

November 29, 2016

**POLK COUNTY, A POLITICAL SUBDIVISION OF  
THE STATE OF FLORIDA**

**ADDENDUM #3  
RFP #17-108  
Professional Engineering Services for Parks and  
Natural Resources**

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This addendum is issued to clarify, add to, revise and/or delete items of the Contract Documents for this work. This Addendum is a part of the Contract Documents and acknowledgment of its receipt should be noted on the Addendum.

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Contained within this addendum: questions and answers received.

Additional Information: attachment, Sample Agreement

*Jeremy Mattingly*

Jeremy Mattingly  
Procurement Specialist  
Procurement Division

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**This Addendum sheet should be signed and returned with your  
submittal. This is the only acknowledgment required.**

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Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

# **RFP #17-108**

## **PROFESSIONAL ENGINEERING SERVICES FOR PARKS AND NATURAL RESOURCES**

### ***ADDENDUM #3***

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#### QUESTIONS AND ANSWERS:

Question 1: I am writing to request the contract for RFP # 17-108, Professional Engineering Services for Parks and Natural Resources?

Answer: Please see attached.

Question 2: Who are the members for the Selection Committee for RFP 17-108?

Answer: Bill Beasley, Deputy County Manager  
Jeff Spence, Parks and Natural Resources Director  
David Peach, Facilities Director  
Cedric, Supplier Diversity Director  
Bill Braswell, County Commissioner

Question 3: Can we use form SF-330 for our resumes or is there another format that the County prefers?

Answer: No, SF-330 forms are not acceptable for resumes. Provide brief resumes of the firm's key personnel to be assigned to the master service agreement including, but not limited to, the items in the list below (One (1) page maximum per resume):

- a) Name and current position held by the person
- b) Name, title and project assignment
- c) Experience:

- (1) Types of projects.
- (2) Size of projects (dollar value of project).
- (3) What were their specific project involvements?

Identify any sub-consultants that may be involved throughout the duration of the agreement. For each sub consultant identified please provide:

- A brief description of their experience outlining their qualifications to perform the intended services
- A brief resume for each key personnel that will be assigned to perform the intended services

## MASTER CONSULTING AGREEMENT

THIS AGREEMENT is entered into as of the Effective Date (defined in Section 1.1 below) by and between Polk County, a political subdivision of the State of Florida, situated at 330 W. Church Street, Bartow, Florida 33830, hereinafter referred to as County, and \_\_\_\_\_ a \_\_\_\_\_, located at \_\_\_\_\_, hereinafter referred to as Consultant, and whose Federal Employer Identification Number is: \_\_\_\_\_.

WHEREAS, County owns and operates a variety of public facilities and improvements; and,

WHEREAS, County requires certain professional services in connection with Professional Engineering Services; and

WHEREAS, County has solicited these services via an advertised request for proposals and has received numerous responsive proposals thereto; and

WHEREAS, after review and consideration of all responsive proposals, the County intends to engage the Consultant to provide it the required professional services; and

WHEREAS, the Consultant remains agreeable to providing the County the requires professional services and represents that it is competent, qualified, capable and prepared to do so according to the terms and conditions stated herein;

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

1.0 **Term**

1.1 This Agreement shall take effect on the date of its execution by the County (the “Effective Date”).

1.2 The term of this Agreement shall be for a five (5) year time period, commencing upon the Effective Date and remaining in full force and effect thereafter, unless otherwise sooner terminated as provided herein.

2.0 **Services to Be Performed by Consultant**

2.1 Consultant shall perform the services as generally described in the RFP 16-381, which is incorporated herein by reference, the Scope of Work, attached hereto and incorporated herein

as Exhibit "A", and as may be further specifically designated and authorized by the County, in writing (collectively, the "Services"). Such authorization will be referred to as a Consultant Services Authorization ("CSA") or a Contract Purchase Order ("CPO") and all provisions of this Agreement apply to the CSA/CPO with full force and effect as if appearing in full within each CSA/CPO. Each CSA/CPO will set forth a specific Scope of Services, maximum limit of compensation, schedule, liquidated damages and completion date, and shall become effective upon the due execution.

2.2 The Consultant is not authorized to undertake any project without a duly executed CSA/CPO, which shall specify the work to be performed and the time to be completed. Consultant recognizes that the County may employ several different Consultants to perform the work described and that the Consultant has not been employed as the exclusive agent to perform any such services.

