

CITY OF NAPLES, FLORIDA
AGREEMENT
(CONSTRUCTION SERVICES)

Bid/Proposal No. 17-002

Clerk Tracking No. 2017-00021

Project Name: City Dock Reconstruction

THIS AGREEMENT (the "Agreement") is made and entered into this 15th day of March 2017 by and between the **City of Naples**, a Florida municipal corporation, (the "CITY") and **Kelly Brothers, Inc.**, a Florida Corporation authorized to do business in Florida, located at: **15775 Pine Ridge Road; Fort Myers, Florida 33908** (the "CONTRACTOR").

WHEREAS, the CITY desires to obtain the services of the CONTRACTOR concerning certain services specified in this Agreement (referred to as the "Project"); and

WHEREAS, the CONTRACTOR has submitted an **(RFP) Request for Proposal No. 17-002** for provision of those services; and

WHEREAS, the CONTRACTOR represents that it has expertise in the type of services that will be required for the Project.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

ARTICLE ONE
CONTRACTOR'S RESPONSIBILITY

1.1. The Services to be performed by the CONTRACTOR are generally described as **City Dock Reconstruction** and may be more fully described in the Scope of Services, attached as **EXHIBIT A** and made a part of this Agreement.

1.2. The CONTRACTOR agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida, the City of Naples, and in Collier County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the services to be provided and performed by the CONTRACTOR pursuant to this Agreement.

1.3. The CONTRACTOR agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, registration, certificate of authorization or other form of legal entitlement to practice such services, it shall employ or retain only qualified personnel to provide such services.

1.4. The CONTRACTOR agrees to employ and designate, in writing, within 5 calendar days after receiving its Notice to Proceed, or other directive from the CITY, a qualified employee to serve as the CONTRACTOR's project manager (the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONTRACTOR with respect to directing, coordinating and

administering all aspects of the services to be provided and performed under this Agreement.

1.5. The CONTRACTOR has represented to the CITY that it has expertise in the type of services that will be required for the Project. The CONTRACTOR agrees that all services to be provided by CONTRACTOR pursuant to this Agreement shall be subject to the CITY's review and approval and shall be in accordance with the generally accepted standards of practice in the State of Florida, as may be applied to the type of services to be rendered, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by the CONTRACTOR. In the event of any conflicts in these requirements, the CONTRACTOR shall notify the CITY of such conflict and utilize its best professional judgment to advise CITY regarding resolution of the conflict.

1.6. The CONTRACTOR agrees not to divulge, furnish or make available to any third person, firm or organization, without CITY's prior written consent, or unless incident to the proper performance of the CONTRACTOR's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by the CONTRACTOR hereunder, and the CONTRACTOR shall require all of its employees, agents, sub-consultants and subcontractors to comply with the provisions of this paragraph. However, the CONTRACTOR shall comply with the Florida Public Records laws including those requirements set out in ARTICLE FIVE, below.

1.7. The CONTRACTOR agrees not to employ or offer to employ any Elected Officer or City Managerial Employee of the CITY who in any way deals with, coordinates on, or assists with, the services provided in this Agreement, for a period of 2 years after termination of all provisions of this Agreement. For purposes of this paragraph, the term "Elected Officer" shall mean any member of the City Council. For purposes of this paragraph, the term "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director. If the CONTRACTOR violates the provisions of this paragraph, the CONTRACTOR shall be required to pay damages to the CITY in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee of the CITY from or on behalf of the contracting person or entity, or an amount equal to the former Elected Officer's or City Managerial Employee's last 2 years of gross compensation from the CITY, whichever is greater.

1.8. The CONTRACTOR agrees not to provide services for compensation to any other party other than the CITY on the same subject matter, same project, or scope of services as set forth in this Agreement without approval from the City Council of the CITY.

1.9. Except as otherwise provided in this Agreement, the CONTRACTOR agrees not to disclose or use any information not available to members of the general public and gained by reason of the CONTRACTOR's contractual relationship with the CITY for the special gain or benefit of the CONTRACTOR or for the special gain or benefit of any other person or entity.

ARTICLE TWO CITY'S RESPONSIBILITIES

2.1. The CITY shall designate in writing a project coordinator to act as the CITY's representative with respect to the services to be rendered under this Agreement (the "Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define the CITY's policies and decisions with respect to the CONTRACTOR's services for the Project. However, the Project Coordinator is not authorized to issue any verbal or written orders or instructions

to the CONTRACTOR that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- (a) The scope of services to be provided and performed by the CONTRACTOR;
- (b) The time the CONTRACTOR is obligated to commence and complete all such services; or
- (c) The amount of compensation the CITY is obligated or committed to pay the CONTRACTOR.

