

**CONTRACTOR AGREEMENT  
BETWEEN OAK GROVE HOA, INC.  
AND BIO MASS TECH, INC.**

This Agreement made this 16th day of February 2009, by and between Oak Grove HOA, Inc. (Owner.) and Bio Mass Tech, Inc. (Contractor) whose offices are located at 15212 State Road 52 Land O' Lakes, FL 34639-6811 FEIN# 59 3232185

**WITNESSETH**

WHEREAS, Oak Grove HOA, Inc. shall enter into a contract with Bio Mass Tech, Inc. for **Installation of Erosion Control Best Practices and Clean Fill Placement/Regrading for Pond150** in accordance with the plans and specifications prepared by the Oak Grove HOA, Inc.

NOW, THEREFORE, the parties hereto do agree as follows:

**ARTICLE 1-DESCRIPTION OF SERVICE:** Bio Mass Tech, Inc. to provide all services, supervision, labor, materials, equipment, and supplies necessary to complete all services as presented in the plans and specifications for the project; this includes all authorized change orders that may be issued by Oak Grove HOA, Inc.

**Scope of Service to include, but not limited to:**

**Provide all labor, materials, tools and supervision for the purpose of Installation of Erosion Control Best Practices and Clean Fill Placement/Regrading for Pond150 in accordance with the plans and specifications by Oak Grove HOA, Inc.**

1. Placement of clean fill, re-grading, and seeding/hydroseeding of a portion of Pond 150, between Sections A-A and F-F to vegetated as-built grade. (Estimated earth fill total is 345 cubic yards and estimated seeding total is 9,000 square feet)
2. Installation of riprap within Pond 150 at the terminus of inlets OG BLVD,150- 3, 150-6 & 150-8. (Estimated riprap total is 72 cubic yards)

Work to be completed shall be as described more fully in Exhibit A, *Erosion Control Best Practices Oak Grove Subdivision Pond 150* (LEI, submitted October3, 2007), complete and ready for operation as a functioning stormwater system.

Operation of heavy equipment near existing structures of any type is prohibited and Bio Mass Tech, Inc. is responsible for any and all damages to existing infrastructure and all utilities. Bio Mass Tech, Inc. should "Call 811 Before You Dig". Restoration is not a separate pay item, but is considered to be an integral part of the work and all cost proposals must include the cost of any restoration necessitated by the work related to that bid item. Restoration is defined as any existing structures and property, including but not limited to the stormwater pond, paving, stabilized roads, drainage piping and ditches, catch basins, headwalls, yard culverts, lawns and ground areas, fencing, landscaping, walkways, and irrigation systems which are altered, removed, or damaged during construction that shall be restored by Bio Mass Tech, Inc. to the same or better condition than existed prior to construction.

**ARTICLE 2- PERIOD OF PERFORMANCE:** The term of this Contract shall be for a period of 15 calendar days, the starting and end dates shall be provided by addendum to this contract.

**ARTICLE 3-METHOD OF COMPENSATION:** Compensation for services rendered pursuant to Article 1 will be for a fixed price of \$ 25,906.00, not to exceed this amount without prior written authorization.

**ARTICLE 4-INVOICES:** Payment will be based on percentage completed and approved. Bio Mass Tech, Inc. will submit invoices for services rendered as presented in a mutually-agreeable schedule of values to be presented by Bio Mass Tech, Inc. Bio Mass Tech, Inc. shall submit an invoice with pictures and schedule of values, for completed work. Payment will be made by Oak Grove HOA, Inc. within 7 days after an approved invoice has been received from the Bio Mass Tech, Inc. No payment will be made by Oak Grove HOA, Inc. to Bio Mass Tech, Inc. until the Certificate of Insurance required under Article 8 below has been received by Oak Grove HOA, Inc. The following will apply if checked:

**ARTICLE 5--TERMINATION:** Oak Grove HOA, Inc., at any time, shall have the right to terminate this contract if the following occur

- A. Bio Mass Tech, Inc. shall default in performance and fail to cure such default within a reasonable period of time after notice of such default by Oak Grove HOA, Inc.