2.3 When the Consultant and the County enter into a CSA/CPO where the term of the CSA/CPO expires on a date that is later than the date that the Master Consulting Agreement (MCA) expires, the Consultant and the County agree that the terms of the MCA and any amendments, attachments or provisions thereof are automatically extended until the expiration or full completion of the requirements of the CSA/CPO have been performed. Cancellation by the County of any remaining work prior to the full completion of the requirements of the CSA/CPO shall cause the terms of the MCA to terminate at the same time. This provision only applies when the expiration of the CSA/CPO extends beyond the expiration of the MCA. It does not apply when a CSA/CPO expires or is cancelled prior to the expiration of the MCA.

### 3.0 **Compensation**

#### 3.1 **General**

3.1.1 County shall pay Consultant in accordance with Exhibit "B", "Fee Schedule", which is attached hereto and incorporated by reference as part of this Agreement. The fee schedule identifies all job classifications, which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of work by personnel in job classifications not listed on the fee schedule will result in nonpayment for such services.

3.1.2 Upon the mutual agreement of the parties, the Fee Schedule, as set out in Exhibit “B” may be adjusted by a written Amendment to the Master Consulting Agreement annually beginning one year from the Effective Date of the Agreement. Such amendment must be executed by both parties and shall operate prospectively only and shall not alter fee schedules for CSA’ s/CPO’s in effect at the time of the amendment.

3.1.3 Compensation may be negotiated as a not to exceed price or a lump sum amount on a per-project basis, on each individual CSA/CPO.

3.1.4 In the event a not to exceed price is negotiated, compensation shall be billed and paid based on and in accordance with the Hourly Rate Schedule attached hereto and incorporated herein as Exhibit “B”. The Hourly Rate Schedule identifies all job classifications which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of work by personnel in job classifications not listed on the fee schedule will result in nonpayment for such services.

3.1.5 Invoices must reference the applicable CSA/CPO number, using an invoice form approved by the County Auditor.

3.1.6 Each individual invoice shall be due and payable forty-five (45) days after receipt by the County of correct, fully documented, invoice, in form and substance satisfactory to the County with all appropriate cost substantiations attached. All invoices shall be delivered, as applicable based on the particular project:

<b>Polk County Roads and Drainage</b> <b>Attention: Director</b>	<b>Polk County Parks and Natural Resources</b> <b>Attention: Director</b>
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3.1.7 In order for both parties herein to close their books and records, the Consultant will clearly state "Final Invoice" on the Consultant’s final/last billing to the County. This certifies that all services have been properly performed and all charges and costs have been invoiced to the County. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the Consultant.

3.1.8 Payment of the final invoice shall not constitute evidence of the County's acceptance of the work

3.1.9 Invoices shall be accompanied by time and task records for all billable hours appearing on the invoice. Additional documents may be requested by County and, if so requested, shall be furnished by Consultant to County Auditor's satisfaction.

3.1.10 Project manager or designated payroll officer shall, by affidavit, attest to the correctness and accuracy of time charges and requested reimbursements.

3.1.11 Pursuant to Section 3.1.4, if a not to exceed fee is negotiated, invoices shall be accompanied by time and task records for all billable hours appearing on the invoice. Alternatively, if a lump sum amount is negotiated, invoices shall be made upon the completion of each phase of the work in proportion to the Services performed, as specifically set forth in the applicable CSA or CPO. Additional documentation may be requested by the County and, if so requested, shall be furnished by the Consultant to the County Auditor's satisfaction.

## 3.2 Reimbursable

3.2.1 All requests for payment of out-of-pocket expenses eligible for reimbursement under the terms of this Agreement shall be reimbursed per the County's Reimbursable Schedule, Exhibit "C", and include copies of paid receipts, invoices or other documentation acceptable to the County's Auditor. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Agreement, CSA, or CPO.

3.2.2 Reimbursable Expenses are the actual, pre-approved, expenses incurred directly in connection with the applicable CSA or CPO, and include:

- Overnight Deliveries
- Reproduction
- Sub-Consultant
- Long Distance Telephone Calls (excluding Florida cities located outside the boundaries of Polk County)

3.2.3 Mileage shall be reimbursed in accordance with F.S. 112.061 and County policy for pre-approved out-of-county travel (excluding travel from home offices located outside of Polk

County to the Polk County line).

