

Recommendation re: Approval of Request to Negotiate Agreement for Professional Engineering and Environmental Consulting Services for the Lake Bonnet Drainage Basin Flood Hazard and Debris Mitigation Project

In accordance with the Consultant's Competitive Negotiation Act (CCNA), the City's Purchasing Division issued a Request for Qualifications (RFQ) No. 2023-RFQ-020 requesting qualifications from qualified firms to provide Professional Engineering and Environmental Consulting Services for the Lake Bonnet Drainage Basin Flood Hazard and Debris Mitigation Project. Four firms responded to the RFQ. A Selection Committee (SC) comprised of representatives of Lakeland Electric and Public Works staff from the Lakes & Stormwater Division, Engineering Division, and Director's Office evaluated the firms based on the following criteria:

- Capability and adequacy of professional personnel
- Response to the requirements set forth in the public announcement
- Experience and past performance
- Willingness to meet time and budget requirements
- Previous experience with state and federal grant execution, management, and compliance

After review of the responses, the SC recommends that the City begin contract negotiations with the first-ranked firm, as ranked below, upon City Commission approval.

COMPANY NAME	Firm Location	RANK
AECOM Technical Services, Inc.	Tampa	1
Geosyntec Consultants, Inc.	Orlando	2
Environmental Science Associates, Inc.	Tampa	3
HGS, LLC dba RES Environmental Operating Company, LLC	Tampa	4

A negotiated agreement will include the following tasks:

- Environmental Assessment, Feasibility Studies, and Constructability Review
- Environmental Permitting and Value Engineered Design
- Public Participation and Outreach
- Program, Project, and Construction Management
- Grant Compliance Documentation and Reporting

The initial term of the Agreement is six (6) years, with up to two (2) additional one (1) year extension periods.

This project is federally funded through the State of Florida's Department of Economic Opportunity's (DEO) Community Development Block Grant Mitigation Program (CDBG-MIT) Subrecipient Agreement MT047 dated October 27, 2022.

Staff recommends the City Commission approve the Request for Approval to negotiate Professional Engineering and Environmental Consulting Services for the Lake Bonnet Drainage Basin Flood Hazard and Debris Mitigation Services and authorize the appropriate City officials to enter into contract negotiations with the first-ranked shortlisted firm above. The City will negotiate with the next highest-ranked firm (Geosyntec Consultants, Inc.) if negotiations fail with the first-ranked firm (AECOM Technical Services, Inc.) and so on.

**AGREEMENT FOR PROFESSIONAL ENGINEERING
AND ENVIRONMENTAL CONSULTING SERVICES**
For the Lake Bonnet Drainage Basin Flood Hazard and Debris Mitigation Project

THIS AGREEMENT made and entered into on this ____ day of _____, 202____ by and between the City of Lakeland, Florida, a municipality organized and existing in accordance with the laws of the State of Florida, hereinafter referred to as the "City," located at 228 South Massachusetts Avenue, Lakeland, Florida 33801-5086, and _____ a _____ corporation, located at _____ hereinafter referred to as the "Consultant."

WITNESSETH:

WHEREAS, City has previously determined that it has a need for Professional Engineering and Environmental Consulting Services for the Lake Bonnet Drainage Basin Flood Hazard and Debris Management Project; and

WHEREAS, City issued a Request for Qualifications for such services pursuant to City of Lakeland Request For Qualification No. 2023-RFQ-020 (hereinafter RFQ); and

WHEREAS, City awarded the RFQ to Consultant; and

WHEREAS, Consultant has represented that it is able to satisfactorily provide the services according to the terms and conditions of the RFQ, which are incorporated herein by reference, and the terms and conditions contained herein; and

NOW THEREFORE, in consideration of the above and mutual covenants contained herein, the parties agree as follows:

I. TERM OF AGREEMENT

- A. The term of this Agreement shall commence on _____ ("Effective Date") and remain in effect for an initial term of six (6) years from the Effective Date unless sooner terminated, as provided herein. Additionally, the parties agree that the term may be extended upon execution of a written agreement between the City and Consultant for up to two (2) additional twelve (12) month periods beyond the initial contract term. However, this option shall be exercised only if all terms and conditions remain the same and approval is granted by the City or its authorized representative.
- B. References in this Agreement to "Term" shall include the initial term of this Agreement and all renewal terms.
- C. Nothing in this Section shall limit or affect the City's right to terminate this Agreement in accordance with the termination Section set forth in this Agreement.

II. SCOPE OF WORK TO BE PERFORMED

- A. The Consultant hereby agrees to provide the City with Professional Engineering and Environmental Consulting Services for the Lake Bonnet Drainage Basin Flood Hazard and Debris Mitigation Project, as requested and more specifically outlined in the RFQ, this Agreement, and all of its Appendices, Addenda, Exhibits, and Attachments attached hereto and incorporated herein by reference as **Addendum "A,"** Section IX – Scope of Work, and all subsequent official documents that form the Contract Documents for this Agreement.

III. CHANGES IN THE SCOPE OF WORK

- A. The City may make changes in the services to be provided hereunder at any time by giving written notice to the Consultant. If such changes increase, decrease, or eliminate any amount of work, the City and the Consultant will negotiate any change in total cost or schedule modifications. If the City approves any change, a written Addendum to the Agreement will be executed to reflect the changes, and the Consultant shall be compensated for said services in accordance with the terms in Section XI herein.
- B. All amendments and changes thereto shall be performed in strict accordance with the terms of this Agreement as they are applicable.

IV. FEDERAL FUNDING

- A. Funding is provided by HUD through the State of Florida Department of Economic Opportunity (DEO) to support long-term mitigation efforts following declared disasters in 2016 and 2017 through HUD's Community Development Block Grant Mitigation (CDBG-MIT) program. Awards were distributed on a competitive basis targeting HUD-designated Most Impacted and Distressed (MID) Areas, primarily addressing the Benefits to Low-to-Moderate Income (LMI) National Objective. Additional information may be found in the Federal Register, Vol. 84, No. 169.
- B. On April 16, 2021, the DEO selected the City to receive CDBG-MIT grant funds based on the Lake Bonnet Drainage Basin Flood Hazard and Debris Mitigation application submitted for the Rebuild Florida Mitigation General Infrastructure Program. The City entered into an Agreement with the DEO (Agreement # MT047) on October 27, 2022, to administer these mitigation disaster funds.

