
**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Professional Services: PS-1903-07/BLH Master Agreement for Continuing Professional Services for Landscape Architecture and Irrigation Design Services

DEPARTMENT: Administrative Services

DIVISION: Purchasing and Contracts

AUTHORIZED BY: Frank Raymond

CONTACT: Lisa Riner

EXT: 7113

MOTION/RECOMMENDATION:

Approve the negotiated rates and award PS-1903-07/BLH Master Agreement for Continuing Professional Services for Landscape Architecture and Irrigation Design Services to Miller Legg of Orlando, Florida and David Wickham and Associates, Inc. of Lake Mary, Florida (Estimated usage \$120,000.00 per year).

County-wide

Ray Hooper

BACKGROUND:

PS-1903-07/BLH will provide for Landscape Architecture and Irrigation Design Services for miscellaneous public projects to be identified throughout the year. Typical projects that require these services include, but are not limited to, roadway corridors, landscape and "hardscape" features, signage, walls, planters, decorative paving, lighting, etc., and building site work.

On August 28, 2007, the Board approved the ranking and authorized staff to negotiate with the top-ranked firms, Miller Legg of Orlando, Florida and David Wickham and Associates, Inc. of Lake Mary, Florida. The attached Award Agreements include the negotiated rates as Exhibit C. The terms of these Agreements provide for a base period of one (1) year, and may be renewed for an additional two (2) successive periods not to exceed one (1) year each.

Authorization for the performance of services by the Consultants under these Agreements shall be in the form of written Work Orders issued and executed by the County, and signed by the Consultant. Staff estimates usage under these Agreements to be in the amount of \$120,000.00 per year. The work and dollar amount for each Work Order will be within the constraints of the approved project budget and will be negotiated on an as-needed basis.

STAFF RECOMMENDATION:

Staff recommends that the Board approve the negotiated rates and award PS-1903-07/BLH Master Agreement for Continuing Professional Services for Landscape Architecture and Irrigation Design Services to Miller Legg of Orlando, Florida and David Wickham and Associates, Inc. of Lake Mary, Florida (Estimated usage \$120,000.00 per year).

ATTACHMENTS:

1. PS-1903-07/BLH Award Agreement with Miller Legg
2. PS-1903-07/BLH Award Agreement with David Wickham

Additionally Reviewed By:

County Attorney Review (Ann Colby)

**CONTINUING PROFESSIONAL CONSULTANT SERVICES AGREEMENT (PS-1903-07/BLH)
LANDSCAPE ARCHITECTURE AND IRRIGATION DESIGN**

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between **MILLER, LEGG & ASSOCIATES, INC.**, duly authorized to conduct business in the State of Florida, whose address is 631 S. Orlando Avenue, Suite 200, Winter Park, Florida 32789, hereinafter called "CONSULTANT" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter called "COUNTY".

W I T N E S S E T H:

WHEREAS, COUNTY desires to retain the services of a competent and qualified CONSULTANT to provide continuing professional landscape architecture and irrigation design services in Seminole County; and

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

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

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

SECTION 1. SERVICES. COUNTY does hereby retain CONSULTANT to furnish professional services and perform those tasks as further described in the Scope of Services attached hereto as Exhibit A and made a part hereof and the solicitation package and any addenda thereto. Required services shall be specifically enumerated, described, and depicted in the Work Orders authorizing performance of the specific project, task, or study. This Agreement standing alone does not authorize the performance of any work or require COUNTY to place any

orders for work.

SECTION 2. TERM. This Agreement shall take effect on the date of its execution by COUNTY and shall run for a period of one (1) year and, at the sole option of COUNTY, may be renewed for two (2) successive periods not to exceed one (1) year each. Expiration of the term of this Agreement shall have no effect upon Work Orders issued pursuant to this Agreement and prior to the expiration date. Obligations entered therein by both parties shall remain in effect until completion of the work authorized by the Work Order.

SECTION 3. AUTHORIZATION FOR SERVICES. Authorization for performance of professional services by CONSULTANT under this Agreement shall be in the form of written Work Orders issued and executed by COUNTY and signed by CONSULTANT. A sample Work Order is attached hereto as Exhibit B. Each Work Order shall describe the services required, state the dates for commencement and completion of work, and establish the amount and method of payment.  The Work Orders will be issued under and shall incorporate the terms of this Agreement. COUNTY makes no covenant or promise as to the number of available projects or that CONSULTANT will perform any project for COUNTY during the life of this Agreement. COUNTY reserves the right to contract with other parties for the services contemplated by this Agreement when it is determined by COUNTY to be in the best interest of COUNTY to do so.

SECTION 4. TIME FOR COMPLETION. The services to be rendered by CONSULTANT shall be commenced as specified in such Work Orders as may be issued hereunder and shall be completed within the time specified therein. In the event COUNTY determines that significant benefits would accrue from expediting an otherwise established time schedule for completion of services under a given Work Order, that Work Order may include a negotiated schedule of incentives based on time savings.

SECTION 5. COMPENSATION. COUNTY agrees to compensate CONSULTANT for the professional services called for under this Agreement on either a "Fixed Fee Basis" or on a "Time Basis Method". If a Work Order is issued under a Time Basis Method, then CONSULTANT shall be compensated in accordance with the rate schedule attached as Exhibit C. If a Work Order is issued for a Fixed Fee Basis, then the applicable Work Order Fixed Fee amount shall include any and all reimbursable expenses. The total annual compensation paid to CONSULTANT pursuant to this Agreement, including reimbursable expenses, shall not exceed the amount budgeted annually by COUNTY for continuing professional consultant services for landscape architecture and irrigation design services.

SECTION 6. REIMBURSABLE EXPENSES. If a Work Order is issued on a Time Basis Method, then reimbursable expenses are in addition to the hourly rates. Reimbursable expenses are subject to the applicable "Not-to-Exceed" or "Limitation of Funds" amount set forth in the Work Order. Reimbursable expenses may include actual expenditures made by CONSULTANT, its employees, or its professional associates in the interest of the Project for the expenses listed in the following paragraphs:

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

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

(c) If authorized in writing in advance by COUNTY, the cost of other expenditures made by CONSULTANT in the interest of the Project.

SECTION 7. PAYMENT AND BILLING.

(a) If the Scope of Services required to be performed by a Work

Order is clearly defined, the Work Order shall be issued on a Fixed Fee Basis. CONSULTANT shall perform all work required by the Work Order, but in no event shall CONSULTANT be paid more than the negotiated Fixed Fee amount stated therein.