3.2.4 Reimbursable Expenses, including subconsultants, shall be reimbursed at cost.

3.2.5 Pre-approved travel costs shall be reimbursed in accordance with F.S. 112.061 and County policy.

3.2.6 All assets, i.e. durable goods, purchased as reimbursable expenses become the property of the County upon completion of the work for which the asset was utilized. All such assets must be surrendered by delivery to the Engineering Services for Transportation and Parks and Natural Resources offices upon demand, termination of the Agreement, or the conclusion of the project, whichever occurs first.

3.2.7 Consultant shall maintain a current inventory of all such assets.

#### 4.0 **Insurance**

##### 4.1 **General Provisions**

4.1.1 Consultant shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverages and amounts of coverage not less than those set forth below and provide the County with a Certificate of Insurance and an opportunity to inspect a certified copy of each policy applicable to this Agreement followed thereafter by an annual Certificate of Insurance satisfactory to the County to evidence such coverage before any work commences.

4.1.2 The County shall be named as an additional insured on all Consultant policies related to the project, excluding professional liability and worker's compensation. The Commercial General Liability and Worker's Compensation Liability policies shall contain a waiver of subrogation in favor of Polk County. All insurance coverage shall be written with an insurer having an A.M. Best Rating of a least the "A" category and size category of VIII.

4.1.3 The Consultant's self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the County.

4.1.4 If there is any failure by the Consultant to comply with the provisions of this section, the County may, at its option, on notice to the Consultant, suspend the work for cause until there is full compliance.

4.1.5 County may, at its sole discretion, purchase such insurance at Consultant's expense provided that the County shall have no obligation to do so and if the County shall do so, it shall not relieve Consultant of its obligation to obtain insurance.

4.1.6 The Consultant shall not be relieved of or excused from the obligation to obtain and maintain such insurance amount and coverages.

4.1.7 All Consultants' subconsultants shall be required to include County and Consultant as additional insured on their General Liability Insurance policies.

4.1.8 In the event that subconsultants used by the Consultant do not have insurance, or do not meet the insurance limits, Consultant shall indemnify and hold harmless the County for any claim in excess of the subconsultants' insurance coverage.

4.1.9 The Consultant shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the County.

4.2 Comprehensive Automobile Liability Insurance. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

4.3 Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

4.3.1 Premises and Operations:

Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

4.3.2 Independent Contractors:

Delete Exclusion relative to collapse, explosion and underground; Property Damage Hazards; Cross Liability Endorsement; and Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm)

4.4 Umbrella (Excess) Liability Insurance. Umbrella Liability with limits of not less than \$1,000,000.00, exclusive of defense costs, to be in excess of all other coverages. Such coverage shall be at least as broad as the primary coverages above, with any excess umbrella layers written on a strict following form basis over the primary coverage. All such policies shall be endorsed to provide defense coverage obligations.

4.5 Professional Liability Insurance. \$2,000,000.00 for design errors and omissions, inclusive of defense costs. Consultant shall be required to provide continuing Professional Liability Insurance to cover each project for a period of two (2) years after the project is completed. Insurance requirements may vary depending on projects as determined by the County Director of Risk Management and Insurance. The County may require the Consultant to provide a higher level of coverage for a specific project and time frame.

4.6 Performance, Payment and Other Bonds. Consultant shall furnish Performance and Payment Bonds specific to each project if required and agreed to under the CSA or CPO for the project.

4.7 Worker's Compensation. The Consultant shall provide, pay for, and maintain worker's compensation insurance on all employees, its agents or subcontractors as required by Florida Statutes.

#### 5.0 Standard of Care

5.1 Consultant has represented to the County that it has the personnel and experience necessary to perform the work in a professional and workmanlike manner.

5.2 Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.

5.3 Consultant shall, at no additional cost to County, re-perform services which fail to

satisfy the foregoing standard of care or otherwise fail to meet the requirement of this Agreement.

5.4 The Consultant warrants that all services shall be performed by skilled and competent personnel to the professional standards in the field.

6.0 **Indemnification**

6.1 **General.** Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, County and Consultant agree to allocate such liabilities in accordance with this Section.

