



St. Johns River

Water Management District

Ann B. Shortelle, Ph.D., Executive Director

4049 Reid Street • P.O. Box 1429 • Palatka, FL 32178-1429 • 386-329-4500
On the internet at www.sjrwmd.com.

INFORMAL REQUEST FOR PROPOSAL

Date: November 30, 2018

To: Potential Respondents

From: Debi Edwards, CPPB, Procurement Specialist

Voice #: 386-329-4866 Email: dkedwards@sjrwmd.com Fax #:386-329-4546

Subject: Informal Request for Proposal #33968 Lake Apopka Wetland Planting Project FY18-19

The St. Johns River Water Management District (District) is requesting proposals for the above referenced wetland restoration planting project as outlined in the attached Statement of Work (SOW) Exhibit 1. Respondents shall submit a task-based proposal that includes cost-per-task, timeframes, and deliverables for all proposed work as part of their submittal. Contractor shall submit the attached Quote Cost Schedule (Exhibit 3) to be considered, including the below referenced documentation, to Debi Edwards via e-mail (preferably), faxed or mailed. Responses are due by 2:00 PM Tuesday, December 18, 2018 (in PDF format).

A mandatory site visit is scheduled for Tuesday December 11, 2018 at 10:00 am at SJRWMD Lake Apopka Field Station 25633 County Road 448A Mount Dora, Florida 32757.

The District's Evaluation Committee will meet to evaluate, and rank Proposals as follows:

- 9:00 am December 19, 2018
 - Review evaluation criteria and responsibilities of the evaluators
- 2:00 pm December 19, 2018
 - Discuss responses
 - Finalize and review rankings
 - Respondents will be notified in writing the staff's intended recommendation

Respondent must complete the Qualification Forms (Certificate as to Corporation, General information), and submit them with their response. Failure to include these forms with the quote may be considered non-responsive.

The estimated budget for the planting project is \$95,000. All questions shall be submitted in writing to the Procurement Specialist, Debi Edwards.

GOVERNING BOARD

John A. Miklos, CHAIRMAN
ORLANDO

Fred N. Roberts Jr., VICE CHAIRMAN
OCALA

Chuck Drake, SECRETARY
ORLANDO

Ron Howse, TREASURER
COCOA

Douglas C. Bournique
VERO BEACH

Douglas Burnett
ST AUGUSTINE

Susan Dolan
SANFORD

Janet Price
FERNANDINA BEACH

Allan Roberts
ST AUGUSTINE

MINIMUM QUALIFICATIONS

Respondent must use the "Qualification" forms (General, Similar Projects, and Client References) provided in these documents to document the minimum qualifications listed below. The Respondent must also provide documentation to validate the expertise and experience. Failure to include these forms with the Proposal shall be cause to consider the proposal as non-responsive.

- a. In addition to completing the "Qualification" forms (GENERAL and CLIENT REFERENCES) provided in these documents, the Respondent must also provide written documentation to validate the expertise and experience of its team. In each of the following disciplines:
 - Ecology aquatic plants
 - Aquatic plant establishment / restoration
- b. Respondents (or a combination of PIs, individuals, or project managers assigned to the work) must have no less than five years of experience on projects of the nature specified above (Respondent-provided documentation). Respondents demonstrating scientific expertise in wetland plant restoration and in documenting successful re-establishment projects for wetland plants specific to Florida may be scored higher.
- c. Respondents (or a combination of PIs, individuals, or project managers assigned to the work) must have successfully completed at least two restoration projects involving aquatic plant restoration within the last 10 years, (covering a minimum project area of 10 acres) with objectives similar to those described in the Statement of Work contained in this document. Respondents with more applicable experience may be scored higher. Respondents with direct experience in Florida may be scored higher.
- d. Respondent must provide at least two client references who can attest to their experience as it relates to the Statement of Work. At least one of the references must be from the projects listed as similar to this project in response to sub-paragraph (a), (b) or (c), above. If a District project is cited, do not request a letter from District staff. The evaluation team will use the project's closeout documents in lieu of a letter of reference and may consult with the District project manager.

Submission of a quote constitutes acknowledgment of receipt of all addenda. Quotes will be construed as though all addenda had been received. Failure of the Respondent to receive any addenda does not relieve Respondent from any and all obligations under the quote, as submitted. All addenda become part of the Agreement.

Unless all quotes are rejected, a contract substantially in the form included in this quotation request documents will be provided to the Successful Respondent, who must execute and return the Agreement to the District within ten days of the date of receipt, along with the following:

- a. A completed Internal Revenue Service Form W-9;
- b. Satisfactory evidence of all required insurance coverage;
- c. Proof satisfactory to the District of the authority of the person or persons executing the Agreement on behalf of Respondent;

- d. All other information and documentation required by the Agreement.

The District will not execute the Agreement until the above documents have been executed and delivered to the District. The Agreement will not be binding until executed by the District. A copy of the fully executed Agreement will be delivered to the Successful Respondent. The District reserves the right to cancel award of the Agreement without liability at any time before the Agreement has been fully executed by all parties and delivered to the Successful Respondent.

Failure upon the part of the Successful Respondent to execute the Agreement or timely submit the required evidence of insurance coverage, or any other matter required by the Agreement, will be just cause, if the District so elects, for the recommended award to be annulled. Submittal of a quote binds the Successful Respondent to perform the Work upon acceptance of the quote and execution of the Agreement by the District.

NOTE: Please check the box provided below if you are unable to provide a quotation for this item at this time and return this page by fax (386-329-4546) to my attention or e-mail it to gsmith@sjrwmd.com.

I am unable to provide a quotation at this time for the following reason(s):

Respondent's Signature

Respondent's Company Name

Please contact me if you have any questions regarding this quotation request.
Thank you.

- Exhibit 1 - Statement of Work
- Exhibit 2 - Evaluation Criteria
- Exhibit 3 - Cost Schedule
- Exhibit 4 - Qualification Forms
- Exhibit 5 - Draft Agreement

**EXHIBIT 1 - STATEMENT OF WORK
FY 2018-2019 LAKE APOPKA NORTH SHORE WETLAND PLANTING**

I. INTRODUCTION

Beginning in the 1940s, the sawgrass marsh that historically made up the Lake Apopka North Shore (LANS) was separated from Lake Apopka by a large levee and the area was drained for muck farming. Restoration of this area is now underway. Because of the large levee and multiple internal levees now in place, it will not be possible to restore the Lake Apopka North Shore to one contiguous sawgrass marsh. Hence, the Lake Apopka North Shore Management Plan calls for restoring the various units to a “mixed marsh” system. This involves the removal of exotic and invasive plant species, and the installation of native desirable aquatic and wetland vegetation.

The overall goal of this project is to establish viable mixed marsh communities of native submerged, floating, emergent and grassy aquatic vegetation in areas of the LANS where exotic and invasive vegetation have been removed. The undesirable vegetation was removed using a combination of herbicide and prescribed fire. It is important to get beneficial native vegetation established in these areas as soon as possible, as a seed bank study has shown that few beneficial species persist in the area. Hence, if these treated areas are not planted quickly, undesirable vegetation will return.

II. OBJECTIVES

Successful proposals will outline a clear implementable approach for planting 50-100 acres of a selected 280-acre portion of the LANS (see maps, Figures 1 & 2), that have been treated with herbicide and fire to remove undesirable vegetation. The water levels in this area vary from 6 inches to 4 feet, depending on elevation of the particular planting areas and the time of year (see elevation map, Figure 3). The District does not have control of the water levels in this area, so the contractor will need to be prepared to work in the conditions that occur on the property at the time the contract is issued and, in the months, following that.

III. SCOPE OF SERVICES

The proposal shall identify which native wetland plant species will be planted to maximize survival in Duda, given current conditions. Contractor must insure that it will be possible to obtain the planting stock, as there will not be time to grow plants from seed.

- a. Describe which native species will be included in the mixed marsh restoration for each of the following zones (listed from deepest to shallowest), as described by FNAI – Guide to the Natural Communities of Florida: 2010 Edition – BASIN MARSH. Assure that selected plants can be obtained within the timeframe of the contract, as there will not be time to grow plants from seed. Examples of acceptable plants, by category, can be found in Table 1. Proposals can include other plants contractor feels might be appropriate and these will be evaluated by staff. Proposals should not include cattails, Carolina willow, elderberry, salt bush,

wax myrtle, or dog fennel, as these are not desirable in these areas. Plant species that carry fire well are favored.

