the absence of contaminants, chemical reactivity, and its suitability for disposal on the Property. The plan will outline, at a minimum, the location and number of sampling sites, the number of samples to be collected and the type of analysis to be performed. The plan shall be submitted and approved by JPA in advance of any sampling. After approval of the sampling plan, all sampling results will be submitted for review and approval by JPA prior to any use of the Property.

8. Notification to JPA of Dredging. Licensee shall notify JPA, in writing, sixty (60) days in advance of the intended date of commencement of dredging or dredge material disposal on the form identified as **Exhibit B**. The Licensee shall be responsible for verifying that capacity is available in the Disposal Area adequate to meet its needs. The Licensee shall require its dredging contractor to notify JPA before starting the dredging or dredge material disposal on the Disposal Area by submitting **Exhibit C** at least five (5) working days before commencing work.

9. Payment. For this License and for this one time use, the disposal fee of Five Dollars (\$5.00) per cubic yard ("Tipping Fee") shall be required from Licensee for the deposit of material in the Disposal Area in advance of any actual dredging. Licensee shall pay to JPA the Tipping Fee for the maximum amount of dredge material that it believes shall be dredged, which Licensee currently estimates to be 45,000 cubic yards. Under no circumstances is Licensee granted the right to deposit more than 60,000 cubic yards in Disposal Area without prior written approval of JPA and the payment of the additional Tipping Fee. To the extent that Licensee overpays and deposits less material, the overpayment shall be refunded by JPA within thirty (30) days of a final accounting. A certification from the Licensee's marine surveyor verifying the total cubic yards of spoil material placed on the Property shall be provided by Licensee to JPA within fifteen (15) days after the completion of the dredging activities. Payment shall be made to JPA at: JAXPORT, 2831 Talleyrand Avenue, Jacksonville, Florida, 32206, **Attn. Finance Department** and noting on the check a reference to the date of the dredging and a description such as "July, 2012 Dredging, Harbour Waterway."

10. Default and Remedies. Should the Licensee default under any of the terms and conditions of this License, JPA shall have the right to: (a) Take possession of and hold as security or for sale any of the Licensee's equipment or materials until JPA is fully reimbursed for any costs due; (b) Terminate this License upon giving Licensee 10 days' written notice thereof, and (c) Pursue those remedies to which JPA may be entitled in law or in equity, including retaining all sums collected in advance.

11. Term. This License shall take effect on the date that JPA sends written notice to Licensee that the Disposal Area is available and ready for acceptance of the dredge spoils. This License shall continue in full force and effect until Licensee has completed the one-time dredging of only its canals and channel and in no case shall the Term exceed a period of six (6) months after the above-described notification by JPA, subject to the conditions and agency approvals herein and subject to the provisions for termination. JPA and the Licensee may mutually agree to an extension of the Term for one (1) additional six (6) month period to allow for the dredging of Licensee's channel and canals, on the same terms as are set forth in this License; provided, however, that this License may not be extended beyond July 30, 2013. The Licensee shall not add any additional areas to be dredged under this extension period. The Licensee shall provide notice of its intention to extend the term by providing written notice to JPA on or before the date that is thirty (30) days prior to the end of the initial Term. Notwithstanding the foregoing, this License may be terminated by JPA if dredge space is needed by JPA for emergency situations. Neither party shall be liable to the other for damages arising out of such a termination.

12. Reports. Licensee acknowledges that under the terms of existing law and regulations, both the United States of America and the State of Florida may, from time to time, require the submission of reports, surveys, or other information concerning the condition and use of the Disposal Area. Licensee hereby agrees to obtain such reports or surveys and submit them to the requesting authority or, in the alternative, to reimburse JPA for Licensee's equitable proportionate share of the costs for any surveys or reports that are so requested and submitted.

13. Maintenance and Repair. Licensee shall be responsible for preservation of the general condition of the Disposal Area during placement of sediment, including but not limited to, dikes, discharge structures, vegetation, shoreline, fish and wildlife habitat. Licensee shall be responsible for repairing all damage to the Disposal Area and paying any penalties imposed by any Federal, State or local governmental agencies for Licensee's or its contractors' or agents' improper use of the Property. Any changes to structures or earthwork, including, without limitation, restoration of the dikes or other structures, must be approved by JPA before commencing work.