6.2 **Indemnification.**

6.2.1 Consultant, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to County) protect and hold County, and its officers, employees and agents harmless from and against any and all, claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses and expenses (including, without limitation, attorney's fees costs and expenses incurred during negotiation, through litigation and all appeals therefrom) whatsoever including, but not limited, to those pertaining to the death of or injury to any person, or damage to any property, arising out of or resulting from (i) the failure of Consultant to comply with applicable laws, rules or regulations, (ii) the breach by Consultant of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of Consultant's performance or nonperformance of this Agreement, or (iv) the negligent acts, errors or omissions, or intentional or willful misconduct, of Consultant, its professional associates, its subcontractors, agents, and employees provided, however, that Consultant shall not be obligated to defend or indemnify the County with respect to any such claims or damages arising out of the County's sole negligence.

6.2.2 County review, comment and observation of the Consultant's work and performance of this Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

6.2.3 Consultant agrees that it bears sole legal responsibility for its work and work product, and the work and work product of subconsultants and their employees, and/or for Consultant's performance of this Agreement and its work product(s).

6.3 Survival. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Agreement shall survive as if the Agreement were in full force and effect.

7.0 **Independent Contractor**

7.1 Consultant undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance.

7.2 County shall have no right to supervise the methods used, but County shall have the right to observe such performance.

7.3 Consultant shall work closely with County in performing Services under this Agreement.

7.4 The Consultant shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the County in any manner.

7.5 Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

8.0 **Authority to Practice**

8.1 The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

9.0 **Public Records Law**

(a) The Contractor acknowledges the County's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and comply in the handling of the materials created under this Agreement. The Contractor further acknowledges that the constitutional and statutory provisions control over the terms of this Agreement. In association with its performance pursuant to this Agreement, the Contractor shall not release or otherwise disclose the content of any documents or information that is specifically exempt from disclosure pursuant to all applicable laws.

(b) Without in any manner limiting the generality of the foregoing, to the extent applicable, the Contractor acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

(1) keep and maintain public records required by the County to perform the services

required under this Agreement;

(2) upon request from the County's Custodian of Public Records or his/her designee, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if the Contractor does not transfer the records to the County; and

(4) upon completion of this Agreement, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

**(c) IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

**RECORDS MANAGEMENT LIASON OFFICER  
POLK COUNTY  
330 WEST CHURCH ST.  
BARTOW, FL 33830  
TELEPHONE: (863) 534-7527  
EMAIL: RMLO@POLK-COUNTY.NET**

**10.0 Compliance with Laws**

10.1 In performance of the Services, Consultant shall comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards, including those now in effect and hereafter adopted.

**11.0 Subcontracting**

11.1 The County reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.

11.2 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the

CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the County. Failure of a Subcontractor to timely or properly perform its obligations shall not relieve Consultant of its obligations hereunder.

12.0 **Federal and State Taxes**

12.1 The County is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the County will provide an exemption certificate to Consultant. The Consultant shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the County, nor shall the Consultant be authorized to use the County's Tax Exemption Number in securing such materials.

13.0 **Public Entity Crimes**

13.1 The Consultant understands and acknowledges that this Agreement with the County will be voidable by the County, in the event the conditions under Section 287.133, Florida Statutes applies to the Consultant, relating to conviction for a public entity crime.

14.0 **County's Responsibilities**

14.1 County shall be responsible for providing access to all County project sites, and providing information in the County's possession that may reasonably be required by Consultant, including; existing reports, studies, financial information, and other required data that are available in the files of the County.

15.0 **Termination of Agreement**

15.1 This Agreement may be terminated by the Consultant upon thirty (30) days prior written notice to the County in the event of substantial failure by the County to perform in accordance with the terms of the Agreement through no fault of the Consultant.

15.2 This Agreement may be terminated by the County with or without cause immediately upon written notice to the Consultant.

15.3 Unless the Consultant is in breach of this Agreement, the Consultant shall be paid for services rendered to the County's satisfaction through the date of termination.

15.4 After receipt of a Termination Notice, as described in this Article 15.0, and except

as otherwise directed by the County, the Consultant shall:

15.4.1 Stop work on the date and to the extent specified.

15.4.2 Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

15.4.3 Transfer all work in process, completed work, and other material related to the terminated work to the County.

15.4.4 Continue and complete all parts of the work that have not been terminated.

16.0 **Uncontrollable Forces (Force Majeure)**

16.1 Neither the County nor Consultant shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term “Uncontrollable Forces” shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

16.2 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.