V. SCHEDULE

- A. Time is of the essence with regard to this Agreement. The Consultant shall perform its services in conformance with the mutually agreed upon schedule. The Consultant shall complete all of said services in a timely manner and will keep the City apprised of the status of work on at least a monthly basis. Should the Consultant fall behind the agreed-upon schedule, it shall employ such resources so as to comply with the agreed-upon schedule.
- B. No extension for completion of services shall be granted to the Consultant without the City's prior written consent, except as provided in Sections III and XLVIII of this Agreement.
- C. In the event of a delay attributable to the acts or inactions of the Consultant, Consultant shall reimburse the City for its direct cost as caused by the Consultant's delay.

VI. WARRANTIES

- A. Consultant warrants that the services provided hereunder shall conform to all requirements of this Agreement; shall be consistent with recognized and sound engineering practices and procedures; and shall conform to the customary standards of care, skill, and diligence appropriate to the nature of the services rendered.
- B. Consultant warrants that the personnel furnishing such services shall be fully qualified and competent to perform the services assigned to them and that such guidance given by, and the recommendations and performance of such personnel shall reflect their best personal knowledge and judgment.
- C. Consultant warrants it is professionally qualified to provide the Scope of Work and is licensed to practice engineering in the State of Florida by all public entities having jurisdiction over the Consultant and the Project.
- D. Subject to the provisions of this Section, should Consultant breach the warranties set forth herein, City shall have such remedies as may be provided at law or equity. Without limiting the generality of the foregoing, if prior to the expiration of the period specified by Florida Statute from the date Consultant completes its services under this Agreement entered into hereunder, Consultant's services are non-complying, defective, or otherwise improperly performed. City notifies Consultant in writing that a defect, error, omission, or non-compliance has been discovered in Consultant's services, Consultant shall, at the option of City: (a) correctly re-perform such non-complying, defective, or otherwise improperly performed services at no additional cost to City; (b) refund the amount paid by City attributable to such non-complying, defective, or otherwise improperly performed services.

VII. GUARANTEE AGAINST INFRINGEMENT

- A. Consultant guarantees that all services provided under this Agreement shall be free from claims of patent, copyright, and trademark infringement. Notwithstanding any other provision of this Agreement, Consultant shall indemnify, hold harmless, and defend City, its officers, directors, employees, agents, assigns, and servants from and against any and all liability, including expenses such as reasonable attorneys' fees or otherwise, for actual or alleged infringement of any patent, copyright, or trademark resulting from the use of any goods, services, or other item delivered under this Agreement.

VIII. REPRESENTATIONS AND ACKNOWLEDGMENTS

- A. The Consultant shall exercise that degree of care and skill ordinarily exercised by members of the same profession and shall perform the Scope of Services using reasonable skill and judgment in accordance with sound business, ethical and professional standards.
- B. The Consultant accepts the relationship of trust and confidence established between it and the City by this Agreement. The Consultant covenants with the City to cooperate in furnishing professional efforts during the Term of this Agreement that are consistent with reasonable professional practices and the City's best interest.
- C. The Consultant acknowledges that the City reserves the right to enter into agreements with other firms or entities to assist the City with its review of the Deliverables, any Project component(s), and the Work.

IX. CONTRACT DOCUMENTS

- A. The Contract shall include the fully executed Agreement for Professional Engineering and Environmental Consulting Services for the Lake Bonnet Drainage Basin Flood Hazard and Debris Mitigation Project (referenced in the RFQ as Appendix "B"), as well as the following documents, which are incorporated herein by reference:

- Addendum "A"** City of Lakeland RFQ 3065 and all its appendices, addenda, exhibits, and attachments
- Addendum "B"** City of Lakeland Addenda to RFQ 3065 (signed by Consultant) if applicable
- Addendum "C"** Consultant's Proposal Submittal includes the following:
 - Appendix "A"** Scoring Criteria, Proof of Publication, Notice of Bid Opening, and Notice of Intent to Award
 - Appendix "B"** (See above) Contract and Agreement for Engineering and Environmental Consulting Services for the Lake Bonnet Drainage Basin Flood Hazard and Debris Mitigation
 - Appendix "C"** Federal Contract Provisions
 - Appendix "D"** State and HUD Contract Provisions
 - Appendix "E"** Consultant's Insurance Certificate(s)
 - Appendix "F"** Consultant's executed Indemnification and Hold Harmless
 - Appendix "G"** City Specification of Safety and Occupational Health Requirements
- Attachment 1** City of Lakeland Request for Qualifications Form (Page 7 of the RFQ signed by the Consultant)
- Attachment 2** Consultant's executed Sworn Statement Pursuant to Section 287.133(3)(A) Florida Statutes, On Public Entity Crimes
- Attachment 3** Consultant's dated copy of the System for Award Management (SAM) system search results for itself and any proposed sub-consultants demonstrating a search of the Excluded Parties List System (EPLS) was conducted, and they are not listed as debarred or suspended
- Attachment 4** Consultant's executed Non-Collusion Affidavit
- Attachment 5** Consultant's executed Drug-Free Workplace Certification
- Attachment 6** Consultant's executed Disclosure(s) of Lobbying Activities and each of its key employees

Attachment 7 Consultant's DBE/MBE/WBE Certification of Respondent and/or Sub-Consultants OR the required documentation detailing the 'Good Faith Efforts' made in the utilization of potential DBE/MBE/WBE Sub-Consultants

Addendum "D" Consultant's Negotiated Cost Proposal

X. CITY'S RESPONSIBILITIES

- A. The City shall provide all available information regarding the Project to the Consultant and provide direction to the Consultant consistent with the terms and conditions of this Agreement.

XI. INDEPENDENT ESTIMATES, COST PROPOSAL, AND COST/PRICE ANALYSIS

- A. Pursuant to § 200.324, the City made and documented independent estimates before receiving bids or proposals.
- B. The City requested a cost proposal from the Consultant with the following parameters:
1. The cost proposal shall be broken down by deliverable with a not-to-exceed fee and cost, showing each element of the fees and costs and totaling a not-to-exceed cost for the total project. Professional fees shall include wages, salaries, taxes, insurance, and overhead. Hourly salary rates and unit prices for materials, testing, etc., shall remain firm for the duration of the contract.
 2. The City shall negotiate the Consultant's profit as a separate element of the contract (required when there has been no price competition).
 3. Not-to-exceed costs shall include a breakdown of the professional fees and costs for each deliverable showing all elements of the professional fees and costs, except profit.
 4. To determine the reasonableness of the proposed fees and costs, the City then conducted a cost/price analysis of the Consultant's final cost proposal using the appropriate set of cost principles.
 5. The City evaluation team conducted all subsequent contract negotiations resulting in a total not-to-exceed cost for the project. Accordingly, the Consultant's Negotiated Cost Proposal is attached hereto and incorporated herein by reference as **Addendum "D."**
 6. Failure to reach an agreement on fees and costs shall cause this Agreement to terminate.

