



**BOARD OF COUNTY COMMISSIONERS**

**DATE:** December 10, 2013  
**AGENDA ITEM NO.** 21

**Consent Agenda** ☐

**Regular Agenda** ☒

**Public Hearing** ☐

**County Administrator's Signature**

**Subject:**

Approval of Ranking and Final Contract – Environmental Planting, Monitoring & Maintenance Services  
Contract No. 123-0445-P(LN)

**Department:**

Department of Environment and Infrastructure /  
Purchasing

**Staff Member Responsible:**

Richard Coates / Joe Lauro

**Recommended Action:**

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS (BOARD) APPROVE THE RANKING OF FIRMS  
AND CONTRACT FOR ENVIRONMENTAL PLANTING, MONITORING AND MAINTENANCE SERVICES WITH:

ENTRIX, INC. D/B/A CARDNO ENTRIX  
VANASSE HANGEN BRUSTLIN, INC.  
WATER & AIR RESEARCH, INC.

DALLAS, TEXAS  
UNIVERSITY PARK, FLORIDA  
GAINESVILLE, FLORIDA

IT IS FURTHER RECOMMENDED AFTER PROPER EXECUTION OF THE AGREEMENTS BY THE FIRMS, THE  
CHAIRMAN SIGN THE AGREEMENTS AND THE CLERK ATTEST.

IT IS ALSO RECOMMENDED THE COUNTY ADMINISTRATOR BE GRANTED AUTHORITY TO AMEND THE  
AGREEMENT PERTAINING TO THE SCOPE OF WORK.

**Summary Explanation/Background:**

On September 17, 2013, the Purchasing Department let a Request for Proposal (RFP) to establish a short list of  
qualified and experienced environmental firms to be used on an as needed basis by the Department of  
Environment and Infrastructure (DEI) Natural Resources Section. Services include but are not limited to  
environmental planting, permit monitoring activities and maintenance services for storm water treatment ponds,  
wetlands, ponds and other aquatic and natural areas.

On October 24, 2013, an evaluation committee consisting of two (2) staff members from DEI Watershed  
Management, two (2) staff members from the Department of Parks and Conservation Resources, a staff member  
from DEI Plant Operations, along with a representative from the Purchasing Department acting as facilitator,  
evaluated and ranked the proposals.

The firms in order of ranking is as follows:

|   |                               |        |        |
|---|-------------------------------|--------|--------|
| 1 | Vanasse Hangen Brustlin, Inc. | 875.00 | Points |
| 2 | Cardno Entrix                 | 874.00 | Points |
| 3 | Water & Air Research, Inc.    | 836.50 | Points |
| 4 | Earth Balance                 | 630.50 | Points |
| 5 | CPH, Inc.                     | 587.00 | Points |
| 6 | Bio-Tech Consulting, Inc.     | 479.50 | Points |
| 7 | Ecological Consultants, Inc.  | 438.00 | Points |
| 8 | Lake and Wetland Management   | 397.00 | Points |

The firms were evaluated according to the criteria listed below:

- Business Plan and Approach – 300 Points
- Experience – 300 Points
- Knowledge and Training – 350 Points
- Location – 50 Points

This competitive process was evaluated and ranked solely on firm qualifications and submittals were sufficiently detailed and comprehensive; further discussions with the firms are not necessary. As services are required, DEI will solicit an Invitation to Quote (ITQ) from the recommended qualified firms. The lowest quotation from a firm for a particular ITQ will be utilized to award work on specific projects. It is staff recommendation to recommend the top three proposers for contract award.

Services performed pursuant to this contract shall commence upon executed agreement and continue for thirty-six (36) months. There is provision for one (1) twenty-four (24) month term extension beyond the initial contract term pending Administrator approval.

Over the term of the contract, there may be minor changes required to the work scope, which was drafted in a general format for the purpose of evaluating qualifications. For the purpose of expediting minor changes to this contract, staff is requesting Board consideration to provide the Administrator the ability to amend the work scope of this contract.

**Fiscal Impact/Cost/Revenue Summary:**

ESTIMATED ANNUAL EXPENDITURE NOT TO EXCEED: \$800,000.00

Funding is provided through the Infrastructure Sales Tax (Penny for Pinellas): Various Capital Improvement Program (CIP) fund allocation.

**Exhibits/Attachments:**

Contract Review  
Agreements  
Tabulation Sheet



**PURCHASING DEPARTMENT  
CONTRACT REVIEW TRANSMITTAL**

CATS  
NO.: 4297

**PROJECT: Environmental Planting, Monitoring & Maintenance Services**

**RFP NUMBER: 123-0445-P(LN)**

**REQ. NUMBER:**

**TYPE:** ☐ Purchase Contract ☐ Other: ☐ Construction-Less than \$100,000 ☐ One Time

In accordance with the policy guide for Contract Administration, the attached documents are submitted for review and comment.

Upon completion of review, complete Contract Review Transmittal and forward to next Review Authority listed. Please indicate suggested changes by revising, in RED, the appropriate section of the document reflecting the exact wording of the change.

**RISK MANAGEMENT:** Please enter required liability coverage on pages: 14 - 17

**PRODUCT ONLY** ☐

This is an annual contract. Estimated Expenditure: \$150,000.00

| REVIEW SEQUENCE | REVIEW AUTHORITY                                                                                            | REVIEW DATE                              | REVIEW SIGNATURE                                       | COMMENTS (Attach Separate page if necessary)                                                                                              | COMMENTS INCORPORATED |
|-----------------|-------------------------------------------------------------------------------------------------------------|------------------------------------------|--------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| 1.              | Purchasing Dept.<br>J. Lauro, Director<br>C. Mancuso, Ass't. Director                                       | 8/9/13                                   | [Signature]                                            | It is a great idea to solicit for qualifications. However, each task is going to be unique and this document has very exact requirements. |                       |
| 2.              | DEI- Transportation and Stormwater.<br>R. Coates, Director<br>K. Levy Manager<br>B. Lambert, Sr. Env. Spec. | 8/22/13<br>8/22/13<br>8/21/13<br>8/22/13 | [Signatures: M. Barnwell, KHL for RC, KHL, B. Lambert] | written responses attached. as revised by Lisa T, includes my comments                                                                    |                       |

Using Dept please provide below information:

☐ Yes, funding for this requisition is using grant Funding. ☐ No, funding for this requisition is not using grant Funding.  
If grant funding is being used you must provide Purchasing with the exact clauses that need to be on attached document.

**Please check attached vendor list. Circle vendors you want RFPs mailed to. Add additional vendors with complete information (Name, Address, Phone and Fax)**

|    |                                                                                           |         |             |                                        |               |
|----|-------------------------------------------------------------------------------------------|---------|-------------|----------------------------------------|---------------|
| 3. | Risk Management Director<br>Attn: Virginia E. Hotscher<br>(Check applicable box at right) | 8/14/13 | [Signature] | Pls see changes - p. 15-17             | HIGH RISK     |
| 4. | BCC Finance<br>Attn: Cassandra Williams                                                   | 8/28/13 | [Signature] |                                        | NOT HIGH RISK |
| 5. | Legal<br>Attn: Miles Belknap                                                              | 9/3/13  | [Signature] | New Sample Services Agreement attached |               |
| 6. | Executive Director<br>David Scott                                                         | 9/5/13  | [Signature] |                                        |               |
| 7. | Asst. County Administrator<br>Attn: M. Woodard                                            | 9/9/13  | [Signature] |                                        |               |

**RETURN ALL DOCUMENTS TO PURCHASING**

Make all inquiries to: Lucy Nowacki, Procurement Analyst at Extension 43766  
In order to meet the following schedule, please return your requirements to Purchasing by:

**TENTATIVE DATES**

RFP Mail Out:  
RFP Opening:  
Purchasing Director Approval:

*we should be seeking quals and evaluating quals and then drawing out specific tasks for each*

## AGREEMENT

**THIS AGREEMENT** is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013 ("Effective Date"), by and between Pinellas County, a political subdivision of the State of Florida ("County"), and Entrix, Inc. D/B/A Cardno Entrix, ("Contractor") (individually, "Party," collectively, "Parties").

### WITNESSETH:

**WHEREAS**, the County requested proposals pursuant to RFP 123-0445-P ("RFP") for Environmental Planting, Monitoring & Maintenance services; and

**WHEREAS**, based upon the County's assessment of Contractor's proposal, the County selected the Contractor to provide the Services as defined herein; and

**WHEREAS**, Contractor represents that it has the experience and expertise to perform the Services as set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the above recitals, the mutual covenants, agreements, terms and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

#### **1. Definitions.**

**A. "Agreement"** means this Agreement, including all Exhibits, which are expressly incorporated herein by reference, and any amendments thereto.

**B. "County Confidential Information"** means any County information deemed confidential and/or exempt from Section 119.07, Florida Statutes, and Section 24(a), Article 1 of the Florida Constitution, or other applicable law, including, but not limited to, data or information referenced in \_\_\_\_\_ NA \_\_\_\_\_, and any other information designated in writing by the County as County Confidential Information.

**C. "Contractor Confidential Information"** means any Contractor information that constitutes a trade secret pursuant to Chapter 688, Florida Statutes, and is designated in this Agreement or in writing as a trade secret by Contractor (unless otherwise determined to be a public record by applicable Florida law). Notwithstanding the foregoing, Contractor Confidential Information does not include information that: (i) becomes public other than as a result of a disclosure by the County in breach of the Agreement; (ii) becomes available to the County on a non-confidential basis from a source other than Contractor, which is not prohibited from disclosing such information by obligation to Contractor; (iii) is known by the County prior to its receipt from Contractor without any obligation or confidentiality with respect thereto; or (iv) is developed by the County independently of any disclosures made by Contractor.

**D. "Contractor Personnel"** means all employees of Contractor, and all employees of subcontractors of Contractor, who are providing the Services at any time during the project term.

