

# Foster Lake & Pond Management, Inc.




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 Garner, NC 27529  
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## Quotation

**To:** Suncrest Village  
 Attn: Kalyn Robbins  
 c/o Grandchester Meadows Inc.  
 PO BOX 1149  
 Apex, N.C. 27502

Date	Quotation Number	Project Name
3/21/23	SV17475	Suncrest Village Dissipator Pad Renovation

Description	Total
<p><b>Location:</b> Suncrest Village, Raleigh, N.C.</p> <p><b>Objective:</b> Renovate dissipator pad at the outlet of the underground detention system at the Suncrest Village Recreation Center.</p> <p>The following services will be performed to accomplish the objective stated above:</p> <ul style="list-style-type: none"> <li>The existing dissipator pad area will be excavated to remove sediment and restore proper depth and shape.</li> <li>New Class B riprap will be installed on geotextile fabric.</li> <li>All excavated material will be disposed off-site.</li> <li>Seed, straw, and erosion control matting will be applied to all disturbed areas.</li> </ul>	\$4,495.00
<p>Authorized to Proceed</p> <p>Printed Name: _____</p> <p>Signature: _____</p> <p>Date: _____</p>	<p>Foster Lake &amp; Pond Management Inc</p> <p><u>Wesley L. Haskins</u></p>  <p>_____</p> <p>3/21/23</p>
<b>TOTAL</b>	<b>\$4,495.00</b>
<p><i>This quotation is good for 45 days from the date shown above. If not authorized within 45 days, a new quotation will be provided.</i></p>	

## Terms and Conditions

The Agreement ("Agreement") entered into this the \_\_\_\_\_ day of \_\_\_\_\_, ("Effective Date"), is subject to the following terms and conditions and, in signing the Agreement, ("CLIENT") agrees and accepts the terms and conditions contained herein.

### 1. Payment:

- a) CLIENTS entering into a contract for completion of a single project or service ("Single Project CLIENTS") shall pay Foster Lake & Pond Management, Inc. ("FLPM"), for all services and materials contracted for by CLIENT ("Services") in accordance with the invoice provided by FLPM upon FLPM's completion of said Services. CLIENTS entering into annualized contracts for Services to be provided on an ongoing basis for a one-year term ("Annualized Contract CLIENTS") shall receive a monthly invoice every thirty (30) days, or as otherwise agreed upon in writing between the parties, for Services to be provided during the annual Services term. All invoices, regardless of contract type, shall be due and payable in full upon presentation to the CLIENT, and shall be past due if payment is not received within thirty (30) days of delivery to CLIENT. Past due invoices are subject to a service charge of 1.5 percent per month (18 percent per annum) on the outstanding balance, to accrue from the date of invoice, and entitles FLPM to the rights described in section 1(b) herein.
- b) If the invoice is past due per the terms of Section 1(a), FLPM may, upon delivery of seven (7) days written notice to CLIENT, suspend the Services until all invoiced amounts are paid in full by CLIENT, including any interest accrued thereon. If the invoice remains unpaid after ninety (90) days from the invoice date, FLPM may initiate legal proceedings to collect the unpaid amount and accrued interest, plus other reasonable expenses of collection, including attorney's fees.

**2. Term of Agreement:** This Agreement shall begin on the Effective Date and continue in full force and effect until payment of the final invoice by CLIENT or until terminated by either party pursuant to the terms of Section 21, herein ("Term").

**3. Cost Revision:** Cost revisions may be negotiated annually between the parties and made a part of this Agreement only by written amendment signed by FLPM and CLIENT.

**4. Representations of CLIENT:** CLIENT warrants and covenants that sufficient funds are available or will be available upon receipt of FLPM's invoice to make payment in full for the Services provided by FLPM.

**5. Representations of FLPM:** FLPM represents that it is an independent contractor and is not an agent, partner, joint venture or employee of CLIENT.

**6. Ownership of Instruments of Service:** All field data, reports, plans, specifications, notes and other similar documents, including all documents on electronic media, prepared by FLPM as an instrument of Service, shall remain the exclusive property of FLPM, and FLPM shall retain all common law, statutory and other rights, including copyright, thereto. In the event of termination of this Agreement and upon full payment of all outstanding invoices, FLPM shall make available to CLIENT copies of all plans, specifications, reports, computations and correspondence associated with the Services.

