

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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**AGREEMENT FOR PROGRAM
MANAGEMENT SERVICES**

THIS AGREEMENT entered into this 15 day of December, 2015 between The City of Columbia (hereinafter called the "City"), its successors and assigns, and Landmark Consulting, LLC (hereinafter called the "Consultant").

WITNESSETH:

WHEREAS, the City of Columbia has been severely and catastrophically affected by record levels of rain from the late evening hours of Saturday, October 3, 2015 through Tuesday, October 6, 2015, a 1000 year rain event; and

WHEREAS, this catastrophic 1000 year rain event resulted in widespread flooding throughout the City of Columbia causing fatalities, injuries, the loss of homes and businesses, causing thousands of individuals to become homeless, loss of potable water and food supplies; and

WHEREAS, the President of the United States, Barack Obama, at the request of South Carolina Governor Nikki Haley declared a Major Disaster pursuant to 42 U.S.C. Section 5170 for the City of Columbia and the County of Richland; and

WHEREAS, the Governor of the State of South Carolina Nikki Haley declared a state of emergency for the State of South Carolina and activated the National Guard for assistance due to the rainfall and resulting flooding; and

WHEREAS, on November 23, 2015 the City issued a Request for Proposals (RFP) for DR4241 Flood Recovery Project Management Services; and

WHEREAS, eleven local and national disaster recovery consultants responded to the City's RFP; and

WHEREAS, Consultant's proposal was determined to be the highest ranked responsive and responsible offeror; and

WHEREAS, the City desires to retain the services of the Contractor to provide the program management services for the City's disaster recovery program.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. CONTRACT FOR SERVICES

The City hereby engages the Consultant and the Consultant hereby agrees to perform the services hereafter set forth. Consultant hereby represents and warrants to City that this Contract complies with all applicable federal laws, regulations and executive orders necessary for reimbursement with federal disaster assistance funds at the applicable rate. Consultant also represents and warrants that all work billed by Consultant under this Contract comports and will comport with federal guidelines for reimbursement with federal disaster relief funds for which the City applies.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Consultant, or any other party pertaining to any matter resulting from the contract.

2. SCOPE OF SERVICES AND TIME OF PERFORMANCE

The Consultant shall in a satisfactory and proper manner as determined by the City perform tasks necessary to complete the projects as outlined in Exhibit A, attached hereto. The Consultant has specialized knowledge to complete the projects without any training from the City and shall perform the

tasks in the order and in the manner that he or she determines is most effective and efficient without any City control over the details of Consultant's performance.

3. TERM OF AGREEMENT

The Agreement shall expire, unless terminated earlier as provided for herein and shall be for a period of three (3) years with two (2) one (1) year renewals unless earlier terminated by either party as provided herein. The Agreement shall expire at the end of the term unless an extension has been requested by either party and agreed to in writing by both parties prior to the expiration of the term. If the applicant closeout process has not been completed within this time period, the City may extend the agreement in order to ensure the Program Manager is available through the applicant closeout process.

The decision whether to extend the contract, upon written request, shall be in the sole and exclusive discretion of the party receiving the request and neither party shall be under any obligation to agree to an extension of the initial term or any additional term.

4. ACCESS TO RECORDS

The Consultant shall make available for examination by the City all of its records with respect to all matters covered by this Agreement and shall maintain such records for a period not less than three (3) years after receipt of final payment under the Agreement.

In addition, the following access to records requirements apply to the Agreement:

- A. The Consultant agrees to provide the City, and if at City's direction, the FEMA Administrator, the Comptroller General of the United States, or other third party access to any books, documents, papers, and records of the Agreement that are directly pertinent to the Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Consultant agrees to permit any of the foregoing parties to reproduce, at the expense of the requestor, by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. All requests for access to Consultant's records shall be made in writing.

5. AMENDMENTS

The parties may amend the Agreement at any time provided that such Amendments are executed in writing, signed by a duly authorized representative of both parties, and approved, where applicable, by the City's governing body.

The City may, in its discretion, amend the Agreement to conform with federal, state, or local governmental guidelines, policies and available funding amounts, or for other reasons. If such Amendments result in a change in the funding, the scope of services, or schedule of, the activities to be undertaken as part of the Agreement, such modifications will be incorporated only by written Amendment signed by both parties.

6. ASSIGNABILITY/SUB-CONSULTING

The Consultant shall not assign or subcontract any interest in the Agreement and shall not transfer any interest in the same without the prior written consent from the City. The Consultant shall be as fully responsible to the City for the acts and omission of its sub consultants, as it is for the acts and omissions of persons directly employed by the Consultant.

The Consultant shall furnish and cause each of its sub consultants to furnish all information and reports required hereunder.

7. BREACH / WAIVER

The failure of either the Consultant or the City to insist upon the strict performance of any provision of the Agreement shall not be deemed to be a waiver of the right to insist upon strict performance of such provision or of any other provision of the Agreement at any time. Partial payment by the City shall not be construed as a waiver. Waiver of any breach of the Agreement shall not constitute waiver of a subsequent breach.