- i. Submerged zone
 - ii. Floating-leaved zone
 - iii. Emergent Zone
 - iv. Grassy Zone (limited since most areas suitable for this have already been planted)
- b. Identify planting locations, density, spacing, timing and methodology for selected plants.
- i. An area encompassing 280 acres has been identified as the general planting location (Figure 4). Within these areas, identify how many of these acres will actually be planted and where these selected acres are located.
 - ii. Specify which plants will be installed and at what density.
 - iii. Describe the methodology used for planting each species.
 - iv. Outline a schedule for conducting the planting.

IV. TASK IDENTIFICATION

- The first task for the Successful Respondent will be to develop a Work Plan based on the respondent's initial proposal. The Work Plan will specify which tasks will be done and the timeframes within which each deliverable will be completed. The Work Plan will serve as the final Scope of Work for this project and will be included in the final contract
- Following agreement on the Work Plan, the Successful Respondent and District shall conduct a 1-day Kick-off meeting to review the scope of work, schedule, and communication protocols. Discussion of modifications to the proposed tasks, timeframes, and deliverables shall occur at this time
- The tasks and deliverables to be implemented shall be agreed upon by the District and the Successful Respondent, and they shall be included in the final contract in the Work Plan

Contractor responsibilities:

- Contractor shall be responsible for preparing final plans and specifications suitable for implementation of the planting project
- Contractor shall be responsible for oversight of any projects and shall provide all materials and services required to complete all projects
- Contractor will ensure seventy-five (75) percent survival of installed plants for a period of thirty (30) days following planting
- If initial survival is less than seventy-five (75) percent, Contractor shall replant to equal seventy-five (75) percent survival at no cost to the District
- Contractor shall notify District at least forty-eight (48) hours prior to planting specific sites.

V. TIMEFRAMES AND DELIVERABLES

All plantings must be complete by **February 28, 2019**.

VI. BUDGET/INVOICING

Invoices may be submitted no more frequently than once per month for Work that is completed and inspected by the District Project Manager.

VII. PROJECT MANAGEMENT

Maria Zondervan, Land Manager

407-832-4242

mzondervan@sjrwmd.com

Figure 1. General location map for Lake Apopka North Shore in Lake and Orange Counties, FL.

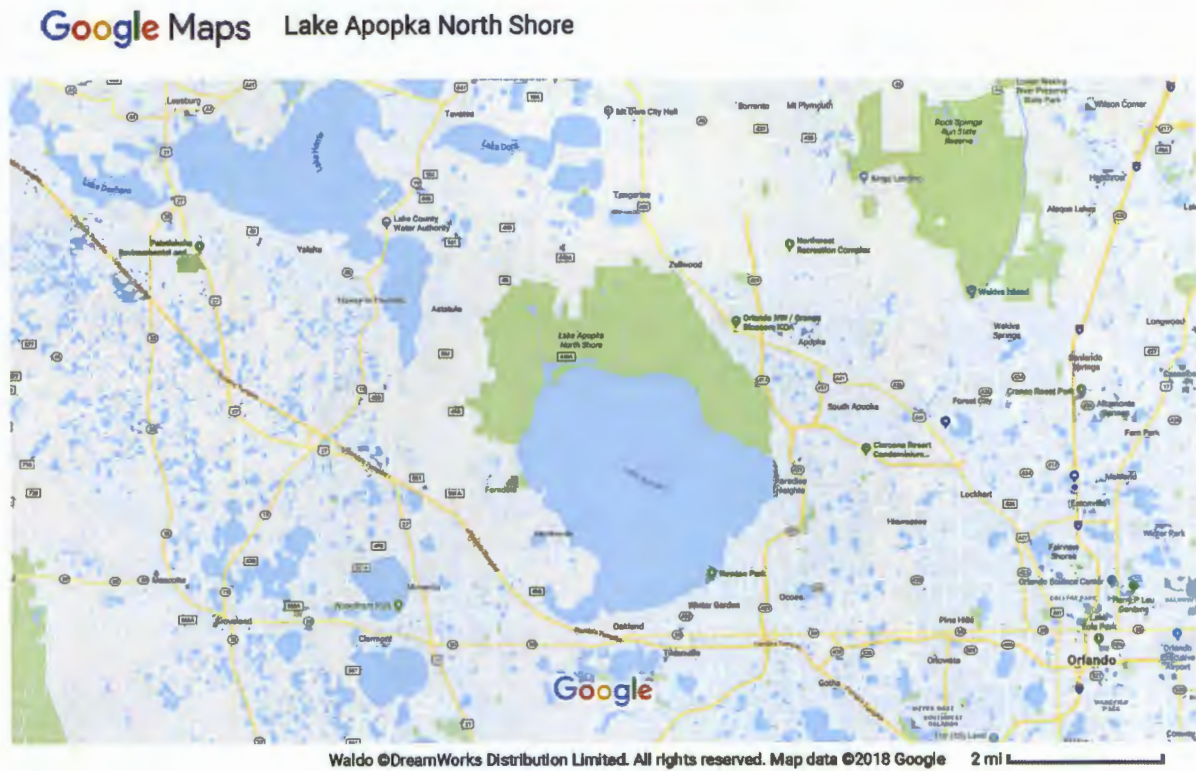


Figure 2. Location of general planting area within the Lake Apopka North Shore



Figure 3. Elevation map. These are projected elevations from the 1980s. They are not current, nor survey accurate, and should therefore only be used as a frame of reference for general elevations in the area.

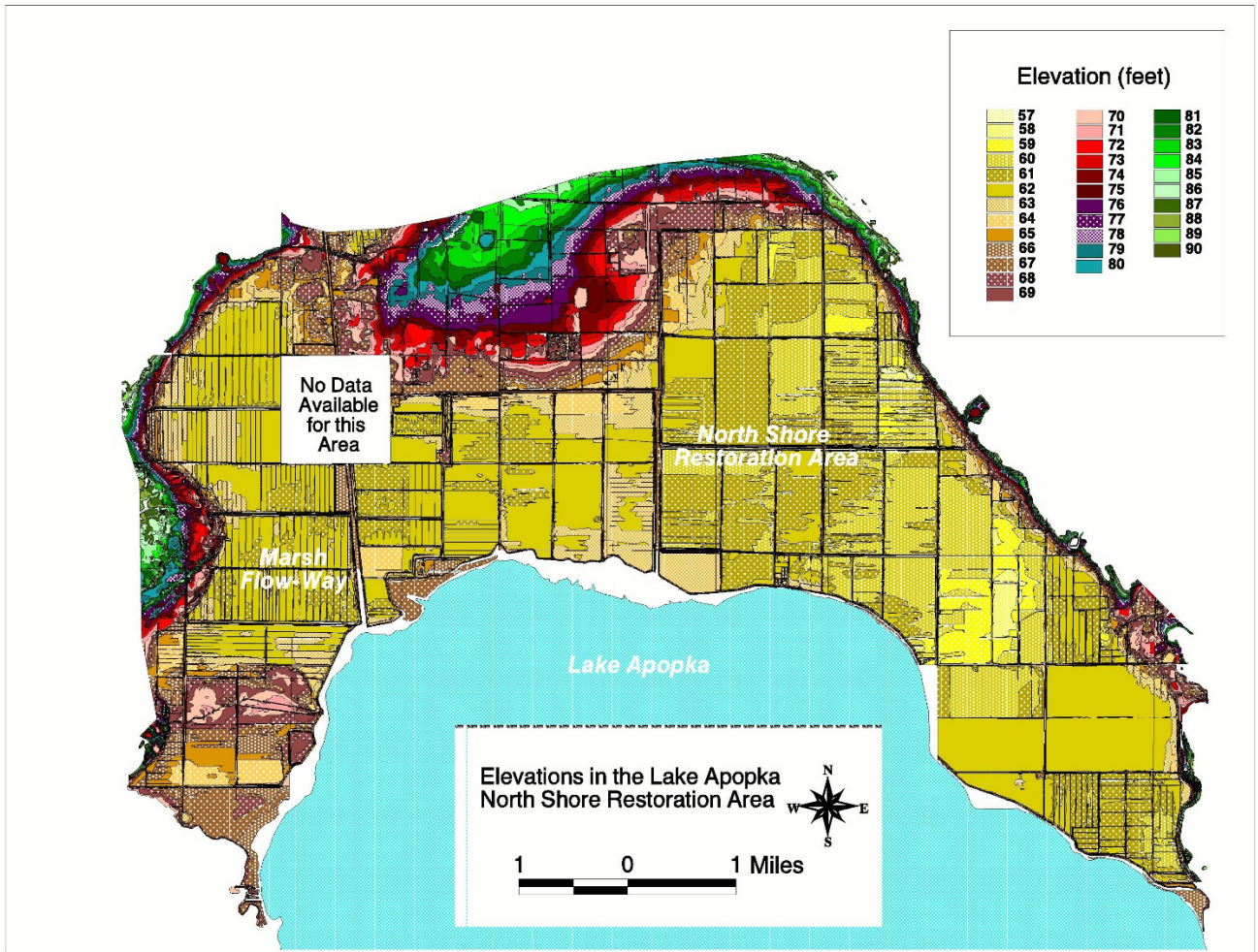


Figure 4. Close-up of general planting area. Note that water levels will vary from what is seen on this image.



