

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: June 15, 2026

RE: Professional Services Agreement with Johnson, Mirmiran & Thompson, Inc. for Construction Engineering and Inspection Services for the Hartsell Avenue Trail Project

Attached for your consideration is a professional services agreement with Johnson, Mirmiran & Thompson, Inc. (JMT) for construction engineering and inspection (CEI) services for the Hartsell Avenue Trail project.

The Hartsell Avenue Trail project consists of replacing an existing five-foot-wide sidewalk with a ten-foot-wide, shared-use path along the east side of Hartsell Avenue from Sikes Boulevard (SR 563) to Lake Beulah Drive. Additionally, the project includes roadway resurfacing, lighting modifications, curb work, and signing and marking improvements. Construction is anticipated to begin in summer 2026, with an estimated duration of 140 days. A project location map depicting the project limits is attached for reference.

In October 2025, the Lakeland City Commission approved a Local Agency Program (LAP) Agreement with the Florida Department of Transportation (FDOT) providing for FDOT funding assistance for the project. The LAP agreement provides a maximum reimbursement amount of \$850,000 for the construction and CEI phases of the project. Specifically, that agreement provides a maximum reimbursement amount of \$90,000 for CEI services.

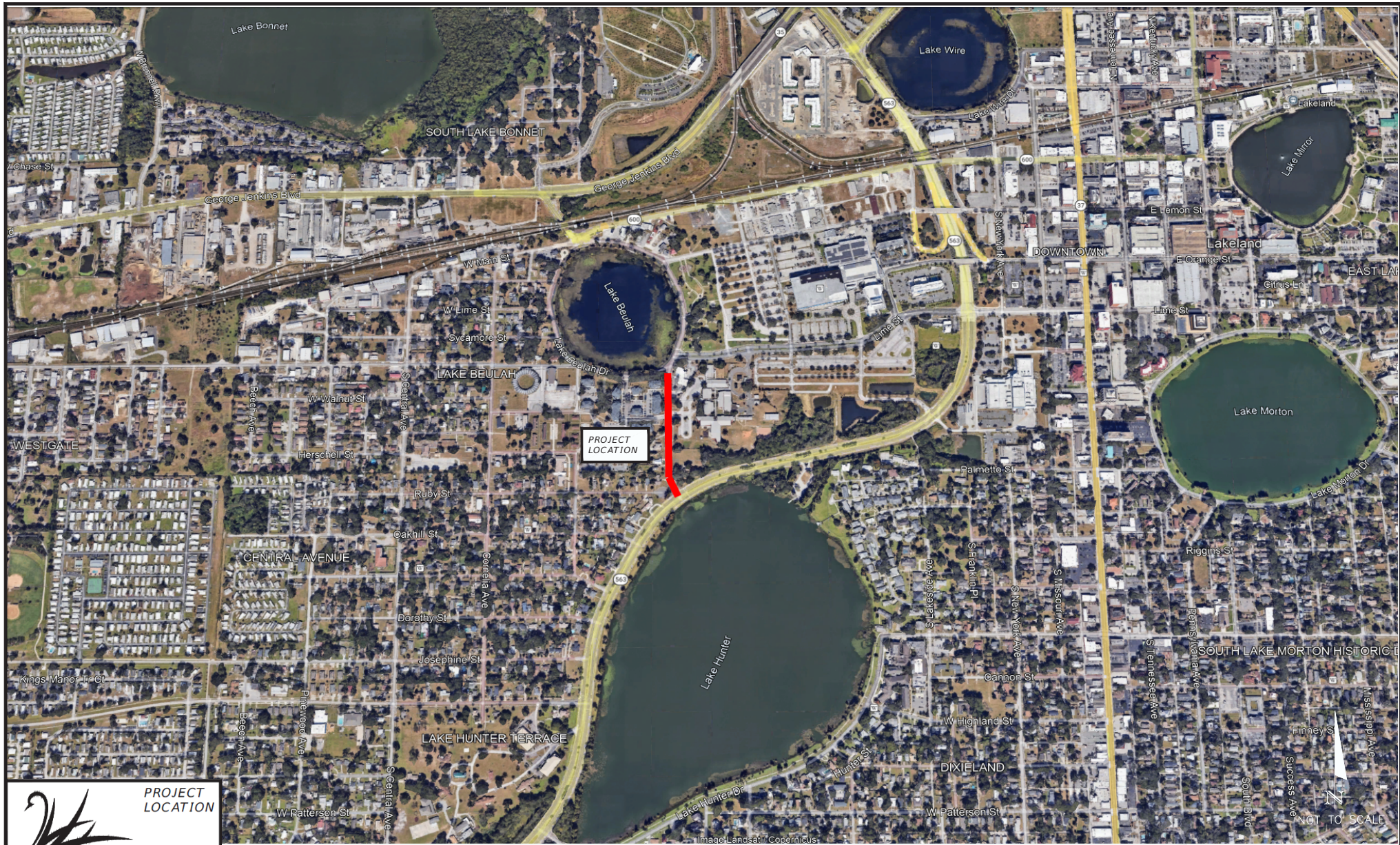
A Request for Qualifications (RFQ) was issued in April 2026, with proposals received from eight firms. The Selection Committee evaluated each submittal based on the evaluation criteria and ranked the firms as follows:

1. Johnson, Mirmiran & Thompson, Inc. (JMT)
2. KCI Technologies, Inc.
3. DRMP, Inc.
4. Rummel, Klepper & Kahl, LLP (RK&K)
5. Infrastructure Consulting & Engineering, LLC
6. England-Thims & Miller, Inc.
7. RS&H, Inc.
8. SAI Consulting Engineers, Inc.

Based on its highest ranking, the Public Works Department negotiated a scope of services and fee with JMT in an amount not-to-exceed \$83,873. FDOT has reviewed the negotiated scope and fee and authorized the City to proceed with execution of the agreement with JMT.

It is recommended that the City Commission award RFQ No. 2026-RFQ-040 to Johnson, Mirmiran & Thompson, Inc. and authorize the appropriate City officials to execute the Professional Services Agreement for CEI services for the Hartsell Avenue Trail project in an amount not-to-exceed \$83,873.

Attachments



PROJECT
LOCATION

Lakeland
PUBLIC WORKS

HARTSELL AVENUE FROM SIKES BOULEVARD (SR 563) TO LAKE BEULAH DRIVE

EXHIBIT
A

SHEET
1 of 1



CITY OF LAKELAND, FLORIDA

PROFESSIONAL SERVICES AGREEMENT

With

Johnson, Mirmiran & Thompson, Inc. (JMT)

For

PROFESSIONAL SERVICES

For

CONSTRUCTION ENGINEERING & INSPECTION (CEI) SERVICES

FOR FPID: 453405-1-68-01

HARTSELL AVENUE TRAIL FROM SIKES BOULEVARD (SR 563) TO LAKE BEULAH DRIVE

City of Lakeland R.F.Q. Number: R.F.Q. 2026-RFQ-040

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) made and entered into this _____ day of _____, 2026 (“Execution Date”), by and between the **CITY OF LAKELAND, FLORIDA**, a Florida municipal corporation, hereinafter referred to as the “City” located at 228 S. Massachusetts Avenue, Lakeland, Florida 33801-5050, and **Johnson, Mirmiran & Thompson, Inc. (JMT)** with offices located at **400 Colonial Center Parkway, Suite 100, Lake Mary, FL 32746**, hereinafter referred to as the “Consultant”.

