



Lake County Forest Preserves

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DATE: June 5, 2023

MEMO TO: Paras Parekh, Chair
Planning Committee

Agenda Item # 10.9

Gina Roberts, Chair
Finance Committee

FROM: John E. Nelson
Director of Operations and Infrastructure

RECOMMENDATION: Recommend approval of a Resolution Awarding a Contract for Construction Management Services for the construction of the new Grounds Maintenance Facility at Lakewood Forest Preserves to Gilbane Building Company, in the Contract Price of \$738,276.00.

STRATEGIC DIRECTIONS SUPPORTED: Organizational Sustainability

FINANCIAL DATA: The Net Zero Grounds Maintenance Facility project was approved as part of the adopted FY2023 Capital Improvement Plan. The actual cost of this portion of the project in the amount of \$738,276.00 will be charged to account 25104000-803000-61011.

BACKGROUND: The proposed new grounds maintenance facility at Lakewood Forest Preserve will be built as a 7,982 square feet net-zero energy building. To best manage the project during its construction phase, staff recommends that the District engage a qualified construction management services firm to assist with the project management, coordinate the trade contractors, monitor quality control during construction, provide schedule and budget oversight, and assist with project commissioning and closeout. Under a previous existing contract, Gilbane Building Company has satisfactorily worked with the District to review the design plans, assist with preparation of trade construction packages that were bid, and evaluate the bids received to provide recommendation for the trade contractors that will make up the construction team.

REVIEW BY OTHERS: Chief Operations Officer, Director of Finance, Corporate Counsel.

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
REGULAR JUNE MEETING
JUNE 14, 2023**

MISTER PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING COMMITTEE** and **FINANCE COMMITTEE** present herewith “A Resolution Awarding a Contract for Construction Management Services for the Grounds Maintenance Facility at Lakewood Forest Preserve to Gilbane Building Company” and request its approval.

PLANNING COMMITTEE:

Date: 6-5-2023 Roll Call Vote: Ayes: _____ Nays: _____
 Voice Vote Majority Ayes; Nays: 0

FINANCE COMMITTEE:

Date: 6-5-2023 Roll Call Vote: Ayes: _____ Nays: _____
 Voice Vote Majority Ayes; Nays: 0

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**A RESOLUTION AWARDING A CONTRACT FOR
CONSTRUCTION MANAGEMENT SERVICES FOR THE GROUNDS
MAINTENANCE FACILITY AT LAKEWOOD FOREST PRESERVE
TO GILBANE BUILDING COMPANY**

WHEREAS, the Lake County Forest Preserve District (the "District") desires to retain a firm to perform construction management services for the construction of the Grounds Maintenance Facility at Lakewood Forest Preserve (the "Services") ; and

WHEREAS, the Director of Operations and Infrastructure and the Purchasing Manager have determined that the Services require personal confidence; and

WHEREAS, the Purchasing Manager and the Director of Operations and Infrastructure have solicited a proposal for the Services from the Gilbane Building Company; and

WHEREAS, the District staff, the Purchasing Manager, the Director of Operations and Infrastructure, and the Planning and Finance Committees recommend that the Board of Commissioners (i) find that the proposal for the Services submitted by Gilbane Building Company is the proposal that is the most advantageous to the District; and (ii) award a contract for the Services to Gilbane Building Company in substantially the form attached hereto (the "Contract") in an amount not to exceed \$738,276.00 (the "Contract Price"); and

WHEREAS, the Board of Commissioners hereby finds that Gilbane Building Company is the most qualified Firm to provide the Services, that the proposal for the Services submitted by Gilbane Building Company is the proposal that is most advantageous to the District, and that the Contract Price is fair and reasonable; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois **THAT:**

Section 1: Recitals. The recitals set forth above are incorporated as a part of this Resolution by this reference.

Section 2: Award of Contract. A Contract in the amount of the Contract Price and in substantially the form attached hereto, is hereby awarded to Gilbane Building Company

Section 3: Execution of Contract. The Executive Director of the District is hereby authorized and directed to execute the Contract for the Services in the amount of the Contract Price.

Section 4: Payments. The District Treasurer shall make payments under the Contract only pursuant to and in accordance with the Contract terms.

Section 5: Effective Date. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this _____ day of _____, 2023

AYES:

NAYS:

APPROVED this _____ day of _____, 2023

Angelo D. Kyle, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____



CONTRACT BETWEEN

LAKE COUNTY FOREST PRESERVE DISTRICT
AND
GILBANE BUILDING COMPANY
FOR THE
PHASE III CONSTRUCTION MANAGEMENT SERVICES
GROUNDS MAINTENANCE FACILITY
LAKEWOOD FOREST PRESERVE

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PHASE III CONSTRUCTION MANAGEMENT SERVICES
GROUNDS MAINTENANCE FACILITY
LAKEWOOD FOREST PRESERVE

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**CONTRACT BETWEEN
LAKE COUNTY FOREST PRESERVE DISTRICT
AND
GILBANE BUILDING COMPANY
FOR THE
PHASE III CONSTRUCTION MANAGEMENT SERVICES
GROUNDS MAINTENANCE FACILITY
LAKEWOOD FOREST PRESERVE**

In consideration of the agreements set forth below, the Lake County Forest Preserve District, a body corporate and politic and unit of local government organized and existing under the Downstate Forest Preserve District Act, 70 ILCS 805/001 et seq., 1899 West Winchester Road, Libertyville, Illinois 60048, ("Owner") and Gilbane Building Company, a Rhode Island corporation with offices located at 123 N. Wacker Drive, 26th Floor, Chicago, Illinois 60606, ("Consultant") make this Contract as of _____, 2023 and hereby agree as follows:

ARTICLE I - THE SERVICES

1.1 Performance of the Services

Consultant shall, at its sole cost and expense, provide, perform, and complete all of the following professional Phase III Construction Management Services, all of which is referred to in this Agreement as the "Services":

A. Professional Services. Provide, perform, and complete, in the manner described and specified in this Contract, all professional services necessary to accomplish the "Project," as defined in Attachment A, in accordance with the Scope of Services attached hereto as Attachment B and the Special Project Requirements attached hereto as Attachment D.

