

## **PROFESSIONAL SERVICES**

- 14. Approve Ranking List, Authorize Negotiations, and Award Agreement for PS-0410-06/TLR – Construction and Engineering Inspection (CEI) Services for SR 15/600 US 17/92 Reconstruction from Seminole County Line to Lake of the Woods Boulevard to Earth Tech Consulting, Inc. Orlando (Not to Exceed \$1,000,000.00).**

PS-0410-06/TLR will provide for Construction and Engineering Inspection Services for SR 15/600 US 17/92 Reconstruction from Seminole County Line to Lake of the Woods Boulevard, in reasonable conformity with the plans, specifications and contract provisions.

This project was publicly advertised and the County received seven (7) submittals (listed in alphabetical order):

- CPH Engineers, Inc., Sanford
- Dyer, Riddle, Mills & Precourt, Inc., Orlando
- Earth Tech Consulting, Inc., Orlando
- HDR Construction Control Corp., Orlando
- JEA Construction Engineering Services, Inc., Winter Park
- Reynolds, Smith and Hills CS, Inc., Orlando
- Volkert Construction Services, Inc., Altamonte Springs

The Evaluation Committee, which consisted of William Glennon, P.E., Project Manager; Gary Johnson, P.E., Director, Public Works; Jerry McCollum, P.E., County Engineer; Stephen Krug, P.E., Principal Engineer; Lenor Bromberg, P.E., Special Projects Manager; evaluated the submittals and short-listed three firms (listed alphabetically):

- Earth Tech Consulting, Inc.
- JEA Construction Engineering Services, Inc.
- Reynolds, Smith and Hills CS, Inc.

Consideration was given to the following criteria:

- Project Approach / Understanding
- Similar Recent Project Experience
- Project Team Qualifications
- Location of Firm

The Evaluation Committee recommends that the Board approve the ranking below and authorize staff to negotiate with the top ranked firm in accordance with F.S. 287.055, the Consultants Competitive Negotiation Act (CCNA).

1. Earth Tech Consulting, Inc.
2. JEA Construction Engineering Services, Inc.
3. Reynolds, Smith and Hills CS, Inc.

This is a budgeted project and funds are available in account number 077541.560670, CIP 00226501. Public Work/Engineering Division and Fiscal Services/Purchasing and Contracts Division recommend that the Board approve the ranking, authorize staff to negotiate, and authorize the Chairman to execute the Agreement as prepared by the County Attorney's Office.

## B.C.C. - SEMINOLE COUNTY, FL PS TABULATION SHEET

ALL SUBMITTALS ACCEPTED BY SEMINOLE COUNTY ARE SUBJECT TO THE COUNTY'S TERMS AND CONDITIONS AND ANY AND ALL ADDITIONAL TERMS AND CONDITIONS SUBMITTED BY THE PROPOSERS ARE REJECTED AND SHALL HAVE NO FORCE AND EFFECT. PS DOCUMENTS FROM THE PROPOSERS LISTED HEREIN ARE THE ONLY SUBMITTALS RECEIVED TIMELY AS OF THE ABOVE OPENING DATE AND TIME. ALL OTHER PS DOCUMENTS SUBMITTED IN RESPONSE TO THIS SOLICITATION, IF ANY, ARE HEREBY REJECTED AS LATE.

PS NUMBER: PS-0410-06/TLR

PS TITLE : CEI Services for SR 15/600 US 17/92  
Reconstruction from Seminole County Line to  
Lake of the Woods Boulevard

Page 1 of 1

DATE: January 11, 2006 TIME: 2:00 P.M.