(b) If the Scope of Services is not clearly defined, the Work Order may be issued on a Time Basis Method and contain a Not-to Exceed amount. If a Not-to-Exceed amount is provided, CONSULTANT shall perform all work required by the Work Order, but in no event shall CONSULTANT be paid more than the Not-to-Exceed amount specified in the applicable Work Order.

(c) If the Scope of Services is not clearly defined, the Work Order may be issued on a Time Basis Method and contain a Limitation of Funds amount. CONSULTANT is not authorized to exceed that amount without the prior written approval of COUNTY. Said approval, if given by COUNTY, shall indicate a new Limitation of Funds amount. CONSULTANT shall advise COUNTY whenever CONSULTANT has incurred expenses on any Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount.

(d) For Work Orders issued on a Fixed Fee Basis, CONSULTANT may invoice the amount due based on the percentage of total Work Order services actually performed and completed, but in no event shall the invoice amount exceed a percentage of the Fixed Fee amount equal to a percentage of the total services actually completed. COUNTY shall pay CONSULTANT ninety percent (90%) of the approved amount on Work Orders issued on a Fixed Fee Basis.

(e) For Work Orders issued on a Time Basis Method with a Not-to-Exceed amount, CONSULTANT may invoice the amount due for actual work hours performed, but in no event shall the invoice amount exceed a percentage of the Not-to-Exceed amount equal to a percentage of the

total services actually completed. COUNTY shall pay CONSULTANT ninety percent (90%) of the approved amount on Work Orders issued on a Time Basis Method with a Not-to-Exceed amount.

(f) Each Work Order issued on a Fixed Fee Basis or Time Basis Method with a Not-to-Exceed amount shall be treated separately for retainage purposes. If COUNTY determines that work is substantially complete and the amount retained is considered to be in excess, COUNTY may, at its sole and absolute discretion, release the retainage or any portion thereof.

(g) For Work Orders issued on a Time Basis Method with a Limitation of Funds amount, CONSULTANT may invoice the amount due for services actually performed and completed. COUNTY shall pay CONSULTANT one hundred percent (100%) of the approved amount on Work Orders issued on a Time Basis Method with a Limitation of Funds amount.

(h) Payments shall be made by COUNTY to CONSULTANT when requested as work progresses for services furnished, but not more than once monthly. Each Work Order shall be invoiced separately. At the close of each calendar month, CONSULTANT shall render to COUNTY a properly dated itemized invoice describing any services rendered, the cost of the services, the name and address of CONSULTANT, Work Order Number, Contract Number, and all other information required by this Agreement.

The original invoice and one (1) copy shall be sent to:

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

Two (2) copies of the invoice shall be sent to:

Seminole County Engineering Department
520 W. Lake Mary Blvd., Suite 200
Sanford, FL 32773

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

SECTION 8. GENERAL TERMS OF PAYMENT AND BILLING.

(a) Upon satisfactory completion of work required hereunder and upon acceptance of the work by COUNTY, CONSULTANT may invoice COUNTY for the full amount of compensation provided for under the terms of this Agreement including any retainage and less any amount already paid by COUNTY. COUNTY shall pay CONSULTANT within thirty (30) days of receipt of proper invoice.

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

(c) In addition to the above, if federal funds are used for any work under the Agreement, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of CONSULTANT which are directly pertinent to work performed under this Agreement for purposes of making audit, examination, excerpts, and transcriptions.

(d) CONSULTANT agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to work performed under this Agreement in such a manner as will readily conform to the

terms of this Agreement and to make such materials available at CONSULTANT's office at all reasonable times during the Agreement period and for five (5) years from the date of final payment under the contract for audit or inspection as provided for in subsections (b) and (c) of this Section.

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

SECTION 9. RESPONSIBILITIES OF CONSULTANT.

(a) CONSULTANT shall be responsible for the professional quality, technical accuracy, competence, methodology, accuracy, and the coordination of all of the following which are listed for illustration purposes and not as a limitation:  documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in his plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature.

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

SECTION 10. OWNERSHIP OF DOCUMENTS. All deliverable analysis, reference data, survey data, plans, and reports or any other form of written instrument or document that may result from CONSULTANT'S services or have been created during the course of CONSULTANT'S performance under this Agreement shall become the property of COUNTY after final payment is made to CONSULTANT.

SECTION 11. TERMINATION.

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

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

(2) deliver to COUNTY  all data, drawings, specifications, reports, estimates, summaries, and ~~any~~ and all such other information and materials of whatever type or nature as may have been accumulated by CONSULTANT in performing this Agreement, whether completed or in process.

(b) If the termination is for the convenience of COUNTY, CONSULTANT shall be paid compensation for services performed to the date of termination. If this Agreement calls for the payment based on a Fixed Fee amount, CONSULTANT shall be paid no more than a percentage of the Fixed Fee amount equivalent to the percentage of the completion of work, as determined solely and conclusively by COUNTY, contemplated by this Agreement.

(c) If the termination is due to the failure of CONSULTANT to fulfill its Agreement obligations, COUNTY may take over the work and prosecute the same to completion by other Agreements or otherwise. In

such case, CONSULTANT shall be liable to COUNTY for all reasonable additional costs occasioned to COUNTY thereby. CONSULTANT shall not be liable for such additional costs if the failure to perform the Agreement arises without any fault or negligence of CONSULTANT; provided, however, that CONSULTANT shall be responsible and liable for the actions of its subcontractors, agents, employees, and persons and entities of a similar type or nature. Such causes may include acts of God or of the public enemy, acts of COUNTY in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the failure to perform must be beyond the control and without any fault or negligence of CONSULTANT.

(d) If after notice of termination for failure to fulfill its Agreement obligations it is determined that CONSULTANT had not so failed, the termination shall be conclusively deemed to have been effected for the convenience of COUNTY. In such event, adjustment in the Agreement price shall be made as provided in subsection (b) of this Section.

(e) The rights and remedies of COUNTY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Agreement.

SECTION 12. AGREEMENT AND WORK ORDER IN CONFLICT. Whenever the terms of this Agreement conflict with any Work Order issued pursuant to it, the Agreement shall prevail.

SECTION 13. EQUAL OPPORTUNITY EMPLOYMENT. CONSULTANT agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, disability, or national origin and will take steps to ensure that applicants are employed, and employees are treated during

employment, without regard to race, color, religion, sex, age, disability, or national origin. This provision shall include, but not be limited to, the following: employment; upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SECTION 14. NO CONTINGENT FEES. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from award or making of this Agreement. For the breach or violation of this provision, COUNTY shall have the right to terminate the Agreement at its sole discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

SECTION 15. CONFLICT OF INTEREST.