8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

The Consultant will comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §7401-7671(q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §1251-1387).

The Consultant will report each violation to the City, Federal Emergency Management Agency (FEMA) and the appropriate Environmental Protection Agency Regional Office (EPA).

The Consultant agrees to include these requirements in each subcontract exceeding Twenty Five Thousand Dollars (\$25,000.00) financed in whole or in part with federal assistance provided by FEMA.

9. COMMENCEMENT OF SERVICES

The Consultant shall meet with the appropriate City staff members to commence the project at such date after the Notice to Proceed has been issued.

10. COMPENSATION

Consultant acknowledges that federal financial assistance may be used to fund the Agreement. Consultant will comply with all applicable federal law, regulations, executive orders, federal policies, procedures, and directives.

- A. The total compensation to be paid by the City to the Consultant in Year 1 under this Agreement shall be for services rendered, billed on an hourly rate basis and will not exceed Two Million, Eight Hundred and Eighty Thousand and No/100 Dollars (\$2,880,000.00), which amount includes a twenty (20%) percent contingency. Total compensation does not include reimbursable expenses, which expenses include travel, costs for messenger and delivery services, computerized research, non-standard copying services (such as presentation packages, architectural drawings, etc.) and search and filing fees.
- B. The Consultant shall submit invoices no more frequently than monthly for services rendered during each phase of the Project. Each invoice submitted must describe the services for which payment is requested as shown in the project schedule, show payment calculations and specify the person(s) rendering such service(s). Each invoice shall bear the signature of the Consultant, which signature shall certify that the information contained in the invoice is true and accurate and that the invoice amount is currently due and owing. The City will not pay interest or penalty on any past due amount. Each invoice must also clearly identify any portion of the fee invoiced for subconsultants services, specified in the Agreement, and identify if the

sub-consultant is a Minority Owned Business Enterprise, Small Business Enterprise, Disabled Veterans Owned Business Enterprise and Women Owned Business Enterprise.

The Consultant shall make sub consulting opportunities available to a broad base of qualified sub consultants to ensure maximum participation from Disadvantaged Business Enterprises (DBE), to include but not limited to: Minority Owned Business Enterprise, Small Business Enterprise, Disabled Veterans Owned Business Enterprise, and Women Owned Business Enterprise in all disciplines of the project.

- C. The Consultant shall, in performance of the Agreement, only use those sub consultants in the Agreement upon which the Consultant's proposal was based. Sub consultants substitutions shall only be made upon the Owner's approval. The Consultant shall enter into Agreements with those sub consultants, in the same dollar amount upon which the Consultant's proposal was based, prior to award of the Agreement. Such Agreements shall be contingent upon award of the Agreement by the Owner and the Owner's Notice to Proceed to the Consultant.

D. Invoicing Procedure:

1. The City's Project Manager or his/her designee must review all invoices prior to payment.
2. The Consultant's invoice must contain sufficient detail by task and resource and should be easily traceable to the work completed on the project schedule. Descriptions used in the project schedule shall match those descriptions contained in the Consultant's invoice.
3. The work completed on the Consultant's project schedule must be the basis for full or percentage of completion payment on the Consultant's invoice.
4. The Consultant will not request payment for taxes on Professional Services, labor or installation fees.
5. The Consultant will not invoice, or request payment for any equipment or services that may be specified in this contract prior to the delivery of said equipment or performance of said services.
6. The Consultant shall adhere to an agreed-upon delivery schedule for equipment and/or services. This is to ensure that the City does not have to pay for the advanced delivery of equipment that it was not expecting in that timeframe and/or have to warehouse or make space for unanticipated equipment deliveries. Exceptions to this requirement must be agreed to in writing.
7. All invoices shall include a valid Purchase Order number on the bill; if emergency purchases are required for any reason before a purchase order number is available, a copy of the emergency request for purchase should accompany the Consultant's invoice.
8. The Consultant shall name a representative that will be responsible for reviewing all invoicing concerns that the City may have concerning this project.
9. The Consultant shall submit receipts for all actual expenses.
10. Travel expenses including airfare and car rental shall be invoiced at cost, without markup and with approved documentation (Note: This section does not apply to travel within the Columbia region for work being performed for the contract but only pertains to travel to and from Columbia if necessary to fulfill the terms of the Agreement.).
11. Lodging shall be invoiced up to the per diem rate according to the GSA rates established at

www.gsa.gov, based on the date of travel.

12. Field documents and other equipment/supplies shall be invoiced at cost only; no markup allowed and with approved documentation, and
13. Other required non-labor expenses as may be applicable to the project and pre-approved by the City shall be invoiced at cost only; no markup allowed and with approved documentation.

Failure of the Consultant to follow these invoice requirements will result in the delay of payment of the invoices.