16.3 The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Forces preventing continued performance of the obligations of this Agreement.

17.0 **Governing Law and Venue**

17.1 This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Polk County, Florida or the United States District Court, Middle District of Florida located in Hillsborough County, Florida.

Each party shall be responsible for its own attorneys' fee and other legal costs and expenses.

18.0 **Non-Discrimination**

18.1 The Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

19.0 **Waiver**

19.1 A waiver by either County or Consultant of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

20.0 **Severability**

20.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

20.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

20.3 The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

20.4 The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

21.0 **Entirety of Agreement**

21.1 The County and the Consultant agree that this Agreement sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein.

21.2 This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the County and Consultant

pertaining to the Services, whether written or oral.

21.3 None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

22.0 **Modification**

22.1 This Agreement may not be modified unless such modifications are evidenced in writing signed by both County and Consultant. Such modifications shall be in the form of a written Amendment executed by both parties.

23.0 **Successors and Assigns**

23.1 County and Consultant each binds itself and its partners, successors, permitted assigns, and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, permitted assigns, and legal representatives of such other party.

23.2 Consultant shall not assign this Agreement without the express written approval of the County by executed amendment, which approval may be withheld in the County's sole discretion.

23.3 In the event of a merger, the surviving corporation shall be substituted for the contracting party to this agreement and such substitution shall be affirmed by the County by executed amendment.

24.0 **Contingent Fees**

24.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than bona fide employee working solely for the Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

25.0 **Truth-In-Negotiation Certificate**

25.1 Execution of this Agreement by the Consultant shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the

compensation provided for in this Agreement are accurate, complete, and current as of the Effective Date of this Agreement.

25.2 The said rates and costs shall be adjusted to exclude any significant sums should the County determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The County shall exercise its rights under this "Certificate" within one (1) year following payment.

26.0 **Ownership of Documents**

26.1 Consultant shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the County for its use and/or distribution as may be deemed appropriate by the County. Consultant is not liable for any damages, injury or costs associated with the County's use or distribution of these documents for purposes other than those originally intended by Consultant.

27.0 **Access and Audits**

27.1 Consultant shall maintain adequate records to justify all charges and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The County shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours at the Consultant's place of business.

27.2 Misrepresentations of billable time or reimbursable expenses as determined by the Auditor to the Polk County Board of County Commissioners shall result in the recovery of any resulting overpayments. The County's cost of recovery shall be the sole expense of the Consultant, including accounting and legal fees, court costs and administrative expenses.

27.3 Intentional misrepresentations of billable hours and reimbursable expenses will be criminally prosecuted to the fullest extent of the law.

27.4 All invoices submitted are subject to audit and demand for refund of overpayment up to three (3) years following completion of all services related to this Agreement.

28.0 **Notice**

28.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by Federal-Express or by Certified Mail, postage prepaid as follows:

As to County: Polk County Procurement Division  
P.O. Box 9005  
Bartow, FL 33830  
Attention: Director

As to Consultant:

28.2 Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m., or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

28.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and County.

29.0 **Service of Process**

As to County: County Attorney  
County Administration Building  
330 W. Church Street, 4th Floor  
Bartow, Florida 33830

As to Consultant:

30.0 **Contract Administration**

30.1 Services of Consultant shall be under the general direction of the Engineering Services for Transportation and Parks and Natural Resources., or their successor, who shall act as the County' s representative during the term of this Agreement.

31.0 **Key Personnel**

31.1 Consultant shall notify County in the event of key personnel changes, which might affect this Agreement. To the extent possible, notification shall be made within ten (10) days prior to changes. Consultant at County's request shall remove without consequence to the County any Subcontractor or employee of the Consultant and replace him/her with another employee having the required skill and experience. County has the right to reject proposed changes in key personnel. The following personnel shall be considered key personnel:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

32.0 **Annual Appropriations**

32.1 Consultant acknowledges that the County, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreements for a period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the County's performance and obligation to pay under this agreement is contingent upon annual appropriation.