B. Approvals. Procure and furnish all approvals and authorizations specified in Attachment A.

C. Insurance. Procure and furnish all required certificates and policies of insurance specified in Attachment A.

D. Standard of Performance. Provide, perform, and complete all of the foregoing in full compliance with this Contract, in a professional manner, and in accordance with the standards of professional practice, care, and diligence in existence at the time of performance of the Services applicable to recognized and qualified consulting firms in the Chicago Metropolitan Area (the "Standard of Performance").

1.2 Commencement and Completion Dates

Consultant shall commence the Services not later than the "Commencement Date" set forth in Attachment A, and shall diligently and continuously prosecute and carry out the Services at such a rate as will allow the Services to be fully provided, performed and completed in full compliance with this Contract not later than the "Completion Date" or, if the Services are to be performed in separate phases, the "Completion Dates," set forth in Attachment A. The time of commencement, rate of progress, and time of completion are referred to in this Contract as the "Contract Time."

1.3 Required Submittals

A. **Submittals Required.** Consultant shall submit to Owner all reports, documents, data, and information required to be submitted by Consultant under this Contract ("Required Submittals").

B. **Time of Submission and Owner's Review.** All Required Submittals shall be provided to Owner no later than the time, if any, specified in Attachment A, or otherwise in this Contract. If no time for submission is specified for any Required Submittal, then that Submittal shall be submitted within a reasonable time in light of its purpose and, in all events, in sufficient time, in Owner's opinion, to permit Owner to review that Submittal same prior to the commencement of any part of the Services to which that Submittal may relate. Owner shall have the right to require such corrections as may be necessary to make any Required Submittal conform to this Contract. No Services related to any Required Submittal shall be performed by Consultant until Owner has completed review of such Required Submittal with no exception noted. Owner's review and approval of any Required Submittal shall not relieve Consultant of the entire responsibility for the performance of the Services in full compliance with, and as required by or pursuant to this Contract, and shall not be regarded as any assumption of risk or liability by Owner. The Consultant shall not be held liable for claims of delay caused by the Owner's failure to timely review and approve any Required Submittal.

C. **Responsibility for Delay.** Consultant shall be responsible for any delay in the Services resulting from Consultant's, or its Sub-consultant's, delay in providing Required Submittals conforming to this Contract.

1.4 Review and Incorporation of Contract Provisions

Consultant represents and declares that it has carefully reviewed, and fully understands, this Contract, including all of its Attachments, all of which are by this reference incorporated into and made a part of this Contract.

1.5 Financial and Technical Ability to Perform

Consultant represents and declares that it is financially solvent, and has the financial resources necessary, and has sufficient experience and competence, and has the necessary capital, facilities, organization, and staff necessary to provide, perform, and complete the Services in full compliance with, and as required by or pursuant to, this Contract.

1.6 Time

Consultant represents and declares that the Contract Time is sufficient time to permit completion of the Services in full compliance with, and as required by or pursuant to, this Contract for the Contract Price.

1.7 Consultant's Personnel and Sub-Consultants

A. **Consultant's Personnel.** Consultant shall provide all personnel necessary to complete the Services, including without limitation, the "Key Project Personnel" identified in Attachment C. Consultant shall provide to Owner telephone numbers at which the Key Personnel can be reached on a 24-hour basis. Consultant and Owner may, by mutual agreement, make changes and additions to the designations of Key Project Personnel. Consultant shall have no claim for a Change Order, for compensation in excess of the Contract Price, or for a delay or extension of the Contract Time as a result of any such termination, reassignment, resignation, or substitution of Key Project Personnel.

B. **Approval and Use of Sub-Consultants.** Consultant shall perform the Services with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved by Owner in writing. All sub-consultants and subcontracts used by Consultant shall be acceptable to, and approved in advance by, Owner. Owner's approval of any sub-consultant or subcontract shall not relieve Consultant of full responsibility and liability for the provision, performance, and completion of the Services in full compliance with, and as required by or pursuant to, this Contract. All Services performed under any subcontract shall be subject to all of the provisions of this Contract in the same manner as if performed by employees of Consultant. Every reference in this Contract to "Consultant" shall be deemed also to refer to all sub-consultants of Consultant. Every subcontract shall include a provision binding the sub-consultant to all provisions of this Contract.

C. **Removal of Personnel and Sub-Consultants.** If any personnel or sub-consultant fails to perform the part of the Services undertaken by it in compliance with this Contract or in a manner reasonably satisfactory to Owner, Consultant, immediately upon notice from Owner, shall remove and replace such personnel or sub-consultant. Consultant shall have no claim for damages, for compensation in excess of the Contract Price, or for a delay or extension of the Contract Time as a result of any such removal or replacement.

1.8 Owner's Responsibilities

Owner shall, at its sole cost and expense: (i) designate in writing a person with authority to act as Owner's representative and on Owner's behalf with respect to the Services except those matters that may require approval of Owner's Board of Commissioners; (ii) provide to Consultant all criteria and full information as to Owner's requirements for the Project or work to which the Services relate, including Owner's objectives and constraints, schedule, space, capacity and performance requirements, and budgetary limitations relevant to the Project; (iii) the Owner shall retain an Architect to provide professional design services with respect to the Project; (iv) provide to Consultant all existing studies, reports, and other available data relevant to the Project; (v) arrange for access to and make all provisions for Consultant to enter upon public and private property as reasonably required for Consultant to perform the Services; (vi) provide surveys describing physical characteristics, legal limitations, and utility locations for the Project and the services of geotechnical engineers or other consultants when such services are reasonably requested by Consultant and are necessary for the performance of the Services, and are not already provided for in this Contract; (vii) provide structural, mechanical, chemical, air and water pollution tests, test for hazardous materials, and other laboratory and environmental tests, inspections, and reports required by law to be provided by Owner in connection with the Project; (viii) review Required Submittals and other reports, documents, data, and information presented by Consultant as appropriate; (ix) except as otherwise provided in Attachment A, provide approvals from all governmental authorities having jurisdiction over the Project when such services are reasonably requested by Consultant; (x) attend Project related meetings; and (xi) give prompt written notice to Consultant whenever Owner observes or otherwise becomes aware of any development that affects the scope or timing of the Services, provided, however, that failure to give such notice shall not relieve Consultant of any of its responsibilities under this Contract.