14. Compliance with Special Restrictions. As part of public law and agreements with the State, Federal, and local governmental agencies, special restrictions, such as seasonal limits and endangered species' protection measures, may be imposed upon the use of the Disposal Area, and Licensee agrees that it will comply fully with all special restrictions.

15. Indemnification.

JPA requires the following indemnification to be made a part of this License:

1. Licensee, Harbour Waterway Association, Inc. and Licensee, Harbour Waterway Special District to the extent permitted by law, and without limitation, its consultants, sub-consultants, contractors, and subcontractors, (individually or collectively referred to as the “Indemnifying Parties”), shall hold harmless, indemnify, and defend JPA, including without limitation, its officers, directors, members, representatives, affiliates, agents and employees, successors and assigns (individually or collectively referred to as the “Indemnified Parties”) and shall reimburse the Indemnified Parties from and against:

- a. General Tort Liability, including without limitation any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including, but not limited to reasonable attorney fees) to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Indemnifying Parties, and other persons employed or utilized by the Indemnifying Parties in the performance of this License or the work or services performed hereunder; and
- b. Environmental Liability, including without limitation, any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs of cleanup, containment or other remediation, and all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) arising from or in connection with (a) the Indemnifying Parties’ actions or activities that result in a violation of any environmental law, ordinance, rule, or regulation or that leads to an environmental claim or citation or to damages due to the Indemnifying Parties’ activities, (b) any environmental, health and safety liabilities arising out of or relating to the operation or other activities performed in connection with this License by the Indemnifying Parties at any time on or prior to the day and year first above written, or (c) any bodily injury (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any person in any way arising from or allegedly arising from any hazardous activity conducted by the Indemnifying Parties. JPA will be entitled to control any remedial action or proceeding relating to an environmental claim; and
- c. Violation of Laws Liability, including without limitation, any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) arising from or based upon the violation of any federal, state, or municipal laws, statutes, resolutions, rules or regulations, by the Indemnifying Parties or those under their control; and
- d. Liability from Breach of Representations, Warranties and Obligations, including, without limitation, any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) which may be incurred by, charged to or recovered from any

of the foregoing, arising directly or indirectly out of (a) any breach of any representation or warranty made by the Indemnifying Parties in connection with this License or in any certificate, document, writing or other instrument delivered by the Indemnifying Parties pursuant to this License or (b) any breach of any covenant or obligation of the Indemnifying Parties set forth in this License or any other certificate, document, writing or other instrument delivered by the Indemnifying Parties pursuant to this License.

2. The indemnifications in Section 15.1, are separate and apart from, and are in no way limited by, any insurance provided pursuant to this License or otherwise. Section 15.1 shall survive the term of this License, and any holdover and/or contract extensions thereto, whether such term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this License.

16. Insurance. The Licensee shall not commence any engineering, design or construction work in connection with this License until its consultants, contractor, subcontractor, or agent (“Contractor”) have obtained the below listed insurance coverages. The amounts and types of insurance required shall be reasonably commensurate with the hazards and magnitude of the undertaking, but in no event be of lesser amount nor more restrictive than the limits of liability and schedule of coverages described below.

Before entering the Property, and without limiting its liability under this License, the Contractor shall procure and maintain, at its sole cost and expense, during the term of this License, insurance of the types and in the minimum amounts stated below:

<u>Schedule</u>	<u>Limits</u>
<u>Workers’ Compensation & Employer’s Liability</u> (Including appropriate Federal Acts)	Florida Statutory Coverage \$100,000 each Accident \$500,000 Disease/Policy Limit \$100,000 Disease/Each Employee
<u>Commercial General Liability</u> Products-Completed Operation Blanket Contractual Liability	\$1,000,000 per Occurrence \$2,000,000 General Aggregate
<u>Marine Protection and Indemnity Insurance</u> Blanket Contractual Liability	\$1,000,000 per Occurrence \$2,000,000 Aggregate
<u>Contractors Pollution Liability</u> Blanket Contractual Liability Products-Completed Operations	\$1,000,000 per Occurrence \$2,000,000 Aggregate

JPA shall be named as an additional insured under all the Commercial General Liability Insurance coverages.