**E. "Services"** means the work, duties and obligations to be carried out and performed by Contractor under this Agreement, as described throughout this Agreement and as specifically described in Exhibit A, Scope of Work, attached hereto and incorporated herein by reference and as specifically described in the scope of work of the Invitation to Quote pursuant to which Contractor performs Services. As used in this Agreement, Services shall include any component task, subtask, service, or function inherent, necessary, or a customary part of the Services, but not specifically described in this Agreement, and shall include the provision of all standard day-to-day administrative, overhead, and internal expenses, including labor, materials, equipment, products, office supplies, consumables, tools, postage, computer hardware/software, telephone charges, copier usage, fax charges, travel, lodging, and per diem and all other costs required to perform Services except as otherwise specifically provided in this Agreement.

## 2. Services.

**A. Services.** The County retains Contractor, and Contractor agrees to provide the Services. All Services shall be performed to the satisfaction of the County, and shall be subject to the provisions and terms contained herein and the Exhibits attached hereto. As services are required, County will solicit an Invitation to Quote outlining the scope of work and schedule requirements. The lowest responsive, responsible quote able to perform within designated timetable will be utilized. A written award of acceptance (Purchase Order), mailed or otherwise furnished to the Contractor shall result in a binding contract without further action by either party.

**B. Services Requiring Prior Approval.** Work on Services requiring prior County approval as provided in Exhibit A, or any Additional Services, shall not be commenced until Contractor submits a written proposal describing the scope of the work, the cost, if applicable, and the completion schedule, if applicable, and the Contract Administrator approves the proposal in writing.

**C. Additional Services.** From the Effective Date and for the duration of the project, the County may elect to have Contractor perform Services that are not specifically described in Exhibit A attached hereto but are related to the Services ("Additional Services"), in which event Contractor shall perform such Additional Services on a time and materials basis, at an hourly rate as provided in Exhibit A attached hereto. Contractor shall commence performing the applicable Additional Services promptly upon receipt of written approval as provided herein.

**D. De-scoping of Services.** The County reserves the right, in its sole discretion, to de-scope Services upon written notification to the Contractor by the County. Upon issuance and receipt of the notification, the Contractor and the County shall enter into a written amendment reducing the appropriate Services Fee for the impacted Services by a sum equal to the amount associated with the de-scoped Services as defined in the payment schedule in this Agreement, if applicable, or as determined by mutual written consent of both Parties based upon the scope of work performed prior to issuance of notification.

**E. Independent Contractor Status and Compliance with the Immigration Reform and Control Act.** Contractor is and shall remain an independent contractor and is neither agent, employee, partner, nor joint venturer of County. Contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 U.S.C. 1324, et seq, and regulations relating thereto, as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach of the Agreement.

**F. Project Monitoring.** During the term of the Agreement, Contractor shall cooperate with the County, either directly or through its representatives, in monitoring Contractor's progress and performance of this Agreement.

## 3. Personnel.

**A. Qualified Personnel.** Contractor agrees that each person performing Services in connection with this Agreement shall have the qualifications and shall fulfill the requirements set forth in this Agreement.

**B. Approval and Replacement of Personnel.** The County shall have the right to approve all Contractor Personnel assigned to provide the Services, which approval shall not be unreasonably withheld. Prior to commencing the Services, the Contractor shall provide at least ten (10) days written notice of the names and qualifications of the Contractor Personnel assigned to perform Services pursuant to the Agreement. Thereafter, during the term of this Agreement, the Contractor shall promptly and as required by the County provide written notice of the names and qualifications of any additional Contractor Personnel assigned to perform Services. The County, on a reasonable basis, shall have the right to require the removal and replacement of any of the Contractor Personnel performing Services, at any time during the term of the Agreement. The County will notify Contractor in writing in the event the County requires such action. Contractor shall accomplish any such removal within forty-eight (48) hours after receipt of notice from the County and shall promptly replace such person with another person, acceptable to the County, with sufficient knowledge and expertise to perform the Services assigned to such individual in accordance with this Agreement.

#### **4. Compensation of and Method of Payment.**

**A. Services Fee.** The County agrees to pay the Contractor the annual sum of not-to-exceed \$\_\_\_\_\_, payable based on the options selected below ("Services Fee") pursuant to the terms and conditions as provided in this Agreement. It is acknowledged and agreed by Contractor that this amount constitutes a limitation upon County's obligation to compensate Contractor for such Services required by this Agreement, but does not constitute a limitation upon Contractor's obligation to perform all of the Services required by this Agreement. In no event will the Services Fee paid pursuant to one of the options selected below exceed the not-to-exceed sum set out in this subsection A, unless the Parties agree to increase this sum by written amendment as authorized in Section 20 of the Agreement (select appropriate box).

☐ For the term commencing on \_\_\_\_\_, 201\_\_\_\_, and ending on \_\_\_\_\_, 201\_\_\_\_, County agrees to pay the Contractor the annual Services Fee of not-to-exceed \$\_\_\_\_\_ for Services completed and accepted as provided in Section \_\_\_\_\_ herein, payable in equal monthly payments of \$\_\_\_\_\_ on the first day of the month commencing on \_\_\_\_\_, 201\_\_\_\_, upon submittal of an invoice as required herein.

☐ County shall pay the Services Fee to the Contractor on a fixed-fee basis for all Services completed and accepted as provided in Section 14 herein. The deliverables and the fixed fees payable are set out in Exhibit B, and are payable upon completion, and acceptance of the deliverables if applicable, and submittal of an invoice as required herein.

☐ County shall pay the Services Fee to the Contractor at (select appropriate box):

☐ the hourly rate of \$\_\_\_\_\_; or

☐ the hourly rates set out in Exhibit \_\_\_\_\_ attached hereto.

Payment of the hourly rate Services Fee shall be due upon completion and acceptance of the Services and submittal of an invoice as required herein.

☒ Other:

As services are required, County will solicit an Invitation to Quote outlining the scope of work and schedule requirements. The lowest responsive, responsible quote able to perform within designated timetable will be utilized. A written award of acceptance (Purchase Order), mailed or otherwise furnished to the Contractor shall result in a binding contract without further action by either party, and Contractor shall be compensated in accordance with Contractor's quote, the Purchase Order and the terms of this Agreement.

#### **B. Travel Expenses.** (Select appropriate box.)

☒ The Services Fee includes all travel, lodging and per diem expenses incurred by Contractor in performing the Services.

☐ The County shall reimburse the Contractor the sum of not-to-exceed \$\_\_\_\_\_ for the travel expenses incurred in accordance with Section 112.061, Florida Statutes, and County Travel Policy, and as approved in writing in advance by \_\_\_\_\_.

#### **C. Tax Exempt Status.** Contractor acknowledges that the County is a tax exempt entity.

**D. Payments.** Contractor shall submit invoices for payments due as provided herein and authorized reimbursable expenses incurred with such documentation as required by County to (select appropriate box):

☒ the County Project Manager as set out in Section 17 herein; or

☐ as provided in Exhibit \_\_\_\_\_ attached hereto.

All payments shall be made in accordance with the requirements of Section 218.70 et seq., Florida Statutes, "The Local Government Prompt Payment Act." The County may dispute any payments invoiced by Contractor in accordance with the County's Invoice Payments Dispute Resolution Process established in accordance with Section 218.76, Florida Statutes, and any such disputes shall be resolved in accordance with the County's Dispute Resolution Process.

- I.
- A.
- B.
- C.
- D.

## 5. Term of Agreement.

**A. Initial Term.** This Agreement shall take effect on the Effective Date and shall remain in full force and effect until expiration of the term of the Agreement or termination of the Agreement as provided herein, whichever occurs first, and except as provided in Section 16. The initial term of this Agreement shall begin (select appropriate box):

- ☒ on the Effective Date
- ☐ on \_\_\_\_\_

and shall continue (select appropriate box):

- ☒ for a period of thirty six (36) months
- ☐ through \_\_\_\_\_,

unless terminated or extended in accordance with the provisions of this Agreement.

**B. Term Extension.** (Select appropriate box.)

- ☐ The term of this Agreement may not be extended. All Services shall be completed by the expiration of the initial term as defined in 5(A).
- ☒ The Parties may extend the term of this Agreement for one (1) additional twenty four (24) month period pursuant to the same terms, conditions, and pricing set forth in the Agreement by mutually executing an amendment to this Agreement, as provided herein.

## 6. Termination.

**A. Contractor Default Provisions and Remedies of County.**

1. Events of Default. Any of the following shall constitute a "Contractor Event of Default" hereunder: (i) Contractor fails to maintain the staffing necessary to perform the Services as required in the Agreement, fails to perform the Services as specified in the Agreement, or fails to complete the Services within the completion dates as specified in the Agreement; (ii) Contractor breaches Section 8 (Confidential Information); (iii) Contractor fails to gain acceptance of a deliverable per Section 14, if applicable, for two (2) consecutive iterations; or (iv) Contractor fails to perform or observe any of the other material provisions of this Agreement.

2. Cure Provisions. Upon the occurrence of a Contractor Event of Default as set out above, the County shall provide written notice of such Contractor Event of Default to Contractor ("Notice to Cure"), and Contractor shall have thirty (30) calendar days after the date of a Notice to Cure to correct, cure, and/or remedy the Contractor Event of Default described in the written notice.

3. Termination for Cause by the County. In the event that Contractor fails to cure a Contractor Event of Default as authorized herein, or upon the occurrence of a Contractor Event of Default as specified in Section 6.A.1.(iii), the County may terminate this Agreement in whole or in part, effective upon receipt by Contractor of written notice of termination pursuant to this provision, and may pursue such remedies at law or in equity as may be available to the County.

