

AGREEMENT FOR ENVIRONMENTAL MAINTENANCE - ANNUAL

THIS AGREEMENT ("Agreement") is made and entered into by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and EarthBalance Corporation, a Florida corporation, whose address is 2570 Commerce Parkway, North Port, FL 34289 and whose federal tax identification number is 59-2612208, hereinafter referred to as "Vendor."

WITNESSETH

WHEREAS, the County intends to purchase environmental maintenance services from the Vendor in connection with "Environmental Maintenance - Annual" (the "Purchase"); and,

WHEREAS, the County issued Solicitation No. RFP220164JJB on February 18, 2022 (the "Solicitation"); and,

WHEREAS, the County evaluated the responses received and found the Vendor qualified to provide the necessary services and,

WHEREAS, the County posted a Notice of Intended Decision on April 19, 2022; and,

WHEREAS, the Vendor has reviewed the products and services to be supplied pursuant to this Agreement and is qualified, willing and able to provide all such products and services in accordance with its terms.

NOW, THEREFORE, the County and the Vendor, in consideration of the mutual covenants contained herein, do agree as follows:

I. PRODUCTS AND SERVICES

The Vendor agrees to diligently provide all products and services for the Purchase, a more specific description of the Project Scope of Services is set forth in Section 1 of the Detailed Specifications of RFP220164JJB, a photocopy of said section being attached hereto and incorporated by reference as Exhibit A. Vendor shall comply strictly with all of the terms and conditions of Solicitation No. RFP220164JJB, as modified by its addendum, copies of which are on file with the County's Department of Procurement Management and are deemed incorporated into this Agreement.

II. TERM AND DELIVERY

A. This Agreement shall commence immediately upon the effective date and shall continue for one (1), three (3) year period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms not to exceed the initial Agreement term of three (3) years. The increments of renewal shall be at the sole

discretion of the County as deemed in its best interest. The effective date shall be the date the Lee County Board of County Commissioners awarded the Solicitation to the Vendor.

III. COMPENSATION AND PAYMENT

- A. The County shall pay the Vendor in accordance with the terms and conditions of this Agreement for providing all products and services as set forth in Exhibit A, and further described in Exhibit B, Fee Schedule, attached hereto and incorporated herein. Said total amount to be all inclusive of costs necessary to provide all products and services as outlined in this Agreement, and as supported by the Vendor's submittal in response to the Solicitation, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.
- B. Notwithstanding the preceding, Vendor shall not make any deliveries or perform any services under this Agreement until receipt of written authorization from the County. Vendor acknowledges and agrees that no minimum order or amount of product or service is guaranteed under this Agreement and County may elect to request no products or services. If the County authorizes delivery of products or performance of services, the County reserves the right to amend, reduce, or cancel the authorization in its sole discretion.
- C. All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of non-appropriation of funds by the County for the services provided under this Agreement, the County will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Vendor on thirty (30) days' prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Agreement beyond the date of termination.

IV. METHOD OF PAYMENT

- A. The County shall pay the Vendor in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes, upon receipt of the Vendor's invoice and written approval of same by the County indicating that the products and services have been provided in conformity with this Agreement.

- B. The Vendor shall submit an invoice for payment to the County on a monthly basis for those specific products and services as described in Exhibit A (and the corresponding fees as described in Exhibit B) that were provided during that invoicing period.
- C. For partial shipments or deliveries, progress payments shall be paid monthly in proportion to the percentage of products and services delivered on those specific line items as approved in writing by the County.

V. ADDITIONAL PURCHASES

- A. No changes to this Agreement or the performance contemplated hereunder shall be made unless the same are in writing and signed by both the Vendor and the County.
- B. If the County requires the Vendor to perform additional services or provide additional product(s) related to this Agreement, then the Vendor shall be entitled to additional compensation based on the Fee Schedule as amended to the extent necessary to accommodate such additional work or product(s). The additional compensation shall be agreed upon before commencement of any additional services or provision of additional product(s) and shall be incorporated into this Agreement by written amendment. The County shall not pay for any additional service, work performed or product provided before a written amendment to this Agreement.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Vendor, the Vendor shall not be entitled to additional compensation.

VI. LIABILITY OF VENDOR

- A. The Vendor shall save, defend, indemnify and hold harmless the County from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, error, omission or default of the Vendor arising out of or in any way connected with the Vendor or subcontractor's performance or failure to perform under the terms of this Agreement.
- B. This section shall survive the termination or expiration of this Agreement.