Any such modifications or changes shall only be made by or upon the authorization of the CITY's city manager as authorized by city council in the enabling legislation or in the CITY's procurement policies.

2.2. The Project Coordinator shall:

- (a) Review and make appropriate recommendations on all requests submitted by the CONTRACTOR for payment for services and work provided and performed in accordance with this Agreement;
- (b) Arrange for access to and make all provisions for the CONTRACTOR to enter the Project site to perform the services to be provided by the CONTRACTOR under this Agreement; and
- (c) Provide notice to the CONTRACTOR of any deficiencies or defects discovered by the CITY with respect to the services to be rendered by the CONTRACTOR hereunder.

2.3. The CONTRACTOR acknowledges that access to the Project Site, to be arranged by the CITY for the CONTRACTOR, may be provided during times that are not the normal business hours of the CONTRACTOR.

ARTICLE THREE TIME

3.1. Services to be rendered by the CONTRACTOR shall be commenced subsequent to the execution of this Agreement **upon written Notice to Proceed** from the CITY for all or any designated portion of the Project and **shall be performed in two phases. Phase I is to be completed by December 15, 2017 and Phase II is to be completed by February 28, 2018.** Project Close-out shall be performed within 60 days of Phase II's completion. Time is of the essence with respect to the performance of this Agreement.

3.2. Should the CONTRACTOR be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of the CONTRACTOR, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of the CITY, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then the CONTRACTOR shall notify the CITY in writing within 5 working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which the CONTRACTOR may have had to request a time extension.

3.3. No interruption, interference, inefficiency, suspension or delay in the commencement or

progress of the CONTRACTOR's services from any cause whatsoever, including those for which the CITY may be responsible in whole or in part, shall relieve the CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from the CITY. The CONTRACTOR's sole remedy against the CITY will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

3.4. Should the CONTRACTOR fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the CITY hereunder, the CITY at its sole discretion and option may withhold any and all payments due and owing to the CONTRACTOR until such time as the CONTRACTOR resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the CITY's satisfaction that the CONTRACTOR's performance is or will shortly be back on schedule.

3.5 Liquidated Damages: Services to be rendered by the CONTRACTOR shall be commenced subsequent to the execution of this Agreement upon written Notice-to-Proceed from the CITY for all or any designated portion of the Project must be completed by the contract dates specified within the Notice-to-Proceed for construction. Should CONTRACTOR fail to complete the project within this timeframe, daily liquidated damages in an amount consistent with the current Sec. 8-10.2 (FDOT) Florida Department of Transportation Standard Specifications will be assessed.

3.6 Bond. A Payment & Performance Bond with a surety insurer authorized to do business in this state as surety (check one)

XXX prior to commencement of work, will be recorded in the public records of the County, or

ARTICLE FOUR COMPENSATION

4.1. The total compensation to be paid the CONTRACTOR by the CITY for all Services is not to exceed **\$6,500,000.00 that includes a \$528,783.12 CITY controlled Contingency** and shall be paid in the manner set forth in the "Basis of Compensation", which is attached as **EXHIBIT B** and made a part of this Agreement.

ARTICLE FIVE MAINTENANCE OF RECORDS

5.1. The CONTRACTOR will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by the CONTRACTOR for a minimum of five 5 years from the date of termination of this Agreement or the date the Project is completed, whichever is later. The CITY, or any duly authorized agents or representatives of the CITY, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the 5 year period noted above; provided, however, such activity shall be conducted only during normal business hours. If the CONTRACTOR desires to destroy records prior to the minimum period, it shall first obtain permission from the CITY in accordance with the Florida Public Records laws.

5.2 119.0701 F.S. CONTACT INFORMATION FOR CITY OF NAPLES' CUSTODIAN OF PUBLIC RECORDS, CITY CLERK'S OFFICE

If the CONTRACTOR has questions regarding the application of

Chapter 119, Florida Statutes, to the CONTRACTOR'S duty to provide public records relating to this contract, contact the City of Naples' Custodian of Public records, the City Clerk at Telephone: 239-213-1015, Email: PublicRecordsRequests@naplesgov.com; Address: 735 8th Street S.; Naples, Florida 34102. Mailing address: same as street address.

5.3 The CONTRACTOR shall:

1. Keep and maintain public records required by the CITY to perform the service.
2. Upon request from the CITY'S custodian of public records, provide the CITY 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 119.0701 F.S. or as otherwise provided by law.
3. 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 CITY.
4. Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY 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 CITY, upon request from the CITY'S custodian of public records, in a format that is compatible with the information technology systems of the CITY.