**B. County Default Provisions and Remedies of Contractor.**

1. Events of Default. Any of the following shall constitute a "County Event of Default" hereunder: (i) the County fails to make timely undisputed payments as described in this Agreement; (ii) the County breaches Section 8 (Confidential Information); or (iii) the County fails to perform any of the other material provisions of this Agreement.

2. Cure Provisions. Upon the occurrence of a County Event of Default as set out above, Contractor shall provide written notice of such County Event of Default to the County ("Notice to Cure"), and the County shall have thirty (30) calendar days after the date of a Notice to Cure to correct, cure, and/or remedy the County Event of Default described in the written notice.

3. Termination for Cause by Contractor. In the event the County fails to cure a County Event of Default as authorized herein, Contractor may terminate this Agreement in whole or in part effective on receipt by the County of written notice of termination pursuant to this provision, and may pursue such remedies at law or in equity as may be available to the Contractor.

**C. Termination for Convenience.** Notwithstanding any other provision herein, the County may terminate this Agreement, without cause, by giving thirty (30) days advance written notice to the Contractor of its election to terminate this Agreement pursuant to this provision.

7. Time is of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance, including the Services as described in Exhibits attached hereto; provided, however, that the foregoing shall not be construed to limit a Party's cure period allowed in the Agreement.

**8. Confidential Information and Public Records.**

**A. County Confidential Information.** Contractor shall not disclose to any third party County Confidential Information that Contractor, through its Contractor Personnel, has access to or has received from the County pursuant to its performance of Services pursuant to the Agreement, unless approved in writing by the County Contract Manager. All such County Confidential Information will be held in trust and confidence from the date of disclosure by the County, and discussions involving such County Confidential Information shall be limited to Contractor Personnel as is necessary to complete the Services.

**B. Contractor Confidential Information.** All Contractor Confidential Information received by the County from Contractor will be held in trust and confidence from the date of disclosure by Contractor and discussions involving such Contractor Confidential Information shall be limited to the members of the County's staff and the County's subcontractors who require such information in the performance of this Agreement. The County acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of Contractor in the Contractor Confidential Information during and after the term of the Agreement and shall at all times maintain the confidentiality of the Contractor Confidential Information provided to the County, subject to federal law and the laws of the State of Florida related to public records disclosure. Contractor shall be solely responsible for taking any and all action it deems necessary to protect its Contractor Confidential Information except as provided herein. Contractor acknowledges that the County is subject to public records legislation, including but not limited to Chapter 119, Florida Statutes, and the Florida Rules of Judicial Administration, and that any of the County's obligations under this Section may be superseded by its obligations under any requirements of said laws.

**C. Public Records.** Contractor acknowledges that information and data it manages as part of the services may be public records in accordance with Chapter 119, Florida Statutes and Pinellas County public records policies. Contractor agrees that prior to providing services it will implement policies and procedures to maintain, produce, secure, and retain public records in accordance with applicable laws, regulations, and County policies, including but not limited to the Section 119.0701, Florida Statutes. Notwithstanding any other provision of this

Agreement relating to compensation, the Contractor agrees to charge the County, and/or any third parties requesting public records only such fees allowed by Section 119.07, Florida Statutes, and County policy for locating and producing public records during the term of this Agreement

**9. Audit.** Contractor shall retain all records relating to this Agreement for a period of at least three (3) years after final payment is made. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, County reserves the right to audit such records pursuant to Pinellas County Code, Section 2-176(j).

**10. Compliance with Laws.** Contractor shall comply with all applicable federal, state, county and local laws, ordinances, rules and regulations in the performance of its obligations under this Agreement, including the procurement of permits and certificates where required, and including, but not limited to, laws related to Workers' Compensation, occupational safety and health and the environment, equal employment opportunity, and privacy of medical records or information.

**11. Public Entities Crimes.** Contractor is directed to the Florida Public Entities Crime Act, Section 287.133, Florida Statutes, and represents to County that Contractor is qualified to transact business with public entities in Florida.

**12. Liability and Insurance.**

**A. Insurance.** Contractor shall comply with the insurance requirements set out in Exhibit C, attached hereto and incorporated herein by reference.

**B. Indemnification.** Contractor agrees to indemnify, pay the cost of defense, including attorney's fees, and hold harmless the County, its officers, employees and agents from all damages, suits, actions or claims, including reasonable attorney's fees incurred by the County, of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the Agreement; or on account of any act or omission, neglect or misconduct of Contractor; or by, or on account of, any claim or amounts recovered under the Workers' Compensation Law or of any other laws, regulations, ordinance, order or decree; or arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon; except only such injury or damage as shall have been occasioned by the sole negligence of the County.

**C. Liability.** Neither the County nor Contractor shall make any express or implied agreements, guaranties or representations, or incur any debt, in the name of or on behalf of the other Party. Neither the County nor Contractor shall be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized hereunder. The County shall have no liability or obligation for any damages to any person or property directly or indirectly arising out of the operation by Contractor of its business, whether caused by Contractor's negligence or willful action or failure to act.

**D. Contractor's Taxes.** The County will have no liability for any sales, service, value added, use, excise, gross receipts, property, workers' compensation, unemployment compensation, withholding or other taxes, whether levied upon Contractor or Contractor's assets, or upon the County in connection with Services performed or business conducted by Contractor. Payment of all such taxes and liabilities shall be the responsibility of Contractor.

**13. County's Funding.** The Agreement is not a general obligation of the County. It is understood that neither this Agreement nor any representation by any County employee or officer creates any obligation to appropriate or make monies available for the purpose of the Agreement beyond the fiscal year in which this Agreement is executed. No liability shall be incurred by the County, or any department, beyond the monies budgeted and available for this purpose. If funds are not appropriated by the County for any or all of this Agreement, the County shall not be obligated to pay any sums provided pursuant to this Agreement beyond the portion for which funds are appropriated. The County agrees to promptly notify Contractor in writing of such failure of appropriation, and upon receipt of such notice, this Agreement, and all rights and obligations contained herein, shall terminate without liability or penalty to the County.

**14. Acceptance of Services.** For all Services deliverables that require County acceptance as provided in Exhibit A, the County, through the Contract Administrator or designee, will have ten (10) calendar days to review the deliverable(s) after receipt or completion of same by Contractor, and either accept or reject the deliverable(s) by written notice to Contractor's Project Manager. If a deliverable is rejected, the written notice from the County will specify any required changes, deficiencies, and/or additions necessary. Contractor shall then have seven (7) calendar days to revise the deliverable(s) to resubmit and/or complete the deliverable(s) for review and approval by the County, who will then have seven (7) calendar days to review and approve, or reject the deliverable(s); provided however, that Contractor shall not be responsible for any delays in the overall project schedule that result from the County's failure to timely approve or reject deliverable(s) as provided herein. Upon final acceptance of the deliverable(s), the County will accept the deliverable(s) in writing.

**15. Subcontracting/Assignment.**

**A. Subcontracting.** Contractor is fully responsible for completion of the Services required by this Agreement and for completion of all subcontractor work, if authorized as provided herein. Contractor shall not subcontract any work under this Agreement to any subcontractor other than the subcontractors specified in the proposal and previously approved by the County, without the prior written consent of the County, which shall be determined by the County in its sole discretion.

**B. Assignment.** (Select appropriate box.)

☐ This Agreement, and any rights or obligations hereunder, shall not be assigned, transferred or delegated to any other person or entity. Any purported assignment in violation of this section shall be null and void.

☒ This Agreement, and all rights or obligations hereunder, shall not be assigned, transferred, or delegated in whole or in part, including by acquisition of assets, merger, consolidation, dissolution, operation of law, change in effective control of the Contractor, or any other assignment, transfer, or delegation of rights or obligations, without the prior written consent of the County. The Contractor shall provide written notice to the County within fifteen (15) calendar days of any action or occurrence assigning the Agreement or any rights or obligations hereunder as described in this section. In the event the County does not consent to the assignment, as determined in its sole discretion, the purported assignment in violation of this section shall be null and void, and the County may elect to terminate this Agreement by providing written notice of its election to terminate pursuant to this provision upon fifteen (15) days notice to Contractor.

**16. Survival.** The following provisions shall survive the expiration or termination of the Term of this Agreement: 6, 8, 9, 12.

**17. Notices.** All notices, authorizations, and requests in connection with this Agreement shall be deemed given on the day they are: (1) deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (2) sent by air express courier (e.g., Federal Express, Airborne, etc.), charges prepaid, return receipt requested; or (iii) sent via email and addressed as set forth below, which designated person(s) may be amended by either Party by giving written notice to the other Party:

For County:

For Contractor:

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:  
Purchasing Director  
Pinellas County Purchasing Department

400 South Fort Harrison Avenue  
Clearwater, FL 33756  
cc: Purchasing Director

**18. Conflict of Interest.**

A. The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the Services required hereunder, and that no person having any such interest shall be employed by Contractor during the agreement term and any extensions.

B. The Contractor shall promptly notify the County in writing of any business association, interest, or other circumstance which constitutes a conflict of interest as provided herein. If the Contractor is in doubt as to whether a prospective business association, interest, or other circumstance constitutes a conflict of interest, the Contractor may identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion as to whether the business association, interest or circumstance constitutes a conflict of interest if entered into by the Contractor. The County agrees to notify the Contractor of its opinion within (10) calendar days of receipt of notification by the Contractor, which shall be binding on the Contractor.

**19. Right to Ownership.** All work created, originated and/or prepared by Contractor in performing Services pursuant to the Agreement, to the extent that such work, products, documentation, materials or information are described in or required by the Services (collectively, the "Work Product") shall be County's property when completed and accepted, if acceptance is required in this Agreement, and the County has made payment of the sums due therefore. The ideas, concepts, know-how or techniques developed during the course of this Agreement by the Contractor or jointly by Contractor and the County may be used by the County without obligation of notice or accounting to the Contractor. Any data, information or other materials furnished by the County for use by Contractor under this Agreement shall remain the sole property of the County.

