

MEMORANDUM

TO: MAYOR AND CITY COMMISSION
FROM: CITY ATTORNEY'S OFFICE
DATE: February 19, 2018
RE: **Approval of Continuing Contract for English Oaks Completion Force Main Construction and Authority to Negotiate Continuing Contracts with Short Listed Firms**

The English Oaks Project to expand wastewater capability in SW Lakeland, began during FY 2006 in response to the rapid increase in development in the City's southwest area. The project was put on hold following the economic downturn of 2009. In 2011, an additional phase of the project was commissioned to utilize easements with sunset provisions. Presently, the new home market is rebounding and the staff recommends that this long lead project be resumed.

Realistic growth potential is expected to yield approximately 7,600 Equivalent Residential Units, resulting in impact fee collections of approximately \$14.5 million with \$3.4 Million in annual user fees. To date, approximately 33,000 linear feet of pipeline has been completed along with the booster pump station, and 26,000 linear feet of pipeline remains to be completed. Funding for English Oaks is through the State Revolving Fund.

Accordingly, the City's Purchasing Department issued RFQ No. 7363 to receive submittals for qualifications as Contractors to construct the multiple remaining phases the English Oaks project. A selection committee evaluated and graded ten (10) submittals. The scoring criteria consisted of: similar projects, general approach, previous experience, safety record, financial ability & bonding, time in business, workload projections, key personnel, willingness to meet time & budget and minority involvement. The following seven (7) companies listed below, in the order in which they were ranked by the Selection Committee, have been short listed:

<u>Ranking</u>	<u>Company</u>	<u>Location</u>
1.	Garney Companies, Inc.	Winter Garden, FL
2.	Woodruff & Sons, Inc.	Bradenton, FL
3.	Felix Associates of Florida, Inc.	Stuart, FL
4.	Kamminga & Roodvoets, Inc.	Tampa, FL
5.	Westra Construction Corp.	Palmetto, FL
6.	Killebrew, Inc.	Lakeland, FL
7.	T B Landmark Construction, Inc.	Jacksonville, FL

Subsequently, a Notice of Intent to Award was sent to these seven (7) companies on Feb 7, 2018.

By entering into a continuing contract for construction services with the above-specified short listed companies, the City will be able to effectively & efficiently utilize a bidding and task authorization process for future selection of these contractors for construction of the remaining phases of English Oaks work and any other water or wastewater utility work. All work performed pursuant to the continuing contracts are subject to the terms/conditions of the attached standard continuing contract and will be issued by individual Task Authorizations requiring appropriate City approval based on the overall cost of the task authorization. The term of the Agreement will be for a period of five (5) years.

It is therefore recommended that the City Commission approve the short listed companies, along with the standard continuing contract, and that the appropriate City officials be authorized to enter into contract negotiations with the selected firms beginning in ranked order.

attachment

**CITY OF LAKELAND FLORIDA
ENGLISH OAKS PHASE III CONSTRUCTION SERVICES
PREQUALIFICATION AGREEMENT
AND OTHER MISCELLANEOUS UTILITY PROJECTS**

THIS AGREEMENT made and entered into this ____ day of _____ 2018, by and between the CITY of Lakeland, Florida, a municipal corporation organized under the laws of the State of Florida (hereinafter called the CITY) and _____ (hereinafter called QUALIFIED CONTRACTOR);

RECITALS:

WHEREAS, the CITY has caused to be prepared a Request for Qualifications titled “Underground Utility Contractor Prequalification for the City of Lakeland English Oaks Phase III Forcemain and Other Utility Projects” hereinafter called PREQUALIFICATION DOCUMENT; and,

WHEREAS, the QUALIFIED CONTRACTOR has submitted to the CITY a proposal in accordance with the PREQUALIFICATION DOCUMENT; and,

WHEREAS, the CITY, in the manner prescribed by law, has determined and declared the aforesaid QUALIFIED CONTRACTOR to be grouped with other QUALIFIED CONTRACTORS to be solicited for bids in accordance with this AGREEMENT;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the QUALIFIED CONTRACTOR, and CITY have agreed, and hereby agree, as follows:

ARTICLE 1 - INCORPORATION OF RECITALS

The Recitals above are true and correct and are incorporated herein by reference.

ARTICLE 2 - TERM

This AGREEMENT is to become effective upon execution by both parties, and shall remain in effect for a five (5) years unless terminated as provided for herein.

ARTICLE 3 - SCOPE OF WORK

- 3.1. QUALIFIED CONTRACTOR shall be permitted to bid upon work with other QUALIFIED CONTRACTORS, for the work associated with the English Oaks Phase III Project and no other bidders will be permitted to bid. The work will be solicited in the form of bid packages from amongst the QUALIFIED CONTRACTORS to bid to construct sanitary sewer force main and all appurtenances in the sizes between 12-inch and 36-inch within public rights of way, fee property, and easements; and other miscellaneous work for the water and/or sanitary sewer systems may be assigned to the PREQUALIFIED CONTRACTOR in accordance with Paragraph 3.4 below.