XII. CONSULTANT INVOICING, NARRATIVE OF WORK ACCOMPLISHED, AND UPDATED SCHEDULE

- A. The City agrees to pay or compensate the Consultant for the professional services and eligible reimbursable expenses specified under each applicable Work Phase, Activity, and Budget as set forth in the Agreement and calculated pursuant to the negotiated Consultant's Cost Proposal herein.
1. At monthly intervals, the Consultant shall submit an invoice for services rendered and eligible reimbursable expenses incurred.
 2. Invoice shall include a listing of Work Phases, Activities, and Budget. Professional services and eligible expenses shall then be categorized under the appropriate Work Phase and Activity with a brief description of the work accomplished and the associated cost and/or expense for each element of the invoiced work.
 3. Invoices will be based upon the Consultant's actual expenses incurred and work performed per individual, evidenced by certified payroll within the billing period.
 4. Invoices shall include monthly timesheets that state the name and classification of each independent professional associate, consultant, and/or sub-contractor employed by the Consultant who performed services within the billing period; the number of hours worked by each person and their associated hourly salary cost.
 5. Invoices shall be sub-totaled by Work Phase and Activity accomplished with a cumulative total billing amount on the bottom of each statement. The total compensation earned will then have previous invoice billings deducted for a net payment due.
 6. Reimbursable/eligible expenses shall be evidenced with paid receipts rendered during the preceding month.

7. Percentage Complete Invoicing. For completed tasks, Consultant, at a minimum, shall invoice the City 5% of the total amount of an Activity Budget under each applicable Activity. In no event shall this limit Consultant's ability to invoice the City for completed tasks that exceed 5% of the Activity Budget under each applicable Activity. Invoicing 5% of the total amount of an Activity Budget under each applicable Activity is established as the minimum amount to be invoiced for purposes of this Agreement.
- B. The Consultant, with the Invoice, shall provide a written narrative of the work accomplished during the invoice period and a revised/updated schedule. Failure to do so will cause the City to withhold payment.

XIII. CONSULTANT PAYMENT

- A. The Consultant agrees that the City reserves the right to withhold any amounts deemed to be in question or in advance of actual work progress and must provide the Consultant with a written explanation of the billing amounts in question. Funds may not be moved between the noted Deliverables without the prior written approval of the City and be based upon a detailed written request by the Consultant and with the understanding that the internal reallocation will not result in a need to increase the total maximum compensation for the stated Scope of Work for the project. Any amount indicated for a specific Phase of work (e.g., Feasibility Study, Design, or Construction Services) shall only be utilized for that Phase of work. Should any services be needed that are out of scope, the Consultant will provide a detailed written Change Order request for the authorization of said additional services, complete with justification and a not-to-exceed estimate of additional costs. The City must approve Change Orders. Any additional work performed without prior written authorization will be at Consultant's sole cost and viewed as non-compensable.
- B. Payments due Consultant under this Agreement shall be made by check and mailed to the address or Post Office Box identified in the remittance instructions on the Consultant's most recent invoice.
- C. All payments shall be made to Consultant in accordance with Fla. Stat. § 218.70, et. seq., the Local Government Prompt Payment Act.

XIV. NON-COMPENSATED SERVICES

- A. The Consultant shall not be compensated for any services required to correct errors, omissions, or deficiencies in the Deliverables furnished, produced, and/or developed by the Consultant or any Consultant Representative.
- B. The Consultant shall not be compensated for any services required to bring any deliverable(s) in compliance with applicable Laws (e.g., Americans with Disabilities Act and Equal Employment Opportunity) in effect at the time such Deliverable(s) was provided to the City in accordance with this Agreement.

XV. INSURANCE REQUIREMENTS

- A. Consultant shall maintain in force during the term of this Agreement, at its own expense, insurance as set forth in Appendix "E" of the RFQ. The Consultant's Certificate of Insurance(s) in accordance with said Insurance Requirements evidencing such coverage prior to issuance of a purchase order or commencement of any work under this Agreement (referenced in the RFQ as Appendix "C") is attached hereto as **Addendum "C"** and incorporated herein by reference throughout the term of this Agreement.
- B. The City reserves the right to change or alter the above-referenced insurance requirements as it deems necessary.

XVI. INDEMNIFICATION

- A. Consultant shall indemnify, pay the cost of defense, including attorneys' fees, and hold harmless the City from all suits, actions, or claims of any character brought on account of any injuries or damages received or sustained by Consultant in accordance with the indemnification provision set forth in Appendix "F" of the RFQ, and the Consultant's executed Indemnification (referenced in the RFQ as Appendix "F") is attached hereto as **Addendum "C"** and incorporated herein by reference throughout the term of this Agreement.
- B. The provisions of this Section are independent of, and will not be limited by, any insurance required to be obtained by the Consultant pursuant to this Agreement or otherwise obtained by the Consultant.

XVII. DELIVERABLES

- A. Deliverables are defined as reports, studies, findings, specifications, plans, or anything else that is the end product of work performed by the Consultant for the City. Within such time constraints as may be set forth in the Scope of Work and Activities, the Consultant shall submit to the City the deliverables identified in the Scope of Work and Activities.

XVIII. OWNERSHIP OF DELIVERABLES AND DOCUMENTS

- A. The City shall solely own all Deliverables, including the copyright and all other associated intellectual property rights, produced and developed by the Consultant pursuant to the terms and conditions set forth in this Agreement. All Deliverables shall be submitted to the City prior to the City issuing the final payment to the Consultant.
- B. The City shall solely own all studies, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information, and material prepared or accumulated by the Consultant or its sub-consultants in rendering services pursuant to this Agreement shall be the sole property of the City and have access to the reproducible copies at no additional cost other than printing. In no event shall Consultant be liable or responsible to anyone for the City's use of any such information or material in another project or following the termination of this Agreement.