**20. Amendment.** This Agreement may be amended by mutual written agreement of the Parties hereto. The County Administrator shall be authorized to execute amendments to this Agreement for the County for any amendment decreasing Services Fees or increasing Services Fees not more than the sums authorized in Section 2-62(a)(1), Pinellas County Code, amending the scope of the Services without any change to the Services Fees.

**21. Severability.** The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the Agreement impossible to perform.

**22. Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without regard to principles of conflicts of laws). The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a Party elects to file an action in federal court) courts located in or for Pinellas County, Florida. This choice of venue is intended by the Parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the Parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this section. Each Party waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this section.

**23. Waiver.** No waiver by either Party of any breach or violation of any covenant, term, condition, or provision of this Agreement or of the provisions of any ordinance or law, shall be construed to waive any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same.

**24. Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties and supersedes all prior negotiations, representations or agreements either oral or written.

*(Signature Page Follows)*

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement the day and year first written.

**PINELLAS COUNTY, FLORIDA**

**[CONTRACTOR]**

by and through its \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

**ATTEST:**

**KEN BURKE, CLERK OF COURT**

By: \_\_\_\_\_

Deputy Clerk

**APPROVED AS TO FORM**

By: \_\_\_\_\_

Office of the County Attorney



## AGREEMENT

**THIS AGREEMENT** is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013 ("Effective Date"), by and between Pinellas County, a political subdivision of the State of Florida ("County"), and Vanasse Hangen-Brustin, Inc., ("Contractor") (individually, "Party," collectively, "Parties").

### W I T N E S S E T H:

**WHEREAS**, the County requested proposals pursuant to RFP 123-0445-P ("RFP") for Environmental Planting, Monitoring & Maintenance services; and

**WHEREAS**, based upon the County's assessment of Contractor's proposal, the County selected the Contractor to provide the Services as defined herein; and

**WHEREAS**, Contractor represents that it has the experience and expertise to perform the Services as set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the above recitals, the mutual covenants, agreements, terms and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

#### **1. Definitions.**

**A. "Agreement"** means this Agreement, including all Exhibits, which are expressly incorporated herein by reference, and any amendments thereto.

**B. "County Confidential Information"** means any County information deemed confidential and/or exempt from Section 119.07, Florida Statutes, and Section 24(a), Article 1 of the Florida Constitution, or other applicable law, including, but not limited to, data or information referenced in \_\_\_\_\_ NA \_\_\_\_\_, and any other information designated in writing by the County as County Confidential Information.

**C. "Contractor Confidential Information"** means any Contractor information that constitutes a trade secret pursuant to Chapter 688, Florida Statutes, and is designated in this Agreement or in writing as a trade secret by Contractor (unless otherwise determined to be a public record by applicable Florida law). Notwithstanding the foregoing, Contractor Confidential Information does not include information that: (i) becomes public other than as a result of a disclosure by the County in breach of the Agreement; (ii) becomes available to the County on a non-confidential basis from a source other than Contractor, which is not prohibited from disclosing such information by obligation to Contractor; (iii) is known by the County prior to its receipt from Contractor without any obligation or confidentiality with respect thereto; or (iv) is developed by the County independently of any disclosures made by Contractor.

**D. "Contractor Personnel"** means all employees of Contractor, and all employees of subcontractors of Contractor, who are providing the Services at any time during the project term.

**E. "Services"** means the work, duties and obligations to be carried out and performed by Contractor under this Agreement, as described throughout this Agreement and as specifically described in Exhibit A, Scope of Work, attached hereto and incorporated herein by reference and as specifically described in the scope of work of the Invitation to Quote pursuant to which Contractor performs Services. As used in this Agreement, Services shall include any component task, subtask, service, or function inherent, necessary, or a customary part of the Services, but not specifically described in this Agreement, and shall include the provision of all standard day-to-day administrative, overhead, and internal expenses, including labor, materials, equipment, products, office supplies, consumables, tools, postage, computer hardware/software, telephone charges, copier usage, fax charges, travel, lodging, and per diem and all other costs required to perform Services except as otherwise specifically provided in this Agreement.

## **2. Services.**

**A. Services.** The County retains Contractor, and Contractor agrees to provide the Services. All Services shall be performed to the satisfaction of the County, and shall be subject to the provisions and terms contained herein and the Exhibits attached hereto. As services are required, County will solicit an Invitation to Quote outlining the scope of work and schedule requirements. The lowest responsive, responsible quote able to perform within designated timetable will be utilized. A written award of acceptance (Purchase Order), mailed or otherwise furnished to the Contractor shall result in a binding contract without further action by either party.

**B. Services Requiring Prior Approval.** Work on Services requiring prior County approval as provided in Exhibit A, or any Additional Services, shall not be commenced until Contractor submits a written proposal describing the scope of the work, the cost, if applicable, and the completion schedule, if applicable, and the Contract Administrator approves the proposal in writing.

**C. Additional Services.** From the Effective Date and for the duration of the project, the County may elect to have Contractor perform Services that are not specifically described in Exhibit A attached hereto but are related to the Services ("Additional Services"), in which event Contractor shall perform such Additional Services on a time and materials basis, at an hourly rate as provided in Exhibit A attached hereto. Contractor shall commence performing the applicable Additional Services promptly upon receipt of written approval as provided herein.

**D. De-scoping of Services.** The County reserves the right, in its sole discretion, to de-scope Services upon written notification to the Contractor by the County. Upon issuance and receipt of the notification, the Contractor and the County shall enter into a written amendment reducing the appropriate Services Fee for the impacted Services by a sum equal to the amount associated with the de-scoped Services as defined in the payment schedule in this Agreement, if applicable, or as determined by mutual written consent of both Parties based upon the scope of work performed prior to issuance of notification.

**E. Independent Contractor Status and Compliance with the Immigration Reform and Control Act.** Contractor is and shall remain an independent contractor and is neither agent, employee, partner, nor joint venturer of County. Contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 U.S.C. 1324, et seq, and regulations relating thereto, as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach of the Agreement.

**F. Project Monitoring.** During the term of the Agreement, Contractor shall cooperate with the County, either directly or through its representatives, in monitoring Contractor's progress and performance of this Agreement.

## **3. Personnel.**

**A. Qualified Personnel.** Contractor agrees that each person performing Services in connection with this Agreement shall have the qualifications and shall fulfill the requirements set forth in this Agreement.

**B. Approval and Replacement of Personnel.** The County shall have the right to approve all Contractor Personnel assigned to provide the Services, which approval shall not be unreasonably withheld. Prior to commencing the Services, the Contractor shall provide at least ten (10) days written notice of the names and qualifications of the Contractor Personnel assigned to perform Services pursuant to the Agreement. Thereafter, during the term of this Agreement, the Contractor shall promptly and as required by the County provide written notice of the names and qualifications of any additional Contractor Personnel assigned to perform Services. The County, on a reasonable basis, shall have the right to require the removal and replacement of any of the Contractor Personnel performing Services, at any time during the term of the Agreement. The County will notify Contractor in writing in the event the County requires such action. Contractor shall accomplish any such removal within forty-eight (48) hours after receipt of notice from the County and shall promptly replace such person with another person, acceptable to the County, with sufficient knowledge and expertise to perform the Services assigned to such individual in accordance with this Agreement.

**4. Compensation of and Method of Payment.**

**A. Services Fee.** The County agrees to pay the Contractor the annual sum of not-to-exceed \$\_\_\_\_\_, payable based on the options selected below ("Services Fee") pursuant to the terms and conditions as provided in this Agreement. It is acknowledged and agreed by Contractor that this amount constitutes a limitation upon County's obligation to compensate Contractor for such Services required by this Agreement, but does not constitute a limitation upon Contractor's obligation to perform all of the Services required by this Agreement. In no event will the Services Fee paid pursuant to one of the options selected below exceed the not-to-exceed sum set out in this subsection A, unless the Parties agree to increase this sum by written amendment as authorized in Section 20 of the Agreement (select appropriate box).

☐ For the term commencing on \_\_\_\_\_, 201\_\_\_\_, and ending on \_\_\_\_\_, 201\_\_\_\_, County agrees to pay the Contractor the annual Services Fee of not-to-exceed \$\_\_\_\_\_ for Services completed and accepted as provided in Section \_\_\_\_\_ herein, payable in equal monthly payments of \$\_\_\_\_\_ on the first day of the month commencing on \_\_\_\_\_, 201\_\_\_\_, upon submittal of an invoice as required herein.

☐ County shall pay the Services Fee to the Contractor on a fixed-fee basis for all Services completed and accepted as provided in Section 14 herein. The deliverables and the fixed fees payable are set out in Exhibit B, and are payable upon completion, and acceptance of the deliverables if applicable, and submittal of an invoice as required herein.

☐ County shall pay the Services Fee to the Contractor at (select appropriate box):

☐ the hourly rate of \$\_\_\_\_\_; or

☐ the hourly rates set out in Exhibit \_\_\_\_\_ attached hereto.

Payment of the hourly rate Services Fee shall be due upon completion and acceptance of the Services and submittal of an invoice as required herein.

☒ Other:

As services are required, County will solicit an Invitation to Quote outlining the scope of work and schedule requirements. The lowest responsive, responsible quote able to perform within designated timetable will be utilized. A written award of acceptance (Purchase Order), mailed or otherwise furnished to the Contractor shall result in a binding contract without further action by either party, and Contractor shall be compensated in accordance with Contractor's quote, the Purchase Order and the terms of this Agreement.

**B. Travel Expenses.** (Select appropriate box.)

☒ The Services Fee includes all travel, lodging and per diem expenses incurred by Contractor in performing the Services.

☐ The County shall reimburse the Contractor the sum of not-to-exceed \$\_\_\_\_\_ for the travel expenses incurred in accordance with Section 112.061, Florida Statutes, and County Travel Policy, and as approved in writing in advance by \_\_\_\_\_.