- 3.2. The Scope of Services generally to be provided by the successful QUALIFIED CONTRACTOR may include any phases of the English Oaks Phase III and other miscellaneous utility project as defined in the bid and the PREQUALIFICATION DOCUMENT.
- 3.3 The form of AGREEMENT for each bid shall be a Task Authorization, as described above to award the work bid to the successful QUALIFIED CONTRACTOR hereof shall be as set forth in such Task Authorization. Any Task Authorization in effect at the termination of this AGREEMENT shall remain in effect until completion of said Task Authorization, and all of the terms and conditions of this AGREEMENT shall survive until completion of all work assigned to the QUALIFIED CONTRACTOR.
- 3.4 Nothing herein requires that work in addition to the English Oaks Phase III Project be assigned to the PREQUALIFIED CONTRACTOR; and the CITY at its sole discretion may choose to perform the additional work in accordance with but not limited to the PREQUALIFICATION DOCUMENT, a sealed bid resulting in bids from other contractors in addition to the PREQUALIFIED CONTRACTOR's, work in accordance with a contract by another governmental entity, work by the CITY's own forces, and any other project delivery methods that the CITY may deem appropriate under the circumstances.

ARTICLE 4 - TASK AUTHORIZATIONS AND APPROVALS

- 4.1 The CITY shall make request of all QUALIFIED CONTRACTOR's to bid upon a package that is put to bid between the QUALIFIED CONTRACTOR's, and the successful QUALIFIED CONTRACTOR's is to perform construction services on a task basis.
- 4.2 Site Visit: If a site visit by QUALIFIED CONTRACTOR's is needed to prepare a bid package, QUALIFIED CONTRACTORS shall request approval from CITY prior to visiting the site, and the bid announcement will state whether a site visit is mandatory or non-mandatory. If mandatory, then only the PREQUALIFIED CONTRACTOR's that attend the site visit will be permitted to bid.
- 4.3 Signatures and Conflicting Terms/Rates: Unless authorized in writing by the CITY, the QUALIFIED CONTRACTOR's shall not include with the bid any conflicting terms and conditions to this AGREEMENT, nor the PREQUALIFICATION DOCUMENT, nor the Task Authorization or any other acceptance forms for CITY approval to proceed.
- 4.4 The CITY will review the bids and if acceptable, the parties will enter into a written "Task Authorization" with the agreed bid, PREQUALIFICATION DOCUMENT, and this AGREEMENT incorporated with the CITY's designated Task Authorization form.
- 4.5 The Task Authorization will not be effective until the approval of the City of Lakeland City Commission and the City Official designated by the City Commission signs the Task Authorization and obtains a purchase order in the QUALIFIED CONTRACTOR's name.

ARTICLE 5 - CHANGES IN THE SCOPE OF WORK

- 4.1 CITY may make changes in the services at any time by giving written notice to the successful QUALIFIED CONTRACTOR. If such changes increase (additional services) or decrease or eliminate any amount of work, CITY and successful QUALIFIED CONTRACTOR will negotiate any change in total cost or schedule modifications.
- 4.2 If the CITY and the QUALIFIED CONTRACTOR approve any change, the Task Authorization will be modified to reflect the changes; and QUALIFIED CONTRACTOR shall be compensated for said services in accordance with the terms of Article 8 herein. All change orders shall be authorized in writing by CITY's and QUALIFIED CONTRACTOR's designated representatives.
- 4.3 All of CITY's said Task Authorizations and amendments thereto shall be performed in strict accordance with the terms of this AGREEMENT insofar as they are applicable.

ARTICLE 6 - SCHEDULE

- 5.1 QUALIFIED CONTRACTOR shall perform services in conformance with the mutually agreed upon schedule set forth in the bid and resultant Task Authorization. QUALIFIED CONTRACTOR shall complete all of said services in a timely manner. Should QUALIFIED CONTRACTOR fall behind the agreed upon schedule, it shall employ such resources so as to comply with the agreed upon schedule at no additional cost to the CITY.
- 5.2 No extension for completion of services shall be granted to QUALIFIED CONTRACTOR without CITY's prior written consent, except as provided in Sections 5 and 22 herein.

ARTICLE 7 - ENGINEER

The English Oaks Phase III Project has been designed by Chastain-Skillman, Inc., whose address is 4705 Old Highway 37, Lakeland, FL 33813, who is hereinafter called ENGINEER, and who will assume all duties and responsibilities and will have the rights and authority assigned to the ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents. Any work in addition to English Oaks will be designed by others who will serve as Engineer and will be identified at the time.

ARTICLE 8 - PAYMENT PROCEDURES

- 8.1 Price shall be as stated in the bid.
- 8.2 QUALIFIED CONTRACTOR and ENGINEER will agree on the portion of work that is complete, and QUALIFIED CONTRACTOR shall submit Applications for Payment in accordance with the Task Authorization. Applications for Payment will be reviewed by ENGINEER and sent to the CITY when payment is recommended.
- 8.3 Progress Payments; CITY shall make progress payments on account of the Bid Price on the basis of QUALIFIED CONTRACTOR 's monthly Applications for Payment, as

recommended by the ENGINEER within 25 business days after the ENGINEER receives said application for payment. If there is a dispute in any portion of the application for payment, the CITY shall pay and the QUALIFIED CONTRACTOR agrees to accept the amount that is not in dispute.

