

LEE COUNTY CONSTRUCTION CONTRACT
AGREEMENT FORM

Contract No. _____
Board Award Date: _____

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 Benton & Sons Construction Company, Inc., a Florida corporation, whose address is 1463 Woodward Court, Fort Myers, FL 33919, and whose Federal tax identification number is 20-3279157, 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 I. 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. **B180578LKD** (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 replace an existing failed seawall by installing 160 linear feet of seawall. CONTRACTOR shall also remove displaced uplands to restore the previous depth of the canal, Class III Waters, to -5 feet Mean low water, removing approximately 65 cubic yards of material adjacent to 13498 Caribbean Boulevard, Fort Myers, FL 33901 Parcel ID 29 43 26 05 00090 0180, Section 29, Township 43 South, Range 26 East, Lee County. Furthermore, CONTRACTOR shall remove the spoil and deposit the spoil in uplands on site at 13498 Caribbean Boulevard, Fort Myers, FL 33901.

PROJECT NAME: Seawall Replacement Caribbean Blvd.

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: One hundred forty-one thousand three hundred twenty dollars and zero cents (\$141,320.00).

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 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, ninety percent (90%) of the portion of the Contract Price properly allocated to labor, materials and equipment incorporated in the Work and ninety percent (90%) of the portion of the Contract Price properly allocated to materials and equipment suitably stored at the site or at 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.

3.1.1 Once the project reaches 50% completion, 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: **Seawall Replacement Caribbean Blvd.** dated **January 11, 2019.**

4.1.2 Addendum Number 1 dated **February 4, 2019,**

4.1.3 Addendum Number 2 dated **February 8, 2019,**

4.1.4 CONTRACTOR's Bid Proposal dated **February 13, 2019**

4.1.5 **Maps and drawings of 13498 Caribbean Boulevard, Lee County, Florida** dated **03/14/19.**

4.2 The COUNTY shall pay the CONTRACTOR in accordance with the Exhibit A, Price Proposal, attached hereto and incorporated herein. The price in the Exhibit A, Price Proposal, shall supersede the price in the CONTRACTOR's Bid Proposal dated February 13, 2019.

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 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.

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.

5.3 Final completion shall be achieved not later than the number of days specified in the Special Conditions.

Liquidated Damages:

5.4 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 delay (but not as a penalty) the sum of \$760.00 per calendar day shall be deducted from monies due 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. The CONTRACTOR shall also be liable for any Actual Damages sustained by the COUNTY due to the CONTRACTOR'S failure to fully complete the work by the time agreed upon for Final Completion in the Contract Documents. Actual Damages may include, but not be limited to: costs related to supervision, inspection, rentals, testing, consulting fees, or lost productivity. The COUNTY shall have the right to deduct all damages due from the final payment request as well as retainage. However, prior to deducting liquidated damages, the COUNTY shall give the CONTRACTOR seven (7) calendar days' notice prior to submitting the adjusted amount due to the Clerk for payment.

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 result 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 judgements 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:

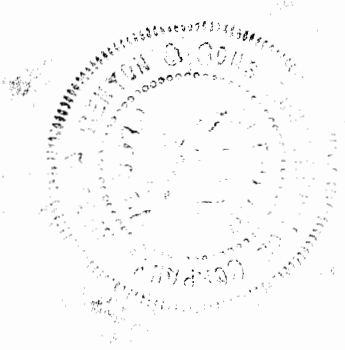
Benton and Sons Construction Company, Inc.

Signed By: *Heather Allen*
Print Name: Heather Allen

Signed By: *R. L. Benton, III*
Print Name: Roy L. Benton, III

Title: President

Date: 03/27/19



LEE COUNTY

BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA

BY: *Brian Hamm*
Vice CHAIR

DATE: 5/13/19

ATTEST:
CLERK OF THE CIRCUIT COURT
Linda Doggett, Clerk

BY: *Melissa Butler*
DEPUTY CLERK



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

BY: *Demanda Sid*
OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A
PRICE PROPOSAL

Revised to correct calculation extension.

CONSTRUCTION BID FORM
for **B180578LKD**
Lee County Facilities Construction Management
Seawall Replacement, Restoration of Displaced Uplands, and Stormwater
at
13498 Caribbean Boulevard, Fort Myers, FL 33905

Bidder: Benton and Sons Construction Company, Inc.

Project Description - This project is located on 13498 Caribbean Boulevard, Fort Myers, Florida 33905. The work consists of seawall replacement, dredging of displaced uplands, and replacement of a stormwater pipe. The proposed work is not to interfere or damage or compromise the integrity of any of the existing structures.

The CONTRACTOR agrees to perform all the work necessary to complete all items listed below in 45 days (substantial completion) and 60 days (final completion) from the Notice to Proceed. The OWNER has the right to accept or reject any or all part of the submitted bid.

ITEM #	ITEM DESCRIPTION	QUANTITY IN PLACE	UNIT	UNIT PRICE	TOTAL COST IN PLACE
Seawall Replacement					
1	Mobilization / Demobilization	1	LS	\$5,000.00	\$5,000.00
2	Demolition and Disposal	1	LS	\$5,000.00	\$5,000.00
3	Seawall Construction and Materials for Precast Concrete Seawall	176	LF	\$700.00	\$123,200.00 \$1,950.00
4	Dredging and Restoration of Displaced Uplands	65	CY	\$30.00	\$2,080.00
5	Stormwater Inlet (Type "C")	1	LS	\$3,500.00	\$3,500.00
5a	18" HDPE Double Wall Pipe	36	LF	\$49.00	\$1,764.00
6	Listed Species Monitoring	1	LS	\$6.00	\$6.00
7	Manatee Exclusion Device	1	LS	\$600.00	\$600.00
9	Lee County Construction Permit	1	LS	\$300.00	\$300.00
	TOTAL BID				\$141,450.00

\$141,450.00

Total Bid (written in words):

One Hundred Forty one thousand fifty dollars and zero cents. One hundred forty one thousand, three hundred twenty dollars and zero cents.

Addendums - Acknowledgement is made, on Form 1, the receipt of Addenda issued during the bidding period. It shall be the responsibility of the CONTRACTOR to address all addenda provided by the OWNER, or his designated agent.

I hereby acknowledge and accept the correction to the calculations above based on unit price.



Roy L. Benton, III, President