XIX. RIGHT TO INSPECTION

- A. City, or its affiliates, shall at all times have the right to review or observe the services performed by Consultant.
- B. City, or its designated representative, shall have the right to review and inspect all of the accounting records for salaries and expenses the Consultant maintains for the work performed for the City. Such inspection shall be at the City's expense and shall occur during normal business hours.
- C. No inspection, review, or observation shall relieve Consultant of its responsibility under this Agreement.

XX. PROGRESS MEETING

- A. City's designated Project Manager may hold periodic progress meetings on a monthly basis, or more frequently if required, during the term of this Agreement. Consultant's Project Manager and all other appropriate personnel and stakeholders shall attend such meetings as designated by the City's Project Manager. Consultant shall be compensated at the billing rates set forth in this Agreement.

XXI. SAFETY

- A. Consultant agrees to comply with City's safety standards while on City property. A listing of the City's standard Specification of Safety and Occupational Health Requirements (referenced in the RFQ as Appendix "G") is attached hereto as **Addendum "C"** and incorporated herein by reference throughout the term of this Agreement.
- B. Consultant shall have full responsibility and assume all liability for the safety and supervision of its employees while performing services hereafter.

XXII. REASONABLE ACCESS

- A. During the term of this Agreement, City shall grant Consultant reasonable access to the City's premises for purposes of fulfilling its obligations under this Agreement.

XXIII. SUBCONTRACTS

- A. The Consultant may hire or use sub-contractors or sub-consultants in connection with the performance of the Consultant's obligations under this Agreement. Unless the context clearly indicates otherwise, the terms "sub-contractor" and "sub-consultant" shall be interchangeable in this Agreement, and the terms "sub-contract agreement" and "sub-consulting agreement" shall likewise be interchangeable in this Agreement.
- B. The Consultant shall give advance notification to the City's Project Manager of any proposed sub-contract

agreement or any change to any existing subcontract agreement. Such advance notice shall include the following:

- A description of the supplies or services called for by the sub-contract or change to an existing sub-contract.
 - Identification of the proposed sub-contractor and an explanation of why and how the proposed sub-contractor was selected.
 - The proposed sub-contractor fees and costs.
- C. The Consultant shall be responsible for negotiating the terms and conditions of each sub-contract agreement. The Consultant is also solely responsible for ensuring that each sub-contractor acts in a manner consistent with and in accordance with the terms and conditions of this Agreement. The Consultant shall require each sub-contractor to (i) obtain the same types and amount of insurance and comply with all insurance provisions that are required of the Consultant pursuant to this Agreement (unless otherwise approved by the City in writing) and (ii) indemnify and hold harmless the Indemnified Parties to the same extent as the Consultant under this Agreement. The Consultant's retention of a subcontractor does not relieve the Consultant of any of its duties, obligations, or representations under this Agreement.
- D. The Consultant shall not change a subcontract agreement without the prior written consent of the City's Project Manager. Any consent of the City's Project Manager does not relieve the Consultant from any obligations under this Agreement and does not constitute a waiver of any of the City's rights under this Agreement. The City's Project Manager may, at its discretion, ratify in writing any such subcontract which shall constitute the consent of the City's Project Manager as required by this Section.

XXIV. DISPUTE RESOLUTION

- A. In the event of any dispute under this Agreement that cannot be readily resolved, it shall be referred to the appropriate executives of the City and Consultant for negotiation and resolution as described below:
- Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties who have not previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice and thereafter, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved by these persons within thirty (30) days of the disputing Party's notice, or if the Parties fail to meet within ten (10) days, the dispute shall be referred to senior executives of both Parties who have authority to settle the dispute and who shall likewise meet to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to senior executives or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may initiate mediation as provided herein.
- B. All negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and State Rules of Evidence.
- C. If the dispute has not been resolved by negotiation as provided herein, the Parties shall endeavor to settle the dispute by mediation. Either Party may initiate mediation proceedings by a request in writing to the other Party. Thereupon, both Parties will be obligated to engage in mediation. The proceeding will be conducted in accordance with the then-current Center for Public Resources ("CPR") Model Procedure for Mediation of Business Disputes, with the following exceptions:
- D. If the Parties have not agreed within thirty (30) days of the request for mediation on the selection of a mediator willing to serve, the CPR, upon the request of either Party, shall appoint a member of the CPR Panels on Neutrals as the mediator; and
- E. Efforts to reach a settlement will continue until the conclusion of the proceeding, which is deemed to occur when: (a) a written settlement is reached, or (b) the mediator concludes and informs the Parties in writing that further efforts would not be useful, or (c) the Parties agree in writing that an impasse has been reached. Neither Party may withdraw before the conclusion of the proceeding.
- F. The Parties regard the aforesaid obligation to mediate as an essential provision of this Agreement and one that is legally binding on them. Accordingly, in case of a violation of such obligation by either Party, the other may bring an action to seek enforcement of such obligation in any court of law having jurisdiction thereof.
- G. If the dispute has not been resolved by negotiation or mediation as provided herein within one hundred twenty

(120) days of the initiation of such mediation procedure, either party may initiate litigation upon ten (10) days written notice to the other Party; provided, however, that if one Party has requested the other to participate in a non-binding procedure, as provided for under this Section, and the other has failed to participate, the requesting Party may initiate litigation before expiration of the above period.

- H. The procedures specified in this Section shall be the sole and exclusive procedures for the resolution of disputes between the Parties arising out of or relating to this Agreement, provided, however, that a Party may seek a preliminary injunction or other provisional judicial relief if, in its reasonable judgment, such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action, the Parties will continue to participate in good faith in the procedures specified in this Section.

XXV. SUSPENSION OF SERVICES

- A. The City's Project Manager may, at any time, by written order to the Consultant, require the Consultant to suspend, delay, or interrupt all or any part of the Scope of Services required by this Agreement. Any such order shall be specifically identified as a suspension of services order ("Suspension of Services Order"). Upon receipt of a Suspension of Services Order, the Consultant shall forthwith comply with its terms and immediately cease incurrence of further costs and fees allocable to the services covered by the Suspension of Services Order during the period of stoppage of services. This shall include the involvement of any and all sub-contractual relationships.
- B. If a Suspension of Services Order issued under this Section is canceled, the Consultant shall resume the Scope of Services within fifteen (15) days after a Suspension of Services Order is canceled. If an adjustment to the Scope of Services or any other term and condition of this Agreement is required due to a suspension of services pursuant to this Section. In that case, the Parties shall follow the Contract Adjustments (as defined herein) procedure as described in Section XLVII of this Agreement. Failure to agree to any Contract Adjustments shall be a dispute concerning a question of fact pursuant to Section XXV.
- C. If a Suspension of Services Order is not canceled and the City terminates this Agreement for convenience, the City shall pay the Consultant costs and fees for services performed up to the effective date of termination, provided such costs and fees are owed to the Consultant pursuant to this Agreement. The Consultant shall provide the City with all completed or partially completed Deliverables prior to the receipt of payment for services performed up to the effective termination date. The foregoing payment shall constitute the Consultant's sole compensation in the event of termination of this Agreement, and the City shall have no other liability to the Consultant related to the termination of this Agreement. Without limiting the generality of the foregoing, the City shall have no liability to the Consultant for lost profits or lost opportunity costs in the event of termination of this Agreement.