(a) CONSULTANT agrees that it will not contract for or accept employment for the performance of any work or service with any individual, business, corporation, or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with COUNTY.

(b) CONSULTANT agrees that it will neither take any action nor engage in any conduct that would cause any COUNTY employee to violate the provisions of Chapter 112, Florida Statutes, relating to ethics in government.

(c) In the event that CONSULTANT causes or in any way promotes or

encourages a COUNTY officer, employee, or agent to violate Chapter 112, Florida Statutes, COUNTY shall have the right to terminate this Agreement.

SECTION 16. ASSIGNMENT. This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the other party and in such cases only by a document of equal dignity herewith.

SECTION 17. SUBCONTRACTORS. In the event that CONSULTANT, during the course of the work under this Agreement, requires the services of any subcontractors or other professional associates in connection with services covered by this Agreement, CONSULTANT must first secure the prior express written approval of COUNTY. If subcontractors or other professional associates are required in connection with the services covered by this Agreement, CONSULTANT shall remain fully responsible for the services of subcontractors or other professional associates.

SECTION 18. INDEMNIFICATION OF COUNTY. CONSULTANT agrees to hold harmless, replace, and indemnify COUNTY, its commissioners, officers, employees, and agents against any and all claim, losses, damages or lawsuits for damages, arising from the negligent, reckless, or intentionally wrongful provision of services hereunder by CONSULTANT, whether caused by CONSULTANT or otherwise.

SECTION 19. INSURANCE.

(a) GENERAL. CONSULTANT shall at its own cost procure the insurance required under this Section.

(1) CONSULTANT shall furnish COUNTY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required by this Section (Professional Liability, Workers' Compensation/Employer's Liability and Commercial

General Liability). COUNTY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy. The Certificate of Insurance shall provide that COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. Until such time as the insurance is no longer required to be maintained by CONSULTANT, CONSULTANT shall provide COUNTY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided.

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

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

(4) Neither approval by COUNTY nor failure to disapprove the insurance furnished by a CONSULTANT shall relieve CONSULTANT of its full responsibility for performance of any obligation including CONSULTANT's indemnification of COUNTY under this Agreement.

(b) INSURANCE COMPANY REQUIREMENTS. Insurance companies providing the insurance under this Agreement must meet the following requirements:

(1) Companies issuing policies (other than Workers' Compensation) must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.

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

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

(c) SPECIFICATIONS. Without limiting any of the other obligations or liability of CONSULTANT, CONSULTANT shall, at its sole expense, procure, maintain, and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this

subsection. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by CONSULTANT and shall be maintained in force until the Agreement completion date. The amounts and types of insurance shall conform to the following minimum requirements.

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

(A) CONSULTANT's insurance shall cover CONSULTANT for liability which would be covered by the latest edition of the standard Workers' Compensation Policy as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. CONSULTANT will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both CONSULTANT and its subcontractors are outlined in subsection (c) below.

In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the United States Longshoremen and Harbor Workers' Compensation Act, Federal Employers' Liability Act, and any other applicable federal or state law.

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

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

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

(2) Commercial General Liability.

(A) CONSULTANT's insurance shall cover CONSULTANT for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment, and the elimination of coverage for Fire Damage Legal Liability.

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

	<u>LIMITS</u>
General Aggregate	Three (3) Times the Each-Occurrence Limit
Personal & Advertising Injury Limit	\$1,000,000.00
Each Occurrence Limit	 \$1,000,000.00

(3) Professional Liability Insurance. CONSULTANT shall carry professional liability insurance with limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00).

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

(e) OCCURRENCE BASIS. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Professional Liability insurance policy must be on an occurrence basis or claims-made basis. If a claims-made basis, the coverage must respond

to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

(f) OBLIGATIONS. Compliance with the foregoing insurance requirements shall not relieve CONSULTANT, its employees, or its agents of liability from any obligation under a Section or any other portions of this Agreement.

SECTION 20. ALTERNATIVE DISPUTE RESOLUTION.

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY protest procedures prior to filing suit or otherwise pursuing legal remedies. COUNTY procedures for proper invoice and payment disputes are set forth in Section 22.15, "Prompt Payment Procedures," Seminole County Administrative Code. Contract claims include all controversies, except  disputes addressed by the "Prompt Payment Procedures," arising under ~~this~~ Agreement with ADR procedures set forth in Section 220.102, "Contract Claims," Seminole County Code.

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

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

SECTION 21. REPRESENTATIVES OF COUNTY AND CONSULTANT.

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

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



SECTION 22. ALL PRIOR AGREEMENTS SUPERSEDED. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained or referred to in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

SECTION 23. MODIFICATIONS, AMENDMENTS, OR ALTERATIONS. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

SECTION 24. INDEPENDENT CONTRACTOR. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties or as constituting CONSULTANT (including its officers, employees, and agents) an agent, representative, or employee of COUNTY for any purpose, or in any manner, whatsoever. CONSULTANT is to be and shall remain forever an independent contractor with respect to all services performed under this Agreement.

SECTION 25. EMPLOYEE STATUS. Persons employed by CONSULTANT in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to COUNTY's officers and employees either by operation of law or by COUNTY.

SECTION 26. SERVICES NOT PROVIDED FOR. No claim for services furnished by CONSULTANT not specifically provided for herein shall be honored by COUNTY.

SECTION 27. PUBLIC RECORDS LAW. CONSULTANT acknowledges COUNTY's obligations under Article I, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, to release public records to members of the public upon request. CONSULTANT acknowledges that COUNTY is required to comply with Article I, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls over the terms of this Agreement.

SECTION 28. COMPLIANCE WITH LAWS AND REGULATIONS. In providing all services pursuant to this Agreement, CONSULTANT shall abide by all statutes, ordinances, rules, and regulations pertaining to or regulating the provisions of such services, including those now in effect and

hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement and shall entitle COUNTY to terminate this Agreement immediately upon delivery of written notice of termination to CONSULTANT.

SECTION 29. NOTICES. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

For COUNTY:

Engineering Division
520 W. Lake Mary Blvd., Suite 200
Sanford, FL 32773



For CONSULTANT:

Miller, Legg & Associates, Inc.
631 S. Orlando Avenue, Suite 200
Winter Park, FL 32789

SECTION 30. RIGHTS AT LAW RETAINED. The rights and remedies of COUNTY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date below written for execution by COUNTY.