The Owner shall coordinate the services of its own consultants with those services provided by the Consultant. Upon the Consultant's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Consultant in this Agreement, or authorize the Consultant to furnish them as an Additional Service, when the Consultant requests such services and demonstrates that they are reasonably required by the scope of the Project.

1.9 Owner's Right to Terminate or Suspend Services for Convenience

A. **Termination or Suspension for Convenience.** Owner shall have the right, at any time and for its convenience, to terminate or suspend the Services in whole or in part at any time by written notice to Consultant. Every such notice shall state the extent and effective date of such termination or suspension. On such effective date, Consultant shall, as and to the extent directed, stop Services under this Contract, cease all placement of further orders or subcontracts, terminate or suspend Services under existing orders and subcontracts, and cancel any outstanding orders or subcontracts that may be canceled.

B. **Payment for Completed Services.** In the event of any termination pursuant to Subsection 1.9A above, Owner shall pay Consultant (i) such direct costs, including overhead, as Consultant shall have paid or incurred for all Services done in compliance with, and as required by or pursuant to, this Contract up to the effective date of termination; and (ii) such other costs pertaining to the Services, exclusive of overhead and profit, as Consultant may have reasonably and necessarily incurred as the result of such termination. Any such payment shall be offset by any prior payment or payments and shall be subject to Owner's rights, if any, to withhold and deduct as provided in this Contract.

When the Project is resumed after any such suspension by the Owner, the Consultant Contract Price shall be equitably adjusted for expenses incurred in the interruption and resumption of the Consultant's services and for the remaining Services and the time schedules.

ARTICLE II - CHANGES AND DELAYS

2.1 Changes

Owner shall have the right, by written order executed by Owner, to make changes to the timing or scope of the Services to be provided pursuant to this Contract (a "Services Change Order"). When a Change Order causes an increase or decrease in the amount of the Services, an equitable adjustment in the Contract Price or Contract Time may be made. No decrease in the amount of the Services caused by any Change Order shall entitle Consultant to make any claim for damages, anticipated profits, or other compensation. Consultant shall not undertake any change in the Services without receipt of an executed Change Order from Owner.

2.2 Delays

For any delay resulting from a cause that Consultant could not reasonably avoid or control, Consultant, upon timely written application, shall be entitled to issuance of a Change Order providing for) an extension of the Contract Time for a period of time equal to the delay resulting from such unavoidable cause. No extension of the Contract Time shall be allowed for any other delay in completion of the Services.

2.3 No Constructive Change Orders

No claims for equitable adjustments in the Contract Price or Contract Time shall be made or allowed unless embodied in a Change Order. If Owner fails to issue a Change Order including or fully including an equitable adjustment in the Contract Price or Contract Time to which Consultant claims it is entitled or, if Consultant believes that any requirement, direction, instruction, interpretation, determination or decision of Owner entitles Consultant to an equitable adjustment in the Contract Price or Contract Time that has not been included or fully included in a Change Order, then Consultant shall submit to Owner a written request for the issuance of or revision of a Change Order including the equitable adjustment or the additional equitable adjustment in the Contract Price or Contract Time that Consultant claims has not been included or fully included in a Change Order. Such request shall be submitted before Consultant proceeds with any Work for which Consultant claims an equitable adjustment is due and shall, in all events,

be submitted no later than two (2) business days after receipts of such Change Order or receipt of notice of such requirement, direction instruction, interpretation, determination or decision. Notwithstanding the submission of any such request, Consultant shall, unless otherwise directed by Owner within two (2) business days after receipt by Owner of such request, proceed without delay to perform the Work in compliance with the Change Order or as required, directed, instructed, interpreted or decided by Owner, and shall, pending a final resolution of the issue, keep a daily record of such Work. Unless Consultant submits such a request within two (2) business days after receipt of such Change Order or receipt of notice of such requirement, direction, instruction, interpretation, determination or decision, Consultant shall be conclusively deemed (i) to have agreed that such Change Order, requirement, direction, instruction, interpretation, determination or decision does not entitle Consultant to an equitable adjustment in the Contract Price or Contract Time; and (ii) to have waived all claims based on such Change Order, requirement, direction, instruction, interpretation, determination or decision.

ARTICLE III - CONSULTANT'S RESPONSIBILITY FOR DEFECTIVE SERVICES

3.1 Representation of Compliance

A. Scope of Representation. Consultant shall perform all Services in conformance with this Contract, free from defects and flaws in design, and in accordance with the Standard of Performance (the "Representation of Compliance").

B. Opinions of Cost. It is recognized that neither Consultant nor Owner has control over the costs of labor, material, equipment or services furnished by others or over competitive bidding, market or negotiating conditions, or construction contractors' methods of determining their prices. Accordingly, any opinions of probable Project costs or construction costs provided for herein are estimates only, made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as an experienced and qualified professional, familiar with the industry. Consultant does not guarantee that proposals, bids or actual Project costs or construction costs will not vary from opinions of probable cost prepared by Consultant.