XXVI. CANCELLATION

- A. City reserves the right to cancel this Agreement, without cause, by providing thirty (30) days prior written notice to the Consultant of its intention to cancel, or with cause, if at any time the Consultant fails to fulfill or abide by any of the terms or conditions specified.
- B. Failure of the Consultant to comply with any of the provisions of this Agreement shall be considered a material breach of contract. It shall be cause for immediate termination of the Agreement at the discretion of the City.
- C. In addition to all other legal remedies available to City, City reserves the right to cancel and obtain from another source any items which have not been provided within the period of time stated in the RFQ or, if no such time is stated, within a reasonable period of time from the date of order or request, as determined by City.
- D. In the event that sufficient budgeted funds are not available for a new fiscal period, the City shall notify the Consultant, in writing, of such occurrence, and the City shall terminate this Agreement on the last day of the then current fiscal period without penalty or expense to the City.

XXVII. PROHIBITION OF CONTINGENT FEES

- A. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the

Consultant any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of the making of this Agreement. In the event of a breach of this provision, the City shall have the right to terminate this Agreement without further liability and, in its sole discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid as a result of said breach.

XXVIII. PROHIBITED INTEREST

- A. No appointed or elected official or employee of the City shall have any direct or indirect interest in this Agreement or the proceeds thereof.

XXIX. FINDINGS CONFIDENTIAL

- A. Subject to the requirement of Florida laws regarding public records and Section LXIII of this Agreement, all Deliverables produced or developed by the Consultant or any City data available to Consultant pursuant to this Agreement shall not be made available to any individual or organization other than any Consultant's Representative by the Consultant without prior written consent from the City.

XXX. COMPLIANCE WITH LAWS AND REGULATIONS

- B. Consultant shall comply with all requirements of Federal, State, and local laws, rules, regulations, standards, and/or ordinances applicable to perform of this Agreement.

XXXI. FEDERAL CONTRACT PROVISIONS

- A. Consultant shall comply with all applicable Federal laws, rules and regulations, procedures, executive orders, HUD, DEO, CBDG-MIT policies, Federal constitutions, procedures, and directives incorporated herein.
- B. Consultant shall incorporate the applicable 2 CFR Appendix II to Part 200 contract provisions into all sub-consultant contracts and ensure compliance in all construction contracts and sub-contracts (referenced in the RFQ as Appendix "C") is attached hereto as **Addendum "C"** and incorporated herein by reference throughout the term of this Agreement. These include the following:
- Remedies – 2 CFR 200 Appendix II (A)
 - Termination for Cause and Convenience - 2 CFR 200 Appendix II (B)
 - Equal Employment Opportunity – 2 CFR 200 Appendix II (C)
 - Davis-Bacon Act – 2 CFR 200 Appendix II (D)
 - Contract Work Hours and Safety Standards Act – 2 CFR 200 Appendix II (E)
 - Rights to Inventions Made Under a Contract or Agreement – 2 CFR 200 Appendix II (F)
 - Clean Air Act – 2 CFR 200 Appendix II (G)
 - Debarment and Suspension – 2 CFR 200 Appendix II (H)
 - Byrd Anti-Lobbying Amendment – 2 CFR 200 Appendix II (I) and 24 CFR §570.303
 - Procurement of Recovered Materials – 2 CFR 200 Appendix II (J)
 - Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment – 2 CFR 200 Appendix II (K)
 - Domestic Preferences for Procurements – 2 CFR 200 Appendix II (L)

XXXII. STATE AND HUD CONTRACT PROVISIONS

Consultant shall comply with applicable State and U.S. Department of Housing and Urban Development (HUD) regulations (referenced in the RFQ as Appendix "D") and attached hereto as **Addendum "C"** and incorporated herein by reference throughout the term of this Agreement. Consultant shall conform and incorporate the applicable State and HUD Contract Provisions into contracts with all sub-consultants.

XXXIII. LOCAL LAWS, RULES, REGULATIONS, STANDARDS, AND ORDINANCES

- A. Consultant shall comply with all requirements of local laws, rules, regulations, standards, and/or ordinances applicable to the performance of this Agreement.
- B. The Consultant shall also comply with the City's policies and procedures, executive orders, and any technical standards provided to the Consultant by the City.

XXXIV. GENERAL PROVISIONS

- A. Each party to this Agreement that is not an individual represents and warrants to the other party that (i) it is a duly organized, qualified, and existing entity authorized to do business under the laws of the State of Florida and (ii) all appropriate authority exists to duly authorize the person executing this Agreement to execute the same so and fully bind the party on whose behalf he or she is executing.
- B. This Agreement has been prepared by the City and reviewed by the Consultant and its professional advisors. The City, Consultant, and Consultant's professional advisors believe that this Agreement expresses their agreement and that it should not be interpreted in favor of either the City or the Consultant or against the City or the Consultant merely because of their efforts in preparing it.
- C. All obligations and rights of any party arising during or attributable to the period prior to expiration or earlier termination of this Agreement, including but not limited to those obligations and rights related to indemnification, shall survive such expiration or earlier termination.
- D. This Agreement constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, whether oral or written, between them.
- E. Each appendix, exhibit, and attachment to this Agreement, including attachments to an appendix, exhibit, and materials referenced in an appendix or exhibit, is an essential part hereof and is incorporated herein by reference.
- F. No term or condition of this Agreement shall be deemed waived, and no breach of this Agreement excused unless the waiver or consent is in writing signed by the party granting such waiver or consent.
- G. The Consultant shall not take any action that will result in a lien being placed against the City or to any services or Deliverables being provided to the City. However, in the event the City is placed on notice of intent to lien or placed on notice of a lien by the Consultant or any Consultant Representative, the Consultant will take immediate action at the Consultant's expense to respectively prevent or remove and discharge the lien.
- P. Subject to the requirements of Florida public records Laws, neither party shall use the other party's name in conjunction with any endorsement, sponsorship, or advertisement without the prior written consent of the named party.
- H. The obligations of the City as to any funding required pursuant to this Agreement shall be limited to an obligation in any given year to budget, appropriate, and pay from legally available funds after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.