RESPONSE -1-	RESPONSE -2-	-RESPONSE -3	RESPONSE - 4
CPH Engineers, Inc. P. O. Box 2808 Sanford, FL 32772-2808 David A. Gierach, P.E. Ph. 407 322-6841 Fx. 407 330-0639	Dyer, Riddle, Mills & Precourt, Inc. 1505 E. Colonial Dr. Orlando, FL 32806 Lucius J. Cushman, Jr. P.E. PH. 407 896-0594 Fx. 407 896-4836	Earth Tech Consulting, Inc. 30 S. Keller Rd., Ste. 500 Orlando, FL 32810 David W. Gorden, VP Ph. 407 660-1719 Fx. 407 660-0250	HDR Construction Control Corp. 315 E. Robinson St., Ste. 400 Orlando, FL 32801 William H. Wadsworth, P.E. Ph. 407 420-4200 Fx. 407 420-4242
RESPONSE -5-	RESPONSE -6-	-RESPONSE -7	
JEAces, Inc. 1685 Lee Road, Suite 250 Winter Park, FL 32789 Kathy J. Caldwell, P.E. Ph. 407 647-1001 Fx. 407 647-8080	Reynolds, Smith and Hills CS, Inc. 6370 Maguire Blvd. Ste. 300 Orlando, FL 32803 Dale A. Barnes, P.E. Ph. 407 893-5800 Fx. 407 893-5858	Volkert Construction Services, Inc. 151 South Wymore Road Altamonte Springs, FL 32714 Jack W. Roberts, P.E. Ph. 407 682-2045 Fx. 407 682-7861	

Tabulated by: T. Roberts, CPPB, Sr. Contracts Analyst – Posted 01/11/06

**Status / Schedule:**

**Evaluation Committee Meeting:** January 31, 2006 at 10am, Wekiva Conference Room, 520 West Lake Mary Blvd., Sanford, Florida  
**Short Listed Firms:** (Posted 01/31/06) Earth Tech; JEAces; and Reynolds, Smith and Hills  
**Presentations Date:** February 17, 2006 @ 9:00am, in the Lake Jesup Conference Room, 520 W. Lake Mary Blvd., Sanford, FL  
**Recommendation Posted 2/20/06:** Earth Tech Consulting  
**BCC Award Date:** March 14, 2006

**EVALUATION RANKINGS**

**PS-0410-06/TLR - CEI Services for SR 15/600 US 17/92 Reconstruction**

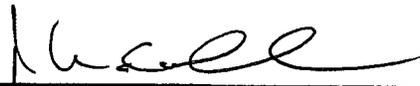
	L. Bromberg	W. Glennon	G. Johnson	S. Krug	J. McCollum	TOTAL POINTS	RANKING
CPH ENGINEERS, INC.	6	6	6	7	7	32	
DYER RIDDLE MILLS & PRECOURT	5	5	1	5	6	22	
EARTH TECH CONSULTING INC.	3	1	2	1	2	9	
HDR CONSTRUCTION CONTROL, INC	7	4	3	4	4	22	
JEACES INC	1	2	5	2	1	11	
REYNOLDS, SMITH & HILLS CS, INC	2	7	4	3	5	21	
VOLKERT CONSTRUCTION SERVICES, INC	4	3	7	6	3	23	

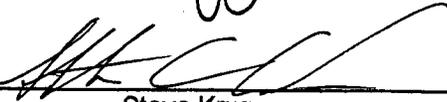
The Evaluation Committee agrees to short-list the top three ranked firms:

  
\_\_\_\_\_  
William Glennon

  
\_\_\_\_\_  
Gary Johnson

  
\_\_\_\_\_  
Lenor Bromberg

  
\_\_\_\_\_  
Jerry McCollum

  
\_\_\_\_\_  
Steve Krug

\_\_\_\_\_

**PRESENTATION RANKINGS**

**PS-0410-06/TLR - CEI for SR 15/600 US 17/92 Reconstruction**

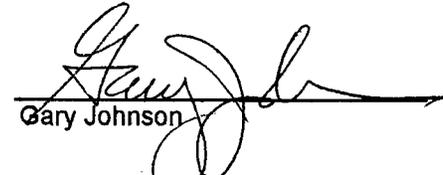
	L. Bromberg	B. Glennon	G. Johnson	S. Krug	J. McCollum	TOTAL POINTS	RANKING
<b>EARTH TECH CONSULTING INC.</b>	1	0	1	1	2	5	1
<b>JEA CONSTRUCTION ENGINEERING SERVICE</b>	2	0	2	2	1	7	2
<b>REYNOLDS, SMITH &amp; HILLS</b>	3	0	3	3	3	12	3

