

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 Kelly Brothers, Inc., a Florida corporation, whose address is 15775 Pine Ridge Rd. Fort Myers, Florida 33908, and whose Federal tax identification number is 59-2069592, 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. B190367BAG, (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 furnish all labor, equipment, supplies, materials, transportation, fuel, power and water, provide environmental protection, and perform all operations in connection with the Alva Boat Ramp Renovation Project located at 21580 Pearl Street, Alva, Florida along the Caloosahatchee River in Section 22, Township 43 South, Range 27E, Lee County.

PROJECT NAME: Alva Boat Ramp Renovation

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 Hundred Ninety Five Thousand, Three Hundred Seventy One and 95/100 Dollars \$495,371.95.

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, 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. 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 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: Alva Boat Ramp Renovation dated June 11, 2019.
- 4.1.2 Addendum Number 1 dated July 12, 2019.
- 4.1.3 Addendum Number 2 dated July 15, 2019.
- 4.1.4 Addendum Number 3 dated July 18, 2019.
- 4.1.5 Addendum Number 4 dated July 19, 2019.
- 4.1.6 Addendum Number 5 dated July 24, 2019
- 4.1.7 CONTRACTOR's Bid Proposal dated August 2, 2019.
- 4.1.8 Alva Boat Ramp Renovation Construction plans dated June 4, 2019.
- 4.1.9 Alva Boat Ramp Renovation Construction Specifications dated June 7, 2019.
- 4.1.10 Alva Boat Ramp Repair Special Provisions dated June 7, 2019.
- 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.

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 \$2,400.00 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:

Kelly Brothers, Inc.

Signed By: [Signature]

Signed By: [Signature]

Print Name: ROBERT S. DEMEO

Print Name: Dane Kelly

Title: President

Date: 9/11/19



LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Brian Hamman, Acting Chair / Vice Chair

DATE: _____


ATTEST:
CLERK OF THE CIRCUIT COURT
Linda Doggett, Clerk

BY: _____

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

BY: _____
OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A
PRICE PROPOSAL

		PROCUREMENT / MANAGEMENT / DEPARTMENT BID/PROPOSAL FORM ADDENDUM 5			
COMPANY NAME: Kelly Brothers, Inc.					
SOLICITATION: B190367BAG ALVA BOAT RAMP RENOVATION					
<p>Having carefully examined the Contract Documents, Contractor/Vendor proposes to furnish the following which meeting these specific items.</p> <p>PRICING</p> <p>Pricing shall be inclusive of all labor, equipment, supplies, overhead, profit, material, and any other incidental costs required to perform and complete all work as specified in the Contract Documents. All Unit Prices will be bid at the nearest whole penny. The Excel document contains formulas for convenience, however it is the Contractor's/Vendor's responsibility to verify all pricing and calculations are CORRECT. Lee County is not responsible for errors in formulas or calculations contained within Excel document(s).</p> <p>In the event there is a discrepancy between a subtotal or total amount and the unit prices and extended amounts, the unit prices will prevail and the corrected extension(s) and total(s) will be considered the price.</p> <p>The County will only accept bids submitted on bid forms provided by the County. Bids submitted on other forms, other than those provided by the County, will be deemed non-responsive and ineligible for award.</p> <p>PLEASE ENSURE you have provided a printed copy of the Bid Schedule with your hard copy submission packages and provided the excel version with your digital submission package.</p>					
Alva Boat Ramp Renovation					
Mobilization					
Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Amount
1	Mobilization & Demobilization	LS	1	\$32,813.00	\$32,813.00
SUBTOTAL: MOBILIZATION					\$32,813.00
Boat Ramp Replacement					
Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Amount
2A	Demolition	LS	1	\$14,993.00	\$14,993.00
2B	Grading/ Bedding	LS	1	\$16,640.00	\$16,640.00
2C	Steel Piles (10')	Each	2	\$1,233.00	\$2,470.00
2D	Concrete Piles (41')	Each	2	\$2,319.00	\$4,638.00
2E	Pre-Cast Panel Fabrication	Each	10	\$1,894.00	\$18,940.00
2F	Pre-Cast Panel Installation	Each	10	\$668.00	\$6,680.00
2G	CP Slab/Curb	S.F.	2,035	\$36.65	\$74,582.75
2I	Bulkhead	L.F.	50	\$652.00	\$32,600.00
2J	Vinyl Sheet Piles/ Cement Bags/ Grout	LS	1	\$16,071.00	\$16,071.00
SUBTOTAL: BOATRAMP REPLACEMENT					\$ 187,606.75
Armorat Scour Protection					
Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Amount
3	Armorat	S.F.	1	\$38.00	\$38.00
SUBTOTAL: ARMORAT SCOUR PROTECTION					\$ 38.00
Riprap					
Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Amount
4	Riprap	LS	1	\$39,762.30	\$39,762.30
SUBTOTAL: RIPRAP					\$ 39,762.30