XXXV. RECORDS AND AUDITS

- A. The Consultant shall keep accurate books, records, and documentation related to this Agreement at the address for delivery of notices set forth in this Agreement. The Consultant shall keep all such books, records, and documentation and shall be open to examination, audit, and copying by the City during the Term of this Agreement and for a period of five (5) years following termination or expiration of this Agreement. The Consultant shall bear the costs associated with retaining books, records, and documentation. Nothing herein shall be construed to allow the destruction of records that may be required to be retained longer by the statutes of the State of Florida.

XXXVI. PRECEDENCE OF DOCUMENTS

- A. In the event of an inconsistency or conflict, the following order of precedence shall govern (i) this Agreement, exclusive of each Appendix, Exhibit, and Attachment; the attachments to and materials referenced in an Appendix or Exhibit, (ii) the Appendices to this Agreement, exclusive of the Attachments and Exhibits to and materials referenced in an Appendix, (iii) and the attachments to and materials referenced in an Appendix or Exhibit.

XXXVII. CITY-AUTHORIZED AUTHORITY

- A. For purposes of this Agreement, any required written permission, consent, acceptance, approval, or agreement by the City means the approval of the Mayor or his authorized designee, unless otherwise set forth in this Agreement or unless otherwise required to be exercised by the City Commission pursuant to the City Charter or applicable Laws.

XXXVIII. SUSPENSION AND DEBARMENT

- A. Consultant and its sub-consultants must certify, pursuant to 49 CFR Part 29, that its firm(s): (1) are not presently suspended or debarred as and/or listed on the U.S. General Services Administration's System for Award Management (SAM) as such; and (2) will at all times remain eligible to bid for and perform the services subject to the requirements set forth herein and other applicable laws. Consultant agrees that any contract awarded to Consultant or its sub-consultants will be subject to termination by the City if Consultant or its sub-consultants fail to comply or maintain such compliance.
- B. Consultant's qualification submittal included a dated copy of the search results from SAM for itself and any proposed sub-consultants demonstrating a search of the Excluded Parties List System (EPLS) was conducted, and they are not listed as debarred or suspended. The search results (referenced in the RFQ as Attachment 3) are attached hereto as **Addendum "C"** and incorporated herein by reference throughout the term of this Agreement.

XXXIX. PUBLIC ENTITY CRIMES

- A. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- B. Consultant's qualification submittal included executed originals of the Sworn Statement Pursuant to Section 287.133(3)(A) Florida Statutes, On Public Entity Crimes certifying Consultant and its sub-consultants do not appear on the convicted vendor list following a conviction for a public entity crime. The executed Sworn Statements (referenced in the RFQ as Attachment 2) are attached hereto as **Addendum "C"** and incorporated herein by reference throughout the term of this Agreement.

XL. CONFLICT OF INTEREST/NON-COLLUSION

- A. The award hereunder is subject to Chapter 112, Florida Statutes. Accordingly, all respondents must disclose with their bid the name of any officer, director, or agent who is also an employee of the City of Lakeland. Further, all respondents must disclose the name of any City employee who owns, directly or indirectly, an interest of five percent (5%) or more of the Consultant or sub-consultant firm(s) or any of its branches. Additionally, the respondents and all sub-respondents shall certify that they have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the bid and that there is no financial interest in or affiliation in a business way with any other respondent on the same land or improvements.

- B. Consultant's qualification submittal included an executed original of the Non-Collusion Affidavit for its firm and all sub-consultants (referenced in the RFQ as Attachment 4) is attached hereto as **Addendum "C"** and incorporated herein by reference throughout the term of this Agreement.

XLI. DRUG-FREE WORKPLACE CERTIFICATION

- A. The Consultant and its sub-consultants shall maintain a drug-free workplace as set forth in Subpart B or part 2429, which adopts the government-wide implementation (2 CFR part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988.
- B. Consultant's qualification submittal included an executed original of the Drug-Free Workplace Certification for its firm and all sub-consultants (referenced in the RFQ as Attachment 5) is attached hereto as **Addendum "C"** and incorporated herein by reference throughout the term of this Agreement.

XLII. DISCLOSURE(S) OF LOBBYING ACTIVITIES

- A. (31 U.S.C. §1352) – Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- B. Consultant's qualification submittal included an executed original of the Disclosure(s) of Lobbying Activities for its firm and all sub-contractors (referenced in the RFQ as Attachment 6) is attached hereto as **Addendum "C"** and incorporated herein by reference throughout the term of this Agreement.

XLIII. DISADVANTAGED BUSINESS ENTERPRISE (DBE), MINORITY BUSINESS ENTERPRISE (MBE), WOMEN'S BUSINESS ENTERPRISE (WBE) CERTIFICATION

- A. The City strongly encourages the solicitation and use of Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Small Disadvantaged Business Enterprises, Section 3, and Labor Surplus Area Firms and documents efforts in accordance with CFR 200.321(a-b).
- B. If the Respondent is a designated DBE/MBE/WBE firm, the Respondent submitted with the Proposal the appropriate certification(s) (referenced in the RFQ as Attachment 7) is attached hereto as **Addendum "C"** and incorporated herein by reference throughout the term of this Agreement.

If the Respondent is not a DBE/MBE/WBE firm, the Respondent must meet the following criteria:

1. Achieve DBE/MBE/WBE certified sub-consultants
- OR
2. If unable to utilize DBE/MBE/WBE certified consultants, must be able to submit documentation detailing the 'Good Faith Efforts' made in the utilization of potential DBE/MBE/WBE sub-consultants. Respondent must submit with the Proposal the appropriate documentation as Attachment 7.