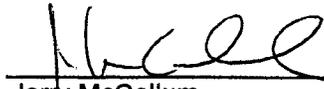
**The Evaluation Committee recommends award to the top ranked firm:**

**Earth Tech Consulting**

  
\_\_\_\_\_  
Lenor Bromberg

Bill Glennon

  
\_\_\_\_\_  
Gary Johnson

  
\_\_\_\_\_  
Jerry McCollum  
2/17/06

Steve Krug

**CONSTRUCTION AND ENGINEERING INSPECTION SERVICES AGREEMENT**  
**(PS-0410-06/TLR)**  
**U.S. HWY 17-92 RECONSTRUCTION FROM SEMINOLE COUNTY LINE**  
**TO LAKE OF THE WOODS BOULEVARD**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **EARTH TECH CONSULTING, INC.**, duly authorized to conduct business in the State of Florida, whose address is 30 S. Keller Road, Suite 500, Orlando, Florida 32810, hereinafter called the "CONSULTANT" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter called the "COUNTY".

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

**WHEREAS**, the COUNTY desires to retain the services of a competent and qualified consultant to provide construction and engineering inspection services for the U.S. Hwy 17-92 Reconstruction Project from the Seminole County Line to Lake of the Woods Boulevard in Seminole County; and

**WHEREAS**, the COUNTY has requested and received expressions of interest for the retention of services of consultants; and

**WHEREAS**, the CONSULTANT is competent and qualified to furnish services to the COUNTY and desires to provide professional services according to the terms and conditions stated herein,

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

**SECTION 1. SERVICES.** COUNTY does hereby retain CONSULTANT to furnish professional services and perform those tasks as further described in the Scope of Services attached hereto and incorporated herein as Exhibit "A".

**SECTION 2. AUTHORIZATION FOR SERVICES.** Authorization for performance of professional services by the CONSULTANT under this Agreement shall be in the form of written Notice to Proceed issued and executed by the COUNTY.

**SECTION 3. TIME FOR COMPLETION.** The services to be rendered by CONSULTANT shall commence upon execution of this Agreement by the parties and shall be completed no later than six (6) months after completion of the construction project.

**SECTION 4. COMPENSATION AND PAYMENT.**

(a) The COUNTY agrees to compensate CONSULTANT for the professional services called for under this Agreement a fee, including reimbursable expenses, not to exceed the sum of \_\_\_\_\_ DOLLARS. CONSULTANT shall perform all work required by the Scope of Services but, in no event, shall CONSULTANT be paid more than the negotiated fee stated above.

(b) Payments shall be made to the CONSULTANT when requested as work progresses for services furnished, but not more than once monthly. CONSULTANT may invoice amount due based on the total required services actually performed and completed. Upon review and approval of CONSULTANT'S invoice, the COUNTY shall, within thirty (30) days of receipt of the invoice, pay CONSULTANT the approved amount. The CONSULTANT shall be compensated at the rates as shown on Exhibit "B", attached hereto.

**SECTION 5. REIMBURSABLE EXPENSES.** Reimbursable expenses shall be paid to the CONSULTANT in addition to the hourly rates. Reimbursable expenses are subject to the applicable "Not-to-Exceed" amount set forth in Section 4 above. Reimbursable expenses may include actual expenditures made by the CONSULTANT, his employees or his professional associates in performance of the Scope of Services for the expenses

listed in the following paragraphs:

(a) Expenses of transportation, when traveling in connection with performance of the Scope of Services, based on Sections 112.061(7) and (8), Florida Statutes, or their successor; long distance calls and telegrams; and fees paid for securing approval of authorities having jurisdiction over the Project.

