

# Exhibit "Ai"

## RFP NOTICE

Polk County, a political subdivision of the State of Florida, requests the submittal proposals from vendors that are interested in providing *professional engineering service* as described herein. Sealed proposals must be received in the Procurement Division, prior to the due date and time listed below.

**RFP Number and Title:** 23-573, Professional Engineering Services for Lake Deeson & Bear Branch

**Description:** Provide professional engineering services for Lake Deeson, a 55-acre lake located in Polk County north of downtown Lakeland (Latitude 28.112671, Longitude -81.932074) and Bear Branch, a stormwater conveyance system located in Polk County in the City of Bartow (Latitude 27.542306, Longitude -81.502775) which are Florida Department of Environmental Protection (FDEP) innovative technology grant funded projects. All services must be performed in accordance with applicable Federal, State and Local regulations.

**Receiving Period:** Prior to 2:00 p.m., Wednesday, October 18, 2023

**Bid Opening:** Wednesday, October 18, 2023 at 2:00 p.m. or as soon as possible thereafter.

This form is for RFP registration only. Please scroll down for additional information.

**Special Instructions:** N/A

Questions regarding this RFP must be in writing and must be sent to Danielle Rose, Sr. Procurement Analyst, via email at [daniellerose@polk-county.net](mailto:daniellerose@polk-county.net) or via fax at (863) 534-6789. All questions must be received by, Tuesday, October 10, 2023, 4:00 p.m.

## RFP REGISTRATION

You must register using this form in order to receive notice of any addenda to these documents. Please fax the completed form to the Procurement Division as soon as possible. It is the vendor's responsibility to verify if addenda have been issued.

RFP Number: 23-573

RFP Title: Professional Engineering Services for Lake Deeson & Bear Branch

This form is for bid registration only. Please scroll down for additional information.

Carefully complete this form and return it to the Procurement Division via e-mail to [procurement@polk-county.net](mailto:procurement@polk-county.net) or fax (863) 534-6789. You must submit one form for each solicitation that you are registering for.

Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

## PROPOSAL SUBMITTAL INSTRUCTIONS

Proposers must submit their proposal prior to 2:00 p.m. on the receiving date. Proposals must be submitted in a “sealed” parcel or electronically through Polk County’s secure website, Kiteworks. Proposals will be publicly opened at 2:00 p.m. on the receiving date.

### **Sealed Parcel Submittal:**

If you are submitting a sealed parcel proposal submit one (1) original marked ORIGINAL and five (5) copies marked COPY of the proposal in a sealed parcel to the Procurement Division. The parcel should be labeled “RFP #23-573, Professional Engineering Services for Lake Deeson & Bear Branch” and marked with the proposer’s name and address. The Proposals may be mailed or delivered to:

**Polk County Procurement Division  
330 West Church Street, Room 150  
Bartow, FL 33830**

To assist with labeling the sealed parcel, please cut along the outer border and affix this label. Be sure to include the name of the company submitting the proposal where requested.

<b>Sealed Proposal. DO NOT OPEN</b>	
<b>RFP Number</b>	23-573
<b>RFP Title</b>	23-573, Professional Engineering Services for Lake Deeson & Bear Branch
<b>Due Date/Time:</b>	October 18, 2023, prior to 2:00 pm
<b>Submitted by:</b>	
<b>Deliver To:</b>	Polk County Procurement Division 330 West Church Street, Room 150, Bartow, Florida 33830

Proposals may be mailed, express mailed or hand delivered. It is the Proposers responsibility to ensure their package is delivered to the Procurement Division prior to 2:00 p.m. on the Receiving date and time referenced above. Proposals delivered at 2:00 p.m. or later will not be accepted.

***Electronic Proposals Submittal:***

All prospective Proposers that are interested in submitting their proposals electronically can do so via the County's secure electronic submittal website, Kiteworks. Proposers must email [daniellerose@polk-county.net](mailto:daniellerose@polk-county.net) at least 48 hours prior to opening to receive a link to upload their submittal. Please only upload your documents as a PDF or Excel file for the Cost Tab, if applicable. Please use the name convention of your files as follow:

“RFP 23-573 Tab 1”

“RFP 23-573 Tab 2”

“RFP 23-573 Tab 3”

“RFP 23-573 Tab 4”

“RFP 23-573, Tab 5”

“RFP 23-573, Tab 6”

“RFP 23-573, Tab 7”

For more instructions, a video tutorial has been produced to further explain the electronic solicitation submittal process. It can be found by clicking here for RFP Submittals: [https://youtu.be/vkn\\_7AHgioE](https://youtu.be/vkn_7AHgioE). If you need assistance accessing this website due to ADA or any other reason, please email Danielle Rose at [daniellerose@polk-county.net](mailto:daniellerose@polk-county.net).

Procurement recommends that Proposers submitting electronically double check the documents submitted into Kiteworks to ensure all requested tab information has been uploaded. Failure to upload the requested tab information may result in the proposal being deemed nonresponsive.

**POLK COUNTY**  
**Procurement Division**  
**Fran McAskill**  
**Procurement Director**  
**REQUEST FOR PROPOSAL 23-573**  
**Professional Engineering Services for Lake Deeson & Bear Branch**

Sealed proposals will be received in the Procurement Division, Wednesday, **October 18, 2023**, prior to **2:00 p.m.**

Attached are important instructions and specifications regarding responses to this Request for Proposal (the "RFP"). The failure of a responding proposer (a "Proposer") to follow these instructions could result in Proposer disqualification from consideration for a contract to be awarded pursuant to this RFP.

This document is issued by Polk County (the "County") which is the sole distributor of this RFP and all addenda and changes to the RFP documents. The County shall record its responses to inquiries and provide any supplemental instructions or additional documents pertaining to this RFP in the form of written addenda to the RFP. The County shall post all such addenda, together with any other information pertaining to this RFP, on the County's website at <http://www.polk-county.net/bocccsite/doing-business/bids/>. It is the sole responsibility of each Proposer to review the website prior to submitting a responsive proposal (a "Proposal") to this RFP to ensure that that the Proposer has obtained all available instructions, addenda, changes, supporting documents, and any other information pertaining to this RFP.

The County is not responsible for any solicitations issued through subscriber, publications, or other sources not connected with the County and the Proposer should not rely on such sources for information regarding the RFP solicitation.

**Questions regarding this RFP must be in writing and must be sent to Danielle Rose, via email at [daniellerose@polk-county.net](mailto:daniellerose@polk-county.net) or via fax at (863) 534-6789. All questions must be received by October 10, 2023; 4:00 p.m.**

**Proposers and any prospective Proposers shall not contact, communicate with or discuss any matter relating in any way to this RFP with any member of the Polk County Board of County Commissioners or any employee of Polk County other than the County Procurement Director or the individual designated above. This prohibition begins with the issuance of the Request for Proposal and ends upon execution of a contract. Any such communication initiated by a Proposer or prospective proposer shall be grounds for disqualifying the offender from consideration for a contract to be awarded pursuant to this RFP and for contracts to be awarded pursuant to RFPs or Requests for Bid that the County may issue in the future.**

A Proposer's responsive Proposal to this RFP may be mailed, express mailed, or hand delivered to:

**Polk County Procurement Division**  
**330 West Church Street, Room 150**  
**Bartow, Florida 33830**  
**(863)534-6757**

## **INTRODUCTION**

Polk County, a political subdivision of the State of Florida seeks professional engineering services to assist with projects located at Lake Deeson and Bear Branch in the County's work program. The County plans to receive funds from the Florida Department of Environmental Protection (FDEP) innovative technology grant to support through completion; the planning, design, construction, operation, monitoring and maintenance of said Projects further defined in the Scope of Services below (each a "Project" and collectively, the "Projects").

Polk County's Selection Process for consultants' services is in accordance with Section 287.055, Florida Statutes, the Consultants' Competitive Negotiations Act ("CCNA"). The Professional Services Selection Committee will review the qualifications of all submitting consultants.

It is the intent of the County to select and negotiate Agreements with one (1) or more consultant(s). There are 2 projects under this RFP. The County intends to have a separate agreement for each project. The County will negotiate a fee schedule and/or overall lump sum price as part of "Selection Process", Elevation Level 4, Contract Negotiations.

Services under this contract will be in compliance with Section 287.055 of the Florida Statutes referred to as the "Consultants' Competitive Negotiation Act" (CCNA). Polk County's Procurement Procedure's Manual outlines the Procedures for Contracting for Professional Services Covered by CCNA. These procedures outline the process used for the selection of a consulting firm awarded through this RFP process.

In accordance with Section 287.055(10), Florida Statutes, or any applicable amending or replacement statute, this provision of the RFP shall serve as the County's public notice that any plans, drawings or designs developed by the successful Proposer(s) on behalf of the County pursuant to this RFP or any agreement, authorization, purchase order or other contract resulting therefrom, are subject to be reused by the County at some future time in accordance with the aforementioned statute.

These services are wholly funded by Florida Department of Environmental Protection (FDEP) innovative technology grant. All requirements of the award are applicable to the Successful Proposer, sub-consultants, and any material suppliers.

All services must be performed in accordance with applicable Federal, State and Local regulations.

## SCOPE OF SERVICES

The scope of work is expected to include, but may not be limited to planning, design, environmental services, environmental permitting, right-of-way, construction management, sediment inactivation with novel chemicals, application and construction inspection, stormwater discharge systems operations, hazardous material operations, pollutant removal analysis, design and permitting of cost-efficient solutions, geographic information system (GIS) mapping and analysis, data analysis, and scientific investigations.

The project may include stormwater management, design of water quality treatment structures, whole lake chemical treatments, automatized injection systems, water quality sample collection and evaluations, use of highly technical water quality monitoring equipment, watershed evaluations, recommendation and construction of water quality improvement solutions.

The following is a list of typical services that may be requested under this agreement. The list is not intended to be all-inclusive:

1. Design, preparation, implementation, and evaluation of water quality improvement projects. Examples of typical services include analysis, design and permitting of water quality improvements, surveying and mapping, chemical applications and analysis, environmental investigations and analysis, and cost estimates.
2. Conduct and/or assist with environmental permitting through local, state, and federal agencies.
3. Develop nutrient budgets, evaluations, and reductions for lakes and streams.
4. Provide design of water quality improvement projects.
5. Sample collection and preparation for laboratory analysis.
6. Provide engineering for surface water restoration projects.
7. Assist the county in activities relating to the Total Maximum Daily Load (TMDL) and alternative restoration plans (4e) program.
8. Conduct or provide oversight for sediment physical and chemical analyses and assessment.
9. Assist the County with implementing and preparing documents and reports as needed for compliance with grant funds.

The Consultant shall function as an extension of the County's resources by providing qualified technical and professional personnel to perform duties and responsibilities assigned under the terms of the agreement(s) according to County Standards and Procedures.

The County will enter into project specific agreements with one or more consultants. There is no guarantee that any or all of the services described in this RFP will be assigned during the term of the agreement. Further, the Consultant is providing these services on a nonexclusive basis. The County, at its option, may elect to have any of the services set forth herein performed by other consultants or County staff.

The County will identify which consultant(s) will be recommended to enter into project specific agreements as part of Elevation Level 3, Interviews.

