

BATHYMETRIC AND STUMP IDENTIFICATION SURVEY AGREEMENT

This Agreement made this 16 day of March, 2021 by and between

University Lakes LLC
3796 Nicholson Drive
Baton Rouge, LA
("UL")

and

C. H. Fenstermaker & Associates, L.L.C.
445 North Blvd., Suite 650
Baton Rouge, LA 70802
("CONSULTANT")

University Lakes Background

University Lakes LLC ("UL"), a special purpose entity created for this Project by LSU Real Estate and Facilities Foundation ("REFF"), a Louisiana nonprofit corporation supporting LSU, wishes to retain C. H. Fenstermaker & Associates, L.L.C. ("Consultant") to serve as UL's bathymetric and stump identification consultant team for the University Lakes Project ("Project"). The UL desires to engage the consultant for this purpose and desires to perform the work as defined in this Agreement.

Now, therefore, in consideration of the foregoing, the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally and equitably to be bound, mutually agree as follows:

ARTICLE 1: SCOPE OF WORK

1.1 Basic Services

The specific tasks that the consultant will perform is listed in the attached Exhibit A ("Basic Services"), which is incorporated herein by reference.

1.2 Changes in Basic Services

Changes may be proposed to the Basic Services required to be performed under this Agreement by the Consultant if UL materially changes the scope, objectives, and/or timetable for Basic Services in writing or if UL fails to provide decisions, instructions or requested information in a timely manner (but only for those occasions when the Consultant has provided UL with timely, explicit written notice of the date or dates by which decisions or other performance is reasonably required and reasonably adequate time for review and approval), makes substantial modifications to properly approved instructions or information previously provided, or makes personnel changes that materially affect Consultant's performance of this Agreement. In such event, the parties shall attempt to negotiate a

modification or change order in accordance with the terms of this Agreement.

Changes in Basic Services required to be performed under this Agreement by the Consultant and the entitlement of the Consultant to any additional compensation shall be made only by a written amendment to this Agreement executed by UL and the Consultant (individually "**Party**", collectively "**Parties**"). Unless otherwise agreed to in writing by the Parties, any such amendment shall be executed by the Parties prior to the performance by the Consultant of any services required by any such amendment.

1.3 UL Initiated Optional Services

UL, without invalidating this Agreement, may in writing request that the Consultant shall provide Optional Services under this Agreement and shall be compensated for the performance of any Optional Services requested by the UL as provided in Article 4 of this Agreement.

The Consultant shall perform Optional Services only after UL and the Consultant have executed a written amendment to this Agreement specifically providing for the performance by the Consultant of such Optional Services.

ARTICLE 2: STAFFING AND INTERACTION

2.1 Standard of Care

The Consultant covenants with UL to furnish its professional skill and judgment with due care in accordance with the generally accepted standards of good project management practice, in accordance with the applicable federal, state and local laws and regulations in effect on the date of this Agreement and in cooperation with, and in reliance upon, the work and services to be performed by other professionals retained by UL in connection with the Project. Consultant represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement or shall cause such services to be performed by appropriately licensed professionals. The Consultant shall be responsible for compliance with all applicable codes. All items not specifically covered by codes shall be in accordance with the standards established by accepted professional groups or by industry standard for that specific item of work. The Consultant shall be responsible, to a reasonable standard of care, for the professional quality, technical accuracy and the coordination of all specifications and other services furnished under this contract. The Consultant shall without additional compensation, correct or revise any errors or deficiencies in the specifications and other services.

2.2 UL

UL shall designate one or more of its members, officers, employees, or contractors to serve as the Consultant's point of contact for purposes of providing decisions, instructions and other information to the Consultant (such designee(s) being individually and collectively referred to as the "UL Representative"). The UL Representative shall be deemed to have provided decisions or instructions

to Consultant only if the UL Representative shall have communicated instructions in writing. UL may substitute other representatives to serve as Consultant's point of contact upon reasonable prior written notice to Consultant.

Consultant recognizes that the UL is undertaking the Project for the benefit of LSU, which owns the majority of the property and rights that will be the subject of the Project. While Consultant understands that LSU has a substantial interest in the Project and that, as between LSU and UL, some activities undertaken pursuant to this Agreement may require approval by or consultation with LSU, Consultant may rely on representations by the UL Representative that those approvals or consultations have been made. This Agreement does not create a contract between LSU and Consultant. UL represents and warrants it has sufficient funding to meet its payment obligations to Consultant.

2.3 Project Advisor

A joint venture of Brailsford & Dunlavey and CSRS will serve as the Project Advisor. Responsibilities will focus on assisting with rehabilitation and improvement of the six lakes adjacent to the LSU campus and City-Brooks Community Park. Responsibilities also include providing financial analysis; assisting with solicitation and selection of a design firms, a contractor and other vendors for design and performance of dredging, excavation and other improvements to the lakes; and assisting with compliance with the restrictions attached to the anticipated funding sources for the project.

2.4 Consultant

The Consultant has designated its key personnel, including a project leader (the "**Project Lead**") as: Travis Bodin will serve as the Principal-in-Charge, Keith Boeneke will provide Quality Assurance and Quality Control, Justin Bordelon will serve as the Project Manager and the "Project Lead"; and Joe Broussard will serve as the Lead Technician. The Project Lead shall serve as the primary point of contact or liaison between the Consultant, Project Advisor and UL directing the overall work effort and coordinating the day-to-day work of this engagement. The Consultant shall assign appropriate additional staff to provide assistance as necessary. The Consultant may reassign or substitute key personnel designated only upon consent by UL, whose consent shall not be withheld or delayed unreasonably, or upon the unavailability of previously assigned personnel due to illness or other factors beyond Consultant's control.