(b) Expense of reproductions, postage and handling of drawings and specifications.

(c) If authorized in writing in advance by the COUNTY, the cost of other expenditures made by the CONSULTANT in performance of the Scope of Services.

**SECTION 6. BILLING AND PAYMENT.**

(a) CONSULTANT shall render to the COUNTY, at the close of each calendar month, an itemized invoice, properly dated including, but not limited to, the following information:

(1) The name and address of the CONSULTANT;

(2) Contract Number;

(3) A complete and accurate record of services performed by the CONSULTANT for all services performed by the CONSULTANT during that month and for which the COUNTY is billed;

(4) A description of the services rendered in (4) above with sufficient detail to identify the exact nature of the work performed; and

(5) Such other information as may be required by this Agreement or requested by the COUNTY from time to time.

The original invoice shall be sent to:

Director of County Finance  
Seminole County Board of County Commissioners  
Post Office Box 8080  
Sanford, Florida 32772

A duplicate copy of the invoice shall be sent to:

Seminole County Public Works Department  
520 W. Lake Mary Boulevard, Suite 200  
Sanford, Florida 32773

(b) Payment shall be made after review and approval by COUNTY within thirty (30) days of receipt of a proper invoice from the CONSULTANT.

**SECTION 7. AUDIT OF RECORDS.**

(a) COUNTY may perform or have performed an audit of the records of CONSULTANT after final payment to support final payment hereunder. This audit would be performed at a time mutually agreeable to CONSULTANT and COUNTY subsequent to the close of the final fiscal period in which the last work is performed. Total compensation to CONSULTANT may be determined subsequent to an audit as provided for in subsection (b) and of this subsection, and the total compensation so determined shall be used to calculate final payment to CONSULTANT. Conduct of this audit shall not delay final payment as required by Section 6(b).

(b) The CONSULTANT agrees to maintain all books, documents, papers, accounting records and other evidences pertaining to work performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at CONSULTANT'S office at all reasonable times during the Agreement period and for five (5) years from the date of final payment under the contract for audit or inspection as provided for in subsection (a) of this Section.

(c) In the event any audit or inspection conducted after final payment, but within the period provided in subsection (b) of this Section reveals any overpayment by COUNTY under the terms of the Agreement, CONSULTANT shall refund such overpayment to COUNTY within thirty (30) days of notice by the COUNTY.

**SECTION 8. RESPONSIBILITY OF CONSULTANT.**

(a) CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of all plans, studies, reports and other services furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in his services.

(b) Neither the COUNTY'S review, approval or acceptance of, nor payment for, any of the services required shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and the CONSULTANT shall be and remain liable to the COUNTY in accordance with applicable law for all damages to the COUNTY caused by the CONSULTANT'S performance of any of the services furnished under this Agreement.

**SECTION 9. OWNERSHIP OF DOCUMENTS.** All deliverable reference data, survey data, plans and reports that result from the CONSULTANT'S services under this Agreement shall become the property of the COUNTY after final payment for the specific service provided is made to CONSULTANT. No changes or revisions to the documents furnished by CONSULTANT shall be made by COUNTY or its agents without the written approval of CONSULTANT.

**SECTION 10. TERM.** This Agreement shall take effect on the date of its execution by COUNTY and shall remain in effect until completion of all review and acceptance work required by the Scope of Services.

**SECTION 11. TERMINATION.**

(a) The COUNTY may, by written notice to the CONSULTANT, terminate this Agreement, in whole or in part, at any time, either for the COUNTY'S convenience or because of the failure of the CONSULTANT to fulfill CONSULTANT'S Agreement obligations. Upon receipt of such notice, the CONSULTANT shall:

(1) immediately discontinue all services affected unless the notice directs otherwise, and

(2) deliver to the COUNTY all plans, studies, reports, estimates, summaries, and such other information and materials as may have been accumulated by the CONSULTANT in performing this Agreement, whether completed or in process.