- 8.4 Payments made by QUALIFIED CONTRACTOR; QUALIFIED CONTRACTOR shall pay any portions due but not in dispute to all subcontractors and material suppliers in the lesser of 30 days after QUALIFIED CONTRACTOR is invoiced or within 10-days from when QUALIFIED CONTRACTOR is paid by the CITY.
- 8.5 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or CITY may withhold for defective or unaccepted work or for liens and claims against CITY or QUALIFIED CONTRACTOR, or any other good cause.
- 8.5.1 Ninety percent (90%) of the value of Work completed, with the balance being retainage.
- 8.5.2 Ninety percent (90%), with the balance being retainage, of the value of materials and equipment not incorporated in the Work, but delivered, suitably stored and accompanied by documentation satisfactory to CITY that QUALIFIED CONTRACTOR has paid for said materials and equipment.
- 8.5.3 Upon the completion of 50% of the work as specified by the Contract Documents or 50% of the bid price completed if not specified, the CITY may, unless good cause exist, increase total payments to QUALIFIED CONTRACTOR to ninety five percent (95%) of the Contract Price, with the balance being retainage, less such amounts as ENGINEER shall determine, or CITY may withhold, for defective or unaccepted work or for liens and claims against CITY or QUALIFIED CONTRACTOR.
- 8.6 Final Payment. QUALIFIED CONTRACTOR will be ready for final payment upon final completion of the Work described in Article 2 herein and in accordance with the Task Authorization, and submittal of all Record Drawings, specifications, addenda, modifications and shop drawings, written and/or extended warranties, all manufacturers instructional and parts manuals, and general and specific releases of lien are delivered to and accepted by the ENGINEER and CITY.

ARTICLE 9 - RIGHT TO INSPECTIONS

- 8.1 CITY or its agents shall at all times have the right to review or observe the services performed by QUALIFIED CONTRACTOR.
- 8.2 No inspection, review, or observation shall relieve QUALIFIED CONTRACTOR of its responsibility under this AGREEMENT or any Task Authorization.

ARTICLE 10 - INSURANCE AND HOLD HARMLESS INDEMNIFICATION

QUALIFIED CONTRACTOR shall maintain in force during the term of this AGREEMENT, at its own expense, insurance as set forth in Attachment No. 1, which is hereby made a part of this AGREEMENT and shall be bound by the terms of the Hold Harmless/Indemnification provisions expressed therein.

ARTICLE 11 - SAFETY

- 10.1 QUALIFIED CONTRACTOR agrees to comply with CITY's published safety standards while on the property of CITY. A copy of these standards is provided in Attachment No. 2.
- 10.2 QUALIFIED CONTRACTOR shall have full responsibility and assume all liability for the safety and supervision of its employees while performing services provided hereunder.
- 10.3 QUALIFIED CONTRACTOR shall submit two copies of its safety plans and procedure to the City within 30-days after the execution of this AGREEMENT.

ARTICLE 12 - WARRANTY

The warranty provisions shall be as published in the PREQUALIFICATION DOCUMENT.

ARTICLE 13 - DEFECTIVE WORK

The curing of defective work and the rights and responsibilities of the parties shall be as published in the PREQUALIFICATION DOCUMENT

ARTICLE 14 - COMPLIANCE WITH LAWS AND REGULATIONS

QUALIFIED CONTRACTOR shall comply with all requirements of federal, state, and local laws, rules, regulations, standards, and/or ordinances applicable to the performance of this AGREEMENT.

ARTICLE 15-REPRESENTATIONS

- 14.1 QUALIFIED CONTRACTOR represents that the services provided hereunder shall conform to all requirements of this AGREEMENT and shall be consistent with recognized and sound construction practices and procedures; and shall conform to the customary standards of care, skill, and diligence appropriate to the nature of the work performed.
- 14.2 QUALIFIED CONTRACTOR represents that the personnel furnishing such services shall be 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 professional knowledge and judgment.

- 14.3 Subject to the provisions of this Section, should QUALIFIED CONTRACTOR breach the warranties set forth herein, CITY shall have such remedies as may be provided at law or equity.

ARTICLE 16 - GUARANTEE AGAINST INFRINGEMENT

QUALIFIED CONTRACTOR 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, QUALIFIED CONTRACTOR shall indemnify, hold harmless, and defend CITY, its officers, directors, employees, agents, assigns, and servants from and against any and all liability, including expenses, legal or otherwise, for actual or alleged infringement of any patent, copyright, or trademark resulting from the use of any goods, services, or other items provided under this AGREEMENT. Notwithstanding the foregoing, QUALIFIED CONTRACTOR may elect to provide non-infringing services.

ARTICLE 17 - DOCUMENTS

The parties acknowledge that the CITY is a Florida municipal corporation and subject to the Florida Public Records Law.

IF THE QUALIFIED CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE QUALIFIED CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT OR ANY RESULTANT TASK AUTHORIZATION, 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 Statute §119.0701, the QUALIFIED CONTRACTOR shall keep and maintain public records required by the CITY in performance of services pursuant to this AGREEMENT. Upon request from the CITY's Custodian of public records 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. QUALIFIED CONTRACTOR 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 this AGREEMENT and following completion of this AGREEMENT if the QUALIFIED CONTRACTOR does not transfer the records to the CITY. QUALIFIED CONTRACTOR shall, upon completion of this AGREEMENT will, transfer, at no cost, to the CITY all public records in possession of the QUALIFIED CONTRACTOR or keep and maintain public records required by the CITY to perform services pursuant to this AGREEMENT. If the QUALIFIED CONTRACTOR transfers all public records to the CITY upon completion of this AGREEMENT, then the QUALIFIED CONTRACTOR shall destroy any duplicate

public records that are exempt or confidential and exempt from public records disclosure requirements. If the QUALIFIED CONTRACTOR keeps and maintains public records upon completion of this AGREEMENT, the QUALIFIED 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.