**C. Tax Exempt Status.** Contractor acknowledges that the County is a tax exempt entity.

**D. Payments.** Contractor shall submit invoices for payments due as provided herein and authorized reimbursable expenses incurred with such documentation as required by County to (select appropriate box):

☒ the County Project Manager as set out in Section 17 herein; or

☐ as provided in Exhibit \_\_\_\_\_ attached hereto.

All payments shall be made in accordance with the requirements of Section 218.70 et seq., Florida Statutes, "The Local Government Prompt Payment Act." The County may dispute any payments invoiced by Contractor in accordance with the County's Invoice Payments Dispute Resolution Process established in accordance with Section 218.76, Florida Statutes, and any such disputes shall be resolved in accordance with the County's Dispute Resolution Process.

- I.
- A.
- B.
- C.
- D.

**5. Term of Agreement.**

**A. Initial Term.** This Agreement shall take effect on the Effective Date and shall remain in full force and effect until expiration of the term of the Agreement or termination of the Agreement as provided herein, whichever occurs first, and except as provided in Section 16. The initial term of this Agreement shall begin (select appropriate box):

- ☒ on the Effective Date
- ☐ on \_\_\_\_\_

and shall continue (select appropriate box):

- ☒ for a period of thirty six (36) months
- ☐ through \_\_\_\_\_.

unless terminated or extended in accordance with the provisions of this Agreement.

**B. Term Extension.** (Select appropriate box.)

- ☐ The term of this Agreement may not be extended. All Services shall be completed by the expiration of the initial term as defined in 5(A).
- ☒ The Parties may extend the term of this Agreement for one (1) additional twenty four (24) month period pursuant to the same terms, conditions, and pricing set forth in the Agreement by mutually executing an amendment to this Agreement, as provided herein.

**6. Termination.**

**A. Contractor Default Provisions and Remedies of County.**

1. Events of Default. Any of the following shall constitute a "Contractor Event of Default" hereunder: (i) Contractor fails to maintain the staffing necessary to perform the Services as required in the Agreement, fails to perform the Services as specified in the Agreement, or fails to complete the Services within the completion dates as specified in the Agreement; (ii) Contractor breaches Section 8 (Confidential Information); (iii) Contractor fails to gain acceptance of a deliverable per Section 14, if applicable, for two (2) consecutive iterations; or (iv) Contractor fails to perform or observe any of the other material provisions of this Agreement.

2. Cure Provisions. Upon the occurrence of a Contractor Event of Default as set out above, the County shall provide written notice of such Contractor Event of Default to Contractor ("Notice to Cure"), and Contractor shall have thirty (30) calendar days after the date of a Notice to Cure to correct, cure, and/or remedy the Contractor Event of Default described in the written notice.

3. Termination for Cause by the County. In the event that Contractor fails to cure a Contractor Event of Default as authorized herein, or upon the occurrence of a Contractor Event of Default as specified in Section 6.A.1.(iii), the County may terminate this Agreement in whole or in part, effective upon receipt by Contractor of written notice of termination pursuant to this provision, and may pursue such remedies at law or in equity as may be available to the County.

**B. County Default Provisions and Remedies of Contractor.**

1. Events of Default. Any of the following shall constitute a "County Event of Default" hereunder: (i) the County fails to make timely undisputed payments as described in this Agreement; (ii) the County breaches Section 8 (Confidential Information); or (iii) the County fails to perform any of the other material provisions of this Agreement.

2. Cure Provisions. Upon the occurrence of a County Event of Default as set out above, Contractor shall provide written notice of such County Event of Default to the County ("Notice to Cure"), and the County shall have thirty (30) calendar days after the date of a Notice to Cure to correct, cure, and/or remedy the County Event of Default described in the written notice.

3. Termination for Cause by Contractor. In the event the County fails to cure a County Event of Default as authorized herein, Contractor may terminate this Agreement in whole or in part effective on receipt by the County of written notice of termination pursuant to this provision, and may pursue such remedies at law or in equity as may be available to the Contractor.

**C. Termination for Convenience.** Notwithstanding any other provision herein, the County may terminate this Agreement, without cause, by giving thirty (30) days advance written notice to the Contractor of its election to terminate this Agreement pursuant to this provision.

7. Time is of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance, including the Services as described in Exhibits attached hereto; provided, however, that the foregoing shall not be construed to limit a Party's cure period allowed in the Agreement.

**8. Confidential Information and Public Records.**

**A. County Confidential Information.** Contractor shall not disclose to any third party County Confidential Information that Contractor, through its Contractor Personnel, has access to or has received from the County pursuant to its performance of Services pursuant to the Agreement, unless approved in writing by the County Contract Manager. All such County Confidential Information will be held in trust and confidence from the date of disclosure by the County, and discussions involving such County Confidential Information shall be limited to Contractor Personnel as is necessary to complete the Services.

**B. Contractor Confidential Information.** All Contractor Confidential Information received by the County from Contractor will be held in trust and confidence from the date of disclosure by Contractor and discussions involving such Contractor Confidential Information shall be limited to the members of the County's staff and the County's subcontractors who require such information in the performance of this Agreement. The County acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of Contractor in the Contractor Confidential Information during and after the term of the Agreement and shall at all times maintain the confidentiality of the Contractor Confidential Information provided to the County, subject to federal law and the laws of the State of Florida related to public records disclosure. Contractor shall be solely responsible for taking any and all action it deems necessary to protect its Contractor Confidential Information except as provided herein. Contractor acknowledges that the County is subject to public records legislation, including but not limited to Chapter 119, Florida Statutes, and the Florida Rules of Judicial Administration, and that any of the County's obligations under this Section may be superseded by its obligations under any requirements of said laws.

**C. Public Records.** Contractor acknowledges that information and data it manages as part of the services may be public records in accordance with Chapter 119, Florida Statutes and Pinellas County public records policies. Contractor agrees that prior to providing services it will implement policies and procedures to maintain, produce, secure, and retain public records in accordance with applicable laws, regulations, and County policies, including but not limited to the Section 119.0701, Florida Statutes. Notwithstanding any other provision of this

Agreement relating to compensation, the Contractor agrees to charge the County, and/or any third parties requesting public records only such fees allowed by Section 119.07, Florida Statutes, and County policy for locating and producing public records during the term of this Agreement

**9. Audit.** Contractor shall retain all records relating to this Agreement for a period of at least three (3) years after final payment is made. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, County reserves the right to audit such records pursuant to Pinellas County Code, Section 2-176(j).

**10. Compliance with Laws.** Contractor shall comply with all applicable federal, state, county and local laws, ordinances, rules and regulations in the performance of its obligations under this Agreement, including the procurement of permits and certificates where required, and including, but not limited to, laws related to Workers' Compensation, occupational safety and health and the environment, equal employment opportunity, and privacy of medical records or information.

**11. Public Entities Crimes.** Contractor is directed to the Florida Public Entities Crime Act, Section 287.133, Florida Statutes, and represents to County that Contractor is qualified to transact business with public entities in Florida.

**12. Liability and Insurance.**

**A. Insurance.** Contractor shall comply with the insurance requirements set out in Exhibit C, attached hereto and incorporated herein by reference.

**B. Indemnification.** Contractor agrees to indemnify, pay the cost of defense, including attorney's fees, and hold harmless the County, its officers, employees and agents from all damages, suits, actions or claims, including reasonable attorney's fees incurred by the County, of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the Agreement; or on account of any act or omission, neglect or misconduct of Contractor; or by, or on account of, any claim or amounts recovered under the Workers' Compensation Law or of any other laws, regulations, ordinance, order or decree; or arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon; except only such injury or damage as shall have been occasioned by the sole negligence of the County.

**C. Liability.** Neither the County nor Contractor shall make any express or implied agreements, guaranties or representations, or incur any debt, in the name of or on behalf of the other Party. Neither the County nor Contractor shall be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized hereunder. The County shall have no liability or obligation for any damages to any person or property directly or indirectly arising out of the operation by Contractor of its business, whether caused by Contractor's negligence or willful action or failure to act.

**D. Contractor's Taxes.** The County will have no liability for any sales, service, value added, use, excise, gross receipts, property, workers' compensation, unemployment compensation, withholding or other taxes, whether levied upon Contractor or Contractor's assets, or upon the County in connection with Services performed or business conducted by Contractor. Payment of all such taxes and liabilities shall be the responsibility of Contractor.

**13. County's Funding.** The Agreement is not a general obligation of the County. It is understood that neither this Agreement nor any representation by any County employee or officer creates any obligation to appropriate or make monies available for the purpose of the Agreement beyond the fiscal year in which this Agreement is executed. No liability shall be incurred by the County, or any department, beyond the monies budgeted and available for this purpose. If funds are not appropriated by the County for any or all of this Agreement, the County shall not be obligated to pay any sums provided pursuant to this Agreement beyond the portion for which funds are appropriated. The County agrees to promptly notify Contractor in writing of such failure of appropriation, and upon receipt of such notice, this Agreement, and all rights and obligations contained herein, shall terminate without liability or penalty to the County.

**14. Acceptance of Services.** For all Services deliverables that require County acceptance as provided in Exhibit A, the County, through the Contract Administrator or designee, will have ten (10) calendar days to review the deliverable(s) after receipt or completion of same by Contractor, and either accept or reject the deliverable(s) by written notice to Contractor's Project Manager. If a deliverable is rejected, the written notice from the County will specify any required changes, deficiencies, and/or additions necessary. Contractor shall then have seven (7) calendar days to revise the deliverable(s) to resubmit and/or complete the deliverable(s) for review and approval by the County, who will then have seven (7) calendar days to review and approve, or reject the deliverable(s); provided however, that Contractor shall not be responsible for any delays in the overall project schedule that result from the County's failure to timely approve or reject deliverable(s) as provided herein. Upon final acceptance of the deliverable(s), the County will accept the deliverable(s) in writing.