NOW THEREFORE in consideration of the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Consultant agree as follows:

SECTION 1.0 – DEFINITIONS

- 1.1 “Consultant” shall mean **Johnson, Mirmiran & Thompson, Inc. (JMT)**. The Consulting firm under contract with the City for Professional Municipal Engineering Services.
- 1.2 “Consultant Representative” shall mean any employee, agent, subcontractor, sub-consultant, consultant, or other representative of the CEI Consultant firm.
- 1.3 “City” shall mean **CITY OF LAKELAND, FLORIDA**.
- 1.4 “Engineer of Record”: The Engineer noted on the Construction Plans as the responsible person for the design and preparation of plans.
- 1.5 “City’s Project Manager” (PM) shall mean the City employee, or their designee, assigned to manage assigned construction projects, construction engineering inspection and testing services. The PM is responsible for the direction, review, and approval of all work, invoices, pay applications, as well as the interpretation of scope, schedule and budget related to those services. The City’s PM will utilize the various departments and personnel of the City and, coordinate with other governmental agencies as required to ensure a successful project.
- 1.6 “Day(s)” or “day(s)” shall mean calendar days, unless otherwise set forth in this Agreement.
- 1.7 “Deliverables” shall mean all data, reports, compliance documents, correspondence, the construction documents, and all other materials produced and developed by the Consultant pursuant to this Agreement.
- 1.8 “Force Majeure Event” shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo.
- 1.9 “Funding Agency” shall mean any State or Federal Agency that provides funding to the City for any Project.
- 1.10 “Parties” shall mean the City and the Consultant.
- 1.11 “Project” shall mean the **Hartsell Avenue Trail Project (FPID:453405-1-68-01)**.
- 1.12 “Scope of Services” means those services set forth in Section 4.0 and that are required to be performed by the Consultant in accordance with the terms and conditions of this Agreement.
- 1.13 “Work” shall mean all the work to construct the Project that is required to be performed by a contractor pursuant

to a construction agreement between the City and contractor.

SECTION 2.0 – TERM OF AGREEMENT

- 2.1 The term of this Agreement shall commence upon execution by both parties and remain in effect for two (2) years or until completion of the Project, unless sooner terminated, as provided herein.
- 2.2 Notwithstanding Section 2.1 above, this Agreement shall remain in effect for the period necessary for Consultant to complete Project services.
- 2.3 Terms and conditions of this Agreement remain in effect and unchanged unless there is a Contract Adjustment (as defined herein) in accordance with Section 22.0.
- 2.4 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.

SECTION 3.0 – REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS

- 3.1 The Consultant is professionally qualified to provide the Scope of Services and is licensed to practice engineering in the State of Florida by all public entities having jurisdiction over the Consultant and the Project.
- 3.2 The Consultant shall be responsible for construction engineering and inspection services required by this Agreement.
- 3.3 The Consultant shall maintain all necessary licenses, permits or other authorizations necessary to act as the Consultant and which are required to provide the Scope of Services during the Term of this Agreement.
- 3.4 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.
- 3.5 The Consultant represents that it has or will secure, at its own expense, all personnel required to perform the Scope of Services required by this Agreement.
- 3.6 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement and that Consultant has not paid or agreed to pay any 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 or making of this Agreement.
- 3.7 The Consultant acknowledges that the Consultant is responsible for the acts and omissions (including negligent, reckless or intentionally wrongful acts and omissions) of any Consultant Representative in the performance of the Scope of Services required by this Agreement.
- 3.8 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 to furnish professional efforts during the Term of this Agreement that are consistent with reasonable professional practices and the best interest of the

City.

- 3.9 The Consultant shall be responsible for the professional quality, technical accuracy and the coordination of all Deliverables furnished, produced and developed by the Consultant under this Agreement.
- 3.10 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.
- 3.11 The Consultant represents and warrants that it has the right to access and use all equipment, services, software, computer models, data, routines, technology, other intellectual property incident to providing the Scope of Services required by this Agreement (collectively, the "Intellectual Property"). The Consultant is responsible for any infringement or claim of infringement of any patent, trademark, copyright, trade secret, or other proprietary interest arising out of the Consultant's use of the Intellectual Property. Notwithstanding the foregoing, the Consultant may elect to provide non-infringing services.

SECTION 4.0 – SCOPE OF SERVICES

- 4.1 The detailed or project specific services that the Consultant shall perform for the City shall be set forth in **Addendum "A"**, which shall be incorporated and made a part of this Agreement.