ARTICLE 18 - ASSIGNMENT

- 17.1 QUALIFIED CONTRACTOR shall not assign or subcontract this AGREEMENT, any Task Authorization hereunder, or any rights or any monies due or to become due hereunder without the prior, written consent of CITY.
- 17.2 If upon receiving written approval from CITY, any part of this AGREEMENT is subcontracted by QUALIFIED CONTRACTOR, QUALIFIED CONTRACTOR shall be fully responsible to CITY for all acts and/or omissions performed by the subcontractor as if no subcontract had been made.
- 17.3 If CITY determines that any subcontractor is not performing in accordance with this AGREEMENT, CITY shall so notify QUALIFIED CONTRACTOR who shall take immediate steps to remedy the situation.
- 17.4 If any part of this AGREEMENT is subcontracted by QUALIFIED CONTRACTOR, prior to commencement of any work by the subcontractor, QUALIFIED CONTRACTOR shall require the subcontractor to provide CITY and its affiliates with insurance coverage as set forth by the CITY Director of Risk Management.

ARTICLE 19 - INDEPENDENT CONTRACTOR

At all times during the term of this AGREEMENT, QUALIFIED CONTRACTOR shall be considered an independent contractor.

ARTICLE 20 - DEFAULT

If, during the term of this AGREEMENT, QUALIFIED CONTRACTOR shall be in default of any of the material provisions 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 the default to QUALIFIED CONTRACTOR with at least (10) days to cure such default. If QUALIFIED CONTRACTOR fails to correct such delinquency or default within thirty (3) days of suspension by CITY, CITY may terminate this AGREEMENT.

ARTICLE 21 - TERMINATION

Notwithstanding any other provision of this AGREEMENT, CITY may, upon written notice to QUALIFIED CONTRACTOR, terminate this AGREEMENT if: (a) QUALIFIED

CONTRACTOR is adjudged to be bankrupt; (b) QUALIFIED CONTRACTOR makes a general assignment for the benefit of its creditors; (c) QUALIFIED CONTRACTOR fails to comply with any of the conditions or provisions of this AGREEMENT; or (d) QUALIFIED CONTRACTOR's experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this AGREEMENT, without prejudice to any other right or remedy CITY may have under this AGREEMENT. In the event of such termination, CITY shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this AGREEMENT, for work, properly performed prior to the effective date of termination.

ARTICLE 22 - FORCE MAJEURE

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; strikes; extraordinary breakdown of or damage to CITY's affiliates' generating plants, their equipment, or facilities; 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; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes. If any circumstance of Force Majeure remains in effect for sixty (60) days, either party may terminate this AGREEMENT.

ARTICLE 23 - DISPUTE RESOLUTION

23.1 In the event of any dispute under this AGREEMENT which cannot be readily resolved, it shall be referred to the appropriate executives of the QUALIFIED CONTRACTOR and CITY (for this article known individually as the "PARTY" and collectively as the "PARTIES") for negotiation and resolution as described below:

23.1.1 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.

23.2 All negotiations pursuant to this Article 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.

- 23.3 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 CPR International Institute for Conflict Prevention & Resolution CPR Mediation Procedure, with the following exceptions:
- 23.3.1 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
- 23.3.2 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.
- 23.3.3 The PARTIES regard the aforesaid obligation to mediate as essential provision of this AGREEMENT and one that is legally binding on them. 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.
- 23.3.4 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 Article, and the other has failed to participate, the requesting PARTY may initiate litigation before expiration of the above period.
- 23.4 The procedures specified in this article 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.

ARTICLE 24 - GOVERNING LAW & VENUE

This AGREEMENT is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida. Venue shall be Polk County, Florida, or the United States District Court in and for the Middle District of Florida, Tampa, Division.

ARTICLE 25 - HEADINGS

Paragraph headings are for the convenience of the parties only and are not to be construed as part of this AGREEMENT.

ARTICLE 26 - SEVERABILITY

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.

ARTICLE 27 - WAIVER AND ELECTION OF REMEDIES

- 27.1 Waiver by either party of any terms, condition, or provision of this AGREEMENT shall not be considered a waiver of that term, condition, or provision in the future.
- 27.2 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.

ARTICLE 28 - THIRD PARTY RIGHTS

Nothing in this AGREEMENT shall be construed to give any rights or benefits to anyone other than CITY and QUALIFIED CONTRACTOR.

ARTICLE 29 - ENTIRE AGREEMENT

This AGREEMENT, including the Schedules, Attachments, Appendix's and Exhibits attached hereto, constitutes the entire AGREEMENT between CITY and QUALIFIED CONTRACTOR with respect to the services specified and all previous representations relative thereto, either written or oral, are hereby annulled and superseded.

ARTICLE 30 - NOTICE

Any notices required to be given by the terms of this AGREEMENT shall be delivered by hand or mailed, postage prepaid, to:

For QUALIFIED CONTRACTOR:

For CITY:

CITY of Lakeland/Department of Water Utilities
Attention: Engineering Manager
501 E. Lemon Street A68
Lakeland, FL 33801
(863) 834-8316 FAX: (863) 834-6178
tom.mattiacci@lakelandgov.net

Either party may change the name of the person receiving notices and the address at which notices are received by so advising the other party in writing.

IN WITNESS WHEREOF, the parties hereto have signed this AGREEMENT in triplicate. Two counterpart each has been delivered to CITY, and one to QUALIFIED CONTRACTOR, with copy to ENGINEER. All portions of the PREQUALIFICATION DOCUMENT have been signed or identified by CITY and QUALIFIED CONTRACTOR or identified by ENGINEER on their behalf.