11. COMPLIANCE WITH THE AGREEMENT / AGREEMENT WORK HOURS AND SAFETY STANDARDS ACT

- A. Overtime requirements. No Consultant or sub consultant contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Consultant and any sub consultant responsible therefor shall be liable for the unpaid wages. In addition, such Consultant and sub consultant shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- C. Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or sub consultant under any such Agreement or any other Federal Agreement with the same prime Consultant, or any other federally-assisted Agreement subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or sub consultant for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- D. Subcontracts. The Consultant or sub consultant shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the sub consultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any sub consultant or lower tier sub consultant with the clauses set forth in paragraphs (1) through (4) of this section.

12. COPELAND "ANTI-KICKBACK" ACT AND DAVIS BACON ACT

The Consultant must comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145) as Supplemented by the Department of Labor regulations (29 C.F.R. Part 3 Consultant and Sub

consultants on public building or public work financed in whole or in part by loans or grants from the United States). The Act provides that each Consultant or sub recipient is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled. The City will report all suspected for reported violations to the federal awarding agency.

The Davis-Bacon Act applies to all projects applicable for Federal-aid construction projects exceeding \$2,000 and to all related subcontracts (regardless of subcontract size). The Consultant must comply with the 29 C.F.R. 5.5 "Agreement provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

13. DUTIES UPON TERMINATION

At termination of this Agreement, the Consultant shall immediately provide the City with all records and data in any format the Consultant is capable of producing and at no cost to the City, which were generated, created or received by the Consultant in performance of the services required by the Agreement or as the City may deem necessary to perform the required services by the City or the Consultant's successor. All records shall be free from any proprietary claims or interest. The Consultant agrees to fully cooperate with the City and any successor to ensure an effective transition to continuously provide the required services.

14. EQUAL EMPLOYMENT OPPORTUNITY (EEOC)

During the performance of this Agreement, the Consultant agrees as follows:

- A. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, or national origin.
- C. The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the

administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders:

- F. In the event of the Consultant's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government Agreements or federally assisted construction

Agreements in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. The Consultant will include the portion of the sentence immediately preceding paragraph and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub consultant or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Consultant becomes involved in, or is threatened with, litigation with a sub consultant or vendor as a result of such direction by the administering agency the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

15. ETHICS

Consultant and any Subconsultant or Sub consultant is subject to the provisions of the 1991 Ethics Reform Act (S.C. Code Ann. §8-13-100, et seq, as amended). Under this Act, a person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

- A. Influence the discharge of a public official's, public member's, or public employee's official responsibilities;
- B. Influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or
- C. Induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities. "Anything of value" includes, but is not limited to, lodging, transportation, entertainment, food, meals, beverages, money, gifts, honorariums, discounts and interest-free loans.

16. FINDINGS CONFIDENTIAL

All of the reports, information, data, records or documents of any kind, prepared or assembled by the Consultant under the Agreement are confidential and the Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the City.

In the event that the City receives a Freedom of Information Act request to provide confidential or proprietary information of the Consultant, City will notify Consultant as soon as practicable of such request.

17. INDEMNIFICATION, HOLD HARMLESS AND INSURANCE

A. The Consultant shall provide to the City evidence of the following insurance:

Workers Compensation Insurance - The Consultant shall procure and shall maintain during the life of this Agreement, Workers Compensation Insurance for all employees to be engaged in work on the project under this Agreement, and in case any work is sublet, the Consultant shall require the sub consultant similarly to provide Worker Compensation Insurance for all of the latter employees to be engaged in such work unless such employees are covered by the protection afforded by the Consultant's Worker Compensation Insurance. The Consultant shall not permit any person who is not protected by Workers Compensation Insurance or a properly approved Self-Insured Workers Compensation Program to perform any activity related to this Agreement.

General Liability Insurance - General Liability Insurance in accordance with the current Columbia Code of Ordinances, which can be located at www.columbiasc.net. The Consultant shall procure and maintain for the duration of the Agreement insurance against claims for any injuries to persons or damages to property, which may arise from or in connection with the performance of the work by the Consultant, his agents, or representatives, employees or sub consultants.

- a. Commercial General Liability Insurance: Coverage in an amount not less than 1,000,000.00 per occurrence, and \$2,000,000.00 aggregate combined single limit for bodily injury, personal injury, and property damage, naming the City of Columbia as an additional insured.
- b. Automobile Liability Insurance- \$500,000.00 combined single limit per accident for bodily injury and property damage.

Professional Liability - Professional Liability Insurance in an amount not less than One Million Dollars and No/100 (\$1,000,000.00) per occurrence and Two Million Dollars and No/100 (\$2,000,000.00) Aggregate.

- a. The Consultant shall provide the City with an Errors and Omissions Liability Policy
- b. (E&O Policy). The policy shall cover the City for all sources of liability which would be covered by the latest edition of the standard Errors and Omissions Liability Coverage Form, as filed for use by the City of Columbia, without the attachment of restrictive endorsements.
- c. The City of Columbia shall be named as an additional insured on the policy.
- d. Notice of Cancellation and/or Restriction: The policy must be specifically endorsed to provide the City with thirty (30) days' notice of cancellation, non-renewal, change in coverage, and/or restriction.