**ARTICLE SIX
INDEMNIFICATION**

6.1. The CONTRACTOR agrees to indemnify and hold harmless the CITY from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employer or utilized by the CONTRACTOR in the performance of the Contract.

**ARTICLE SEVEN
INSURANCE**

7.1. The CONTRACTOR shall obtain and carry, at all times during its performance under this Agreement, insurance of the types and in the amounts set forth in the document titled General Insurance Requirements, which is attached as **EXHIBIT C** and made a part of this Agreement.

**ARTICLE EIGHT
SERVICES BY CONTRACTOR'S OWN STAFF**

8.1. The services to be performed hereunder shall be performed by the CONTRACTOR's own staff, unless otherwise authorized in writing by the CITY. The employment of, contract with, or use of the services of any other person or firm by the CONTRACTOR, as independent contractor or otherwise, shall be subject to the prior written approval of the CITY. No provision of this Agreement shall, however, be construed as constituting an agreement between the CITY and any such other person or firm. Nor shall anything contained in this Agreement be deemed to give any such party or any third party any claim or right of action against the CITY beyond such as may otherwise exist without regard to this Agreement.

ARTICLE NINE WAIVER OF CLAIMS

9.1. The CONTRACTOR's acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against the CITY arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by the CONTRACTOR as unsettled at the time of the final payment. Neither the acceptance of the CONTRACTOR's services nor payment by the CITY shall be deemed to be a waiver of any of the CITY's rights against the CONTRACTOR.

ARTICLE TEN TERMINATION OR SUSPENSION

10.1. The CONTRACTOR shall be considered in material default of this Agreement and such default will be considered cause for the CITY to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice(s) to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as directed by the CITY, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by the CONTRACTOR or by any of the CONTRACTOR's principals, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. The CITY may so terminate this Agreement, in whole or in part, by giving the CONTRACTOR at least 3 calendar days' written notice.

10.2. If, after notice of termination of this Agreement as provided for in paragraph 10.1 above, it is determined for any reason that the CONTRACTOR was not in default, or that its default was excusable, or that the CITY otherwise was not entitled to the remedy against the CONTRACTOR provided for in paragraph 10.1, then the notice of termination given pursuant to paragraph 10.1 shall be deemed to be the notice of termination provided for in paragraph 10.3 below and the CONTRACTOR's remedies against the CITY shall be the same as and limited to those afforded the CONTRACTOR under paragraph 10.3 below.

10.3. The CITY shall have the right to terminate this Agreement, in whole or in part, without cause upon 7 calendar day's written notice to the CONTRACTOR. In the event of such termination for convenience, the CONTRACTOR's recovery against the CITY shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by the CONTRACTOR that are directly attributable to the termination, but the CONTRACTOR shall not be entitled to any other or further recovery against the CITY, including, but not limited to, anticipated fees or profits on work not required to be performed.

ARTICLE ELEVEN

CONFLICT OF INTEREST

11.1. The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The CONTRACTOR further represents that no persons having any such interest shall be employed to perform those services.

ARTICLE TWELVE MODIFICATION

12.1. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

ARTICLE THIRTEEN NOTICES AND ADDRESS OF RECORD

13.1. All notices required or made pursuant to this Agreement to be given by the CONTRACTOR to the CITY shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CITY's address of record:

City of Naples
735 Eighth Street South; Naples, Florida 34102-3796
Attention: **A. William Moss**, City Manager

13.2. All notices required or made pursuant to this Agreement to be given by the CITY to the CONTRACTOR shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CONTRACTOR's address of record:

Kelly Brothers, Inc.
15775 Pine Ridge Road; Fort Myers, Florida 33908
Attention: **Dane Kelly**, Vice Pres & Assistant Secretary
FEI/EIN Number: On File

13.3. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

ARTICLE FOURTEEN MISCELLANEOUS

14.1. The CONTRACTOR assumes toward the CITY a duty of care commensurate with that which is imposed upon persons or firms in contractor's profession. CONTRACTOR will make reasonable efforts to ensure that its employees and agents maintain a professional demeanor and that the work area is compliant with CITY property maintenance and Project standards.

14.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

14.3. This Agreement is not assignable, in whole or in part, by the CONTRACTOR without the prior written consent of the CITY.

14.4. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

14.5. The headings of the Articles, Exhibits, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Exhibits, Parts and Attachments.

14.6. This Agreement constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

14.7. The CONTRACTOR shall comply fully with all provisions of state and federal law, including without limitation all provisions of the Immigration Reform and Control Act of 1986 ("IRCA") as amended, as well as all related immigration laws, rules, and regulations pertaining to proper employee work authorization in the United States. The CONTRACTOR shall execute the Certification of Compliance with Immigration Laws, attached hereto as **EXHIBIT D**.