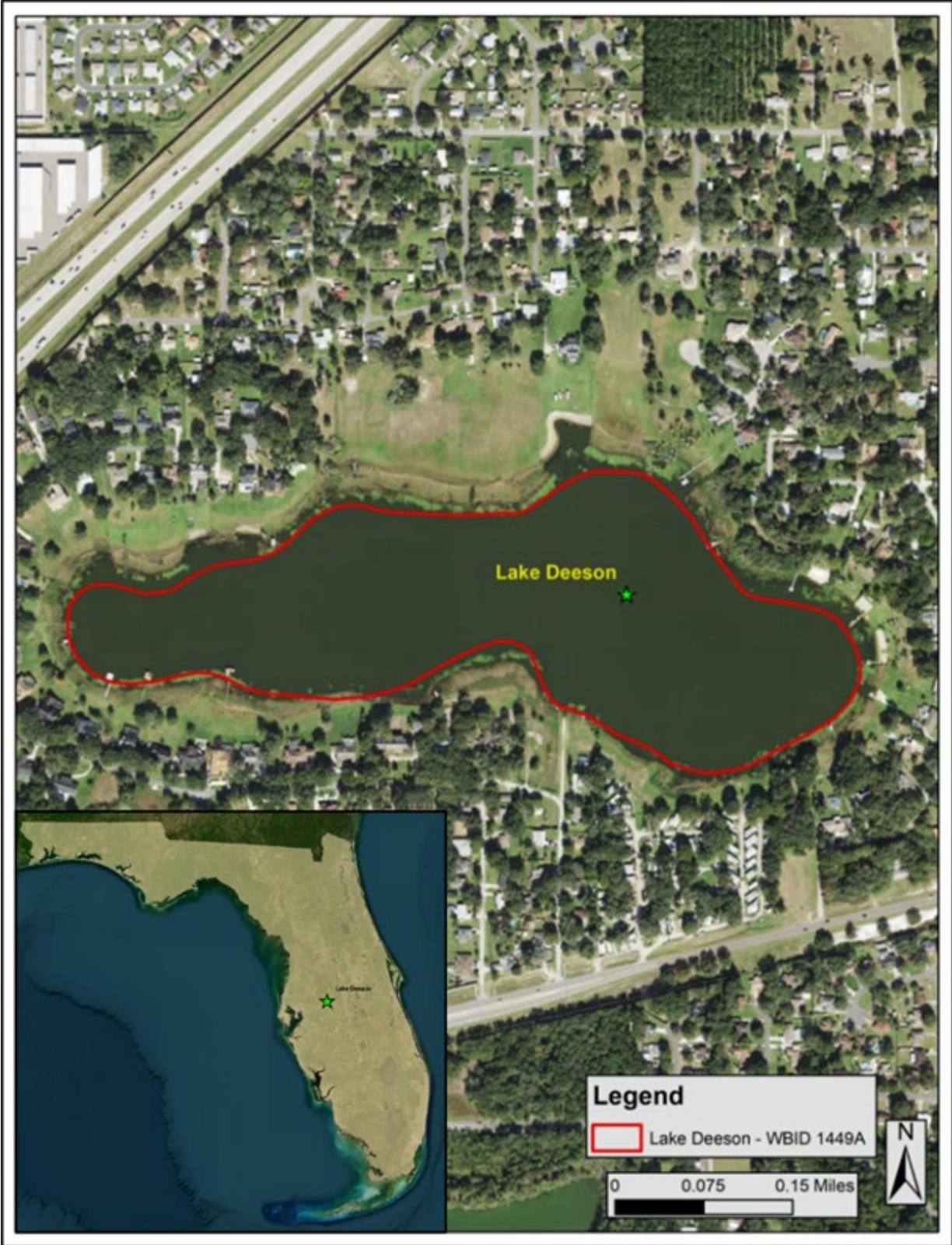
The projects that will be done under the resulting Agreements are listed below. The following projects are proposed for design, implementation, and evaluation:

### **1. Lake Deeson**

The Alternative Restoration Plan for Lake Deeson primary focus is sediment treatment. This is due to the fact that studies found internal nutrient loading to be the main cause of water quality impairment. This project intends to apply ~125,000 pounds of EutroSORB G to mitigate an estimated 2,500 lbs of phosphorus in the top 4-cm of sediment. EutroSORB G is first mixed with water and applied as a slurry evenly over the surface of the lake. Once applied, the lanthanum ions sorbed to the clay matrix react preferentially with free phosphate compounds in water (removing soluble reactive phosphorus (SRP) and rapidly forms a highly stable insoluble mineral. The resulting mineral complex becomes integrated as an inert component into the natural sediments of the waterbody and is not bioavailable. Due to the specificity of EutroSORB G to phosphate it will continually bind new incoming phosphorus from internal and external sources.

The Lake Deeson monitoring plan is essential to track and quantify improvements made in water quality. Water quality samples will be collected pre-treatment, two weeks post-treatment, and then three times/month for twelve months and analyzed for total phosphorus (TP), SRP, dissolved oxygen (DO), and temperature. In addition to the water quality monitoring program post-treatment sediment core samples will be collected quarterly from 4 sites and analyzed for % solids in addition to the following phosphorus fractions as mg P/kg: labile, reductant-soluble, metal-oxide, organic, and apatite/residual.

**Figure 1.** Lake Deeson is a 55-acre lake located in Polk County north of downtown of Lakeland. Project Location: Latitude 28.112671, Longitude -81.932074.



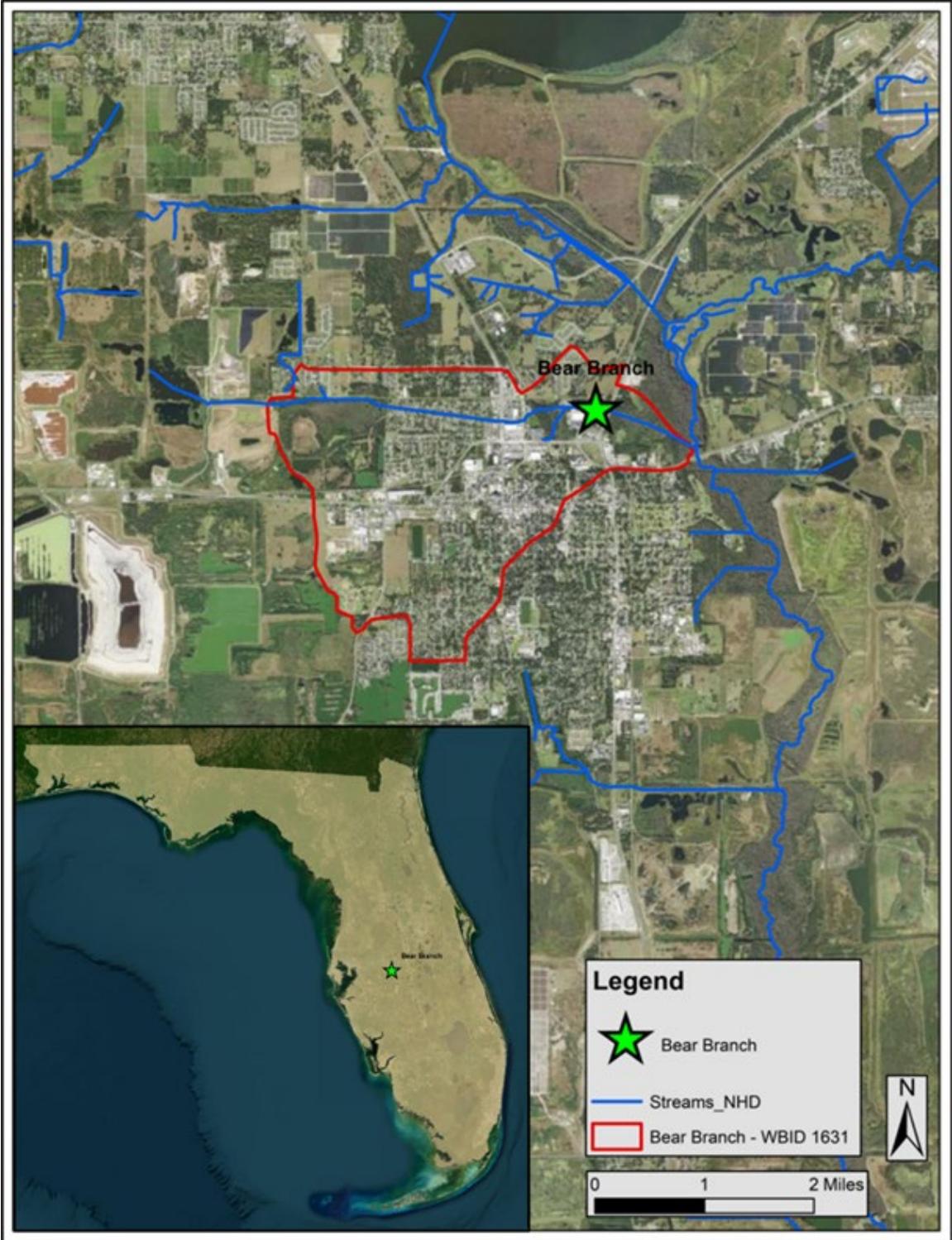
## **2. Bear Branch**

Streams, as low-lying points in the landscape, are strongly influenced by stormwater discharge, pollutant loading, and increased temperatures all of which characterize urbanization. To be effective, urban stream restoration efforts must be integrated within broader best management practices for meaningful long-lasting results. Bear Branch is an urban stream located in Polk County approximately 1 mile upstream of the Peace River that is not meeting FDEP NNC. This project provides a novel approach using proven, integrated technologies to manage phosphorus that can be widely applied to remove phosphorus in streams, stormwater culverts, agricultural ditches, canals, and lakes. Two integrated and scale-able technologies will be utilized during this demonstration project:

- 1) EutroSORB® WC is a liquid mineral-based phosphorus binding agent proven to rapidly bind and strip soluble reactive phosphorus (SRP) from the water column. The phosphorus becomes tightly bound and forms a stable and inert insoluble compound. Reduction of phosphate levels moving downstream will enhance water quality, reduce the recovery potential of harmful algal blooms (HABs), and provide conditions more favorable to beneficial phytoplankton.
- 2) Automated injection systems are designed to provide accurate, variable-rate application of liquid technologies to aquatic environments.

Treatment performance will be evaluated by comparing pre-treatment phosphorus monitoring (i.e., baseline data) to phosphorus levels obtained during and after treatments. The amount of pre-treatment phosphorus in the Bear Branch water as well as flow data will allow for an accurate estimation of the quantity of SRP. The amount of pre-treatment phosphorus in Bear Branch as well as flow data will allow for an accurate determination of the quantity of SRP and pounds of phosphorus removed during the demonstration project.

**Figure 2.** Bear Branch is a stormwater conveyance system located in Polk County in the City of Bartow. Project Location: Latitude 27.542306, Longitude -81.502775.



## **AGREEMENT**

The term of the resulting agreement(s) will be negotiated during Elevation Level 4, Contract Negotiations.

## **EVALUATION CRITERIA**

Proposals should not contain information in excess of that requested, must be concise, and must specifically address the issues of this RFP. Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this RFP are not desired and may be construed as an indication of the Proposer's lack of cost consciousness. Elaborate artwork, expensive visual aids, and other presentation aids are neither necessary nor desired unless specifically requested. The Proposal responses shall be contained within a three-ring binder (original and each copy in separate binders). For the purposes of this RFP, one page equals a single sided page. It is requested that the responses be in the same order as the selection and evaluation procedures. The submittals should include the following:

### **TAB 1 – EXECUTIVE SUMMARY**

(Items a-c: Maximum of two (2) pages)

- a) Name, company name, address, telephone number, and email address.
- b) State the number of years in business, as the same company/consultant.
- c) State the number of full-time employees.
- d) Provide documentation showing proper incorporation by the Secretary of State.
- e) Provide a copy of the consultant's applicable certification(s) from the State of Florida allowing them to provide the services as outlined in the Scope of Service as well as compliance with F.S. 287.055

### **TAB 2 – APPROACH TO PROJECT (35 POINTS)**

(Maximum of four (4) pages)

- Provide a short narrative project approach outlining how you propose to respond to and manage this project.
- Please describe the specific abilities of the consultant/team in regard to this approach. Include any innovative approaches to providing the services, and include any additional information not directly cited in the scope of services.
- Briefly describe consultant's quality assurance/quality control program.
- Please include a project schedule.