(b) If the termination is for the convenience of the COUNTY, the CONSULTANT shall be paid compensation for services performed to the date of termination. CONSULTANT shall be paid no more than a percentage of the Fixed Fee amount equivalent to the percentage of the completion of work contemplated by the Agreement.

(c) If the termination is due to the failure of the CONSULTANT to fulfill his Agreement obligations, the COUNTY may take over the work and prosecute the same to completion by Agreement or otherwise. In such case, the CONSULTANT shall be liable to the COUNTY for reasonable additional costs occasioned to the COUNTY thereby. The CONSULTANT shall not be liable for such additional costs if the failure to perform the Agreement arises out of causes beyond the control and without the fault or negligence of the CONSULTANT. Such causes may include, but are not limited to, acts of God or of the public enemy, acts of the COUNTY in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the failure to perform must be beyond the control and without the fault or negligence of the CONSULTANT.

(d) If, after notice of termination for failure to fulfill Agreement obligations, it is determined that the CONSULTANT had not so failed, the termination shall be deemed to have been effected for the convenience of the COUNTY. In such event, adjustment in the Agreement

price shall be made as provided in subsection (b) of this Section.

(e) The rights and remedies of the COUNTY provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

**SECTION 12. EQUAL OPPORTUNITY EMPLOYMENT.** CONSULTANT agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and will take steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**SECTION 13. NO CONTINGENT FEES.** CONSULTANT warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement and that CONSULTANT has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, COUNTY shall have the right to terminate the Agreement at its discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**SECTION 14. ASSIGNMENT.** This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any

circumstances, by the parties hereto without prior written consent of the opposite party and only by a document of equal dignity herewith.

**SECTION 15. SUBCONTRACTORS.** In the event CONSULTANT, during the course of the work under this Agreement, requires the services of any subcontractors or other professional associates in connection with service covered by this Agreement, CONSULTANT must secure the prior written approval of the COUNTY. If subcontractors or other professional associates are required in connection with the services covered by this Agreement, CONSULTANT shall remain fully responsible for the services of subcontractors or other professional associates.

**SECTION 16. INDEMNIFICATION OF COUNTY.** The CONSULTANT agrees to hold harmless, replace, and indemnify the COUNTY, its commissioners, officers, employees, and agents against any and all claim, losses, damages or lawsuits for damages, arising from the negligent, reckless, or intentionally wrongful provision of services hereunder by the CONSULTANT, whether caused by the CONSULTANT or otherwise.

**SECTION 17. INSURANCE.**

(a) General. The CONSULTANT shall at the CONSULTANT'S own cost, procure the insurance required under this Section.

(1) The CONSULTANT shall furnish the COUNTY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required by this Section (Professional Liability, Workers' Compensation/Employer's Liability and Commercial General Liability). The COUNTY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy. The Certificate of Insurance shall provide that the COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. Until such time as the insurance is no longer required to be maintained by the CONSULTANT, the

CONSULTANT shall provide the COUNTY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided.

(2) The Certificate shall contain a statement that it is being provided in accordance with the Agreement and that the insurance is in full compliance with the requirements of the Agreement. In lieu of the statement on the Certificate, the CONSULTANT shall, at the option of the COUNTY submit a sworn, notarized statement from an authorized representative of the insurer that the Certificate is being provided in accordance with the Agreement and that the insurance is in full compliance with the requirements of the Agreement. **The Certificate shall have this Agreement number clearly marked on its face.**

(3) In addition to providing the Certificate of Insurance, if required by the COUNTY, the CONSULTANT shall, within thirty (30) days after receipt of the request, provide the COUNTY with a certified copy of each of the policies of insurance providing the coverage required by this Section.