SECTION 5.0 – CONTRACT DOCUMENTS

- 5.1 This Agreement (fully executed) is inclusive of the RFQ documents, all Appendices and all Addendums.

- 5.2 Contract Documents consisting of:

- Notice to Bidders, pages 3-7, inclusive
- Request for Qualifications Statement Form, page 8
- Insurance Requirements, pages 9-11
- Consultant Hold Harmless/Indemnification, pages 12-13
- Instructions, pages 14-17, inclusive
- Description of the Project, page 18
- Submittal Requirements and Selection Process, pages 19-22, inclusive
- Compliance with CCNA, page 23
- Appendices, page 24
- Appendix A – Scope of Services – Construction Engineering & Inspection (CEI) Services
- Appendix B – Consultant Selection Information
- Appendix C – SOQ Summary Sheet
- Appendix D – Example Professional Services Agreement
- Appendix E – Required Forms
- Appendix F – Local Agency Program Federal-Aid Terms for Professional Services Contracts
- Appendix G – Additional Documents – Project Plans & Specifications

- 5.3 Addendums, if applicable.

- 5.4 Insurance Certificates, which shall be provided by the Consultant, along with the return of this executed Agreement.

SECTION 6.0 – RESERVED

SECTION 7.0 – SCHEDULE

- 7.1 Time is of the essence with regard to this Agreement. The Consultant shall perform its services in conformance with the mutually agreed upon schedule set forth in the negotiated **Addendum “E”**. 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 bi-weekly basis. Should the Consultant fall behind the agreed upon schedule, it shall employ such resources so as to comply with the agreed upon schedule.
- 7.2 No extension for completion of services shall be granted to the Consultant without the City’s prior written consent, except as provided in Sections 2.0 and 22.0 herein.
- 7.3 In the event of a delay attributable to the acts or inaction of the Consultant, Consultant shall reimburse the City for its direct cost as caused by the Consultant’s delay.

SECTION 8.0 – CITY’S RESPONSIBILITIES

- 8.1 The City shall provide all available information regarding the Project to the Consultant, and shall provide direction to the Consultant consistent with the terms and conditions of this Agreement.
- 8.2 The City shall evaluate the Consultant’s performance upon completion of the Project.

SECTION 9.0 – COMPENSATION; INVOICE

- 9.1 Provided that the Consultant faithfully performs its obligations and, subject to other terms and conditions of this Agreement, the City hereby agrees to pay the Consultant on a time-and expense basis in an amount not-to-exceed **\$83,873.00 (Eighty-Three Thousand Eight Hundred Seventy-Three Dollars and Zero Cents)**, which amount shall be calculated pursuant to the fees and costs as set forth in the Consultant’s Professional Services Fee Schedule as set forth in **Addendum “E”**. Such fees and costs shall be inclusive of all wages, salaries, taxes, insurance, profit and out-of-pocket expenses including, but not limited to, transportation, lodging, meals, materials, and documents required by this Agreement.
- 9.2 The Consultant shall invoice the City on a monthly basis that includes monthly time sheets or labor-cost statements for services rendered during the preceding month, if applicable. Each time sheet shall state the names and classifications of all personnel who performed services during said month under this agreement and the number of hours worked by each. The City shall pay the Consultant within thirty (30) days of receipt of such invoice (provided the Consultant is in compliance with the terms and conditions of this Agreement).
- 9.3 The not to exceed amount set forth in this agreement may be increased only in strict accordance with this Agreement. Nothing in this Agreement shall be construed as placing any obligation on the City to pay any fees and costs to the Consultant incurred beyond the not to exceed amount set forth in this agreement or any amendment thereto without the Parties following the Contract Adjustments (as defined herein) procedure set forth in Section 22.0 of this Agreement.

SECTION 10.0 - NON-COMPENSATED SERVICES

- 10.1 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.
- 10.2 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 Florida Building Code) in effect at the time such Deliverable(s) was provided to the City in accordance with this Agreement.