3.2 Corrections

Consultant shall be responsible for the quality, technical accuracy, completeness and coordination of all Services under this Contract. Consultant shall correct and remedy all of its errors, omissions, and negligent acts related to the Services, promptly and without charge. *Consultant is not responsible for the errors, omissions, or negligent acts of any construction contractor or trade contractor.*

3.3 Risk of Loss

The Services shall be provided, performed, and completed at the risk and cost of Consultant. Consultant shall be responsible for any and all damages as a result of Consultant's negligent acts. Notwithstanding any other provision of this Contract, Consultant's obligations under this Section 3.3 shall exist without regard to, and shall not be construed to be waived by, the availability or unavailability of any insurance, either of Owner or Consultant, to indemnify, hold harmless, or reimburse Consultant for such damages, losses, or costs.

ARTICLE IV - INSURANCE; INDEMNIFICATION

4.1 Insurance

Contemporaneous with Consultant's execution of this Contract, Consultant shall provide certificates and policies of insurance evidencing at least the minimum insurance coverage and limits set forth in Attachment A. For good cause shown, Owner may extend the time for

submission of the required policies of insurance upon such terms, and with such assurances of complete and prompt performance, as Owner may impose in the exercise of its sole discretion. Such policies shall be in a form reasonably acceptable to Owner and from companies with a general rating of A-, and a financial size category of Class V or better, in Best's Insurance Guide and otherwise reasonably acceptable to Owner. Such insurance shall provide that no change to or cancellation of any insurance, nor any reduction in limits or coverage or other modifications affecting this Agreement, shall become effective until the expiration of thirty (30) days after written notice thereof shall have been given by the insurance company to Owner. Consultant shall, at all times while providing, performing, or completing the Services, including without limitation at all times while providing corrective Services pursuant to Section 3.2 of this Contract, maintain and keep in force, at Consultant's expense, at least the minimum insurance coverage and limits set forth in Attachment A.

4.2 Indemnification

Consultant, without regard to the availability or unavailability of any insurance, either of Owner or Consultant, shall, to the fullest extent permitted by law, indemnify, save harmless, and reimburse Owner against any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses, including reasonable attorneys' fees, that may arise or be alleged to have arisen out of or in connection with Consultant's negligent acts, errors, or omissions, except only to the extent caused by the negligence of Owner.

ARTICLE V - PAYMENT

5.1 Contract Price

Owner shall pay to Consultant, in accordance with and subject to the terms and conditions set forth in this Article V and Attachment A, and Consultant shall accept in full satisfaction for providing, performing, and completing the Services, the amount or amounts set forth in Attachment A ("Contract Price"), subject to any additions, deductions, or withholdings provided for in this Contract.

5.2 Taxes, Benefits and Royalties

The Contract Price includes applicable federal, state, and local taxes of every kind and nature applicable to the Services as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or other similar benefits and all costs, royalties, and fees arising from the use on or the incorporation into the Services of patented equipment, materials, supplies, tools, appliances, devices, processes, or inventions. Consultant waives and releases any claim against Owner arising from the payment of any such tax, contribution, premium, benefit, cost, royalty, or fee.

5.3 Progress Payments

A. **Payment in Installments.** The Contract Price shall be paid in installments in the manner set forth in Attachment A ("Progress Payments").

B. **Pay Requests.** Consultant shall, as a condition precedent to its right to receive each Progress Payment, submit to Owner an invoice accompanied by such receipts, vouchers, and other documents as may be necessary to reasonably establish Consultant's prior payment for all labor, material, and other things covered by the invoice and the absence of any lien or other interest of any party in regard to the Services performed under this Contract. In addition to the foregoing, such invoice shall include (i) employee classifications, rates per hour, and hours worked by each classification, and, if the Services are to be performed in separate phases, for each phase; (ii) total amount billed in the current period and total amount billed to date, and, if the

Services are to be performed in separate phases, for each phase; (iii) the estimated percent completion, and, if the Services are to be performed in separate phases, for each phase; and (iv) Consultant's certification that all prior Progress Payments have been properly applied to the Services with respect to which they were paid. Owner may, by written notice to Consultant, designate a specific day of each month on or before which pay requests must be submitted.

5.4 Final Acceptance and Final Payment

The Services or, if the Services are to be performed in separate phases, each phase of the Services, shall be considered complete on the date of final written acceptance by Owner of the Services or each phase of the Services, as the case may be, which acceptance shall not be unreasonably withheld or delayed. The Services or each phase of the Services, as the case may be, shall be deemed accepted by Owner if not objected to in writing within sixty (60) days after submission by Consultant of the Services or such phase of Services for final acceptance and payment plus, if applicable, such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the Services, or phase of Services, as the case may be. Within thirty (30) days after final acceptance, Owner shall pay to Consultant the balance of the Contract Price or, if the Services are to be performed in separate phases, the balance of that portion of the Contract Price with respect to such phase of the Services, after deducting therefrom charges, if any, against Consultant as provided for in this Contract ("Final Payment"). The acceptance by Consultant of Final Payment with respect to the Services or a particular phase of Services, as the case may be, shall operate as a full and complete release of Owner of and from any and all lawsuits, claims, or demands for further payment of any kind for the Services or, if the Services are performed in separate phases, for that phase of the Services.

5.5 Deductions

A. Owner's Right to Withhold. Notwithstanding any other provision of this Contract and without prejudice to any of Owner's other rights or remedies, Owner shall have the right at any time or times, whether before or after approval of any pay request, to deduct and withhold from any Progress or Final Payment that may be or become due under this Contract, such amount as may reasonably appear necessary to compensate Owner for any actual or prospective loss due to: (i) Services that are defective, damaged, flawed, unsuitable, nonconforming or incomplete; (ii) damage for which Consultant is liable under this contract; (iii) liens or claims of lien, regardless of merit; (iv) claims of Sub-consultants, suppliers or other persons, regardless of merit; (v) delay in the progress or completion of the Services; (vi) inability of Consultant to complete the Services; (vii) failure of Consultant to perform any of its obligations under this Contract; (viii) any other failure of Consultant to perform any of its obligations under this Contract; (ix) the cost to Owner including attorneys' fees and administrative costs of correcting any of the aforesaid matters or exercising any one or more of Owner's remedies set forth in Section 6.1 of this Contract.