14.8 To the extent that any provision in the Specifications or any other Contract Documents pertaining to this Project conflict with any provision of this Agreement, this Agreement controls.

14.9 Dispute Resolution. Disputes under this Agreement shall be resolved through mutual consultation between the parties within 14 days after notice; and failing resolution through mutual consultation, through mediation within 30 days thereafter; and failing mediation, through Arbitration under the Florida Arbitration Code, by a single arbitrator. If the parties cannot agree on a mediator or arbitrator, within 14 days of failure of the previous method, they shall request the Chief Judge of the 20th Judicial Circuit to appoint a mediator, or an arbitrator, as the case may be. Time periods are waivable by mutual agreement of the parties, but shall not exceed 90 days for completion of the processes described herein, unless by mutual agreement. Costs of the mediator or arbitrator shall be shared equally.

14.10 Attorneys' fees. Except as otherwise provided herein, each party shall be responsible for its own attorneys' fees.

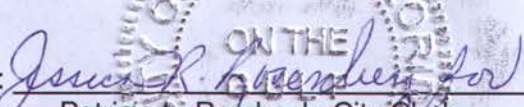
ARTICLE FIFTEEN APPLICABLE LAW

15.1. Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate Florida state court in Collier County, Florida.

END OF ARTICLE PAGE

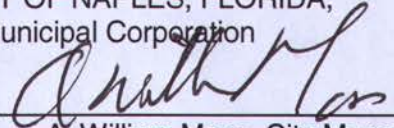
IN WITNESS WHEREOF, the parties hereto have executed this Agreement for the day and year first written above.

ATTEST:

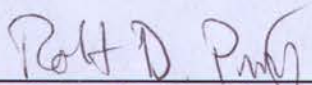
By: 
Patricia L. Rambosk, City Clerk

CITY:

CITY OF NAPLES, FLORIDA,
A Municipal Corporation

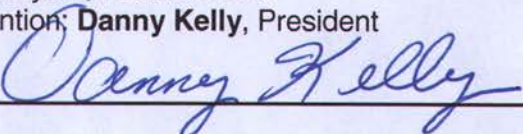
By: 
A. William Moss, City Manager

Approved as to form
and legal sufficiency:

By: 
Robert D. Pritt, City Attorney

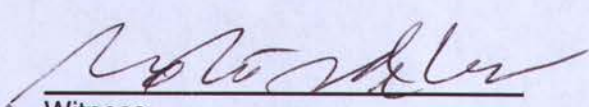
CONTRACTOR:

Kelly Brothers, Inc.
15775 Pine Ridge Road
Fort Myers, Florida 33908
Attention: **Danny Kelly**, President

By: 

Printed Name: **Danny Kelly**

Title: **President**


Witness

Robert S. De Meo
Witness Printed Name

FEI/EIN Number: On File
A Florida Corporation

(FL)

(CORPORATE SEAL)



EXHIBIT A

SCOPE OF SERVICES

The Scope of Services to be provided under this Agreement are included in Exhibit A and made a part of this Agreement and those set out in the Proposal, any Issued Addendum(s) and Contractor's Submittal of (RFP) Request for Proposal No.17-002, titled City Dock Reconstruction herein referenced and made a part of this Agreement.

PROJECT REQUIREMENTS

BACKGROUND

The dock is a public facility owned and operated by the City of Naples since 1939. Operating from the dock are four service vessel slips; Naples Natural Resources vessel, Naples Emergency Management Services vessel and Naples Fire Service vessel; two law enforcement slips, eighteen charter vessel slips, two multi-use slips, 10 transient slips as well as 48 public slip facilities. The City dock operates 2 mooring fields, each consisting of 6 mooring balls (total of 12). The Naples City dock is located on the Naples Bay end of 12th Avenue South, about three and a half miles north of the Gordon Pass to the Gulf of Mexico. Situated at marker 35, the dock monitors VHF channel 16 and has both gas and diesel fuel available. Water depth is up to 17 feet at the dock itself, and the channel itself is about six to seven feet. The current dock can accommodate boat lengths up to 110 feet on the "T" heads at the end of each set of slips, as can the fuel dock. Slips with water and electrical capacity are available for 10 transient slips and the 12 mooring balls. Reservations are recommended for the slips; however, no reservations are accepted for use of the mooring balls which are open to the public on a "first come, first serve" basis. Heads with showers are available, as are laundry facilities, bait and ice, and sewage pump out. A privately-operated ship's store is located at the land side of the dock in Crayton Cove, along with restaurants, lodging and a trolley service. The Naples City dock is open from 7:00 am to 5:00 pm seven days a week.