SECTION 11.0 – COMPLIANCE WITH LAWS AND REGULATIONS

- 11.1 Consultant shall comply with all requirements of federal, state, and local laws, rules, regulations, standards, and/or ordinances applicable to the performance of this Agreement.

SECTION 12.0 – INSURANCE

- 12.1 The Consultant shall maintain in force during the Term of this Agreement, at its own expense, insurance as set forth in **Addendum “B”**, which is hereby made a part of this Agreement.
- 12.2 The City reserves the right to change or alter the above insurance requirements as it deems necessary.

SECTION 13.0 – INDEMNIFICATION

- 13.1 The Consultant shall enter into the indemnification set forth in **Addendum “C”**, which is hereby made a part of this Agreement.
- 13.2 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.

SECTION 14.0 – OWNERSHIP OF DELIVERABLES

- 14.1 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 final payment to the Consultant.

SECTION 15.0 – SUBCONTRACTS

- 15.1 The Consultant may hire or use subcontractors or sub-consultants in connection with the performance of the Consultant’s obligations under this Agreement. Unless context clearly indicates otherwise, the terms “subcontractor” and “sub-consultant” shall be interchangeable in this Agreement, and the terms “subcontract agreement” and “sub-consulting agreement” shall likewise be interchangeable in this Agreement.

- 15.2 The Consultant shall give advance notification to the City's Project Manager of any proposed subcontract 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 subcontract or change to an existing subcontract.
 - Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected.
 - The proposed subcontractor price.
- 15.3 The Consultant shall be responsible for negotiating the terms and conditions of each subcontract agreement. The Consultant is also solely responsible for ensuring that each subcontractor acts in a manner consistent with and in accordance with the terms and conditions of this Agreement. The Consultant shall require each subcontractor 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.
- 15.4 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 15.4.

SECTION 16.0 – DISPUTES

- 16.1 Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement, which is not disposed of by a supplemental agreement, shall be decided by the City's Project Manager, who shall provide a written decision to the Consultant. The decision of the City's Project Manager shall be final and conclusive, unless within fifteen (15) days from the date of receipt of such copy, the Consultant mails or otherwise furnishes to the City's Project Manager a written notice of dispute.
- 16.2 In the event a decision of the City's Project Manager is the subject of a dispute, such dispute may be settled by appropriate legal proceeding or, if the Parties mutually agree in writing, through arbitration or administrative process. Pending any binding arbitative or administrative decision, appeal, or judgment referred to in this Section or the settlement of any dispute arising under this Agreement, the Parties shall proceed diligently with the performance of this Agreement.
- 16.3 Each party shall be responsible for its own costs and expenses, including legal fees, of any arbitration, administrative proceedings, appeal or suit prosecuted by either party.

SECTION 17.0 – SUSPENSION OF SERVICES

- 17.1 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.

- 17.2 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, the Parties shall follow the Contract Adjustments (as defined herein) procedure as described in Section 22.0 of this Agreement. Failure to agree to any Contract Adjustments shall be a dispute concerning a question of fact pursuant to Section 16.0.
- 17.3 If a Suspension of Services Order is not canceled and this Agreement is terminated by the City 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 all completed or partially completed Deliverables prior to the receipt of payment for services performed up to the effective date of termination. 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 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.

SECTION 18.0 – TERMINATION

18.1 TERMINATION FOR CONVENIENCE

- 18.1.1 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 shall determine that such termination is in the best interest of the City. 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.
- 18.1.2 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.
- 18.1.3 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 all completed or partially completed Deliverables prior to the receipt of payment for services performed up to the effective date of termination. 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.

18.2 TERMINATION FOR DEFAULT

18.2.1 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.

18.2.2 In the event of termination of this Agreement pursuant to Section 18.2, 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.

18.3 Nothing contained in this Section 18.0 shall be construed as limiting the City's rights and remedies in the event of termination of this Agreement.

SECTION 19.0 – PROHIBITED INTEREST

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

SECTION 20.0 – FINDINGS CONFIDENTIAL

20.1 Subject to the requirement of Florida laws regarding public records and Section 27.0 of this Agreement, all Deliverables produced or developed by the Consultant or any City data available to the 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.