### **TAB 3 – EXPERIENCE, EXPERTISE, PERSONNEL & TECHNICAL RESOURCES (40 POINTS)**

- Provide a minimum of two (2) and a maximum of five (5) recent projects performed within the past ten (10) years as the prime consulting firm performing the engineering services for similar size and scope projects. At least one (1) of the projects should demonstrate how your consulting firm evaluated the application of phosphate binding products on lake's and/or stream's water quality and one (1) project where your consulting firm utilized automated injection systems for phosphorus mitigation in surface waters. (Limit response to one (1) page per project)

- For each project please provide:
  - a. Name and location of the project;
  - b. Size and cost of the project;
  - c. Project representative name, address, phone number, and email address;
  - d. Date project was completed or is anticipated to be completed; compare to the original date.
  - e. The nature of the consultant's responsibility on the project;
  - f. Identify the key staff and their role in each project;
  - g. Identify working relationship of consultants or joint venture on project, if applicable;
  - h. Provide the original budget and the final budget of the project. Explain the reason(s) for differences, such as owner requested change, consultant claim, and insufficient plans and specifications.
  - i. List of any time extensions created by item h above.
- Provide documentation of your knowledge of implementing EutroSORB products for whole-lake treatments.
- Provide an organizational chart of the team highlighting the key individuals who will work on this contract as identified above.
- The key staff presented in the consultant's response shall be the staff utilized on this contract. Please provide the resumes of the key staff including, but not limited to, the items in the list below (One (1) page maximum per resume):
  - a) Name and current position held by the person
  - b) Name, title and project assignment
  - c) Experience:
    - 1) Types of projects.
    - 2) Size of projects (dollar value of project).
    - 3) What were their specific project involvements?
- Demonstrate each key staff's availability and office and home location to respond to the needs of the project (Two (2) pages maximum for all key staff member)
- Identify sub consultants to be used, if any. For each sub consultant identified please provide
  - Their locations that can be utilized to expedite a deliverable if required.
  - A brief description of their experience outlining their qualifications to perform the intended services.
  - A brief resume for each key personnel that will be assigned to perform the intended services.

**TAB 4 – INTERACTION WITH COUNTY AND REGULATORY AGENCY STAFF (5 POINTS)**

- Provide documentation supporting the specialized qualifications of the proposed staff in terms of meeting this scope of service. Qualifications should highlight experience with regulatory agencies, identifying specific agencies and the items being addressed, including construction permitting, stormwater management permitting, consultation, governing regulations, and other related activities. Describe the firm's ability to work with the County's Parks and Natural Resources Division, Procurement

Division, Florida Department of Environmental Protection, and County Attorney's Office staff in order to successfully fulfill the scope of service. Demonstrate the firm's knowledge of permitting process, as well as local regulatory agencies, including, but not limited to SWFWMD and FDEP. (Limit response to one (1) page)

**TAB 5 – IS THE FIRM A “CERTIFIED WOMAN OR MINORITY BUSINESS ENTERPRISE” (5 POINTS)**

- Polk County Board of County Commissioners has a long-standing commitment to encouraging the utilization of Women and Minority Businesses that do business with the County as vendors. To that end we encourage all of our prime and professional services vendors to utilize W/MBE vendors where at all possible, irrespective of a company's certification status. Please explain how the submitting firm will encourage minority participation in the project. (Limit response to one page)
- There will be a maximum of five (5) points allocated for this tab. If the Proposer is a Woman or Minority owned business then five (5) points will be allocated. If the Proposer is not a Woman or Minority owned business but is utilizing one or more sub-consultants that are a Women or Minority owned business to assist in performing the scope of work, then the Proposal will be allocated one (1) point for each sub-consultant which meets the County's certification criteria of Women or Minority owned, up to a maximum of five (5) points. The Woman or Minority owned business sub-consultant(s) must have been identified under Tab 3, Experience, Expertise, Personnel and Technical Resources in order to qualify for point allocation.
- Proposers or sub-consultants will be allocated points if they are a certified W/MBE as evidenced by providing the documentation described below.
- If the Proposer or sub-consultant has a certified W/MBE status, provide documentation of the firms' certified W/MBE status as defined by the Florida Small and Minority Business Act and as defined in Polk County's Purchasing Procedures. Polk County's Purchasing Procedures recognize the following to meet the requirement of a certified W/MBE status:
  - Valid W/MBE Certification from one of the following:
    - Florida Minority Supplier Development Council
    - Women Business Enterprise National Council
    - The State of Florida Office of Supplier Diversity
    - Florida Department of Transportation
    - U. S. Small Business Administration
    - Federal Aviation Authority
    - Other Florida governmental agencies

Certifications from other governmental agencies will be considered on a case-by-case basis.

- In the event a Proposer lists one or more sub-consultants in Tab 5 which is a Women or Minority owned business and receives point(s) as a result, and after the Proposer is awarded the project, if successful, it is determined that the listed sub-consultant does not assist in the performance of the scope of work (and is not replaced with an alternative sub-consultant which is a Women or Minority owned business), then the Proposer acknowledges and agrees that it may be suspended or debarred by the Procurement Director for failure to comply with the conditions, specifications or terms of a proposal or contract with the County or for committing a fraud or misrepresentation in connection

with a proposal or contract with the County, in accordance with the Polk County Purchasing Ordinance and Procedures Manual.

**TAB 6 – TIMELY COMPLETION OF PROJECTS (5 POINTS)**

- Describe the firms’ current and future projected workload. Describe specifically the firms’ daily ability to handle each aspect of the scope of services described herein. (Limit response to two (2) pages maximum)

**TAB 7 – SURVEYS OF PAST PERFORMANCE (10 POINTS)**

- Provide reference surveys from past clients for all projects identified under Tab 3.
- Completed surveys. (See Exhibit 1) Procurement will take the average of all three surveys and score as follows:
  - Average Score between 9-10                      10 Points
  - Average Score between 7-8                      8 Points
  - Average Score between 5-6                      6 Points
  - Average Score between 3-4                      4 Points
  - Average Score between 1-2                      2 Points
  - Average Score of 0                                0 Points

**BID OPENING**

Proposers attend the Bid Opening in person or via conference call by dialing (646) 558-8656 and enter Meeting ID: 327 647 2818. A listing of all proposers will be posted to Procurement’s website as soon as possible after bid opening.

**Selection Process**

Proposals will be evaluated in accordance with this section and all applicable County procurement policies and procedures.

The County shall appoint a selection committee (the “Selection Committee”) that will be responsible for evaluating and scoring/ranking the Proposals in accordance with this Section.

The County will use a competitive selection process based on the Elevation Levels described in this Section. At Elevation Levels 2 and 3, the Selection Committee will score and/or rank the Proposals as applicable.

Selection of a final Proposal will be based upon the following steps and factors:

**Elevation Level 1 (Procurement Requirements Assessment):**

- The County Procurement Division shall review all Proposals for conformance with RFP guidelines and detailed submittal requirements. At the County’s discretion, non-conforming Proposals may be eliminated from further consideration and conforming Proposals shall be elevated to Elevation Level 2. Procurement will distribute Proposals and evaluation criteria to the Selection Committee.
- Procurement will also ensure all consultants meet the requirement of certification as outlined in Florida Statute 287.055(3)(c).
- The Selection Committee may convene to review questions that arise during individual member review of submitted Proposals before Elevation Level 2 to allow

for questions, clarifications, explanations, or other discussion to be held before the review of Proposals is completed.

### **Elevation Level 2 (Scoring)**

- Procurement shall score each Proposal on the following evaluation criteria:
  - Is the consultant a certified W/MBE (Tab 5) 5 points
  - Surveys of Past Performance (Tab 7) 10 points
  - Subtotal Points 15 points

by the process stated under each corresponding Tab description as set forth on Pages 14-15.

1) Each Selection Committee member shall score each Proposal on the following evaluation criteria:

- Approach to Project (Tab 2) 35 Points
- Experience, Expertise, (Tab 3) 40 Points  
Personnel, and Technical Resources
- Interaction w/ County & Regulatory (Tab 4) 5 points  
Agencies
- Timely Completion of Projects(Tab 6) 5 points
- Subtotal Points 85 points

by the following process:

1) Each Selection Committee member shall determine which of the following descriptions applies to each of the foregoing evaluation criteria:

- EXCELLENT (1.0): Of the highest or finest quality; exceptional; superior; superb; exquisite; peerless.

The Proposer provided information for a given criteria that satisfied the requirements and described specifically how and what will be accomplished in such a manner that exhibited an exceptional and superior degree of understanding, skill, and competency, both qualitatively and quantitatively. The facts included in the narrative (including all supporting documentation, diagrams, drawings, charts, and schedules, etc.) demonstrate the Proposer's ability to perform and deliver far beyond expectation.

- VERY GOOD (0.8): To a high degree; better than or above competent and/or skillful. The Proposer provided information for a given criteria that satisfied the requirements and described specifically how and what will be accomplished in such a manner that exhibited a very high degree of understanding, skill, and competency, both qualitatively and quantitatively. The facts included in the narrative (including all supporting documentation, diagrams, drawings, charts, and schedules, etc.) demonstrate the Proposer's ability to perform and deliver beyond expectation.

- GOOD (0.6): Having positive or desirable qualities; competent; skilled; above average.

The Proposer provided information for a given criteria that satisfied the requirements and described specifically how and what will be accomplished in such a manner that exhibited a skillful and above-average degree of understanding, skill, and competency, both qualitatively and quantitatively. The facts included in the narrative (including all supporting documentation, diagrams, drawings, charts, and schedules, etc.) demonstrate the Proposer's ability to perform and deliver at the expected level.

- FAIR (0.4): Average; moderate; mediocre; adequate; sufficient; satisfactory; standard.  
The Proposer provided information for a given criteria that satisfied the requirements and described sufficiently how and what will be accomplished in a manner that exhibited an adequate and average degree of understanding, skill, and competency, both qualitatively and quantitatively. The facts included in the narrative (including all supporting documentation, diagrams, drawings, charts, and schedules, etc.) demonstrate the Proposer’s ability to perform and deliver at a level slightly below expectation.
- POOR (0.2): Inadequate; lacking; inferior in quality; of little or less merit; substandard; marginal.  
The Proposer provided information for a given criteria that did not satisfy the requirements and described in an inadequate manner how and what will be accomplished. The information provided simply reiterated a requirement, contained inaccurate statements or references, lacked adequate information, or was of inferior quality. The facts included in the narrative (including all supporting documentation, diagrams, drawings, charts, and schedules, etc.) demonstrate the Proposer’s ability to perform and deliver at a substandard and inferior level.
- UNACCEPTABLE (0.0):  
The Proposer failed to provide any information for a given criteria, provided information that could not be understood, or did not provide the information for a given category as requested.

After a Selection Committee member has determined the description applicable for each evaluation criterion, the total points available for such criterion shall be multiplied by the factor associated with the applicable description to produce the number of points allocated for that evaluation criterion. For example, a Selection Committee member classifies the “Experience and Expertise” criterion (which shall be worth 25 points for the purpose of this example) as “Very Good” (which is a description factor multiplier of 0.8). The points that Selection Committee member allocated for that evaluation criterion would be 20, calculated as follows: 25 available points x 0.8 applicable description factor multiplier = 20 points.

A Selection Committee member’s total score for each Proposal shall equal the sum of the total points allocated for each evaluation criteria.

When all Selection Committee members have completed their Proposal evaluations, the individual Selection Committee member’s total scores for each Proposal will be added together to produce a final score for each Proposal.

Procurement will confirm the calculations for the final score for each Proposal. Then, Procurement shall publish a rank-ordered listing of the Proposals to the Selection Committee with the Proposal receiving the highest point as the highest-ranked Proposal.

In accordance with Section 287.055(4)(a), Florida Statutes, if there are three (3) or more Proposers in Elevation Level 2, the Selection Committee will elevate no fewer than the three highest scored of such Proposers to Elevation Level 3 for interviews. If there are only two Proposers in Elevation Level 2, the Selection Committee shall elevate those two Proposers

to Elevation Level 3 for interviews. If there is only one Proposer in Elevation Level 2, then the Selection Committee may collectively decide if they would like to elevate the Proposer to Elevation Level 3 for interviews or if they would like to recommend the Board authorize staff to enter into Contract Negotiations with the Proposer. In the latter case, after Board approval to authorize staff to negotiate a contract, the Proposer will then be elevated to Elevation Level 4 for contract negotiations.

### **Elevation Level 3 (Proposer Interviews)**

The Selection Committee may be required to conduct interviews of the Proposers that it has elevated from Elevation Level 2 to Elevation Level 3.