EXPECTED OUTCOMES

The primary outcome for this project will be a safer and more user friendly public boating facility. Anticipated secondary outcomes include greater public facility use of the dock, related economic growth of the Crayton Cove area where the dock is located and increased water quality from less piling leaching at the dock site. The dock operates under submerged lands lease #110024505 and is a Florida Department of Environmental Protection "Clean Marina" facility.

SCOPE OF WORK

The project work included in this contract shall include the following: Disposal of the existing wooden fixed docks, overwater buildings and wood fend off piles, installation of new concrete floating dock; installation of IPE fixed dock and new overwater buildings.

The project work included in this contract will be referenced as either Phase I or Phase II work. Phase I scope is any work associated with the completion of; the main fixed dock, the main floating dock (Dock A and B slips, structures and amenities) and the fuel dock. Phase II scope is any work associated with the completion of Dock C, D, E and F. As specified in the solicitation schedule, Phase I is to be complete by December 15, 2017 and

Phase II is to be complete by February 28, 2018.

EXHIBIT A

SCOPE OF SERVICES (Cont'd)

SCOPE OF WORK(Cont'd)

The Contractor shall work in accord with the utility contractors and material/equipment suppliers to provide critical path project management, installation, and completion of all described work.

Contractor shall plan, organize, supervise, monitor, direct, schedule, and control the work competently and efficiently. Contractor will provide an onsite supervisor with experience to direct work.

Contractor shall protect the site, adjacent properties, work, and product at all times and is responsible for any damage due to encompassing properties and/or related structures, fixtures, and landscaping on all properties associated with this project by any person or persons under their direction.

Contractor will provide applicable permits, licensing, insurances, and requirements to perform the described work. Contractor shall provide contact information for the personnel directing the referenced work including emergency contact numbers.

All state, federal and local permit requirements and conditions shall meet Best Management Practices and are a part of this contract. The Owner shall provide all Federal and State permits. The Contractor shall be reimbursed for the cost of the permits. All cost associated to permit requirements shall be included in Bid Proposal costs. Contractor shall comply with all permit requirements.

Contractor shall provide in its pricing all necessary tools, equipment, labor, workmanship and anything else required to complete the work described in a timely and accurate manner to meet project plans and time schedules.

Contractor shall be familiar with the job site and access. The designated construction access and staging areas are limited and shall be reviewed and agreed upon with the Permittee/Owner. Contractor should expect tidal fluctuations during the course of work and shall determine work schedule accordingly. The Contractor is responsible for determining sub-surface penetration schedule. Geotechnical exploration boring logs are provided with the bid documents but are not part of the contract documents. Owner makes no representations regarding the accuracy of the information depicted in the boring logs or whether the boring logs are reflective of the conditions to be encountered anywhere on the project site. The Contractor is to conduct whatever subsurface investigations it deems necessary and Owner will provide any bidder access to the Project site to enable the Contractor to conduct subsurface investigations. If Contractor believes additional time is needed prior to submitting a bid to investigate subsurface conditions, Contractor is to notify the Engineer at least 48 hours prior to the deadline for submittal of bids.

END OF EXHIBIT A

EXHIBIT B

BASIS OF COMPENSATION

As consideration for providing the Services as set forth in the Agreement, the CITY agrees to pay, and the CONTRACTOR agrees to accept payment on a time and reimbursement cost basis as indicated below in Exhibit B, which is attached and made part of this Agreement. The CITY is adding a separate \$528,783.12 CITY controlled Contingency to the issuance of this Agreement making the total amount of the Agreement at \$6,500,000.00.

The CONTRACTOR agrees that the unit price quoted in the original bid is the maximum price per Item No. in the Schedule of Values and Options' table to complete the work described in the Proposal, any Issued Addendum(s) and Contractor's Submittal of (RFP) Request for Proposal No.17-002, titled City Dock Reconstruction herein referenced and made a part of this Agreement. The CONTRACTOR agrees that the CITY maintains and reserves the right to modify the work described in the original Proposal and its Schedule of Values and Options' table, any Issued Addendum(s) and Contractor's Submittal of (RFP) Request for Proposal No.17-002, titled City Dock Reconstruction herein referenced and made a part of this Agreement, through adjustment or value engineering in order to reduce the total cost of this project.