Table 1. Acceptable plants for planting at Lake Apopka North Shore. Proposals can include other plants contractor feels might be appropriate and these will be evaluated by staff.

Zone	Scientific Name	Common name
Submerged	<i>Ceratophyllum demersum</i>	coontail
	<i>Cabomba caroliniana</i>	fanwort
	<i>Najas guadalupensis</i>	southern naiad
Floating-leaved	<i>Nymphaea</i> spp	water lillies
	<i>Utricularia</i> spp	bladderworts
	<i>Nymphoides aquatica</i>	banana lily
	<i>Nymphoides cordata</i>	little floating heart
	<i>Brasenia schreberi</i>	water shield
	<i>Nymphaea odorata</i>	white waterlily
	<i>Nelumbo lutea</i>	American lotus
	<i>Nuphar advena</i>	yellow pondlily
Emergent	<i>Pontederia cordata</i>	pickerel weed
	<i>Polygonum</i> spp	smartweeds
	<i>Sagittaria</i> spp	arrowheads
	<i>Acrostichum danaeifolium</i>	giant leather fern
	<i>Leersia</i> spp	cutgrass
	<i>Hibiscus grandiflorus</i>	swamp hibiscus
	<i>Hibiscus coccineus</i>	marsh hibiscus
	<i>Canna flaccida</i>	golden canna
	Cyperaceae	sedges
	<i>Sagittaria lancifolia</i>	bulltongue arrowhead
	<i>Cladium jamaicense</i>	sawgrass
	<i>Scirpus tabernaemontani</i>	softstem bulrush
	<i>Hydrocoryle</i> spp	water pennywort
Grassy	<i>Spartina bakeri</i>	sand cordgrass
	<i>Saccharum giganteum</i>	sugar cane plume grass
	<i>Panicum hemitonum</i>	maidencane
	<i>Rhynchospora inundata</i>	inundated beakrush
	<i>Paspalidium geminatum</i>	Kissimmee grass
	Cyperaceae	sedges
	<i>Bidens laevis</i>	smooth beggarticks
	<i>Polygonum punctatum</i>	dotted smartweed
	<i>Pluchea odorata</i>	sweetscent
	<i>Bacopa caroliniana</i>	lemon bacopa
	<i>Sacciolepis striata</i>	American cupscale-grass

EXHIBIT 2 - EVALUATION CRITERIA

Responses shall include information or documentation regarding, and will be evaluated using, the evaluation criteria set forth below. The evaluation rating scale is as follows:

More than adequate..... 8 – 10 Less than adequate 1 –4
 Adequate 5 – 7 Not covered in submittal..... 0

	Criteria Note: If the Evaluation Committee determines that the written submittals are sufficient to finalize its rankings of the Respondents.	Weight	Written Submittal Score
	<p>Background and Qualifications and ability to conduct the work presented in the Statement of Work</p> <ul style="list-style-type: none"> a) Knowledge of subjects contained within project description b) Understanding of the problems and objectives c) Past performance d) Ability to meet needs and perform work e) Equipment and availability f) Is Respondent a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act 	30%	
	<p>Personnel</p> <ul style="list-style-type: none"> a) Names and functions of personnel assigned and pertinence to project b) Qualifications, resumes, licenses, certifications or industry recognitions in areas relevant to project tasks c) Hours committed to project d) Special expertise of personnel and specific linkages to identified project objectives 	10%	
	<p>Client References and Experience — provide names and contact information for at least two projects and supply a letter of reference from at least two client references</p> <ul style="list-style-type: none"> a) Similar projects (form) b) Client references (form) c) Previous work with aquatic vegetation planting d) Previous work experience within Florida with similar Scope of Work 	15%	
	<p>Project Management</p> <ul style="list-style-type: none"> a) Allocation of staff b) Management methods c) Identify sub-contractors d) Commitment to project completion within time and budget constraints 	10%	
	<p>Technical Merit</p> <ul style="list-style-type: none"> a) Completeness and clarity of submittal b) Adequately addresses project objectives c) QA/QC methods d) Approach adequately described – scientific, technical, and analytical e) Demonstration of the usefulness of project results 	30%	

	<p>Volume of District work previously awarded to Respondent Submit documentation as to the volume of work (in dollars) awarded by the District to firm in the past three years, including contracts, work orders, and purchase orders. Points will be allocated from 0 to 10 with Respondents with higher previous awarded contract totals since May 22, 2015, through the submittal date of this RFP [, receiving fewer award points. Respondents with no previous work awards may receive the highest allocation of points (10), while the Respondent with the highest previous work awarded will receive zero points. The District shall rely on its official financial records to resolve any discrepancies. Checks issued by the District on or prior to the date submittals are received shall be included in this total even if Respondent has not yet received the payment.</p>	3%	
	<p>Location of Respondent’s Management Office/Project Manager relative to the project area (see explanation below) Location of managing firm/project manager relative to the project area — higher consideration will be given to firms whose managing firm/project manager is located nearest to the project area. (The District has selected the location of it Lake Apopka Field Station (25633 County Road 448A, Mount Dora, FL 32757) as the reference point for distance calibration purposes.) The website <i>MapQuest.com</i> (using the “Shortest” route type) should be utilized to determine mileage. The District will award points as follows:</p> <ul style="list-style-type: none"> • Within 0-100 miles of the project area = 10 points • > 100 but ≤ 200 miles from of the project area = 7 points • > 200 but ≤ 300 miles from of the project area = 4 points • > 300 miles from of the project area = 0 points 	2%	
	TOTAL (Written Proposal)	100%	

EXHIBIT 3 - COST SCHEDULE

(This form to be included in the response)

Proposal to be opened at 2:00 p.m., December 18, 2018

To: ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

In accordance with the advertisement requesting proposals for the Request for Proposal for the Lake Apopka Wetland Restoration Planting Project, subject to the terms and conditions of the Agreement, the undersigned proposes to perform the Work for the price contained in the following schedule (fill in all blanks).

If said proposal exceeds the estimated amount previously provided, the District expressly reserves the right to increase, decrease, or delete any class, item, or part of the Work, as may be determined by the District.

The proposal will be awarded to the Respondent having the highest ranked proposal, which successfully concludes negotiations with the District.

RESPONDENT SHALL INCLUDE THEIR TASK-BASED PROPOSAL THAT INCLUDES COST-PER TASK, TIMEFRAMES AND DELIVERABLES.

Pursuant to §287.084(2) Fla. Stat., a vendor whose principal place of business is outside the State of Florida must accompany any written bid, proposal, or reply documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.

I HEREBY ACKNOWLEDGE, as Respondent's authorized representative, that I have fully read and understand all terms and conditions as set forth in this proposal and upon award of such proposal, shall fully comply with such terms and conditions.

Date

Respondent (firm name)

Address

E-mail address

Signature

Telephone number

Typed name and title

Fax number

EXHIBIT 4 – QUALIFICATION FORM
QUALIFICATIONS - GENERAL

(This form to be included in the response)

As part of the quote request, Respondent shall complete the following so that the District can determine Respondent's ability and experience regarding the proposed request.

Name of Respondent: _____

Respondent's tax identification No.: _____

Year company was organized/formed: _____

Number of years Respondent has been engaged in business under the present firm or trade name:

Total number of years Respondent has experience in similar work described in this request:

Has Respondent previously been engaged in the same or similar business under another firm or trade name? If so, please describe each such instance.

Has Respondent ever been adjudicated bankrupt, initiated bankruptcy, or been the subject of bankruptcy proceedings on behalf of the current entity submitting this bid or a prior entity that Respondent substantially operated or controlled? If yes, please describe the nature and result of those proceedings and the entity involved.

Describe the background/experience of the person or persons who will be primarily responsible for directing the Work that will be performed pursuant to this bid. This inquiry is intended to encompass the project manager and/or superintendent who will be engaged on a daily basis in directing performance of the Work.

QUALIFICATIONS — SIMILAR PROJECTS

(This form to be included in the response)

Respondent (or a combination of the firm, individual, or project manager assigned to the work) must have successfully completed at least two similar projects (restoration involving aquatic plants restoration) within the past ten years (covering a minimum project area of 10 acres) immediately preceding the date set for receipt of the response.