**ARTICLE 6-CHANGES AND EXTRA WORK:** Oak Grove HOA, Inc. at any time may, by written authorization, make changes in the Scope of Work. If such changes result in an increase or a decrease in the level of Contractor's service to be provided, Contractor shall make a claim in writing for an adjustment to its compensation. Written claims must be agreed in writing by Oak Grove HOA, Inc. before any claim becomes part of this agreement. Under no circumstances shall Contractor provide additional service for which an additional cost or fee is to be charged without a written modification to this Agreement being first executed by the parties hereto. The Contractor has inspected the site prior to submission of the cost proposal and entering into this Agreement and any adjustments during the course of work to the required quantities for completion of this scope of services (Article 1) was accounted for in the fixed price.

**ARTICLE 7-RESPONSIBILITY:** All services, to be provided by Bio Mass Tech, Inc. under this Agreement shall be performed in accordance with the usual and customary standards of professional practice in the area of the Project. Bio Mass Tech, Inc. shall bear all responsibility for the adequacy and accuracy of service rendered and documents prepared pursuant to this Agreement, notwithstanding review, payment for, or approval of any work performed or services rendered.

The Owner, Lane Engineering Inc, or any person representing Owner shall not supervise, direct, or have control or authority over, nor be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the contractor to comply with laws and regulations applicable to the performance of the work.

Contractor has inspected the site prior to beginning work and if during the course of the work uncovers or reveals any subsurface or physical condition that is of an unusual nature and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character of this scope of services (Article 1), Contractor shall promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any work in connection therewith notify Owner in writing of such condition. Contractor shall not further disturb such condition or perform any work in connection therewith until receipt of written order from Owner to do so.

**ARTICLE 8-INSURANCE:** Bio Mass Tech, Inc. shall procure and maintain, at its expense, Workmen's Compensation and Employers Liability Insurance as required by law, and such insurance must contain a waiver of subrogation against Oak Grove HOA, Inc. and its affiliated companies; Commercial General Liability coverage in an amount not less than \$1,000,000.00 in combined single limits for bodily injury and property damage; and Professional Liability coverage in an amount not less than \$2,000,000.00. Contractor shall provide evidence of Automobile Liability Insurance of at least \$1,000,000 combined single limit for bodily injury and/or property damage per occurrence.

A certificate of insurance naming Oak Grove HOA, Inc. and Lane Engineering, Inc. as an additional insured and specifying such coverage shall be furnished to Oak Grove HOA, Inc., and the required coverage shall be kept in force until all of the Contractor's obligations under this Agreement have been fully discharged and fulfilled, or until the Contractor has been specifically released there from by a written instrument signed by an authorized officer of Oak Grove HOA, Inc.. The insurance policy shall provide that the insurance carrier must give Oak Grove HOA, Inc. notice at least thirty days in advance of cancellation of coverage, of any change in coverage, or of cancellation of the policy. No payments will be made by Oak Grove HOA, Inc. until certificate insurance is provided.

**ARTICLE 9-DEFICIENCIES IN WORK & WARRANTY** Should Oak Grove HOA determine that any work performed by Bio Mass Tech, Inc. does not meet the requirements of this RFP, Oak Grove HOA shall submit in writing to Bio Mass Tech, Inc. a list of deficiencies and necessary repairs. The determination of deficiencies in work will be at the sole determination of Oak Grove HOA. Bio Mass Tech, Inc. will have thirty (30) days to correct deficiencies. Failure to correct deficiencies will result in termination of this contract. The Bio Mass Tech, Inc. shall warrant the work for Item 1 and Item 2 for a one year period following the installation. The Bio Mass Tech, Inc. will be responsible for selecting the most applicable seeding/hydroseeding for the site conditions. The seeding/hydroseeding area should be watered or maintained by the Contractor until a uniform stand of grass has been established at which time maintenance of this area shall be turned over to OGHOA. Any sparse areas will be re-seeded as required by the OGHOA.

