

LEE COUNTY CONSTRUCTION CONTRACT
AGREEMENT FORM

AGREEMENT

THIS AGREEMENT ("Agreement"), effective the date the Lee County Board of County Commissioners awarded the Solicitation to the Contractor, is made and entered into by both parties, by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "OWNER" or the "COUNTY" and Douglas N. Higgens Inc., a Michigan corporation, whose address is 3390 Travis Pointe Rd., Suite A, Ann Arbor, Michigan 48108, and whose Federal tax identification number is 38-1807765, hereinafter referred to as "CONTRACTOR".

In consideration of the mutual covenants herein set forth, the COUNTY and the CONTRACTOR do hereby agree as follows:

ARTICLE 1. WORK

The CONTRACTOR shall perform all the Work required by the Contract Documents (the "Work").

Scope of Work:

In full accordance with the drawings and as further elaborated in the specifications of Lee County Invitation to Bid No. B240287JJB (the "Solicitation"), a copy of which is on file with the Lee County Department of Procurement Management and is deemed incorporated into this Agreement, the CONTRACTOR shall provide the installation of an alum treatment facility, which includes the installation of housing shelters, an alum tank, pump, control panel, pipe network on lake bottom, and dispersal apparatuses at Lakes Park. Lakes Park is located at 7330 Gladiolus Dr, Fort Myers, FL 33908.

PROJECT NAME: LAKES PARK WATER QUALITY PHASE III - CONSTRUCTION

LOCATION: Lee County, Florida

ARTICLE 2. AMOUNT OF CONTRACT

2.1 The COUNTY shall pay the CONTRACTOR in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the sum of Four Million, Two Hundred Ninety-Four Thousand, Six Hundred dollars and zero cents. (\$4,294,600.00).

2.2 All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of nonappropriation of funds by the County for the services provided under this Agreement, the County will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the CONTRACTOR on thirty (30) calendar days' prior written notice, but failure to give such notice shall be of no effect, and the County shall not be obligated under this Agreement beyond the date of termination.

ARTICLE 3. PROGRESS PAYMENTS

Based upon Applications for payment submitted to the OWNER'S Representative by the CONTRACTOR, and Certificates for Payment issued by the OWNER'S Representative, the COUNTY shall make progress payments on account of the Contract Price to the CONTRACTOR as provided in the Contract Documents as follows:

3.1 Not later than fifteen (15) calendar days following the approval of an Application for payment, up to ninety-five percent (95%) of the portion of the Contract Price properly allocated to the aggregate of labor, materials, and equipment costs collectively incorporated in the Work and up to ninety-five percent (95%) of the portion of the Contract Price properly allocated to materials and equipment suitably stored at the site or some other location agreed upon in writing, for the period covered by the application for payment, less the aggregate of previous payments made by the COUNTY. In the event day fifteen (15) falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline shall fall to the next Monday or non-Lee County recognized holiday.

3.1.1 The amount of retainage withheld from each subsequent progress payment made to the CONTRACTOR may not exceed 5%.

3.2 Upon final completion of the work and acceptance of the project, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Price, less such amounts as the COUNTY shall determine for all incomplete Work, unsettled claims, or unused units as provided in the Contract Documents.

ARTICLE 4. CONTRACT DOCUMENTS

This Contract executed this date by the Lee County Board of County Commissioners and the CONTRACTOR. WITNESSETH that the parties hereto do mutually agree as follows:

4.1 The CONTRACTOR shall furnish all labor, equipment, and materials and perform the Work above described for the amount stated above in strict accordance with the General Conditions, Supplementary Information, Plans and Specifications, and other Contract Documents, all of which are made a part hereof as if attached and enumerated as follows:

- 4.1.1 Lee County Invitation to Bid/Project Manual titled: Lakes Park Water Quality Phase III - Construction dated April 5, 2024.
- 4.1.2 Addendum Number 1 dated April 29, 2024.
- 4.1.3 Addendum Number 2 dated May 1, 2024.
- 4.1.4 Addendum Number 3 dated May 2, 2024.
- 4.1.5 Addendum Number 4 dated May 8, 2024.
- 4.1.6 CONTRACTOR's Bid Proposal dated May 14, 2024.
- 4.1.7 Construction Plans for Lakes Park Water Quality – Phase 3 dated March 2024.
- 4.2 The COUNTY shall pay the CONTRACTOR in accordance with the Exhibit A, Price Proposal, attached hereto and incorporated herein.
- 4.3 Public Payment and Performance Bond
- 4.4 Certificate of Insurance
- 4.5 Notice of Award
- 4.6 Documentation submitted by the CONTRACTOR prior to the Notice of Award: None.
- 4.7 CONTRACTOR's Background Screening Affidavit attached hereto and incorporated herein as Exhibit B.
- 4.8 The following, which may be delivered or issued after the effective date of the Agreement and are not attached hereto: All written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.
- 4.9 Revised Scope of the project that has been verified and agreed upon between the CONTRACTOR and the COUNTY is attached hereto and incorporated herein as Exhibit C. Any conflicts between the Revised Scope and any other above-mentioned documents shall be interpreted in favor of the Revised Scope.

ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 5.1 Work to be started on the date specified in the Official Notice to Proceed.
- 5.2 Substantial completion shall be achieved not later than the number of days specified in the Special Conditions and/or notice to proceed.
- 5.3 Final completion shall be achieved not later than the number of days specified in the Special Conditions and/or notice to proceed.

Liquidated Damages for Delay:

The COUNTY and CONTRACTOR recognize that time is of the essence of this Agreement and that the COUNTY will suffer financial loss if the work is not completed within the times specified in 5.2 and 5.3 above, plus any extensions thereof allowed by Change Order. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the COUNTY if the work is not completed on time. Accordingly, instead of requiring any such proof, COUNTY and CONTRACTOR agree that as Liquidated Damages for CONTRACTOR's delay (but not as a penalty), the sum of \$2,592.00 per calendar day shall be deductible from monies due to the CONTRACTOR or paid by the CONTRACTOR to the COUNTY for each calendar day that expires after the time specified for Substantial Completion and the project fails to reach Substantial Completion.

Actual Damages for Breach Other than Delay:

The CONTRACTOR shall also be liable for any Actual Damages sustained by the COUNTY due to the CONTRACTOR'S breach of this Agreement not otherwise addressed by liquidated damages. Actual Damages may include but are not limited to: costs related to supervision, inspection, rentals, testing, consulting fees, or replacement parts.

The County Manager, or designee, shall have the right to calculate and assess all appropriate damages due from the final payment request as well as retainage. However, prior to deducting damages, the COUNTY shall give the CONTRACTOR seven (7) calendar days' notice prior to submitting the adjusted amount due to the Clerk for payment. In the event of a dispute, the County Manager, or his or her designee, may negotiate the Liquidated Damages sum owed to the COUNTY by the CONTRACTOR.

ARTICLE 6. DISPUTE RESOLUTION

6.1 In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.

6.2 In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.

6.3 Any dispute, action, or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.

6.4 This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.

6.5 Unless otherwise agreed in writing, the Contractor will be required to continue all obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual periods of mediation or judicial proceedings.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 Final payments, constituting the entire unpaid balance of the Contract Price shall be paid by the COUNTY to the CONTRACTOR when the work has been completed, the Contract fully performed, and a final Certificate for Payment, form No. CMO:013, has been approved by the COUNTY.

7.2 Terms used in the Agreement which are defined in the General Conditions of the Contract shall have the meaning designated in those conditions.

7.3 The COUNTY and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

7.4 The CONTRACTOR shall not assign or transfer any of its rights, benefits, or obligations, except for transfer that results from transfer or consolidation with a third party, without the prior written approval of the COUNTY. The CONTRACTOR shall have the right to employ other persons and/or firms to serve as sub-contractors in connection with the requirements of the Contract Documents.

7.5 The CONTRACTOR agrees through the signing of this agreement by an authorized party or agent that he shall hold harmless and defend the County of Lee and its agents and employees from all suits and action, including attorney's fees, and all cost of litigation and judgments of every name and description arising out of and incidental to the performance of this Contract Document or work performed thereunder, whether or not due to or caused by negligence of the COUNTY, excluding only the sole negligence of the COUNTY. This provision shall also pertain to any claims brought against the COUNTY by any employee of the CONTRACTOR, or sub-contractor(s), or anyone directly or indirectly employed by any of them. The CONTRACTOR'S obligation under this provision shall not be limited in any way to the agreed upon Contract Price as shown in this agreement or the CONTRACTOR'S limit of or lack of sufficient insurance protection.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

DOUGLAS N. HIGGINS INC.