If the Respondent elects to subcontract with any firm for any portion of the work (including prime contractors and sub-contractors), the Respondent shall:

- a. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises.
- b. Establish delivery schedules where the requirement encourages participation by small and minority businesses and women's business enterprises.
- c. When appropriate, utilize the services and assistance of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

XLIV. THE SECTION 3 PROGRAM

- A. The Section 3 Program of the Housing and Urban Development (HUD) Act of 1968 requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low-or very-low income residents in connection with projects and activities in their neighborhoods. Section 3 is a provision of the HUD Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. If the Respondent is not a Section 3 firm, the Respondent must make "Good Faith Efforts" to utilize Section 3 sub-consultants by visiting the following link to HUD's Section 3 Opportunity Portal to match Section 3 business enterprises in the closest metropolitan area available for contracting opportunities:
<https://portalapps.hud.gov/Sect3BusReg/BRRegistry/SearchBusiness>

XLV. E-VERIFY

- A. If required by applicable Laws (e.g., Florida Executive Order 11-02), the Consultant shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Consultant during the Term of this Agreement and shall expressly require any subcontractors performing work or providing services pursuant to this Agreement to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Term of this Agreement.

XLVI. CONTRACT ADJUSTMENTS OR CHANGES IN THE SCOPE OF WORK

- A. The City may change the services to be provided hereunder at any time by giving written notice to the Consultant. If such changes increase, decrease, or eliminate any amount of work, the City and the Consultant will negotiate any change in total cost or schedule modifications. If the City approves any change, this Agreement may be amended to reflect the changes and authorized in writing by the City's and Consultant's designated representative.
- B. The Consultant shall be compensated for said services in accordance with the terms of Section XI herein.
- C. All the City's amendments thereto shall be performed in strict accordance with the terms of this Agreement insofar as they are applicable.

XLVII. DOCUMENTS

- A. Upon City's or its designated Project Leader's request, at any time during the term of this Agreement or upon completion or termination of this Agreement, Consultant shall provide City or its designated Project Manager with a copy of all documents prepared by Consultant under this Agreement or any Task Authorization hereunder.
- B. The parties acknowledge that the City is a Florida municipal corporation and subject to the Florida Public Records Act Law pursuant to Florida Statute Chapter 119.

XLVIII. ASSIGNMENTS AND SUBCONTRACTS

- A. Consultant shall not assign or subcontract this Agreement or any rights or any monies due or to become due hereunder without the prior written consent of City.
- B. If upon receiving written approval from City, any part of this Agreement is subcontracted by Consultant, Consultant shall be fully responsible to City for all acts and/or omissions performed by the subcontractor as if no subcontract had been made.
- C. If City determines that any subcontractor is not performing in accordance with this Agreement, City shall so notify Consultant, who shall take immediate steps to remedy the situation. City shall also be given direct access to the subcontractor.
- D. If any part of this Agreement is subcontracted by Consultant, prior to the commencement of any work by the subcontractor, Consultant shall require the subcontractor to provide City and its affiliates with insurance coverage as set forth by the City's Risk Manager.

XLIX. INDEPENDENT CONSULTANT

- A. At all times during the term of this Agreement, Consultant shall be considered an independent contractor. As such, Consultant is responsible for reporting any taxable income they receive from the City, as required by the IRS.

L. DEFAULT

- A. Each of the following shall constitute a default under this Agreement: (a) Consultant is adjudged to be bankrupt; (b) Consultant makes a general assignment for the benefit of its creditors; or (c) Consultant fails to comply with any of the terms, conditions, or provisions of this Agreement. If during the term of this Agreement, Consultant shall be in default of this Agreement, City may suspend its performance hereunder until such delinquency or default has been corrected; provided, however, that no suspension shall be effective unless and until City gives written notice of default to Consultant with at least ten (10) days to cure such default. If Consultant fails to correct such delinquency or default, City may terminate this Agreement and pursue such remedies as may be available at law or in equity. Consultant shall be paid compensation for services satisfactorily performed and completed as of the date of termination. City shall not be liable for partially completed work. In addition to the remedies available hereunder, the City shall have the right of offset from sums or payments otherwise due the Consultant any sums or amounts which the Consultant may owe to the City pursuant to the provisions of this Agreement or otherwise.

LI. TERMINATION FOR CONVENIENCE

- A. The performance of the Scope of Services under this Agreement may be terminated, in whole or in part, by the City for any reason whenever the City's Project Manager determines that such termination is in the City's best interest. Termination shall be effective fifteen (15) days after delivery to the Consultant of a notice of termination specifying the extent to which performance of Scope of Services under this Agreement is terminated.
- B. Upon receipt of the notice of termination, the Consultant shall, unless the notice of termination directs otherwise, immediately discontinue performance of the Scope of Services required by this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- C. The City shall pay the Consultant costs and fees for services performed up to the effective date of termination, provided such costs and fees are owed to the Consultant pursuant to this Agreement. The Consultant shall provide the City with all completed or partially completed Deliverables prior to the receipt of payment for services performed up to the effective termination date. The foregoing payment shall constitute the Consultant's sole compensation in the event of termination of this Agreement by the City for convenience, and the City shall have no other liability to the Consultant related to termination of this Agreement by the City for convenience. Without limiting the generality of the foregoing, the City shall have no liability to the Consultant for lost profits or lost opportunity costs in the event of termination of this Agreement by the City for convenience.

LII. TERMINATION FOR DEFAULT

- A. The City may terminate this Agreement upon written notice to the Consultant in the event the Consultant defaults on any of the terms and conditions of this Agreement, and such failure continues for a period of thirty (30) days following notice from the City specifying the default; provided, however, that the City may immediately terminate this Agreement, without providing the Consultant with notice of default or an opportunity to cure, if the City determines that the Consultant has failed to comply with any of the terms and conditions of this Agreement related to insurance coverage.
- B. In the event of termination of this Agreement pursuant to Section L above, the City shall not be obligated to make any further payment to the Consultant hereunder until such time as the City has determined all costs, expenses, losses, and damages which the City may have incurred as a result of such default by the Consultant, whereupon the City shall be entitled to set off all costs (including the cost to cover if the City procures similar services from another architect/ engineer), expenses, losses, and damages so incurred by the City against any amount due Consultant under this Agreement.

- C. Nothing contained in this Section shall be construed as limiting the City's rights and remedies in the event of termination of this Agreement.