All insurance policies shall be written by insurers holding a current certificate of authority issued by the Department of Insurance of the State of Florida pursuant to Chapter 624, Florida Statutes. The insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of JPA. Insurer must meet or exceed the minimal requirements of A.M. Best, Financial Strength Rating of A-(Excellent) and Financial Size Rating of no less than VII. Prior to entering the Property, Certificates of Insurance approved by JPA's Risk Management Division evidencing the maintenance of said insurance shall be furnished to JPA. The Certificates shall provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until thirty (30) days after receipt of written notice by JPA. Any indemnification provisions in this License are separate and apart and in no way limited by the insurance coverages or amounts stated above.

Anything to the contrary notwithstanding, the liabilities of the Contractor under this License shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage. Neither approval nor failure to disapprove insurance furnished by the Contractor shall relieve the Contractor from responsibility to provide insurance as required by the contract.

17. No JPA Liability. JPA shall not be liable in any way, or to any extent, or at all, for or on account of any injury or damage to any person or property at any time on the Property unless such injury or damage or destruction is due to the sole negligence of JPA.

18. Non-waiver. No waiver or breach by either party to this License of any of the terms, conditions and covenants hereof to be performed, kept and observed by the other party shall be construed as or shall operate as a waiver of any subsequent breach of any of the terms, conditions or covenants hereof.

19. Notice. All notices required by this License to be given by or on behalf of either party to the other shall be in writing and signed by a duly authorized representative of the party giving the notice. Notice shall be deemed given if made by registered or certified United States mail, postage prepaid, with return receipt requested and executed. Notices shall be delivered to:

For JPA:

Marvin Grieve
2831 Talleyrand Avenue
Jacksonville, FL 32206
904.357.3064

For Licensee:

President
Harbour Waterway Association, Inc.
4636 Harbour North Court
Jacksonville, FL 32225

Harbour Waterway Special District
Attn: Stanley H Pipes Jr.
11554 Starboard Dr.
Jacksonville, FL. 32225

20. Section Headings. Titles or section headings used in this License are for the convenience of the parties only. Title or Section headings shall not be used in any way to construe or interpret the provisions of this License.

21. Negotiated Agreement. The parties agree that they have had meaningful discussion and/or negotiation of the provisions, terms and conditions of this License. Therefore, doubtful or ambiguous provisions, if any, contained in this License shall not be construed against the party who physically prepared this License or any provision thereof. The rule commonly referred to as *Fortius Contra Proferentum* shall not be applied to this License or any construction or interpretation thereof.

22. Entire Agreement. This License contains the entire agreement by and between the parties hereto. The parties understand and agree that neither party nor its agents have made representations or promises with respect to this License except as expressly set forth herein; and that no claim or liability shall arise for any representations or promises not expressly stated in this License. Any amendment, revision, modification or change to this License shall not be effective unless it is in writing and executed by the parties hereto.

The remainder of this page is intentionally left blank. See pages following for execution by JPA and Licensee→

IN WITNESS WHEREOF, JPA and Licensee have executed this License as of the day and year first written above.

Signed and Sealed in Our Presence:

WITNESSES:

JACKSONVILLE PORT AUTHORITY

By: Rebecca Davis
Name: Rebecca Davis

By: C. Kauffman
Name: CHRISTOPHER E. KAUFFMANN
Title: CHIEF OPERATING OFFICER

By: Alice Newman
Name: Alice W. Newman

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 15th day of Feb., 2012, by CHRIS C. KAUFFMANN, of JPA, a body politic and corporate, on behalf of JPA, who: *(notary must check applicable box)*

- are personally known to me; or
- produced a current _____ driver's license as identification; or
- produced _____ as identification.

