

Contract No.: CM1939
Bid/Proposal No: NC12-018

CONTRACT FOR
TOTAL AQUATIC POND AND DITCH MANAGEMENT

THIS CONTRACT entered into this 28th day of January, 2013, by and between the **BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as "County", and DeAngelo Brothers, Inc. dba Aquagenix, hereinafter referred to as "Vendor".

WHEREAS, the Board of County Commissioners of Nassau County, Florida received sealed bids for Total Aquatic Pond and Ditch Management, Bid No. NC12-018; and

WHEREAS, the Public Works Department determined that Vendor was the lowest, most responsive and responsible bidder for the bid items as set forth in Attachment "B"; and

NOW, THEREFORE, in consideration of the terms and conditions herein set forth, the County and the Vendor agree as follows:

SECTION 1. Description of Services to be Provided

The County does hereby retain the Vendor to furnish services as further described in the Scope of Services attached hereto as Attachment "A" and made a part hereof. Required materials and service shall be specifically enumerated, described and depicted in the Purchase orders authorizing performance of the specific task. This Contract standing alone does not authorize the performance of any work or require the County to place any orders for work.

SECTION 2. Receiving/Payment/Invoicing

No payment will be made without proper purchase order authorization. The County shall pay the vendor within forty-five (45) calendar days of receipt of invoice, pursuant to and in accordance with the promulgations set forth by the State of Florida's Prompt Payment Act. (Florida Statutes Section 218.70). Payment shall not be made until materials, goods or services have been received, inspected and accepted by the County in the quality and quantity ordered. Payment will be accomplished by submission of an

invoice, with the Purchase Order number referenced thereon and mailed to the address set forth in the Purchase Order. Payment in advance of receipt of goods or services by Nassau County cannot be made.

The invoice submitted shall be in sufficient detail as to item, quantity and price in order for the County to verify compliance with the awarded bid.

SECTION 3. Acceptance of Goods/Services

Receipt of goods/services shall not constitute acceptance. Final acceptance and authorization of payment shall be given only after a thorough inspection indicates that the product/performance meets bid specifications and conditions. Should the products/services differ in any respect from specifications, payment will be withheld until such time as the supplier takes necessary corrective action. If the proposed corrective action is not acceptable to the County, the County Manager's Office may authorize the recipient to refuse final acceptance of the goods/services. Should a representative of the County agree to accept the goods/services on condition that the Vendor will correct his performance within a stipulated time period, then payment will be withheld until the services are performed as specified.

SECTION 4. Firm Prices

Vendor shall provide services at the monthly fee rates set forth in the Bid Price Sheet, attached hereto as Attachment "B". Prices for goods and services covered in the specifications shall be firm; no additional fees or charges shall be accepted.

SECTION 5. Fund Availability

This Contract is deemed effective only to the extent that appropriations are available. Pursuant to Florida Statutes all appropriations lapse at the end of the Fiscal Year. Multi-year awards shall be adequately funded but the County reserves the right not to appropriate for an ongoing procurement if it is deemed in its best interest.

SECTION 6. Permits/Licenses/Fees

Any permits, licenses or fees required for this service will be the responsibility of the Vendor unless otherwise stated.

SECTION 7. Taxes

The County is tax exempt. As such, the County will not pay any Federal Excise or State of Florida Sales Tax. The Vendor will refrain from including taxes in any billing.

SECTION 8. Laws Governing this Contract

This Contract shall be consistent with, and be governed by, the Ordinances of Nassau County, the whole law of the State of Florida, both procedural and substantive, and applicable federal statutes, rules and regulations. Any and all litigation arising under this Contract shall be brought in Nassau County, Florida.

SECTION 9. Changes

The County reserves the right to order, in writing, changes in the work within the scope of the contract, such as change in quantity or delivery schedule. The Vendor has the right to request an equitable price adjustment in cases where changes to the contract under the authority of this clause result in increased costs to the Vendor.

SECTION 10. Modifications

In addition to modifications made under the changes clause, this Contract may be modified within the scope of the contract upon the written and mutual consent of both parties, and approval by appropriate legal bodies in the County.

SECTION 11. Assignment & Subcontracting

The Vendor will not be permitted to assign its contract with the County, or to subcontract any of the work requirements to be performed without obtaining prior written approval by the County.