B. Use of Withheld Funds. Owner shall be entitled to retain any and all amounts withheld pursuant to Subsection 5.5A above until Consultant shall have either performed the obligations in question or furnished security for such performance satisfactory to Owner. Owner shall be entitled to apply any money withheld or any other money due Consultant under this Contract to reimburse itself for any and all costs, expenses, losses, damages, liabilities, suits, judgments, awards, attorneys' fees and administrative expenses incurred, suffered or sustained by Owner and chargeable to Consultant under this Contract.

5.6 Accounting

Consultant shall keep accounts, books, and other records of all its billable charges and costs incurred in performing the Services in accordance with generally accepted accounting practices,

consistently applied, and in such manner as to permit verification of all entries. Consultant shall make all such material available for inspection by Owner, at the office of Consultant during normal business hours during this Contract and for a period of three years after termination of this Contract. Copies of such material shall be furnished, at Owner's expense, upon request.

ARTICLE VI - REMEDIES

6.1 Owner's Remedies

If it should appear at any time prior to Final Payment that Consultant has failed or refused to prosecute, or has delayed in the prosecution of the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this contract, or has attempted to assign this Contract or Consultant's rights under this contract, either in whole or in part, or has falsely made any representation or warranty in this Contract, or has otherwise failed, refused or delayed to perform or satisfy any other requirement of this Contract, or has failed to pay its debts as they come due ("Event of Default"), and has failed to cure any such Event of Default within five (5) business days after Consultant's receipt of written notice of such Event of Default, Owner shall have the right, at its election and without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

- A. Owner may require Consultant, within such reasonable time as may be fixed by Owner, to complete or correct all or any part of the Services that are defective, damaged, flawed, unsuitable, nonconforming or incomplete to accelerate all or any part of the Services, and to take any or all other action necessary to bring Consultant and the Services into strict compliance with this Contract.
- B. Owner may accept the defective, damaged, flawed, unsuitable, nonconforming, incomplete or dilatory Services as part thereof and make an equitable reduction in the Contract Price.
- C. Owner may terminate this Contract without liability for further payment of amounts due or to become due under this Contract.
- D. Owner may withhold from any Progress Payment or Final Payment, whether or not previously approved, or may recover from Consultant any and all costs including attorneys' fees and administrative expenses incurred by Owner as the result of any Event of Default or as a result of actions taken by Owner in response to any Event of Default.
- E. Owner may recover any direct damages suffered by Owner.

6.2 Terminations and Suspensions by Owner Deemed for Convenience

Any termination or suspension by Owner of Consultant's rights under this Contract for an alleged Event of Default that is ultimately held unjustified shall automatically be deemed to be a termination or suspension for the convenience of Owner under Section 1.9 of this Contract.

ARTICLE VII - LEGAL RELATIONSHIPS AND REQUIREMENTS

7.1 Binding Effect

This Contract shall be binding on Owner and Consultant and on their respective heirs, executors, administrators, personal representatives, and permitted successors and assigns. Every reference in this Contract to a party shall also be deemed to be a reference to the authorized officers, employees, agents, and representatives of such party.

7.2 Relationship of the Parties

Consultant shall act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Contract shall be construed (i) to create the relationship of principal and agent, partners, or joint ventures between Owner and Consultant or (ii) to create any relationship between Owner and any sub-consultant of Consultant.

7.3 No Collusion

Consultant hereby represents and certifies that Consultant is not barred from contracting with a unit of state or local government as a result of (i) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless Consultant is contesting, in accordance with the procedures established by the appropriate revenue Act, its liability for the tax or the amount of the tax, as set forth in 65 ILCS 5/11-42.1-1; or (ii) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 et seq. Consultant hereby represents that the only persons, firms, or corporations interested in this Contract as principals are those disclosed to Owner prior to the execution of this Contract, and that this Contract is made without collusion with any other person, firm, or corporation. If at any time it shall be found that Consultant has, in procuring this Contract, colluded with any other person, firm, or corporation, then Consultant shall be liable to Owner for all loss or damage that Owner may suffer thereby, and this Contract shall, at Owner's option, be null and void.

Consultant hereby represents and warrants that neither Consultant nor any person affiliated with Consultant or that has an economic interest in Consultant or that has or will have an interest in the Work or will participate, in any manner whatsoever, in the Work is acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism, and neither Consultant nor any person affiliated with Consultant or that has an economic interest in Consultant or that has or will have an interest in the Work or will participate, in any manner whatsoever, in the Work is, directly or indirectly, engaged in, or facilitating, the Work on behalf of any such person, group, entity or nation.

7.4 Assignment

Consultant shall not (i) assign this Contract in whole or in part, (ii) assign any of Consultant's rights or obligations under this Contract, or (iii) assign any payment due or to become due under this Contract without the prior express written approval of Owner, which approval may be withheld in the sole and unfettered discretion of Owner; provided, however, that Owner's prior written approval shall not be required for assignments of accounts, as defined in the Illinois Commercial Code, if to do so would violate Section 9-318 of the Illinois Commercial Code, 810 ILCS 5/9-318. Owner may assign this Contract, in whole or in part, or any or all of its rights or obligations under this Contract, without the consent of Consultant.

7.5 Confidential Information

All information supplied by Owner to Consultant for or in connection with this Contract or the Services shall be held confidential by Consultant and shall not, without the prior express written consent of Owner, be used for any purpose other than performance of the Services.

7.6 No Waiver

No examination, inspection, investigation, test, measurement, review, determination, decision, certificate or approval by Owner, nor any order by Owner for the payment of money, nor any payment for or use, occupancy, possession or acceptance of the whole or any part of the Services by Owner, nor any extension of time granted by Owner, nor any delay by Owner in exercising any

right under this Contract, nor any other act or omission of Owner shall constitute or be deemed to be an acceptance of any defective, damaged, flawed, unsuitable, nonconforming or incomplete Services, nor operate to waive or otherwise diminish the effect of any warranty or representation made by Consultant or of any requirement or provision of this Contract or of any remedy, power or right of Owner.