Exhibit B - REVISED SCHEDULE OF VALUES

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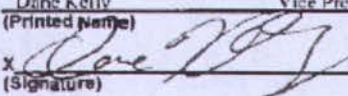
SCHEDULE OF VALUES					
Naples City Dock			THA # 1541		
BIDDER:					
ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL COST
1	Contractor Mob/Demob	EA	2	192,804.00	\$ 385,608.00 -
2	Dock Removal/Disposal	SF	19,490	13.14	\$ 256,098.60 -
3	Main Dock Fixed	SF	3,571	87.73	\$ 313,283.83 -
4	Floating Dock	SF	17,054	107.44	\$ 1,832,281.76 -
5	Floating Fuel Dock	SF	4,208	120.45	\$ 506,853.60 -
6	Fender Piles	EA	60	1,485.30	\$ 89,118.00 -
7	Dock Rail	LF	402	63.00	\$ 25,326.00 -
8	Dock Electric	LS	1	845,408.86	\$ 845,408.86 -
9	Dock Fire	LS	1	112,430.00	\$ 112,430.00 -
10	Dock Water	LS	1	88,515.00	\$ 88,515.00 -
11	Dock Pumpout	LS	1	49,444.35	\$ 49,444.35 -
12	Sight Lighting	LF	1,108	69.61	\$ 77,127.88 -
13	Signage/Trash-Rcyc Cans/Ladders/Life Rings/Dock Boxes	LS	1	84,247.00	\$ 84,247.00 -
14	Fuel System	LS	1	399,783.00	\$ 399,783.00 -
15	Dockmaster Office	LS	1	180,513.00	\$ 180,513.00 -
16	Gazebo	LS	1	159,870.00	\$ 159,870.00 -
17	Bathrooms	LS	1	365,768.00	\$ 365,768.00 -
18	Building Fire Protection	LS	1	17,006.00	\$ 17,006.00 -
19	Site Utilities	LS	1	127,835.00	\$ 127,835.00 -
20	Riprap	LF	20	244.00	\$ 4,880.00 -
21	Upland Concrete Sidewalk and Curb	LS	1	12,991.00	\$ 12,991.00 -
22	Dredging	CY	341	108.00	\$ 36,828.00 -
				TOTAL COST	\$ 5,971,216.88 -
WRITTEN COST \$ Five Million Nine Hundred Seventy One Thousand Two Hundred Sixteen Dollars and 88/100					
NOTE: ALL BOAT LIFT PILING MUST BE INCLUDED IN THE BID PROPOSAL. IF ANY ROCK PUNCHING/ DRILLING SHOULD BE REQUIRED PERMITTEE OR ENGINEER MUST BE NOTIFIED PRIOR TO COMENCEMENT.					

Submitting Vendor Name: Kelly Brothers, Inc.

EXHIBIT B

BASIS OF COMPENSATION (Cont'd)

OPTIONS					
ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL COST
A	PT Decking Deduction (Item No. 3)	SF	3,571	8.00	\$ 28,568.00 -
B	Concrete Bent Option 1 (Item No. 3) (Denote +/- in item 3 price)	LS	1	79,500.00	\$ 79,500.00 -
C	Concrete Bent Option 2 (Item No. 3) (Denote +/- in item 3 price)	LS	1	156,283.00	\$ 156,283.00 -
D	Alternate Floating Dock Manufacturer (Item No. 4)	SF	17,054	NA	\$ NA -
E	Value Engineering Floating Dock System (Item No. 4)	SF	17,054	102.50	\$ 1,748,035.00 -
F	Dock Rail Option 2 (Item No. 7) (Page C 205)	LF	402	86.05	\$ 34,592.10 -
G	Dock Rail Option 3 (Item No. 7) (Page C 205)	LF	402	81.00	\$ 32,562.00 -
H	Dock Rail Option 4 (Item No. 7) (Page C 205)	LF	402	54.00	\$ 21,708.00 -
I	Fend all bumpers for the fuel dock	EA	1	339.00	\$ 339.00 -
J	Boat Lift (16k galen 4 post)	EA	1	16,838.00	\$ 16,838.00 -
K	Wood Pile (12" x 35' with vinyl cone cap)	EA	1	1,445.00	\$ 1,445.00 -
L	Offsite Contractor Mob/Demob	EA	2	299,175.00	\$ 598,350.00 -
M	Alternative Dock Fire	LS	1	112,430.00	\$ 112,430.00 -
CONTRACTOR NOTES:					
1) Proposal does not include any the cost for any FPL fees/permits that may be required for this project.					

Company Name: Kelly Brothers, Inc.
 EIN: 59-2069592
 Email: dane@kellybros.net
 Name and Title of Individual completing this schedule:
Dane Kelly Vice President & Asst. Secretary
 (Printed Name) (Title)
 x  02/07/2017
 (Signature) (Date)

DIRECT MATERIAL PURCHASES

The City reserves the option to directly purchase construction materials, supplies and equipment. The Contractor will coordinate with the Department's designee and the City's Purchasing Division regarding all Direct Material Purchases (DMP). The City will purchase the materials based on the Awarded Contractor's quotes less sales tax. A deductive Contract change order will be a part of the process after issuance of a City Purchase Order (PO) for Direct Material Purchases.