During an interview, elevated Proposers may be requested to make a presentation focusing on their qualifications, approach to the project and the ability to furnish the required services. The Selection Committee members will have an opportunity to inquire about any aspect of the RFP and the Proposer's Proposal. After all elevated Proposer interviews, the Selection Committee will evaluate both of the Projects identified in the Scope of Services, above, and rank each elevated Proposer for each of the 2 total Projects. Starting with Project #1, each Selection Committee member will individually rank the Proposers in numerical order beginning at number 1 for the Proposer deemed to be the most highly qualified to perform the required services for that specific project. In accordance with Section 287.055(4)(b), Florida Statutes, in determining whether a Proposer is qualified to perform the individual project services, each Selection Committee member shall consider such factors as: Ability of Personnel

- Past performance
- Willingness to meet time and budget requirements
- Recent, current, and projected workloads

Procurement shall receive and compile each Selection Committee member's ranking of each elevated Proposer for Project #1, and then publish rank-ordered listing of Proposers for Project #1 to the Selection Committee, based on the combined average rankings given each Proposer for Project #1. Procurement will then compile each Selection Committee member's ranking of each elevated Proposer for Project#2, and then publish rank-ordered listing of Proposers fir Project#2 to the Selection Committee, based on the combined average rankings given each Prosper for Project#2.

Once both Projects have been evaluated and the Proposers ranked for each Project, the Selection Committee members will then collectively decide if they would like to recommend the Board authorize staff to enter into Contract Negotiations with each of the Proposers to negotiate an agreement for each Project, starting with the highest-ranked Proposer for each Project. After the Board grants approval to authorize staff to negotiate individual agreement(s), said Proposer(s) will then be elevated to Elevation Level 4 for contract negotiations.

In the event of a tie, bids may be awarded to one of the proposers based on any of the following criteria listed below, or as otherwise directed by the Procurement Director to comply with all of the provisions of the procurement ordinance.

- Availability or completion period;
- Service availability;
- Previous Consultant record by the Consultants on similar projects or requirements.

**Elevation Level 4 (Contract Negotiations)**

If a Proposer is elevated to this level, the associated Division, Procurement and the County Attorney’s Office, with the assistance of the elevated Proposer shall negotiate an Agreement in accordance with Section 287.055(5), Florida Statutes.

If after negotiating for a reasonable time period the parties cannot agree on a contract, the County shall, in its sole discretion, terminate further contract negotiations with that Proposer. Procurement shall notify the Selection Committee that contract negotiations with the elevated Proposer have terminated. The Selection Committee shall then determine whether to recommend to the Board to approve contract negotiations with the next-highest-ranked Proposer, and so on. If the Selection Committee decides not to recommend contract negotiations with the next-highest-ranked Proposer, or if the County determines there is no other Proposer with whom the County can successfully negotiate a contract, then the RFP Selection Process shall terminate.

After contract negotiations with a Proposer are successfully completed pursuant to Elevation Level 4, the Selection Committee shall recommend to the Board of County Commissions that it selects such Proposer to provide the services as outlined in the Agreement. The Board of County Commissioners shall make the final decision whether to enter into an Agreement with a Proposer.

**GENERAL CONDITIONS**

**CONTACT**

After the issuance of any Request for Proposal, prospective proposers shall not contact, communicate with or discuss any matter relating in any way to the Request for Proposal with the Board of County Commissioners, and any employee of Polk County, other than the Procurement Director or as directed in the cover page of the Request for Proposal. This prohibition begins with the issuance of any Request for Proposal and ends upon completion execution of a contract. Such communications initiated by a proposer shall be grounds for disqualifying the offending proposer from consideration for award of the proposal and/or any future proposal.

**INSURANCE REQUIREMENTS**

The selected consultant, if any, shall maintain, at all times, the following minimum levels of insurance and; shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverages and amounts of coverage not less than those set forth below. Provide to the County original Certificates of Insurance satisfactory to the County to evidence such coverage before any work commences. Polk County, a political subdivision of the State of Florida, shall be an additional named insured on all policies related to the project; excluding workers’ compensation and professional liability. The Workers’ Compensation and General Liability policies shall contain a

waiver of subrogation in favor of Polk County. All insurance coverage shall be written with a company having an A.M. Best Rating of at least the “A” category and size category of VIII. The consultant’s self-insured retention or deductible per line of coverage shall not exceed \$25,000 without the permission of the County. In the event of any failure by the consultant to comply with the provisions; the County may, at its option, on notice to the consultant suspend the project for cause until there is full compliance. Alternatively, the County may purchase such insurance at the consultant’s expense, provided that the County shall have no obligation to do so and if the County shall do so, the consultant shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

Worker’s Compensation and Employer’s Liability Insurance providing statutory benefits, including those that may be required by any applicable federal statute:

Admitted in Florida	Yes
Employer’s Liability	\$100,000
All States Endorsement	Statutory
Voluntary Compensation	Statutory

Commercial General Liability Insurance. \$1,000,000 combined single limit of liability for bodily injuries, death, and property damage, and personal injury resulting from any one occurrence, including the following coverages:

Premises and Operations and Products/Completed Operations;

Broad Form Commercial General Liability Endorsement to include blanket contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Consultant); Personal Injury (with employment and contractual exclusions deleted) and Broad Form Property Damage coverages;

Independent Consultants; Policy must include Separation of Insureds Clause.

Comprehensive Automobile Liability Insurance. \$1,000,000 combined single limit of liability for bodily injuries, death, and property damage, and personal injury resulting from any one occurrence, including all owned, hired and non-owned vehicles.

Professional Liability Insurance. \$2,000,000 for design errors and omissions, inclusive of defense costs. Selected consultant shall be required to provide continuing Professional Liability Insurance to cover the project for a period of two (2) years after the projects are completed.

**INDEMNIFICATION**

To the maximum extent permitted by law, the Consultant shall indemnify, protect and hold the County, FDEP and its officers, employees and agents, harmless from and against any and all, claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses, and expenses whatsoever (including, without limitation, reasonable attorneys’ fees, costs, and expenses incurred during negotiation, through litigation and all appeals therefrom) including, without limitation, those pertaining to the

death of or injury to any person, or damage to any property, to the extent arising out of or resulting from (i) the failure of Consultant to comply with applicable laws, rules or regulations, (ii) the breach by Consultant of its obligations under this Agreement, (iii) any claim for trademark, patent, or copyright infringement arising out of the scope of Consultant's performance or nonperformance of this Agreement, or (iv) the negligent acts, errors or omissions, or intentional or willful misconduct, of Consultant or any persons or entities employed or utilized by Consultant in the performance of this Agreement. The obligations imposed by this Section shall survive the expiration or earlier termination of the Agreement.

#### **PUBLIC ENTITY CRIMES STATEMENT**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid or proposal on a contract to provide any goods or services to a public entity, may not submit a bid or proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a consultant, supplier, subconsultant, or contractor under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. By submitting this proposal, the proposer hereby certifies that they have complied with said statute.

#### **EQUAL OPPORTUNITY/AFFIRMATIVE ACTION**

The County is an equal opportunity/affirmative action employer. The County is committed to equal opportunity employment effort; and expects consultants that do business with the County to have a vigorous affirmative action program.

#### **WOMEN/MINORITY BUSINESS ENTERPRISE OUTREACH**

The County hereby notifies all Proposers that W/MBEs are to be afforded a full opportunity to participate in any request for proposal by the County and will not be subject to discrimination on the basis of race, color, sex or national origin.

#### **AFFIRMATION**

By submitting their proposal, the Proposer affirms that the proposal is genuine and not made in the interest of or on behalf of any undisclosed person, consultant or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; the Proposer has not directly or indirectly induced or solicited any other person to submit a false or sham proposal; the Proposer has not solicited or induced any person, consultant or corporation to refrain from submitting a proposal; and the Proposer has not sought by collusion to obtain for him/herself any advantage over other persons or over the County.

## **DEVELOPMENT COSTS**

Neither the County nor its representative(s) shall be liable for any expenses incurred in connection with preparation of a response to the RFP. Proposers should prepare their proposals simply and economically, providing a straightforward and concise description of the proposer's ability to meet the requirements of the RFP.

## **ADDENDA**

The County may record its responses to inquiries and any supplemental instructions in the form of written addenda. The addenda will be posted on the County's website at <http://www.polk-county.net/boccsite/doing-business/bids/>. It is the sole responsibility of the proposers to check the website to ensure that all available information has been received prior to submitting a proposal.

## **CODE OF ETHICS**

If any proposer violates or is a party to a violation of the code of ethics of Polk County or the State of Florida, with respect to this proposal, such proposer may be disqualified from performing the work described in this proposal or from furnishing the goods or services for which the proposal is submitted and shall be further disqualified from bidding on any future proposals for work, goods, or services for the County.

## **DRUG FREE WORKPLACE**

Preference shall be given to businesses with Drug Free Workplace (DFW) programs. Whenever two or more proposals, which are equal with respect to price, quality and service, are received by the County for the procurement of commodities or contractual services, a proposal received from a business that has provided a statement that it is a DFW shall be given preference in the award process.

## **APPLICABLE LAWS AND COURTS**

This RFP and any resulting agreements shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Polk County, Florida or the United States District Court, Middle District of Florida, located in Hillsborough County, Florida. The proposer shall comply with all applicable federal, state and local laws and regulations.

## **CONTRACTUAL MATTERS**

A drafted copy of the Agreement to be entered into with the successful proposer(s) is included with this RFP as Attachment A.

All contracts are subject to final approval of the Polk County Board of County Commissioners. Persons or consultants who incur expenses or change position in anticipation of a contract prior to the Board's approval do so at their own risk.

## **PROPOSAL ACCEPTANCE PERIOD**

A proposal shall be binding upon the offeror and irrevocable by it for one hundred and twenty (120) calendar days following the proposal opening date. Any proposal in which offeror shortens the acceptance period may be rejected.

## **ADDITION/DELETION**

The County reserves the right to add to or delete any item from this proposal or resulting agreements when deemed to be in the best interest of the County.

## **PROPRIETARY INFORMATION**

In accordance with Chapter 119 of the Florida Statutes (Public Records Law), and except as may be provided by other applicable State and Federal Law, all proposers should be aware that Request for Proposals and the responses thereto are in the public domain. However, the proposers are required to identify specifically any information contained in their proposals which they consider confidential and/or proprietary and which they believe to be exempt from disclosure, citing specifically the applicable exempting law. Proposers should provide a redacted copy of proposal with submittal.

All proposals received from proposers in response to this Request for Proposal will become the property of the County and will not be returned to the proposers. In the event of contract award, all documentation produced as part of the contract will become the exclusive property of the County.

## **REVIEW OF PROPOSAL FILES**

In accordance with Chapter 119.071 of the Florida Statutes, the responses received for this Request for Proposal are exempt from review for thirty (30) days after the Bid Opening Date or at Recommendation of Award, whichever event occurs first.

Should the RFP be cancelled and re-solicited for any reason, proposal responses shall remain exempt from disclosure for a period not to exceed twelve (12) months or at Recommendation of Award of the subsequent solicitation.

## **RFP PROTEST**

Any proposer desiring to file a protest, with respect to a recommended award of any RFP, shall do so by filing a written protest. The written protest must be in the possession of the Procurement Division within three (3) working days of the Notice of Recommended Award mailing date. All proposers who submitted a proposal will be sent a Notice of Recommended Award, unless only one proposal was received.

A copy of the protest procedures may be obtained from the Polk County Procurement Division or can be downloaded from the County's website at <http://www.polk-county.net/docs/default-source/procurement/protest-procedures.pdf?sfvrsn=2>.

**FAILURE TO FOLLOW PROTEST PROCEDURE REQUIREMENTS WITHIN THE TIME FRAMES PRESCRIBED HEREIN AS ESTABLISHED BY POLK COUNTY, FLORIDA, SHALL CONSTITUTE A WAIVER OF THE PROPOSER'S RIGHT TO PROTEST AND ANY RESULTING CLAIM.**

## **UNAUTHORIZED ALIEN(S)**

The Consultant agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this solicitation. The County shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the

Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the County. As part of the response to this solicitation, the successful consultant will complete and submit the form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS."