7.7 No Third Party Beneficiaries

No claim as a third party beneficiary under this Contract by any person, firm, or corporation (other than Owner and Consultant) shall be made or be valid against Owner or Consultant.

7.8 Notices

All notices required or permitted to be given under this Contract shall be in writing and shall be deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third business day after being deposited in the United States mail, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested.

Notices and communications to Owner shall be addressed to, and delivered at, the following address:

NAME: Lake County Forest Preserve District
ADDRESS: 1899 West Winchester Road
CITY STATE: Libertyville, Illinois 60048
Attention: John Nelson, Director of Operations and Infrastructure

Notices and communications to Consultant shall be addressed to and delivered at the following address:

NAME: Gilbane Building Company
ADDRESS: 123 N. Wacker Drive, 26th Floor
CITY STATE: Chicago, Illinois 60606
Attention: Derek Ward, Senior Executive

The foregoing shall not be deemed to preclude the use of other non-oral means of notification or to invalidate any notice properly given by any such other non-oral means.

By notice complying with the requirements of this Section 7.8, Owner and Consultant each shall have the right to change the address or addressee or both for all future notices to it, but no notice of a change of address or addressee shall be effective until actually received.

7.9 Governing Laws

This Contract and the rights of Owner and Consultant under this Contract shall be interpreted according to the internal laws, but not the conflict of laws rules, of the State of Illinois.

7.10 Changes in Laws

Unless otherwise explicitly provided in this Contract, any reference to laws shall include such laws as they may be amended or modified from time to time.

7.11 Compliance with Laws and Grants

Consultant shall perform, or cause its Sub-consultants to perform, the Services in accordance with all required governmental permits, licenses, or other approvals and authorizations, and with applicable statutes, ordinances, rules, and regulations. This requirement includes, but is not limited to, compliance with the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. Consultant shall also comply with applicable conditions of any federal, state, or local grant received by Owner or Consultant with respect to this Contract or the Services.

Consultant shall be liable for any fines or civil penalties that may be imposed or incurred by a governmental agency with jurisdiction over the Services as a result of Consultant's or its sub-consultants' improper performance of, or failure to properly perform, the Services or any part thereof.

Every provision of law required by law to be inserted into this Contract shall be deemed to be inserted herein.

7.12 Ownership of Documents

Consultant and Consultant's sub-consultants shall be deemed the original authors and owners respectively of materials produced pursuant to this Contract and shall retain all common law, statutory and other reserved rights, including copyrights. Consultant hereby grants and conveys to Owner perpetual, irrevocable non-exclusive rights and license to use all Required Submittals and other materials produced under this Contract for District purposes and no other purposes. The Owner agrees to defend and hold the Consultant and the Consultant's sub-consultants harmless from any causes of action, claims, losses, damages and expenses of any nature whatsoever, including reasonable attorney's fees, resulting from any unauthorized re-use of the Consultant's and Consultant's sub-consultants' materials.

7.13 Time

The Contract Time is of the essence of this Contract. Except where otherwise stated, references in this Contract to days shall be construed to refer to calendar days.

7.14 Severability

The provisions of this Contract shall be interpreted when possible to sustain their legality and enforceability as a whole. In the event any provision of this Contract shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provisions of this Contract shall be in any way affected thereby.

7.15 Entire Agreement

This Contract sets forth the entire agreement of Owner and Consultant with respect to the accomplishment of the Services and the payment of the Contract Price therefore, and there are no other understandings or agreements, oral or written, between Owner and Consultant with respect to the Services and the compensation therefore.

7.16 Amendments

No modification, addition, deletion, revision, alteration, or other change to this Contract shall be effective unless and until such change is reduced to writing and executed and delivered by Owner and Consultant.

PHASE III CONSTRUCTION MANAGEMENT SERVICES
GROUNDS MAINTENANCE FACILITY
LAKEWOOD FOREST PRESERVE

IN WITNESS WHEREOF, Owner and Consultant have caused this Contract to be executed as of the day and year first written above.

(SEAL)

Attest/Witness

LAKE COUNTY FOREST PRESERVE DISTRICT

By: _____
Julie Gragnani
Title: Secretary

Alex Ty Kovach
Title: Executive Director

Attest/Witness

GILBANE

By: _____
Title: _____

By: _____
Karrie Kratz
Title: Vice President / Business Unit Leader

ATTACHMENT A - SUPPLEMENTAL SCHEDULE OF CONTRACT TERMS

1. **Project:**
Consultant shall provide Construction Management Services at Lakewood Forest Preserve for the new Net-Zero Grounds Maintenance Facility, which services include: Submittals/Procurement, Construction, Project Closeout and Warranty Period.
The Services shall include the Services provided in Consultant's detailed Scope of Work. See Attachment B and Attachment D.

2. **Approvals and Authorizations:**
The Owner / Design Team will facilitate the following governmental approvals and authorizations on or before the following dates:

<u>Approval/Authorization</u>	<u>Date</u>
Lake County Planning, Building and Development	07/01/2023
Lake County Stormwater Management Commission	07/01/2023
Lake County Health Department (well & septic)	07/01/2023

3. **Commencement Date:**
Submittals - July 1, 2023
Construction Start – September 2, 2023

4. **Completion Date:**
June 1, 2024

Anticipated Schedule:

- Substantial Completion – June 1, 2024
- Final Completion / Owner Occupancy – June 21, 2024
- Warranty Period – June 1, 2024 to May 31, 2025

5. **Insurance Coverage:**

A. Worker's Compensation and Employer's Liability with limits not less than:

- (1) Worker's Compensation: Statutory
- (2) Employer's Liability:
 - a. \$1,000,000 injury-per-occurrence
 - b. \$500,000 disease-per-employee
 - c. \$500,000 disease-policy limit

Such insurance shall evidence that coverage applies in the State of Illinois.