Retainage of (10%) ten percent will be a part of said agreement and future payments.

END OF EXHIBIT B

EXHIBIT C

GENERAL INSURANCE REQUIREMENTS

The Contractor shall not commence work until he has obtained all the insurance required under this heading, and until such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work until all similar insurance required of the subcontractor has also been obtained and approved by the Owner.

Certificates of insurance must be issued by an authorized representative of the insurance company at the request and direction of the policyholder and must include sufficient information so as to identify the coverage and the contract for Owner's improvements for which they are issued. Certificates of insurance must be issued by a nationally recognized insurance company with a Best's Rating of no less than B+VII, satisfactory to the Owner, and duly authorized to do business in the state of said Contract.

The Contractor shall procure and maintain, during the life of this Contract, Workmen's Compensation Insurance for all of his employees to be engaged in work under this Contract, and he shall require any subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by the Contractor's insurance. In case any employees are to be engaged in hazardous work under this Contract, and are not protected under this Workmen's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate coverage for the protection of such employees. It is acceptable to use a State-approved Workmen's Compensation Self-Insurance fund.

The Contractor shall take out and maintain during the life of this Contract, Public Liability and Property Damage and shall include Contractual Liability, Personal Injury, Libel, Slander, False Arrest, Malicious Prosecution, Wrongful Entry or Eviction, Broad Form Property Damage, Products, Completed Operations and XCU Coverage to be included on an occurrence basis, and to the full extent of the Contract to protect him, the Owner, and any subcontractor performing work covered by this Contract from damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either of them. The Contractor shall also maintain automobile liability insurance including "non-owned and hired" coverage. The entire cost of this insurance shall be borne by the Contractor.

The amount of such insurance shall be no less than \$1,000,000 annual aggregate for bodily injury and property damage combined per occurrence.

The City of Naples must be named as Additional Insured on the insurance certificate and the following must also be stated on the certificate. "These coverage's are primary to all other coverage's the City possesses for this contract only." The City of Naples shall be named as the Certificate Holder. The Certificate Holder shall read as follows:

The City of Naples
735 Eighth Street South
Naples, Florida 34102

No City Division, Department, or individual name should appear on the Certificate.
No other format will be acceptable.

The Certificate must state the bid number and title.

When using the ACORD 25 – Certificate of Insurance only the most current version will be accepted.

The City of Naples requires a copy of a cancellation notice in the event the policy is cancelled. The City of Naples shall be expressly endorsed onto the policy as a cancellation notice recipient.

[If other insurance or insurance requirements or any waivers, attach as Exhibit C-1 through C-__]

EXHIBIT C

SPECIAL INSURANCE REQUIREMENTS

THESE SPECIFIC REQUIREMENTS ARE IN ADDITION TO AND TAKE PRECEDENCE OVER THE ABOVE GENERAL INSURANCE REQUIREMENTS

- (1) The amounts and types of insurance coverage shall conform to the following minimum requirements.
- (2) The insurance required by this Agreement shall be written for not less than the limits specified therein or required by law, whichever is greater.
- (3) Coverage's shall be maintained without interruption from the date of commencement of the work until the date of completion and acceptance of the Project by the Owner or as specified in this Agreement, whichever is longer.
- (4) Certificates of insurance acceptable to the Owner shall be filed with the Owner within ten (10) calendar days after Notice of Award is received by Contractor. Such certificates shall contain a provision that coverage's afforded under the policies will not be canceled or allowed to expire except after thirty (30) days prior written notice has been given to the Owner.

All insurance coverage of the Contractor shall be primary to any insurance or self. Insurance program carried by the Owner applicable to this Project.

- (5) The acceptance by Owner of any Certificate of Insurance does not constitute approval or agreement by the Owner that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of this Agreement.
- (6) Contractor shall require each of its subcontractors to procure and maintain, until the completion of the subcontractor's work, insurance of the types and to the limits specified in this Section unless such insurance requirements for the subcontractor are expressly waived in writing by the Owner.
- (7) Should at any time the Contractor not maintain the insurance coverage's required herein, the Owner may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage's and charge the Contractor for such coverage's purchased. The Owner shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage's purchased or the insurance company or companies used. The decision of the Owner to purchase such insurance coverage's shall in no way be construed to be a waiver of any of its rights under the Contract Documents.
- (8) If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the Work or termination of the Agreement, the Contractor shall renew or replace Certificate(s) of insurance not later than thirty (30) days prior to the date of their expiration. Failure of the Contractor to provide the Owner with such renewal certificate(s) shall be considered justification for the Owner to terminate the Agreement.