Completed Project 1:

Agency/company: _____

Current contact person at agency/company: _____

Telephone: _____ Fax: _____ Email: _____

Address of agency/company: _____

Name of project: _____

Description: _____

Project value: _____ Start date: _____ Completion date: _____
(month/year) (month/year)

Name(s) of assigned personnel:

Project manager: _____

Others: _____

Completed Project 2:

Agency/company: _____

Current contact person at agency/company: _____

Telephone: _____ Fax: _____ Email: _____

Address of agency/company: _____

Name of project: _____

Description: _____

Project value: _____ Start date: _____ Completion date: _____
(month/year) (month/year)

Name(s) of assigned personnel:

Project manager: _____

Others: _____

QUALIFICATIONS — CLIENT REFERENCE

(This form to be included in the response)

Respondent shall provide two client references, which may include the similar projects listed above. No more than one reference shall be from the District. (For similar projects listed above, simply state “Similar Project No. ____.”)

Client Reference 1:

Agency/company: _____

Current contact person at agency/company: _____

Telephone: _____ Fax: _____ E-mail: _____

Agency/Company Address: _____

Name of project: _____

Description: _____

Project manager: _____

Client Reference 2:

Agency/company: _____

Current contact person at agency/company: _____

Telephone: _____ Fax: _____ E-mail: _____

Agency/Company Address: _____

Name of project: _____

Description: _____

Project manager: _____

**EXHIBIT 5 - DRAFT AGREEMENT
BETWEEN THE
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND _____ FOR LAKE APOPKA WETLAND PLANTING**

THIS AGREEMENT is entered into by and between the GOVERNING BOARD of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT (the "District"), whose address is 4049 Reid Street, Palatka, Florida 32177-2571, and _____ ("Contractor"), whose address is _____. All references to the parties hereto include the parties, their officers, employees, agents, successors, and assigns.

In consideration of the payments hereinafter specified, Contractor agrees to furnish and deliver all materials and perform all labor required for Informal RFP 33968, Lake Apopka Wetland Restoration Project (the "Work"). Contractor shall complete the Work in conformity with this Agreement, which consists of and incorporates all of the following documents: (1) advertisement for bids, proposals, or qualifications; (2) Instructions to Respondents; (3) addenda; certifications, and affidavits; (4) proposal; (5) Agreement, including the Statement of Work, and any Special Conditions or other attachments. If any provision in the body of this Agreement conflicts with any attachment hereto, the body of this Agreement shall prevail. This Agreement, including attachments, shall take precedence over all solicitation documents (items 1 – 4). The parties hereby agree to the following terms and conditions.

1. TERM

- (a) The term of this Agreement shall be from the Effective Date to the Completion Date. Time is of the essence for each and every aspect of this Agreement. Where additional time is allowed to complete the Work, the new time limit shall also be of the essence. All provisions of this Agreement that by their nature extend beyond the Completion Date survive termination or expiration hereof.
- (b) **Effective Date.** The Effective Date is the date upon which the last party to this Agreement has dated and executed the same.
- (c) **Completion Date.** The Completion Date of this Agreement is February 28, 2019, unless extended by mutual written agreement of the parties. The Work shall be completed for use no later than said date.

2. LIQUIDATED DAMAGES

- (a) If Contractor neglects, fails, or refuses to satisfactorily complete the Work by the Completion Date, Contractor shall, as a part of the consideration for this Agreement, pay the District the amount stipulated herein, not as a penalty, but as liquidated damages for such breach, for each day Contractor is in default thereafter. This amount is fixed and agreed upon between the parties due to the impracticability and extreme difficulty of ascertaining the actual damages the District would sustain in such event. The amount of liquidated damages shall be one half of one percent (.5%) of the total contract amount per day. Liquidated damages shall be deducted from payments as they become due and may be deducted from the retainage due upon completion. They constitute an agreed-upon liquidated sum solely for consequential damages attributable to delay and are not a substitute for any other consequential damages incurred by the District, such as the

cost of finding a replacement Contractor for completion of the Work if this Agreement is terminated by the District for non-performance.

- (b) Contractor shall not be charged with liquidated damages or any excess cost when the District determines that Contractor's reasons for the time extension are acceptable in accordance with **FORCE MAJEURE; DELAYS; EXTENSION OF COMPLETION DATE**. A written extension of the Completion Date constitutes a waiver of liquidated damages to the new Completion Date unless expressly provided therein to the contrary.

3. DELIVERABLES

- (a) The Work is specified in the Statement of Work, Attachment A. Contractor shall deliver all products and deliverables as stated therein. Contractor is responsible for the professional quality, technical accuracy, and timely completion of the Work. Both workmanship and materials shall be of good quality. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials provided. Unless otherwise specifically provided for herein, Contractor shall provide and pay for all materials, labor, and other facilities and equipment necessary for performance of the Work. The District's Project Manager shall make a final acceptance inspection of the deliverables when completed and finished in all respects.
- (b) If not otherwise addressed in the Statement of Work, upon written request, Contractor shall submit written progress reports to the District's Project Manager at the frequency requested in the form approved by the Project Manager at no additional cost to the District. The progress report shall provide an updated progress schedule, taking into account all delays and approved changes in the Work. Failure to provide a progress report will be cause to withhold payment.

- 4. OWNERSHIP OF DELIVERABLES.** The Work is specified in the Statement of Work, Attachment A. Contractor shall deliver all products and deliverables as stated therein. Contractor is responsible for the professional quality, technical accuracy, and timely completion of the Work. Both workmanship and materials shall be of good quality. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials provided. Unless otherwise specifically provided for herein, Contractor shall provide and pay for all materials, labor, and other facilities and equipment necessary for performance of the Work. The District's Project Manager shall make a final acceptance inspection of the deliverables when completed and finished in all respects.

5. FUNDING OF AGREEMENT

- (a) For satisfactory performance of the Work, the District agrees to pay Contractor \$_____ (the "Total Compensation"). The parties may agree in writing to re-allocate funding from the amounts described below.

6. PAYMENT OF INVOICES

- (a) Contractor shall submit itemized invoices on a delivery basis for the Work by email to acctpay@sjrwmd.com. Each invoice shall be submitted in detail sufficient for proper pre-audit and post-audit review. If necessary for audit purposes, Contractor shall provide additional supporting information as required to document invoices.
- (b) **End of District Fiscal Year Reporting.** The District's fiscal year ends on September 30. Irrespective of the invoicing frequency, the District is required to account for all encumbered funds at that time. When authorized under the Agreement, submittal of an invoice as of September 30 satisfies this requirement. The invoice shall be submitted no later than October 30. If the Agreement does not authorize submittal of an invoice as of September 30, Contractor shall submit, prior to October 30, a description of the additional Work completed between the last

invoice and September 30, and an estimate of the additional amount due as of September 30 for such Work. If there have been no prior invoices, Contractor shall submit a description of the Work completed on the project through September 30 and a statement estimating the dollar value of that Work as of September 30.

- (c) **Final Invoice.** The final invoice must be submitted no later than 45 days after the Completion Date; provided, however, that when the Completion Date corresponds with the end of the District's fiscal year (September 30), the final invoice must be submitted no later than 30 days after the Completion Date. **Final invoices that are submitted after the requisite date shall be subject to a penalty of ten percent of the invoice. This penalty may be waived by the District, in its sole judgment and discretion, upon a showing of special circumstances that prevent the timely submittal of the final invoice. Contractor must request approval for delayed submittal of the final invoice not later than ten days prior to the due date and state the basis for the delay.**
 - (d) All invoices shall include the following information: (1) District contract number; (2) Contractor's name and address (include remit address, if necessary); (3) Contractor's invoice number and date of invoice; (4) District Project Manager; (5) Contractor's Project Manager; (6) supporting documentation as to cost and/or project completion (as per the cost schedule and other requirements of the Statement of Work; (7) Progress Report (if required); (8) Diversity Report (if otherwise required herein). Invoices that do not correspond with this paragraph shall be returned without action, stating the basis for rejection. Payments shall be made within 45 days of receipt of an approved invoice. Disputes regarding invoice sufficiency are resolved pursuant to the dispute resolution procedure of this Agreement.
 - (e) **Travel expenses.** If the cost schedule for this Agreement includes a line item for travel expenses, travel expenses shall be drawn from the project budget and are not otherwise compensable. If travel expenses are not included in the cost schedule, they are a cost of providing the service that is borne by Contractor and are only compensable when specifically approved by the District as an authorized District traveler. In such instance, travel expenses must be submitted on District or State of Florida travel forms and shall be paid pursuant to District Administrative Directive 2000-02.
 - (f) **Payments.** Absent exceptional circumstances, Contractor is required to sign up and receive payment(s) electronically from the District via Automated Clearing House (ACH) payment.
 - (g) **Payments withheld.** The District may withhold or, on account of subsequently discovered evidence, nullify, in whole or in part, any payment to such an extent as may be necessary to protect the District from loss as a result of: (1) defective Work not remedied; (2) failure of Contractor to make payments when due to subcontractors or suppliers for materials or labor; (3) failure to maintain adequate progress in the Work; (4) damage to another contractor; or (5) any other material breach of this Agreement. Amounts withheld shall not be considered due and shall not be paid until the ground(s) for withholding payment have been remedied.
 - (h) **Payments.** The District shall pay Contractor 100% of each approved invoice.
7. **PAYMENT AND RELEASE.** Upon satisfactory completion of the Work, the District will provide Contractor a written statement accepting all deliverables. Contractor's acceptance of final payment shall constitute a release in full of all Contractor claims against the District arising from the performance of this Agreement, with the exception of any pending claims for additional compensation that have been documented and filed as required by this Agreement.
8. **INDEMNIFICATION.** Contractor shall indemnify and hold harmless, release, and forever discharge the District, its public officers, employees, agents, representatives, successors, and assigns, from any