**15. Subcontracting/Assignment.**

**A. Subcontracting.** Contractor is fully responsible for completion of the Services required by this Agreement and for completion of all subcontractor work, if authorized as provided herein. Contractor shall not subcontract any work under this Agreement to any subcontractor other than the subcontractors specified in the proposal and previously approved by the County, without the prior written consent of the County, which shall be determined by the County in its sole discretion.

**B. Assignment.** (Select appropriate box.)

☐ This Agreement, and any rights or obligations hereunder, shall not be assigned, transferred or delegated to any other person or entity. Any purported assignment in violation of this section shall be null and void.

☒ This Agreement, and all rights or obligations hereunder, shall not be assigned, transferred, or delegated in whole or in part, including by acquisition of assets, merger, consolidation, dissolution, operation of law, change in effective control of the Contractor, or any other assignment, transfer, or delegation of rights or obligations, without the prior written consent of the County. The Contractor shall provide written notice to the County within fifteen (15) calendar days of any action or occurrence assigning the Agreement or any rights or obligations hereunder as described in this section. In the event the County does not consent to the assignment, as determined in its sole discretion, the purported assignment in violation of this section shall be null and void, and the County may elect to terminate this Agreement by providing written notice of its election to terminate pursuant to this provision upon fifteen (15) days notice to Contractor.

**16. Survival.** The following provisions shall survive the expiration or termination of the Term of this Agreement: 6, 8, 9, 12.

**17. Notices.** All notices, authorizations, and requests in connection with this Agreement shall be deemed given on the day they are: (1) deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (2) sent by air express courier (e.g., Federal Express, Airborne, etc.), charges prepaid, return receipt requested; or (iii) sent via email and addressed as set forth below, which designated person(s) may be amended by either Party by giving written notice to the other Party:

For County:

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For Contractor:

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:  
Purchasing Director  
Pinellas County Purchasing Department

400 South Fort Harrison Avenue  
Clearwater, FL 33756  
cc: Purchasing Director

**18. Conflict of Interest.**

A. The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the Services required hereunder, and that no person having any such interest shall be employed by Contractor during the agreement term and any extensions.

B. The Contractor shall promptly notify the County in writing of any business association, interest, or other circumstance which constitutes a conflict of interest as provided herein. If the Contractor is in doubt as to whether a prospective business association, interest, or other circumstance constitutes a conflict of interest, the Contractor may identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion as to whether the business association, interest or circumstance constitutes a conflict of interest if entered into by the Contractor. The County agrees to notify the Contractor of its opinion within (10) calendar days of receipt of notification by the Contractor, which shall be binding on the Contractor.

**19. Right to Ownership.** All work created, originated and/or prepared by Contractor in performing Services pursuant to the Agreement, to the extent that such work, products, documentation, materials or information are described in or required by the Services (collectively, the "Work Product") shall be County's property when completed and accepted, if acceptance is required in this Agreement, and the County has made payment of the sums due therefore. The ideas, concepts, know-how or techniques developed during the course of this Agreement by the Contractor or jointly by Contractor and the County may be used by the County without obligation of notice or accounting to the Contractor. Any data, information or other materials furnished by the County for use by Contractor under this Agreement shall remain the sole property of the County.

**20. Amendment.** This Agreement may be amended by mutual written agreement of the Parties hereto. The County Administrator shall be authorized to execute amendments to this Agreement for the County for any amendment decreasing Services Fees or increasing Services Fees not more than the sums authorized in Section 2-62(a)(1), Pinellas County Code, amending the scope of the Services without any change to the Services Fees.

**21. Severability.** The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the Agreement impossible to perform.

**22. Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without regard to principles of conflicts of laws). The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a Party elects to file an action in federal court) courts located in or for Pinellas County, Florida. This choice of venue is intended by the Parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the Parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this section. Each Party waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this section.

**23. Waiver.** No waiver by either Party of any breach or violation of any covenant, term, condition, or provision of this Agreement or of the provisions of any ordinance or law, shall be construed to waive any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same.

**24. Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties and supersedes all prior negotiations, representations or agreements either oral or written.

*(Signature Page Follows)*

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement the day and year first written.

**PINELLAS COUNTY, FLORIDA**

**[CONTRACTOR]**

by and through its \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

**ATTEST:**

**KEN BURKE, CLERK OF COURT**

By: \_\_\_\_\_

Deputy Clerk

**APPROVED AS TO FORM**

By: \_\_\_\_\_

Office of the County Attorney



## AGREEMENT

**THIS AGREEMENT** is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013 ("Effective Date"), by and between Pinellas County, a political subdivision of the State of Florida ("County"), and Water & Air Reseach, Inc., ("Contractor") (individually, "Party," collectively, "Parties").

### W I T N E S S E T H:

**WHEREAS**, the County requested proposals pursuant to RFP 123-0445-P ("RFP") for Environmental Planting, Monitoring & Maintenance services; and

**WHEREAS**, based upon the County's assessment of Contractor's proposal, the County selected the Contractor to provide the Services as defined herein; and

**WHEREAS**, Contractor represents that it has the experience and expertise to perform the Services as set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the above recitals, the mutual covenants, agreements, terms and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

#### **1. Definitions.**

**A. "Agreement"** means this Agreement, including all Exhibits, which are expressly incorporated herein by reference, and any amendments thereto.

**B. "County Confidential Information"** means any County information deemed confidential and/or exempt from Section 119.07, Florida Statutes, and Section 24(a), Article 1 of the Florida Constitution, or other applicable law, including, but not limited to, data or information referenced in \_\_\_\_\_ NA \_\_\_\_\_, and any other information designated in writing by the County as County Confidential Information.

**C. "Contractor Confidential Information"** means any Contractor information that constitutes a trade secret pursuant to Chapter 688, Florida Statutes, and is designated in this Agreement or in writing as a trade secret by Contractor (unless otherwise determined to be a public record by applicable Florida law). Notwithstanding the foregoing, Contractor Confidential Information does not include information that: (i) becomes public other than as a result of a disclosure by the County in breach of the Agreement; (ii) becomes available to the County on a non-confidential basis from a source other than Contractor, which is not prohibited from disclosing such information by obligation to Contractor; (iii) is known by the County prior to its receipt from Contractor without any obligation or confidentiality with respect thereto; or (iv) is developed by the County independently of any disclosures made by Contractor.

**D. "Contractor Personnel"** means all employees of Contractor, and all employees of subcontractors of Contractor, who are providing the Services at any time during the project term.

**E. "Services"** means the work, duties and obligations to be carried out and performed by Contractor under this Agreement, as described throughout this Agreement and as specifically described in Exhibit A, Scope of Work, attached hereto and incorporated herein by reference and as specifically described in the scope of work of the Invitation to Quote pursuant to which Contractor performs Services. As used in this Agreement, Services shall include any component task, subtask, service, or function inherent, necessary, or a customary part of the Services, but not specifically described in this Agreement, and shall include the provision of all standard day-to-day administrative, overhead, and internal expenses, including labor, materials, equipment, products, office supplies, consumables, tools, postage, computer hardware/software, telephone charges, copier usage, fax charges, travel, lodging, and per diem and all other costs required to perform Services except as otherwise specifically provided in this Agreement.

## 2. Services.

**A. Services.** The County retains Contractor, and Contractor agrees to provide the Services. All Services shall be performed to the satisfaction of the County, and shall be subject to the provisions and terms contained herein and the Exhibits attached hereto. As services are required, County will solicit an Invitation to Quote outlining the scope of work and schedule requirements. The lowest responsive, responsible quote able to perform within designated timetable will be utilized. A written award of acceptance (Purchase Order), mailed or otherwise furnished to the Contractor shall result in a binding contract without further action by either party.

**B. Services Requiring Prior Approval.** Work on Services requiring prior County approval as provided in Exhibit A, or any Additional Services, shall not be commenced until Contractor submits a written proposal describing the scope of the work, the cost, if applicable, and the completion schedule, if applicable, and the Contract Administrator approves the proposal in writing.

**C. Additional Services.** From the Effective Date and for the duration of the project, the County may elect to have Contractor perform Services that are not specifically described in Exhibit A attached hereto but are related to the Services ("Additional Services"), in which event Contractor shall perform such Additional Services on a time and materials basis, at an hourly rate as provided in Exhibit A attached hereto. Contractor shall commence performing the applicable Additional Services promptly upon receipt of written approval as provided herein.

**D. De-scoping of Services.** The County reserves the right, in its sole discretion, to de-scope Services upon written notification to the Contractor by the County. Upon issuance and receipt of the notification, the Contractor and the County shall enter into a written amendment reducing the appropriate Services Fee for the impacted Services by a sum equal to the amount associated with the de-scoped Services as defined in the payment schedule in this Agreement, if applicable, or as determined by mutual written consent of both Parties based upon the scope of work performed prior to issuance of notification.

**E. Independent Contractor Status and Compliance with the Immigration Reform and Control Act.** Contractor is and shall remain an independent contractor and is neither agent, employee, partner, nor joint venturer of County. Contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 U.S.C. 1324, et seq, and regulations relating thereto, as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach of the Agreement.

**F. Project Monitoring.** During the term of the Agreement, Contractor shall cooperate with the County, either directly or through its representatives, in monitoring Contractor's progress and performance of this Agreement.

## 3. Personnel.

**A. Qualified Personnel.** Contractor agrees that each person performing Services in connection with this Agreement shall have the qualifications and shall fulfill the requirements set forth in this Agreement.