**7. Reuse of Documents:** The Services, and any and all data, recommendations, proposals, reports, design criteria, or similar information provided by FLPM to CLIENT pursuant to the Agreement are provided for the exclusive use of CLIENT and are not to be used or relied upon in connection with other projects or by third parties without the express written consent of FLPM, and FLPM makes no representations or warranties as to their suitability or fitness for any purpose other than FLPM's provision of the Services

**8. Confidentiality:** Subject to any obligation FLPM may have under applicable laws or regulations, FLPM shall release information relating to the Services only to its employees and subcontractors in the course of performance of the Services or to CLIENT'S authorized representative(s) and to persons designated by CLIENT'S authorized representative(s) to receive such information throughout the Term of the Agreement.

**9. Assignment and Subcontracting:** Nothing in this Agreement shall be construed as giving any rights or benefits under the Agreement to anyone other than the CLIENT and FLPM, and all duties and responsibilities undertaken pursuant to this Agreement shall be for the sole and exclusive benefit of and use by the CLIENT and FLPM, and not for the benefit of any other party. Neither the CLIENT nor FLPM shall assign, sublet or transfer any rights under or interests in this Agreement without the signed written consent of the other, which shall not be unreasonably withheld. However, nothing contained herein shall prevent or restrict FLPM from employing independent professionals and/or subcontractors, as FLPM may deem appropriate in its sole discretion, to assist in the performance of the Services.

**10. Project Site:** In the event that CLIENT is not the legal owner of the site(s) where the Services shall be performed ("Site"), CLIENT shall notify the owner(s) of the Site(s) of (i) the dates during which the Services will be provided, and (ii) the risks to both body and property associated with the same. CLIENTS that do not own the Site warrant that they have the full right and authority to enter into this Agreement and direct work to be performed at the Site, and shall fully indemnify FLPM for all losses of any form which FLPM may suffer as a result of the provision of Services to CLIENT which are caused in full or in part by the negligence of CLIENT. The failure of CLIENT to properly notify Site owners of the Services and of this Agreement is agreed upon by the parties to conclusively constitute the CLIENT's negligence.

**11. Access to Site:** CLIENT is responsible for providing FLPM access to the Site to the extent necessary for FLPM to carry out the Services to be rendered under this Agreement.

**12. Period of Services:** Unless otherwise provided in the Agreement, FLPM will begin work promptly upon the Effective Date and shall complete the Services within a reasonable length of time for Single Project CLIENTS or as agreed upon between the parties for Annualized Contract CLIENTS. If the Services are delayed or suspended in whole or in part by the CLIENT or by third parties not under FLPM's control, the times for performance, if explicitly defined, shall be extended proportionately to the delay or suspension. In the event that such delay extends for such length of time that demobilization and remobilization become necessary, the compensation owed to FLPM under this Agreement shall be subject to renegotiation in FLPM's sole

discretion. Notwithstanding the terms contained herein, CLIENT agrees and accepts that time is not of the essence in the completion of the Services pursuant to this Agreement.