2.5 Related Agreements with Other Parties

UL, in its discretion, may contract with other professionals ("Other Parties") for services related to due diligence, design, permitting, and/or construction.

- 2.5.1 The services, duties and responsibilities of the Other Parties shall be described in a written agreement between UL and the Other Parties

- 2.5.2 UL shall, in the agreements between UL and the Other Parties, require the Other Parties to perform their work and services in cooperation with the Consultant, consistent with this Agreement and in accordance with applicable scheduling and budgeting requirements pertinent to the Project. Where appropriate and at the request of the Consultant, sufficient copies of the agreements shall be furnished to the Consultant without cost.
- 2.5.3 Where appropriate, UL shall send to the Consultant and shall require the Other Parties to send to the Consultant copies of notices and communications sent by the Other Parties to UL relating to the Project.

2.6 Access to Information

Consultant expects to call on Project Advisor and/or appropriate UL personnel for purposes of gathering information and conducting research for this engagement. The close involvement of Project Advisor and UL's decision-makers may be required to identify both goals and constraints. Accordingly, UL shall provide Consultant with timely input and feedback from such decision-makers on work plans and studies, as well as access to information, facilities, and other personnel that are critical to Consultant's ability to perform the contracted services upon reasonable request.

ARTICLE 3: TIMETABLE

3.1 Basic Services

- 3.1.1 The duration of the Basic Services required to be performed under this Agreement by the Consultant shall be approximately five (5) consecutive calendar months, which commenced on the execution of this agreement.
- 3.1.2 Consultant shall devote its reasonable best efforts to meeting all target dates and completing the Basic Services in accordance with the deadlines set forth in this Agreement. The Parties shall use their reasonable best efforts to coordinate specific dates for meetings with key participants and other events both before and after delivery of the Project.

ARTICLE 4: COMPENSATION AND METHOD OF PAYMENT

4.1 Compensation for Basic Services

Compensation for Basic Services shall be based on services described in Exhibit A at the established rates in Exhibit B for the period of time identified in Paragraph 3.1.1. Total compensation shall not exceed One Hundred Five Thousand Four Hundred and Forty Dollars (\$105,440.00).

4.2 Compensation for Changes to Basic Services and Additional Services

- 4.2.1 The Consultant may be entitled to receive additional compensation when the scope or duration of Basic Services is modified.
- 4.2.2 Per Paragraph 1.2, should the scope or duration of Basic Services be modified under circumstances where Consultant may be entitled to additional compensation, Consultant shall request a written amendment to this Agreement which, unless otherwise agreed to in writing by the Parties shall be executed by the Parties prior to the performance by the Consultant of any services required by any such amendment. Amendment(s) governing Additional Services shall clearly document the scope, schedule and compensation for such Additional Services.

4.3 Compensation for Optional Services

Upon written acceptance of Consultant's proposal for requested Optional Services, per Paragraph 1.3, UL shall pay the Consultant compensation for Optional Services performed by the Consultant. The Optional Services will be accepted by written amendment to this Agreement executed by UL and Consultant. Amendment(s) governing Optional Services shall clearly document the scope, schedule and compensation for such Optional Services.

4.4 Reimbursable Expense

Compensation for services according to the rates specified in Exhibit B includes all costs incurred by Consultant in providing the services. There shall be no reimbursement paid to Consultant by UL.

4.5 Application for Payment

Consultant shall on a monthly basis submit applications of payment to the Project Advisor for services performed during such month incurred during such month, all in a form and containing such detail as may reasonably be requested by Project Advisor and UL.

4.6 Payment

Provided that the Consultant is not in default under this Agreement and submits an application for payment hereunder reasonably in accordance with this Agreement and is then reasonably in compliance with the terms and conditions of this Agreement, UL shall pay all amounts applied for in such application within forty-five (45) days after the receipt by the UL of such application. Applications for payment submitted hereunder by the Consultant are subject to the review and approval of the Project Advisor and UL. If UL should dispute any amount included in any application for payment submitted hereunder by the Consultant, UL shall pay, in accordance with the terms of this Agreement, any amounts included in such application and not disputed.

4.7 Withholding of Payments

No deductions shall be made from any amounts payable hereunder to the Consultant on account of any penalty, liquidated damages, retainage or other sums claimed or withheld by UL from payments to the Other Parties, provided however that UL shall be entitled to withhold amounts payable hereunder to the Consultant to the extent that such amounts are the subject of a formally-submitted written Claim in accordance with Article 8.3, or similar between UL and the Consultant.

ARTICLE 5: INTELLECTUAL PROPERTY AND CONFIDENTIALITY

5.1 Right to Work Product

UL and Consultant shall jointly own the copyrights to studies, reports, and all other written documents authored by Consultant in the course of work performed pursuant to this Agreement ("Work Product"). As author of Work Product, Consultant shall have the right to apply for copyright registration for all or portions of such product and shall identify UL as joint copyright claimant in any such application. Each party hereby assigns to the other party a joint ownership interest and license in Work Product, together with Improvements to Work Product. As used herein, the term "Improvements" means modifications or enhancements that either party makes to Work Product directly or indirectly, whether or not such modifications or enhancements are entitled to copyright protection.