This AGREEMENT will be effective on _____, 2018.

OWNER: **CITY OF LAKELAND**

QUALIFIED CONTRACTOR:

BY: _____
R. Howard Wiggs, Mayor

BY: _____

ATTEST: _____
Kelly S. Koos, City Clerk

ATTEST: _____

Approved as to form and correctness:

Timothy McCausland, City Attorney
_____, 2018.

Florida State Contractor's
License No. _____

Attachment No. 1

INSURANCE REQUIREMENTS

Underground Utility Contractor Prequalification for English Oaks Force Main
and Other Utility Projects

STATEMENT OF PURPOSE

The City of Lakeland (the “City”) from time to time enters into agreements, leases and other contracts with Other Parties (as hereinafter defined).

Such Agreements shall contain at a minimum risk management/insurance terms to protect the City’s interests and to minimize its potential liabilities. Accordingly, the following minimum requirements shall apply:

CITY DEFINED

The term City (wherever it may appear) is defined to mean the City of Lakeland itself, its Commission, employees, volunteers, representatives and agents.

OTHER PARTY DEFINED

The term Other Party (wherever it may appear) is defined to mean the other person or entity which is the counter-party to the Agreement with the City and any of such Other Party’s subsidiaries, affiliates, officers, employees, volunteers, representatives, agents, contractors and subcontractors.

LOSS CONTROL/SAFETY

Precaution shall be exercised at all times by the Other Party for the protection of all persons, including employees, and property. The Other Party shall comply with all laws, rules, regulations or ordinances related to safety and health, and shall make special effort to anticipate and detect hazardous conditions and shall take such precautionary and prompt action where loss control/safety measures should reasonably be expected.

The City may order work to be stopped at any time, without liability, if conditions exist that present immediate danger to persons or property. The Other Party acknowledges that such stoppage, or failure to stop, will not shift responsibility for any damages from the Other Party to the City.

INSURANCE - BASIC COVERAGES REQUIRED

The Other Party shall procure and maintain the following described insurance, except for coverage specifically waived by the City of Lakeland, on policies and with insurers acceptable to the City, and insurers with AM Best ratings of no less than A.

Insurance Requirements (cont'd)

These insurance requirements shall in no way limit the liability of the Other Party. The City does not represent these minimum insurance requirements to be sufficient or adequate to protect the Other Party's interests or liabilities, but are merely minimums.

"Except for workers' compensation and professional liability, the Other Party's insurance policies shall be endorsed to name the City of Lakeland as **additional insured**. It is agreed that the Other Party's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by The City of Lakeland for liability arising out of the operations of this agreement."

Except for workers compensation, the Other Party waives its right of recovery against the City, to the extent permitted by its insurance policies.

The Other Party's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by the City. They shall be reduced or eliminated at the option of the City. The Other Party is responsible for the amount of any deductible or self-insured retention.

Insurance required of the Other Party or any other insurance of the Other Party shall be considered primary, and insurance of the City shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of the City of Lakeland, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract, or lease.

Commercial General Liability: This insurance shall be an "occurrence" type policy written in comprehensive form and shall protect the Other Party and the additional insured against all claims arising from bodily injury, sickness, disease, or death of any person other than the Other Party's employees or damage to property of the City or others arising out of any act or omission of the Other Party or its agents, employees, or Subcontractors and to be inclusive of property damage resulting from explosion, collapse or underground (xcu) exposures. This policy shall also include protection against claims insured by usual personal injury liability coverage, and to insure the contractual liability assumed by the Other Party under the article entitled **INDEMNIFICATION**, and **"Products and Completed Operations" coverage**.

The Other Party is required to continue to purchase products and completed operations coverage for a minimum of three years beyond the City's acceptance of renovation or construction properties.

The liability limits shall not be less than:

Bodily Injury and Property Damage	\$1,000,000 Single limit each occurrence
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Business Automobile Liability: Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

The liability limits shall not be less than:

Bodily Injury and Property Damage	\$1,000,000 Single limit each occurrence
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Insurance Requirements (cont'd)

Workers' Compensation: Workers' Compensation coverage to apply for all employees for statutory limits and shall include employer's liability with a limit of \$100,000 each accident, \$500,000 disease policy limits, \$100,000 disease limit each employee. ("All States" endorsement is required where applicable). If exempt from Worker's Compensation coverage, as defined in Florida Statue 440, the Other Party will provide a copy of State Workers' Compensation exemption.

All subcontractors shall be required to maintain Worker's Compensation.

The Other Party shall also purchase any other coverage required by law for the benefit of employees.

Excess Liability: This insurance shall protect the Other Party and the additional insured against all claims in excess of the limits provided under the employer's liability, commercial automobile liability, and commercial general liability policies. The policy shall be an "occurrence" type policy, and shall follow the form of the General and Automobile Liability.

The liability limits shall not be less than: \$4,000,000

ADDITIONAL INSURANCE

Additional Insurance: The City requires the following types of insurance.

Builder's Risk Coverage: Builder's Risk insurance is to be purchased to cover subject property for all risks of loss (including theft and sinkhole), subject to a waiver of coinsurance and covering off-site storage, transit and installation risks as indicated in the Installation Floater (below) and Transportation insurance described hereafter, if such coverages are not separately provided.