### **EMPLOYMENT ELIGIBILITY VERIFICATION (E-Verify)**

A. Unless otherwise defined herein, terms used in this Section which are defined in Section 448.095, Florida Statutes, as may be amended from time to time, shall have the meaning ascribed in said statute.

B. Pursuant to Section 448.095(5), Florida Statutes, the consultant hereto, and any subconsultant thereof, must register with and use the E-Verify system to verify the work authorization status of all new employees of the consultant or subconsultant. The consultant acknowledges and agrees that (i) the County and the consultant may not enter into this Agreement, and the consultant may not enter into any subcontracts hereunder, unless each party to this Agreement, and each party to any subcontracts hereunder, registers with and uses the E-Verify system; and (ii) use of the U.S. Department of Homeland Security's E-Verify System and compliance with all other terms of this Certification and Section 448.095, Fla. Stat., is an express condition of this Agreement, and the County may treat a failure to comply as a material breach of this Agreement.

C. By entering into this Agreement, the consultant becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subconsultants to provide an affidavit attesting that the subconsultant does not employ, contract with, or subcontract with, an unauthorized alien. The consultant shall maintain a copy of such affidavit for the duration of this Agreement. Failure to comply will lead to termination of this Agreement, or if a subconsultant knowingly violates the statute or Section 448.09(1), Fla. Stat., the subcontract must be terminated immediately. If this Agreement is terminated pursuant to Section 448.095, Fla. Stat., such termination is not a breach of contract and may not be considered as such. Any challenge to termination under this provision must be filed in the Tenth Judicial Circuit Court of Florida no later than 20 calendar days after the date of termination. If this Agreement is terminated for a violation of Section 448.095, Fla. Stat., by the consultant, the consultant may not be awarded a public contract for a period of 1 year after the date of termination. The consultant shall be liable for any additional costs incurred by the County as a result of the termination of this Agreement. Nothing in this Section shall be construed to allow intentional discrimination of any class protected by law.

### **LIMITATIONS**

This request does not commit Polk County to award a contract. Proposers will assume all costs incurred in the preparation of their response to this RFP. The County reserves the right to: 1) accept or reject qualifications and/or proposals in part or in whole; 2) request additional qualification information; 3) limit and determine the actual contract services to be included in a contract; 4) obtain information for use in evaluating submittals from any source and 5) reject all submittals.

### **ATTORNEY'S FEES AND COSTS:**

Each party shall be responsible for its own legal and attorney's fees, costs and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this Agreement, including attorney's fees, costs and expenses incurred for any appellate or bankruptcy proceedings.

### **PUBLIC RECORD LAWS**

(a) The Consultant acknowledges the County's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and comply in the handling of the materials created under this Agreement. The Consultant further acknowledges that the constitutional and statutory provisions control over the terms of this Agreement. In association with its performance pursuant to this Agreement, the Consultant shall not release or otherwise disclose the content of any documents or information that is specifically exempt from disclosure pursuant to all applicable laws.

(b) Without in any manner limiting the generality of the foregoing, to the extent applicable, the Consultant acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

(1) keep and maintain public records required by the County to perform the services required under this Agreement;

(2) upon request from the County's Custodian of Public Records or his/her designee, provide the County 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 Chapter 119, Florida Statutes, 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 term of this Agreement and following completion of this Agreement if the Consultant does not transfer the records to the County; and

(4) upon completion of this Agreement, transfer, at no cost, to the County all public records in possession of the Consultant or keep and maintain public records required by the County to perform the service. If the Consultant transfers all public records to the County upon completion of this Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of this Agreement, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

### **(c) IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING**

**TO THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

**RECORDS MANAGEMENT LIAISON OFFICER  
POLK COUNTY  
330 WEST CHURCH ST  
BARTOW, FL 33830  
TELEPHONE: (863) 534-7527  
EMAIL: RMLO@POLK-COUNTY.NET**

**SCRUTINIZED COMPANIES AND BUSINESS OPERATIONS CERTIFICATION;  
TERMINATION**

A. Certification(s)

(I) By its execution of this Agreement, the Vendor hereby certifies to the County that the Vendor is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, nor is the Vendor engaged in a boycott of Israel, nor was the Vendor on such List or engaged in such a boycott at the time it submitted its bid, proposal, quote, or other form of offer, as applicable, to the County with respect to this Agreement.

(II) Additionally, if the value of the goods or services acquired under this Agreement are greater than or equal to One Million Dollars (\$1,000,000), then the Vendor further certifies to the County as follows:

(a) the Vendor is not on the Scrutinized Companies with Activities in Sudan List, created pursuant to Section 215.473, Florida Statutes; and

(b) the Vendor is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; and

(c) the Vendor is not engaged in business operations (as that term is defined in Florida Statutes, Section 287.135) in Cuba or Syria; and

(d) the Vendor was not on any of the Lists referenced in this subsection A(ii), nor engaged in business operations in Cuba or Syria when it submitted its proposal to the County concerning the subject of this Agreement.

(iii) The Vendor hereby acknowledges that it is fully aware of the penalties that may be imposed upon the Vendor for submitting a false certification to the County regarding the foregoing matters.

B. Termination. In addition to any other termination rights stated herein, the County may immediately terminate this Agreement upon the occurrence of any of the following events:

(i) The Vendor is found to have submitted a false certification to the County with respect to any of the matters set forth in subsection A(i) above, or the

Vendor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

(ii) The Vendor is found to have submitted a false certification to the County with respect to any of the matters set forth in subsection A(ii) above, or the Vendor is found to have been placed on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, and the value of the goods or services acquired under this Agreement are greater than or equal to One Million Dollars (\$1,000,000).

### **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

- a. The consultant and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Consultant shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

### **LOBBYING & INTEGRITY**

The Consultant agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to section 216.347, F.S., except that pursuant to the requirements of section 287.058(6), F.S., during the term of any executed agreement between Consultant and the State, Consultant may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Consultant shall comply with sections 11.062 and 216.347, F.S.

### **AUDITS**

- a. Inspector General. The Consultant understands its duty, pursuant to section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Consultant will comply with this duty

and ensure that its subconsultants issued under this Agreement, if any, impose this requirement, in writing, on its subconsultants, respectively.

- b. Physical Access and Inspection. Florida Department of Environmental Protection (the, "Department") &/or County personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
  - i. Consultant shall provide access to any location or facility on which Consultant is performing work, or storing or staging equipment, materials or documents;
  - ii. Consultant shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
  - iii. Consultant shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, the Department &/or County may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Consultant must provide the additional proof within thirty (30) days of such request.

## **SUBCONTRACTING**

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Consultant.
- b. The Department &/or County may, for cause, require the replacement of any Consultant employee, subconsultant, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department &/or County may, for cause, deny access to Department's secure information or any facility by any Consultant employee, subconsultant, or agent.
- d. The Department's &/or County's actions under paragraphs b. or c. shall not relieve Consultant of its obligation to perform all work in compliance with the Agreement. The Consultant shall be responsible for the payment of all monies due under any subcontract. The Department &/or County shall not be liable to any subconsultant for

any expenses or liabilities incurred under any subcontract and Consultant shall be solely liable to the subconsultant for all expenses and liabilities incurred under any subcontract.

e. The Department &/or County will not deny Consultant's employees, subconsultants, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.

f. The Department &/or County supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. A list of minority-owned consultants that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.

g. The Consultant shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subconsultant at any tier, and if the cause of the default is completely beyond the control of both Consultant and the subconsultant(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for Consultant to meet the required delivery schedule.

#### **GUARANTEE OF PARENT COMPANY**

If Consultant is a subsidiary of another corporation or other business entity, Consultant asserts that its parent company will guarantee all of the obligations of Consultant for purposes of fulfilling the obligations of Agreement. In the event Consultant is sold during the period the Agreement is in effect, Consultant agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Consultant.

#### **SURVIVAL**

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

#### **THIRD PARTIES**

The Department &/or County shall not be deemed to assume any liability for the acts, failures to act or negligence of Consultant, its agents, servants, and employees, nor shall Consultant disclaim its own negligence to Department, County or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department &/or County consents to a subcontract, Consultant will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

## **SEVERABILITY**

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

## **GRANTEE'S EMPLOYEES, SUBCONSULTANTS AND AGENTS**

All Consultant employees, subconsultants, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Consultant shall furnish a copy of technical certification or other proof of qualification. All employees, subconsultants, or agents performing work under Agreement must comply with all security and administrative requirements of Department &/or County and shall comply with all controlling laws and regulations relevant to the services they are providing under Agreement.

## **ASSIGNMENT**

The Consultant shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department &/or County. In the event of any assignment, Consultant remains secondarily liable for performance of the Agreement, unless Department &/or County expressly waives such secondary liability. The Department &/or County may assign the Agreement with prior written notice to Consultant of its intent to do so.

## Proposers Incorporation Information

(Submittal Page)

The following section should be completed by all bidders and submitted with their bid submittal:

Company Name: \_\_\_\_\_

DBA/Fictitious Name (if applicable): \_\_\_\_\_

TIN #: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

County: \_\_\_\_\_

Note: Company name must match legal name assigned to the TIN number. A current W9 should be submitted with your bid submittal.

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Cell Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Type of Organization (select one type)

- Sole Proprietorship
- Partnership
- Non-Profit
- Sub Chapter
- Joint Venture
- Corporation
- LLC
- LLP
- Publicly Traded
- Employee Owned

State of Incorporation: \_\_\_\_\_

The Successful vendor must complete and submit this form prior to award. The Successful vendor must invoice using the company name listed above.

## EXHIBIT 1

### DETAILED INSTRUCTIONS ON HOW TO PREPARE AND SEND PERFORMANCE SURVEYS

The objective of this process is to identify the past performance of the Consultant submitting a proposal package. This is accomplished by sending survey forms to past customers. The customers should return the forms directly to the Consultant. The Consultant is to include all surveys in their proposal package.

#### **Sending the Survey**

The surveys shall be sent to all clients for whom the Consultant has identified under Tab 3. Surveys should correlate to all projects identified under Tab 3.

If more surveys are included, then Procurement will only use those identified under Tab 3.

1. The Consultant shall complete the following information for each customer that a survey will be sent

CLIENT NAME	Name of the company that the work was performed for (i.e. Hillsborough County).
FIRST NAME	First name of the person who will answer customer satisfaction questions.
LAST NAME	Last name of the person who will answer customer satisfaction questions.
PHONE NUMBER	Current phone number for the reference (including area code).
EMAIL ADDRESS	Current email address for the reference.
PROJECT NAME	Name of the project (Engineering Services for Hillsborough County Environmental Lands), Etc.
COST OF SERVICES	Cost of services (200,000)
DATE COMPLETE	Date when the services were completed. (i.e. 5/31/2013)

2. The Consultant is responsible for verifying that their information is accurate prior to submission for references.

3. The survey must contain different services/projects. You cannot have multiple people evaluating the same job. However, one person may evaluate several different jobs.

4. The past projects can be either completed or on-going.

5. The past client/owner must evaluate and complete the survey.

### **Preparing the Surveys**

1. The Consultant is responsible for sending out a performance survey to the clients that have been identified under Tab 3. The survey can be found on the next page.
2. The Consultant should enter the past clients' contact information, and project information on each survey form for each reference. The Consultant should also enter their name as the Consultant being surveyed.
3. The Consultant is responsible for ensuring all references/surveys are included in their submittal under Tab 7.
4. Polk County Procurement may contact the reference for additional information or to clarify survey data. If the reference cannot be contacted, there will be no credit given for that reference.