SECTION 12. Severability

If any section, subsection, sentence, clause, phrase, or portion of this Contract is, for any reason, held invalid, unconstitutional, or unenforceable by any Court of Competent Jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 13. Termination for Default

The performance of the Contract may be terminated by the County in accordance with this clause, in whole or in part, in writing, whenever the County shall determine that the Vendor has failed to meet performance requirement(s) of the Contract.

SECTION 14. Termination for Convenience

The County reserves the right to terminate the Contract in whole or part by giving the vendor written notice at least thirty (30) days prior to the effective date of the termination. Upon receipt of termination from the County, the Vendor shall only provide those services specifically approved or directed by the County. All other rights and duties of the parties under the Contract shall continue during such notice period, and the County shall continue to be responsible to the vendor for the payment of any obligations to the extent such responsibility has not been excused by breach of default of the Vendor.

SECTION 15. Force Majeure

Neither party of this Contract shall be liable to the other for any cost or damages if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the parties. Such causes may include, but are not restricted to, acts of nature, fires, quarantine restriction, strikes and freight embargoes. In all cases, the failure to perform must be totally beyond the control and without any fault or negligence of the party.

SECTION 16. Access and Audits

The Vendor shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the Work for at least three (3) years after completion of this Contract. The County and the Clerk of Courts shall have access to such books, records, and documents as required in this Section for the purpose of inspection or audit during normal business hours, at the County's or the clerk's cost, upon five (5) days' written notice.

SECTION 17. Vendor Responsibilities

The Vendor will provide the services agreed upon in a timely and professional manner in accordance with specifications.

SECTION 18. Period of Contract/Option to Extend or Renew

This Contract shall begin on February 1, 2013 and terminate September 30, 2015. The performance period of this Contract may be extended for one (1) year upon mutual Contract between the vendor and the County with no change in terms or conditions. Any Contract or amendment to the Contract shall be subject to fund availability and mutual written agreement between the County and the Vendor.

SECTION 19. Exercise of Option

Exercise of option to extend term of contract: If the County wishes to enter into an option period, the County shall request from the Vendor their written statement of desire to enter into an extension of the performance period.

SECTION 20. Probationary Period

The first ninety (90) days of this Contract are to be considered a “probationary” period. At the County’s election, this Contract may be terminated, based on the performance of the Vendor, and a new award be granted without another formal bid.

SECTION 21. Escalation Clause

Ninety (90) days prior to the end of the contract term, the Vendor may request in writing an increase in an individual item unit cost. Consideration of price increases at each renewal period will be given provided such escalations are reasonable and acceptable to the County. It is also expected that de-escalation of prices will be extended to the County if market so reflects. The County will consider a price adjustment based on the latest Consumer Price Index and/or proof of a manufacturer’s price increase. Any and all proposed increases are subject to approval by the County.

SECTION 22. Supervision

The Vendor shall act as an independent contractor and not as an employee of the County. The County shall not exercise any supervision or control over the Vendor’s employees performing services under this Contract. Such employees shall be accountable not to the County, but solely to the Vendor, who in turn is responsible to the County.

SECTION 23. Indemnification and Insurance

The Vendor shall indemnify and hold harmless the County and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of this contract, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to loss to or destruction of tangible property, including loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the Vendor and/or Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

In any and all claims against the County or any of its agents or employees, by any employee of the Vendor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Vendor or any Subcontractor under Workers' Compensation acts, disability benefit acts, or other employee benefits act.

The vendor shall, on a primary basis, and at its sole expense, agree to maintain in full force and effect at all times during the life of this contract, insurance coverage's, limits, including endorsements, as described herein. The requirements contained herein, as well as the County's review or acceptance of insurance maintained by the Vendor is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Vendor under the Contract.

Workers' Compensation: The Vendor shall agree to maintain Workers' Compensation Insurance and Employers Liability in accordance with Florida Statute Chapter 440. Coverage must include Employers Liability with a minimum limit of \$100,000 each.

Business Auto Policy: The Vendor shall agree to maintain Business Automobile Liability at a limit of liability not less than \$500,000 each occurrence for all owned, non-owned and hired automobiles. In the event the Vendor does not own any automobiles, the Business Auto Liability requirement shall be amended allowing the Vendor to agree

to maintain only Hired and Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate business auto coverage form.