VII. VENDOR'S INSURANCE

- A. Vendor shall procure and maintain insurance as specified in Exhibit C Insurance Requirements, attached hereto and made a part of this Agreement.

- B. Vendor shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Agreement, insurance coverage (including endorsements) and limits as described in Exhibit C. These requirements, as well as the County's review or acceptance of insurance maintained by Vendor, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Vendor under this Agreement. Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of "B or better." No changes are to be made to these specifications without prior written specific approval by County Risk Management. To the extent multiple insurance coverages and/or County's self-insured retention may apply, any and all insurance coverage purchased by Vendor and its subcontractors identifying the County as an additional named insured shall be primary.

VIII. RESPONSIBILITIES OF THE VENDOR

- A. The Vendor shall be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Vendor under this Agreement. The Vendor shall, without additional compensation, correct any errors or deficiencies in its products, or if directed by County, supply a comparable replacement product or service.
- B. The Vendor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Vendor), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- C. The Vendor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- D. Vendor specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:
- 1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
 - 2) upon request from the County, 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; and
- 4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Vendor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, PRRCustodian@leegov.com; <http://www.leegov.com/publicrecords>.

- E. The Vendor is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor. Vendor is not an employee, agent or servant of the County and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Vendor's sole direction, supervision and control. The Vendor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Vendor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees of the County. The Vendor shall be solely responsible for providing benefits and insurance to its employees.
- F. The Vendor shall comply with the Vendor Background Screening Affidavit attached hereto and incorporated herein as Exhibit D.

IX. OWNERSHIP OF PRODUCTS

It is understood and agreed that all products provided under this Agreement shall become the property of the County upon acceptance by the County.

X. TIMELY DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES

- A. The Vendor shall ensure that all of its staff, contractors and suppliers involved in the production or delivery of the products are fully qualified and capable to perform their assigned tasks.
- B. The personnel assigned by the Vendor to perform the services pursuant to this Agreement shall comply with the terms set forth in this Agreement. If the services provided require use of specific key personnel, the personnel shall be agreed to by the County and Vendor. If the Vendor's key personnel have been predetermined and approved, through the Solicitation process or otherwise, any subsequent change or substitution to the personnel must receive the County's written approval before said changes or substitution can become effective.
- C. The Vendor specifically agrees that all products shall be delivered within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any unforeseeable and unavoidable cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the control of the parties.

XI. COMPLIANCE WITH APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Florida. Vendor shall promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations, and rules relating to the services to be performed hereunder and in effect at the time of performance. Vendor shall conduct no activity or provide any service that is unlawful or offensive.

XII. TERMINATION

- A. The County shall have the right at any time upon thirty (30) days' written notice to the Vendor to terminate this Agreement in whole or in part for any reason whatsoever. In the event of such termination, the County shall be responsible to Vendor only for fees and compensation earned by the Vendor, in accordance with Section III, prior to the effective date of said termination. In no event shall the County be responsible for lost profits of Vendor or any other elements of breach of contract.
- B. After receipt of a notice of termination, except as otherwise directed, the Vendor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.
- C. The County's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or

acceptance and are in addition to the Vendor's obligations under this Agreement.

XIII. DISPUTE RESOLUTION

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.
- B. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists, in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- D. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- E. Unless otherwise agreed in writing, the Vendor shall be required to continue all obligations under this Agreement during the pendency of a claim or dispute including, but not limited to, actual periods of mediation or judicial proceedings.

XIV. STOP WORK ORDER

The County may, at any time, by written order to the Vendor, require the Vendor to stop all or any part of the work called for by this Agreement. Any order shall be identified specifically as a stop work order issued pursuant to this clause. This order shall be effective as of the date the order is delivered to the Vendor. Upon receipt of such an order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. The Vendor shall not resume work unless specifically so directed in writing by the County. The County may take one of the following actions:

- 1. Cancel the stop work order; or
- 2. Terminate the work covered by the order; or
- 3. Terminate the Agreement in accordance with provisions contained in Section XI.

In the event the County does not direct the Vendor to resume work, the stop work order may be converted into a notice of termination for convenience pursuant to Section XII. The notice period for such termination shall be deemed to commence on the date of issuance of the stop work order. In the event the County does not direct the Vendor to resume work within ninety (90) days, the Vendor may terminate this Agreement.