- 13. Unforeseen Occurrences or Conditions:** If, during the performance of the Services, any unforeseen hazardous substance, material, element of constituent or other unforeseen conditions or occurrences are encountered which, in FLPM's sole judgment, significantly affects or may affect the Services, the risk involved in providing the Services, or the recommended scope of Services, FLPM shall promptly notify CLIENT thereof. Subsequent to said notification, FLPM may, in its sole discretion: (i) if practicable and with written approval of CLIENT, complete the originally contracted for Services in accordance with the procedures originally intended in the Services proposal; (ii) enter a written agreement with CLIENT, signed by the parties, to modify the scope of Services, the procedures to be used for completion of the Services, and the cost of the Services to include study of the previously unforeseen conditions or occurrences; or (iii) terminate the Services effective on the date of delivery to CLIENT of notice of intent to the same, pursuant to the terms of Section 21 herein. This Agreement is also subject to renegotiation or termination by FLPM, in its sole discretion, due to concealed contingencies, to include but not be limited to leaks, debris, poor drainage situations, clogged drains, design flaws, and structural failures not reasonably apparent to FLPM, in its sole discretion and judgment, when estimating the labor and materials required for completion of the Services.
- 14. Permitting:** Unless otherwise agreed upon in writing by the parties, FLPM is not responsible for any permitting required for performance of the Services, and CLIENT explicitly assumes responsibility for the same.
- 15. Force Majeure:** In the event that completion of any portion of the Services is delayed by causes beyond the control of FLPM, to include but not be limited to delays caused by strikes, riots, acts of God, fire, flood, shortages of labor or materials, war, governmental laws, regulations, or restrictions, the time for performance of the Services shall be extended for a period equal to the length of the delay, and if determined to be necessary by FLPM, in its sole discretion, the parties shall renegotiate the terms and conditions upon which Services will be continued. CLIENT agrees and accepts that, for purposes of the Agreement, acts of CLIENT's contractors or agents which result in such delay shall constitute Force Majeure entitling FLPM to the rights contained herein.
- 16. Standard of Care:** FLPM shall perform the Services for CLIENT in a workmanlike manner, using a reasonable degree of care and skill consistent with industry standards.
- 17. Disclaimer of Warranties:** EXCEPT FOR WARRANTIES EXPLICITLY CONTAINED HEREIN, FLPM MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
- 18. Subsurface Utilities:** Any and all subsurface utilities (including but not limited to water, sewer, cable, irrigation, power, and telephone lines) are to be located by the CLIENT prior to the first day on which FLPM shall provide Services at the Site, unless otherwise agreed upon in writing by the parties. CLIENT assumes all liability and responsibility for damage which may be incurred by CLIENT or third parties if the locations of utilities are not clearly and accurately marked and CLIENT shall indemnify and hold FLPM harmless for any liability it shall incur related to the same.
- 19. Liability for Accidental Damage:** CLIENT accepts and acknowledges that the movement of heavy equipment may cause damage to any and all concrete and/or asphalt surfaces located at the Site. FLPM shall exercise reasonable care in avoidance of such damage, and FLPM shall only repair such damage when, in its sole discretion, it is the direct result of FLPM'S negligent performance of the Services.
- 20. Limitation of Liability:** The remedies set forth herein are the exclusive remedies available to the parties hereto, and the total liability of FLPM for any and all claims which may be brought against it arising out of this Agreement or the Services shall not exceed the total sum of fees paid by CLIENT for the Services.
- 21. Indemnifications.** CLIENT shall indemnify and hold harmless FLPM and all of its personnel, from and against any and all claims, damages, losses and expenses (including reasonable attorney's fees) to the extent they are caused by the negligent act, error, or omissions of the CLIENT. CLIENT agrees and accepts that CLIENT's decision to have FLPM perform Services not in accordance with the Services recommended by FLPM, shall be conclusive evidence of the CLIENT's negligence hereunder.
- 22. Termination of Contract:** This agreement may be terminated without cause by either party upon delivery of thirty (30) days' written notice to the other of intent to terminate this Agreement. Thereafter, FLPM shall deliver to CLIENT a final invoice for Services on the last effective date of this Agreement. Should an Annualized Contract CLIENT terminate this Agreement pursuant to the terms contained herein, CLIENT shall nonetheless remain liable for all material costs as they have been calculated by FLPM, in its SOLE discretion for the Term of the Annualized Contract. Such amount shall be reflected on the final invoice delivered to CLIENT, and shall be due upon receipt.
- 23. Severability:** If any term or provision of this Agreement is held invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 24. No Waiver:** No waiver by FLPM of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by FLPM. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 25. No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

- 26. Merger, Amendment:** This Agreement constitutes the entire Agreement between FLPM and the CLIENT, and any prior negotiations and written or oral understandings between the parties are merged herein. This Agreement can be amended only by a written document signed by both FLPM and the CLIENT.
- 27. Survival:** Provisions of this Agreement which by their nature should apply beyond the termination or expiration of the Agreement, will remain in force after any termination or expiration of this Agreement.
- 28. Choice of Law:** The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Venue for all disputes arising out of or related to this Agreement or the Services shall be the city of Raleigh, county of Wake, state of North Carolina.