B. The Consultant shall furnish the City with a certificate showing satisfactory proof of carriage of the insurance required hereunder and such insurance shall be approved by the City prior to the Consultant and any sub-contractor of the Consultant commencing any services under the Agreement and this insurance shall remain in effect throughout the term of the Agreement and any renewals. Insurance shall remain in effect for the duration of the project and for a period of one (1) year after completion. The City of Columbia shall be the Certificate Holder and shall be named as an Additional Insured, except the City shall not be named as Additional Insured on Consultant's Professional Liability and Workers Compensation insurance.

C. The Consultant shall hold harmless, defend and indemnify the City from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Consultant's performance or nonperformance of the services or subject matter called for in the Agreement.

18. INDEPENDENT CONSULTANT / CONTRACTOR

Nothing contained in the Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Consultant shall at all times remain an independent Consultant with respect to the services to be performed under the agreement. The City shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance.

19. INTEREST OF CONSULTANT

The Consultant covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under the Agreement or which is adverse to the interests of the City of Columbia. The Consultant further covenants that in the performance of the Agreement no person having such interest shall be employed.

The Consultant is expected to make her services available to other entities but agrees to refrain from representing other entities in matters where the position of the City conflicts with that of the other entity. The City may at its discretion, waive this provision. The Consultant has provided a list of all of its clients with whom there may be potential conflicts with the City. This list shall be supplemented throughout the duration of the Agreement.

20. LICENSES, PERMITS AND TAXES

- A. The Consultant shall be responsible for obtaining any approvals, permits and/or licenses as may be required of the Consultant in performing the services required under the Agreement. The Consultant shall be responsible for any costs relating to same.
- B. The Consultant shall procure a City of Columbia business license while performing services under the Agreement.

21. NOTICE

- A. Written notice to the City shall be made by placing by registered mail, return receipt in the United States Mail, postage prepaid and addressed to: Office of the City Attorney, City of Columbia, Post Office Box 667, Columbia, South Carolina 29202.
- B. Written notice to the Consultant shall be made by registered mail, return receipt in the United States Mail, postage prepaid and addressed to Landmark Consulting, LLC, 525 St. Charles Avenue, Suite 330, New Orleans, LA, 70130.

22. COMMUNICATION PROTOCOLS

- A. City shall designate a City point of contact to coordinate all tasks and invoicing with Consultant. Consultant shall not perform any tasks under this Agreement unless directed to do so by the City's designated point of contact. Consultant shall submit all invoices to the designated point of contact.
- B. Consultant shall direct any questions, inquiries and requests for interviews from the media to the City's Public Relations department. Consultant shall not issue any press releases, hold briefings, conduct interviews or conduct any other public relations functions regarding any matter covered by this Agreement without prior written consent of the City.

23. NON-DISCRIMINATION

The Consultant will take affirmative action in complying with all federal, state and local requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, sexual orientation, national origin or physical handicap.

24. OVERSIGHT

- A. The City will maintain oversight to ensure the Consultant performs in accordance with terms, conditions and specifications of its contract or purchase orders per 2 C.F.R. §200.318(b)(General Procurement Standards) and 44 C.F.R §13.36 (Procurement).
- B. The Consultant shall be responsible for performance of all services required by the Agreement. The Consultant does not act as the City's agent or employee.

25. OWNERSHIP OF PROJECT DOCUMENTS

All data, documents or other information of any description generated by or used by the Consultant or any sub consultant retained by the Consultant and related to the services required by the Agreement shall be the property of the City and shall not be used by the Consultant for any purpose whatsoever except to perform the services required by the Agreement.

26. REMEDIES

The Consultant shall only be entitled to the actual direct costs of all labor and material expended on the services required under the Agreement prior to the effective date of the termination. In no event shall the Consultant be entitled to anticipatory profit or damages for any termination under the Agreement. In no event shall the Consultant be entitled to assert a claim in quantum meruit or any other measure of damages other than that stated herein.

27. SCHEDULE OF COMPLETION OF ACTIVITIES

Time is of the essence. The Consultant shall complete any and all services performed under the Agreement within the timeframes as outlined in the work plan to be developed by the parties and approved by the City.

28. SEVERABILITY

If any provision of the Agreement is held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of Applicable law.

29. STATE LAW APPLICABLE

The Agreement shall be construed in accordance with federal, state, local laws, ordinances and codes in performing the work provided under the Agreement. The Consultant agrees to subject itself to the jurisdiction and venue of the Circuit Courts of Richland County, State of South Carolina as to all matters and disputes arising or to arise under the Agreement and the performance thereof. The City may seek attorney's fees and the Consultant agrees to pay such fees as awarded by the Court or other body. No attorney's fees may be sought by, nor will be paid to, the Consultant.

The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this contract.

30. SUCCESSORSHIP

The agreement shall be binding upon the Consultant and upon its successors and assignees.

31. SUSPENSION AND DEBARMENT

The Consultant is subject to non-procurement Debarment and Suspension Regulations implementing Executive Orders 12549 and 12689, 2 C.F.R. pt. 180 (2 C.F.R. §200.212). The Agreement is a covered transaction for the purposes of C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant(s), its principals (defined at 2 C.F.R. §180.995), or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935).