XV. MISCELLANEOUS

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- B. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the parties hereto. A party to this Agreement shall not sell, transfer, assign, license, franchise, restructure, alter, or change its corporate structure or otherwise part with possession or mortgage, charge or encumber any right or obligation under this Agreement without the proposed assignee and/or party restructuring, altering or changing its corporate structure agreeing in writing with the non-assigning party to observe and perform the terms, conditions and restrictions on the part of the assigning party to this Agreement, whether express or implied, as if the proposed assignee and/or party restructuring, altering or changing its corporate structure was an original contracting party to this Agreement. Notwithstanding the foregoing provision, the Vendor may assign its rights if given written authorization by the County and claims for the money due or to become due to the Vendor from the County under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the County. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the County.
- C. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.
- D. The failure of the County to enforce one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
- E. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.

- F. Neither the County's review, approval or acceptance of, nor payment for, the products and services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- G. If the Vendor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- H. When any period of time is referred to by days herein, it shall be computed to exclude the first day and include the last day of such period. When the period of time is fewer than three (3) days, it shall mean business days as defined by Lee County. If the period of time is greater than three (3) days, then it shall mean calendar days. For any period of time greater than seven (7) days, where the deadline falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline will then fall to the next Monday or non-Lee County recognized holiday
- I. Any notices of default or termination shall be sufficient if sent by the parties via United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

<u>Vendor's Representative</u>		<u>County's Representative</u>		
Name:	Cristine Borowski	Names:	Roger Desjarlais	Mary Tucker
Title:	Vice President of Business Management	Titles:	County Manager	Procurement Management Director
Address:	2570 Commerce Parkway, North Port, FL 34289	Address:	P.O. Box 398 Fort Myers, FL 33902	
Telephone:	941-426-7878	Telephone:	(239) 533-2221	(239) 533-8881
Facsimile:	941-426-8778	Facsimile:	(239) 485-2262	(239) 485-8383
Email:	nhults@earthbalance.com	Email:	rdesjarlais@leegov.com	mtucker@leegov.com

- J. Any change in the County's or the Vendor's Representative will be promptly communicated by the party making the change.
- K. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- L. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:
 1. Agreement
 3. Solicitation
 4. Vendor's Submittal in Response to the Solicitation

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

EARTHBALANCE CORPORATION

Signed By: *Lisa Stansbury*
Print Name: Lisa Stansbury

Signed By: *Cristine Borowski*
Print Name: Cristine Borowski
Title: Vice President
Date: 4-29-22

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: *Cecil L. Pendergrass*
CHAIR
DATE: 6-17-22

Commissioner Cecil L. Pendergrass, Chairman
Lee County Board of County Commissioners
District 2

ATTEST:
CLERK OF THE CIRCUIT COURT

BY: *Melissa Butler*
Melissa Butler
Deputy Clerk



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: *Amador*
OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A DETAILED SPECIFICATIONS

VER 03-25-2021

DETAILED SPECIFICATIONS

1. GENERAL SCOPE OF PROJECT

- 1.1. The Lee County Board of County Commissioners seeks to contract with a Library of qualified Vendor's to perform various projects including but not limited to cleanup and maintenance projects within creeks, waterways, wetland, preserves, and upland areas throughout Lee County on an as-needed basis. All work performed to follow Federal, State, Local, OSHA and department mandated regulations and specifications for associated work. The scope of work for these projects shall be developed individually and may include one or more of the following tasks:
 - 1.1.1. Removal (manual and/or mechanical) of nuisance vegetation from designated portions within creeks, waterways, wetland, preserves, and upland areas. Nuisance vegetation includes invasive species listed as Category I & II by the Florida Invasive Species Council (FISC) as well as other native and non-native species as determined by the County Project Manager for each individual project. Removal may include herbicidal treatment by or under the supervision of an applicator with the appropriate State of Florida certification.
 - 1.1.2. Removal of vegetative and non-vegetative debris if determined to be an impediment to flow, have an adverse impact on water quality, or be a hazard to navigation.
 - 1.1.3. Planting of native vegetation as needed to restore site conditions or comply with permit requirements.
 - 1.1.4. Grading or excavation.
 - 1.1.5. Other incidental tasks determined by the County Project Manager to be necessary to complete project.
- 1.2. The following general conditions shall apply for all projects conducted under this contract unless modified by the County Project Manager.
 - 1.2.1. The Vendor shall be solely responsible for determining the type and amount of equipment and labor necessary to complete the work in accordance with the scope of work and within the time limits established by the County Project Manager.
 - 1.2.2. The Vendor shall be solely responsible for examining the area(s) identified on maps provided by the County Project Manager to arrive at an accurate cost determination for the work involved during the time of the year for which the work shall occur.
 - 1.2.3. The Vendor shall be responsible for providing adequate notice (at least 24 hours) to the County Project Manager prior to beginning any work.
 - 1.2.4. The Vendor shall be responsible for the proper disposal of all debris or vegetation collected or generated at the work site including trash items such as bottles, cans, etc. Non-vegetative debris must be disposed of at a Florida Department of Environmental Protection permitted facility.
 - 1.2.5. The Vendor shall exercise care to avoid damage to adjacent wetland and native plants or to public or private improvements including lawns, roadways, structures, utilities, sprinklers, septic systems, and fencing. Repair, replacement, or restitution for any such damage shall be the sole responsibility of the Vendor.
 - 1.2.6. The Vendor shall implement Best Management Practices (BMP's) for erosion and turbidity control to prevent violations of state water quality and impacts to wetlands and surface waters. The Vendor shall

maintain water quality as needed during the project to include but not be limited to the use of turbidity barriers and silt screens. In the event the work causes a violation of the turbidity or quality standards in Rule 62-302, F.A.C., the Vendor shall cease all work contributing to the violation and install more turbidity containment devices and repair any non-functioning turbidity containment devices. The Vendor shall notify the County Project Manager of the violation with eight (8) hours.

- 1.2.7. The Vendor shall be required to submit a site-specific prescription for any works involving the use of herbicides. All herbicides shall be approved for use by the E.P.A. and shall be applied per the manufacturer's instructions on the label by, or under the supervision of, an applicator that has been certified by the Florida Department of Agriculture and Consumer Services to include a category certification in either Aquatic Pest Control or Natural Areas Weed Management (dependent on hydric site conditions/vegetation). The Vendor shall adhere to all Federal, State and Local regulations governing the application, transportation, storage, use, and disposal of products used in the performance of this contract.
- 1.2.8. The Vendor shall furnish all labor, supplies, vehicles, equipment including operators, laborers, and superintendents necessary to provide the request services in accordance with all terms and conditions of this specification.
- 1.2.9. The Vendor shall be appropriately licensed and shall obtain all necessary permits (if applicable).
- 1.3. Perform control of exotic invasive pest plants as indicated in a site-specific prescription or plan using hand crews and/or heavy equipment. Crew leaders at a minimum shall possess a current State of Florida Department of Agriculture Pesticide Commercial applicator's license in Natural Areas Weed Management and/or Aquatic Pest Control categories.
- 1.4. Perform sourcing, procurement, delivery, and installation of native plants for mitigation and habitat restoration projects. This shall include planting and in some cases watering for a period to allow establishment of the plants. Ability to comply and adhere to permit conditions.

End of Detailed Specifications

SPECIAL CONDITIONS

1. BASIS OF AWARD

1.1. It is the County's intent to award to a library of qualified Vendors that are responsive, responsible, and meet the County's requirements to perform work on an as-needed basis over the term of this Agreement. This shall allow individual departments and divisions to use the Vendor that has the product that best supports the department's need. The County reserves the right to purchase the services listed in this Agreement elsewhere at its sole discretion and when deemed in its best interest.

2. MASTER AGREEMENT

2.1. This is a "Master" contract, which is not for any specific project. Work to be performed under this contract shall be authorized, scheduled, funded, and accounted for by the issuance of COUNTY Project Authorization (CPA), by the requesting department.

3. INDIVIDUAL PROJECT AWARDS

3.1. Any CPA \$25,000.00 or less may be awarded to any firm holding a valid contract under this bid, and able to meet the required schedule.

3.2. Any CPA over \$25,000.01, but less than \$200,000.00, the County shall be quoted by all approved firms holding a valid contract under this Solicitation. If there are fewer than three (3) approved firms holding a valid contract under this Solicitation, then all of the firms shall quote the project/task. When quotes are requested, the Vendor's submittal shall be based on the unit prices contracted, or lower prices. The quote shall not list any prices that are higher. Award of the project shall be made to the firm holding a valid contract under the Solicitation, with the lowest quoted price, able to meet the required project schedule.

3.3. The County retains the right to select any Vendor to whom a multiple-Vendor award has been made.

3.4. The County retains the right to bid separately and competitively any, and all job estimates greater than \$200,000.00.