ATTEST:

MILLER, LEGG & ASSOCIATES, INC.

DAN A. TINTNER
Secretary

By: _____
DAVID L. JOHN
President

(CORPORATE SEAL)

Date: _____

(County Signature Page Follows)

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

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

By: _____
CARLTON HENLEY, Chairman

Date: _____

For use and reliance
of Seminole County only.

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

Approved as to form and
legal sufficiency.

County Attorney

Attachments:

- Exhibit A - Scope of Services
- Exhibit B - Sample Work Order
- Exhibit C - Rate Schedule



AEC:jjr
09/21/07
P:\Users\jroyal\Purchasing 2007\Agreements\PS-1903-07-Miller Legg.doc

EXHIBIT A

Scope of Consultant Services for Landscape Architecture and Irrigation Design

I. REQUIRED SERVICES

Provide high quality landscape architecture and irrigation system design services for Public Works projects in a timely cost effective manner. Coordinate and perform all work in accordance with F.D.O.T. Florida Highway Landscape Guide, the Florida Irrigation society, and Irrigation Association standards and specifications, accepted xeriscape practices and Seminole County requirements. Prepare and provide unambiguous contract bid documents suitable for project construction and a site evaluation report for constructed work.

II. QUALIFICATIONS

- A) The Consultant's work shall be performed by a registered landscape architect or other licensed professionals that are experienced and proficient in the design of a Public Works landscape and irrigation system in accordance with accepted xeriscape practices and the standards and specifications of the Florida Irrigation Association.
- B) The Consultant shall be Florida Department of Transportation (F.D.O.T.) pre-qualified in the landscape architecture design category.

EXHIBIT A

Scope of Consultant Services for Landscape Architecture and Irrigation Design

I. REQUIRED SERVICES

Provide high quality landscape architecture and irrigation system design services for Public Works projects in a timely cost effective manner. Coordinate and perform all work in accordance with F.D.O.T. Florida Highway Landscape Guide, the Florida Irrigation society, and Irrigation Association standards and specifications, accepted xeriscape practices and Seminole County requirements. Prepare and provide unambiguous contract bid documents suitable for project construction and a site evaluation report for constructed work.

II. QUALIFICATIONS

- A) The Consultant's work shall be performed by a registered landscape architect or other licensed professionals that are experienced and proficient in the design of a Public Works landscape and irrigation system in accordance with accepted xeriscape practices and the standards and specifications of the Florida Irrigation Association.
- B) The Consultant shall be Florida Department of Transportation (F.D.O.T.) pre-qualified in the landscape architecture design category.

**Board of County Commissioners
SEMINOLE COUNTY, FLORIDA**

WORK ORDER

Work Order Number: _____

Master Agreement No.: _____ Dated: _____
Contract Title: _____
Project Title: _____

Consultant: _____
Address: _____

ATTACHMENTS TO THIS WORK ORDER:

- drawings/plans/specifications
- scope of services
- special conditions
- _____

METHOD OF COMPENSATION:

- fixed fee basis
- time basis-not-to-exceed
- time basis-limitation of funds

TIME FOR COMPLETION: The services to be provided by the CONSULTANT shall commence upon execution of this Agreement by the parties and shall be completed within "X" (days, months, years) of the effective date of this agreement. Failure to meet the completion date may be grounds for Termination for Default.

Work Order Amount: _____ DOLLARS (\$ _____)

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order on this _____ day of _____, 20____, for the purposes stated herein.

(THIS SECTION TO BE COMPLETED BY THE COUNTY)

ATTEST:

_____, Secretary By: _____, President

(CORPORATE SEAL)

Date: _____

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

WITNESSES:

(Procurement Analyst)

By: _____
Robert L. Hunter, Procurement Supervisor

(Procurement Analyst)

Date: _____
As authorized by Section 8.153 Seminole
County Administrative Code.

OC # _____ ON # _____

WORK ORDER TERMS AND CONDITIONS

- a) Execution of this Work Order by the COUNTY shall serve as authorization for the CONSULTANT to provide, for the stated project, professional services as set out in the Scope of Services attached as Exhibit "A" to the Master Agreement cited on the face of this Work Order and as further delineated in the attachments listed on this Work Order.
- b) Term: This work order shall take effect on the date of its execution by the County and expires upon final delivery, inspection, acceptance and payment unless terminated earlier in accordance with the Termination provisions herein.
- c) The CONSULTANT shall provide said services pursuant to this Work Order, its Attachments, and the cited Master Agreement (as amended, if applicable) which is incorporated herein by reference as if it had been set out in its entirety.
- d) Whenever the Work Order conflicts with the cited Master Agreement, the Master Agreement shall prevail.
- e) METHOD OF COMPENSATION - If the compensation is based on a:
 - (i) FIXED FEE BASIS, then the Work Order Amount becomes the Fixed Fee Amount and the CONSULTANT shall perform all work required by this Work Order for the Fixed Fee Amount. The Fixed Fee is an all-inclusive Firm Fixed Price binding the CONSULTANT to complete the work for the Fixed Fee Amount regardless of the costs of performance. In no event shall the CONSULTANT be paid more than the Fixed Fee Amount.
 - (ii) TIME BASIS WITH A NOT-TO-EXCEED AMOUNT, then the Work Order Amount becomes the Not-to-Exceed Amount and the CONSULTANT shall perform all the work required by this Work Order for a sum not exceeding the Not-to-Exceed Amount. In no event is the CONSULTANT authorized to incur expenses exceeding the not-to-exceed amount without the express written consent of the COUNTY. Such consent will normally be in the form of an amendment to this Work Order. The CONSULTANT's compensation shall be based on the actual work required by this Work Order and the Labor Hour Rates established in the Master Agreement.
 - (iii) TIME BASIS WITH A LIMITATION OF FUNDS AMOUNT, then the Work Order Amount becomes the Limitation of Funds amount and the CONSULTANT is not authorized to exceed the Limitation of Funds amount without prior written approval of the COUNTY. Such approval, if given by the COUNTY, shall indicate a new Limitation of Funds amount. The CONSULTANT shall advise the COUNTY whenever the CONSULTANT has incurred expenses on this Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount. The CONSULTANT's compensation shall be based on the actual work required by this Work Order and the Labor Hour Rates established in the Master Agreement.
- f) Payment to the CONSULTANT shall be made by the COUNTY in strict accordance with the payment terms of the referenced Master Agreement.
- g) It is expressly understood by the CONSULTANT that this Work Order, until executed by the COUNTY, does not authorize the performance of any services by the CONSULTANT and that the COUNTY, prior to its execution of the Work Order, reserves the right to authorize a party other than the CONSULTANT to perform the services called for under this Work Order; if it is determined that to do so is in the best interest of the COUNTY.
- h) The CONSULTANT shall sign the Work Order first and the COUNTY second. This Work Order becomes effective and binding upon execution by the COUNTY and not until then. A copy of this Work Order will be forwarded to the CONSULTANT upon execution by the COUNTY.