The Consultant must comply 2 C.F.R. 180, sub-part C and 2 C.F.R. pt. 3000, sub-part C and must include a requirement to comply with these regulations in any lower-tier covered transaction it enters into.

Execution of the Agreement is a material representation of fact relied upon by the City. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, sub-part C and 2 C.F.R. pt. 3000, sub-part C in addition to remedies available to the State of South Carolina Emergency Management Division and the City of Columbia, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The Consultant agrees to comply with the requirements of 2 C.F.R. pt. 180, sub-part C and 2 pt. 3000, sub-part C during the duration of the project and throughout the period of any Agreement that may arise from this project.

The Consultant further agrees to include a provision requiring such requirements in its contracts with its sub-consultants.

The Consultant shall notify the City in accordance with Notice, if Consultant or any of its sub-consultants becomes suspended or debarred during the course of this project. In the event that a sub-consultant becomes suspended or debarred during the course of this project, the parties will work together to determine what, if any, course of action to be taken with regard to the suspended or debarred sub-consultant.

32. TERMINATION OF AGREEMENT

The City may terminate the Agreement at any time upon any of the following grounds:

A. Non Appropriation

Failure by the City to appropriate funds for the performance of any of the services required in this Agreement in any annual budget;

B. Termination of Agreement for Cause

If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner these obligations under the Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of the Agreement, the City shall thereupon have the right to terminate the Agreement by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In such event, all finished or unfinished documents, data studies, surveys and reports prepared under the Agreement shall become the property of the City.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Consultant and the City may withhold any payments to the Consultant until such time as the exact amount of damages due to the City from the Consultant is determined.

The Consultant fails to perform any of the services required in this Agreement if after notice of such deficiency by the City, Consultant does not correct such deficiency within fifteen (15) days having been notified by the City of such deficiency or the parties fail to agree upon a corrective action plan within that time.

C. Termination for Convenience of the City

The City may terminate this Contract at any time by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents and other material as described in Access to Records shall, at the option of the City, become its property.

The City shall, at its sole option and discretion, have the right to terminate this contract for any reason whatsoever. A termination for default under the Agreement, if wrongfully made, shall be treated as a termination for convenience under this clause;

D. Force Majeure;

E. Upon expiration of the term of this Agreement; and

F. By mutual agreement

33. USE OF RECOVERED MATERIALS

A. The Consultant shall comply with Section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (2 C.F.R. §200.322). In performance of the Agreement, the Consultant shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired:

1. competitively within a timeframe providing for compliance with the Agreement performance schedule;
2. meeting Agreement performance requirements; or
3. at a reasonable price.

B. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at

<http://www.epa.gov/cpg/products.htm>.

34. WHOLE AGREEMENT

The Agreement represents the entire Agreement between the City and the Consultant and supersedes all prior communications, negotiations, representations or agreements, either written or oral. Only written Amendment signed by both the City and the Consultant may amend the Agreement.

35. MISCELLANEOUS

- A. Nothing in the Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.
- B. In the event there are any disagreements between the City and the Consultant with regard to any of the requirements, specifications or interpretation of the Agreement, the Consultant agrees to defer to the reasonable interpretations of the City as, from time to time may be made by the City. Ambiguities in the terms of the Agreement, if any, shall not be construed against the City.
- C. The Agreement is subject to City Council approval.
- D. The Consultant and sub-consultants shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.
- E. The Consultant acknowledges that 31 U.S.C. chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's and sub-consultants' actions pertaining to the Agreement.
- F. Buy American Act (41 U.S.C. 10a et seq.)
The Buy American Act applies to any contract that is funded in whole or in part by funds under the Disaster Mitigation Act of 2000. The Contractor must comply with the requirements of the Buy American Act and require that all subcontractors also comply with this Act.

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Exhibit A – Scope of Services

In accordance with instructions given by the City through specific Task Orders, Consultant shall do and perform Services including but not limited to:

1. CONTRACTED SERVICES:

Grant Management

The Consultant is to provide assistance and support for grants management and administration as needed for federal and state programs, including primarily, but not limited to, the Federal Emergency Management Agency Public Assistance Program, Federal Emergency Management Agency Hazard Mitigation Program, and U.S. Department of Transportation programs. The Consultant shall work closely and collaborate with various funding agencies and internal City departments to ensure the proper use and application of federal and state funds. The Consultant shall focus on maximizing eligible, allocable federal dollars. The Consultant shall conduct efficient processes that reduce the timeline for eligibility determinations that support project cash flow sources and uses. The Consultant will provide technical knowledge and experience, proven business processes, and policy strategies. In order to develop and implement the framework of grant activities, The Consultant shall perform services and work necessary to complete the following objectives and tasks:

- i. Develop a document management plan that specifically outlines the structure, containment, and management of all project documentation consistently for all City departments. Effectively maintain efficient and complete records concerning any and all applicable grant programs.
- ii. Compile and summarize/justify costs for presentation to Federal agencies and State agencies for reimbursement of eligible costs, ensuring compliance with applicable regulations.
- iii. Attend meetings with the City, Federal agencies, and State agencies to negotiate and represent Project Worksheets (PWs) and the obligation of eligible amounts.
- iv. Provide grant management advice to maximize reimbursements of disaster recovery expenses.
- v. Provide advice to City personnel and consultants; attend and participate in meetings as required.
- vi. Prepare draft correspondence to local, Federal and State officials as necessary.
- vii. Prepare and conduct the close-out process, ensuring maximum recovery and retention of all eligible funding, satisfactory disposition of appeals and availability of supporting documents for future audits.
- viii. Keep track and monitor Consultant's own time and activities by project, or as allowable under the provisions of Federal guidance for direct administrative, indirect, and project management costs (reference Federal regulations and policy guidance for these topics).
- ix. Provide written performance and status reports to City on the status of the FEMA Public Assistance program and other grant programs as requested. The performance and status report should include, but is not limited to, the following:
 - Hours billed and amount invoiced by personnel
 - PW and grant application development and revisions
 - PW and grant application submissions and approvals
 - Obligated amounts versus eligible estimates
 - Issues with PW and grant application submissions and resolutions
 - Issues requiring assistance
 - Amounts awarded to City per PW and grant application
 - Requests For Reimbursement submitted
 - Estimated and actual costs
 - Reimbursements received by City

- Insurance deductions
- PW and grant application closeouts

Grant Development

The Consultant shall provide services to maximize grant funding for the City, including but not limited to the following objectives and tasks:

- A. Prepare and coordinate the development of PW's and versions as required with the City, Federal agencies and State agencies. This includes project development, formulation, and processing as required for small and large projects.
- B. Prepare, submit and track Hazard Mitigation Grant program applications as require with the City, Federal agencies and State agencies. This includes project or program development, formulation, processing, and monitoring as required.
- C. Work with the City departments and divisions to obtain all costs and necessary backup documentation to develop, revise and submit PW's and grant applications to the Federal agencies and State agencies to be approved, obligated and reimbursed.
- D. Review eligibility issues for the City and develop justifications for presentation to the Federal agencies, State agencies, and other agencies involved in providing disaster recovery funds.
- E. Ensure that all eligible damages have been identified, quantified, and presented to the City, Federal agencies, and State agencies. All eligible damages shall be incorporated into PW's and grant applications with supporting documentation and proper cost estimates, using the FEMA Cost Estimating Factor (CEF) when necessary.
- F. Review contracts, bid documentation, change orders, and other records to support the proper preparation and presentation of PW's, grant applications and eligible activities.

Policy Support

The Consultant shall provide support to the City on all relative grant policies, including but not limited to providing the City with any changes in policies, procedures, processes, or deadlines throughout the financial disaster recovery process.

Audit Preparation and Management

The Consultant shall provide support services to the City to manage and prepare for potential audits from the City receiving grant funding. These services will include but should not be limited to:

- A. Prepare for and respond to inspections and audits for on-going and completed projects.
- B. Prepare formal audit responses and justifications; attend associated meetings and hearings as needed.

Additional Services

The Consultant shall provide, or as needed retain the services of, professional experts to prepare damage assessments and technical reviews and oversight in the furtherance of program objectives. The Consultant shall also provide cost reconciliation support as needed. The Consultant shall provide destructive and non-destructive testing, as needed to document damages, including but not limited to roof system analysis, wall system testing, metallurgy, hazardous materials testing, geotechnical investigations, topographic surveys and other related information necessary to support the identification of storm related damage. The Consultant shall obtain three or more proposals from qualified third parties when required for the Project and recommend to the City for approval. Additional Services shall be considered a reimbursable expense and billed to the City at a rate of 1.1 times the actual cost.

Program Management

The Program Management shall be performed by the consultant, hereinafter from time to time, as the context requires, referred to as "Program Manager" includes those activities needed to successfully organize and implement the overall Project and the individual component projects identified under the Project, including:

- A. Technical consultation and support to the Utilities and Engineering Department.
- B. General project planning, management, and administration.
- C. Project schedule and cost control.
- D. Architecture and design review and management.
- E. Construction contract bid and award support,
- F. Construction management, oversight, administration, and
- G. Project controls.

The City shall be responsible for procurement of architectural, engineering, and architectural-engineering (design consultant) services (with the assistance of the Project Manager) to be performed under the Project, and shall also be responsible for publicly bidding all construction contracts. Contract documents (plans and specifications) shall be designed and stamped by the design consultant responsible for preparation; the Program Manager shall review the contract documents for adherence to the design criteria, guidelines and standards established by the City.

The role of the Program Manager (as outlined above) on the project shall be to provide management services to the individual projects throughout the various phases of work; these phases include planning, preliminary design, final design, bid and award, construction, commissioning and warranty phases. In the performance of management services, the Program Manager may have responsibility for and may be responsible to perform design or construction work and the City will authorize the services via a Task Order. The design work shall be the responsibility of an architectural and/or engineering firm, duly licensed to perform in the state of South Carolina that shall contract with the City directly and therefore will be the Engineer of Record throughout the life of an individual project liable for the work performed. The construction shall be performed by general contractors, duly licensed to perform in the State of South Carolina, and these general contractors shall be also liable for their work. The general contractors will also be contracted directly with the City.