B. Comprehensive Motor Vehicle Liability with limits for vehicles owned, non-owned or rented, not less than:

- (1) Bodily Injury:
 - a. \$ 500,000 - per person

PHASE III CONSTRUCTION MANAGEMENT SERVICES
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LAKEWOOD FOREST PRESERVE

- b. \$1,000,000 - per occurrence
- (2) Property Damage:
 - a. \$ 500,000 - per occurrence
 - b. \$ 1,000,000 - aggregate

All employees shall be included as insured's.

C. Comprehensive General Liability with coverage written on an "occurrence" basis and with limits no less than:

- (1) General Aggregate: \$2,000,000.00
- (2) Bodily Injury: \$2,000,000.00 per person
\$2,000,000.00 per occurrence
- (3) Property Damage: \$2,000,000.00 per person
\$2,000,000.00 aggregate

Coverages shall include:

- ❖ Broad Form Property Damage Endorsement
- ❖ Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract)

D. Professional Liability Insurance with a limit of liability of not less than \$1,000,000.00 per claim and aggregate, and covering Consultant against all sums that Consultant may be obligated to pay on account of any liability arising out of the Contract.

F. Umbrella Policy. The required coverages may be in any combination of primary, excess and umbrella policies. Any excess or umbrella policy must provide excess coverage of underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

G. Owner as Additional Insured. Owner shall be named as an Additional Insured on all policies except for:

- ❖ Worker's Compensation Policy
- ❖ Professional Liability

H. Other Parties as Additional Insured. In addition to Owner, the following parties shall be named as Additional Insured on the following policies:

Additional Insured	Policy or Policies
<u>Williams Architects</u>	<u>all except Workers Compensation</u>

6. Schedule of Prices - Lump Sum

PHASE III CONSTRUCTION MANAGEMENT SERVICES
 GROUNDS MAINTENANCE FACILITY
 LAKEWOOD FOREST PRESERVE

For providing, performing and completing Consultant (CM) Services, the following Breakdown & Lump Sum amount, is set forth and based on the current trade contractors bid amounts of \$4,790,838.

• Office Support (part-time) for Field Staff	\$68,000
• On-Site Field Construction Staff during Construction	\$442,000
• Consultant (CM) Office & Field Office Reimbursables (estimated)	\$55,000
• Consultant (CM) Fee (3.0% based on CM Staff & Trade Costs)	\$164,774
• <u>General Liability Insurance (on CM Services at \$11.65 per \$1,000)</u>	<u>\$8,502</u>
Consultant (CM) Services Subtotal	\$738,276

Seven Hundred Thirty-Eight thousand, Two hundred, Seventy-six Dollars and no Cents
 (in writing)

\$738,276 Dollars and 00 Cents
 (in figures)

7. Reimbursables

All field office support and field office costs shall be reimbursed at cost without any markups to the District, and may include the following items.

- Field office expenses
- Copy/Scanner Machines
- Safety Personal Protection Equipment
- Safety/OSHA Kits
- First Aid Supplies
- Telephone System & Monthly Charges
- Television/Monitor
- Peripherals / Technology
- Internet Connectivity, if Owner cannot provide
- Bottle Potable Water Dispenser, with water
- Small Tools & Supplies
- Shipping/Fedex
- Stationary, Paper, Office Supplies
- Record Retention

All items listed above may not be incurred during the project.

8. Additional Services

For additional services and Change Orders, if subject to Consultant's right to a Change Order providing for an equitable adjustment as provided in Section 2.2, the following hourly construction phase rates would apply.

Project Executive	\$200
Senior Project Manager	\$120
Superintendent	\$140
Project Engineer	\$85
On-site Project Assistant	\$55

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GROUNDS MAINTENANCE FACILITY
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Safety Manager	\$150
Quality Manager	\$150
Project Controls	\$120
Scheduling Manager	\$190
Chief Purchasing Agent	\$200
Purchasing Assistant	\$85
Accounting	\$120
Virtual Design & Construction	\$115

9. **Payments:**

Regardless of whether the Contract Price is based upon hourly rates or a lump sum, Consultant shall, not later than ten (10) days after execution of the Contract and before submitting its first pay request, submit to Owner a schedule showing the value of each component part or phase of the Services in form and with substantiating data acceptable to Owner ("Breakdown Schedule"). The sum of the items listed in the Breakdown Schedule shall equal the lump sum Contract Price or the not to exceed Contract Price, as the case may be. An unbalanced Breakdown Schedule providing for overpayment of Consultant on component parts or phases of the Services to be performed first will not be accepted. The Breakdown Schedule shall be revised and resubmitted until acceptable to Owner. No payment shall be made for Services until Consultant has submitted, and Owner has approved, an acceptable Breakdown Schedule. When a component or phase of the Services, as identified in the Breakdown Schedule, is complete, Owner will pay Consultant the value of such component or phase as provided in the Breakdown Schedule; however, Owner shall not be required to make payments more frequently than once per month.

All pay requests from Consultant shall be made using the pay request format supplied by Owner.

Owner may require that the approved Breakdown Schedule be revised based on developments occurring during the provision and performance of the Services. If Consultant fails to submit a revised Breakdown Schedule that is acceptable to Owner, Owner shall have the right either to suspend Progress and Final Payments for Services or to make such payments based on Owner's determination of the value of the Services completed.