Dock Replacement					
Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Amount
5A	Demolition	LS	1	\$ 1,968.00	\$ 1,968.00
5B	Dock	S.F.	940	\$ 78.00	\$ 73,320.00
SUBTOTAL: DOCK REPLACEMENT					\$ 78,288.00
ADA Timber Ramp					
Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Amount
6	ADA Timber Ramp	S.F.	380	\$ 133.00	\$ 50,540.00
SUBTOTAL: ADA TIMBER RAMP					\$ 50,540.00
Upland Site Work					
Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Amount
7A	Demolition	LS	1	\$ 7,365.00	\$ 7,365.00
7B	Grading	LS	1	\$ 6,731.00	\$ 6,731.00
7C	New Paving/Striping	S.Y.	253	\$ 53.00	\$ 13,409.00
7D	Milling/Resurfacing/Striping	S.Y.	1871	\$ 14.00	\$ 23,394.00
7E	Concrete Sidewalk and Pads	S.F.	625	\$ 9.00	\$ 5,625.00
7F	Bumpers Guards	Each	19	\$ 152.00	\$ 2,888.00
7G	Shell Parking	C.Y.	150	\$ 70.00	\$ 10,500.00
7H	ADA Parking	LS	1	\$ 608.00	\$ 608.00
7I	Tree Removal	LS	1	\$ 2,228.90	\$ 2,228.90
7J	Riprap Overflow Structure	Each	1	\$ 546.00	\$ 546.00
7K	Signage	LS	1	\$ 832.00	\$ 832.00
7L	Landscaping	LS	1	\$ 6,346.00	\$ 6,346.00
7M	Fence	LF	481	\$ 42.00	\$ 20,202.00
SUBTOTAL: UPLAND SITE WORK					\$ 100,674.90
Environmental Protection Measures					
Item	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Amount
8	Environmental Protection Measures	LS	1	\$ 5,649.00	\$ 5,649.00
SUBTOTAL: ENVIRONMENTAL PROTECTION MEASURES					\$ 5,649.00
BID SUMMARY					
PROJECT TOTAL				\$495,371.95	
PROJECT TOTAL: Four Hundred Ninety Five Thousand, Three Hundred Seventy One and 95/100 Dollars					
<small>(Use Words to Write Total)</small>					

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: 9/11/19

[Signature]
Signature

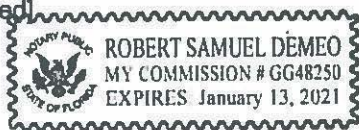
STATE OF Florida
COUNTY OF LEE

Dane Kelly / President
Name/Title

On the date set forth above, the foregoing instrument was sworn to (or affirmed) and subscribed before me by the above-named person and in their stated capacity, and is either personally known to me or who has produce the following as identification:

[Blank line for identification details]

[Stamp/seal required]



[Signature]
ROBERT SAMUEL DEMEO
Signature, Notary Public