Commercial General Liability: Commercial General Liability for public liability during the lifetime of this Contract shall have minimum limits of \$1,000,000 per claim, \$2,000,000 per occurrence for Personal Injury, Bodily Injury, and Property Damage Liability. Coverage shall include Premises and/or Operations, Independent Contractors, Products and/or Complete Operations, Contractual Liability and Broad Form Property Damage Endorsements. Coverage shall not contain an exclusion or limitation endorsement for Contractual Liability or Cross Liability. Coverage for the hazards of explosion, collapse and underground property damage (XCU) must also be included when applicable to the work to be performed. All insurance policies shall be issued from a company or companies duly licensed by the State of Florida. All policies shall be on an occurrence-made basis; the County shall not accept claims-made policies. Specific endorsements will be requested depending upon the type and scope of work to be performed.

Additional Insured Requirements: Certificates showing proof of the above required insurance shall be provided to the County prior to start of this contract and shall be attached hereto as Exhibit "C". Except as to Workers' Compensation and Employers' Liability, said Certificate(s) shall clearly state that coverage required by the Contract has been endorsed to include Nassau County, a political subdivision of the State of Florida, its officers, agents and employees as Additional Insured with a CG 2026-Designated Person or Organization endorsement, or similar endorsement, to its Commercial General Liability. The name for the Additional Insured endorsement issued by the insurer shall read "Nassau County, a political subdivision of the State of Florida, its officers, employees and agents". The Certificate of Insurance shall unequivocally provide thirty (30) days written notice to the County prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Said liability insurance must be acceptable by and approved by the County as to form and types of coverage. In the event that the statutory liability of the County is amended during the term of this Contract to exceed the above limits, the contractor shall be required, upon thirty (30) days written notice by the

County, to provide coverage at least equal to the amended statutory limit of liability of the County.

SECTION 24. Disputes

Any dispute arising under this Contract shall be addressed by the representatives of the County and the Vendor as set forth herein. Disputes shall be set forth in writing to the County Manager with a copy to the Department Head or Vendor, depending on which party initiates the dispute, and provided by overnight mail, UPS, FedEx, or certified mail. A response shall be provided in the same manner prior to the initial meeting with the County Manager, the Department Head (or their designee), and a representative of the Vendor. This initial meeting shall take place no more than thirty (30) days from the written notification of the dispute addressed to the County Manager.

If the dispute is not settled at the initial meeting, the County Manager shall immediately notify the County Attorney. The Department Head (or his/her designee), the County Attorney, the County Manager, and the Department Head (or their designee(s)) shall meet with the Vendor's representative(s) within thirty (30) days of the County Manager's notification to the County Attorney of the continued dispute.

If there is no satisfactory resolution, the claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, shall be submitted to mediation in accordance with mediation rules as established by the Florida Supreme Court. Mediators shall be chosen by the County and the cost of mediation shall be borne by the Consultant. If either party initiates a Court proceeding, and the Court orders, or the parties agree to, mediation, the cost of mediation shall be borne by the Vendor. Vendor shall not stop work during the pendency of mediation or dispute resolution. No litigation shall be initiated unless and until the procedures set forth herein are followed.

SECTION 25. Entire Agreement

The written terms and provisions of this contract shall supersede all prior verbal statements of any official or other representative of the County. Such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any manner whatsoever, this Contract or contract documents.

IN WITNESS WHEREOF, the parties have executed this contract, in two (2) copies,
each of which shall be deemed an original on this day and year first above written.

COMMISSIONERS

BOARD OF COUNTY

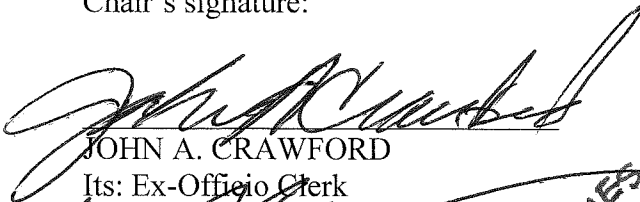
NASSAU COUNTY, FLORIDA



DANIEL B. LEEPER

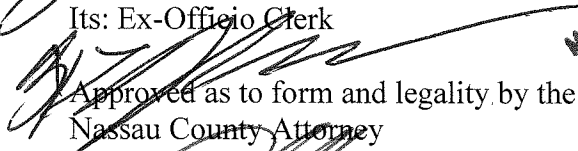
Its: Chair

Attest as to authenticity of the
Chair's signature:




JOHN A. CRAWFORD

Its: Ex-Officio Clerk



Approved as to form and legality by the
Nassau County Attorney

MES
01-29-13


DAVID A. HALLMAN

[Vendor signature next page]

**DeAngelo Brothers, Inc.
dba Aquagenix**

MATTHEW BYATT
By: Matthew Byatt
Its: Manager

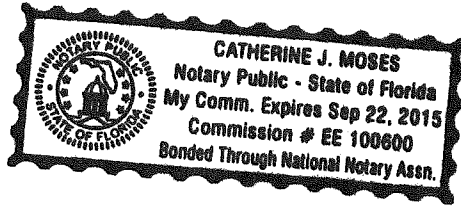
STATE OF Florida
COUNTY OF Duval

Before me personally appeared, Matt Byatt, who is personally known _____ or produced Driver License as identification, known to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that he/she executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this 25 day of June, 2013.

Catherine J. Moses
Notary Signature

Notary-Public-State of Florida at large
My Commission expires:



ATTACHMENT "B" - BID PRICE SHEET (Revised 11-15-2012)

TOTAL AQUATIC POND AND DITCH MANAGEMENT
 NASSAU COUNTY PUBLIC WORKS DEPARTMENT
 BID NUMBER NC12-018

| Site | Location | Est. Quan. (Months of Service) | Monthly Fee | Total Annual |
|-----------------------|-----------------------------|-----------------------------------|-------------|--------------|
| 1 | West Nassau Landfill | 9 | \$ 844.00 | \$ 7,596.00 |
| 2 | Lofton Creek Landfill | 9 | \$ 106.00 | \$ 954.00 |
| 3 | Iris Boulevard Pond | 4 | \$ 215.00 | \$ 860.00 |
| 4 | Wind Chime Lane Pond | 4 | \$ 75.00 | \$ 300.00 |
| 5 | Nassau Amelia Utility (NAU) | 12 | \$ 104.00 | \$ 1,248.00 |
| TOTAL CONTRACT VALUE: | | | | \$10,958.00 |

| Item | Service | Price (per acre/per occurrence) |
|------|---|---------------------------------|
| 6 | Cattail removal as needed (per acre/per occurrence) | \$1,000.00 |

The undersigned declares that they have examined the Notice to Bidders, Instructions to Bidders, and Specifications and is informed fully with regard to all terms and conditions pertaining thereto and agrees under these specifications at the prices set forth below.

Company: De Angelo Brothers, Inc / dba Aquagenic
 Address: 3605 Florida Mining Blvd S, Ste #201, Bldg #300
 City, State, Zip: Jacksonville, Florida 32257
 By: Matt Byatt
 (Signature)
Matt Byatt
 (Above name printed or typed)
 Phone: (904) 262-2001 Fax: (904) 262-0010
 Email: mbyatt@dbiservices.com

ATTACHMENT "A" - TECHNICAL SPECIFICATIONS/SCOPE OF WORK

**TOTAL AQUATIC POND AND DITCH MANAGEMENT
NASSAU COUNTY PUBLIC WORKS DEPARTMENT**

SCOPE OF SERVICES

A. SITE DETAILS AND LOCATION

1. WEST NASSAU LANDFILL
46026 Landfill Road
Callahan, Florida 32011
(904) 548-4972

Total aquatic services for the four (4) ponds and surrounding rim ditch as required by the Florida Department of Environmental Protection (FDEP), located at the West Nassau Landfill. Please see the attached West Nassau Landfill aerials.

| | |
|--|---------------------------|
| Convenience Center Pond approximate size | 11,475 sq ft / 0.26 acres |
| Southeast Pond approximate size | 313,630 sq ft / 7.2 acres |
| Northeast Pond approximate size | 56,630 sq ft / 1.3 acres |
| Northwest Pond approximate size | 17,425 sq ft / 0.4 acres |

| | |
|-----------------------|---------|
| Rim Ditch approximate | 6200 ft |
|-----------------------|---------|

- a. Each site shall be inspected monthly during the peak growing season (March through September) and spray shall be applied as needed. All species (native and invasive) need to be sprayed. Each site shall be inspected every other month during the non-growing season (October through February) and spray shall be applied as needed.