and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney’s fees, arising from or caused by the Contractor, its employees or subcontractors, in the performance of the Work. Contractor shall further indemnify the District for all costs and penalties the District incurs related to any failure to offer Patient Protection and Affordable Care Act compliant health care coverage to Contractor-employees performing under this contract.

9. **INSURANCE.** Contractor shall acquire and maintain all insurance required by Attachment B, Insurance Requirements, and shall not commence Work until it has provided Certificates of Insurance to the District as per Attachment B. Receipt of Certificates of Insurance indicating less coverage than required does not constitute a waiver of the Insurance Requirements. Contractor waives its right of recovery against the District to the extent permitted by its insurance policies. Contractor’s insurance shall be considered primary, and District insurance shall be considered excess, as may be applicable to Contractor’s obligation to provide insurance.

10. **FUNDING CONTINGENCY.** This Agreement is at all times contingent upon funding availability, which may include a single source or multiple sources, including, but not limited to: (1) ad valorem tax revenues appropriated by the District's Governing Board; (2) annual appropriations by the Florida Legislature, or (3) appropriations from other agencies or funding sources. Agreements that extend for a period of more than one Fiscal Year are subject to annual appropriation of funds in the sole discretion and judgment of the District's Governing Board for each succeeding Fiscal Year. Should the Work not be funded, in whole or in part, in the current Fiscal Year or succeeding Fiscal Years, the District shall so notify Contractor and this Agreement shall be deemed terminated for convenience five days after receipt of such notice, or within such additional time as the District may allow. For the purpose of this Agreement, “Fiscal Year” is defined as the period beginning on October 1 and ending on September 30.

11. **PROJECT MANAGEMENT PERSONNEL**

(a) The Project Managers listed below shall be responsible for overall coordination and management of the Work. Either party may change its Project Manager upon three business days’ prior written notice to the other party. Written notice of change of address shall be provided within five business days. All notices shall be in writing to the Project Managers at the addresses below and shall be sent by one of the following methods: (1) hand delivery; (2) U.S. certified mail; (3) national overnight courier; (4) email or, (5) fax. Notices via certified mail are deemed delivered upon receipt. Notices via overnight courier are deemed delivered one business day after having been deposited with the courier. Notices via email or fax are deemed delivered on the date transmitted and received.

<u>DISTRICT</u>	Contractor
Maria Zondervan, Project Manager	TBD, Project Manager
St. Johns River Water Management District	TBD
25633 CR 448A	TBD
Mount Dora, Florida 32757	TBD
Phone: (407) 659-4872	Phone: TBD
Email: mzondevan@sjrwmd.com	Email: TBD

(b) The District’s Project Manager shall have sole responsibility for transmitting instructions, receiving information, and communicating District policies and decisions regarding all matters pertinent to performance of the Work.

(c) Contractor shall provide efficient supervision of the Work, using its best skill and attention. shall keep on Contractor the worksite during its progress a competent superintendent, satisfactory to

the District. The superintendent shall not be changed except with the District's consent, unless the superintendent proves to be unsatisfactory to Contractor and/or ceases to be in its employ. The superintendent shall represent Contractor in the absence of Contractor's Project Manager. All directions given to him shall be as binding as if given to Contractor. If the District produces documented evidence and informs the Contractor that any person on the job is incompetent, disorderly, or is working contrary to the Agreement or the District's instructions, that person shall thereupon be immediately dismissed from the project and shall not be given employment on any work connected with this Agreement. The District may request Contractor replace its Project Manager if said manager fails to carry the Work forward in a competent manner, follow instructions or specifications, or for other reasonable cause.

- (d) Contractor shall maintain an adequate and competent professional staff. Contractor's employees, subcontractors, or agents shall be properly trained to meet or exceed any specified licensing, training and/or certification applicable to their profession. Upon request, Contractor shall furnish proof thereof.

12. SCHEDULING AND WORK PLANNING; PROGRESS REPORTING

- (a) **Progress Reports.** Contractor shall provide to the District update/status reports as provided in the Statement of Work. Reports will provide detail on progress of the Work and outline any potential issues affecting completion or the overall schedule. Reports may be submitted in any form agreed to by District's Project Manager and Contractor, and may include emails, memos, and letters.

1. **Progress Meetings.** The District may conduct progress meetings with Contractor on a frequency to be determined by the District. In such event, Contractor shall make available its Project Manager and other appropriate personnel to discuss matters pertinent to the Work.
2. **Failure to Meet Schedule.** If progress of the Work falls five percent or more behind schedule, except as a result of District-approved delays, Contractor shall take all necessary steps to augment the work effort to get the project back on schedule. Should the progress of the Work fall ten percent or more behind schedule, the District may advise Contractor through a "cure" notice that this Agreement is subject to termination for cause if the failure is not cured within the time frame specified in said notice.

13. FORCE MAJEURE; DELAYS

- (a) **Force Majeure.** Contractor shall not be liable for failure to carry out the terms of this Agreement to the extent such failure is due to a Force Majeure event, except for failures that could have been reasonably foreseen and guarded against so as to avoid or reduce the adverse impact thereof. A Force Majeure event is hereby defined as the failure to carry out any of the terms of this Agreement due to any one of the following circumstances beyond the control of Contractor: (a) the operation and effect of rules, regulations, or orders promulgated by any commission, county, municipality, or governmental agency of the State of Florida or the United States, (b) a restraining order, injunction, or similar decree of any court of competent jurisdiction, (c) war, (d) flood, (e) earthquake, (f) fire, (g) severe wind storm, (h) acts of public disturbance, (i) quarantine restrictions, (j) epidemics, (k) strikes, (l) freight embargoes, or (m) sabotage. The times specified herein for performances include delays that can ordinarily be anticipated due to adverse weather conditions. The District is not obligated to grant an extension of time due to adverse weather conditions unless such conditions rise to the level of Force Majeure.
- (b) **Delay.** Contractor shall not be compensated for delays caused by Contractor's inefficiency, rework made necessary by Contractor's error, failure to perform the Work as scheduled, or any other corrective or productivity measures made necessary by errors, omissions, or failures to

properly perform the Work. Within ten days after the onset of a delay, Contractor shall notify the District in writing of the delay, which shall provide: (1) a detailed description the delay and its probable duration, (2) the specified portion of the Work affected, and (3) an opinion as to the cause of the delay and liability (if any) for the delay. Notices provided more than ten days after the inception of the delay shall only be effective as to additional costs or delay incurred during the ten-day period preceding receipt of such notice. In the case of continuing cause delay for the same cause, only one notice of delay is necessary. **Failure to provide this notice waives any claim for extension of time or additional compensation resulting from such delay.** If the delay is due to the failure of another District contractor to complete its work in a timely manner, changes ordered in the Work, a Force Majeure event, or any other cause which the District, in its sole judgment and discretion, determines to justify the delay, then the Completion Date may be extended as necessary to compensate for the delay. All time extensions shall be in the form of a written amendment signed by both parties.