LIII. FORCE MAJEURE

- A. Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by: acts of God; fire; flood; windstorm; explosion; riot, war; sabotage; labor strikes; terrorism; pandemic; court injunction or order, federal and/or state law or regulation; order by any regulatory agency; or cause or causes beyond the reasonable control of the party affected; extraordinary breakdown of, or damage to, City's generating plants or equipment; provided that prompt written notice of such delay is given by such party to the other, and each of the parties to this Agreement shall use diligent, commercially reasonable efforts to minimize the duration and consequences of any failure of or delay in the performance resulting from a Force Majeure event.
- B. In the event of a delay in performance excusable under this Section, the performance of work will be extended by a period of time reasonably necessary to overcome the effect of such failure or delay upon mutual written agreement of the parties. However, if any circumstances of Force Majeure remain in effect for forty-five (45) days, either party may terminate this Agreement.

LIV. NOTICE

- A. Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals, and other communications which are required to be given by either party to the other shall be in writing and shall be deemed given and delivered on the date delivered in person, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, return receipt requested to the address provided below, or upon the date delivered by overnight courier (signature required) to the address provided below.

CONSULTANT:

Address _____

Attention: _____

Phone: _____

Email: _____

CITY:

Laurie Smith, Manager, Lakes & Stormwater
City of Lakeland, Public Works Department
407 Fairway Avenue
Lakeland, FL 33801
(863) 834-6276
Email: laurie.smith@lakelandgov.net

- B. Either party may change its authorized representative or address for receipt of notices by providing the other with written notice of such change. The change shall become effective five (5) days after receipt by the non-changing party of the written notice of change. Unless otherwise agreed to by the Parties in writing, electronic submission of notices does not relieve either party of the requirement to provide notice in writing as required in subsection A above.

LV. JURISDICTION, VENUE, AND GOVERNING LAW

- A. This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida and shall inure to and be binding upon the Parties, their successors, and assigns. The venue for any action brought in state court shall be in Polk County, Florida. The venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division. The Parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.

LVI. HEADINGS

- A. Section headings are for the convenience of the parties only and are not to be construed as part of this Agreement.

LVII. SEVERABILITY

- A. In the event any portion or part of this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of law, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts thereof shall otherwise be fully enforceable.

LVIII. WAIVER AND ELECTION OF REMEDIES

- A. Waiver by either party of any term, condition, or provision of this Agreement shall not be considered a waiver of that term, condition, or provision in the future.
- B. No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

LIX. ENTIRE AGREEMENT

- A. This Agreement, including Schedules, Attachments, Appendices, and Exhibits attached hereto, constitutes the entire agreement between the City and Consultant with respect to the services specified, and all previous representations relative thereto, either written or oral, are hereby annulled and superseded.

LX. THIRD-PARTY RIGHTS

- A. Except as otherwise expressly contained in this Agreement, there are no other third-party intended beneficiaries.

LXI. TRUTH-IN-NEGOTIATION CERTIFICATE

- A. Signature of this Agreement by Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement is accurate, complete, and current at the time of contracting. The original contract price and any additions hereto shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

LXII. PUBLIC RECORDS

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK - DIRECTOR OF COMMUNICATIONS AT: PHONE: 863-834-6264, E-MAIL:

KEVIN.COOK@LAKELANDGOV.NET, ADDRESS: ATTN: COMMUNICATIONS DEPARTMENT, 228 S. MASSACHUSETTS AVE., LAKELAND, FLORIDA 33801.

In accordance with Florida Statutes Chapter 119.0701, the Consultant shall keep and maintain public records required by the City in performance of services pursuant to the contract. Upon request from the City's custodian of public records, Consultant shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 or as otherwise provided by law. Consultant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the City. Consultant shall, upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Consultant or keep and maintain public records required by the City to perform services pursuant to the contract. If the Consultant transfers all public records to the City upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

LXIII. RECORDS RETENTION

A. The Consultant shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five (5) years from the date the audit report is issued or six (6) state fiscal years after all reporting requirements are satisfied and final payments have been received, whichever period is longer, and shall allow City, DEO, or its designee, CFO, or Auditor General access to such records upon request. The Consultant shall ensure that audit working papers are made available to City, DEO, or its designee, CFO, or Auditor General access to such records upon request for a period of six (6) years from the date the audit report is issued unless extended in writing by DEO. In addition, if any litigation, claim, negotiation, audit, or other action involving the records has been started prior to the expiration of the controlling period as identified above, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the controlling period as identified above, whichever is longer.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

CITY OF LAKELAND, FLORIDA

CONSULTANT

By: _____
H. William Mutz, Mayor

By: _____

Printed Name: _____

Title: _____

ATTEST:

ATTEST:

Kelly S. Koos, City Clerk

Printed Name: _____

Title: _____

APPROVED AS TO FORM AND

CORRECTNESS:

By: _____
Palmer C. Davis, City Attorney

Addendum "A"

City of Lakeland RFQ 3065 and all its Appendices, Addenda, Exhibits, and Attachments

Addendum" B"

City of Lakeland Addenda to RFQ 3065 (signed by Consultant) if applicable

Addendum "C"

Consultant's Proposal Submittal includes the following:

- Appendix "A"** Scoring Criteria, Proof of Publication, Notice of Bid Opening, and Notice of Intent to Award
- Appendix "B"** (See above) Contract and Agreement for Engineering and Environmental Consulting Services for the Lake Bonnet Drainage Basin Flood Hazard and Debris Mitigation
- Appendix "C"** Federal Contract Provisions
- Appendix "D"** State and HUD Contract Provisions
- Appendix "E"** Consultant's Insurance Certificate(s)
- Appendix "F"** Consultant's executed Indemnification and Hold Harmless
- Appendix "G"** City Specification of Safety and Occupational Health Requirements

- Attachment 1** City of Lakeland Request for Qualifications Form (Page 7 of the RFQ signed by the Consultant)
- Attachment 2** Consultant's executed Sworn Statement Pursuant to Section 287.133(3)(A) Florida Statutes, On Public Entity Crimes
- Attachment 3** Consultant's dated copy of the System for Award Management (SAM) system search results for itself and any proposed sub-consultants demonstrating a search of the Excluded Parties List System (EPLS) was conducted, and they are not listed as debarred or suspended.
- Attachment 4** Consultant's executed Non-Collusion Affidavit
- Attachment 5** Consultant's executed Drug-Free Workplace Certification
- Attachment 6** Consultant's executed Disclosure(s) of Lobbying Activities and each of its key employees
- Attachment 7** Consultant's DBE/MBE/WBE Certification of Respondent and/or Sub-Consultants OR the required documentation detailing the 'Good Faith Efforts' made in the utilization of potential DBE/MBE/WBE Sub-Consultants

Addendum "D"
Consultant's Negotiated Cost Proposal