Exhibit C

Miller Legg 2007 Fee Schedule							
Labor Category	Raw Hourly Rate	Fringe and Overhead %	Fringe and Overhead Amount	Loaded Hourly Rate	Profit %	Profit Amount	Billing Rate
Principal	\$ 61.88	62%	\$ 100.25	\$ 162.13	15%	\$ 24.32	\$ 186.44
Senior Landscape Architect	\$ 56.33	62%	\$ 91.25	\$ 147.58	15%	\$ 22.14	\$ 169.72
Project Landscape Architect	\$ 41.00	62%	\$ 66.42	\$ 107.42	15%	\$ 16.11	\$ 123.53
Landscape Architect II	\$ 29.09	62%	\$ 47.13	\$ 76.22	15%	\$ 11.43	\$ 87.65
Landscape Designer II	\$ 25.25	62%	\$ 40.91	\$ 66.16	15%	\$ 9.92	\$ 76.09
Irrigation Designer I	\$ 25.25	62%	\$ 40.91	\$ 66.16	15%	\$ 9.92	\$ 76.09
Landscape Designer I	\$ 21.21	62%	\$ 34.37	\$ 55.58	15%	\$ 8.34	\$ 63.92
Technician	\$ 15.92	62%	\$ 25.79	\$ 41.71	15%	\$ 6.26	\$ 47.97

**CONTINUING PROFESSIONAL CONSULTANT SERVICES AGREEMENT (PS-1903-07/BLH)
LANDSCAPE ARCHITECTURE AND IRRIGATION DESIGN**

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between **DAVID WICKHAM & ASSOCIATES, INC.**, duly authorized to conduct business in the State of Florida, whose address is 722 Powderhorn Circle, Lake Mary, Florida 32746-5113, hereinafter called "CONSULTANT" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter called "COUNTY".

W I T N E S S E T H:

WHEREAS, COUNTY desires to retain the services of a competent and qualified CONSULTANT to provide continuing professional landscape architecture and irrigation design services in Seminole County; and

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

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

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

SECTION 1. SERVICES. COUNTY does hereby retain CONSULTANT to furnish professional services and perform those tasks as further described in the Scope of Services attached hereto as Exhibit A and made a part hereof and the solicitation package and any addenda thereto. Required services shall be specifically enumerated, described, and depicted in the Work Orders authorizing performance of the specific project, task, or study. This Agreement standing alone does not authorize the performance of any work or require COUNTY to place any

orders for work.

SECTION 2. TERM. This Agreement shall take effect on the date of its execution by COUNTY and shall run for a period of one (1) year and, at the sole option of COUNTY, may be renewed for two (2) successive periods not to exceed one (1) year each. Expiration of the term of this Agreement shall have no effect upon Work Orders issued pursuant to this Agreement and prior to the expiration date. Obligations entered therein by both parties shall remain in effect until completion of the work authorized by the Work Order.

SECTION 3. AUTHORIZATION FOR SERVICES. Authorization for performance of professional services by CONSULTANT under this Agreement shall be in the form of written Work Orders issued and executed by COUNTY and signed by CONSULTANT. A sample Work Order is attached hereto as Exhibit B. Each Work Order shall describe the services required, state the dates for commencement and completion of work, and establish the amount and method of payment.  The Work Orders will be issued under and shall incorporate the terms of this Agreement. COUNTY makes no covenant or promise as to the number of available projects or that CONSULTANT will perform any project for COUNTY during the life of this Agreement. COUNTY reserves the right to contract with other parties for the services contemplated by this Agreement when it is determined by COUNTY to be in the best interest of COUNTY to do so.

SECTION 4. TIME FOR COMPLETION. The services to be rendered by CONSULTANT shall be commenced as specified in such Work Orders as may be issued hereunder and shall be completed within the time specified therein. In the event COUNTY determines that significant benefits would accrue from expediting an otherwise established time schedule for completion of services under a given Work Order, that Work Order may include a negotiated schedule of incentives based on time savings.

SECTION 5. COMPENSATION. COUNTY agrees to compensate CONSULTANT for the professional services called for under this Agreement on either a "Fixed Fee Basis" or on a "Time Basis Method". If a Work Order is issued under a Time Basis Method, then CONSULTANT shall be compensated in accordance with the rate schedule attached as Exhibit C. If a Work Order is issued for a Fixed Fee Basis, then the applicable Work Order Fixed Fee amount shall include any and all reimbursable expenses. The total annual compensation paid to CONSULTANT pursuant to this Agreement, including reimbursable expenses, shall not exceed the amount budgeted annually by COUNTY for continuing professional consultant services for landscape architecture and irrigation design services.

SECTION 6. REIMBURSABLE EXPENSES. If a Work Order is issued on a Time Basis Method, then reimbursable expenses are in addition to the hourly rates. Reimbursable expenses are subject to the applicable "Not-to-Exceed" or "Limitation of Funds" amount set forth in the Work Order. Reimbursable expenses may include actual expenditures made by CONSULTANT, its employees, or its professional associates in the interest of the Project for the expenses listed in the following paragraphs:

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

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

(c) If authorized in writing in advance by COUNTY, the cost of other expenditures made by CONSULTANT in the interest of the Project.

SECTION 7. PAYMENT AND BILLING.

(a) If the Scope of Services required to be performed by a Work

Order is clearly defined, the Work Order shall be issued on a Fixed Fee Basis. CONSULTANT shall perform all work required by the Work Order, but in no event shall CONSULTANT be paid more than the negotiated Fixed Fee amount stated therein.

(b) If the Scope of Services is not clearly defined, the Work Order may be issued on a Time Basis Method and contain a Not-to Exceed amount. If a Not-to-Exceed amount is provided, CONSULTANT shall perform all work required by the Work Order, but in no event shall CONSULTANT be paid more than the Not-to-Exceed amount specified in the applicable Work Order.