14. AMENDMENTS; EMERGENCY CHANGES IN WORK

- (a) **Amendments.** The parties may not amend this Agreement except in writing. Modifications that alter, add to, or deduct from the Work, or otherwise modify the terms of this Agreement, shall be implemented through a change order or formal amendment, specifying the nature of the change and any associated change in the Total Compensation and/or Completion Date. The District's Project Manager may also issue a District Supplemental Instruction (DSI) form (Attachment C) to authorize minor adjustments to the Work that are consistent with the purpose of the Work. Both parties must sign the DSI. A DSI may not be used to change the Total Compensation, quantity, quality or the Completion Date of the Work, or to change or modify the Agreement.
- (b) **Emergency Changes in Work.** In the event an emergency endangering life or property requires immediate action, the District may give Contractor an oral instruction to proceed with an emergency change in the Work, which will be confirmed in writing within five days. Within 15 days after commencement of the emergency change in the Work, Contractor shall provide the District with a written estimate of any increased costs or delays as a result thereof. **Failure to so notify the District constitutes a waiver of any right to an extension of time or increase in compensation.** Within 15 days after receipt of Contractor's estimate, the parties shall negotiate a Change Order. If unable to reach agreement, disputed issues shall be resolved pursuant to the dispute resolution procedure. In no event shall Contractor decline to perform the emergency change in the Work.

15. TERMINATION AND SUSPENSION

- (a) **District Termination for Cause.** The Agreement may be terminated by the District for cause in the event of any breach hereof, including, but not limited to, Contractor's: (1) failing to carry forward and complete the Work as provided herein; (2) failing to comply with applicable laws, regulations, permits, or ordinances; (3) failing to timely correct defective Work; (4) making a general assignment for the benefit of its creditors; (5) having a receiver appointed because of insolvency; (6) filing bankruptcy or having a petition for involuntary bankruptcy filed against it; (7) failing to make payments when due to subcontractors, vendors, or others for materials or labor used in the Work; (8) making a material misrepresentation to the District regarding the Work, or (9) any other material breach of this Agreement. In such event, the District shall provide Contractor with written notice of its intention to terminate this Agreement, stating the nature of the deficiency and the effective date of termination. At the District's sole judgment and discretion, the District may afford Contractor an opportunity to cure said deficiency, in which event the notice shall specify the time allowed. Upon termination, the District may take

possession of the premises and of all materials thereon and finish the Work by whatever means it deems expedient. In such event, Contractor shall not receive any further payment until the Work is completed by the District. Contractor shall be liable for all costs involved in completing the Work, including additional managerial and administrative services, which shall be offset against any amount due to Contractor.

- (b) **District Termination for Convenience.** Notwithstanding any other provision hereof, the District may at any time terminate this Agreement or any Work issued under it, in whole or in part, without cause, upon 30 days' written notice to Contractor. In such event, Contractor shall be compensated for any Work performed prior to the date of termination and for materials that were ordered prior to receipt of notice of termination that cannot be returned to the vendor, which shall become District property. Upon receipt of notice, Contractor shall discontinue the Work on the date and to the extent specified therein and shall place no further orders for materials, equipment, services, or facilities, except as needed to continue any portion of the Work not terminated. Contractor shall also make every reasonable effort to cancel, upon terms satisfactory to the District, all orders or subcontracts related to the terminated Work. Contractor may not claim any compensation not specifically provided for herein, including, but not limited to: loss of anticipated profits; idle equipment, labor, and facilities; any additional claims of subcontractors and vendors.
- (c) **District Suspension for Cause.** The District may issue a written partial or full Stop Work Notice in the event Contractor fails to comply with or is negligent in performing any provision hereof. All performance shall immediately cease as per such notice and no further billable costs shall be incurred. The District may terminate this Agreement if Contractor fails or refuses to comply with a Stop Work Notice.
- (d) **District Suspension for Convenience.** The District may direct Contractor to stop Work, in whole or in part, whenever, in the District's sole judgment and discretion, such stoppage is necessary to ensure proper completion of the Work, avoid injury to third persons, or otherwise meet the District's objectives. The District shall provide Contractor not less than five days' written notice, except in emergency circumstances. Contractor shall immediately comply with such notice. Should such stoppage increase Contractor's cost, an equitable adjustment will be made by Change Order. The notice shall be effective until rescinded in writing, unless the period of suspension is stated in the notice.
- (e) **Contractor's Right to Stop Work or Terminate Agreement**
 - (i) **Stop Work.** Contractor may stop work only under the following circumstances: (1) the Work is ordered temporarily discontinued by a court or other public authority; (2) it is necessary to stop work in order to protect the safety of Contractor or third persons; or (3) the District fails to pay Contractor when due any undisputed and adequately documented sum certified for payment by the District Project Manager. In such event, Contractor shall provide the District not less than seven days prior written notice of its intention to stop work, except in emergency circumstances or when necessary to prevent injury to persons or property.
 - (ii) **Termination.** Contractor may terminate this Agreement under only the following circumstances: (1) the Work is ordered discontinued by a court or other public authority, through no act or fault of Contractor, for a period of not less than three months; (2) the District fails to pay Contractor when due any undisputed and adequately documented sum certified for payment by the District Project Manager. In such event, Contractor shall provide not less than 20 days written notice of its intention to terminate and afford the District the opportunity to cure said deficiency within said time period.

- (iii) **Duty to Perform.** Except as expressly provided above, in the event of any event, dispute, or other matter arising under this Agreement, Contractor shall fully perform the Work in accordance with the District's written instructions and may claim additional compensation as a Change Order, subject to the dispute resolution procedure.

**ADDITIONAL PROVISIONS
(In Alphabetical Order)**

16. DEFINITIONS

ADDENDA: Written or graphic instruments issued prior to the opening of responses, which make additions, deletions, or revisions to the solicitation or contract documents.

AGREEMENT: The written contract between the District and Contractor covering the Work, which includes all documents attached to this Agreement or incorporated herein by reference. The words "contract" and "Agreement" are synonymous in these documents.

AMENDMENT: Any written change made to the terms and conditions of the Agreement.

BUSINESS DAY: Monday through Friday, excepting those holidays observed by the District – New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving (and Friday), and Christmas Day.

CHANGE ORDER: A written agreement of the parties after the Commencement Date to amend this Agreement so as to modify the Statement of Work or the Total Compensation or provide for an extension of time.

CONTRACTOR: Contractor, its officers, employees, agents, successors, and assigns.

CONTRACTOR'S PROJECT MANAGER: The individual designated by the Contractor to be responsible for overall coordination, oversight, and management of the Work for Contractor.

REQUEST FOR PROPOSAL: An advertised solicitation for sealed competitive Proposals, with the title, date, and hour of the public opening designated. It includes a detailed description of the services sought, the date for submittal of Proposals, and all contractual terms and conditions.

RESPONDENT: Any person who submits a response to a solicitation.

STATEMENT OF WORK: The District's written directions, requirements and technical specifications for completing the Work. Standards for specifying materials or testing that are incorporated therein by reference shall have the same force and effect as if fully set forth therein.

SUBCONTRACTORS: Those persons having a direct contract with Contractor relating to performance of the Work, including one who furnishes material worked into a special design in accordance with the plans or specifications of the Work, but not including one who merely furnishes material.

TOTAL PROPOSAL: The total cost to be paid to Contractor for completion of the Work.

TOTAL COMPENSATION: The total funds to be expended pursuant to this Agreement upon satisfactory completion of the Work.

WORK: All labor, materials, equipment, transportation, supporting documentation, and other products, services, or facilities necessary for complete performance of the Agreement.

17. ASSIGNMENT AND SUBCONTRACTS

- (a) Contractor shall not sublet, assign, or transfer any Work involving more than 15% of the total cost of the Work, or assign any monies due hereunder, without the District's prior written consent. As soon as practicable after signing this Agreement, but not less than seven business days prior to the effective date of any subcontracts, Contractor shall notify the District's Project Manager in writing of the name of any subcontractor that has not been previously disclosed in the procurement process. Within five business days the District shall indicate its approval or disapproval, which shall not be unreasonably withheld. Failure to timely provide such approval or disapproval shall constitute approval. Neither District approval of a subcontractor nor any other provision of this Agreement creates a contractual relationship between any subcontractor and the District. Contractor shall be allowed a maximum five percent markup of their subcontractor's work for oversight and management.
- (b) Contractor is responsible for fulfilling all work elements in any subcontracts and payment of all monies due. Contractor is fully responsible to the District for the acts and omissions of its subcontractors and persons directly or indirectly employed by them and shall hold the District harmless from any liability or damages resulting from any subcontract to the extent allowed by law.