SECTION 21.0 – GENERAL PROVISIONS

21.1 Should any section or portion of any section of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other paragraph or portion of this Agreement.

21.2 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 so as to duly authorize the person executing this Agreement to so execute the same and fully bind the party on whose behalf he or she is executing.

21.3 The Consultant shall make no assignment of any of its rights, duties, or obligations under this Agreement without the City's prior written consent, which consent may be withheld by the City Commission in its sole

and absolute discretion.

- 21.4 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. Venue for any action brought in state court shall be in Polk County, Florida. 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.
- 21.5 The Consultant shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, "Laws"), including all Laws related to licensing and permitting, the Americans with Disabilities Act, the Florida Building Code, Equal Employment Opportunity Provisions of Title VII of the Civil Rights Act of 1964 (78 Stat. 252), the Regulations of the Department of Commerce (15 CFR, Part 8) and Florida laws regarding public records. 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.
- 21.6 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.
- 21.7 The headings are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.
- 21.8 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. All such books, records and documentation shall be kept by the Consultant 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 the retention of books, records and documentation. Nothing herein shall be construed to allow destruction of records that may be required to be retained longer by the statutes of the State of Florida.
- 21.9 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.
- 21.10 This Agreement may be amended only in writing executed by the Parties.
- 21.11 This Agreement constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, whether oral or written, between them.
- 21.12 Each Appendix to this Agreement, including attachments to an Appendix and materials referenced in an appendix, is an essential part hereof and is incorporated herein by reference.
- 21.13 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.
- 21.14 In the event that either party is delayed in the performance of any act or obligation pursuant to or required by this Agreement by reason of a Force Majeure Event, the time for required completion of such act or

obligation shall be extended by the number of days equal to the total number of days, if any, that such party is actually delayed by such Force Majeure Event. The party seeking delay in performance shall give notice to the other party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any party seeking delay in performance due to a Force Majeure Event shall use best efforts to rectify any condition causing such delay and shall cooperate with the other party to overcome any delay that has resulted.

- 21.15 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. 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.
- 21.16 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.
- 21.17 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.
- 21.18 All Deliverables shall be made available to the City upon request and shall be considered public records in accordance with Chapter 119, Florida Statutes, unless exempt there from.
- 21.19 Time is of the essence of this Agreement and each of its provisions.
- 21.20 In the event of an inconsistency or conflict, the following order of precedence shall govern: (i) this Agreement, exclusive of the appendices and the attachments to and materials referenced in an appendix, (ii) the appendices to this Agreement, exclusive of the attachments to and materials referenced in an appendix.
- 21.21 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.
- 21.22 The Consultant shall maintain a drug free work place as set forth in **Addendum "E"**.
- 21.23 The Consultant shall not discriminate because of race, color, religion, gender, national origin, marital status, age, disability, sexual orientation, genetic information or other protected category.
- 21.24 In accordance with *Rulemaking Authority 287.032(2), 287.042(12) FS. Law Implemented 287.042(3), 287.042(6) FS. History--New 11-3-88, Formerly 13A-1.01*. Contracts which include services that provide for a Vendor to purchase commodities for subsequent transfer to the State, may be entered into by an agency (the City) only under the following circumstances:
 - a. The City has determined that there is a demonstrated need to acquire the commodity through the Vendor, as opposed to direct acquisition by the City.
 - b. The City has provided a means to identify the commodity, including line-item costs, acquired by the

- Vendor for subsequent transfer to the control by the City; and
- c. The City has specified the quality of the commodity to be acquired and made provisions for warranty, service, and transfer of ownership.
- 21.25 The only governmental application prohibition against contracting with scrutinized companies are the ones that are in accordance with the economic sanctions by the US Department of State and the US Department of Treasury. The General Economic Sanctions websites may be found at: <http://www.state.gov/e/eb/tfs/spi/index.htm> and <http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>.
- 21.26 The Consultant shall comply with the Local Agency Program Federal-Aid terms for Professional Services Contracts set forth in **Addendum "F"**.
- 21.27 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 likewise 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.