ATTACHMENT B - CONSULTANT'S SCOPE OF WORK

CM Scope of Work

Construction Phase

- Prepare and periodically update the Project schedule for the Owner's review and acceptance. The Project schedule shall coordinate and integrate the Construction Managers services, the Architects services, other Owner consultant's services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of submittals for review and approval; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.
- In Consultation with the Architect, shall provide recommendations with regard to scheduling, procurement, and sequencing for phase construction. These recommendations shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.
- Develop and implement a detailed system of cost control that will provide the Owner and Architect timely information as to the anticipated total Cost of Work.
- Conduct weekly Trade Contractor meetings with all trade contractors: distribute updated project schedule; review site access and logistical requirements; review safety standards and expectations. Coordinate and schedule all phases of construction throughout the project.
- Manage submittals and long-lead material items to minimize impact to the project schedule.
- Manage construction logs – including submittals, RFIs, change orders, trade closeout documentation and warranties, and other related documents, reports, data and information as may be necessary.
- Provide on-site, full-time experienced field staff to provide complete project administration and oversight. Superintendent shall coordinate day-to-day construction scheduling, confirm work is in accordance with contract documents, prepare progress reports, update the project schedule, facilitate coordination meetings, provide quality control oversight, and ensure safety protocols are in place at all times.
- Facilitate with all necessary inspections.
- Coordinate with Owner's third-party material testing service company, site surveying, and commissioning and testing company.
- Review in collaboration the necessary Insurance Certificates, if required.
- Review and consult on all trade contractors monthly pay requests with Owner and Architect. Preparation of the application for payment shall be by the Owner.
- Review and coordinate all trade contractor shop drawing submittals and promptly forward to the Architect and Design Team for review and approval.
- Manage Trade Contractor's work to be in compliance with the overall project schedule.
- Conduct weekly trade contractor coordination meetings.
- Conduct and chair the jobsite weekly Owner/Architect construction meetings attended by the Owner's representative, Architect, Design Team (as required) to review progress,

outstanding issues, change orders and monthly pay requests. Prepare and issue minutes of each meeting to all attendees within three (3) business days after the meeting.

- Manage and resolve unforeseen changes in the field. Manage and review contractor change requests to assure validity. Provide an extensive and qualified review of all unsolicited and solicited change order requests from trade contractors prior to forwarding to the Owner. Coordinate all change order requests with Owner for approval prior to authorizing work.
- Provide the Owner with regular reports on budget status throughout the project.
- Communicate regularly with the Owner to assure that construction activities are coordinated with on-going operational needs. Work with the trade contractors to make appropriate adjustments as needed.
- Provide regular updates on the project schedule.

Project Closeout and Warranty Period

- Upon substantial completion by the trade contractors, distribute Architect's punch list to the contractors. Assure that deficiencies are corrected in a timely manner.
- Review the completed work to obtain Owner and Architect sign-off on the punch list.
- Assist the Owner, Architect and Design Team in obtaining a certificate of occupancy from the county.
- Coordinate with Owner in the delivery of furniture, finishes, and equipment.
- Coordinate with Owner, Architect and Design Team to ensure that real-time, net-zero monitoring systems are in place and fully operational.
- Coordinate final cleanup.
- Prepare submittal of all contractor warranties, keys, record shop drawings, operating and maintenance manuals, record shop drawings, etc. and coordinate with Owner for proper operation and maintenance of the systems and equipment.
- Coordinate with contractors, subcontractors, Architect, and Design Team as needed throughout the warranty period to facilitate net-zero certification. Conduct warranty walkthroughs as needed.

General Conditions and Project Requirements

General Conditions include items that are necessary for the completion of the project, but are not a part of the finished product that is turned over to the Owner. The Owner will provide and assume responsibility for the following General Project Requirements: temporary fence rental, building layout and maintenance, portable toilets, snow removal, barricades, traffic signs, dumpsters, and street sweeping.

ATTACHMENT C - KEY PERSONNEL

1. KEY PROJECT PERSONNEL – OWNER

NAME	TITLE	TELEPHONE NUMBER OFFICE	TELEPHONE NUMBER MOBILE	EMAIL
John Nelson	Director of Operations and Infrastructure	847-968-3407	847-489-6140	jenelson@lcfpd.org
Pat Bovill	Superintendent Construction and Building Trades	847-968-3281	847-276-6937	pbovill@lcfpd.org

2. KEY PROJECT PERSONNEL – CONSULTANT

NAME	TITLE	TELEPHONE NUMBER OFFICE	TELEPHONE NUMBER MOBILE	EMAIL
Derek Ward	Senior Executive	312-614-3903	312-415-1774	dward@gilbaneco.com
Walter Hadelers	Project Executive	312-596-1720	773-951-7482	WHadelers@GilbaneCo.com

ATTACHMENT D – SPECIAL PROJECT REQUIREMENTS

The following special project requirements shall be incorporated herein as part of the contract.

- If the Owner determines to carry construction contingencies, the Owner shall retain any balance not allocated toward building construction. All draws from contingency shall be authorized by the owner and follow the Owner's standard change order process.
- The Owner will be responsible for Other Project Costs, including Survey and Layout, Material Testing, Utility Locating, Permits and Fees, Design and Engineering Fees, Construction Administration Fees, Commissioning Fees, Furniture, Fixtures, and Equipment.
- The Forest Preserve District is tax-exempt. Documentation available upon request.
- Construction Manager's Reimbursable Expenses shall be "open book" and the Owner reserves the right to inspect the expense records upon request and any unspent funds will be retained by the Owner at the completion of the project.

CONSULTANT DISCLOSURE FORM

a. **Required Disclosures:** Each Consultant that (i) submits a proposal to enter into a contract for a Large District Purchase or (ii) approves a Change Order to increase the price of or extend the time of the performance of a contract, if such original contract or the Change Order required, or requires, Board approval under this Policy, shall, with its proposal or prior to executing such Change Order, disclose for itself and for each of its Disclosure-Covered Owners and Disclosure-Covered Employees (i) each Campaign Contribution that it, he, or she has made within the two-year time period preceding the date upon which such proposal is submitted or such Change Order is executed and (ii) the identity and position of each Family Member that is either a District Commissioner or employed by the District as an Executive Director, Chief Operations Officer, Department Director, or Department Supervisor/Manager.

The Consultant/Vendor should fully complete and execute the Consultant Disclosure Form during the proposal evaluation phase. This form is not part of the contract but should be included with recommendation/resolution Board information.

It is located on FERN and linked here: <https://www.lcfd.org/file.aspx?DocumentId=6419>