(c) If the Scope of Services is not clearly defined, the Work Order may be issued on a Time Basis Method and contain a Limitation of Funds amount. CONSULTANT is not authorized to exceed that amount without the prior written approval of COUNTY. Said approval, if given by COUNTY, shall indicate a new Limitation of Funds amount. CONSULTANT shall advise COUNTY whenever CONSULTANT has incurred expenses on any Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount.

(d) For Work Orders issued on a Fixed Fee Basis, CONSULTANT may invoice the amount due based on the percentage of total Work Order services actually performed and completed, but in no event shall the invoice amount exceed a percentage of the Fixed Fee amount equal to a percentage of the total services actually completed. COUNTY shall pay CONSULTANT ninety percent (90%) of the approved amount on Work Orders issued on a Fixed Fee Basis.

(e) For Work Orders issued on a Time Basis Method with a Not-to-Exceed amount, CONSULTANT may invoice the amount due for actual work hours performed, but in no event shall the invoice amount exceed a percentage of the Not-to-Exceed amount equal to a percentage of the

total services actually completed. COUNTY shall pay CONSULTANT ninety percent (90%) of the approved amount on Work Orders issued on a Time Basis Method with a Not-to-Exceed amount.

(f) Each Work Order issued on a Fixed Fee Basis or Time Basis Method with a Not-to-Exceed amount shall be treated separately for retainage purposes. If COUNTY determines that work is substantially complete and the amount retained is considered to be in excess, COUNTY may, at its sole and absolute discretion, release the retainage or any portion thereof.

(g) For Work Orders issued on a Time Basis Method with a Limitation of Funds amount, CONSULTANT may invoice the amount due for services actually performed and completed. COUNTY shall pay CONSULTANT one hundred percent (100%) of the approved amount on Work Orders issued on a Time Basis Method with a Limitation of Funds amount.

(h) Payments shall be made by COUNTY to CONSULTANT when requested as work progresses for services  furnished, but not more than once monthly. Each Work Order shall be invoiced separately. At the close of each calendar month, CONSULTANT shall render to COUNTY a properly dated itemized invoice describing any services rendered, the cost of the services, the name and address of CONSULTANT, Work Order Number, Contract Number, and all other information required by this Agreement.

The original invoice and one (1) copy shall be sent to:

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

Two (2) copies of the invoice shall be sent to:

Seminole County Engineering Department
520 W. Lake Mary Blvd., Suite 200
Sanford, FL 32773

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

SECTION 8. GENERAL TERMS OF PAYMENT AND BILLING.

(a) Upon satisfactory completion of work required hereunder and upon acceptance of the work by COUNTY, CONSULTANT may invoice COUNTY for the full amount of compensation provided for under the terms of this Agreement including any retainage and less any amount already paid by COUNTY. COUNTY shall pay CONSULTANT within thirty (30) days of receipt of proper invoice.

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

(c) In addition to the above, if federal funds are used for any work under the Agreement, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of CONSULTANT which are directly pertinent to work performed under this Agreement for purposes of making audit, examination, excerpts, and transcriptions.

(d) CONSULTANT agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to work performed under this Agreement in such a manner as will readily conform to the

terms of this Agreement and to make such materials available at CONSULTANT's office at all reasonable times during the Agreement period and for five (5) years from the date of final payment under the contract for audit or inspection as provided for in subsections (b) and (c) of this Section.

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

SECTION 9. RESPONSIBILITIES OF CONSULTANT.

(a) CONSULTANT shall be responsible for the professional quality, technical accuracy, competence, methodology, accuracy, and the coordination of all of the following which are listed for illustration purposes and not as a limitation:  documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in his plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature.

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

SECTION 10. OWNERSHIP OF DOCUMENTS. All deliverable analysis, reference data, survey data, plans, and reports or any other form of written instrument or document that may result from CONSULTANT'S services or have been created during the course of CONSULTANT'S performance under this Agreement shall become the property of COUNTY after final payment is made to CONSULTANT.

SECTION 11. TERMINATION.

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

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

(2) deliver to COUNTY all data, drawings, specifications, reports, estimates, summaries, and ~~any~~ and all such other information and materials of whatever type or nature as may have been accumulated by CONSULTANT in performing this Agreement, whether completed or in process.

(b) If the termination is for the convenience of COUNTY, CONSULTANT shall be paid compensation for services performed to the date of termination. If this Agreement calls for the payment based on a Fixed Fee amount, CONSULTANT shall be paid no more than a percentage of the Fixed Fee amount equivalent to the percentage of the completion of work, as determined solely and conclusively by COUNTY, contemplated by this Agreement.

(c) If the termination is due to the failure of CONSULTANT to fulfill its Agreement obligations, COUNTY may take over the work and prosecute the same to completion by other Agreements or otherwise. In

such case, CONSULTANT shall be liable to COUNTY for all reasonable additional costs occasioned to COUNTY thereby. CONSULTANT shall not be liable for such additional costs if the failure to perform the Agreement arises without any fault or negligence of CONSULTANT; provided, however, that CONSULTANT shall be responsible and liable for the actions of its subcontractors, agents, employees, and persons and entities of a similar type or nature. Such causes may include acts of God or of the public enemy, acts of COUNTY in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the failure to perform must be beyond the control and without any fault or negligence of CONSULTANT.

(d) If after notice of termination for failure to fulfill its Agreement obligations it is determined that CONSULTANT had not so failed, the termination shall be conclusively deemed to have been effected for the convenience of COUNTY. In such event, adjustment in the Agreement price shall be made as provided in subsection (b) of this Section.

(e) The rights and remedies of COUNTY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Agreement.

SECTION 12. AGREEMENT AND WORK ORDER IN CONFLICT. Whenever the terms of this Agreement conflict with any Work Order issued pursuant to it, the Agreement shall prevail.

SECTION 13. EQUAL OPPORTUNITY EMPLOYMENT. CONSULTANT agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, disability, or national origin and will take steps to ensure that applicants are employed, and employees are treated during

employment, without regard to race, color, religion, sex, age, disability, or national origin. This provision shall include, but not be limited to, the following: employment; upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SECTION 14. NO CONTINGENT FEES. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from award or making of this Agreement. For the breach or violation of this provision, COUNTY shall have the right to terminate the Agreement at its sole discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

SECTION 15. CONFLICT OF INTEREST.