(4) Neither approval by the COUNTY or failure to disapprove the insurance furnished by CONSULTANT shall relieve the CONSULTANT of the CONSULTANT'S full responsibility for performance of any obligation including CONSULTANT'S indemnification of COUNTY under this Agreement.

(b) Insurance Company Requirements. Insurance companies providing the insurance under this Agreement must meet the following requirements:

(1) Companies issuing policies other than Workers' Compensation must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida.

Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.

(2) In addition, such companies other than those authorized by Section 440.57, Florida Statutes, shall have and maintain a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

(3) If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: 1) lose its Certificate of Authority, 2) no longer comply with Section 440.57, Florida Statutes, or 3) fail to maintain the requisite Best's Rating and Financial Size Category, the CONSULTANT shall, as soon as the CONSULTANT has knowledge of any such circumstance, immediately notify the COUNTY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as the CONSULTANT has replaced the unacceptable insurer with an insurer acceptable to the COUNTY the CONSULTANT shall be deemed to be in default of this Agreement.

(c) Specifications. Without limiting any of the other obligations or liability of the CONSULTANT, the CONSULTANT shall, at the CONSULTANT'S sole expense, procure, maintain and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this Section. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by the CONSULTANT and shall be maintained in force until the Agreement completion date. The amounts and types of insurance shall conform to the following minimum requirements.

(1) Workers' Compensation/Employer's Liability.

(A) CONSULTANT'S insurance shall cover the CONSULTANT for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. The CONSULTANT will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both the CONSULTANT and its subcontractors are outlined in subsection (c) below. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the United States Longshoremen and Harbor Workers' Compensation Act, Federal Employers' Liability Act and any other applicable Federal or State law.

(B) Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen's and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

(C) The minimum amount of coverage under Part Two of the standard Workers' Compensation Policy shall be:

\$ 500,000.00	(Each Accident)
\$1,000,000.00	(Disease-Policy Limit)
\$ 500,000.00	(Disease-Each Employee)

(2) Commercial General Liability.

(A) The CONSULTANT'S insurance shall cover the CONSULTANT for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by

the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment and the elimination of coverage for Fire Damage Legal Liability.

(B) The minimum limits to be maintained by the CONSULTANT (inclusive of any amounts provided by an Umbrella or Excess policy) shall be as follows:

<u>LIMITS</u>	
General Aggregate	\$Three (3) Times the Each Occurrence Limit
Personal & Advertising Injury Limit	\$500,000.00
Each Occurrence Limit	\$500,000.00

(3) Professional Liability Insurance. The CONSULTANT shall carry limits of not less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00).

(d) Coverage. The insurance provided by CONSULTANT pursuant to this Agreement shall apply on a primary basis and any other insurance or self-insurance maintained by the COUNTY or the COUNTY'S officials, officers, or employees shall be excess of and not contributing with the insurance provided by or on behalf of the CONSULTANT.

(e) Occurrence Basis. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Professional Liability insurance policy must either be on an occurrence basis, or, if a claims-made basis, the coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

(f) Obligations. Compliance with the foregoing insurance requirements shall not relieve the CONSULTANT, its employees or agents

of liability from any obligation under a Section or any other portions of this Agreement.

**SECTION 18. ALTERNATIVE DISPUTE RESOLUTION.**

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY protest procedures prior to filing suit or otherwise pursuing legal remedies. COUNTY procedures for proper invoice and payment disputes are set forth in Section 22.15, "Prompt Payment Procedures," Seminole County Administrative Code.

(b) CONSULTANT agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in the COUNTY protest procedures set forth in subsection (a) above of which the CONSULTANT had knowledge and failed to present during the COUNTY protest procedures.

