

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 Arbor Tree and Land, Inc., a Florida corporation, whose address is 7089 Hemstreet Place, West Palm Beach, FL 33413, and whose Federal tax identification number is 59-2384451, 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. B190518JJB (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 maintenance dredging and disposal of approximately 4,443 cubic yards for a navigational channel in the Caloosahatchee River between Travers Ave. and Bayside Dr. in Fort Myers. Included with the work is the removal of the existing channel marker posts and the construction of six (6) replacement channel markers as aids to navigation. The navigational channel shall be excavated to the uniform width and depth as shown on the Solicitation’s Construction Plan attachments and the dredged material shall be transported to a temporary upland off-load site and then transported to an approved upland disposal site. The selection, permitting and operation of the containment and disposal sites shall be the responsibility of the CONTRACTOR. CONTRACTOR shall meet all stringent turbidity avoidance and control requirements as established by the COUNTY. As applicable, CONTRACTOR shall permit these sites with the federal, state and local authorities.

**PROJECT NAME:** Sunset Cove Channel Dredge

**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: Three hundred sixty nine thousand four hundred forty five dollars and 00/100 (\$369,445.00 ).

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, 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: **Sunset Cove Channel Dredge** dated **August 30, 2019**.

4.1.2 Addendum Number 1 dated **September 12, 2019**.

4.1.3 CONTRACTOR's Bid Proposal dated **September 23, 2019**.

4.1.4 **Sunset Cove Channel Dredging – Construction Plans** dated **August 6, 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 \$500 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:

ARBOR TREE AND LAND, INC.

Signed By: 

Signed By: 

Print Name: Clinton Hodges

Print Name: William Hodges

Title: President

Date: 11/7/19

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**

<i>Sunset Cove Channel Dredge</i>					
<b>Item</b>	<b>Description</b>	<b>Unit of Measure</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Extended Amount</b>
1	Mobilization and Demobilization	LS	1	\$165,000	\$165,000
2	Surveying - Pre-const. Survey with proposed cut and fill quantities, Layout, As-built Survey	LS	1	\$35,000	\$35,000
3	Maintenance of Traffic for boaters & drivers	LS	1	\$12,000	\$12,000
4	Environmental Protective Measures - Includes: NPDES-Erosion & Sediment Control - Plan / Permitting / Program, Including silt fence, turbidity curtains, containment barriers. Water Quality Monitoring - Turbidity Testing and Recording Turbidity Levels during dredging activities, including testing/calibration equipment	LS	1	\$40,000	\$40,000
5	Disposal of Dredged Material including handling, transporting and placement at approved Contractor provided Off-load and Disposal Sites	LS	1	\$25,000	\$25,000
6	Dredging of Channel	CY	4,443	\$15.00	\$66,645
7	Navigational Aid Marker (Post with wrap & Signs), including removal of existing channel marker posts	EA	6	\$1,800	\$10,800
8	Permitting	LS	1	\$15,000	\$15,000
<b>PROJECT TOTAL</b>				<b>\$369,445.00</b>	
<i>**Quantities are not guaranteed Final payment will be based on actual quantities</i>					
<b>PROJECT TOTAL: Three hundred sixty nine thousand four hundred and forty five dollars</b>					
(Use Words to Write Total)					



**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: 11/7/2019

[Signature]  
Signature

STATE OF FL  
COUNTY OF PB

Clinton Hodges / PM  
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: N/A

[Stamp/seal required]

[Signature]  
Signature, Notary Public



**Julianne M. Patrick**  
COMMISSION # GG286233  
EXPIRES: Dec. 20, 2022  
Bonded Thru Aaron Notary