## Survey Questionnaire – Polk County

### RFP 23-573, Professional Engineering Services for Lake Deeson & Bear Branch

To: \_\_\_\_\_ (Name of Person completing survey)  
 \_\_\_\_\_ (Name of Client Company/Consultant)  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Total Annual Budget of Entity \_\_\_\_\_

Subject: Past Performance Survey of Similar work:

Project name: \_\_\_\_\_

Name of Vendor being surveyed: \_\_\_\_\_

Cost of Services: Original Cost: \_\_\_\_\_ Ending Cost: \_\_\_\_\_

Contract Start Date: \_\_\_\_\_ Contract End Date: \_\_\_\_\_

**Rate each of the criteria on a scale of 1 to 10, with 10 representing that you were very satisfied (and would hire the Consultant /individual again) and 1 representing that you were very unsatisfied (and would never hire the Consultant /individual again). Please rate each of the criteria to the best of your knowledge. If you do not have sufficient knowledge of past performance in a particular area, leave it blank.**

NO	CRITERIA	UNIT	SCORE
1	Ability to manage cost	(1-10)	
2	Ability to maintain project schedule (complete on-time/early)	(1-10)	
3	Quality of workmanship	(1-10)	
4	Professionalism and ability to manage	(1-10)	
5	Close out process	(1-10)	
6	Ability to communicate with Client's staff	(1-10)	
7	Ability to resolve issues promptly	(1-10)	
8	Ability to follow protocol	(1-10)	
9	Ability to maintain proper documentation	(1-10)	
10	Appropriate application of technology	(1-10)	
11	Overall Client satisfaction and comfort level in hiring	(1-10)	
12	Ability to offer solid recommendations	(1-10)	
13	Ability to facilitate consensus and commitment to the plan of action among staff	(1-10)	

Printed Name of Evaluator \_\_\_\_\_

Signature of Evaluator: \_\_\_\_\_

Please fax or email the completed survey to: \_\_\_\_\_

**Affidavit Certification Immigration Laws**

POLK COUNTY WILL NOT INTENTIONALLY AWARD COUNTY CONTRACTS TO ANY CONSULTANT WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 A(E) {SECTION 274A(E) OF THE IMMIGRATION AND NATIONALITY ACT ("INA")}.

POLK COUNTY MAY CONSIDER THE EMPLOYMENT BY ANY CONSULTANT OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(E) OF THE INA. **SUCH VIOLATION OF THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN 274A(E) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY POLK COUNTY.**

BIDDER ATTEST THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

State of: \_\_\_\_\_

County of: \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (*name*) as \_\_\_\_\_ (*title of officer*) of \_\_\_\_\_ (*entity name*), on behalf of the company, who  is personally known to me or  has produced \_\_\_\_\_ as identification.

Notary Public Signature: \_\_\_\_\_

Printed Name of Notary Public: \_\_\_\_\_

Notary Commission Number and Expiration: \_\_\_\_\_

(AFFIX NOTARY SEAL)

**EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY) CERTIFICATION**

(Florida Statutes, Section 448.095)

PROJECT NAME: \_\_\_\_\_

The undersigned, as an authorized officer of the consultant identified below (the “**Consultant**”), having full knowledge of the statements contained herein, hereby certifies to Polk County, a political subdivision of the State of Florida (the “**County**”), by and on behalf of the Consultant in accordance with the requirements of Section 448.095, Florida Statutes, as related to the contract entered into by and between the Consultant and the County on or about the date hereof, whereby the Consultant will provide labor, supplies, or services to the County in exchange for salary, wages, or other remuneration (the “**Contract**”), as follows:

1. Unless otherwise defined herein, terms used in this Certification which are defined in Section 448.095, Florida Statutes, as may be amended from time to time, shall have the meaning ascribed in said statute.

2. Pursuant to Section 448.095(5), Florida Statutes, the Consultant, and any subconsultant under the Contract, must register with and use the E-Verify system to verify the work authorization status of all new employees of the Consultant or subconsultant. The Consultant acknowledges and agrees that (i) the County and the Consultant may not enter into the Contract, and the Consultant may not enter into any subcontracts thereunder, unless each party to the Contract, and each party to any subcontracts thereunder, registers with and uses the E-Verify system; and (ii) use of the U.S. Department of Homeland Security’s E-Verify System and compliance with all other terms of this Certification and Section 448.095, Fla. Stat., is an express condition of the Contract, and the County may treat a failure to comply as a material breach of the Contract.

3. By entering into the Contract, the Consultant becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subconsultants to provide an affidavit attesting that the subconsultant does not employ, contract with, or subcontract with, an unauthorized alien. The Consultant shall maintain a copy of such affidavit for the duration of the Contract. Failure to comply will lead to termination of the Contract, or if a subconsultant knowingly violates the statute or Section 448.09(1), Fla. Stat., the subcontract must be terminated immediately. If the Contract is terminated pursuant to Section 448.095, Fla. Stat., such termination is not a breach of contract and may not be considered as such. Any challenge to termination under this provision must be filed in the Tenth Judicial Circuit Court of Florida no later than 20 calendar days after the date of termination. If the Contract is terminated for a violation of Section 448.095, Fla. Stat., by the Consultant, the Consultant may not be awarded a public contract for a period of 1 year after the date of termination. The Consultant shall be liable for any additional costs incurred by the County as a result of the termination of the Contract. Nothing in this Certification shall be construed to allow intentional discrimination of any class protected by law.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**ATTEST:**

**CONSULTANT:**

By: \_\_\_\_\_  
PRINTED NAME: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
PRINTED NAME: \_\_\_\_\_  
Its: \_\_\_\_\_

October 12, 2023

**POLK COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA**

**ADDENDUM #1**

**RFP 23-573, Professional Engineering Services for Lake Deeson & Bear Branch**

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This addendum is issued to clarify, add to, revise and/or delete items of the RFP Documents for this work. This Addendum is a part of the RFP Documents and acknowledgment of its receipt should be noted on the Addendum.

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Contained within this addendum: Additional Information in reference to Contractual Matters

Attachment "A"- drafted copy of the Professional Services Agreement to be entered into with the successful proposer(s) was inadvertently omitted from the RFP document. Attached to this addendum you will find the omitted document for reference.

Danielle Rose  
Senior Procurement Analyst  
Procurement Division

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**This Addendum sheet should be signed and returned with your submittal. This is the only acknowledgment required.**

---

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

**ATTACHMENT “A” - PROFESSIONAL SERVICE AGREEMENT**

**THIS PROFESSIONAL SERVICE AGREEMENT** (the “Agreement”) is entered into as of the Effective Date (defined in Section 1, below) by and between Polk County (the “County”), a political subdivision of the State of Florida, situated at 330 West Church Street, Bartow, Florida 33830, and Consultant legal name (the “Consultant”) a [state] corporation, headquartered at [consultant address] whose Federal Employer Identification Number is [FEIN#].

**WHEREAS**, the County requires certain professional services in connection with the Professional Engineering Services for Lake Deeson & Bear Branch; and,

**WHEREAS**, the County has solicited for these services via RFP 23-573, an advertised request for proposals (the “RFP”), and has received numerous responsive proposals thereto; and

**WHEREAS**, pursuant to the RFP, the County has selected the Consultant and the Consultant remains agreeable to providing the County the professional services described herein, and the Consultant represents that it is capable and prepared to do so according to the terms and conditions stated herein.

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, the parties hereby agree, as follows:

**1.0 Effective Date; Term**

1.1 This Agreement shall take effect on the date (the “Effective Date”) of its execution by the County and shall continue until the Consultant completes all Services as identified in Section 2, below, unless the Agreement is otherwise sooner terminated as provided herein.

1.2 The Consultant shall complete the Project within \_\_\_\_\_ calendar days or until completion of the construction project, subject to an Event of Force Majeure as defined in Section 30.0, unless otherwise approved by the County in its sole and absolute discretion, commencing upon issuance of the Notice to Proceed.

**2.0 Consultant Services**

2.1 The County does hereby retain the Consultant to furnish those services and to perform those tasks (collectively, the “Services”) further described in (i) the County’s Request for Proposal RFP # 23-573, to include all attachments and addenda, (ii) the Consultant’s responsive proposal thereto, and (iii) the scope of services (collectively, (i) (ii), and (iii) are

“RFP 23-573”), all of which are incorporated into this Agreement by this reference, attached as a composite Exhibit “A” and made a part of this Agreement.

### 3.0 Compensation

#### 3.1 General

3.1.1 In consideration for its providing the Services, the County shall pay the Consultant the not to exceed amount of \$\_\_\_\_\_ stated in Exhibit “A-III” Compensation, which is attached hereto and made a part of this Agreement.

3.1.2 The Consultant shall invoice the County based upon the Consultant’s fees that are stated on the attached Exhibit “B”, "Fee Schedule", which is made a part of this Agreement. The Fee Schedule identifies all Consultant job classifications which will perform billable services pursuant to this Agreement and the fee for each job classification, along with all equipment, materials, and supplies necessary in the performance of the Services. The County shall not be obligated to pay the Consultant (i) for any Services performed by individuals whose job classifications are not listed on the Fee Schedule, and (ii) for the cost of any equipment, material, or supplies not listed on the Fee Schedule that the Consultant may use in performing the Services.

3.1.3 All the Consultant’s invoices for payment must reference this Agreement and must be submitted using a form approved by the County Auditor.

3.1.4 Each invoice shall be due and payable forty-five (45) days after the date the County receives a correct, fully documented, invoice, in form and substance satisfactory to the County with all appropriate cost substantiations attached. All invoices shall be delivered to:

Polk County Parks and Natural Resources Division  
4177 Ben Durrance Rd.  
Drawer PW06  
Bartow, FL 33830

3.1.5 The Consultant will clearly state "Final Invoice" on the Consultant’s final/last billing for the Services rendered to the County. The Consultant’s submission of a Final Invoice is its certification that all Services have been properly performed and all charges and costs have been invoiced to the County. This account will be closed upon the County’s receipt of a Final Invoice. The Consultant hereby waives any charges not properly included on its Final Invoice.

3.1.6 The County's payment of a Final Invoice shall not constitute evidence of the County's acceptance of the Consultant's performance of the Services or its acceptance of any of the Consultant's Project work.

3.1.7 All Consultant invoices shall be accompanied by time and task records for all billable hours appearing on the invoice. After examining an invoice, the County may request that the Consultant submit additional documents to support certain fees or charges. Upon receipt of any such request the Consultant shall provide the requested documents or other required information to the County Auditor's satisfaction.

3.1.8 On each invoice submitted, the Consultant's Project Manager or designated payroll officer is attesting to the correctness and accuracy of all fees, time charges and requested reimbursements for which the Consultant seeks payment.

3.1.9 The County's review, approval, acceptance, or payment for any of the Consultant's Services shall not be construed to: (i) operate as a waiver of any rights the County possesses under this Agreement; or (ii) waive or release any claim or cause of action arising out of the Consultant's performance or nonperformance of this Agreement. The Consultant shall be and will always remain liable to the County in accordance with applicable law for any and all damages to the County caused by the Consultant's negligent or wrongful performance or nonperformance of any of the Services to be furnished under this Agreement.

### 3.2 Reimbursable Expenses

3.2.1 All Consultant requests for payment of expenses eligible for reimbursement under the terms of this Agreement shall be reimbursed per the County's Reimbursable Schedule that is attached hereto as Exhibit "C" and made a part of this Agreement. The Consultant's request for payment shall include copies of paid receipts, invoices or other documentation acceptable to the County Auditor. To qualify for reimbursement, the Consultant's documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Services performed in accordance with this Agreement.

3.2.2 Reimbursable Expenses are the actual, pre-approved, expenses the Consultant incurred directly in connection with the performance of the Services performed in accordance with this Agreement:

Overnight Deliveries  
Reproduction  
Sub-Consultant

3.2.3 Mileage and associated travel costs shall be reimbursed in accordance with F.S. 112.061 and County policy for pre-approved out-of-county travel (excluding travel from home offices located outside of Polk County to the Polk County line).

3.2.4 All assets, i.e. durable goods, purchased as reimbursable expenses become the property of the County upon completion of any Project work for which the asset was utilized. All such assets must be surrendered by delivery to the applicable County Division responsible for the Project immediately upon (i) demand, (ii) termination of the Agreement, or (iii) the conclusion of the applicable Project, whichever occurs first.

3.2.5 Consultant shall maintain a current inventory of all such assets.

#### **4.0 Consultant's Responsibilities**

4.1 The Consultant shall be responsible for the professional quality, accuracy, competence, methodology, and the coordination of all Services performed pursuant to this Agreement.