3.5. The Vendor shall provide quotes for all products and services as requested by the County. The County's request for a quote does not authorize or otherwise guarantee issuance of a CPA for the work.

3.6. The Vendor's quote for each CPA negotiated shall provide, at a minimum:

3.6.1. Project Detailed Scope of Work

3.6.2. Itemized pricing

4. ADDITIONAL SERVICES

4.1. Vendor shall ensure that project site is restored to the satisfaction of the County, at its sole discretion, following all work completed under this Agreement. Following project specific needs, additional services unrelated to specified scope of work as described herein may be required to provide for full project completion. Such services may be requested under this Agreement on a project-by-project basis where the Vendor or County deem necessary and applicable.

5. LOCAL VENDOR PREFERENCE

5.1. For purposes of this Solicitation, a "Local Vendor" must satisfy each of the following requirements:

5.1.1. A physical business address in Lee County.

5.1.2. At least two (2) full-time employees in Lee County; and

5.1.3. A Local Business Tax Receipt issued by Lee County at least one year prior to solicitation opening.

5.2. A vendor must be able to demonstrate its qualification for the local preference at the time a quote is submitted, including any supporting documentation needed to verify the above requirements.

6. ADDITIONAL INSURANCE

- 6.1. Maritime Insurance may be requested on a project-by-project basis.

End of Special Conditions



Procurement Management Department
 2115 Second Street, 1st Floor
 Fort Myers, FL 33901
 Main Line: (239) 533-8881
 Fax Line: (239) 485-8383
www.leegov.com/procurement

Posted Date: March 16, 2022

Solicitation No.: RFP220164JJB

Solicitation Name: Environmental Maintenance - Annual

Subject: Addendum Number 1

The following represents clarification, additions, deletions, and/or modifications to the above referenced bid. This addendum shall hereafter be regarded as part of the solicitation. Items not referenced herein remain unchanged, including the response date. Words, phrases or sentences with a strikethrough represent deletions to the original solicitation. Underlined words and bolded, phrases or sentences represent additions to the original solicitation.

1. REVISED THRESHOLD FOR INDIVIDUAL PROJECTS

FROM:

Any CPA over \$25,000.01, but less than ~~\$200,000.00~~, the County shall be quoted by all approved firms holding a valid contract under this Solicitation.

TO:

Any CPA over \$25,000.01, but less than \$300,000.00, the County shall be quoted by all approved firms holding a valid contract under this Solicitation.

2. QUESTIONS/ANSWERS

1.	Is this RFP primarily for creeks and flow ways? And is there a 2nd RFP coming for Lee County Preserves (Exotic Vegetation Control)?
Answer	<u>Not necessarily, it is also for wetlands, preserves and upland areas. There will not be another RFP for Exotic Vegetation Control. The County's intent to combine the current Environmental Maintenance and Nuisance Vegetation and Debris Removal from Creeks and Waterways in Lee County into one solicitation.</u>
2.	Would all the vendors be asked to provide a bid for a individual project that is under \$25,000?
Answer	<u>No, only one Vendor needs to provide a quote.</u>
3.	Would the site manager have an estimate of each individual project?
Answer	<u>Yes.</u>
4.	Please confirm the due date for all proposals.
Answer	<u>March 23rd, 2022.</u>
5.	Will the County reach out to the contact person for the three similar projects under tab 2 of the evaluation criteria to validate?
Answer	<u>Yes. It is highly encouraged for Vendors to submit true and accurate information with their submission.</u>

6.	Can Vendors use Lee County projects for the reference surveys?
Answer	It is highly encouraged that Vendors use other municipalities or private companies to provide the references.
7.	Do you want the vendors to provide information if they have done work with the county in the past?
Answer	Yes. If Vendors have provided goods or services to the County on a regular basis within the past three (3) consecutive years, they must provide this in their submission. This can be found on page 33 of the solicitation package.
8.	Is this contract combining the current Environmental Maintenance and Nuisance Vegetation and Debris Removal from Creeks and Waterways contracts?
Answer	Yes, please see answer to #1.
9.	Is the first evaluation meeting a public meeting?
Answer	Yes.
10.	One of the other participants at the pre-bid meeting mentioned that one of the bid requirements was a list of all Lee County project's we've worked on over the past 3 years; however, I didn't see that requirement in the bid documents. Are respondents required to provide a list of all Lee County projects they've worked on for the past 3 years? If so, what information is required for each of those projects?
Answer	It is not required but highly encouraged that Vendors list all the work done with the County over the last three (3) years. This can be fulfilled just be referencing the solicitation number.
11.	In response to the notification of current Lee Co Minimum Insurance Requirements including Maritime Remedies page 16-17 item d. regarding the above referenced RFP, our Worker's Comp carrier AMERISAFE has provided a copy sample NCCI Maritime Coverage Endorsement applicable to the entire State of Florida attached here and advises that together with our current/existing Longshoreman and Harbor coverage (USL&H), these two coverages/endorsements satisfy the Lee Co minimum requirements of \$ 1,000,000.00 per occurrence as set forth in item d, Maritime Remedies but believe we are best served by asking for confirmation of this from Lee Co Risk Management. How do we go about seeking this clarification of compliance?
Answer	With Maritime Insurance only being requested on a project-by-project basis, this can be answered at the time that specific project is being bid out.