2. KEY PERSONNEL CLAUSE:

Consultant must provide the City a resume and proposed position and rate as described in Exhibit "B" for all proposed staff.

3. FURTHER PROVISIONS:

- a. The Consultant will obtain the City's approval before it substitutes consultants in the subject matter.
- b. The City and the Consultant bind themselves under the Additional Terms and Conditions attached hereto.
- c. The City will provide personal work spaces for assigned Consultant staff at City-owned or leased locations.

- d. The City will provide access to City owned or leased locations during customary office hours for assigned Consultant staff. Also, when warranted and requested by the Consultant, the City will either provide security to City owned properties, or the City will authorize the Consultant to provide their own security as a billable expense based on the terms and rates of this contract.
- e. The City will provide limited internet connectivity, land line telephone service, proprietary software licenses for special software that the City may require the Consultant to utilize during the duration of the contract and City email service and addresses for assigned Consultant staff located at City owned or leased locations.
- f. Provide administration of the Agreement through the Office of Recovery
- g. Provide access to all personnel and records deemed necessary for the performance of the Services by the Consultant.

Exhibit B – Program Staff Augmentation List and Rate Sheet

See attached pages 113 and 114 from Consultant's proposal

APPENDIX Xii:

ENGRFP#00004-15-16
DR4241 Flood Recovery Project Management Services

APPENDIX XII – PROGRAM STAFF AUGMENTATION LIST

The following is a list of positions to augment specific job duties as it relates to the Scope of Work. Additional positions may be included in response as applicable to specific work to be performed. Include title/classification of position and a description of work or tasks to be performed along with hourly rate. Title substitutions are allowed.

Program Manager - Provides guidance and supervision of contracted staff. Ensures all rules, policies and guidelines are adhered to in accordance with local, State and Federal regulations. Oversees the project management of contracted purchase orders and acts as liaison to the City's Program and Contract Managers. Responsible for quality control, performance reporting, providing the Division the status of projects, and coordinating with the City's Public Assistance Officer when requested.

Project Lead - Provide information to the City's Program and Contract Manager, establish and maintain quality control, provide technical support, monitor and report status of projects. Knowledgeable and experienced with FEMA rules and regulations, able to work with State, Federal and local officials and be customer service oriented.

Public Assistance Subject Matter Expert - Develop project worksheets, gather documentation, assist in project applications, and provide programmatic assistance. Knowledgeable of FEMA rules and regulations, able to work with State, Federal and local officials and be customer service oriented.

Grant Subject Matter Expert - Monitor recovery grant activities, coordinate and communicate with stakeholders, ensure contract and records are maintained, prepare correspondence when necessary. Knowledgeable of grants management, able to work with State, Federal and local officials and be customer service oriented.

Planning Subject Matter Expert – Assists in the advancement and monitoring of Recovery projects, Stafford Act Appeals, financial monitoring and reporting, and recovery logistics. Prepare and upload project documentation, and prepare status tracking reports of projects. Must have the ability to perform administrative assignments in an accurate and efficient manner.

Engineer (Junior) – Assists in the development and review of engineering project requirements, scopes of work, assessment reports, project specifications and special provisions and offers assistance with project management and oversight to ensure all FEMA and other federal, state and local guidelines are adhered to. Expected to have a minimum of 5 years of engineering experience related to utility systems (water, sanitary sewer and storm drainage), road and bridge infrastructure, and facility (buildings and parks) design or redevelopment.

Engineer (Senior) – Assists in the development and review of engineering project requirements, scopes of work, assessment reports, project specifications and special provisions and offers assistance with project management and oversight to ensure all FEMA and other federal, state and local guidelines are adhered to. Expected to have a minimum of 10 years of engineering experience related to utility systems (water, sanitary sewer and storm drainage), road and bridge infrastructure, and facility (buildings and parks) design or redevelopment.

APPENDIX Xii:

ENGRFP#00004-15-16

DR4241 Flood Recovery Project Management Services

Administrative Support Specialist - Prepares and uploads documents, tabulates timesheets, provide human resources support, answer phone lines, general administrative duties in the overall support of projects, field operations and management. Must have the ability to perform administrative functions in an accurate and efficient manner.

Documentation Subject Matter Expert – Assist with for storage, cataloging and retrieval of documents. Maintain the integrity of working documents and update documentation when revised, maintain systems for document storage and retrieval. Must have the ability to perform administrative functions in an accurate and efficient manner.

Procurement Subject Matter Expert – assists with procurement of equipment, supplies and services, preparation of bid solicitations. Must have the ability to perform administrative functions in an accurate and efficient manner.