4.2 The County's review, approval, acceptance, or payment for any of the Consultant's Services shall not be construed to: (i) operate as a waiver of any rights the County possesses under this Agreement; or (ii) waive or release any claim or cause of action arising out of the Consultant's performance or nonperformance of this Agreement. The Consultant shall be and will always remain liable to the County in accordance with applicable law for any and all damages to the County caused by the Consultant's negligent or wrongful performance or nonperformance of any of the Services to be furnished under this Agreement.

#### **5.0 Ownership of Documents**

All analyses, reference data, bills, completed reports, or any other form of written instrument or document created or resulting from the Consultant's performance of the Services pursuant to this Agreement, subject to the cure period provided in Section 26.0, shall become the property of the County after payment is made to the Consultant for such instruments or documents.

#### **6.0 Termination**

6.1 The County may terminate this Agreement, in whole or in part, at any time, either for the County's convenience or because of the failure of the Consultant to fulfill its obligations under this Agreement, subject to the cure period provided in Section 26.0, by

delivering written notice to the Consultant. Upon receipt of such notice, the Consultant shall:

6.1.1 Immediately discontinue all affected Services unless the notice directs otherwise, and

6.1.2 Deliver to the County all data, reports, summaries, and any and all such other information and materials of whatever type or nature as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process.

6.2 Unless in dispute or subject to the County's right of set-off or other remedy, the Consultant shall be paid for Services actually rendered to the date of termination.

6.3 The rights and remedies of the County provided for in this Section 6 are in addition and supplemental to any and all other rights and remedies provided by law or under this Agreement.

#### **7.0 No Contingent Fees**

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or consultant, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from award of or making of the Agreement. For the breach or violation of this provision, the County shall have the right to terminate the Agreement at its sole discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

#### **8.0 Assignment**

The Consultant shall not assign, transfer, or encumber this Agreement, or any interest herein, under any circumstances, without obtaining the prior written consent of the County, which consent may be withheld in the County's exercise of its reasonable discretion.

#### **9.0 Professional Associates and Subconsultants**

If the Consultant requires the assistance of any professional associates or subconsultants in connection with its providing the Services the Consultant must obtain the prior express written approval of the County, which the County may withhold in its discretion, before any such professional associate or subconsultant may perform any work for the County. If after obtaining the County's approval the Consultant utilizes any professional associates or subconsultants in the

delivery of the Services then the Consultant shall remain solely and fully liable to the County for the performance or nonperformance of all such professional associates and subconsultants. The failure of a professional associate or subconsultant to timely or properly perform any of its obligations to the Consultant shall not relieve the Consultant of its obligations to the County under this Agreement.

#### **10.0 Indemnification of County**

Consultant, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to County) protect and hold the County, FDEP and its officers, employees and agents harmless from and against any and all, claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses, and expenses (including, without limitation, attorneys' fees costs and expenses incurred during negotiation, through litigation and all appeals therefrom) whatsoever including, but not limited, to those pertaining to the death of or injury to any person, or damage to any property, arising out of or resulting from (i) the failure of Consultant to comply with applicable laws, rules or regulations, (ii) the breach by Consultant of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of Consultant's performance or nonperformance of this Agreement, or (iv) the negligent acts, errors or omissions, or intentional or willful misconduct, of Consultant, its professional associates, subconsultants, agents, and employees provided, however, that Consultant shall not be obligated to defend or indemnify the County with respect to any such claims or damages arising out of the County's sole negligence.

#### **11.0 Insurance Requirements**

The Consultant shall maintain at all times the following minimum levels of insurance and shall, without in any way altering its liability, obtain, pay for and maintain insurance for the coverage and amounts of coverage not less than those set forth below. The Consultant shall provide the County original Certificates of Insurance satisfactory to the County to evidence such coverage before any work commences. The County shall be named as an additional insured on General and Automobile Liability policies. General Liability and Workers' Compensation policies shall contain a waiver of subrogation in favor of Polk County. The Commercial General Liability Policy shall (by endorsement if necessary) provide contractual liability coverage for the contractual indemnity stated in Section 10, above. All insurance coverage shall be written with a

company having an A.M. Best rating of at least the “A” category and size category of VIII. The Consultant’s self-insured retention or deductible per line of coverage shall not exceed \$25,000 without the permission of the County. In the event of any failure by the Consultant to comply with the provisions of this Section 11, the County may, at its option, upon notice to the Consultant suspend Consultant's performance of the Services for cause until there is full compliance. Alternatively, the County may purchase such insurance at the Consultant’s expense, provided that the County shall have no obligation to do so and if the County shall do so, the Consultant shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverage.

Comprehensive Automobile Liability Insurance. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

Professional Liability. \$2,000,000 for errors and omissions, exclusive of defense costs.

Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

Premises and Operations:

Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Consultant); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

Independent Consultants:

Delete Exclusion relative to collapse, explosion and underground; Property Damage Hazards; Cross Liability Endorsement; and Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Consultant)

Workers Compensation. The Consultant shall provide, pay for, and maintain workers compensation insurance on all employees, its agents or subconsultants as required by Florida Statutes.

## 12.0 Public Entity Crimes

The Consultant understands and acknowledges that this Agreement will be voidable by the County in the event the conditions stated in Florida Statutes, Section 287.133 relating to conviction for a public entity crime apply to the Consultant.

**13.0 Non-Discrimination**

The Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

**14.0 Designation of Party Representatives**

14.1 Upon receipt of a request from the Consultant, the County shall designate in writing one or more of its employees who are authorized to act by and on behalf of the County to transmit instructions, receive information and interpret and define the County's policy and decisions with respect to the Services to be provided pursuant to this Agreement.

14.2 The Consultant shall designate or appoint one or more Consultant representatives who are authorized to act on behalf of and to bind the Consultant regarding all matters involving the conduct of its performance pursuant to this Agreement.

**15.0 All Prior Agreements Superseded**

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document or its designated exhibits. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

**16.0 Modifications, Amendments or Alterations**

No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless agreed to and executed in writing by both parties to this Agreement in a form acceptable to the County.

**17.0 Independent Consultant**

Nothing stated in this Agreement is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties, or as constituting the Consultant (including its officers, employees, and agents) as the agent, representative, or employee of the County for any purpose, or in any manner, whatsoever. The Consultant is to be

and shall remain forever an independent Consultant with respect to all Services performed under this Agreement. The Consultant shall not pledge the County's credit or make the County a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and the Consultant shall have no right to speak for or bind the County in any manner.

#### 18.0 Public Records Law

(a) The Consultant acknowledges the County's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and comply in the handling of the materials created under this Agreement. The Consultant further acknowledges that the constitutional and statutory provisions control over the terms of this Agreement. In association with its performance pursuant to this Agreement, the Consultant shall not release or otherwise disclose the content of any documents or information that is specifically exempt from disclosure pursuant to all applicable laws.

(b) Without in any manner limiting the generality of the foregoing, to the extent applicable, the Consultant acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

(1) keep and maintain public records required by the County to perform the services required under this Agreement;

(2) upon request from the County's Custodian of Public Records or his/her designee, provide the County 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 Chapter 119, Florida Statutes, 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 term of this Agreement and following completion of this Agreement if the Consultant does not transfer the records to the County; and

(4) upon completion of this Agreement, transfer, at no cost, to the County all public records in possession of the Consultant or keep and maintain public records required by the County to perform the service. If the Consultant transfers all public records to the County upon completion of this Agreement, the Consultants shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of this Agreement, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

**(c) IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

**RECORDS MANAGEMENT LIAISON OFFICER  
POLK COUNTY  
330 WEST CHURCH ST.  
BARTOW, FL 33830  
TELEPHONE: (863) 534-7527  
EMAIL: RMLO@POLK-COUNTY.NET**

**19.0 Compliance with Laws and Regulations**

In providing all Services pursuant to this Agreement, the Consultant shall comply with applicable regulatory requirements including federal, state, special district, and local laws, rules regulations, orders, codes, criteria and standards, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement, and shall entitle the County to terminate this Agreement immediately upon delivery of written notice of termination to the Consultant.

**20.0 Governing Law and Venue**

This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Polk County, Florida or in the United States District Court, Middle District of Florida, located in Hillsborough County, Florida. Each party shall be responsible for its own attorneys' fees and other legal costs and expenses.

**21.0 Notices**

Whenever either party desires to give notice unto the other, it must be given by written notice, delivered (i) in person, (ii) via registered or certified United States mail, postage prepaid with return receipt requested, or (iii) via nationally recognized overnight delivery service, and addressed to the party for whom it is intended at the place last specified by each party. The place for giving of notice shall remain such until it is changed by written notice delivered in compliance with the provisions of this Section 21. For the present, the parties designate the following as the respective places for giving of notice, to wit:

**For County:**

Polk County Parks and Natural Resources Division  
4177 Ben Durrance Rd.  
Drawer PW06  
Bartow, Florida 33830  
Attention: Division Director

**For Consultant:**

Consultant Name

Street Address  
City/State/Zip  
Attention: Project Manager

## **22.0 Severability**

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement; any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

## **23.0 Annual Appropriations**

Consultant acknowledges that during any fiscal year the County shall not expend money, incur any liability, or enter into any agreement which by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Accordingly, any agreement, verbal or written, the County may make in violation of this fiscal limitation is null and void, and no money may be paid on such agreement. The County may enter into agreements whose duration exceeds one year; however, any such agreement shall be executory only for the value of the services to be rendered which the County agrees to pay as allocated in its annual budget for each succeeding fiscal year. Accordingly, the County's performance and obligation to pay the Consultant under this Agreement is contingent upon annual appropriations being made for that purpose.

## **24.0 Employment Eligibility Verification (E-VERIFY)**

A. Unless otherwise defined herein, terms used in this Section which are defined in Section 448.095, Florida Statutes, as may be amended from time to time, shall have the meaning ascribed in said statute.

B. Pursuant to Section 448.095(5), Florida Statutes, the consultant hereto, and any subconsultant thereof, must register with and use the E-Verify system to verify the work authorization status of all new employees of the consultant or subconsultant. The consultant

acknowledges and agrees that (i) the County and the consultant may not enter into this Agreement, and the consultant may not enter into any subcontracts hereunder, unless each party to this Agreement, and each party to any subcontracts hereunder, registers with and uses the E-Verify system; and (ii) use of the U.S. Department of Homeland Security's E-Verify System and compliance with all other terms of this Certification and Section 448.095, Fla. Stat., is an express condition of this Agreement, and the County may treat a failure to comply as a material breach of this Agreement.

C. By entering into this Agreement, the consultant becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subconsultants to provide an affidavit attesting that the subconsultant does not employ, contract with, or subcontract with, an unauthorized alien. The consultant shall maintain a copy of such affidavit for the duration of this Agreement. Failure to comply will lead to termination of this Agreement, or if a subconsultant knowingly violates the statute or Section 448.09(1), Fla. Stat., the subcontract must be terminated immediately. If this Agreement is terminated pursuant to Section 448.095, Fla. Stat., such termination is not a breach of contract and may not be considered as such. Any challenge to termination under this provision must be filed in the Tenth Judicial Circuit Court of Florida no later than 20 calendar days after the date of termination. If this Agreement is terminated for a violation of Section 448.095, Fla. Stat., by the consultant, the consultant may not be awarded a public contract for a period of 1 year after the date of termination. The consultant shall be liable for any additional costs incurred by the County as a result of the termination of this Agreement. Nothing in this Section shall be construed to allow intentional discrimination of any class protected by law.

## **25.0 Consultant Representations**

25.1 The Consultant hereby represents and warrants the following to the County:

25.1.1 Consultant is a [corporation/llc/etc.] that is duly organized and existing in good standing under the laws of the State of [state] with full right and authority to do business within the State of Florida.

25.1.2 Consultant's performance under this Agreement will not violate or breach any contract or agreement to which the Consultant is a party or is otherwise bound, and will not violate any governmental statute, ordinance, rule, or regulation.

25.1.3 Consultant has the full right and authority to enter into this Agreement and to perform its obligations in accordance with its terms.