Signed By: Kelly A. Wilkie

Signed By: [Signature]

Print Name: Kelly A. Wilkie, Vice-President

Print Name: Daniel N. Higgins

Title: President

Date: July 12, 2024

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

Signed By: _____

Print Name: _____

Title: _____

Date: _____

ATTEST:
CLERK OF THE CIRCUIT COURT

BY: _____
DEPUTY CLERK

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: _____
OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A
PRICE PROPOSAL

Lakes Park Water Quality Phase III - Construction					
Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Amount
1	MOBILIZATION	LS	1	\$ 360,000.00	\$ 360,000.00
2	MAINTENANCE OF TRAFFIC	LS	1	\$ 70,000.00	\$ 70,000.00
3	PRECONSTRUCTION VIDEO	LS	1	\$ 8,000.00	\$ 8,000.00
4	EROSION AND SEDIMENT CONTROL	LS	1	\$ 18,000.00	\$ 18,000.00
5	EXISTING CATCH BASIN MODIFICATION	EA	1	\$ 5,000.00	\$ 5,000.00
6	BOLLARD (8" REMOVABLE W/LOCK)	EA	2	\$ 3,000.00	\$ 6,000.00
7	ROOF AND FOUNDATION FOR STORAGE TANK	LS	1	\$ 170,000.00	\$ 170,000.00
8	FENCING - TYPE B, 8-FT VINYL COATED W/ ARTIF. HEDGE WALL PANEL	LF	60	\$ 600.00	\$ 36,000.00
9	ALUM TANK FILL STRUCTURE	LS	1	\$ 80,000.00	\$ 80,000.00
10	ALUM STORAGE TANK (6,000-GAL, DBL. WALL)	LS	1	\$ 178,000.00	\$ 178,000.00
11	ALUM TREATMENT SYSTEM (PUMP, BUILDING, EI&C, WETWELL)	LS	1	\$ 1,000,000.00	\$ 1,000,000.00
12	MOTOR OPERATED VALVE (8")	EA	5	\$ 30,200.00	\$ 151,000.00
13	ALUM CONTAINMENT PIPELINE (2" POLY-FLO DBL. WALL, PE PIPE)	FT	475	\$ 170.00	\$ 80,750.00
14	DISTRIBUTION PIPELINE (6" HDPE, ANCHORED TO LAKE BOTTOM)	LF	3,718	\$ 128.00	\$ 475,904.00
15	DISTRIBUTION PIPELINE (8" HDPE, ANCHORED TO LAKE BOTTOM)	LF	6,627	\$ 148.00	\$ 980,796.00
16	FORCEMAIN RELOCATION (6" PVC)	LF	35	\$ 330.00	\$ 11,550.00
17	STORM SEWER CLEANING	LF	370	\$0.00	\$0.00
18	POND ALUM INJECTION APPARATUS	EA	15	\$ 39,000.00	\$ 585,000.00
19	ASPHALT REPAIR	LS	1	\$ 39,000.00	\$ 39,000.00
20	SOD	SY	3,300	\$ 12.00	\$ 39,600.00
BID SUMMARY					
				PROJECT TOTAL	\$4,294,600.00

EXHIBIT B

CONTRACTOR'S BACKGROUND SCREENING AFFIDAVIT



CONTRACTOR BACKGROUND SCREENING AFFIDAVIT

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Contractor who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The Contractor is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit. I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Contractor will be solely responsible for complying with such legal requirements. Furthermore, the Contractor shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: July 12, 2024

[Handwritten signature]

Signature

STATE OF Florida
COUNTY OF Collier

Daniel N. Higgins, President
Name/Title

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of [X] physical presence or [] online notarization, this 12th day of July, 2024, by the above-named person and in their stated capacity, and is either personally known to me or who has produced the following type of identification: personally known

Type of Identification

[Stamp/seal required]

[Handwritten signature: Tamara Ludwig]
Signature, Notary Public

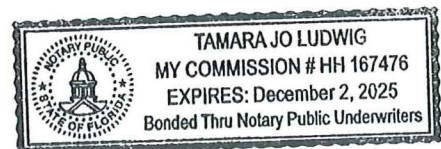


EXHIBIT C

REVISED SCOPE

1. The hip roof on the storage tank shade structure will be eliminated and replaced with a .25:12 pitch double-sloped roof. Based on feedback from the negotiation meeting that took place on May 29, 2024, the roof system and style for the precast concrete control building will remain as designed.
2. The Plasti-Fab stop logs will be eliminated and replaced with an aluminum stop log system.
3. The storm sewer cleaning will be eliminated from the scope of services under this contract.
4. If only the marine portion of work is being performed, on-site field supervision during this period will be handled by Earth Tech Enterprises, the marine contractor. A separate superintendent will not be provided by the CONTRACTOR during this portion of the work.
5. The contract time will be adjusted as follows:
 - a. A 120-day Limited Notice to Proceed (NTP) will be issued by the COUNTY for shop drawing approval and material procurement.
 - b. A separate NTP will be issued for construction and will be 240 days from the date of issuance.
6. If necessary, the CONTRACTOR and the COUNTY will work together to issue "Stop Work Notices" to address specific park impacts and specific material delivery delays such as the technical submittal approval, manufacturing, and delivery of the precast concrete control building.