(a) CONSULTANT agrees that it will not contract for or accept employment for the performance of any work or service with any individual, business, corporation, or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with COUNTY.

(b) CONSULTANT agrees that it will neither take any action nor engage in any conduct that would cause any COUNTY employee to violate the provisions of Chapter 112, Florida Statutes, relating to ethics in government.

(c) In the event that CONSULTANT causes or in any way promotes or

encourages a COUNTY officer, employee, or agent to violate Chapter 112, Florida Statutes, COUNTY shall have the right to terminate this Agreement.

SECTION 16. ASSIGNMENT. This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the other party and in such cases only by a document of equal dignity herewith.

SECTION 17. SUBCONTRACTORS. In the event that CONSULTANT, during the course of the work under this Agreement, requires the services of any subcontractors or other professional associates in connection with services covered by this Agreement, CONSULTANT must first secure the prior express written approval of COUNTY. If subcontractors or other professional associates are required in connection with the services covered by this Agreement, CONSULTANT shall remain fully responsible for the services of subcontractors or other professional associates.

SECTION 18. INDEMNIFICATION OF COUNTY. CONSULTANT agrees to hold harmless, replace, and indemnify COUNTY, its commissioners, officers, employees, and agents against any and all claim, losses, damages or lawsuits for damages, arising from the negligent, reckless, or intentionally wrongful provision of services hereunder by CONSULTANT, whether caused by CONSULTANT or otherwise.

SECTION 19. INSURANCE.

(a) GENERAL. CONSULTANT shall at its own cost procure the insurance required under this Section.

(1) CONSULTANT shall furnish COUNTY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required by this Section (Professional Liability, Workers' Compensation/Employer's Liability and Commercial

General Liability). COUNTY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy. The Certificate of Insurance shall provide that COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. Until such time as the insurance is no longer required to be maintained by CONSULTANT, CONSULTANT shall provide COUNTY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided.

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

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

(4) Neither approval by COUNTY nor failure to disapprove the insurance furnished by a CONSULTANT shall relieve CONSULTANT of its full responsibility for performance of any obligation including CONSULTANT's indemnification of COUNTY under this Agreement.

(b) INSURANCE COMPANY REQUIREMENTS. Insurance companies providing the insurance under this Agreement must meet the following requirements:

(1) Companies issuing policies (other than Workers' Compensation) must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.

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

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

(c) SPECIFICATIONS. Without limiting any of the other obligations or liability of CONSULTANT, CONSULTANT shall, at its sole expense, procure, maintain, and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this

subsection. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by CONSULTANT and shall be maintained in force until the Agreement completion date. The amounts and types of insurance shall conform to the following minimum requirements.

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

(A) CONSULTANT's insurance shall cover CONSULTANT for liability which would be covered by the latest edition of the standard Workers' Compensation Policy as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. CONSULTANT will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both CONSULTANT and its subcontractors are outlined in subsection (c) below.

In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the United States Longshoremen and Harbor Workers' Compensation Act, Federal Employers' Liability Act, and any other applicable federal or state law.

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

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

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

(2) Commercial General Liability.

(A) CONSULTANT's insurance shall cover CONSULTANT for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment, and the elimination of coverage for Fire Damage Legal Liability.

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

	<u>LIMITS</u>
General Aggregate	Three (3) Times the Each-Occurrence Limit
Personal & Advertising Injury Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00



(3) Professional Liability Insurance. CONSULTANT shall carry professional liability insurance with limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00).

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

(e) OCCURRENCE BASIS. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Professional Liability insurance policy must be on an occurrence basis or claims-made basis. If a claims-made basis, the coverage must respond

to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

(f) OBLIGATIONS. Compliance with the foregoing insurance requirements shall not relieve CONSULTANT, its employees, or its agents of liability from any obligation under a Section or any other portions of this Agreement.

SECTION 20. ALTERNATIVE DISPUTE RESOLUTION.

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY protest procedures prior to filing suit or otherwise pursuing legal remedies. COUNTY procedures for proper invoice and payment disputes are set forth in Section 22.15, "Prompt Payment Procedures," Seminole County Administrative Code. Contract claims include all controversies, except  disputes addressed by the "Prompt Payment Procedures," arising under this Agreement with ADR procedures set forth in Section 220.102, "Contract Claims," Seminole County Code.

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

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

SECTION 21. REPRESENTATIVES OF COUNTY AND CONSULTANT.

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

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



SECTION 22. ALL PRIOR AGREEMENTS SUPERSEDED. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained or referred to in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

SECTION 23. MODIFICATIONS, AMENDMENTS, OR ALTERATIONS. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

SECTION 24. INDEPENDENT CONTRACTOR. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties or as constituting CONSULTANT (including its officers, employees, and agents) an agent, representative, or employee of COUNTY for any purpose, or in any manner, whatsoever. CONSULTANT is to be and shall remain forever an independent contractor with respect to all services performed under this Agreement.

SECTION 25. EMPLOYEE STATUS. Persons employed by CONSULTANT in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to COUNTY's officers and employees either by operation of law or by COUNTY.

SECTION 26. SERVICES NOT PROVIDED FOR. No claim for services furnished by CONSULTANT not specifically provided for herein shall be honored by COUNTY.

SECTION 27. PUBLIC RECORDS LAW. CONSULTANT acknowledges COUNTY's obligations under Article I, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, to release public records to members of the public upon request. CONSULTANT acknowledges that COUNTY is required to comply with Article I, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls over the terms of this Agreement.

SECTION 28. COMPLIANCE WITH LAWS AND REGULATIONS. In providing all services pursuant to this Agreement, CONSULTANT shall abide by all statutes, ordinances, rules, and regulations pertaining to or regulating the provisions of such services, including those now in effect and

hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement and shall entitle COUNTY to terminate this Agreement immediately upon delivery of written notice of termination to CONSULTANT.

SECTION 29. NOTICES. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

For COUNTY:

Engineering Division
520 W. Lake Mary Blvd., Suite 200
Sanford, FL 32773



For CONSULTANT:

David Wickham & Associates, Inc.
722 Powderhorn Circle
Lake Mary, FL 32746-5113

SECTION 30. RIGHTS AT LAW RETAINED. The rights and remedies of COUNTY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date below written for execution by COUNTY.

ATTEST:

DAVID WICKHAM & ASSOCIATES, INC.

CLAUDIA WICKHAM
Vice-President

By: _____
DAVID WICKHAM
President

(CORPORATE SEAL)

Date: _____

(County Signature Page Follows)

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

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

By: _____
CARLTON HENLEY, Chairman

Date: _____

For use and reliance
of Seminole County only.