2. LOFTON CREEK LANDFILL
(Located directly behind the Nassau County Animal Control)
86078 License Road
Fernandina Beach, Florida 32034
(904) 548-4972

Total aquatic services for the pond and associated ditch to the east, as required by FDEP, located at the Lofton Creek Landfill. Please see the attached Lofton Creek Landfill aerial.

| | |
|-----------------------|---------------------------|
| Pond approximate size | 50,000 sq ft / 1.15 acres |
| Ditch approximate | 640 ft |

- a. Each site shall be inspected monthly during the peak growing season (March through September) and spray shall be applied as needed. All species (native and invasive) need to be sprayed. Each site shall be inspected every other month during the non-growing season (October through February) and spray shall be applied as needed.

3. IRIS BOULEVARD POND

45234 Iris Blvd.

Callahan, Florida 32011

(Access provided through a 16-foot gate at the above address)

(904) 421-7334

Total aquatic services for one (1) pond, located at the end of Iris Boulevard. Please see the attached Iris Boulevard Pond aerial.

| | |
|-----------------------|---------------------------|
| Pond approximate size | 84,100 sq ft / 1.93 acres |
|-----------------------|---------------------------|

- a. The Iris Boulevard site shall be inspected quarterly and spray shall be applied as needed for all floating weeds and shoreline weeds.

4. WIND CHIME LANE POND

Callahan, Florida 32011

(Located at the end of Wind Chime Lane off of U.S. 1)

(904) 421-7334

Total aquatic services for one (1) pond, located at the end of Wind Chime Lane. Please see the attached Wind Chime Lane Pond aerial.

| | |
|-----------------------|--------------------------|
| Pond approximate size | 8,000 sq ft / 0.18 acres |
|-----------------------|--------------------------|

- a. The Wind Chime Lane site shall be inspected quarterly and spray shall be applied as needed for all floating weeds and shoreline weeds.

5. NASSAU AMELIA UTILITY (NAU)

5390 First Coast Highway

Fernandina Beach, Florida 32034

(904) 261-0822

Total aquatic services for the two (2) ponds as required by FDEP, located at NAU. Please see the attached Nassau Amelia Utility aerial.

| | |
|----------------------------|---------------------------|
| West Pond approximate size | 39,200 sq ft / 0.9 acres |
| East Pond approximate size | 87,640 sq ft / 2.02 acres |

- a. The NAU site shall be inspected and sprayed monthly for algae and aquatic weeds and border grass and brush control to water's edge.

B. SPECIFICATIONS / SCOPE OF WORK

Contractor shall provide aquatic weed control services meeting the following minimum specifications:

1. The sites shall be inspected and sprayed as specified in the Site Details and Location information provided above.
2. The Contractor shall perform water testing and bacteria testing on an as needed basis, at the discretion of the County.
3. The Contractor may use fish stocking at the discretion of the County.
4. Treatments to maintain reasonable control of excessive growth of aquatic vegetation is to be provided by the Contractor. In the event that the growth of aquatic vegetation returns prior to the scheduled inspection period, the Contractor will be required to perform the required treatments.
5. The water from the treated ponds is used for irrigation.
6. The water from the treated ponds is used for human or animal consumption.
7. Dead plants shall be pulled out and removed.
8. The Contractor shall provide comprehensive reports detailing the inspection and/or work performed, including pictures within the following week.
9. Contractor agrees to comply with all local, state, and federal safety standards while on the property of Nassau County. Contractor shall have full responsibility and assume all liability for the safety and supervision of its employees while performing services under this agreement.
10. Contractor will be held responsible for any damage to existing structures, work, materials, or equipment because of his operations and shall repair or replace any damaged structures, work, material, or equipment to the satisfaction to, and at no additional cost to the County.
11. All services must comply and meet the requirements of all Florida Department of Environmental Protection (FDEP) and St. Johns River Water Management District (SJRWMD) permits for each site.

C. LICENSE REQUIREMENTS

1. The Contractor shall be required to warrant and represent that at all times during the term of the Agreement it shall maintain in good standing all required licenses, certifications, and permits required under federal, state, and local laws necessary to perform the services.
2. Contractor must have a General Standards and Commercial Aquatic Pesticide License for the State of Florida.
3. Contractor must have a Best Management Practices (BMP) License.
4. Contractor must be registered to do business in the State of Florida.