CS-16-01

Contract No. CM2343 Bid No. NC16-022

CONTRACT FOR TOTAL AQUATIC POND AND DITCH MANAGEMENT

THIS CONTRACT entered into this <u>8th</u> day of <u>August</u>, 2016, 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, LLC. dba Aquagenix, 6209 Bowdendale Avenue, Jacksonville, Florida, 32216, 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. NC16-022, on June 29, 2016 at 10:00 a.m.; and

WHEREAS, the Public Works Department determined that DeAngelo Brothers, Inc. dba Aquagenix 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.

SECTION 2. Receiving/Payment/Invoicing

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 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 contract number referenced thereon and mailed to The Public Works Department, 96161 Nassau Place, Yulee, FL, 32097. Payment in advance of receipt of 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 services shall <u>not</u> constitute acceptance. Final acceptance and authorization of payment shall be given only after a thorough inspection indicates that the performance meets bid

specifications and conditions. Should the 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

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 the October 1, 2016 and terminate September 30, 2019. The performance period of this Contract may be extended upon mutual Contract between the vendor and the County with no change in terms or conditions. Any extension of performance period under this provision shall be in one (1) year increments. Two (2) additional terms of one (1) year increments shall be permitted under this provision. Total contract length and individual one (1) year extensions shall not exceed five years from date of execution. 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. <u>Workers' Compensation:</u> 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 for bodily injury caused by an accident, each accident; \$100,000 for bodily injury caused by a disease, each employee; \$500,000 for bodily injury caused by a disease, policy limit.

Business Auto Policy: The Vendor shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 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 each occurrence, \$2,000,000 General Aggregate; and \$2,000,000 Products-Completed Operations Aggregate. Coverage shall include Premises and/or Operations, Independent Contractors, Products and/or Complete Operations, Personal and Advertising Liability, 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 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.

<u>Pollution Liability:</u> Contractor shall maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of the work or services to be performed under this contract. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Limits of not less than \$1,000,000 shall be provided.

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. General Liability, Auto Liability and Workers Compensation policies must contain a Waiver of Subrogation clause in favor of Nassau County Board of County Commissioners. 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". Above stated insurance policies will be endorsed to unequivocally provide thirty (30) days written notice to the County prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. A copy of the policy endorsements must be included with the Certificate of Insurance. 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 Vendor. 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.

Venue for any mediation shall be in Nassau County, Florida. Venue for any litigation shall be in state court in Nassau County, Florida.

SECTION 25. PUBLIC RECORDS

The County is a public agency subject to Chapter 119, Florida Statutes. Under this agreement, to the extent that the contractor/vendor/consultant is providing services to the County, and pursuant to section 119.0701, Florida Statutes, the contractor/vendor/consultant shall:

a. Keep and maintain public records required by the public agency to perform the service.

b. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

d. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

If a contractor/vendor/consultant does not comply with a public records request, the County shall enforce the contract provisions in accordance with the contract.

SECTION 26. 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.

BOARD OF COUNTY COMMISSIONERS NASSAU COUNTY, FLORIDA

WALTER J/BOATRIGHT Its: Chairman

Attest as to authenticity of the Chair's signature: MES 09.14 JØMN A CRAWFORD fts: Ex-Officio Clerk Approved as to form and legality by the Nassau County Attorney

MICHAEL MULLIN

[Vendor signature continued on next page]

DEANGELO BROTHERS, LLC DBA, AQUAGENIX

By: DANSel Mele Its: Brauch Manager

STATE OF FLORI COUNTY OF

Before me personally appeared, <u>Douviel Mele</u>, who is personally known <u>A</u> or produced _______ 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 1+4 day of _____, 2016. Signature

Notary-Public-State of <u>Vida</u> at large My Commission expires:



ATTACHMENT "A"

TECHNICAL SPECIFICATIONS/SCOPE OF WORK

TOTAL AQUATIC POND AND DITCH MANAGEMENT NASSAU COUNTY PUBLIC WORKS DEPARTMENT

A. SITE DETAILS AND LOCATION

1. SOLID WASTE DEPARTMENT

i. WEST NASSAU LANDFILL

46026 Landfill Road Callahan, Florida 32011 (904) 530-6700

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.