SECTION 22.0 – CONTRACT ADJUSTMENTS OR CHANGES IN THE SCOPE OF WORK

- 22.1 Either party may propose additions, deletions or modifications to the Scope of Services or the other terms and conditions of this Agreement (e.g., Consultant's project manager or key personnel required pursuant to Section 24.0 of this Agreement), ("Contract Adjustments") in whatever manner such party determines to be reasonably necessary for the proper completion of the services. Proposals for Contract Adjustments shall be submitted to the non-requesting party on a form provided by the City. Contract Adjustments shall be effected through written amendments to this Agreement signed by authorized representatives of the Parties.
- 22.2 There shall be no modification of the not-to-exceed amount set forth in this agreement on account of any Contract Adjustment made necessary or appropriate as a result of the mismanagement, improper act, or other failure of the Consultant or any Consultant Representative to properly perform their obligations and functions under this Agreement.
- 22.3 Notwithstanding anything to the contrary contained in this Agreement, there shall be no change in the fees and costs set forth in **Addendum "E"** except through a written amendment to this Agreement signed by authorized representatives of the Parties.

SECTION 23.0 – NOTICE

- 23.1 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.

CITY:

Public Works Department, Engineering Division
228 S. Massachusetts Avenue
Lakeland, FL 33801
Attention: Manager of Engineering
Phone: (863) 834-6041
Fax: (863) 834-6188
Email: ryan.lazenby@lakelandgov.net

Consultant:

Johnson, Mirmiran & Thompson, Inc.
400 Colonial Center Parkway
Suite 100
Lake Mary, FL 32746
Attention: Steven E. Haines, P.E., LEED AP
Phone: (772) 448-4459
Email: SHaines@jmt.com

- 23.2 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 Section 23.1 above.

SECTION 24.0 – PERSONNEL

- 24.1 The Consultant shall assign the key personnel identified to perform the Scope of Services in accordance with this Agreement. The Consultant shall not, without the City's prior written consent, transfer, reassign, redeploy or otherwise remove any key personnel; provided, however, that removal of any key personnel due to their incapacity or termination shall not constitute a violation of this Section. If any of the key personnel are incapacitated or are terminated, the Consultant shall, within ten (10) days, replace such person with another person approved by the City and that is at least as well qualified as the person who initially performed that person's role. The Consultant shall provide for a transition period of at least one (1) week (or such shorter period of time approved by the City) during which time any key personnel being replaced shall familiarize their replacement(s) with the work required to be performed by the replacement(s). The Consultant shall be solely responsible for all costs associated with replacement of key personnel. Without limiting the generality of the foregoing, if any change in key personnel causes a delay, the Consultant shall be solely responsible for any and all of its increased costs associated with such delay.
- 24.2 The City may require the Consultant to replace any persons performing the Scope of Services, including but not limited to any Consultant Representative, whom the City determines is not performing the Scope of Service to the City's satisfaction. Before a written request is issued, authorized representatives of the City and the Consultant will discuss the circumstance. Upon receipt of a written request from an authorized representative of the City, the Consultant shall be required to proceed with the replacement. The

replacement request will include the required replacement date and the reason for the replacement. The Consultant shall use its best efforts to effect the replacement in a manner that does not degrade service quality. This Section will not be deemed to give the City the right to require the Consultant to terminate a person's employment. Rather, this Section is intended to give the City only the right to require that the Consultant discontinue using persons in the performance of the Scope of Services under this Agreement.

SECTION 25.0 – SAFETY

- 25.1 The Consultant agrees to comply with the City's published safety standards while on the property of the City. A copy of these standards is provided in **Addendum "D"**, attached hereto.

SECTION 26.0 – CONSULTANT PERFORMANCE EVALUATION

- 26.1 At the end of the Project, the City will evaluate the Consultant in accordance with the requirements set forth in the Agreement. An example of the Consultant Evaluation Form is attached hereto as **Addendum "G"**.