33.0 **Liquidated Damages**

33.1 The parties hereto agree that liquidated damages, in the amount specified in the applicable CSA/CPO, will be assessed against the Consultant for Consultant's failure to meet the final deliverable date in the Performance Schedule in the Scope of Work, but only to the extent and in proportion to Consultant's fault in causing the delay as compared to other causes, and to the extent the Consultant is not delayed by reasons beyond Consultant's reasonable control.

34.0 **Unauthorized Alien(s)**

34.1 The Consultant agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this Agreement. The County shall consider the employment or

utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the County. The form “AFFIDAVIT CERTIFICATION IMMIGRATION LAWS” will be signed by the CONSULTANT and submitted as part of the Agreement.

34.2 Employers may avail themselves of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automated link to Federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

34.3 If your company wishes to avail themselves of this program, you can register online for E-Verify at <https://www.vis-dhs.com/EmployerRegistration>, which provides instructions for completing the registration process. At the end of the registration process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you as the employer, the SSA, and DHS. An employee who has signatory authority for the employer can sign the MOU. Employers can use their discretion in identifying the best method by which to sign up their locations for E-Verify. To find out more about E-Verify, please visit [www.dhs.gov/e-verify](http://www.dhs.gov/e-verify) or contact USCIS at 1-888-464-4218.

**35.0 Limitation of Liability.**

**IN NO EVENT, SHALL THE COUNTY BE LIABLE TO THE CONSULTANT FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS CONTRACT BY THE COUNTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.**

(THE REMAINDER OF THE PAGE LEFT INTENTIONALLY BLANK)

SAMPLE

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date.

**ATTEST:**

STACY M. BUTTERFIELD

**Polk County**, a political subdivision  
of the State of Florida

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Melony Bell, Chairman  
Board of County Commissioners

Date Signed by County: \_\_\_\_\_

Review as to form and legal sufficiency

\_\_\_\_\_  
County Attorney's Office      Date

**ATTEST:**

COMPANY Name  
a \_\_\_\_\_

By: \_\_\_\_\_  
Corporate Secretary

By: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Print Name]

DATE: \_\_\_\_\_

\_\_\_\_\_  
[Title]

**SEAL**

DATE: \_\_\_\_\_

ACKNOWLEDGEMENT OF FIRM, IF A CORPORATION

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The foregoing instruments was acknowledged before me this

\_\_\_\_\_ By \_\_\_\_\_

(Date)

(Name of officer or agent, title of officer or agent)

on behalf of the corporation, pursuant to the powers conferred upon said officer or agent by the corporation.

He/she personally appeared before me at the time of notarization, and is personally known to me or has produced

\_\_\_\_\_ as identification and did certify to have knowledge of the matters stated

(Type of Identification)

in the foregoing instrument and certified the same to be true in all respects.

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_

(Date)

\_\_\_\_\_ Commission Number \_\_\_\_\_

(Official Notary Signature and Notary Seal)

\_\_\_\_\_ Commission Expiration Date \_\_\_\_\_

(Name of Notary typed, printed or stamped)

ACKNOWLEDGEMENT OF FIRM, IF A PARTNERSHIP

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this

\_\_\_\_\_ By \_\_\_\_\_

(Date)

(Name of acknowledging partner or agent)

on behalf of \_\_\_\_\_ a partnership. He/She

personally appeared before me at the time of notarization, and is personally known to me or has produced

\_\_\_\_\_ as identification and did certify to have knowledge of the matters

(Type of Identification)

in the foregoing instrument and certified the same to be true in all respects.

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_

(Date)

\_\_\_\_\_ Commission Number \_\_\_\_\_

(Official Notary Signature and Notary Seal)

\_\_\_\_\_ Commission Expiration Date \_\_\_\_\_

(Name of Notary typed, printed or stamped)

ACKNOWLEDGEMENT OF FIRM, IF AN INDIVIDUAL

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this

\_\_\_\_\_ By \_\_\_\_\_

(Date)

(Name of acknowledging)

who personally appeared before me at the time of notarization, and is personally known to me or has produced

\_\_\_\_\_ as identification and did certify to have knowledge of the matters

(Type of Identification)

in the foregoing instrument and certified the same to be true in all respects.

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_

(Date)

\_\_\_\_\_ Commission Number \_\_\_\_\_

(Official Notary Signature and Notary Seal)

\_\_\_\_\_ Commission Expiration Date \_\_\_\_\_

(Name of Notary typed, printed or stamped)