**B. Approval and Replacement of Personnel.** The County shall have the right to approve all Contractor Personnel assigned to provide the Services, which approval shall not be unreasonably withheld. Prior to commencing the Services, the Contractor shall provide at least ten (10) days written notice of the names and qualifications of the Contractor Personnel assigned to perform Services pursuant to the Agreement. Thereafter, during the term of this Agreement, the Contractor shall promptly and as required by the County provide written notice of the names and qualifications of any additional Contractor Personnel assigned to perform Services. The County, on a reasonable basis, shall have the right to require the removal and replacement of any of the Contractor Personnel performing Services, at any time during the term of the Agreement. The County will notify Contractor in writing in the event the County requires such action. Contractor shall accomplish any such removal within forty-eight (48) hours after receipt of notice from the County and shall promptly replace such person with another person, acceptable to the County, with sufficient knowledge and expertise to perform the Services assigned to such individual in accordance with this Agreement.

**4. Compensation of and Method of Payment.**

**A. Services Fee.** The County agrees to pay the Contractor the annual sum of not-to-exceed \$\_\_\_\_\_, payable based on the options selected below ("Services Fee") pursuant to the terms and conditions as provided in this Agreement. It is acknowledged and agreed by Contractor that this amount constitutes a limitation upon County's obligation to compensate Contractor for such Services required by this Agreement, but does not constitute a limitation upon Contractor's obligation to perform all of the Services required by this Agreement. In no event will the Services Fee paid pursuant to one of the options selected below exceed the not-to-exceed sum set out in this subsection A, unless the Parties agree to increase this sum by written amendment as authorized in Section 20 of the Agreement (select appropriate box).

☐ For the term commencing on \_\_\_\_\_, 201\_\_\_\_, and ending on \_\_\_\_\_, 201\_\_\_\_, County agrees to pay the Contractor the annual Services Fee of not-to-exceed \$\_\_\_\_\_ for Services completed and accepted as provided in Section \_\_\_\_\_ herein, payable in equal monthly payments of \$\_\_\_\_\_ on the first day of the month commencing on \_\_\_\_\_, 201\_\_\_\_, upon submittal of an invoice as required herein.

☐ County shall pay the Services Fee to the Contractor on a fixed-fee basis for all Services completed and accepted as provided in Section 14 herein. The deliverables and the fixed fees payable are set out in Exhibit B, and are payable upon completion, and acceptance of the deliverables if applicable, and submittal of an invoice as required herein.

☐ County shall pay the Services Fee to the Contractor at (select appropriate box):

☐ the hourly rate of \$\_\_\_\_\_; or

☐ the hourly rates set out in Exhibit \_\_\_\_\_ attached hereto.

Payment of the hourly rate Services Fee shall be due upon completion and acceptance of the Services and submittal of an invoice as required herein.

☒ Other:

As services are required, County will solicit an Invitation to Quote outlining the scope of work and schedule requirements. The lowest responsive, responsible quote able to perform within designated timetable will be utilized. A written award of acceptance (Purchase Order), mailed or otherwise furnished to the Contractor shall result in a binding contract without further action by either party, and Contractor shall be compensated in accordance with Contractor's quote, the Purchase Order and the terms of this Agreement.

**B. Travel Expenses.** (Select appropriate box.)

☒ The Services Fee includes all travel, lodging and per diem expenses incurred by Contractor in performing the Services.

☐ The County shall reimburse the Contractor the sum of not-to-exceed \$\_\_\_\_\_ for the travel expenses incurred in accordance with Section 112.061, Florida Statutes, and County Travel Policy, and as approved in writing in advance by \_\_\_\_\_.

**C. Tax Exempt Status.** Contractor acknowledges that the County is a tax exempt entity.

**D. Payments.** Contractor shall submit invoices for payments due as provided herein and authorized reimbursable expenses incurred with such documentation as required by County to (select appropriate box):

☒ the County Project Manager as set out in Section 17 herein; or

☐ as provided in Exhibit \_\_\_\_ attached hereto.

All payments shall be made in accordance with the requirements of Section 218.70 et seq., Florida Statutes, "The Local Government Prompt Payment Act." The County may dispute any payments invoiced by Contractor in accordance with the County's Invoice Payments Dispute Resolution Process established in accordance with Section 218.76, Florida Statutes, and any such disputes shall be resolved in accordance with the County's Dispute Resolution Process.

- I.
- A.
- B.
- C.
- D.

**5. Term of Agreement.**

**A. Initial Term.** This Agreement shall take effect on the Effective Date and shall remain in full force and effect until expiration of the term of the Agreement or termination of the Agreement as provided herein, whichever occurs first, and except as provided in Section 16. The initial term of this Agreement shall begin (select appropriate box):

- ☒ on the Effective Date
- ☐ on \_\_\_\_\_

and shall continue (select appropriate box):

- ☒ for a period of thirty six (36) months
- ☐ through \_\_\_\_\_.

unless terminated or extended in accordance with the provisions of this Agreement.

**B. Term Extension.** (Select appropriate box.)

- ☐ The term of this Agreement may not be extended. All Services shall be completed by the expiration of the initial term as defined in 5(A).
- ☒ The Parties may extend the term of this Agreement for one (1) additional twenty four (24) month period pursuant to the same terms, conditions, and pricing set forth in the Agreement by mutually executing an amendment to this Agreement, as provided herein.

**6. Termination.**

**A. Contractor Default Provisions and Remedies of County.**

1. Events of Default. Any of the following shall constitute a "Contractor Event of Default" hereunder: (i) Contractor fails to maintain the staffing necessary to perform the Services as required in the Agreement, fails to perform the Services as specified in the Agreement, or fails to complete the Services within the completion dates as specified in the Agreement; (ii) Contractor breaches Section 8 (Confidential Information); (iii) Contractor fails to gain acceptance of a deliverable per Section 14, if applicable, for two (2) consecutive iterations; or (iv) Contractor fails to perform or observe any of the other material provisions of this Agreement.
2. Cure Provisions. Upon the occurrence of a Contractor Event of Default as set out above, the County shall provide written notice of such Contractor Event of Default to Contractor ("Notice to Cure"), and Contractor shall have thirty (30) calendar days after the date of a Notice to Cure to correct, cure, and/or remedy the Contractor Event of Default described in the written notice.

3. Termination for Cause by the County. In the event that Contractor fails to cure a Contractor Event of Default as authorized herein, or upon the occurrence of a Contractor Event of Default as specified in Section 6.A.1.(iii), the County may terminate this Agreement in whole or in part, effective upon receipt by Contractor of written notice of termination pursuant to this provision, and may pursue such remedies at law or in equity as may be available to the County.

**B. County Default Provisions and Remedies of Contractor.**

1. Events of Default. Any of the following shall constitute a "County Event of Default" hereunder: (i) the County fails to make timely undisputed payments as described in this Agreement; (ii) the County breaches Section 8 (Confidential Information); or (iii) the County fails to perform any of the other material provisions of this Agreement.

2. Cure Provisions. Upon the occurrence of a County Event of Default as set out above, Contractor shall provide written notice of such County Event of Default to the County ("Notice to Cure"), and the County shall have thirty (30) calendar days after the date of a Notice to Cure to correct, cure, and/or remedy the County Event of Default described in the written notice.

3. Termination for Cause by Contractor. In the event the County fails to cure a County Event of Default as authorized herein, Contractor may terminate this Agreement in whole or in part effective on receipt by the County of written notice of termination pursuant to this provision, and may pursue such remedies at law or in equity as may be available to the Contractor.

**C. Termination for Convenience.** Notwithstanding any other provision herein, the County may terminate this Agreement, without cause, by giving thirty (30) days advance written notice to the Contractor of its election to terminate this Agreement pursuant to this provision.

**7. Time is of the Essence.** Time is of the essence with respect to all provisions of this Agreement that specify a time for performance, including the Services as described in Exhibits attached hereto; provided, however, that the foregoing shall not be construed to limit a Party's cure period allowed in the Agreement.

**8. Confidential Information and Public Records.**

**A. County Confidential Information.** Contractor shall not disclose to any third party County Confidential Information that Contractor, through its Contractor Personnel, has access to or has received from the County pursuant to its performance of Services pursuant to the Agreement, unless approved in writing by the County Contract Manager. All such County Confidential Information will be held in trust and confidence from the date of disclosure by the County, and discussions involving such County Confidential Information shall be limited to Contractor Personnel as is necessary to complete the Services.

**B. Contractor Confidential Information.** All Contractor Confidential Information received by the County from Contractor will be held in trust and confidence from the date of disclosure by Contractor and discussions involving such Contractor Confidential Information shall be limited to the members of the County's staff and the County's subcontractors who require such information in the performance of this Agreement. The County acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of Contractor in the Contractor Confidential Information during and after the term of the Agreement and shall at all times maintain the confidentiality of the Contractor Confidential Information provided to the County, subject to federal law and the laws of the State of Florida related to public records disclosure. Contractor shall be solely responsible for taking any and all action it deems necessary to protect its Contractor Confidential Information except as provided herein. Contractor acknowledges that the County is subject to public records legislation, including but not limited to Chapter 119, Florida Statutes, and the Florida Rules of Judicial Administration, and that any of the County's obligations under this Section may be superseded by its obligations under any requirements of said laws.

**C. Public Records.** Contractor acknowledges that information and data it manages as part of the services may be public records in accordance with Chapter 119, Florida Statutes and Pinellas County public records policies. Contractor agrees that prior to providing services it will implement policies and procedures to maintain, produce, secure, and retain public records in accordance with applicable laws, regulations, and County policies, including but not limited to the Section 119.0701, Florida Statutes. Notwithstanding any other provision of this

Agreement relating to compensation, the Contractor agrees to charge the County, and/or any third parties requesting public records only such fees allowed by Section 119.07, Florida Statutes, and County policy for locating and producing public records during the term of this Agreement

**9. Audit.** Contractor shall retain all records relating to this Agreement for a period of at least three (3) years after final payment is made. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, County reserves the right to audit such records pursuant to Pinellas County Code, Section 2-176(j).