Pond	Approximate Size	Design Depth
Convenience Center Pond	11,475 Square Feet (s.f.) / 0.26 acres	6 ft.
South Pond	313,630 s.f. / 7.2 acres	2 ft. on East, deeper towards the Mitigation Area
Northeast Pond	56,630 s.f. / 1.3 acres	3-4 ft.
Northwest Pond	17,425 s.f. / 0.4 acres	4 ft.
Perimeter Ditch	6200 ft.	Varies

- a. Each site shall be inspected monthly and spray shall be applied as needed. All species (native and invasive) need to be sprayed.
- b. The Perimeter Ditch vegetation is cut as close to the water line as possible. The vegetation below the waterline is to be treated so the ditch capacity is not impacted.
- c. The pond depths can vary greatly from the wet to dry season.
- d. Mitigation Area on the west side of the South pond shall be kept free of cattails.
- e. If cypress trees are harmed, they shall be replaced at the Vendor's expense.

ii. LOFTON CREEK LANDFILL

(Located directly behind the Nassau County Animal Control) 86078 License Road Fernandina Beach, Florida 32034 (904) 530-6700

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	Design Depth
Pond	50,000 s.f. /1.15acres	3-4 ft.
Ditch	640 ft.	Varies

- a. Each site shall be inspected monthly and spray shall be applied as needed. All species (native and invasive) need to be sprayed.
- b. The pond depth can vary greatly from the wet to dry season.

2. ROAD & BRIDGE DEPARTMENT

i. IRIS BOULEVARD POND

45234 Iris Blvd.Callahan, Florida 32011(Access provided through a 16-foot gate at the above address)(904) 530-6175

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	Design Depth
Pond	84,100 s.f. / 1.93 acres	Unknown

- a. The Iris Boulevard site shall be inspected quarterly and spray shall be applied as needed for all floating weeds and shoreline weeds.
- b. Access to the Pond shall be coordinated through the Road & Bridge Department.
- c. Based upon the condition of the access, treatment will be at the discretion of the Road & Bridge Department so that access is not adversely impacted.
- d. It is understood that some aquatic growth may return between treatments. The spraying is to assist with maintenance and will be inspected by the County on a regular basis and the need for re-spraying is subjective.

ii. WIND CHIME LANE POND

Callahan, Florida 32011 (Located at the end of Wind Chime Lane off of U.S.1) (904) 530-6175

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	Design Depth
Pond	8,000 s.f. / 0.18 acres	5 ft.

a. The Wind Chime Lane site shall be inspected quarterly and spray shall be applied as

needed for aquatic weeds and shoreline weeds.

b. It is understood that some aquatic growth may return between treatments. The spraying is to assist with maintenance and will be inspected by the County on a regular basis and the need for re-spraying is subjective.

3. NASSAU-AMELIA UTILITIES (NAU)

i. NAU

5390 First Coast Highway Fernandina Beach, Florida 32034 (904) 530-6450

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

Pond	Approximate Size	Design Depth
West Pond	39,200 s.f. /0.9 acres	N/A
East Pond	87,640 s.f. /2.02 acres	Avg. 5 ft.

- 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. The East Pond water level can fluctuate several feet (1 over 5 feet) depending on the water usage of the golf courses throughout the year.
- c. The reclaimed water from the treated ponds is used for irrigation.

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 reclaimed water from NAU is used for golf course irrigation and therefore has direct public access. Other ponds support local wildlife and have direct public access
- 6. Dead plants shall be removed.
- 7. Invoices shall be submitted to each department, as detailed above in Part A, for their respective ponds. Invoices shall be submitted in a timely manner, along with the associated reports, if the reports have not be submitted prior to the invoice date.
- 8. The Contractor shall provide comprehensive reports detailing the inspection and treatment. The reports shall include at a minimum: date and time of arrival and departure for the visit, name and date of county staff contacted prior to visit, summary of work performed, type of treatment applied and with amounts, and any observations or notes. The report shall also include pictures from the date of visit, date and time stamped. The report shall be provided to each department prior to or along with invoicing.
- 9. The Vendor shall provide a minimum of 48-hour notice to each department prior to any site visit. Iris Blvd. pond shall have an additional 2 week notice to the department to allow time for access inspection and arrangements.
- 10. 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.
- 11. 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.
- 12. 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/CERTIFICATION 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.

ATTACHMENT "B"-BID PRICE SHEET (Revised 06-20-2016)

Site	Location	Est. Quan.	Monthly Fee	Total Annual
		(Months of Service)	Monuny ree	
1	West Nassau Landfill	12	\$ 558.00	\$6,696.00
2	Lofton Creek Landfill	12	\$ 67.00	\$ 804.00
3	Iris Boulevard Pond	4	\$195.00	\$ 780.00
4	Wind Chime Lane	4	\$ 69.00	\$ 276.00
5	Nassau Amelia Utility (NAU)	12	\$104.00	\$1,248.00
	TOTAL CONTRACT VALUE:			\$9,804.00

TOTAL AQUATIC POND AND DITCH MANAGEMENT NASSAU COUNTY PUBLIC WORKS DEPARTMENT BID NUMBER NC16-022

The following item may or may not be included in the final agreement:

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:	DeAngelo Brothers LLC/DBA Ac	luagen		
Address:	6209 Bowdendale Avenue			
City, State, Zip:	Jacksonville, Florida, 32216			
By:	(Signature)		······································	
	Daniel Mele			
	(Above name printed or typed)			
Phone:	904-262-2001	Fax:	904-262-0010	
Email:	daniel.mele@dbiservices.com			