The Builders Risk insurance is to be endorsed to cover the interests of all parties, including the City and all contractors and subcontractors. The insurance is to be endorsed to cover testing and to grant permission to occupy.

The liability limits shall not be less than: Replacement Cost

EVIDENCE/CERTIFICATES OF INSURANCE

Required insurance shall be documented in Certificates of Insurance which provide that the City shall be notified at least 30 days in advance of cancellation, nonrenewable, or adverse change.

New Certificates of Insurance are to be provided to the City at least 15 days prior to coverage renewals.

If requested by the City, the Other Party shall furnish complete copies of the Other Party's insurance policies, forms and endorsements.

For Commercial General Liability coverage the Other Party shall, at the option of the City, provide an indication of the amounts of claims payments or reserves chargeable to the aggregate amount of liability coverage.

Receipt of certificates or other documentation of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Other Party's obligation to fulfill the insurance requirements herein.

Attachment No. 2

Hold Harmless/Indemnification – Contractor

To the fullest extent permitted by laws and regulations, and in consideration of the amount stated on any Purchase Order, the Contractor shall defend, indemnify, and hold harmless the City, its officers, directors, agents, guests, invitees, and employees from and against all liabilities, damages, losses, and costs, direct, indirect, or consequential (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising out of or resulting from any acts of negligence, recklessness or intentional wrongful misconduct in the performance of the work by the Contractor, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable.

In any and all claims against the City, or any of its officers, directors, agents, or employees by any employee of the Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the City, the Contractor, or any of his Subcontractors. To the extent this Indemnification conflicts with any provision of Florida Law or Statute, this indemnification shall be deemed to be amended in such a manner as to be consistent with such Law or Statute.

Applicability: It is the express intent of the Contractor that this agreement shall apply for the project(s) or time period indicated below. (Check and complete one):

_____ **Agreement is applicable to all contracts, purchase orders and other work performed for the City of Lakeland for the time period of not more than five (5) years.**

_____ to _____.
(Date) (Date)

(OR)

_____ **Agreement is limited to Bid #, Purchase Order #, Requisition # _____, or Contract dated _____.**

Subrogation: The Contractor and his Subcontractors agree by entering into this contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Contractor or Subcontractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor or Subcontractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor or Subcontractor enter into such an agreement on a pre-loss basis.

Release of Liability: Acceptance by the Contractor of the last payment shall be a release to the City and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, or relating to the work, or for any act or neglect of the City or of any person relating to or affecting the work.

Savings Clause: The parties agree that to the extent the written terms of this Indemnification conflict with any provisions of Florida laws or statutes, in particular Sections 725.06 and 725.08 of the Florida Statutes, the written terms of this indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in full and complete compliance with all such laws or statutes and to contain such limiting conditions, or limitations of liability, or to not contain any unenforceable, or prohibited term or terms, such that this Indemnification shall be enforceable in accordance with and to the greatest extent permitted by Florida Law.

Name of Organization

BY: _____
Signature of Owner or Officer

E-mail: _____

STATE OF: _____

Organization Phone Number

COUNTY OF: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2018

by _____, of _____.
Printed Name of Owner / Officer Corporate or Company Name

He/She is personally known to me or has produced _____ as
State Driver's License Number

identification, and did _____ / did not _____ take an oath.

Signature of Person Taking Acknowledgment

Printed Name of Person Taking Acknowledgment

Notary Seal

CITY OF LAKELAND

BY: _____
Karen Lukhaub, Director of Risk Management

DATE _____

Attachment No. 3

SPECIFICATION SAFETY REQUIREMENTS

(Revised September 2014)

The following safety requirements are comprehensive in nature with some site specificity; therefore, not all sections are applicable to every Contract. Please apply those safety requirements as site or situation dictates. NOTE: All City project representatives who assume responsibility for contract management will be responsible for insuring compliance with these safety requirements by all Contractors and/or Subcontractors.

I. GENERAL

- A. The Contractor shall comply with all Federal/State Occupational Safety and Health Act (OSHA) Standards and any other rules and regulations applicable to construction and/or maintenance activities in the State of Florida. The Contractor shall also comply with county, city, or any other agency's rules and regulations regarding safety.
- B. The City's safety personnel or any City supervisor may order that the work be stopped if a condition of immediate danger is found to exist. Nothing contained herein shall be construed to shift responsibility or risk of loss for injuries or damage sustained as a result of a violation of this Article from the Contractor to the City; and the Contractor shall remain solely and exclusively responsible for compliance with all safety requirements and for the safety of all persons and property at the project site.
- C. The parties hereto expressly agree that the obligation to comply with applicable safety provisions is a material provision of this Contract and a duty of the Contractor. The City reserves the right to require demonstration of compliance with the safety provisions of this Contract. The parties agree that such failure is deemed to be a material breach of this Agreement; and the Contractor agrees upon such breach, all work pursuant to the Contract shall terminate until demonstration to the City that the safety provisions of this Agreement have been complied with. In no event shall action or failure to act on the part of the City be construed as a duty to enforce the safety provisions of this Agreement, nor shall it be construed to create liability for the City for any act or failure to act in respect to the safety provisions of this Agreement.

II. SAFETY EQUIPMENT

All City safety policies and procedures will be strictly adhered to and enforced by the City of Lakeland Safety Division, which may include work stoppage or removal of Contractor and/or personnel. Such policies and procedures are available upon request. These safety regulations include, but are not limited to:

- A. All persons on City property will wear industrial safety glasses with affixed side shields at all times, except when in an office building or construction trailer, in the enclosed cab of a motor vehicle, or during a break period when all work has stopped.

- B. All persons on City property will wear an approved hard hat in good repair at all times, except when in an office building or construction trailer, in the enclosed cab of a motor vehicle, or during a break period when all work has stopped. Bump hats, or “cowboy style” hard hats are not acceptable at any time.
- C. All persons on City property and in an area where the noise level exceeds 85db must wear hearing protection that complies with ANSI S3.19-74 (ear muffs and/or approved ear plugs with an NRR of at least 30). This includes areas where noisy equipment is in use (i.e. jack hammers, electric or air drills, heavy equipment with open cabs, pipe cutting saws, etc.) and in a plant environment where posted.
- D. Sport or athletic-type style shoes are NOT considered a suitable work shoe and are not acceptable as work shoes at this location
- E. Work conducted in an elevated position will require that:
 - 1. Any person on City property working on or in an elevated location (four feet above ground level) regardless of the installation of handrails or guardrails must wear safety harness and be tied off with a lanyard to a fixed object or support that will restrict that person’s fall to a “minimum distance”. (29CFR 1910.66 applies to all cases)
 - 2. Any person working from an electrical-line bucket truck will have in use the appropriate fall protection device.
 - 3. Any person on a pole or otherwise elevated position shall utilize the appropriate gaffs, harness or otherwise appropriate fall protection.
 - 4. Compliance with 29CFR 1910.269 is required. Distance requirements as detailed in this standard to energized lines must be adhered to.
- F. Any person on City property, in an area where tools are being used that cause or may cause flying particles or an area where there is a potential of excessive dust or airborne particles, must wear, in addition to and over their industrial safety glasses, either soft-sided goggles or a full face shield/protector, and the appropriate respiratory protection equipment.
- G. Respiratory Protection:
 - 1. Contractors are required to comply with 29 CFR 1910.134 and all of its provisions. This includes ensuring appropriate medical exams and fit testing is conducted on an annual basis.
 - 2. If cutting or mixing concrete or any other material known to contain silicon dust, respiratory protection of at least an N95 rated mask or wetting of the dust to prevent aerosolization is required.

H. Where vehicular and/or pedestrian traffic is affected:

1. Maintenance of Traffic

The Contractor shall conduct his work so as to interfere as little as possible with public travel, whether vehicular or pedestrian. Whenever it is necessary to cross, obstruct, or close roads, driveways, and walks, whether public or private, the Contractor shall, at his own expense, provide and maintain suitable and safe detours or other temporary expedients for the accommodation of public and private travel, and shall give reasonable notice to owners of private drives before interfering with them. Such maintenance of traffic will not be required when the Contractor has obtained permission from the owner and tenant of private property, or from the authority having jurisdiction over public property involved, to obstruct traffic at the designated point.

2. Barricades and Lights

All streets, roads, highways, and other public thoroughfares, which are closed to traffic, shall be protected by effective barricades on which shall be placed acceptable warning signs. Barricades shall be located at the nearest intersecting public highway or street on each side of the blocked section and all other positions required by applicable standards.

All barricades and obstructions shall be illuminated by means of warning lights from sunset to sunrise. Materials stored upon or alongside public streets and highways shall be so placed, and at the work at all times shall be so conducted, as to cause the minimum obstruction and inconvenience to the traveling public.

All barricades, signs, lights, and other protective devices shall be installed and maintained in conformity with applicable statutory requirements and, where within railroad and highway rights-of-way, as required by the authority having jurisdiction thereover.

All Contractor owned or controlled vehicles and/or equipment which will be operated on or within ten (10) feet of the roadway will be equipped with a minimum of one amber 360 degree Class I warning device. This device must meet minimum standards for utility construction purposes such as a minimum of 500,000 candlepower and visible from 360 degrees of mounting. The warning device(s) must be in operation at all times that a vehicle/equipment is on the roadway or within the ten (10) feet of runoff area and not in a "normal" travel status.

All personnel, when working within fifteen (15) feet of the roadway, for fifteen (15) minutes or more must wear approved FDOT reflective vests.

3. Damage to Existing Property

The Contractor will be held responsible for any damage to existing structures, work, materials, or equipment because of his operations and shall repair or replace any damaged structures, work, materials, or equipment to the satisfaction of, and at no additional cost to, the City, unless otherwise addressed in the Contract.

III. TOXIC SUBSTANCES

The Contractor shall be responsible for compliance any and all Federal, State or Local Right-To-Know-Law for its employees and the employees of any and all Subcontractors the Contractor brings on or causes to be on the project site, inclusive of pesticides and/or herbicides.

The Contractor shall, between receiving the Contract and coming on the project site to begin work, provide the City's field representative with affidavits and/or training documents stating that ALL personnel the Contractor brings on, or causes to be on the project site, have been given training or possess the appropriate licenses (if required) on any toxic substances said personnel will be working with or may be exposed to while working at the job site.

The Contractor shall provide/give to the City's field representative a copy of manufacturer's MSDS or SDS (as appropriate) for ANY and ALL "Toxic Chemicals" used by or brought on the project site by the Contractor or Subcontractor prior to the substance(s) being delivered to the City's property.

The Contractor and/or Subcontractor must be provided MSDS(s) or SDS's (as appropriate) which is / are in the possession of the City upon receipt of a written request. The City may establish reasonable procedures for acting upon such requests to avoid interruption of normal work operations.

Before any work shall begin, the Contractor shall arrange a meeting to advise City's field representative about safety and any dangers City employees will be subjected to, due to the presence of chemicals on the project site.

IV. STORMWATER DRAINAGE AND SURFACE WATER PROTECTION

The Contractor shall comply with all applicable ordinances, rules, and regulations restricting the introduction of non-stormwater discharges to the City's municipal separate stormwater system (MS4) and/or surface water bodies, including: the Code of Ordinances of Lakeland, Part II, Section 86; Polk County Ordinance 93-06; and, the City of Lakeland Land Development Regulations, Article 6.

- A. The Contractor is prohibited from placing, depositing, or dumping of any dirt, sweepings, filth, slops, litter, loose materials, water, grease, slippery materials, etc. in or upon any street, highway, alley, sidewalk, park, lake, or other public place in the City.

- B. The Contractor will develop and implement a plan to utilize best management practices (BMPs), including, but not limited to, treatment methods and practices, to control polluted runoff, spillage, leaks, sludge, waste, or runoff from raw material to prevent flooding and/or adverse impacts to the natural resources of the City, and ensure the elimination of pollutants discharging to the MS4 and/or any surface water body during construction and maintenance activities. To the maximum extent possible, the Contractor will utilize schedules of activities, prohibitions of practices, maintenance procedures, and other management activities to prevent or eliminate pollutants from entering the MS4 or being discharged to surface water bodies.
- C. The Contractor will utilize proper erosion, liquid and sediment control measures; provide inlet protection for storm drains and drainage conveyances, ponds, and easements; and, take all reasonable precautions to contain runoff on-site and eliminate illicit discharges to the MS4 and/or surface water bodies. Illicit discharge includes, but is not limited to, any spilling, leaking, seeping, pouring, emitting, emptying, or dumping of materials, rinsewater, or waste products into the MS4 and/or surface water bodies of the City.

V. TRENCHING AND EXCAVATION

Trenching and excavation operations shall comply with the OSHA 29CFR 1926 Subpart P final rule and the State of Florida Trench Safety Act.

- A. Where Contractor work may interfere with other utilities, the City and City's Safety Division shall be notified prior to all encroachments unless otherwise addressed in the Contract. The contractor is responsible for coordinating with the appropriate agency (Sunshine One-Call/ #811) for any and all locates.
- B. The City has identified certain areas within its operations which are regulated by OSHA 29CFR 1910 Subpart Z. If the Contractor's work involves these affected areas, the City requires prior to commencement of Contractor work that applicable and acceptable written compliance programs and documented certification/qualifications be provided to the City, management, and safety personnel.

VI. CONFINED SPACE

- A. Contractor shall provide documentation to the City of Lakeland Safety Division representative which testifies to the level of Confined Space training the contract personnel have completed. In addition, if only contract employees are to enter the confined space, contractors are responsible for air monitoring of the space. Further, the contractor must ensure that rescue personnel are available prior to entry. Therefore the contractor is responsible for providing all necessary equipment in order to perform confined space operations. This includes providing appropriate air monitors with documentation indicating a calibration date of no more than 30 days prior to entry.
- B. Contractor shall familiarize themselves and abide by the published City of Lakeland Confined Space procedure and permit system. The contractor is responsible for training their personnel on the provisions contained in this published procedure.

VII. HOT WORK

Any and all hot work (defined as burning, brazing, welding, grinding, or soldering) performed by the contractor shall be conducted in accordance with the City of Lakeland

published Hot Work procedures and permit system. This may be obtained from either the Safety Division or from the McIntosh Power Plant Fire Team.

VIII. ENERGIZED SYSTEMS

Strict adherence to the table of distances to energized systems is mandatory. Unless otherwise specified by Lakeland Electric Systems Control, the contractor may not be any closer than 20-feet to energized systems. The contractor must notify System control at (863) 834-6560 for line clearance.

ALL UNQUALIFIED PERSONNEL SHALL NOT GET CLOSER THAN 20 FEET (ENCROACHMENT) ENERGIZED EQUIPMENT OR AREAS

- A. The contractor shall make coordination with Lakeland Electric Delivery Operations Workforce Management Coordinator by calling (863) 834-6751 no less than 24 hours prior to work commencing. Such coordination is necessary to cover any electrical lines or to hold or stabilize any poles that may be within the vicinity of the workzone. In addition the attached waiver must be completed by the contractor and returned to the COL Safety Division prior to commencement of work.
- B. The contractor is also responsible for any and all locates for underground utilities and for systems. This may be accomplished by contacting Sunshine State One- Call at 1-800-432-4770.

IX. WORK SITE EMERGENCY CONDITIONS

- A. In the event a contractor is working on a City of Lakeland Work Site and a work site emergency condition (i.e. major fire, hazardous fluid/gas leak, bomb threat, etc.) occurs, the CONTRACTOR and the CONTRACTOR'S employees shall follow all instructions issued by the CITY. Upon notification of work site emergency, the CONTRACTOR and all contract employees shall evacuate to the CONTRACTOR'S parking lot. The CITY will issue further instructions to the CONTRACTOR indicating when the CONTRACTOR may return to the plant site.

X. TRAINING DOCUMENTATION in support of OSHA requirements shall be provided upon request.

XI. CONTRACTOR SHALL WITHIN 30 CALENDAR DAY of notification of award of contract, and prior to commencement of work, shall provide to the City's Safety Division, the Contractor's written safety compliance program(s) applicable to the contract.