Jill S. Mashburn
Print Name: JILL S. MASHBURN
Notary Public, State of Florida
My Commission Expires: _____

Form approved:

Kristin S. Nelson
Assistant General Counsel

JILL S. MASHBURN
Notary Public, State of Florida
My Comm. Expires July 1, 2014
Commission No. EE 6041

LICENSEE:

WITNESSES:

**HARBOUR WATERWAY ASSOCIATION,
INC.,** a Florida corporation not-for-profit,

By: [Signature]
Name: ROBERT P. BIRTALAN

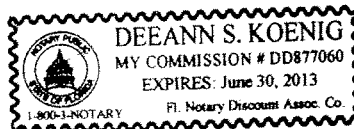
By: [Signature]
Name: William K. Hibbard
Title: President

**STATE OF FLORIDA
COUNTY OF DUVAL**

The foregoing instrument was acknowledged before me this 7th day of Feb, 2012
by William K. Hibbard, the President of Harbour Waterway Association, Inc., a Florida
corporation not-for-profit, on behalf of the corporation, who:
(notary must check applicable box)

- is personally known to me; or
- produced a current _____ driver's license as identification; or
- produced _____ as identification.

[Signature]
Print Name: DeeAnn S. Koenig
Notary Public, State of Florida
My Commission Expires: June 30, 2013



LICENSEE:

WITNESSES:

HARBOUR WATERWAY SPECIAL DISTRICT, a Florida special district,

By: [Signature]
Name: ROBERT P. BIRTALAN

By: [Signature]
Name: PAUL E STROUP JR

By: [Signature]
Name: Stanley H. Pipes Jr.
Title: Supervisor and Secretary / Treasurer

**STATE OF FLORIDA
COUNTY OF DUVAL**

The foregoing instrument was acknowledged before me this 7th day of Feb, 2012 by Stanley H. Pipes Jr., a Supervisor and Secretary/Treasurer of the Harbour Waterway Special District., a Florida dependant special district, on behalf of the district, who:
(notary must check applicable box)

- is personally known to me; or
- produced a current _____ driver's license as identification; or
- produced _____ as identification.

[Signature]
Print Name: DeeAnn S. Koening
Notary Public, State of Florida
My Commission Expires: June 30, 2013

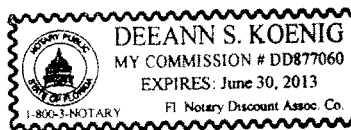


TABLE OF CONTENTS

EXHIBITS

<u>Title</u>	<u>Description</u>
Exhibit A	Sketch of Disposal Site
Exhibit B	Licensee Notification
Exhibit C	Dredger Notification



Exhibit A

EXHIBIT B

LICENSEE NOTIFICATION

The **Harbour Waterway Association, Inc. and Harbour Waterway Special District** as licensee of the City of Jacksonville wishes to maintenance dredge its canals, as shown on the **attached drawing**.

Estimated volume of material to be dredged: _____
Method of dredging: _____
Spoil disposal site (attached map): _____

Anticipated dredging dates: Begin: _____
 End: _____

APPLICABLE PERMITS

Enclosed are copies of any permits not already on file with the Jacksonville Port Authority.

SPECIAL CONDITIONS

The Jacksonville Port Authority representative shall be given access to the dredge site and dredge materials disposal in order to ensure compliance with permit conditions.

Harbour Waterway Association, Inc.

Name

Title

Signature

Harbour Waterway Special District

Name

Title

Signature

EXHIBIT C

DREDGER NOTIFICATION

The _____ (Dredge Company Name) holder of DNR Registration # _____ will be dredging the canals belonging to **Harbour Waterway Association/Harbour Waterway Special District**.

Dredging will begin: _____

Dredging will be completed: _____

Company Address: _____

Telephone: _____

Contact: _____

The following agencies have been notified:

City of Jacksonville, Department of Regulatory & Environmental Services:

_____ Date

State of Florida, Department of Environmental Regulation:

_____ Date

U.S. Army, Corps of Engineers:

_____ Date

Attached is a brief description of dredging plan, type, size of dredge, dredger rates, hours of operation, location of discharge site, monitoring plan, and turbidity controls.

I understand that if violations of the License Agreement between the Jacksonville Port Authority and the **Harbour Waterway Association/Harbour Waterway Special District** occur, the Jacksonville Port Authority representative can immediately suspend the use of the dredge material disposal area until the violations are corrected.

I have read and understand all of the License Agreement conditions and permit conditions that apply to this dredging operation.

Signature

Notary

Name

Title