BIDDER/PROPOSER IS ADVISED, YOU ARE REQUIRED TO ACKNOWLEDGE RECEIPT OF THIS ADDENDUM WHEN SUBMITTING A BID/PROPOSAL. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE BIDDER/PROPOSER BEING CONSIDERED NON-RESPONSIVE.

ALL OTHER TERMS AND CONDITIONS OF THE SOLICITATION DOCUMENTS ARE AND SHALL REMAIN THE SAME.

Jake Bond
 Jake Bond
 Procurement Analyst Direct Line: 239-533-8898
 Lee County Procurement Management

**EXHIBIT B
FEE SCHEDULE**

Payment for actual work completed shall be made in accordance with the terms of this Agreement and any County Project Authorizations issued hereunder.

EXHIBIT C INSURANCE REQUIREMENTS



Lee County Insurance Requirements including Pollution Liability
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Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products and completed operations
\$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL)

- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident
\$500,000 disease limit
\$500,000 disease – policy limit

- d. **Pollution Liability** - Covering property loss and liability arising from pollution-related damages, for sites that have been inspected and found uncontaminated. Transporter moving hazardous products or waste as cargo aboard the transporter's truck:

\$1,000,000 bodily injury / property damage/ cleanup, including wrongful delivery.

**The required minimum limit of liability shown in a. or b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."*

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Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:
 - a. **The certificate holder shall read as follows:**

**Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902**
 - b. ***“Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials” will be named as an “Additional Insured” on the General Liability policy, including Products and Completed Operations coverage.***
 - c. Lee County will be given notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Risk Manager (P.O. BOX 398 Ft. Myers, FL 33902).

Special Requirements:

1. An appropriate “Indemnification” clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to insure that all subcontractors comply with all insurance requirements.



**Lee County Insurance Requirements
including Maritime Remedies**

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products and completed operations
\$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL)
\$500,000 bodily injury per person
\$1,000,000 bodily injury per accident
\$500,000 property damage per accident

- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident
\$500,000 disease limit
\$500,000 disease – policy limit

- d. **Maritime Remedies** – coverage shall provide minimum limits of liability of \$1,000,000 per occurrence for General Maritime Laws, including but not limited to:

Maintenance & Cure;
Unseaworthiness;
Wrongful Death;
Jones Act;



d. Maritime Remedies cont.

Death on the High Seas Act;
Longshore and Harbor Workers' Act;
Protection and Indemnity;

And or any other state workers' compensation law, or other federal occupational disease law that your employees might be exposed to.

**The required minimum limit of liability shown in a and b may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."*

Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

a. The certificate holder shall read as follows:

**Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902**

- b. "Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials" will be named as an "Additional Insured" on the General Liability policy, including Products and Completed Operations coverage.**

Special Requirements:

1. An appropriate "Indemnification" clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to insure that all subcontractors comply with all insurance requirements.

EXHIBIT D
VENDOR BACKGROUND SCREENING AFFIDAVIT



**VENDOR BACKGROUND
SCREENING AFFIDAVIT**

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Vendor who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The Vendor is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit. I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Vendor will be solely responsible for complying with such legal requirements. Furthermore, the Vendor shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: 5/21/2022

Cristin Borowski
Signature

STATE OF Florida
COUNTY OF Sarasota

Cristin Borowski, Vice President
Name/Title

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this 2nd day of May, 2022, by the above-named person and in their stated capacity, and is either personally known to me or who has produced the following as identification: _____

[Stamp/seal required]

Becky Adams
Signature, Notary Public