(c) In the event that COUNTY protest procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

**SECTION 19. REPRESENTATIVE OF COUNTY AND CONSULTANT.**

(a) It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement will arise. The COUNTY, upon request by CONSULTANT, shall designate in writing and shall advise CONSULTANT in writing of one (1) or more COUNTY employees to whom all communications pertaining to the day-to-day conduct of the Agreement shall be addressed. The designated representative shall have the authority to transmit instructions, receive information and interpret

and define the COUNTY'S policy and decisions pertinent to the work covered by this Agreement.

(b) CONSULTANT shall, at all times during the normal work week, designate or appoint one or more representatives of CONSULTANT who are authorized to act on behalf of CONSULTANT regarding all matters involving the conduct of the performance pursuant to this Agreement and shall keep COUNTY continually advised of such designation.

**SECTION 20. ALL PRIOR AGREEMENTS SUPERSEDED.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are not commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained or referred to in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

**SECTION 21. MODIFICATIONS, AMENDMENTS OR ALTERATIONS.** No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

**SECTION 22. INDEPENDENT CONTRACTOR.** It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of copartners between the parties, or as constituting the CONSULTANT including its officers, employees, and agents, the agent, representative, or employee of the COUNTY for any purpose, or in any manner, whatsoever. The CONSULTANT is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

**SECTION 23. EMPLOYEE STATUS.** Persons employed by the CONSULTANT in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the COUNTY'S officers and employees either by operation of law or by the COUNTY.

**SECTION 24. SERVICES NOT PROVIDED FOR.** No claim for services furnished by the CONSULTANT not specifically provided for herein shall be honored by the COUNTY.

**SECTION 25. PUBLIC RECORDS LAW.** CONSULTANT acknowledges COUNTY'S obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, to release public records to members of the public upon request. CONSULTANT acknowledges that COUNTY is required to comply with Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls over the terms of this Agreement.

**SECTION 26. NOTICES.** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to wit:

**For COUNTY:**

Seminole County Public Works Department  
520 W. Lake Mary Boulevard, Suite 200  
Sanford, Florida 32773

**For CONSULTANT:**

Earth Tech Consulting, Inc.  
30 S. Keller Rd., Ste 500  
Orlando, FL 32810

**SECTION 27. RIGHTS AT LAW RETAINED.** The rights and remedies of the COUNTY, provided for under this Agreement, are in addition to any other rights and remedies provided by law.

**SECTION 28. COMPLIANCE WITH LAWS AND REGULATIONS.** In providing all services pursuant to this Agreement, the CONSULTANT shall abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement, and shall entitle the COUNTY to terminate this Agreement immediately upon delivery of written notice of termination to the CONSULTANT.

**SECTION 29. CONFLICT OF INTEREST.**

(a) The CONSULTANT agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

(b) The CONSULTANT hereby certifies that no officer, agent or employee of the COUNTY has any material interest (as defined in Section 112.312(15), Florida Statutes, as over 5%) either directly or indirectly, in the business of the CONSULTANT to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

(c) Pursuant to Section 216.347, Florida Statutes, the CONSULTANT hereby agrees that monies received from the COUNTY pursuant to this

Agreement will not be used for the purpose of lobbying the Legislature or any other State or Federal agency.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

ATTEST: EARTH TECH CONSULTING, INC.

\_\_\_\_\_  
, Secretary  
  
(CORPORATE SEAL)

By: \_\_\_\_\_  
DAVID W. GORDON, Vice-President

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

ATTEST: BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
CARLTON HENLEY, Chairman

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

For the use and reliance  
of Seminole County only.

As authorized for execution by  
the Board of County Commissioners  
at their \_\_\_\_\_, 20\_\_\_\_,  
regular meeting.

Approved as to form and  
legal sufficiency.

\_\_\_\_\_  
County Attorney  
AC/lpk  
2/23/06 3/1/06  
ps-0410

Attachments:  
Exhibit "A" - Scope of Services  
Exhibit "B" - Rate Schedule