HOURLY RATES AND REIMBURSABLE PROJECT EXPENSES

Please include your hourly rates by position as outlined and defined above:

Program Manager	\$ 210 /hr.
Project Lead	\$ 200 /hr.
Public Assistance Subject Matter Expert	\$ 165 /hr.
Grant Subject Matter Expert	\$ 165 /hr.
Planning Subject Matter Expert	\$ 175 /hr.
Engineer (Junior)	\$ 140 /hr.
Engineer (Senior)	\$ 165 /hr.
Administrative Support Specialist	\$ 75 /hr.
Documentation Subject Matter Expert	\$ 85 /hr.
Procurement Subject Matter Expert	\$ 175 /hr.
Other	\$ 195 /hr.

EXHIBIT C

SUBCONSULTANT FIRM INFORMATION RECORDS

The Consultant shall list all firms, including minority and female owned firms, providing sub-consulting services under this Agreement. The list shall be submitted in the format provided below. Any proposed changes must be submitted in writing to the City, including the reason(s) for the proposed changes, prior to initiation of any action by the Consultant. Any invoices submitted for payment under this Agreement must include the dollar amount to be paid to each firm listed below for the invoice period.

Firm Name and Address	Contact Name and Telephone Number	Services to be Provided	Dollar Value of Services
Plexos Group, LLC 8680 Bluebonnet Blvd., Suite F Baton Rouge, LA 70810	David Odom 225-757-5344	Compliance / Project Management Services	TBD
DESA, Inc. 400 Percival Road Columbia, SC 29206	Diane Sumpter 803-743-1142	Project Management Services	TBD
Chao & Associates, Inc. 7 Clusters Court Columbia, SC 29210	C. Jimmy Chao 803-772-8420	Engineering Support and Oversight	TBD

IN WITNESS WHEREOF, the City and the Consultant have entered into this Agreement as of the date first above written.


CITY OF COLUMBIA, SOUTH CAROLINA



Witness

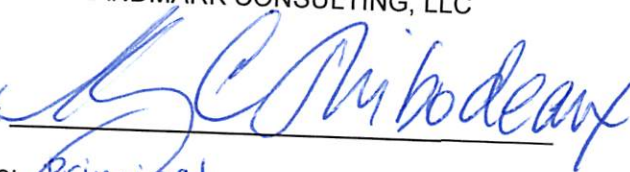
By: 


City Manager



Witness

LANDMARK CONSULTING, LLC

By: 

Title: 

**COLUMBIA**

A Capital Place to Be
1136 Washington St., 4th Floor
Columbia, South Carolina 29201

PURCHASE ORDER

P.O. NUMBER	P155913
DATE	01/07/16
VENDOR I.D.	V014632
DELIVERY DATE	
FOB	DESTINATION
REQUISITION NO	R171793
OUR PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, PACKING LIST AND CORRESPONDENCE.	

TO: LANDMARK CONSULTING LLC
525 ST CHARLES AVENUE SUITE 330
NEW ORLEANS, LA 70130
United States of America

FAX#

Page 1 of 24

DELIVER ITEMS TO:

BUDGET
1136 WASHINGTON STREET, 5TH FLOOR
COLUMBIA, SC 29201

SEND INVOICE TO:

ACCOUNTING
PO BOX 147
COLUMBIA, SC 29217

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENSION
001	SC Severe Storms & Floods DR-4241/DR-3373 OCTOBER 2015 ALL PRICES SPECIFICATIONS, TERMS AND CONDITIONS PER CITY OF COLUMBIA BID #ENGRFP0004-15-16. FLOOD RECOVERY CONSULTING SERVICES Services to be provided and hourly rate: Program Manager \$210 hr. Project Lead \$200 hr. Public Assistance Subject Matter Expert \$165 hr. Grant Subject Matter Expert \$165 hr. Planning Subject Matter Expert \$175 hr. Engineer (Junior) \$140 hr. Engineer (Senior) \$165 hr. Administrative Support Specialist \$75 hr. Documentation Subject Matter Expert \$85 hr. Procurement Subject Matter Expert \$175 hr. Other \$195 hr.	2,304,0	EA	1.00	2,304,000.00
002	CONTINGENCY FEE CONTACT: RUBY HAMPTON 803-545-3146 Thanks, Elizabeth Marsh City of Columbia Purchasing Division 1136 Washington Street, Columbia, SC 29201 Phone: 803-545-3474 Fax: 803-733-8408 Email: ecmars@columbiasc.net	576,000	EA	1.00	576,000.00
				SALES TAX	0.00
				TOTAL	2,880,000.00

THE ARTICLES SPECIFIED ARE SUBJECT TO THE FOLLOWING CONDITIONS:

1. Submit all claims for payments by detailed itemized invoice in duplicate.
2. Goods other than those specified on this order must not be substituted or prices changed without authorization.
3. The right of cancellation in case of long delay in shipment is reserved.
4. If the quantity shipped is short of the purchase order quantity, specify on the packing slip if that quantity is on back order or cancelled.
5. Prepay shipping charges, if any, and add to invoice.
6. Ship "Open Account." No C.O.D.'s will be accepted.

AUTHORIZED SIGNATURE

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