EXHIBIT C

SPECIAL INSURANCE REQUIREMENTS (Cont'd)

THESE SPECIFIC REQUIREMENTS ARE IN ADDITION TO AND TAKE PRECEDENCE OVER THE ABOVE GENERAL INSURANCE REQUIREMENTS

COMMERCIAL GENERAL LIABILITY

- (1) Commercial General Liability Insurance shall be maintained by the Contractor. Coverage will include, but not be limited to, Bodily Injury, Property Damage, Personal Injury, and Contractual Liability for this Agreement, Independent Contractors, and Broad Form Property Damage including Completed Operations and Products and Completed Operations Coverage. Products and Completed Operations coverage shall be maintained up to final Release of Lien and acceptance by the Owner of the work under this Agreement. Limits of Liability shall not be less than the following:
 - U.S.L. & H. and Jones Act (If applicable) Workers Compensation.
as required by law, shall be maintained by the Contractor
— General Aggregate \$2,000,000
- (2) The General Aggregate limit shall apply separately to this Project and the policy shall be endorsed using the following endorsement wording. "This endorsement modifies insurance provided under the following: Commercial General Liability Coverage Part. The General Aggregate Limit under LIMITS OF INSURANCE applies separately to each of your projects away from premises owned by or rented to you."
- (3) If the General Liability insurance required herein is issued or renewed on a "claims made" basis, as opposed to the "occurrence" form, the retroactive for coverage shall be no later than the commencement date of the Project and shall provide that in the event of cancellation or non-renewal the Extended Reporting Period (Discovery Period) for claims shall be no less than three (3) years.
- (4) The Owner shall be named as an Additional Insured and the policy shall be endorsed that such coverage shall be primary to any similar coverage carried by the Owner.
- (5) Coverage shall be included for explosion, collapse or underground property damage claims
- (6) Watercraft Liability coverage shall be carried at the limits shown above if applicable to the completion of the work under this Agreement.

AUTOMOBILE LIABILITY INSURANCE

- (1) Automobile Liability Insurance shall be maintained by the Contractor for the ownership, maintenance or use of any owned, non-owned or hired vehicle with limits of not less than:

Bodily Injury and Property Damage \$1,000,000
- (2) The Owner shall be named as an Additional Insured under this policy.

EXHIBIT D

CERTIFICATION OF COMPLIANCE WITH IMMIGRATION LAWS

The undersigned is the **Vice President & Assistant Secretary of the Kelly Brothers, Inc.**, company ("the CONTRACTOR"), and hereby certifies to the following:

1. The CONTRACTOR is in full compliance with all provisions of the Immigration Reform and Control Act of 1986 ("IRCA"), as well as all related immigration laws, rules, regulations pertaining to proper employee work authorization in the United States.

2. The undersigned has verified that the CONTRACTOR has obtained and maintains on file, and will continue to obtain and maintain on file, all documentation required by law, including but not limited to, Form I-9, Employment Eligibility Verification, for all persons employed by or working for the CONTRACTOR in any capacity on any project for the City of Naples (CITY). All such persons have provided evidence of identity and eligibility to work to the CONTRACTOR in accordance with the IRCA and related law. The undersigned hereby affirms that no person has been or will be employed by the CONTRACTOR to work on projects for the CITY who is not authorized to work under law. The undersigned further affirms that the CONTRACTOR's files will be updated by written notice any time that additional employees work on projects for the CITY.

3. The CONTRACTOR will have its contractors, subcontractors, suppliers and vendors who are involved in projects for the CITY to sign a written acknowledgment that they too are in compliance with immigration law. It is understood that failure to do so could result in the CONTRACTOR being liable for any violation of the law by such third parties.

4. The CONTRACTOR will fully cooperate with and have its contractors, subcontractors, suppliers and vendors to fully cooperate with, all inquiries and investigations conducted by any governmental agency in connection with proper compliance with the laws pertaining to appropriate work authorization in the United States.

5. The undersigned, on behalf of the CONTRACTOR, acknowledges that this Certification may be relied upon by the CITY, its officers, directors, employees, and affiliates or related persons and entities.

6. If it is found that the CONTRACTOR has not complied with the laws pertaining to proper employment authorization, and any legal and administrative action ensues against the CITY, the CONTRACTOR will indemnify, defend and hold the CITY harmless along with their officers, directors, employees, and affiliated or related persons and entities.

7. The CONTRACTOR acknowledges that the CITY by their authorized representatives shall have the right, at any time, upon 24 hours' notice, to examine the CONTRACTOR's books and records to confirm that the CONTRACTOR is in compliance with the terms of this certification.

Executed this 7th day of MARCH, 2017.

By: Danny Kelly