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

Approved as to form and
legal sufficiency.

County Attorney

Attachments:

- Exhibit A - Scope of Services
- Exhibit B - Sample Work Order
- Exhibit C - Rate Schedule



AEC:jjr
09/21/07
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EXHIBIT A

Scope of Consultant Services for Landscape Architecture and Irrigation Design

I. REQUIRED SERVICES

Provide high quality landscape architecture and irrigation system design services for Public Works projects in a timely cost effective manner. Coordinate and perform all work in accordance with F.D.O.T. Florida Highway Landscape Guide, the Florida Irrigation society, and Irrigation Association standards and specifications, accepted xeriscape practices and Seminole County requirements. Prepare and provide unambiguous contract bid documents suitable for project construction and a site evaluation report for constructed work.

II. QUALIFICATIONS

- A) The Consultant's work shall be performed by a registered landscape architect or other licensed professionals that are experienced and proficient in the design of a Public Works landscape and irrigation system in accordance with accepted xeriscape practices and the standards and specifications of the Florida Irrigation Association.
- B) The Consultant shall be Florida Department of Transportation (F.D.O.T.) pre-qualified in the landscape architecture design category.

**Board of County Commissioners
SEMINOLE COUNTY, FLORIDA**

WORK ORDER

Work Order Number: _____

Master Agreement No.: _____ Dated: _____
Contract Title: _____
Project Title: _____

Consultant: _____
Address: _____

ATTACHMENTS TO THIS WORK ORDER:

- drawings/plans/specifications
- scope of services
- special conditions
- _____

METHOD OF COMPENSATION:

- fixed fee basis
- time basis-not-to-exceed
- time basis-limitation of funds

TIME FOR COMPLETION: The services to be provided by the CONSULTANT shall commence upon execution of this Agreement by the parties and shall be completed within "X" (days, months, years) of the effective date of this agreement. Failure to meet the completion date may be grounds for Termination for Default.

Work Order Amount: _____ DOLLARS (\$ _____)

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order on this _____ day of _____, 20____, for the purposes stated herein.

(THIS SECTION TO BE COMPLETED BY THE COUNTY)

ATTEST:

_____, Secretary By: _____, President

(CORPORATE SEAL)

Date: _____

WITNESSES:

(Procurement Analyst)

By: _____
Robert L. Hunter, Procurement Supervisor

(Procurement Analyst)

Date: _____
As authorized by Section 8.153 Seminole
County Administrative Code.

OC # _____ ON # _____

WORK ORDER TERMS AND CONDITIONS

- a) Execution of this Work Order by the COUNTY shall serve as authorization for the CONSULTANT to provide, for the stated project, professional services as set out in the Scope of Services attached as Exhibit "A" to the Master Agreement cited on the face of this Work Order and as further delineated in the attachments listed on this Work Order.
- b) Term: This work order shall take effect on the date of its execution by the County and expires upon final delivery, inspection, acceptance and payment unless terminated earlier in accordance with the Termination provisions herein.
- c) The CONSULTANT shall provide said services pursuant to this Work Order, its Attachments, and the cited Master Agreement (as amended, if applicable) which is incorporated herein by reference as if it had been set out in its entirety.
- d) Whenever the Work Order conflicts with the cited Master Agreement, the Master Agreement shall prevail.
- e) METHOD OF COMPENSATION - If the compensation is based on a:
 - (i) FIXED FEE BASIS, then the Work Order Amount becomes the Fixed Fee Amount and the CONSULTANT shall perform all work required by this Work Order for the Fixed Fee Amount. The Fixed Fee is an all-inclusive Firm Fixed Price binding the CONSULTANT to complete the work for the Fixed Fee Amount regardless of the costs of performance. In no event shall the CONSULTANT be paid more than the Fixed Fee Amount.
 - (ii) TIME BASIS WITH A NOT-TO-EXCEED AMOUNT, then the Work Order Amount becomes the Not-to-Exceed Amount and the CONSULTANT shall perform all the work required by this Work Order for a sum not exceeding the Not-to-Exceed Amount. In no event is the CONSULTANT authorized to incur expenses exceeding the not-to-exceed amount without the express written consent of the COUNTY. Such consent will normally be in the form of an amendment to this Work Order. The CONSULTANT's compensation shall be based on the actual work required by this Work Order and the Labor Hour Rates established in the Master Agreement.
 - (iii) TIME BASIS WITH A LIMITATION OF FUNDS AMOUNT, then the Work Order Amount becomes the Limitation of Funds amount and the CONSULTANT is not authorized to exceed the Limitation of Funds amount without prior written approval of the COUNTY. Such approval, if given by the COUNTY, shall indicate a new Limitation of Funds amount. The CONSULTANT shall advise the COUNTY whenever the CONSULTANT has incurred expenses on this Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount. The CONSULTANT's compensation shall be based on the actual work required by this Work Order and the Labor Hour Rates established in the Master Agreement.
- f) Payment to the CONSULTANT shall be made by the COUNTY in strict accordance with the payment terms of the referenced Master Agreement.
- g) It is expressly understood by the CONSULTANT that this Work Order, until executed by the COUNTY, does not authorize the performance of any services by the CONSULTANT and that the COUNTY, prior to its execution of the Work Order, reserves the right to authorize a party other than the CONSULTANT to perform the services called for under this Work Order; if it is determined that to do so is in the best interest of the COUNTY.
- h) The CONSULTANT shall sign the Work Order first and the COUNTY second. This Work Order becomes effective and binding upon execution by the COUNTY and not until then. A copy of this Work Order will be forwarded to the CONSULTANT upon execution by the COUNTY.

FEE SCHEDULE

Labor Category	Raw Hourly Rate	Fringe and Overhead %	Fringe and Overhead Amount	Loaded Hourly Rate	Profit %	Profit Amount	Billing Rate
Principal/ Sr. Designer	\$36.00	50%	\$54.00	\$90.00	10%	\$9.00	\$99.00*
Technician/ Drafter	\$27.00	50%	\$40.50	\$67.50	10%	\$6.75	\$74.25*
Secretary/ Typing	\$18.00	50%	\$27.00	\$45.00	10%	\$4.50	\$49.50*

* David Wickham & Associates, Inc. will hold to these/this Fee Schedule billing rate(s) for the first year of the master agreement (PS-1903-07/BLH), and, throughout the additional two years of this agreement.