18. AUDIT; ACCESS TO RECORDS. Contractor must preserve its books and other records involving transactions related to this Agreement and provide the District, or its duly authorized representatives, access and necessary facilities to inspect and audit those records for five years after the receipt of funds. If an examination or audit is performed, Contractor must continue to maintain all required records until such audit has been completed and all questions arising from it are resolved. Contractor shall refund any payment(s) that are found to not constitute allowable costs based upon an audit examination.

19. CIVIL RIGHTS. Pursuant to chapter 760, Fla. Stat., Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, age, handicap, or marital status.

20. COOPERATION WITH THE INSPECTOR GENERAL, PURSUANT TO §20.055(5) FLA. STAT. Contractor and any subcontractors understand and will comply with their duty, pursuant to §20.055(5), Fla. Stat., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

21. COORDINATION WITH THE DISTRICT AND OTHER DISTRICT CONTRACTORS

- (a) The District may let other contracts in connection with the Work. Wherever work done by the District or another District contractor is contiguous to Contractor's Work, the respective rights of the various interests shall be established by the District so as to secure completion of the Work. Contractor shall arrange its Work so as not to interfere with the District or other District contractors and join its Work to that of others in a proper manner, and in accordance with the intent of the Statement of Work. Contractor shall perform its Work in the proper sequence in relation to that of other District contractors, as may be directed by the District. Contractor shall

afford other District contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly conduct and coordinate its Work with theirs. Contractor shall take into account all contingent work to be done by others and shall not plead it's want of knowledge of such contingent work as a basis for delay or non-performance. Contractor shall be liable for any damage it causes to the work performed by other District contractors.

- (b) If any part of the Work depends for proper execution or results upon the work of other District contractors, Contractor shall inspect and promptly report any defects in the other contractors' work that render it unsuitable for Contractor's Work. Failure to so inspect and report shall constitute an acceptance of the other contractors' work as fit and proper for the reception of its Work, except as to defects which may develop in the other contractors' work after execution of the Work.

22. CORRELATION AND INTENT OF DOCUMENTS; QUESTIONS OR ISSUES REGARDING PERFORMANCE OF THE WORK

- (a) This Agreement and all attachments are complementary. What is called for by one is as binding as if called for by all. The intent is to include all labor and materials, equipment, transportation, and incidentals necessary for the proper and complete execution of the Work. Materials or work described in words, which so applied have a well-known technical or trade meaning, shall be held to refer to such recognized standards.
- (b) It is the District's intention to fully assist Contractor in the successful performance of the Work and to respond in a timely manner to questions or issues that arise. Contractor should discuss any questions or issues with the District's Project Manager and communicate such questions or issues in writing when required by this Agreement. The District shall respond through its Project Manager.

23. DISPUTE RESOLUTION

- (a) **During the course of work.** In the event any dispute arises during the course of the Work, Contractor shall fully perform the Work in accordance with the District's written instructions and may claim additional compensation. Contractor is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by submitting a formal request for additional compensation, schedule adjustment, or other dispute resolution to the District's Project Manager no later than 15 days after the precipitating event. If not resolved by the Project Manager within five business days, the Project Manager shall forward the request to the District's Office of General Counsel, which shall issue a written decision within 15 days of receipt. This determination shall constitute final action of the District and shall then be subject to judicial review upon completion of the Work. **Contractor shall proceed with the Work in accordance with said determination. This shall not waive Contractor's position regarding the matter in dispute.**
- (b) **Invoices.** In the event the District rejects an invoice as improper, and the Contractor declines to modify the invoice, the Contractor must notify the District in writing within ten days of receipt of notice of rejection that the Contractor will not modify the invoice and state the reason(s) therefor. Within five business days of receipt of such notice, if not informally resolved through discussion with the District Project Manager, the Project Manager shall forward the disputed invoice and the Contractor's written response to the District's Office of General Counsel. The matter shall then proceed as described in subsection (a), above.

- 24. **DIVERSITY REPORTING.** The District is committed to the opportunity for diversity in its procurement activities and encourages its prime vendors (contractors and suppliers) to make a good faith effort to ensure that women and minority-owned business enterprises (W/MBE) are given the

opportunity for maximum participation as sub-contractors. The District will assist Contractor by sharing information on W/MBEs. Contractor shall provide with each invoice a report describing the company names for all W/MBEs, the type of minority, and the amount spent with each at all levels. The report will also denote if there were no W/MBE expenditures.

25. DUTY TO INSPECT AND REPORT DEFICIENCIES IN PLANS AND SPECIFICATIONS

- (a) For any Work that is dependent upon conditions at the worksite, Contractor’s acceptance of contract award represents and warrants that Contractor has inspected and satisfied itself concerning the nature and location of the Work and general and local conditions, including, without limitation: (1) conditions affecting transportation, disposal, handling, and storage of materials; (2) availability and quality of labor; (3) availability and condition of roads; (4) climatic conditions and seasons; (5) hydrology of the terrain; (6) topography and ground surface conditions; (7) nature and quantity of surface materials to be encountered; (8) equipment and facilities needed preliminary to and during the Work; and (9) all other matters that can affect the Work and the cost thereof. Contractor’s failure to acquaint itself with such conditions will not relieve it from its responsibility for properly estimating the time required or cost of performing the Work. Where the District has investigated subsurface conditions, this data may be provided to Contractor or is available upon request. Contractor must either seek clarification concerning the data or assume the responsibility for its interpretation.
- (b) If Contractor discovers hidden or subsurface conditions that differ materially from those normally expected or indicated in the technical specifications, Contractor shall immediately, and before such conditions are disturbed, notify the District in writing of: (1) subsurface or latent physical conditions differing materially from those indicated in the technical specifications, or (2) unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for herein. The District shall promptly investigate the conditions and determine whether they materially differ so as to cause an increase or decrease in Contractor’s cost. Where the differing site conditions materially impact Contractor’s cost, an equitable adjustment shall be made, and the Agreement modified accordingly. No claim will be allowed if Contractor fails to provide the required notice.
- (c) If Contractor in the course of the Work finds any defect in the plans and specifications, including, but not limited to, any discrepancy between the drawings and the physical conditions at the worksite, or any errors or omissions in the drawings or in the layout, as given by points and instructions, it shall immediately inform the District in writing, which shall be promptly verified by the District. Any Work done after such discovery, until authorized, will be done at Contractor’s risk as to cost overruns and modifications necessary to correct deficiencies in the Work. To ensure the proper execution of its subsequent Work, Contractor shall measure Work already in place or completed and shall immediately report any discrepancy between the executed Work and the drawings or other specifications.

26. GOVERNING LAW, VENUE, ATTORNEY’S FEES, WAIVER OF RIGHT TO JURY

TRIAL. This Agreement shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. As used herein, “shall” is always mandatory. In the event of any legal proceedings arising from or related to this Agreement: (1) venue for any state or federal legal proceedings shall be in Duval County; (2) each party shall bear its own attorney’s fees, including appeals; (3) for civil proceedings, the parties hereby consent to trial by the court and waive the right to jury trial.

27. **INTEREST IN THE BUSINESS OF CONTRACTOR; NON-LOBBYING.** Contractor certifies that no officer, agent, or employee of the District has any material interest, as defined in chapter 112, Fla. Stat., either directly or indirectly, in the business of Contractor to be conducted under this Agreement, and that no such person shall have any such interest at any time during the term of this Agreement. Pursuant to §216.347, Fla. Stat., monies received from the District pursuant to this Agreement shall not be used to lobby the Florida Legislature or any other state agency.
28. **INDEPENDENT CONTRACTOR.** Contractor is an independent contractor. Neither Contractor nor Contractor's employees are employees or agents of the District. Contractor controls and directs the means and methods by which the Work is accomplished. Contractor is solely responsible for compliance with all labor, health insurance (Patient Protection and Affordable Care Act 42 U.S.C. §§ 18001, et seq.), and tax laws pertaining to Contractor, its officers, agents, and employees, and shall indemnify and hold the District harmless from any failure to comply with such laws.
29. **LIENS.** Neither final payment nor payment of any part of the retainage shall become due until Contractor delivers to the District releases of all labor and material cost liens arising from Contractor's performance of the Work, including Contractor and any subcontractor(s), and an affidavit by Contractor stating that the releases and receipts include all labor and material costs for which a lien could be filed. If any subcontractor refuses to furnish Contractor a release or a receipt in full, Contractor may furnish to the District a bond satisfactory to the District, indemnifying the District against any such potential lien. If any lien or potential lien remains unsatisfied, the District may discharge the same forthwith and deduct the cost thereof from any amounts due to Contractor. In the event Contractor has been fully paid or the amount of such lien exceeds the amount due to Contractor, Contractor shall refund to the District all monies that the District paid in discharging such lien, including all costs and a reasonable attorney's fee. The discharging of such a lien by the District shall not constitute a waiver of any claims or defenses that Contractor may have against the lienor.
30. **NUISANCE.** Contractor shall exercise every reasonable means to avoid creating or continuing a public or private nuisance resulting from the Work, including, but not limited to: (1) excessive noise associated with radio or other forms of electronic entertainment for persons at the worksite; (2) dust from construction operations, and (3) the uncontrolled flow of surface waters.
31. **PERMITS AND LICENSES; COMPLIANCE WITH LAW.** Contractor shall comply with all applicable federal, state and local laws and regulations, including those pertaining to health and safety. All materials used, and work performed must conform to the laws of the United States, the state of Florida and county and municipal ordinances. Contractor represents and warrants that it is duly licensed to perform the Work in accordance with the laws of the state of Florida and the county or municipality in which the Work is to be performed. Unless otherwise specifically provided for herein, Contractor shall give to the proper authorities all required notices relative to the Work in its charge; obtain and pay for all official permits or any other licenses, including any and all professional licenses required by the nature of the Work; and furnish any bonds, security, or deposits required to permit performance of the Work. Contractor is responsible for the resolution of any issues resulting from a finding of noncompliance by any regulatory agencies, due to the Contractor's failure to comply with applicable regulatory requirements, including all costs for delays, litigation, fines, or other costs.
32. **PETROLEUM STORAGE TANKS.** Any petroleum storage tanks with a capacity of 55 gallons or greater that Contractor brings onto District property must be either double-walled or kept within secondary containment that will contain 110% of the tank volume.
33. **PUBLIC RECORDS**