Except for the assignment to the City of Baton Rouge-Parish of East Baton Rouge, Louisiana State University and Baton Rouge Parks and Recreation (BREC), neither party shall assign, grant, or license its copyright interests in Work Product and Improvements to any third party without the prior written consent of the other party, which consent shall not be withheld unreasonably. Each party shall cooperate with the other party's reasonable efforts to enforce copyrights in Work Product and Improvements against infringing third parties. If UL is required by law to release Work Product and Improvements to third parties, UL shall redact or otherwise protect Consultant's Proprietary Models defined in Paragraph 5.2 to the fullest extent permitted by law. Consultant shall cooperate with the UL's reasonable efforts to enforce copyrights in Work Product and Improvements against infringing third parties.

5.2 Intellectual Property

Notwithstanding anything to the contrary contained in this Agreement, Consultant shall retain ownership of all patents, trademarks, copyrights, trade secrets, registered designs, service marks, trade names, logos, inventions and all other intellectual property rights relating to proprietary software, analytical models, methods and techniques ("Proprietary Models") that Consultant owns and uses in performing work pursuant to this Agreement. Consultant hereby grants a nonexclusive license to UL to copy, display, distribute and otherwise use the Proprietary Models for UL's own internal, noncommercial use provided that they are not provided to third parties without Consultant's prior, express written consent.

5.3 Confidentiality

As used herein, the term "Confidential Information" means any information relating to UL or LSU, including any of their respective members, directors, employees, students, or other affiliated persons or legal entities that is not within the public domain or that UL or LSU has specifically designated as confidential by written notice to Consultant.

Consultant hereby acknowledges that all information furnished by UL to Consultant or obtained by Consultant in the course of Consultant Services, or in any way arising from or relating to any and all studies or entries related to the Project by Consultant, its agents or representatives, shall be treated as confidential information ("Confidential Information") whether specifically designated as confidential by written notice or not.

Consultant shall not, without UL 's prior written consent, disclose Confidential Information to any third party, other than if such disclosure is

- a) Reasonably necessary to enable Consultant to perform this Agreement;
- b) a general statistical summary that does not single out UL,
- c) provided to UL, LSU, UL and/or LSU's employees, agents or representatives, or Consultant's agents, employees, representatives, attorneys, consultants;
- d) in response to lawful process or subpoena or other valid and or enforceable order of a court of competent jurisdiction; and/or
- e) as required by applicable law.

ARTICLE 6: INSURANCE

6.1.1 Insurance Provided by Consultant

Insurance Issuer
Required Notices
Required A rating documentation
Cancellation Warnings

6.1.2 Commercial General Liability Insurance

General Aggregate \$2,000,000
Products/Completed
Operations Aggregate \$1,000,000
Personal & Advertising Injury \$1,000,000
Each Occurrence \$1,000,000
Fire Damage (any one fire) NIL
Medical Insurance (any one person) NIL

6.1.3 Comprehensive Automotive Liability Insurance

The minimum amount of limits shall be \$1,000,000 for each occurrence - bodily injury and property damage.

6.1.4 Workers Compensation Insurance

Each Accident \$1,000,000

Disease - Policy Limits \$1,000,000

Disease - Each Employee \$1,000,000

6.1.5 Professional Liability Insurance

Per Claim/ Annual Aggregate \$1,000,000 / \$2,000,000

6.1.6 Umbrella (excess of liability insurance in 6.1.2 and 6.1.3)

\$5,000,000

6.2 Insurance Provided by the UL

UL shall be responsible for its own liability insurance and, at its option, may purchase and maintain such insurance as will protect UL against claims which may arise from operations under this Agreement.

ARTICLE 7: MUTUAL INDEMNIFICATION

7.1 The Consultant agrees to indemnify and hold harmless UL and its respective members, managers, employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage to the extent arising out of or resulting from negligent or wrongful acts or omissions of the Consultant or any party for whose negligent or wrongful acts or omissions the Consultant may be responsible, including without limitation, any party retained by, through and/or under the Consultant, provided however that the Consultant shall not be deemed hereunder to be responsible for any acts or omissions of Other Parties retained by, through or under the Other Parties.

7.2 UL agrees to indemnify and hold harmless the Consultant, its subcontractors and their employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage to the extent arising out of or resulting from the negligent or wrongful acts or omissions of UL or any party for whose negligent or wrongful acts or omissions UL may be responsible, including without limitation any party retained by, through or under UL, provided however that UL shall not be deemed hereunder to be responsible for any acts or omissions of the Consultant or any party retained by, through or under the Consultant.

7.3 Limitation of Liability

Neither UL nor Consultant shall be liable to the other Party for any consequential, exemplary, special, incidental, or punitive damages sounding in contract or tort except as may arise from breach of Article 5 above or as may be necessary to provide indemnification in accordance with Article 7 against actions or claims asserted by third parties.

Notwithstanding any other provision in this Agreement , and regardless of the basis on which the claim is made, Consultant's aggregate liability for direct damages shall be limited to either (a) in the case damages are insured under valid and collectible policies of insurance maintained by Consultant as specified in Article 6 of this Agreement , the applicable limit(s) of such policies or (b) in the case damages are not insured under valid and collectible policies of insurance maintained by Consultant as specified in Article 6 of this Agreement , one hundred percent (100%) of actual compensation received by the Consultant and its assignee (if any) under the terms of this Agreement.

7.4 Waiver of Subrogation

The UL and the Consultant waive all rights against each other for damages occurring during the Project to the extent covered by valid and collectible insurance and to the extent that insurance proceeds are actually received. The UL and the Consultant shall each require similar waivers in favor of the UL and the Consultant from all parties retained by, through or under each in connection with the services and the Project.

ARTICLE 8: TERMINATION, SUSPENSION, DISPUTE RESOLUTION

8.1 Termination

8.1.1 This Agreement may be terminated by:

8.1.1.1.1 Either UL or the Consultant upon thirty (30) days ' prior written notice to the other should the other fail substantially to perform in accordance with the terms and conditions hereof ; or if all or a substantial part of the Project is stopped for a period of 120 days under an order of any court or other public authority having jurisdiction over the Project or as a result of a governmental act; or

8.1.1.1.2 UL for any reason upon thirty (30) days' prior written notice.

8.1.2 In the event of any termination of this Agreement which is not the fault of the Consultant, the Consultant shall be paid all amounts payable hereunder to the Consultant in respect to authorized services properly and timely performed through the effective date of termination. Under no circumstances shall the Consultant be entitled to anticipated revenue or profit on the value of services not performed.

8.1.3 In the event the Consultant is in default under this Agreement and this Agreement is terminated by UL, UL shall be required to pay the Consultant only for those services which have been properly rendered hereunder by the Consultant.

8.2 Suspension

- 8.2.1 UL may in writing order the Consultant to suspend all or any part of the services required to be performed under this Agreement by the Consultant for the convenience of UL or for any work stoppage beyond the control of UL or the Consultant. If the performance of all or any part of the services required to be performed under this Agreement by the Consultant is so suspended, the Consultant's compensation for remaining Basic Services , Additional Services or Optional Services and the schedule for the performance of any remaining services shall be equitably adjusted if appropriate and this Agreement shall be amended in writing accordingly by UL and the Consultant. Temporary suspensions or curtailment of Project activities required in connection with LSU sponsored activities such as infrastructure Project activities undertaken by the State lasting less than seven (7) consecutive days or similar occurrences shall not be considered a suspension for purposes of Section 8.2.
- 8.2.2 In the event that the services required to be performed under this Agreement by the Consultant are suspended by UL, UL shall be required to pay the Consultant only for those authorized services which have been properly and timely rendered hereunder by the Consultant.
- 8.2.3 Persons assigned to another project during any such suspension period and not available to perform services in respect to the Project upon the cessation of any such suspension period shall be replaced by the Consultant.
- 8.2.4 Subject to the provisions of this Agreement, a suspension of the Project shall not terminate this Agreement.

8.3 Dispute Resolution

- 8.3.1 UL and Consultant shall attempt to settle any dispute, disagreement, or claim arising out of, or in any way related to, this Agreement through good faith consultations between appropriate representatives of each Party. Subject to the provisions of Paragraph 8.3.2, any dispute, disagreement, or claim that is not resolved to the parties' mutual satisfaction within thirty (30) days (or such longer period as may be mutually agreed at the time) from the date either Party invokes this provision through written notice to the other Party, shall be resolved through mediation and, if not resolved by at mediation within ninety (90) days, then by binding arbitration in Baton Rouge, LA in accordance with the rules and procedures of the American Arbitration Association ("AAA"). The parties shall share the costs of arbitration, including the fees and expenses of the arbitrator, equally unless the arbitration award provides otherwise. The arbitrator's authority to grant relief shall be subject to the provisions of this Agreement, the United States Arbitration Act ("US AA") and the ABA-AAA Code of Ethics for Arbitrators in Commercial Disputes. The arbitrator's decision shall be final, binding and enforceable in any court of competent jurisdiction. All post-award proceedings shall be governed by the **USAA**.

- 8.3.2 Nothing in this Agreement shall be construed to prevent either Party from moving a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other emergency relief to restrain the other Party from releasing Work Product, Improvements, or Proprietary Models to a third party, seeking to transfer intellectual property rights thereto, in contravention of Section 5 above, or requiring specific performance in connection with Section 8.3.4. Each Party shall be entitled to assert damage claims in such proceedings.
- 8.3.3 Nothing in this Article 8 shall be construed to limit or otherwise affect UL's right to terminate this Agreement with or without Cause pursuant to the provisions of Article 8 of this Agreement.
- 8.3.4 In the event of disputes over time, money or scope, except for cases involving non-payment of sums due Consultant by UL, the Consultant will continue to perform its services under this Agreement, unless work is suspended by UL, pending final resolution of such disputes in accordance with the terms of this Agreement.

8.4 Notices

All notices or other communications required or permitted by Article 8 of this Agreement to be given to UL or the Project Advisor shall be deemed to have been given when made in writing between the Project Lead for the Consultant team and both the Project Advisor and UL Representatives.

ARTICLE 9: ADDITIONAL PROVISIONS

9.1 Press Releases

Consultant shall not issue any press releases or respond to media inquiries concerning the Project.

Notwithstanding the foregoing, Consultant shall have the right to disseminate promotional materials concerning its engagement as a consultant to UL. All promotional materials shall be subject to the provisions of this Agreement relating to Confidential Information set forth in Section 5 above.

9.2 Estimates and Projections

Estimates and projections relating to Project budgets, finance and other aspects of Consultant's analysis will be based upon reasonable assumptions, information provided by UL, the funding entities represented on the PMC or other sources, reasonable analytical techniques, and professional judgment. Actual costs and financial performance, however, will be influenced by market and other external factors. Accordingly, Consultant does not represent or warrant that its estimates and projections will reflect UL's actual costs and financial performance.

9.3 Independent Contractor

In the performance of its duties and obligations under this Agreement, Consultant is an independent contractor. Neither Consultant nor any of its employees, agents, or subcontractors shall be considered employees, servants, agents, partners, or joint venture partners of or with UL by reason of this Agreement.

9.4 Waiver

No waiver of any of the terms of this Agreement or of any breach of its terms shall be effective unless such waiver is in writing and signed by the waiving Party. No waiver of any breach shall be deemed a waiver of any other subsequent breach.

9.5 Hazardous Materials

Unless otherwise provided in this Agreement, the Consultant shall have no responsibility for the discovery of hazardous materials in any form at the individual project sites, including but not limited to asbestos, asbestos products, polychlorinated biphenyl, lead paint, toxic mold or other toxic substances.

9.6 Severability

If any term, covenant, or condition contained herein is adjudged invalid or unenforceable to any extent, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.7 No Personal Liability

All actions or claims against UL, or Consultant arising under or relating to this Agreement shall be made only against such Party as a corporation or other legal entity, and any liability relating thereto shall be enforceable only against the assets of such Party.

9.8 No Third-Party Beneficiary

Except as otherwise specifically provided herein, the provisions of this Agreement are for the exclusive benefit of UL and Consultant. Notwithstanding anything to the contrary contained in this Agreement, no third party may seek to enforce or benefit from the provisions of this Agreement.

9.9 Assignment: Subcontracting

Neither Party may assign this Agreement, in whole or in part, without the other Party's prior written consent. Consultant shall be entitled to engage subcontractors to assist Consultant in its performance of this Agreement with UL's prior written consent, which consent shall not be withheld unreasonably; provided, that Consultant's engagement of any subcontractor shall not relieve Consultant of its obligations to UL under this Agreement or impose any liability or obligations upon UL to any such subcontractor. Consultant agrees that UL may assign this Agreement, in whole or in part, to either LSU or to a limited liability company or other special purpose entity provided that the assignee agrees

to assume the obligations of UL and cure any default existing as of the effective date of such assignment.

9.10 Relationship Between REFF and LSU

Consultant acknowledges and agrees that REFF is a private non-profit corporation and the sole member of UL, that REFF, UL and LSU are separate entities in law and in fact, that while UL is undertaking this Project for benefit of LSU it is not an agent of or for LSU and has no authority to bind LSU. Consultant further acknowledges and agrees that neither LSU nor the State of Louisiana shall be liable, directly or indirectly for the payment of any sums or their performance of any obligations arising out of the work performed in connection with this Agreement.

9.11 Non-Solicitation

In consideration of Consultant's agreement to provide services pursuant to this Agreement through valued employees who may have specialized knowledge of Consultant's trade secrets, intellectual property and proprietary methods, UL covenants and agrees that, during the term of this Agreement and for a period of six (6) months from the later of the cancellation or completion of the Project, UL shall not, without Consultant's prior written consent, solicit or hire as an employee of UL, or solicit or retain as an independent contractor to UL, any current or former employee of Consultant who performed any services for UL while employed by Consultant to perform professional services for UL that are substantially similar in nature and/or scope to the professional services that the person was assigned to perform on the Project while employed by Consultant. This paragraph may be specifically enforced in any court of competent jurisdiction, regardless of any other provision of this Agreement.

9.12 Counterparts

This Agreement may be executed in counterparts, and by each Party on separate counterparts, all of which together shall constitute one agreement binding on the parties hereto, notwithstanding that both parties are not signatories to the original or the same counterpart. Each Party represents and warrants that the person signing this Agreement on its behalf has full authority to bind such Party to the covenants, terms and conditions stated herein.

9.13 Governing Law and Venue

This Agreement shall be governed by and interpreted in accordance with the laws of the state of Louisiana and the venue for any action brought or arising under this Agreement shall be in a court of competent jurisdiction located in East Baton Rouge Parish, Louisiana.

9.14 Conflict of Interest

The Consultant shall disclose potential conflicts of interest dealing with its involvement with any party or contracting to provide services to UL for the Project. The UL will review the Consultant's disclosures and make a judgment as to whether a problematic conflict exists. If it does, the UL

may direct the Consultant as to the management, reduction, or elimination of the conflict or potentially the termination of the agreement with the Consultant to avoid the conflict in its entirety.

9.15 Construction

The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as defining or as limiting in any way the scope or intent of the provisions hereof. Wherever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable

9.16 Delay or Omissions

No delay or omission in the exercise of any right or remedy accruing to any Party upon any breach by any other Party under this Agreement shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. Project Funding may be from Federal sources, as such compliance with CDBG contract clauses (attached as Exhibit D) is required to the extent required by law.

9.17 Force Majeure.

If the performance by either party of any obligation hereunder is delayed by acts of God, strikes, wars, riots, embargoes, acts of civil or military authorities, fires, floods, accidents, pandemics, quarantines, unusually severe and unfavorable weather conditions, or not reasonably within the control of the party ("Force Majeure"), such Force Majeure shall be grounds for an extension of time deadlines under this Agreement. In the case of any such delay, the party experiencing the delay shall inform the other party within seven days from becoming aware of any such delay in writing, at which time the parties shall set new deadlines, subject to further extension by reason of the same Force Majeure.

9.18 Exhibits

The annexed Exhibits shall be construed as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein. Any fact disclosed on one Exhibit hereto shall be deemed to be disclosed on each other applicable Exhibit.

9.18.1 Exhibit A— Scope of Services

9.18.2 Exhibit B— Rates and Fee

9.18.3 Exhibit C - CDBG Compliance Provisions for Professional Services Contracts

9.18.4 Exhibit D - Section 3 Certification with Section 3 Plan Attachment and Section 3 Certifications

9.18.5 Exhibit 1 - Proposed limits of work

9.19 Litigation Expenses

Subject to the limitations provided in Section 7.4, if a Party makes demand against the other Party as a result of (a) a default of any provision of this Agreement; or (b) the subject matter of this Agreement, the Parties hereto agree that the unsuccessful Party shall pay to the successful Party all of its reasonable out-of-pocket costs and expenses incurred as a result of a default, or in connection with an indemnification obligation ("Litigation Expenses"), including (a) reasonable attorneys and of legal assistants, paralegals, law clerks and others persons and entities used by attorneys and under attorney supervision (including without limitation accounting and expert consultants) and (b) subject to the provisions of Section 8.3.1, all costs incurred or advanced by any of them irrespective of whether incurred in or advanced prior to the initiation of any legal, equitable, arbitration, administrative, bankruptcy, trial or similar proceedings and any appeal from any of same.

9.20 Entire Agreement

This Agreement represents the entire and integrated agreement between UL and the Consultant in respect to the Project and supersedes all prior negotiations, representations or agreements, either written or oral, between UL and the Consultant. This Agreement may not be modified, amended, or waived in whole or in part, except by subsequent written instrument signed by both UL and the Consultant.

[THE REMAINDER OF PAGE IS INTENTIONALLY BLANK. SIGNATURE PAGES OF THE PARTIES SHALL FOLLOW]

**UNIVERSITY LAKES LLC SIGNATURE PAGE TO
BATHYMETRIC AND STUMP IDENTIFICATION SURVEY AGREEMENT**

University Lakes LLC has executed this Agreement dated:

March 16, 2021.

UNIVERSITY LAKES LLC:

BY: _____


Robert M. Stuart, Jr.

Title: _____
Manager

**C. H. FENSTERMAKER & ASSOCIATES, L.L.C. SIGNATURE PAGE TO
BATHYMETRIC AND STUMP IDENTIFICATION SURVEY AGREEMENT**

C. H. FENSTERMAKER & ASSOCIATES, L.L.C. has executed this Agreement dated:

March 15 _____, 2021.

C. H. FENSTERMAKER & ASSOCIATES, L.L.C.

BY: Angelle Guilbeau
Angelle Guilbeau

Title: Director, Risk Management & Compliance

**EXHIBIT A— SCOPE OF SERVICES
("Basic Services")**

This Exhibit A serves as an exhibit to the Agreement for Bathymetric and Stump Identification Survey Services ("Agreement") made on _____ day of _____ by and between Consultant and UL.

Scope of Services:

Task 1: Bathymetric Survey

1. Sixty-three (63) transects with a total of 94,308 linear feet.
2. The survey transects will extend across the lake and 20 feet landside on each side of the lake.
3. 43 transects shall run in an east-west direction and will be spaced at approximately 200-foot intervals north and south.
4. 20 transects will be ran with the magnetometer in a north-south direction and will be spaced at predetermined intervals east and west from the centerline of each lake.
5. Survey data points shall have minimum 10' horizontal spacing along each transect.
6. Each transect will capture the following:
 - o Consultant shall capture the elevation where the fluff layer starts and the elevation of the consolidated lake bottom
 - o Magnetometer data shall be collected along with the bathymetric survey, along the same transects to identify any pipelines or metals on the lake bottom. Three (3) additional north-south lines shall be collected for each of the lakes as described in Item 4 above.

All surveys shall be referenced to North American Datum of 1983: NAD83 (2011) Epoch 2010.00, Louisiana State Plane South Zone U.S. Feet. All elevations shall be referenced to the North American Vertical Datum of 1988 (NAVD 88) U.S. Survey Feet with orthometric heights calculated using Geoid 18.

Task 1 Deliverables:

Survey Report shall include the following:

- o Project overview and Survey methodology
- o CSV file of all data in PNEZD format
- o CADD Drawings for the plan view, contours, and cross-sections
- o Hard copy and electronic copy.

Task 2: Stump Identification Survey

Consultant to identify stump locations in all six (6) lakes by performing no more than Eighty-six (86) transects. If additional transects are needed, consultant to provide written documentation requesting UL approval.

Task 2 Deliverables:

Survey Report shall include the following:

- Survey methodology
- Sonar contacts
- Coordinates and typical dimensions of stumps
- Magnetometer report listing all anomalies with the amplitude, duration, type, and position.

EXHIBIT B — RATES AND FEE

C. H. Fenstermaker & Associates, L.L.C. (“Consultant”) has been selected by the University Lakes LLC (“UL”) to provide bathymetric and stump identification survey services to the University Lakes Project (“Project”). This Exhibit B serves as an exhibit to the Agreement for services (“Agreement”) made on _____ day of _____ by and between Consultant and UL.

Consultant to perform the services as defined in Exhibit A in accordance with unit cost below:

Task 1: Bathymetric Survey

Unit cost per transect = \$ 800.00 / transect

Task 2: Stump Identification

Unit cost per transect = \$ 640.00 / transect

EXHIBIT C
CDBG COMPLIANCE PROVISIONS
FOR
PROFESSIONAL SERVICES CONTRACTS

CONTENTS

1. EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)
2. CERTIFICATION OF NONSEGREGATED FACILITIES
3. CIVIL RIGHTS
4. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974
5. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES
6. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)
7. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED
8. AGE DISCRIMINATION ACT OF 1975
9. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS
10. FLOOD DISASTER PROTECTION
11. ACCESS TO RECORDS - MAINTENANCE OF RECORDS
12. INSPECTION
13. REPORTING REQUIREMENTS
14. CONFLICT OF INTEREST
15. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 1246, AS AMENDED
16. PATENTS
17. COPYRIGHT
18. TERMINATION FOR CAUSE
19. TERMINATION FOR CONVENIENCE

20. ENERGY EFFICIENCY
21. SUBCONTRACTS
22. DEBARMENT, SUSPENSION, AND INELIGIBILITY
23. BREACH OF CONTRACT TERMS
24. PROVISIONS REQUIRED BY LAW DEEMED INSERTED
25. CHANGES
26. PERSONNEL
27. ANTI-KICKBACK RULES
28. ASSIGNABILITY
29. INTEREST OF CONTRACTOR
30. POLITICAL ACTIVITY
31. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET UNIFORM REQUIREMENTS (“Supercircular”)
32. DISCRIMINATION DUE TO BELIEF
33. CONFIDENTIAL FINDINGS
34. LOBBYING

1. **EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)**
(applicable to contracts and subcontracts above \$10,000)

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” (2 CFR Part 200, App. II (C))

2. **CERTIFICATION OF NONSEGREGATED FACILITIES**
(applicable to contracts and subcontracts over \$10,000)

By the submission of this bid, the bidder, offeror, applicant or subcontractor certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

3. **CIVIL RIGHTS**

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

4. **SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974**

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

5. **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES**

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require

employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

6. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)

(applicable to contracts and subcontracts over \$10,000)

- A. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as 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.
- B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

8. AGE DISCRIMINATION ACT OF 1975

The Contractor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

9. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS

(applicable to contracts and subcontracts exceeding \$150,000)

The Contractor and all subcontractors shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q), as amended, and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). (2 CFR Part 200, App. II (G))

10. FLOOD DISASTER PROTECTION

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended,

42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

11. ACCESS TO RECORDS - MAINTENANCE OF RECORDS

The State of Louisiana, 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 the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the State's final closeout of the grant.

12. INSPECTION

The authorized representative and agents of the State of Louisiana and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

13. REPORTING REQUIREMENTS

The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Owner.

14. CONFLICT OF INTEREST

- A. The Contractor shall observe all applicable provisions of the Louisiana Code of Governmental Ethics. Further, the Contractor shall conduct its operations so as not to cause others to violate the Louisiana Code of Governmental Ethics.
- B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

15. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED

(applicable to contracts and subcontracts of \$10,000 and under)

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative

action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. Contractors shall incorporate foregoing requirements in all subcontracts.

16. PATENTS

- A. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.
- B. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.
- C. If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.
- D. To the extent that the federal grant supporting the work of the Contractor constitutes a "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. (2 CFR Part 200, App. II (F))

17. **COPYRIGHT**

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

18. **TERMINATION FOR CAUSE**

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Owner, become the Owner's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

19. **TERMINATION FOR CONVENIENCE**

The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Contractor. If the contract is terminated by the Owner as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

20. **ENERGY EFFICIENCY**

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

21. **SUBCONTRACTS**

- A. The Contractor shall not enter into any subcontract with any subcontractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracting programs by any agency of the United States Government or the State of Louisiana.
- B. The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor's subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.

- C. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the Contractor by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.
- D. Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

22. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Contractor represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status in accordance with the provisions of 2 CFR Part 200, App. II (H) (government debarment and suspension regulations).

23. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

24. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

25. CHANGES

The Owner may, from time to time, request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the Owner and the Contractor, shall be incorporated in written and executed amendments to this Contract.

26. PERSONNEL

The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

All the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

27. **ANTI-KICKBACK RULES**

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to insure compliance by the subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

28. **ASSIGNABILITY**

The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Owner provided that claims for money due or to become due the Contractor from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Owner.

29. **INTEREST OF CONTRACTOR**

The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

30. **POLITICAL ACTIVITY**

The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

31. **COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET UNIFORM REQUIREMENTS ("Supercircular")**

The parties agree to comply with the regulations, policies, guidelines, and requirements of 2 CFR Part 200, and all requirements incorporated by reference therein, as they relate to the use of Federal funds under this contract.

32. DISCRIMINATION DUE TO BELIEFS

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

33. CONFIDENTIAL FINDINGS

All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

34. LOBBYING

The Contractor certifies, to the best of his or her knowledge and belief that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

EXHIBIT D

SECTION 3 CERTIFICATION OF SELECTED CONTRACTOR
(WITH SECTION 3 PLAN ATTACHMENT AND SECTION 3 CERTIFICATION)

FOR

C. H. FENSTERMAKER & ASSOCIATES, L.L.C.

SECTION 3 CERTIFICATION OF SELECTED CONTRACTOR

Name of Contractor: C. H. Fenstermaker & Associates, L.L.C.
445 North Blvd., Suite 650
Baton Rouge, LA 70802

Project: University Lakes Project

The undersigned hereby certifies that:

A. The positions listed under Paragraph B that have been filled by C.H. Fenstermaker & Associates, L.L.C. since being notified of anticipated issuance of contractor selection on or about 12/09/2020, were not filled to circumvent the contractor's obligations to provide employment opportunities; including training positions, for Section 3 residents, as required by Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations, 24 CFR Part 135.

B. Employment Positions filled since 12/09/2020 :

<u>Student Intern (2) - Baton Rouge Office</u>	<u>Planner - Baton Rouge Office</u>	<u>Construction Administrator</u>
<u>Engineer Intern (2) - 1 Baton Rouge Office</u>	<u>Subject Matter Expert</u>	<u></u>
<u>Engineer (2)</u>	<u>Engineering Technician - Baton Rouge Office</u>	<u></u>

C. If no employment positions have been filled since March, 2021, please check box.

Angelle Guilbeau, Director of Risk Management and Compliance

Name & Title of Signer (Print or Type)

Angelle Guilbeau
Signature

3/15/2021
Date

ATTACHMENT TO EXHIBIT D
(continued)

SECTION 3 PLAN

C. H. Fenstermaker & Associates, L.L.C. agrees to implement the following specific affirmative action steps directed at increasing the utilization of lower income residents and businesses within the East Baton Rouge Parish of Louisiana.

- A. To ascertain from the East Baton Rouge Parish official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the East Baton Rouge Parish the necessary number of lower income residents through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. To insert this Section 3 Plan in all bid documents and to require all bidders on subcontracts to submit a Section 3 Plan including utilization goals and the specific steps planned to accomplish these goals.
- E. To ensure that subcontracts, which are typically let on a negotiated rather than a bid basis, in areas other than Section 3 covered project areas, are also let on a negotiated basis whenever feasible, if let in a Section 3 covered project area.
- F. To formally contact unions, subcontractors, and trade associations to secure their cooperation for this program.
- G. To ensure that all appropriate project area business concerns are notified of pending sub contractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.
- I. To appoint Justin Bordelon, to function as the Equal Opportunity Officer in the completion of the Action Plan, to coordinate the implementation of this Section 3 Plan.

J. To list on Table A information related to subcontracts to be awarded.

K. To list on Table B all projected workforce needs for all phases of this project by occupation, trade, skill level, and number of positions.

As Principal-in-Charge of C. H. Fenstermaker & Associates, L.L.C. I have read and fully agree to this Section 3 Plan, and become a party to the full implementation of this program.

Angelle Guelbeau

Signature

3/15/2021

Date

Angelle Guelbeau

Print

Related to: University Lakes Project

CONTRACTOR/SUBCONTRACTOR'S SECTION 3 TABLES A & B

TABLE A
PROPOSED SUBCONTRACTS BREAKDOWN

FOR THE PERIOD COVERING March 1, _____ 2021
 THROUGH December 31, _____ 2021
 (Duration of the CDBG-Assisted Project)

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Type Of Contract (Business or Profession)	Total Number of Contracts	Total Approximate Dollar Amount	Estimated Number Of Contracts to Project Area Businesses*	Estimated Dollar Amount of Project Area Businesses*
Engineering Project Agreements	15	1.5MM	7	\$1MM

*The Project Area is coextensive with the East Baton Rouge Parish's boundaries.

C. H. Fenstermaker & Associates, L.L.C.
 Company

University Lakes
 Project Name

 Project Number

TABLE B
ESTIMATED PROJECT WORKFORCE BREAKDOWN

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Job Category	Total Estimated Positions	No. Positions Currently Occupied By Permanent Employees	No. Positions Not Currently Occupied	No. Positions To Be Filled w/LIPAR*
Officers/Supervisors	4	4		
Professionals	2	2		
Technicians	2	2		
Housing Sales/Rental/Mgmt.				
Office Clerical				
Service Workers	3	3		
Others				

TRADE:

Journeyman				
Apprentices				
Maximum No. Trainees				
Others				

TRADE:

Journeyman				
Apprentices				
Maximum No. Trainees				
Others				

*Lower Income Project Area Residents: Individuals residing within East Baton Rouge Parish whose family income does not exceed 80% of the median income in the State.

C. H. Fenstermaker & Associates, L.L.C.
Company

ATTACHMENT TO EXHIBIT D
(continued)

CERTIFICATION REGARDING SECTION 3

The undersigned hereby certifies that:

- (a) Section 3 provisions are included in all project related contracts exceeding \$100,000; and,
- (b) A written Section 3 plan has been implemented by C. H. Fenstermaker & Associates, L.L.C.

Angelle Guilbeau
Signature

3/15/2021
Date

Angelle Guilbeau
Print

Related to: University Lakes Project