**ARTICLE 10-OVERVIEW** The Contractor shall provide all materials and labor to satisfy the requirements of the Description of Work and Exhibit A. Exhibit B and C should be used as reference material. The services will require the Contractor to partner and cooperate with Oak Grove HOA to ensure that Oak Grove HOA receives the highest quality service.

**ARTICLE 11-EXHIBITS:** This proposal includes the following Exhibits which can be obtained at: [www.oakgrovehoa.com/ponds](http://www.oakgrovehoa.com/ponds) Exhibit A – Erosion Control Best Practices Oak Grove Subdivision Pond 150 (LEI, submitted October 3, 2007) Exhibit B – As-Built Drawings for Permit #49012855.007 and #49012855.009 Exhibit C – Cumbey and Fair Survey of Pond 150, 2006

**ARTICLE 12-EXTENT OF AGREEMENT:** This Agreement contains all of the agreements, Representations, and understandings of the parties hereto and supersedes any previous commitments, understandings or agreements, whether oral or written. Further, this Agreement shall only be modified or amended by a written instrument signed by the parties hereto.

**ARTICLE 13-SAFETY REQUIREMENTS:** Bio Mass Tech, Inc. shall comply with the following safety requirements, policies, and regulations immediately upon entering onto Owner property, before-commencing work, and while performing work on Owner property. Noncompliance shall be considered a breach of this agreement and grounds for immediate termination by Oak Grove HOA, Inc., Bio Mass Tech, Inc. will comply with regulations of OSHA, EPA and DOT, as well as local jurisdictional laws. Bio Mass Tech, Inc. shall comply with all applicable state, federal and local statutes and regulations relating to pollution prevention and control and sedimentation and erosion control. In the interest of safety, Bio Mass Tech, Inc. will comply with the following

procedures while performing the Work on Owner property: Prior to commencement of the Work on Owner's property, Bio Mass Tech, Inc. shall initiate a conference with representatives of Owner and Oak Grove HOA, Inc. to develop a safety action plan, establish safety procedures, review safety policies and regulations, review compliance with Roadway Worker Safety and Bridge Worker Safety (if applicable), develop an emergency action plan, and discuss the specifics of the Work.

**ARTICLE 14-FORCE MAJEURE:** Either party shall be excused from performing its contractual obligations if it is prevented or delayed in such performance by conditions that constitute "force majeure" such as acts of God, acts of the public enemy, labor disturbances, authority of law, fire or explosion, war, insurrection, or any like causes beyond the control of Oak Grove HOA, Inc. or Bio Mass Tech, Inc., A party wishing to take advantage of the relief provided in this article must immediately advise the other parties of the existence of the force majeure condition and the estimated time of its duration.

**ARTICLE 15-EQUAL OPPORTUNITY EMPLOYMENT:** Bio Mass Tech, Inc. corporate policies provide for equal opportunities in employment.

**ARTICLE 16-INDEMNIFICATION & JURISDICTION:** In an effort to resolve any conflicts that arise during the construction, or following completion of, this scope of services (Article 1), the Owner and Contractor agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation. The Owner and Contractor further agree to follow mediation with consultants retained for, or having performed work associated with this scope of services (Article 1), thereby providing for mediation as the primary method for dispute resolution among the parties.

If mediation undertaken in good faith by all parties is unsuccessful, then any controversy of claim arising out of or relating to breach of this project, project performance of this contract or the breach thereof, shall be brought in Circuit Court in Pasco County, Florida. Should the amount in controversy not meet the jurisdictional threshold for a Circuit Court action, such controversy or claim shall be brought in a Court having jurisdiction in Pasco County, Florida. In the event of litigation, or any other means of dispute resolutions, relating to the project, project performance or this contract, the prevailing party shall be entities to its reasonable attorneys' fees, cost of expenses, including all appellate attorneys' fees, costs, and expenses.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed by their duly authorized officers on the date first written above.

**BIO-MASS TECH. INC.**

SIGN: \_\_\_\_\_

NAME: James Griffin

TITLE: Vice President

DATE: February 16, 2009

**Oak Grove PUD HOA, Inc.**

SIGN: \_\_\_\_\_

NAME: April Baughn

TITLE: President

DATE: 3/23/09