25.1.4 Consultant now has and will continue to maintain all licenses and approvals required for conducting its business, and that it will at all times conduct its business activities in a reputable manner.

25.1.5 Consultant has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

25.1.6 Consultant has the personnel and experience necessary to perform all Services in a professional and workmanlike manner.

25.1.7 Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as provided by a professional of like experience, knowledge and resources, under similar circumstances.

25.1.8 Consultant shall, at no additional cost to County, re-perform those Services which fail to satisfy the foregoing standard of care or which otherwise fail to meet the requirements of this Agreement.

25.1.9 Each individual executing this Agreement on behalf of the Consultant is authorized to do so

## **26.0 Default and Remedy**

If the Consultant materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the Consultant receives written notice of the default from the County, then the County shall have the right to (i) immediately terminate this Agreement by delivering written notice to the Consultant, and (ii) pursue any and all remedies available in law, equity, and under this Agreement. If the County materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the County receives written notice of the default from the Consultant, then the Consultant shall have the right to immediately terminate this Agreement by delivering written notice to the County. Upon any such termination, the County shall pay the Consultant the full amount due and owing for all Services performed through the date of Agreement termination.

### **27.0 Limitation of Liability**

**IN NO EVENT, SHALL THE COUNTY BE LIABLE TO THE CONSULTANT FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS CONTRACT BY THE COUNTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.**

### **28.0 Waiver**

A waiver by either County or Consultant of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach of this Agreement. The making or acceptance of a payment by either party with the knowledge of the other party's existing default or breach of the Agreement shall not waive such default or breach, or any subsequent default or breach of this Agreement, and shall not be construed as doing so.

### **29.0 Attorneys' Fees and Costs**

Each party shall be responsible for its own legal and attorneys' fees, costs and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this Agreement, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

### **30.0 Force Majeure**

Either party hereunder may be temporarily excused from performance if an Event of Force Majeure directly or indirectly causes its nonperformance. An "Event of Force Majeure" is defined as any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions. Neither party shall be excused from performance if non-performance is due to forces which are reasonably preventable, removable, or remediable and which the non-performing party could have, with the exercise of

reasonable diligence, prevented, removed, or remedied prior to, during, or immediately after their occurrence. Within five (5) days after the occurrence of an Event of Force Majeure, the non-performing party shall deliver written notice to the other party describing the event in reasonably sufficient detail, along with proof of how the event has precluded the non-performing party from performing its obligations hereunder, and a good faith estimate as to the anticipated duration of the delay and the means and methods for correcting the delay. The non-performing party's obligations, so far as those obligations are affected by the Event of Force Majeure, shall be temporarily suspended during, but no longer than, the continuance of the Event of Force Majeure and for a reasonable time thereafter as may be required for the non-performing party to return to normal business operations. If excused from performing any obligations under this Agreement due to the occurrence of an Event of Force Majeure, the non-performing party shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations under this Agreement. During any such time period, the non-performing party shall keep the other party duly notified of all such actions required for it to be able to commence or resume performance of its obligations under this Agreement.

**31.0 Key Personnel**

The Consultant shall notify the County if any of the Consultant's Key Personnel (as defined, below) change during the Term of the Agreement. To the extent possible, the Consultant shall notify the County at least ten (10) days prior to any proposed change in its Key Personnel. At the County's request the Consultant shall remove without consequence to the County any of the Consultant's contractors, subcontractors, subconsultants, agents or employees and replace the same with an appropriate substitute having the required skill and experience necessary to perform the Services. The County shall have the right to reject the Consultant's proposed changes in Key Personnel. The following individuals shall be considered "Key Personnel:"

(Key Personnel should be the names provided in their proposal)

Name: \_\_\_\_\_

**32.0 Scrutinized Companies and Business Operations Certification; Termination.**

A. Certification(s).

(i) By its execution of this Agreement, the Vendor hereby certifies to the County that

the Vendor is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, nor is the Vendor engaged in a boycott of Israel, nor was the Vendor on such List or engaged in such a boycott at the time it submitted its bid, proposal, quote, or other form of offer, as applicable, to the County with respect to this Agreement.

(ii) Additionally, if the value of the goods or services acquired under this Agreement are greater than or equal to One Million Dollars (\$1,000,000), then the Vendor further certifies to the County as follows:

(a) the Vendor is not on the Scrutinized Companies with Activities in Sudan List, created pursuant to Section 215.473, Florida Statutes; and

(b) the Vendor is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; and

(c) the Vendor is not engaged in business operations (as that term is defined in Florida Statutes, Section 287.135) in Cuba or Syria; and

(d) the Vendor was not on any of the Lists referenced in this subsection A(ii), nor engaged in business operations in Cuba or Syria when it submitted its proposal to the County concerning the subject of this Agreement.

(iii) The Vendor hereby acknowledges that it is fully aware of the penalties that may be imposed upon the Vendor for submitting a false certification to the County regarding the foregoing matters.

B. Termination. In addition to any other termination rights stated herein, the County may immediately terminate this Agreement upon the occurrence of any of the following events:

(i) The Vendor is found to have submitted a false certification to the County with respect to any of the matters set forth in subsection A(i) above, or the Vendor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

(ii) The Vendor is found to have submitted a false certification to the County with respect to any of the matters set forth in subsection A(ii) above, or the Vendor is found to have been placed on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, and the value of the goods or services acquired under this Agreement are greater than or equal to One Million Dollars (\$1,000,000).

### 33. **No Construction Against Drafter**

The Parties acknowledge that this Agreement and all the terms and conditions contained herein have been fully reviewed and negotiated by the Parties. Accordingly, any rule of

construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

**34. Unauthorized Alien(s)**

The Consultant shall not employ or utilize unauthorized aliens in the performance of the Services provided pursuant to this Agreement. The County shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a) and a cause for the County's unilateral termination of this Agreement. When delivering executed counterparts of this Agreement to the County, the Consultant shall also deliver a completed and executed counterpart of the attached "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" form.

**35. Compliance With Federal, State And Local Laws**

- a. The consultant and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Consultant shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

**36. Lobbying & Integrity**

The Consultant agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to section 216.347, F.S., except that pursuant to the requirements of section 287.058(6), F.S., during the term of any executed

agreement between Consultant and the State, Consultant may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Consultant shall comply with sections 11.062 and 216.347, F.S.

37. **Audits**

- a. Inspector General. The Consultant understands its duty, pursuant to section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Consultant will comply with this duty and ensure that its subconsultants issued under this Agreement, if any, impose this requirement, in writing, on its subconsultants, respectively.
- b. Physical Access and Inspection. Florida Department of Environmental Protection (the, “Department”) &/or County personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
  - i. Consultant shall provide access to any location or facility on which Consultant is performing work, or storing or staging equipment, materials or documents;
  - ii. Consultant shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
  - iii. Consultant shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, the Department &/or County may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Consultant must provide the additional proof within thirty (30) days of such request.

38. **Subcontracting**

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Consultant.
- b. The Department &/or County may, for cause, require the replacement of any Consultant employee, subconsultant, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department &/or County may, for cause, deny access to Department's secure information or any facility by any Consultant employee, subconsultant, or agent.
- d. The Department's &/or County's actions under paragraphs b. or c. shall not relieve Consultant of its obligation to perform all work in compliance with the Agreement. The Consultant shall be responsible for the payment of all monies due under any subcontract. The Department &/or County shall not be liable to any subconsultant for any expenses or liabilities incurred under any subcontract and Consultant shall be solely liable to the subconsultant for all expenses and liabilities incurred under any subcontract.
- e. The Department &/or County will not deny Consultant's employees, subconsultants, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
- f. The Department &/or County supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. A list of minority-owned consultants that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
- g. The Consultant shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subconsultant at any tier, and if the cause of the default is completely beyond the control of both Consultant and the

subconsultant(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for Consultant to meet the required delivery schedule.

**39. Guarantee Of Parent Company**

If Consultant is a subsidiary of another corporation or other business entity, Consultant asserts that its parent company will guarantee all of the obligations of Consultant for purposes of fulfilling the obligations of Agreement. In the event Consultant is sold during the period the Agreement is in effect, Consultant agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Consultant.

**40. Survival**

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

**41. Third Parties**

The Department &/or County shall not be deemed to assume any liability for the acts, failures to act or negligence of Consultant, its agents, servants, and employees, nor shall Consultant disclaim its own negligence to Department, County or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department &/or County consents to a subcontract, Consultant will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

**42. Grantee's Employees, Subconsultants and Agents**

All Consultant employees, subconsultants, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Consultant shall furnish a copy of technical certification or other proof of qualification. All employees, subconsultants, or agents performing work under Agreement must comply with

all security and administrative requirements of Department &/or County and shall comply with all controlling laws and regulations relevant to the services they are providing under Agreement.

**43. Execution in Counterparts and Authority to Sign**

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;  
THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE  
WITH THE PARTIES' SIGNATURES. )**

DRAFT



ACKNOWLEDGEMENT OF CONSULTANT IF A LIMITED LIABILITY COMPANY  
STATE OF \_\_\_\_\_ County OF \_\_\_\_\_  
The foregoing instruments was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_\_ (Date) by \_\_\_\_\_ (Name of officer or agent) as \_\_\_\_\_ (title of officer or agent) of the Company on behalf of the Company, pursuant to the powers conferred upon him/her by the Company. He/she personally appeared before me at the time of notarization, and  is personally known to me or  has produced \_\_\_\_\_ as identification and did certify to have knowledge of the matters stated in the foregoing instrument and certified the same to be true in all respects. Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ (Date) \_\_\_\_\_ (Official Notary Signature and Notary Seal) \_\_\_\_\_ (Name of Notary typed, printed or stamped)  
Commission Number \_\_\_\_\_ Commission Expiration Date \_\_\_\_\_

ACKNOWLEDGEMENT OF CONSULTANT, IF A CORPORATION  
STATE OF \_\_\_\_\_ County OF \_\_\_\_\_  
The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_\_ (Date) by \_\_\_\_\_ (Name of officer or agent) as \_\_\_\_\_ (title of officer or agent) of the Corporation on behalf of the Corporation, pursuant to the powers conferred upon him/her by the Corporation. He/she personally appeared before me at the time of notarization, and  is personally known to me or  has produced \_\_\_\_\_ as identification and did certify to have knowledge of the matters stated in the foregoing instrument and certified the same to be true in all respects. Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ (Date) \_\_\_\_\_ (Official Notary Signature and Notary Seal) \_\_\_\_\_ (Name of Notary typed, printed or stamped)  
Commission Number \_\_\_\_\_ Commission Expiration Date \_\_\_\_\_

ACKNOWLEDGEMENT OF CONSULTANT, IF AN INDIVIDUAL  
STATE OF \_\_\_\_\_ County OF \_\_\_\_\_  
The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_\_ (Date) By \_\_\_\_\_ (Name of acknowledging) who personally appeared before me at the time of notarization, and  is personally known to me or  has produced \_\_\_\_\_ as identification and did certify to have knowledge of the matters in the foregoing instrument and certified the same to be true in all respects. Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ (Date) \_\_\_\_\_ (Official Notary Signature and Notary Seal) \_\_\_\_\_ (Name of Notary typed, printed or stamped)  
Commission Number \_\_\_\_\_ Commission Expiration Date \_\_\_\_\_

ACKNOWLEDGEMENT OF CONSULTANT, IF A PARTNERSHIP  
STATE OF \_\_\_\_\_ County OF \_\_\_\_\_  
The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_\_ (Date) by \_\_\_\_\_ (Name of acknowledging partner or agent) on behalf of \_\_\_\_\_ a partnership. He/She personally appeared before me at the time of notarization, and  is personally known to me or  has produced \_\_\_\_\_ as identification and did certify to have knowledge of the matters in the foregoing instrument and certified the same to be true in all respects. Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ (Date) \_\_\_\_\_ (Official Notary Signature and Notary Seal) \_\_\_\_\_ (Name of Notary typed, printed or stamped)  
Commission Number \_\_\_\_\_ Commission Expiration Date \_\_\_\_\_