SECTION 27.0 – PUBLIC RECORDS

- 27.1 The Consultant shall (i) keep and maintain public records (as defined in Chapter 119, Florida Statutes) required by the City to perform the services pursuant to this Agreement; (ii) Upon request from the City Clerk's Office, provide the City (at no cost to 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 under Florida laws regarding public records or other applicable Laws; (iii) ensure that public records in the Consultant's possession that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by applicable Laws for the Term and after the expiration or earlier termination of this Agreement; and (iv) after the expiration or earlier termination of this Agreement, at the City's request, either transfer, at no cost, to the City all public records in the Consultant's possession within ten (10) days following the City's request and/or keep and maintain any public records required by the City to perform the services pursuant to this Agreement. If the Consultant transfers all public records to the City upon the expiration or earlier termination of this Agreement, 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 the expiration or earlier termination of this Agreement, the Consultant shall meet all applicable requirements for retaining public records in accordance with this Agreement and all applicable Laws. At the City's request, all public records stored electronically by the Consultant shall be provided to the City in a format approved by the City.
- 27.2 **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: KELLY S. KOOS – CITY CLERK AT: PHONE: 863-834-6210, E-MAIL: cityclerk@lakelandgov.net, MAIL: ATTN: CITY CLERK 228 S. MASSACHUSETTS AVE., LAKE LAND, FLORIDA 33801.**
- 27.3 Nothing contained herein shall be construed to affect or limit the Consultant's obligations including but not limited to Consultant's obligations to comply with all other applicable Laws and to maintain books and

records pursuant to this Agreement.

SECTION 28.0 – FLORIDA PROMPT PAYMENT ACT

28.1 The City shall abide by the Florida Prompt Payment Act as stated in Florida Statutes, Chapter 218.70.

Section 29.0 RECORDS RETENTION

29.1 Records Retention: The City shall retain sufficient records demonstrating its compliance with the terms of the LAP Agreement for a period of five (5) years from the date the audit report is issued and shall allow the Department, or its designee, the CFO, or State of Florida Auditor General access to such records upon request. The City shall ensure that the audit working papers are made available to the Department, or its designee, the CFO, or State of Florida Auditor General upon request for a period of five (5) years from the date the audit report is issued unless extended in writing by the Department.

SECTION 30.0 – DETERMINATION OF ALLOWABLE COSTS IN ACCORDANCE WITH FEDERAL COST PRINCIPLES

30.1 The City shall abide by the determination of allowable cost in accordance with Federal Cost Principle as follows: Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State laws, the regulations in 23 C.F.R and 49 C.F.R. and policies and procedures prescribed by the Division Administrator of FHWA. Federal funds shall not be paid on account of any cost incurred prior to authorization by FHWA to the Department to proceed with the Project or part thereof involving such cost (23 C.F.R.1.9(a)). If FHWA or the Department determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported and the Department shall notify the Agency (City) in writing citing the reasons why items and amounts are not eligible for federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists. Federal funds may deny participation in parcel or Project cost in part or in total. For any amounts determined to be ineligible for federal reimbursement for which the Department has advanced payment, the Agency shall promptly reimburse the Department for all such amounts within 90 days of written notice.

SECTION 31.0 – CONFLICT OF INTEREST/CONFIDENTIALITY CERTIFICATION

31.1 The City of Lakeland as the contracting agency, follows requirements to conflict of interest specified in 23 CFR 1.33 and 23 CFR 172.7(b)(4). Consultant Executed FDOT Form 375-030-50 shall be attached hereto as Addendum "E" and made a part hereof.

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

CITY:

CITY OF LAKELAND

BY: _____

ATTEST: _____
Kelly S. Koos, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Palmer Davis, Interim City Attorney

CONSULTANT:

Johnson, Mirmiran & Thompson, Inc.

BY: **Steven E. Haines, PE, LEED AP**

ITS:  _____

ATTEST: _____

ITS: _____

REMAINING PORTION INTENTIONALLY LEFT BLANK