**10. Compliance with Laws.** Contractor shall comply with all applicable federal, state, county and local laws, ordinances, rules and regulations in the performance of its obligations under this Agreement, including the procurement of permits and certificates where required, and including, but not limited to, laws related to Workers' Compensation, occupational safety and health and the environment, equal employment opportunity, and privacy of medical records or information.

**11. Public Entities Crimes.** Contractor is directed to the Florida Public Entities Crime Act, Section 287.133, Florida Statutes, and represents to County that Contractor is qualified to transact business with public entities in Florida.

**12. Liability and Insurance.**

**A. Insurance.** Contractor shall comply with the insurance requirements set out in Exhibit C, attached hereto and incorporated herein by reference.

**B. Indemnification.** Contractor agrees to indemnify, pay the cost of defense, including attorney's fees, and hold harmless the County, its officers, employees and agents from all damages, suits, actions or claims, including reasonable attorney's fees incurred by the County, of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the Agreement; or on account of any act or omission, neglect or misconduct of Contractor; or by, or on account of, any claim or amounts recovered under the Workers' Compensation Law or of any other laws, regulations, ordinance, order or decree; or arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon; except only such injury or damage as shall have been occasioned by the sole negligence of the County.

**C. Liability.** Neither the County nor Contractor shall make any express or implied agreements, guaranties or representations, or incur any debt, in the name of or on behalf of the other Party. Neither the County nor Contractor shall be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized hereunder. The County shall have no liability or obligation for any damages to any person or property directly or indirectly arising out of the operation by Contractor of its business, whether caused by Contractor's negligence or willful action or failure to act.

**D. Contractor's Taxes.** The County will have no liability for any sales, service, value added, use, excise, gross receipts, property, workers' compensation, unemployment compensation, withholding or other taxes, whether levied upon Contractor or Contractor's assets, or upon the County in connection with Services performed or business conducted by Contractor. Payment of all such taxes and liabilities shall be the responsibility of Contractor.

**13. County's Funding.** The Agreement is not a general obligation of the County. It is understood that neither this Agreement nor any representation by any County employee or officer creates any obligation to appropriate or make monies available for the purpose of the Agreement beyond the fiscal year in which this Agreement is executed. No liability shall be incurred by the County, or any department, beyond the monies budgeted and available for this purpose. If funds are not appropriated by the County for any or all of this Agreement, the County shall not be obligated to pay any sums provided pursuant to this Agreement beyond the portion for which funds are appropriated. The County agrees to promptly notify Contractor in writing of such failure of appropriation, and upon receipt of such notice, this Agreement, and all rights and obligations contained herein, shall terminate without liability or penalty to the County.

**14. Acceptance of Services.** For all Services deliverables that require County acceptance as provided in Exhibit A, the County, through the Contract Administrator or designee, will have ten (10) calendar days to review the deliverable(s) after receipt or completion of same by Contractor, and either accept or reject the deliverable(s) by written notice to Contractor's Project Manager. If a deliverable is rejected, the written notice from the County will specify any required changes, deficiencies, and/or additions necessary. Contractor shall then have seven (7) calendar days to revise the deliverable(s) to resubmit and/or complete the deliverable(s) for review and approval by the County, who will then have seven (7) calendar days to review and approve, or reject the deliverable(s); provided however, that Contractor shall not be responsible for any delays in the overall project schedule that result from the County's failure to timely approve or reject deliverable(s) as provided herein. Upon final acceptance of the deliverable(s), the County will accept the deliverable(s) in writing.

**15. Subcontracting/Assignment.**

**A. Subcontracting.** Contractor is fully responsible for completion of the Services required by this Agreement and for completion of all subcontractor work, if authorized as provided herein. Contractor shall not subcontract any work under this Agreement to any subcontractor other than the subcontractors specified in the proposal and previously approved by the County, without the prior written consent of the County, which shall be determined by the County in its sole discretion.

**B. Assignment.** (Select appropriate box.)

☐ This Agreement, and any rights or obligations hereunder, shall not be assigned, transferred or delegated to any other person or entity. Any purported assignment in violation of this section shall be null and void.

☒ This Agreement, and all rights or obligations hereunder, shall not be assigned, transferred, or delegated in whole or in part, including by acquisition of assets, merger, consolidation, dissolution, operation of law, change in effective control of the Contractor, or any other assignment, transfer, or delegation of rights or obligations, without the prior written consent of the County. The Contractor shall provide written notice to the County within fifteen (15) calendar days of any action or occurrence assigning the Agreement or any rights or obligations hereunder as described in this section. In the event the County does not consent to the assignment, as determined in its sole discretion, the purported assignment in violation of this section shall be null and void, and the County may elect to terminate this Agreement by providing written notice of its election to terminate pursuant to this provision upon fifteen (15) days notice to Contractor.

**16. Survival.** The following provisions shall survive the expiration or termination of the Term of this Agreement: 6, 8, 9, 12.

**17. Notices.** All notices, authorizations, and requests in connection with this Agreement shall be deemed given on the day they are: (1) deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (2) sent by air express courier (e.g., Federal Express, Airborne, etc.), charges prepaid, return receipt requested; or (iii) sent via email and addressed as set forth below, which designated person(s) may be amended by either Party by giving written notice to the other Party:

For County:

For Contractor:

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:  
Purchasing Director  
Pinellas County Purchasing Department

400 South Fort Harrison Avenue  
Clearwater, FL 33756  
cc: Purchasing Director

**18. Conflict of Interest.**

A. The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the Services required hereunder, and that no person having any such interest shall be employed by Contractor during the agreement term and any extensions.

B. The Contractor shall promptly notify the County in writing of any business association, interest, or other circumstance which constitutes a conflict of interest as provided herein. If the Contractor is in doubt as to whether a prospective business association, interest, or other circumstance constitutes a conflict of interest, the Contractor may identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion as to whether the business association, interest or circumstance constitutes a conflict of interest if entered into by the Contractor. The County agrees to notify the Contractor of its opinion within (10) calendar days of receipt of notification by the Contractor, which shall be binding on the Contractor.

**19. Right to Ownership.** All work created, originated and/or prepared by Contractor in performing Services pursuant to the Agreement, to the extent that such work, products, documentation, materials or information are described in or required by the Services (collectively, the "Work Product") shall be County's property when completed and accepted, if acceptance is required in this Agreement, and the County has made payment of the sums due therefore. The ideas, concepts, know-how or techniques developed during the course of this Agreement by the Contractor or jointly by Contractor and the County may be used by the County without obligation of notice or accounting to the Contractor. Any data, information or other materials furnished by the County for use by Contractor under this Agreement shall remain the sole property of the County.

**20. Amendment.** This Agreement may be amended by mutual written agreement of the Parties hereto. The County Administrator shall be authorized to execute amendments to this Agreement for the County for any amendment decreasing Services Fees or increasing Services Fees not more than the sums authorized in Section 2-62(a)(1), Pinellas County Code, amending the scope of the Services without any change to the Services Fees.

**21. Severability.** The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the Agreement impossible to perform.

**22. Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without regard to principles of conflicts of laws). The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a Party elects to file an action in federal court) courts located in or for Pinellas County, Florida. This choice of venue is intended by the Parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the Parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this section. Each Party waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this section.

**23. Waiver.** No waiver by either Party of any breach or violation of any covenant, term, condition, or provision of this Agreement or of the provisions of any ordinance or law, shall be construed to waive any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same.

**24. Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties and supersedes all prior negotiations, representations or agreements either oral or written.

*(Signature Page Follows)*

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement the day and year first written.

**PINELLAS COUNTY, FLORIDA**

**[CONTRACTOR]**

by and through its \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

**ATTEST:**

**KEN BURKE, CLERK OF COURT**

By: \_\_\_\_\_

Deputy Clerk

**APPROVED AS TO FORM**

By: \_\_\_\_\_

Office of the County Attorney



# PINELLAS COUNTY EVALUATION CRITERIA TABULATION SHEET

RFP TITLE: ENVIRONMENTAL PLANTING, MONITORING & MAINTENANCE SERVICES

RFP #: 123-0445-P (LN)

| COMPANY NAME                  | EVALUATOR | EVALUATOR | EVALUATOR | EVALUATOR | EVALUATOR | TOTAL POINTS | TOTAL AVERAGE | RANK |
|-------------------------------|-----------|-----------|-----------|-----------|-----------|--------------|---------------|------|
|                               | Lisa      | Mary      | Mike      | Belinda   | Robert    |              |               |      |
|                               | Baltus    | Barnwell  | Engelman  | Lambert   | Miller    |              |               |      |
| Vanasse Hangen Brustlin, Inc. | 860.00    | 860.00    | 890.00    | 890.00    | 875.00    | 4375.00      | 875.00        | 1    |
| Cardno Entrix                 | 875.00    | 857.50    | 890.00    | 890.00    | 857.50    | 4370.00      | 874.00        | 2    |
| Water & Air Research, Inc.    | 840.00    | 822.50    | 840.00    | 840.00    | 840.00    | 4182.50      | 836.50        | 3    |
| Earth Balance                 | 622.50    | 637.50    | 635.00    | 605.00    | 652.50    | 3152.50      | 630.50        | 4    |
| CPH, Inc.                     | 587.50    | 570.00    | 605.00    | 570.00    | 602.50    | 2935.00      | 587.00        | 5    |
| Bio-Tech Consulting, Inc      | 462.50    | 480.00    | 480.00    | 480.00    | 495.00    | 2397.50      | 479.50        | 6    |
| Ecological Consultants, Inc.  | 450.00    | 417.50    | 435.00    | 417.50    | 470.00    | 2190.00      | 438.00        | 7    |
| Lake and Wetland Management   | 380.00    | 397.50    | 415.00    | 380.00    | 415.00    | 1987.50      | 397.50        | 8    |

Date: October 24, 2013