- (a) Contractor is responsible for identifying confidential trade secret information as such upon submittal to the District. Notwithstanding any other provision hereof, the District shall not be liable to Contractor for release of confidential information not identified as such upon submittal. If the District receives a public records request that requests information claimed to be confidential by Contractor, the District shall take such steps as are necessary to comply with chapter 119, Fla. Stat., while protecting the confidentiality of trade secret information. In the event of a dispute as to whether the requested information is a trade secret, Contractor shall be liable for all costs incurred by the District resulting from the dispute, including any court costs and attorney's fees. The calculation of those costs shall not include costs that are charged to the public records requestor.
- (b) Contractor shall comply with Florida Public Records law under Chapter 119, Fla. Stat. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in §119.011(12), Fla. Stat. Contractor shall keep and maintain public records required by the District to perform the services under this Agreement.
- (c) If Contractor meets the definition of "Contractor" found in §119.0701(1)(a), Fla. Stat.; [i.e., an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency], then the following requirements apply:
 - (i) Pursuant to §119.0701, Fla. Stat., a request to inspect or copy public records relating to this Agreement for services must be made directly to the District. If the District does not possess the requested records, the District shall immediately notify the Contractor of the request, and the Contractor must provide the records to the District or allow the records to be inspected or copied within a reasonable time. If Contractor fails to provide the public records to the District within a reasonable time, the Contractor may be subject to penalties under s. 119.10, Fla. Stat.
 - (ii) Upon request from the District's custodian of public records, Contractor shall provide the District 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, Fla. Stat., or as otherwise provided by law.
 - (iii) Contractor shall identify and ensure that all 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 Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the District.
 - (iv) Upon completion of the Agreement, Contractor shall transfer, at no cost to District, all public records in possession of Contractor or keep and maintain public records required by the District to perform the services under this Agreement. If the Contractor transfers all public records to the District upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records that are stored electronically must be provided to the District, upon request from the District's custodian of public records, in a format that is accessible by and compatible with the information technology systems of the District.

(d) IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLA. STAT., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE DISTRICT'S CUSTODIAN OF PUBLIC RECORDS AT:

**District Clerk
St. Johns River Water Management District
4049 Reid Street
Palatka, Florida 32177-2571
(386) 329-4127
clerk@sjrwmd.com**

34. **REMEDIES FOR NON-PERFORMANCE.** In the event of incomplete or damaged Work caused by Contractor's failure of performance, the District may terminate this Agreement for cause. Alternatively, the District, in its sole discretion and judgment, may allow Contractor to correct the deficiency at its expense. If the District determines that it is not in its best interest for Contractor to correct the deficiency, the District may pursue any or all of the following remedies, in whole or in part: (1) accept the Work as is and deduct the reasonable value of the deficient Work from the Total Compensation; (2) complete the Work through the utilization of District employees and deduct the cost thereof from the Total Compensation; (3) contract with a third party to complete the deficient Work and deduct the cost thereof from the Total Compensation. In addition to the remedies set forth above, the District may avail itself of any statutory and/or common law remedies. Delay or failure by the District to enforce any right or remedy hereunder shall not impair, or be deemed a waiver of, any such right or remedy, or impair the District's rights or remedies for any subsequent breach of this Agreement.
35. **SAFETY.** For any Work that is to be performed on premises that are owned or controlled by the District (the Premises), Contractor has the sole and exclusive duty for the safety of the premises. Contractor shall provide and maintain sufficient protection for the safety of its employees and other persons who may utilize the Premises, and prevent damage to District property, materials, and equipment. Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ any unfit person or anyone not skilled in the work assigned. Neither Contractor nor its subcontractors shall allow or cause to be allowed any hunting or any weapons, animals, alcohol, or drugs, on or from the Premises or adjacent property. Contractor employees shall not park their vehicles or store equipment or materials adjacent to roads where it may be a hazard to traffic. A clear distance of at least 30 feet from the edge of the pavement or right-of-way shall be kept free of any obstacles unless otherwise authorized by the District. Contractor shall ensure that only authorized personnel are allowed on the worksite and shall post notices warning both employees and the public of all safety hazards created by Contractor.
36. **USE OF COMPLETED PORTIONS OF THE WORK.** The District shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding the fact that the time for completing the entire Work or such portions may not have expired. Such taking of possession and use will not be deemed an acceptance of any Work not completed. If such

possession and use increases the cost of or delays the Work, Contractor shall be entitled to a Change Order for extra compensation, or extension of time, as necessary, to offset the effect of such prior possession and use.

37. WARRANTY

- (a) Contractor warrants that the Work, workmanship and material furnished by Contractor shall be new and of specified quality, shall conform to the requirements of this Agreement, shall be free from defects, and shall be free from any security interest, lien, or other encumbrances. This warranty shall remain in effect for a period of 12 months after completion of the Work, unless otherwise specified herein. Any defective Work, workmanship, or material corrected during the warranty period shall be similarly warranted for 12 months following its correction or for such other period as specified herein. The express warranty set forth herein shall not be exclusive and shall not act as a limitation upon any statutory or other warranty of any kind, express or implied, including any implied warranty of merchantability or fitness for a particular purpose.
- (b) In the event of breach of this warranty, Contractor shall take the necessary actions to correct the breach in the most expedient manner as dictated by then-existing circumstances. All costs incidental to the repair, replacement, redesign, and testing incurred as a result thereof, including the removal, replacement, and reinstallation of equipment in place when the Work was started, shall be Contractor's responsibility. Upon written notification of a breach, Contractor shall promptly send the necessary personnel to the project site to assume responsibility for corrective action. Time is of the essence. Contractor shall be afforded necessary and reasonable access to perform warranty work. If Contractor fails to promptly correct the breach, the District may take corrective action without waiving any other rights or remedies it may have, and Contractor shall reimburse the District for all expenses reasonably incurred in performing such corrective action.

38. WORK SCHEDULE. For construction or other services upon District property, no Work shall be accomplished on official holidays or weekends unless approved in advance by the District Project Manager. Unless otherwise approved by the District Project Manager, Contractor's work hours on District property shall not commence before 7:00 a.m. and shall conclude on or before 6:00 p.m. All requests to change the schedule shall be coordinated with the District a minimum of 24 hours in advance of the change and confirmed in writing.

IN WITNESS WHEREOF, the St. Johns River Water Management District has caused this Agreement to be executed on the day and year written below in its name by its Executive Director, or duly authorized designee, and Contractor has caused this Agreement to be executed on the day and year written below in its name by its duly authorized representatives, and, if appropriate, has caused the seal of the corporation to be attached. This Agreement may be executed in separate counterparts, which shall not affect its validity. Upon execution, this Agreement constitutes the entire agreement of the parties, notwithstanding any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. This Agreement cannot be changed by any means other than written amendments referencing this Agreement and signed by all parties.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

CONTRACTOR

By: _____
Ann B. Shortelle, Ph.D., Executive
Director (or designee)

By: _____

Typed Name and Title

Date:

Date:
