

## RFP NOTICE

Polk County, a political subdivision of the State of Florida, requests the submittal proposals from vendors that are interested in providing architectural and engineering services for the Polk County Agricultural Center Complex Design and Master Plan here as described herein. Sealed proposals must be received in the Procurement Division, prior to the due date and time listed below.

**RFP Number and Title:** 24-642, Architectural and Engineering (A&E) Services for the Polk County Agricultural Center Complex

**Description:** Provide A&E Services for the Polk County Agricultural Center Complex Design and Master Plan.

**Receiving Period:** Prior to 2:00 p.m., Wednesday, January 8, 2025

**Bid Opening:** Wednesday, January 8, 2025, at 2:00 p.m. or as soon as possible thereafter.

**Special Instructions:** A **MANDATORY** pre-proposal meeting will be held Tuesday, December 17, 2024, 2:00 p.m. at the Facilities Management Division conference room, located at 2160 Marshall Edwards Drive, Bartow, FL, 33830. An authorized representative or agent of the Proposer must be present at this meeting in person as evidenced by their signature on the meeting's sign-in sheet, or the Proposers Proposal will be considered non-responsive. A **MANDATORY** site visit will immediately follow. An authorized representative or agent of the Proposer must be present at the meeting and site visit as evidenced by their signature on the meeting's sign-in sheet, or the Proposers Proposal will be considered non-responsive.

Questions regarding this RFP must be in writing and must be sent to Tabatha Shirah, Procurement Analyst, via email at [tabathashirah@polk-county.net](mailto:tabathashirah@polk-county.net) or via fax at (863) 534-6789. All questions must be received by, Friday, December 20, 2024, 4:00 p.m.

## RFP REGISTRATION

You must register using this form in order to receive notice of any addenda to these documents. Please fax the completed form to the Procurement Division as soon as possible. It is the vendor's responsibility to verify if addenda have been issued.

**RFP Number:** 24-642

**RFP Title:** Architectural and Engineering (A&E) Services for the Polk County Agricultural Center Complex

This form is for bid registration only. Please scroll down for additional information.

Carefully complete this form and return it to the Procurement Division via e-mail to [procurement@polk-county.net](mailto:procurement@polk-county.net) or fax (863) 534-6789. You must submit one form for each solicitation that you are registering for.

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

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

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

## PROPOSAL SUBMITTAL INSTRUCTIONS

Proposers must submit their proposal prior to 2:00 p.m. on the receiving date. Proposals must be submitted in a “sealed” parcel or electronically through Polk County’s secure website, Kiteworks. Proposals will be publicly opened at 2:00 p.m. on the receiving date.

### **Sealed Parcel Submittal:**

If you are submitting a sealed parcel proposal submit one (1) original marked ORIGINAL and five (5) copies marked COPY of the proposal in a sealed parcel to the Procurement Division. The parcel should be labeled “RFP #24-642, Architectural and Engineering (A&E) Services for the Polk County Agricultural Center Complex” and marked with the proposer’s name and address. The Proposals may be mailed or delivered to:

**Polk County Procurement Division  
330 West Church Street, Room 150  
Bartow, FL 33830**

To assist with labeling the sealed parcel, please cut along the outer border and affix this label. Be sure to include the name of the company submitting the proposal where requested.

<b>Sealed Proposal. DO NOT OPEN</b>	
<b>RFP Number</b>	24-642
<b>RFP Title</b>	Architectural & Engineering Services for the Polk County Agricultural Center Complex
<b>Due Date/Time:</b>	January 8, 2025, prior to 2:00 pm
<b>Submitted by:</b>	
<b>Deliver To:</b>	Polk County Procurement Division 330 West Church Street, Room 150, Bartow, Florida 33830

Proposals may be mailed, express mailed or hand delivered. It is the Proposers responsibility to ensure their package is delivered to the Procurement Division prior to

2:00 p.m. on the Receiving date and time referenced above. Proposals delivered at 2:00 p.m. or later will not be accepted.

***Electronic Proposals Submittal:***

All prospective Proposers that are interested in submitting their proposals electronically can do so via the County’s secure electronic submittal website, Kiteworks. Proposers must email [tabathashirah@polk-county.net](mailto:tabathashirah@polk-county.net) at least 48 hours prior to opening to receive a link to upload their submittal. Please only upload your documents as a PDF or Excel file for the Cost Tab, if applicable. Please use the name convention of your files as follow:

“RFP 24-642 Tab 1”

“RFP 24-642 Tab 2”

“RFP 24-642 Tab 3”

“RFP 24-642 Tab 4”

“RFP 24-642 Tab 5”

“RFP 24-642 Tab 6”

“RFP 24-642 Tab 7”

“RFP 24-642 Tab 8”

For more instructions, a video tutorial has been produced to further explain the electronic solicitation submittal process. It can be found by clicking here for RFP Submittals: [https://youtu.be/vkn\\_7AHgioE](https://youtu.be/vkn_7AHgioE). If you need assistance accessing this website due to ADA or any other reason, please email Tabatha Shirah at [tabathashirah@polk-county.net](mailto:tabathashirah@polk-county.net).

Procurement recommends that Proposers submitting electronically double check the documents submitted into Kiteworks to ensure all requested tab information has been uploaded. Failure to upload the requested tab information may result in the proposal being deemed nonresponsive.

**POLK COUNTY**  
**Procurement Division**  
**Fran McAskill**  
**Procurement Director**

**REQUEST FOR PROPOSAL 24-642**  
**Architectural & Engineering Services for the Polk County Agricultural Center Complex**

Sealed proposals will be received in the Procurement Division, Wednesday, **January 8, 2025 prior to 2:00 p.m.**

Attached are important instructions and specifications regarding responses to this Request for Proposal (the "RFP"). The failure of a responding proposer (a "Proposer") to follow these instructions could result in Proposer disqualification from consideration for a contract to be awarded pursuant to this RFP.

This document is issued by Polk County (the "County") which is the sole distributor of this RFP and all addenda and changes to the RFP documents. The County shall record its responses to inquiries and provide any supplemental instructions or additional documents pertaining to this RFP in the form of written addenda to the RFP. The County shall post all such addenda, together with any other information pertaining to this RFP, on the County's website at <http://www.polk-county.net/boccsite/doing-business/bids/>. It is the sole responsibility of each Proposer to review the website prior to submitting a responsive proposal (a "Proposal") to this RFP to ensure that that the Proposer has obtained all available instructions, addenda, changes, supporting documents, and any other information pertaining to this RFP.

The County is not responsible for any solicitations issued through subscriber, publications, or other sources not connected with the County and the Proposer should not rely on such sources for information regarding the RFP solicitation.

**Questions regarding this RFP must be in writing and must be sent to Tabatha Shirah, via email at [tabathashirah@polk-county.net](mailto:tabathashirah@polk-county.net) or via fax at (863) 534-6789. All questions must be received by December 20, 2024, 4:00 p.m.**

**Proposers and any prospective Proposers shall not contact, communicate with or discuss any matter relating in any way to this RFP with any member of the Polk County Board of County Commissioners or any employee of Polk County other than the County Procurement Director or the individual designated above. This prohibition begins with the issuance of the Request for Proposal and ends upon execution of a contract. Any such communication initiated by a Proposer or prospective proposer shall be grounds for disqualifying the offender from consideration for a contract to be awarded pursuant to this RFP and for contracts to be awarded pursuant to RFPs or Requests for Bid that the County may issue in the future.**

A Proposer's responsive Proposal to this RFP may be mailed, express mailed, or hand delivered to:

**Polk County Procurement Division**  
**330 West Church Street, Room 150**  
**Bartow, Florida 33830**  
**(863)534-6757**

## **INTRODUCTION**

Polk County, a political subdivision of the State of Florida seeks professional architectural and engineering services for the Polk County Agricultural Center Complex Design and Master Plan, “the Project”.

Polk County’s Selection Process for consultants’ services is in accordance with Section 287.055, Florida Statutes, the Consultants’ Competitive Negotiations Act (“CCNA”). The Professional Services Selection Committee will review the qualifications of all submitting firms.

It is the intent of the County to select and negotiate a Consulting Agreement with one (1) architectural firm.

The County will negotiate a fee schedule and or overall lump sum price as part of “Selection Process”, Elevation Level 4, Contract Negotiations.

Services under this contract will be in compliance with Section 287.055 of the Florida Statutes referred to as the “Consultants’ Competitive Negotiation Act” (CCNA). Polk County’s Procurement Procedure’s Manual outlines the Procedures for Contracting for Professional Services Covered by CCNA. These procedures outline the process used for the selection of a consulting firm awarded through this RFP process.

In accordance with Section 287.055(10), Florida Statutes, or any applicable amending or replacement statute, this provision of the RFP shall serve as the County’s public notice that any plans, drawings or designs developed by the successful Proposer(s) on behalf of the County pursuant to this RFP or any agreement, authorization, purchase order or other contract resulting therefrom, are subject to be reused by the County at some future time in accordance with the aforementioned statute.

All services must be performed in accordance with applicable Federal, State and Local regulations.

## **BACKGROUND, PURPOSE AND SCOPE**

### **Background & Purpose:**

The Polk County agricultural center complex project is to design and build an agricultural complex that celebrates Polk County’s heritage as an agricultural community while embracing future generations by planning for the future development of the site.

The estimated construction cost for the project is \$21 Million.

### **Scope of Services**

The County’s intent is to select an experienced Architectural firm to provide architectural and engineering services to develop a master plan for the Polk County Agricultural Center Complex and design those elements adopted from the master plan in future phases contingent upon funding availability.

The site is located on County owned property at 2200 Homeland-Garfield Road, Bartow, Florida 33830.

The project includes an event arena, livestock barn(s), paddock area(s), trailer parking and a maintenance & operations building.

The project shall consist of multiple distinct work phases as follows:

- The first work phase will include the development of a master plan, design of the project based upon the master plan, develop a cost estimate for construction, bid the project and construction administration.
- Additional phases are contingent upon available funding.

The County will negotiate a lump sum cost for the first work phase with the selected Architectural firm during Elevation Level 4 (Contract Negotiations).

Architectural and engineering services are to include, but not limited to the following work categories necessary to permit and construct the new buildings:

- a. Attend and participate in all design progress/review meetings.
- b. Participate in all modeling reviews and reporting.
- c. Provide all programming, schematic design (SD), design development (DD), and construction document (CD) level design documents.
- d. Detailed cost estimates.
- e. Provide constructability design reviews and reporting.
- f. Participate in all value engineering design reviews and reporting.
- g. Participate in master project scheduling and reporting services.
- h. Attend all pre-bid meetings.
- i. Provide bidding assistance review services.
- j. Attend all bid related meetings.
- k. Participate and provide all site and buildings permitting signed and sealed document services.
- l. Provide all design and sub consulting services.
- m. Participate in all pre-construction and construction progress coordination meetings.
- n. Coordinate and participate in all closeout documentation requirements and meetings.
- o. Provide complete design documents and specifications.

## **AGREEMENT**

The term of this agreement is through acceptance and approval of the County for all deliverables to be outlined in the construction bid agreement(s) after notice to proceed is issued. The actual term will be negotiated as part of the Selection Process, Elevation Level 4.

## **EVALUATION CRITERIA**

Proposals should not contain information in excess of that requested, must be concise, and must specifically address the issues of this RFP. Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this RFP

are not desired and may be construed as an indication of the Proposer's lack of cost consciousness. Elaborate artwork, expensive visual aids, and other presentation aids are neither necessary nor desired unless specifically requested. The Proposal responses shall be contained within a three ring binder (original and each copy in separate binders). For the purposes of this RFP, one page equals a single sided page. It is requested that the responses be in the same order as the selection and evaluation procedures. The submittals should include the following:

### **Tab 1 – Executive Summary**

(Items a-c: Maximum of two (2) pages)

- a) Name, company name, address, telephone number, and email address.
- b) State the number of years in business, as the same company/firm.
- c) State the number of full-time employees.
- d) Provide documentation showing proper incorporation by the Secretary of State.
- e) Provide a copy of the firm's applicable certification(s) from the State of Florida allowing them to provide the services as outlined in the Scope of Service as well as compliance with F.S. 287.055

### **Tab 2 – Approach to Project (35 Points)**

(Maximum of four (4) pages)

- Provide a short narrative project approach outlining how you propose to respond to and manage this project.
- Please describe the specific abilities of the firm/team in regards to this approach. Include any innovative approaches to providing the services, and include any additional information not directly cited in the scope of services.
- Briefly describe firm's quality assurance/quality control program.
- Please include a project schedule.

### **Tab 3 – Experience, Expertise, Personnel & Technical Resources (35 Points)**

- Provide a minimum of three (3) and a maximum of five (5) recent projects performed within the past ten (10) years as the prime firm performing the architectural services for master plan and design of similar size and scope. (Limit response to one (1) page per project)
- For each project please provide:
  - a. Name and location of the project;
  - b. Size and cost of the project;
  - c. Project representative name, address, phone number, and email address;
  - d. Date project was completed or is anticipated to be completed; compare to the original date.
  - e. The nature of the firm's responsibility on the project;
  - f. Identify the key staff and their role in each project;
  - g. Identify working relationship of consultants or joint venture on project, if applicable;
  - h. Provide the original budget and the final budget of the project. Explain the reason(s) for differences, such as owner requested change, contractor claim, and insufficient plans and specifications.
  - i. List of any time extensions created by item h above.



- Provide an organizational chart of the team highlighting the key individuals who will work on this contract as identified above.
- The key staff presented in the consultant’s response shall be the staff utilized on this contract. Please provide the resumes of the key staff 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?
- Demonstrate each key staff’s availability and office and home location to respond to the needs of the project (Two (2) pages maximum for all key staff member)
- Identify sub consultants to be used, if any. For each sub consultant identified please provide
  - Their locations that can be utilized to expedite a deliverable if required.
  - 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.

**Tab 4 Is the Firm a “Polk County Entity”? (5 Points)**

- There will be a maximum of five (5) points allocated for this Tab. If the Proposer is a Polk County Entity then five (5) points will be allocated. If the Proposer is not a Polk County Entity but is utilizing one or more sub-consultants that are a Polk County Entity to assist in performing the scope of work then the Proposal will be allocated one (1) point for each sub-consultant which is a Polk County Entity up to a maximum of five (5) points. The Polk County Entity sub-consultant(s) must have been identified under Tab 3, Experience, Expertise, Personnel and Technical Resources in order to qualify for point allocation.
- Provide documentation of the Proposers’ headquarters and local offices, if any, and the amount of time the firm has been located at each such local office. Please also indicate the number of employees at the local office.
- Provide documentation of the sub-consultant’s headquarters and local offices, if any, and the amount of time the sub-consultant has been located at each such local office. Please also indicate the number of employees at the local office.
- Proposers or sub-consultants will be allocated points if they meet the following Polk County Government definition of Polk County Entity.
  - The term “Polk County Entity” means any business having a physical location within the boundaries of Polk County, Florida, at which employees are located and business activity is managed and controlled on a day to day basis. Additionally, the business must have been located within the boundaries of Polk County for a minimum of 12 months prior to the date the applicable solicitation is issued. This requirement may be evidenced through a recorded deed, an executed lease agreement, or other form of written documentation acceptable to the County. The County shall have the right, but not the obligation, to verify the foregoing requirements.

- In the event a Proposer lists one or more sub-consultants in Tab 4 which is a Polk County Entity and receives point(s) as a result, and after the Proposer is awarded the project, if successful, it is determined that the listed sub-consultant does not assist in the performance of the scope of work (and is not replaced with an alternative sub-consultant which is a Polk County Entity), then the Proposer acknowledges and agrees that it may be suspended or debarred by the Procurement Director for failure to comply with the conditions, specifications or terms of a proposal or contract with the County or for committing a fraud or misrepresentation in connection with a proposal or contract with the County, in accordance with the Polk County Purchasing Ordinance and Procedures Manual.

**Tab 5 Is the Firm a “Certified Woman or Minority Business Enterprise” (5 Points)**

- Polk County Board of County Commissioners has a long standing commitment to encouraging the utilization of Women and Minority Businesses that do business with the County as vendors. To that end we encourage all of our prime and professional services vendors to utilize W/MBE vendors where at all possible, irrespective of a company’s certification status. Please explain how the submitting firm will encourage minority participation in the project. (Limit response to one page)
- There will be a maximum of five (5) points allocated for this tab. If the Proposer is a Woman or Minority owned business then five (5) points will be allocated. If the Proposer is not a Woman or Minority owned business but is utilizing one or more sub-consultants that are a Women or Minority owned business to assist in performing the scope of work, then the Proposal will be allocated one (1) point for each sub-consultant which meets the County’s certification criteria of Women or Minority owned, up to a maximum of five (5) points. The Woman or Minority owned business sub-consultant(s) must have been identified under Tab 3, Experience, Expertise, Personnel and Technical Resources in order to qualify for point allocation.
- Proposers or sub-consultants will be allocated points if they are a certified W/MBE as evidenced by providing the documentation described below.
- If the Proposer or sub-consultant has a certified W/MBE status, provide documentation of the firms’ certified W/MBE status as defined by the Florida Small and Minority Business Act and as defined in Polk County’s Purchasing Procedures. Polk County’s Purchasing Procedures recognize the following to meet the requirement of a certified W/MBE status:
  - Valid W/MBE Certification from one of the following:
    - Florida Minority Supplier Development Council
    - Women Business Enterprise National Council
    - The State of Florida Office of Supplier Diversity
    - Florida Department of Transportation
    - U. S. Small Business Administration
    - Federal Aviation Authority
    - Other Florida governmental agencies

Certifications from other governmental agencies will be considered on a case-by-case basis.

- In the event a Proposer lists one or more sub-consultants in Tab 5 which is a Women or Minority owned business and receives point(s) as a result, and after the Proposer is awarded the project, if successful, it is determined that the listed sub-consultant does not

assist in the performance of the scope of work (and is not replaced with an alternative sub-consultant which is a Women or Minority owned business), then the Proposer acknowledges and agrees that it may be suspended or debarred by the Procurement Director for failure to comply with the conditions, specifications or terms of a proposal or contract with the County or for committing a fraud or misrepresentation in connection with a proposal or contract with the County, in accordance with the Polk County Purchasing Ordinance and Procedures Manual.

**Tab 6 – Interaction with County and Regulatory Agency Staff (5 Points)**

- Provide documentation supporting the specialized qualifications of the proposed staff in terms of meeting this scope of service. Qualifications should highlight experience with regulatory agencies, identifying specific agencies and the items being addressed, including construction permitting, consultation, governing regulations; and other related activities. Describe the firm’s ability to work with the Facilities Management Division, Procurement Division, Building Division, Codes Division, and County Attorney’s Office staff in order to successfully fulfill the scope of service. Demonstrate the firm’s knowledge of permitting process, as well as local regulatory agencies. (Limit response to one (1) page)

**Tab 7 – Timely Completion of Projects (5 Points)**

- Describe the firms’ current and future projected workload. Describe specifically the firms’ daily ability to handle each aspect of the scope of services described herein. (Limit response to two (2) pages maximum)

**Tab 8 – Surveys of Past Performance (10 Points)**

- Provide reference surveys from past clients for all projects identified under Tab 3.
- Completed surveys. (See Exhibit 1) Procurement will take the average of all three surveys and score as follows
  - Average Score between 9-10                      10 Points
  - Average Score between 7-8                      8 Points
  - Average Score between 5-6                      6 Points
  - Average Score between 3-4                      4 Points
  - Average Score between 1-2                      2 Points
  - Average Score of 0                                  0 Points

**BID OPENING**

Proposers attend the Bid Opening in person or via conference call by dialing (646) 558-8656 and enter Meeting ID: 327 647 2818. A listing of all proposers will be posted to Procurement’s website as soon as possible after bid opening.

**Selection Process**

Proposals will be evaluated in accordance with this section and all applicable County procurement policies and procedures.

The County shall appoint a selection committee (the “Selection Committee”) that will be responsible for evaluating and scoring/ranking the Proposals in accordance with this Section.

The County will use a competitive selection process based on the Elevation Levels described in this Section. At Elevation Levels 2 and 3, the Selection Committee will score and/or rank the Proposals as applicable.

Selection of a final Proposal will be based upon the following steps and factors:

**Elevation Level 1 (Procurement Requirements Assessment):**

- The County Procurement Division shall review all Proposals for conformance with RFP guidelines and detailed submittal requirements. At the County’s discretion, non-conforming Proposals may be eliminated from further consideration and conforming Proposals shall be elevated to Elevation Level 2. Procurement will distribute Proposals and evaluation criteria to the Selection Committee.
- Procurement will also ensure all firms meet the requirement of certification as outlined in Florida Statute 287.055(3)(c).
- The Selection Committee may convene to review questions that arise during individual member review of submitted Proposals before Elevation Level 2 to allow for questions, clarifications, explanations, or other discussion to be held before the review of Proposals is completed.

**Elevation Level 2 (Scoring)**

- Procurement shall score each Proposal on the following evaluation criteria:
  - Local (Tab 4) 5 points
  - W/MBE Certification (Tab 5) 5 Points
  - Surveys of Past Performance (Tab 8) 10 points
  - Subtotal Points 20 points

by the process stated under each corresponding Tab description as set forth on Pages 8-11.

- 1) Each Selection Committee member shall score each Proposal on the following evaluation criteria:
  - Approach to Project (Tab 2) 35 Points
  - Experience, Expertise, (Tab 3) 35 Points  
Personnel, and Technical Resources
  - Interaction w/ County & Regulatory (Tab 6) 5 points  
Agencies
  - Timely Completion of Projects(Tab 7) 5 points  
Subtotal Points 80 points

by the following process:

- 1) Each Selection Committee member shall determine which of the following descriptions applies to each of the foregoing evaluation criteria:
  - EXCELLENT (1.0): Of the highest or finest quality; exceptional; superior; superb; exquisite; peerless.  
The Proposer provided information for a given criteria that satisfied the requirements and described specifically how and what will be accomplished in such a manner that exhibited an exceptional and superior degree of understanding, skill, and competency, both qualitatively and quantitatively. The facts included in the narrative (including all

supporting documentation, diagrams, drawings, charts, and schedules, etc.) demonstrate the Proposer's ability to perform and deliver far beyond expectation.

- **VERY GOOD (0.8):** To a high degree; better than or above competent and/or skillful. The Proposer provided information for a given criteria that satisfied the requirements and described specifically how and what will be accomplished in such a manner that exhibited a very high degree of understanding, skill, and competency, both qualitatively and quantitatively. The facts included in the narrative (including all supporting documentation, diagrams, drawings, charts, and schedules, etc.) demonstrate the Proposer's ability to perform and deliver beyond expectation.
- **GOOD (0.6):** Having positive or desirable qualities; competent; skilled; above average. The Proposer provided information for a given criteria that satisfied the requirements and described specifically how and what will be accomplished in such a manner that exhibited a skillful and above-average degree of understanding, skill, and competency, both qualitatively and quantitatively. The facts included in the narrative (including all supporting documentation, diagrams, drawings, charts, and schedules, etc.) demonstrate the Proposer's ability to perform and deliver at the expected level.
- **FAIR (0.4):** Average; moderate; mediocre; adequate; sufficient; satisfactory; standard. The Proposer provided information for a given criteria that satisfied the requirements and described sufficiently how and what will be accomplished in a manner that exhibited an adequate and average degree of understanding, skill, and competency, both qualitatively and quantitatively. The facts included in the narrative (including all supporting documentation, diagrams, drawings, charts, and schedules, etc.) demonstrate the Proposer's ability to perform and deliver at a level slightly below expectation.
- **POOR (0.2):** Inadequate; lacking; inferior in quality; of little or less merit; substandard; marginal. The Proposer provided information for a given criteria that did not satisfy the requirements and described in an inadequate manner how and what will be accomplished. The information provided simply reiterated a requirement, contained inaccurate statements or references, lacked adequate information, or was of inferior quality. The facts included in the narrative (including all supporting documentation, diagrams, drawings, charts, and schedules, etc.) demonstrate the Proposer's ability to perform and deliver at a substandard and inferior level.
- **UNACCEPTABLE (0.0):** The Proposer failed to provide any information for a given criteria, provided information that could not be understood, or did not provide the information for a given category as requested.

After a Selection Committee member has determined the description applicable for each evaluation criterion, the total points available for such criterion shall be multiplied by the factor associated with the applicable description to produce the number of points allocated for that evaluation criterion. For example, a Selection Committee member classifies the "Experience and Expertise" criterion (which shall be worth 25 points for the purpose of this example) as "Very Good" (which is a description factor multiplier of 0.8). The points that Selection Committee member allocated for that evaluation criterion would be 20, calculated as follows: 25 available points x 0.8 applicable description factor multiplier = 20 points.

A Selection Committee member's total score for each Proposal shall equal the sum of the total points allocated for each evaluation criteria.

When all Selection Committee members have completed their Proposal evaluations, the individual Selection Committee member's total scores for each Proposal will be added together to produce a final score for each Proposal.

Procurement will confirm the calculations for the final score for each Proposal. Then, Procurement shall publish a rank-ordered listing of the Proposals to the Selection Committee with the Proposal receiving the highest point as the highest-ranked Proposal.

In accordance with Section 287.055(4)(a), Florida Statutes, if there are three (3) or more Proposers in Elevation Level 2, the Selection Committee will elevate no fewer than the three highest scored of such Proposers to Elevation Level 3 for interviews. If there are only two Proposers in Elevation Level 2, the Selection Committee shall elevate those two Proposers to Elevation Level 3 for interviews. If there is only one Proposer in Elevation Level 2, then the Selection Committee may collectively decide if they would like to elevate the Proposer to Elevation Level 3 for interviews or if they would like to recommend the Board authorize staff to enter into Contract Negotiations with the Proposer. In the latter case, after Board approval to authorize staff to negotiate a contract, the Proposer will then be elevated to Elevation Level 4 for contract negotiations.

### **Elevation Level 3 (Proposer Interviews)**

The Selection Committee may be required to conduct interviews of the Proposers that it has elevated from Elevation Level 2 to Elevation Level 3.

During an interview, elevated Proposers may be requested to make a presentation focusing on their qualifications, approach to the project and the ability to furnish the required services. The Selection Committee members will have an opportunity to inquire about any aspect of the RFP and the Proposer's Proposal. After all elevated Proposer interviews, each Selection Committee member will individually rank the Proposers in numerical order beginning at number 1 for the Proposer deemed to be the most highly qualified to perform the required services. In accordance with Section 287.055(4)(b), Florida Statutes, in determining whether a Proposer is qualified, each Selection Committee member shall consider such factors as:

- Ability of Personnel
- Whether a Proposer is a certified minority business enterprise
- Past performance
- Willingness to meet time and budget requirements
- Location
- Recent, current, and projected workloads
- Volume of work previously awarded to each Proposer by the County

Procurement shall receive and compile each Selection Committee member's ranking of each Proposer, and then publish a rank-ordered listing of Proposers to the Selection Committee, based on the combined average rankings given each Proposer. The Selection Committee members will then collectively decide if they would like to recommend the Board, or if applicable the County manager, authorize staff to enter into Contract Negotiations with all Proposers elevated to Proposer Interviews, starting with the highest-ranked Proposer. After Board or County Manager approval, as applicable, to authorize staff to negotiate a contract, the highest-ranked Proposer will then be elevated to Elevation Level 4, Contract Negotiations.

#### **Elevation Level 4 (Contract Negotiations)**

If a Proposer is elevated to this level, the User Division, with the assistance of Procurement and the County Attorney's Office, shall negotiate an Agreement with the elevated Proposer(s) in accordance with Section 287.055(5), Florida Statutes.

If after negotiating for a reasonable time period the parties cannot agree on a contract, the County shall, in its sole discretion, terminate further contract negotiations with that Proposer. Procurement shall notify the Selection Committee that contract negotiations with the elevated Proposer have terminated. The Selection Committee shall then determine whether to recommend to the Board to approve contract negotiations with the next-highest-ranked Proposer, and so on. If the Selection Committee decides not to recommend contract negotiations with the next-highest-ranked Proposer, or if the County determines there is no other Proposer with whom the County can successfully negotiate a contract, then the RFP Selection Process shall terminate.

After contract negotiations with a Proposer are successfully completed pursuant to Elevation Level 4, the Selection Committee shall recommend to the Board of County Commissioners that it selects such Proposer to provide the services as outlined in the Agreement. The Board of County Commissioners shall make the final decision whether to enter into an Agreement with a Proposer.

## **GENERAL CONDITIONS**

### **CONTACT**

After the issuance of any Request for Proposal, prospective proposers shall not contact, communicate with or discuss any matter relating in any way to the Request for Proposal with the Board of County Commissioners, and any employee of Polk County, other than the Procurement Director or as directed in the cover page of the Request for Proposal. This prohibition begins with the issuance of any Request for Proposal and ends upon completion execution of a contract. Such communications initiated by a proposer shall be grounds for disqualifying the offending proposer from consideration for award of the proposal and/or any future proposal.

### **INSURANCE REQUIREMENTS**

The selected firm, if any, 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. Provide to the County original Certificates of Insurance satisfactory to the County to evidence such coverage before any work commences. Polk County, a political subdivision of the State of Florida, shall be an additional named insured on all policies related to the project; excluding workers' compensation and professional liability. The Workers' Compensation and General Liability policies shall contain a waiver of subrogation in favor of Polk County. All insurance coverage shall be written with a company having an A.M. Best Rating of at least the "A" category and size category of VIII. The firm's self-insured retention or deductible per line of coverage shall not exceed \$25,000 without the permission of the County. In the event of any failure by the firm to comply with the provisions; the County may, at its option, on notice to the firm suspend the project for cause until there is full compliance. Alternatively, the County may purchase such insurance at the firm's expense, provided that the County shall have no obligation to do so and if the County shall do so, the firm shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

Worker's Compensation and Employer's Liability Insurance providing statutory benefits, including those that may be required by any applicable federal statute:

Admitted in Florida	Yes
Employer's Liability	\$100,000
All States Endorsement	Statutory
Voluntary Compensation	Statutory

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

Premises and Operations and Products/Completed 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 coverages;

Independent Contractors; Policy must include Separation of Insureds Clause.

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

Professional Liability Insurance. \$2,000,000 for design errors and omissions, inclusive of defense costs. Selected firm shall be required to provide continuing Professional Liability Insurance to cover the project for a period of two (2) years after the projects are completed.

### **INDEMNIFICATION**

To the maximum extent permitted by law, the Consultant shall indemnify, protect and hold the 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 whatsoever (including, without limitation, reasonable attorneys' fees, costs, and expenses incurred during negotiation, through litigation and all appeals therefrom) including, without limitation, those pertaining to the death of or injury to any person, or damage to any property, to the extent 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 or any persons or entities employed or utilized by Consultant in the performance of this Agreement. The obligations imposed by this Section shall survive the expiration or earlier termination of the Agreement.

### **PUBLIC ENTITY CRIMES STATEMENT**

The Consultant declares and warrants that neither the Consultant nor any of the Consultant's affiliates, as that term is defined in Section 287.133, Florida Statutes, are subject to the restrictions in Section 287.133, Florida Statutes, regarding the commission of a public entity crime. If during the term of this Agreement, the Consultant or any affiliate is convicted of a public entity crime or is otherwise prohibited from performing work for or transacting business with the County pursuant to Section 287.133, Florida Statutes, then the Consultant shall be in material default of this Agreement, and in such case, the County shall have the rights and remedies as provided herein.

## **EQUAL OPPORTUNITY/AFFIRMATIVE ACTION**

The County is an equal opportunity/affirmative action employer. The County is committed to equal opportunity employment effort; and expects firms that do business with the County to have a vigorous affirmative action program.

## **WOMEN/MINORITY BUSINESS ENTERPRISE OUTREACH**

The County hereby notifies all Proposers that W/MBEs are to be afforded a full opportunity to participate in any request for proposal by the County and will not be subject to discrimination on the basis of race, color, sex or national origin.

## **AFFIRMATION**

By submitting their proposal, the Proposer affirms that the proposal is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; the Proposer has not directly or indirectly induced or solicited any other person to submit a false or sham proposal; the Proposer has not solicited or induced any person, firm or corporation to refrain from submitting a proposal; and the Proposer has not sought by collusion to obtain for him/herself any advantage over other persons or over the County.

## **DEVELOPMENT COSTS**

Neither the County nor its representative(s) shall be liable for any expenses incurred in connection with preparation of a response to the RFP. Proposers should prepare their proposals simply and economically, providing a straightforward and concise description of the proposer's ability to meet the requirements of the RFP.

## **ADDENDA**

The County may record its responses to inquiries and any supplemental instructions in the form of written addenda. The addenda will be posted on the County's website at <http://www.polk-county.net/bocccsite/doing-business/bids/>. It is the sole responsibility of the proposers to check the website to ensure that all available information has been received prior to submitting a proposal.

## **CODE OF ETHICS**

If any proposer violates or is a party to a violation of the code of ethics of Polk County or the State of Florida, with respect to this proposal, such proposer may be disqualified from performing the work described in this proposal or from furnishing the goods or services for which the proposal is submitted and shall be further disqualified from bidding on any future proposals for work, goods, or services for the County.

## **DRUG FREE WORKPLACE**

Preference shall be given to businesses with Drug Free Workplace (DFW) programs. Whenever two or more proposals, which are equal with respect to price, quality and service, are received by the County for the procurement of commodities or contractual services, a proposal received from a business that has provided a statement that it is a DFW shall be given preference in the award process.

## **APPLICABLE LAWS AND COURTS**

This RFP and any resulting agreements 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. The proposer shall comply with all applicable federal, state and local laws and regulations.

## **CONTRACTUAL MATTERS**

A copy of the Consulting Agreement to be entered into with the successful proposer(s) is included with this RFP as Attachment A.

All contracts are subject to final approval of the Polk County Board of County Commissioners. Persons or firms who incur expenses or change position in anticipation of a contract prior to the Board's approval do so at their own risk.

## **PROPOSAL ACCEPTANCE PERIOD**

A proposal shall be binding upon the offeror and irrevocable by it for ninety (90) calendar days following the proposal opening date. Any proposal in which offeror shortens the acceptance period may be rejected.

## **ADDITION/DELETION**

The County reserves the right to add to or delete any item from this proposal or resulting agreements when deemed to be in the best interest of the County.

## **PROPRIETARY INFORMATION**

In accordance with Chapter 119 of the Florida Statutes (Public Records Law), and except as may be provided by other applicable State and Federal Law, all proposers should be aware that Request for Proposals and the responses thereto are in the public domain. However, the proposers are required to identify specifically any information contained in their proposals which they consider confidential and/or proprietary and which they believe to be exempt from disclosure, citing specifically the applicable exempting law. Proposers should provide a redacted copy of proposal with submittal.

All proposals received from proposers in response to this Request for Proposal will become the property of the County and will not be returned to the proposers. In the event of contract award, all documentation produced as part of the contract will become the exclusive property of the County.

## **REVIEW OF PROPOSAL FILES**

In accordance with Chapter 119.071 of the Florida Statutes, the responses received for this Request for Proposal are exempt from review for thirty (30) days after the Bid Opening Date or at Recommendation of Award, whichever event occurs first.

Should the RFP be cancelled and re-solicited for any reason, proposal responses shall remain exempt from disclosure for a period not to exceed twelve (12) months or at Recommendation of Award of the subsequent solicitation.

## **RFP PROTEST**

Any proposer desiring to file a protest, with respect to a recommended award of any RFP, shall do so by filing a written protest. The written protest must be in the possession of the Procurement Division within three (3) working days of the Notice of Recommended Award mailing date. All proposers who submitted a proposal will be sent a Notice of Recommended Award, unless only one proposal was received.

A copy of the protest procedures may be obtained from the Polk County Procurement Division or can be downloaded from the County's website at <http://www.polk-county.net/docs/default-source/procurement/protest-procedures.pdf?sfvrsn=2>.

**FAILURE TO FOLLOW PROTEST PROCEDURE REQUIREMENTS WITHIN THE TIME FRAMES PRESCRIBED HEREIN AS ESTABLISHED BY POLK COUNTY, FLORIDA, SHALL CONSTITUTE A WAIVER OF THE PROPOSER'S RIGHT TO PROTEST AND ANY RESULTING CLAIM.**

## **UNAUTHORIZED ALIEN(S)**

The Consultant agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this solicitation. 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. As part of the response to this solicitation, the successful consultant will complete and submit the form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS."

## **EMPLOYMENT ELIGIBILITY VERIFICATION (E-Verify)**

A. Unless otherwise defined herein, terms used in this Section which are defined in Section 448.095, Florida Statutes, as may be amended from time to time, shall have the meaning ascribed in said statute.

B. Pursuant to Section 448.095(5), Florida Statutes, the contractor hereto, and any subcontractor thereof, must register with and use the E-Verify system to verify the work authorization status of all new employees of the contractor or subcontractor. The contractor acknowledges and agrees that (i) the County and the contractor may not enter into this Agreement, and the contractor may not enter into any subcontracts hereunder, unless each party to this Agreement, and each party to any subcontracts hereunder, registers with and uses the E-Verify system; and (ii) use of the U.S. Department of Homeland Security's E-Verify System and compliance with all other terms of this Certification and Section 448.095, Fla. Stat., is an express condition of this Agreement, and the County may treat a failure to comply as a material breach of this Agreement.

C. By entering into this Agreement, the contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of this Agreement. Failure to comply will lead to

termination of this Agreement, or if a subcontractor knowingly violates the statute or Section 448.09(1), Fla. Stat., the subcontract must be terminated immediately. If this Agreement is terminated pursuant to Section 448.095, Fla. Stat., such termination is not a breach of contract and may not be considered as such. Any challenge to termination under this provision must be filed in the Tenth Judicial Circuit Court of Florida no later than 20 calendar days after the date of termination. If this Agreement is terminated for a violation of Section 448.095, Fla. Stat., by the contractor, the contractor may not be awarded a public contract for a period of 1 year after the date of termination. The contractor shall be liable for any additional costs incurred by the County as a result of the termination of this Agreement. Nothing in this Section shall be construed to allow intentional discrimination of any class protected by law.

### **LIMITATIONS**

This request does not commit Polk County to award a contract. Proposers will assume all costs incurred in the preparation of their response to this RFP. The County reserves the right to: 1) accept or reject qualifications and/or proposals in part or in whole; 2) request additional qualification information; 3) limit and determine the actual contract services to be included in a contract; 4) obtain information for use in evaluating submittals from any source and 5) reject all submittals.

### **ATTORNEY'S FEES AND COSTS:**

Each party shall be responsible for its own legal and attorney's fees, costs and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this Agreement, including attorney's fees, costs and expenses incurred for any appellate or bankruptcy proceedings.

**Prohibition Against Considering Vendor Interests:** In accordance with Section 287.05701, Florida Statutes, the County may not (i) request documentation of or consider a Vendor's social, political, or ideological interests when determining if the Vendor is a responsible vendor; or (ii) give preference to a Vendor based on the Vendor's social, political, or ideological interests.

### **PUBLIC RECORD LAWS**

(a) The Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant or keep and maintain public records required by the County to perform the service. If the Consultant transfers all public records to the County upon completion of this Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of this Agreement, the Consultant 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 CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

**RECORDS MANAGEMENT LIAISON OFFICER  
POLK COUNTY  
330 WEST CHURCH ST  
BARTOW, FL 33830  
TELEPHONE: (863) 534-7527  
EMAIL: RML0@POLK-COUNTY.NET**

**Scrutinized Companies and Business Operations Certification; Termination.**

A. Certification(s)

(I) By its execution of this Agreement, the Vendor hereby certifies to the County that the Vendor is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, nor is the Vendor engaged in a boycott of Israel, nor was the Vendor on such List or engaged in such a boycott at the time it submitted its bid, proposal, quote, or other form of offer, as applicable, to the County with respect to this Agreement.

(II) Additionally, if the value of the goods or services acquired under this Agreement are greater than or equal to One Million Dollars (\$1,000,000), then the Vendor further certifies to the County as follows:

(a) the Vendor is not on the Scrutinized Companies with Activities in Sudan List, created pursuant to Section 215.473, Florida Statutes; and

(b) the Vendor is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; and

(c) the Vendor is not engaged in business operations (as that term is defined in Florida Statutes, Section 287.135) in Cuba or Syria; and

(d) the Vendor was not on any of the Lists referenced in this subsection A(ii), nor engaged in business operations in Cuba or Syria when it submitted its proposal to the County concerning the subject of this Agreement.

(iii) The Vendor hereby acknowledges that it is fully aware of the penalties that may be imposed upon the Vendor for submitting a false certification to the County regarding the foregoing matters.

B. Termination. In addition to any other termination rights stated herein, the County may immediately terminate this Agreement upon the occurrence of any of the following events:

(i) The Vendor is found to have submitted a false certification to the County with respect to any of the matters set forth in subsection A(i) above, or the Vendor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

(ii) The Vendor is found to have submitted a false certification to the County with respect to any of the matters set forth in subsection A(ii) above, or the Vendor is found to have been placed on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, and the value of the goods or services acquired under this Agreement are greater than or equal to One Million Dollars (\$1,000,000).

## Proposers Incorporation Information

(Submittal Page)

The following section should be completed by all bidders and submitted with their bid submittal:

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

DBA/Fictitious Name (if applicable): \_\_\_\_\_

TIN #: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

County: \_\_\_\_\_

Note: Company name must match legal name assigned to the TIN number. A current W9 should be submitted with your bid submittal.

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Cell Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Type of Organization (select one type)

- Sole Proprietorship
- Partnership
- Non-Profit
- Sub Chapter
- Joint Venture
- Corporation
- LLC
- LLP
- Publicly Traded
- Employee Owned

State of Incorporation: \_\_\_\_\_

The Successful vendor must complete and submit this form prior to award. The Successful vendor must invoice using the company name listed above.



# EXHIBIT 1

## DETAILED INSTRUCTIONS ON HOW TO PREPARE AND SEND PERFORMANCE SURVEYS

The objective of this process is to identify the past performance of the Consultant submitting a proposal package. This is accomplished by sending survey forms to past customers. The customers should return the forms directly to the Consultant. The Consultant is to include all surveys in their proposal package.

### **Sending the Survey**

The surveys shall be sent to all clients for whom the Consultant has identified under Tab 3. Surveys should correlate to all projects identified under Tab 3.

If more surveys are included then Procurement will only use those identified under Tab 3.

1. The Consultant shall complete the following information for each customer that a survey will be sent

CLIENT NAME	Name of the company that the work was performed for (i.e. Hillsborough County).
FIRST NAME	First name of the person who will answer customer satisfaction questions.
LAST NAME	Last name of the person who will answer customer satisfaction questions.
PHONE NUMBER	Current phone number for the reference (including area code).
EMAIL ADDRESS	Current email address for the reference.
PROJECT NAME	Name of the project (A&E Services for Hillsborough County Agricultural Center Master Plan), Etc.
COST OF SERVICES	Cost of services (\$200,000.00)
DATE COMPLETE	Date when the services were completed. (i.e. 12/31/2014)

2. The Consultant is responsible for verifying that their information is accurate prior to submission for references.

3. The survey must contain different services/projects. You cannot have multiple people evaluating the same job. However, one person may evaluate several different jobs.

4. The past projects can be either completed or on-going.

5. The past client/owner must evaluate and complete the survey.

### **Preparing the Surveys**

1. The Consultant is responsible for sending out a performance survey to the clients that have been identified under Tab 3. The survey can be found on the next page.
2. The Consultant should enter the past clients' contact information, and project information on each survey form for each reference. The Consultant should also enter their name as the Consultant being surveyed.
3. The Consultant is responsible for ensuring all references/surveys are included in their submittal under Tab 8
4. Polk County Procurement may contact the reference for additional information or to clarify survey data. If the reference cannot be contacted, there will be no credit given for that reference.

**Survey Questionnaire – Polk County**  
**RFP 24-642, A & E Services for the Polk County Agricultural Center Complex**

To: \_\_\_\_\_ (Name of Person completing survey)  
 \_\_\_\_\_ (Name of Client Company/Consultant)  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Total Annual Budget of Entity \_\_\_\_\_

Subject: Past Performance Survey of Similar work:

Project name: \_\_\_\_\_

Name of Vendor being surveyed: \_\_\_\_\_

Cost of Services: Original Cost: \_\_\_\_\_ Ending Cost: \_\_\_\_\_

Contract Start Date: \_\_\_\_\_ Contract End Date: \_\_\_\_\_

**Rate each of the criteria on a scale of 1 to 10, with 10 representing that you were very satisfied (and would hire the Consultant /individual again) and 1 representing that you were very unsatisfied (and would never hire the Consultant /individual again). Please rate each of the criteria to the best of your knowledge. If you do not have sufficient knowledge of past performance in a particular area, leave it blank.**

NO	CRITERIA	UNIT	SCORE
1	Ability to manage cost	(1-10)	
2	Ability to maintain project schedule (complete on-time/early)	(1-10)	
3	Quality of workmanship	(1-10)	
4	Professionalism and ability to manage	(1-10)	
5	Close out process	(1-10)	
6	Ability to communicate with Client's staff	(1-10)	
7	Ability to resolve issues promptly	(1-10)	
8	Ability to follow protocol	(1-10)	
9	Ability to maintain proper documentation	(1-10)	
10	Appropriate application of technology	(1-10)	
11	Overall Client satisfaction and comfort level in hiring	(1-10)	
12	Ability to offer solid recommendations	(1-10)	
13	Ability to facilitate consensus and commitment to the plan of action among staff	(1-10)	

Printed Name of Evaluator \_\_\_\_\_

Signature of Evaluator: \_\_\_\_\_

Please fax or email the completed survey to: \_\_\_\_\_

**Affidavit Certification Immigration Laws**

POLK COUNTY WILL NOT INTENTIONALLY AWARD COUNTY CONTRACTS TO ANY CONSULTANT WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 A(E) {SECTION 274A(E) OF THE IMMIGRATION AND NATIONALITY ACT (“INA”)}

POLK COUNTY MAY CONSIDER THE EMPLOYMENT BY ANY CONSULTANT OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(E) OF THE INA. **SUCH VIOLATION OF THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN 274A(E) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY POLK COUNTY.**

BIDDER ATTEST THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

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

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

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

Date: \_\_\_\_\_

State of: \_\_\_\_\_

County of: \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (name) as \_\_\_\_\_ (title of officer) of \_\_\_\_\_ (entity name), on behalf of the company, who  is personally known to me or  has produced \_\_\_\_\_ as identification.

Notary Public Signature: \_\_\_\_\_

Printed Name of Notary Public: \_\_\_\_\_

Notary Commission Number and Expiration: \_\_\_\_\_

(AFFIX NOTARY SEAL)

## Affidavit Regarding the Use of Coercion for Labor or Services

In compliance with Section 787.06(13), Florida Statutes, this attestation must be completed by an officer or representative of a nongovernmental entity that is executing, renewing, or extending a contract with Polk County, a political subdivision of the State of Florida.

The undersigned, on behalf of the entity listed below (the "Nongovernmental Entity"), hereby attests under penalty of perjury as follows:

1. I am over the age of 18 and I have personal knowledge of the matters set forth herein.
2. I currently serve as an officer or representative of the Nongovernmental Entity.
3. The Nongovernmental Entity does **not** use coercion for labor or services, as those underlined terms are defined in Section 787.06, Florida Statutes.
4. This declaration is made pursuant to Section 92.525, Fla. Stat. and Section 787.06, Fla. Stat. I understand that making a false statement in this declaration may subject me to criminal penalties.

Under penalties of perjury, I \_\_\_\_\_ (Signatory Name and Title), declare that I have read the foregoing Affidavit Regarding the Use of Coercion for Labor and Services and that the facts stated in it are true.

Further Affiant sayeth naught.

\_\_\_\_\_  
NONGOVERNMENTAL AGENCY

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

## **ATTACHMENT A – Sample Architectural & Engineering Services 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, 330 W. Church Street, Bartow, Florida 33830, hereinafter referred to as the “County”, and \_\_\_\_\_, \_\_\_\_\_, located at \_\_\_\_\_, herein referred to as the “Consultant”, and whose Federal Identification Number is: \_\_\_\_\_.

**WHEREAS**, the County requires certain architectural and engineering services for the design and master plan for the Polk County Agricultural Center Complex Design and Master Plan. The first work phase will include the development of a master plan, design of the project based upon the master plan, develop a cost estimate for construction, bid the project and construction administration and close out documentation, all to be performed in Polk County for the construction of the new Polk County Agricultural Center Complex (the “Project”); and,

**WHEREAS**, the County has solicited for these professional services via RFP 24-642, an advertised request for proposals (the “RFP”), and has received numerous responsive proposals thereto; and

**WHEREAS**, pursuant to the RFP, the County has selected the Consultant and the Consultant remains agreeable to providing the County the professional services described herein, and the Consultant represents that it is 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 Effective Date; Term**

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

1.2 The Agreement Term shall be from the Effective Date through completion of both parties’ obligations hereunder, unless otherwise sooner terminated as provided herein.

### **2.0 Consultant Services - General**

The County does hereby retain the Consultant to furnish those services and to perform those tasks as set forth and described in (i) the County’s Request for Proposal RFP #23-132, to include all attachments and addenda, (ii) the Consultant’s responsive proposal thereto, and (iii) the Lawrence W. Crow Demolition and Sallyport Architectural and Engineering Design Services Scope of Work (collectively, (i) (ii), and (iii) are “RFP 23-132”), all of which are incorporated into this Agreement by this reference, attached as a composite Exhibit “A” and made a part of this Agreement, together with those services set forth and described on Exhibit B “Scope of Services” attached hereto and incorporated herein, and as may be otherwise set forth herein (collectively, the “Services”).

### 3.0 Project Administration Services

3.1 The Consultant shall manage the Consultant's services and administer the Project. The Consultant shall consult with the County, research applicable design criteria, attend Project meetings, and communicate with members of the Project Team and issue progress reports. The Consultant shall coordinate the Services provided by the Consultant and the Consultant's sub-consultants with those services provided by the County and the County's other Project consultants.

3.2 When Project requirements have been sufficiently identified, the County may require the Consultant to prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the County, design services furnished by the Consultant, completion of documentation provided by the Consultant, commencement of construction and Substantial Completion of the Project Improvements to be made based upon the final, approved Construction Documents.

3.3 When developing the design for the Project the Consultant shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics.

3.4 Upon request of the County, the Consultant shall make a presentation to explain the design of the Project to representatives of the County.

3.5 The Consultant shall submit design documents to the County at intervals appropriate to the design process for purposes of evaluation and approval by the County. The Consultant shall be entitled to rely on written approvals received from the County in the further development of the design.

3.6 The Consultant shall assist the County in connection with the County's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

#### 3.7 EVALUATION OF BUDGET AND COST OF THE WORK.

3.7.1 When the Project requirements have been sufficiently identified, the Consultant shall prepare a preliminary estimate of the Cost of the Work (as the term is defined in Section 46.2, below). This estimate may be based on current area, volume or similar conceptual estimating techniques. The Consultant shall advise the County of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the estimate of the Cost of the Work exceeds the County's budget, the Consultant, at no additional charge, shall make appropriate recommendations to the County to adjust the Project's size, quality or budget, and the County shall cooperate with the Consultant in making such adjustments.

3.7.2 The Consultant's preliminary estimate of the Cost of the Work, and updated estimates of the Cost of the Work represent the Consultant's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Consultant nor the County has control over the cost of labor, materials or equipment, over the methods available to the Consultant when determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Consultant

cannot and does not warrant or represent that bids or negotiated prices will not vary from the County's budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Consultant.

3.7.3 In preparing estimates of the Cost of the Work, the Consultant shall be permitted to include contingencies and allowances for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents (as the term is defined in Section 46.1, below); to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the County's budget for the Cost of the Work.

3.7.4 If bidding or negotiation has not commenced within 90 days after the Consultant submits the Construction Documents to the County, the budget for the Cost of the Work shall be adjusted to reflect any changes in the general level of prices in the construction industry.

**3.7.5** If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, and the County elects to revise the Project scope to reduce the Cost of the Work, then the Consultant, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit as a condition of this Agreement.

#### 4.0 Evaluation and Planning Services

**4.1 The County may furnish a program setting forth the County's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements.** The Consultant shall provide a preliminary evaluation of the information furnished by the County under this Agreement, including the County's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Consultant shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the County of any other information or consultant services that may be reasonably needed for the Project.

4.2 The Consultant shall provide a preliminary evaluation of the County's site for the Project based on the information provided by the County of site conditions, and the County's program, schedule and budget for the Cost of the Work.

#### 5.0 Design Services

##### 5.1 SCHEMATIC DESIGN DOCUMENTS

5.1.1 The Consultant shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these



media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

## 5.2 DESIGN DEVELOPMENT DOCUMENTS

5.2.1 The Consultant shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

## 5.3 CONSTRUCTION DOCUMENTS

5.3.1 The Consultant shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

5.3.2 During the development of the Construction Documents, the Consultant shall assist the County in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and the form of agreement between the County and the Contractor; and (2) the Conditions (General, Supplementary and other Conditions) of the Contract (the "Construction Contract") for Construction of the Project. The Consultant also shall compile the Project Manual that includes the Conditions of the Construction Contract and Specifications and may include bidding requirements and sample forms.

5.3.3 Progress submittals of final design documents shall be delivered to the County for review and approval, at the 50% Construction Document Phase, the 100% Construction Documents to be submitted for permit, and the 100% Construction Documents, approved for construction for each subproject. Such submittals shall be reissued as necessary to secure approval. County comments shall be incorporated into the next design phase of the work. Consultant is entitled to rely upon County's approval that the design conforms to the program at each stage. The County and the Consultant agree that they shall not proceed to the next design phase, including the Construction Phase, until they have mutually agreed that the Project is feasible in accordance with the budget approved by the County.

## 6.0 Contract Administration Services

### 6.1 GENERAL ADMINISTRATION

6.1.1 The Consultant shall provide administration of the Construction Contract between the County and its selected contractor (the "Contractor") as set forth in that contract.

**6.1.2** The Consultant's responsibility to provide the Contract Administration Services under this Agreement commences with the Notice to Proceed to the Contractor and terminates at the issuance to the County of the final Certificate for Payment. However, the Consultant may be entitled to a Change in Services in accordance with Section 47.2 if Contract Administration Services extend 60 days after the date of Final Completion of the Work.

**6.1.3** The Consultant shall be a representative of, and shall advise and consult with, the County during the provision of the Contract Administration Services. The Consultant shall have authority to act on behalf of the County only to the extent provided in this Agreement unless otherwise modified by written amendment.

**6.1.4** Duties, responsibilities and limitations of authority of the Consultant under this Section 6.0 shall not be restricted, modified or extended without written agreement of the County and Consultant.

**6.1.5** The Consultant shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Consultant and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

**6.1.6** When reasonably required by the County, the Consultant shall on the County's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

**6.1.7** On receipt of written request from either the County or Contractor, the Consultant shall interpret and decide any disputed or unresolved matters between the County and Contractor concerning the requirements and performance of the Work pursuant to the Contract Documents. The Consultant's response to such requests shall be made in writing within any time limits stated in the Construction Contract or as agreed among the parties.

**6.1.8** Interpretations and decisions of the Consultant with respect to the matters described in section 6.1.7, above, shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Consultant shall endeavor to secure faithful performance by both County and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions rendered in good faith.

**6.1.9** The Consultant shall render initial decisions on claims, disputes or other matters in question between the County and Consultant as provided in the Contract Documents. However, the County's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

## **6.2 EVALUATIONS OF THE WORK**

**6.2.1** The Consultant, as a representative of the County, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the County and the Consultant, (1) to become generally familiar with and to

keep the County informed in writing about the progress and quality of the portion of the Work completed, (2) to guard the County against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Consultant shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**6.2.2** The Consultant shall report to the County known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Consultant shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Consultant shall be responsible for the Consultant's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Sub-contractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

**6.2.3** The Consultant shall at all times have access to the Work wherever it is in preparation or progress.

**6.2.4** Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized in writing, the Consultant and Contractor shall communicate through the County. Communications by and with the Consultant's sub-consultants shall be through the Consultant. The Consultant shall respond to the County with the Consultant's written responses or correspondence within a reasonable length of time.

**6.2.5** The Consultant shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Consultant considers it necessary or advisable, the Consultant, with the County's approval, will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Consultant nor a decision made in good faith, either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of the Consultant to the Contractor, Sub-contractor, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. If the Consultant requires inspection or testing of the Work without the County's prior approval and deems the Work acceptable, then the Consultant will be responsible for any compensation due the Contractor.

### **6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR**

**6.3.1** The Consultant shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The Consultant's certification for payment shall constitute a representation to the County, based on the Consultant's evaluation of the Work as provided in Paragraph 6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the

point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Consultant.

**6.3.2** The issuance of a Certificate for Payment shall not be a representation that the Consultant has (1) made exhaustive or continuous on-site inspections beyond those inspections required pursuant to this Agreement, to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the County to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**6.3.3** The Consultant shall maintain a record of the Contractor's Applications for Payment.

#### 6.4 SUBMITTALS

**6.4.1** The Consultant shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consultant's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the County, Contractor or separate contractor. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of any construction means, methods, techniques, sequences or procedures. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**6.4.2** The Consultant shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

**6.4.3** If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Consultant shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Consultant. The Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

## 6.5 CHANGES IN THE WORK

**6.5.1** The Consultant shall prepare Construction Change Directives and assist the County with the preparation of change orders and allowance authorizations for the County's approval and execution in accordance with the Contract Documents. The Consultant may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time, which are consistent with the intent of the Contract Documents. If necessary, the Consultant shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified.

**6.5.2** The Consultant shall review properly prepared, timely requests by the County or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Consultant to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Consultant determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Consultant may issue an order for a minor change in the Work or recommend to the County that the requested change be denied.

**6.5.3** If the Consultant determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Consultant shall make a recommendation to the County, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Consultant shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Consultant. With the County's approval, the Consultant shall incorporate those estimates into a Change Order or other appropriate documentation for the County's execution or negotiation with the Contractor.

**6.5.4** The Consultant shall maintain records relative to changes in the Work.

## 6.6 PROJECT COMPLETION

**6.6.1** The Consultant shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive from the Contractor and forward to the County, for the County's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

**6.6.2** The Consultant's inspection shall be conducted with the County's Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Consultant of Work to be completed or corrected.

**6.6.3** When the Work is found to be substantially complete, the Consultant shall inform the County about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

**6.6.4** The Consultant shall receive from the Contractor and forward to the County: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the County against liens.

#### 7.0 Facility Operation Services

**7.1** The Consultant shall meet with the County or the County's Designated Representative promptly after Substantial Completion to review the need for facility operation services.

**7.2** Upon request of the County, and prior to the expiration of one year from the date of Substantial Completion, the Consultant shall conduct a meeting with the County and the County's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the County.

#### 8.0 Additional Services

**8.1** The Consultant shall perform the additional Services as set forth and further described on Exhibit "B".

**8.2** The following minimum Design Services and Contract Administration Services shall be provided by the Consultant without a Change in Services in accordance with Section 47.2:

**8.2.1** A reasonable number of reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Consultant.

**8.2.2** Up to two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.

**8.2.3** Up to two (2) inspections for any portion of the Work to determine final completion.

**8.3** The following Design and Contract Administration Services may be provided by the Consultant as a Change in Services in accordance with Section 47.2:

**8.3.1** Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Services, with prior approval by County;

**8.3.2** Providing consultation concerning replacement of Work resulting from fire or other cause during construction;

**8.3.3** Evaluation of substitutions proposed by the County's consultants or contractors and making subsequent revisions to the Instruments of Service (as described in Section 47.1, below), with prior approval by County.

8.3.4 Preparation of design and documentation for alternate bid or proposal requests proposed by the County after the Guaranteed Maximum Price for the Work is established.

8.3.5 Contract Administration Services provided 60 (sixty) days after the date of Final Completion of the Work, as may be requested by the County.

## 9.0 **Compensation**

9.1 In consideration for its providing the Services, the County shall pay Consultant the lump sum amount stated in Exhibit "C", "Compensation", which is attached hereto and made a part of this Agreement. Exhibit "C" identifies the Services by Task Item; the Consultant shall bill the County for all Services it performs by the applicable Task Item.

9.2 The Consultant shall invoice the County monthly for Services rendered as outlined in Exhibit "C". All such invoices shall be based upon the percentage of work completed for each Task Item, as set forth on Exhibit "C", for the preceding month. Each invoice shall include a description of work performed or milestone achieved. No invoices shall be issued or paid for services that have not been performed.

9.3 All invoices must reference this Agreement number, using an invoice form approved by the County Auditor.

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

Polk County Facilities Management Division

Attention: Division Director

2160 Marshall Edwards Drive

Bartow, FL 33830

9.5 In order for both parties herein to close their books and records for the Project, 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.

9.6 Payment of the final invoice for the Project shall not constitute evidence of the County's acceptance of the Work or Services.

9.7 A contract amendment/change order may be executed by both parties, after Substantial Completion, to incorporate any additional design fees due to the Consultant. The amendment shall be based upon 5% of the additional cost of the Work that has been added to the Project where the Consultant participated in the design process.

9.8 If the Services of the Consultant are changed as described in Section 47.2.1 or 47.2.2, the Consultant's compensation may be adjusted. Such adjustment shall be computed as a lump sum on a task-by-task basis, or, in the discretion of the County, in an otherwise equitable manner.

9.9 An allowance is included for additional services in the amount set forth in Exhibit C. This allowance shall only be used at the direction of the County with approval of the Facilities Management Director. Any unused portion of the allowance shall be returned to the County following final completion.

9.10 Forty (40) calendar days shall be allowed for the County's inspection and approval of the goods and services for which any invoice has been submitted.

9.11 No deduction shall be made from the Consultant's compensation on account of penalty, liquidated damages, or other sums withheld from payments to the Contractors.

9.12 If any work designed or specified by the Consultant during any phase of service is abandoned or suspended in whole or in part, the Consultant is to be paid for the Services performed prior to receipt of written notice from the County of such abandonment or suspension, together with reimbursements then due and any terminal expense resulting from abandonment or suspension for more than three months.

#### 10.0 **Reimbursable Expense**

10.1 All requests for payment of out-of-pocket expenses eligible for reimbursement under the terms of this Agreement shall be reimbursed per the negotiated Scope of Work (Exhibit A-iii) and in accordance with the County's Reimbursable Schedule that is attached hereto as Exhibit "C" and made a part of this Agreement. The Consultant's requests for payment shall 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 Services described in this Agreement.

10.2 Reimbursable Expenses are the actual, pre-approved, expenses incurred directly in connection with the Agreement, and include:

Overnight Deliveries

Reproduction

10.3 Mileage shall be reimbursed in accordance with Section 112.061, Florida Statutes, 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).

10.4 Reimbursable Expenses, including those of the sub-consultants, shall be reimbursed at cost.

10.5 Pre-approved travel costs shall be reimbursed in accordance with Section 112.061, Florida Statutes, and County policy.

10.6 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 Polk County Facilities



Management Division offices upon demand termination of the Agreement or the conclusion of the project, whichever occurs first.

10.7 The County shall reimburse the Consultant for any documents required over and above the number specified in this Agreement per the County's Reimbursable Schedule that is attached hereto as Exhibit "D".

#### 11.0 **Project Team**

11.1 No later than the date it selects the Contractor, the County shall identify the initial members of its Project Team which will include the County's Designated Representative and the Consultant's Designated Representative. If it had not done so prior to that date, the Consultant will identify to the County the Consultant's Designated Representative. The Consultant's Designated Representative shall be authorized to act on the Consultant's behalf with respect to the Project.

11.2 The County hereby authorizes the County's Facilities Management Director to act as the County's agent and execute documents associated with the Project. Examples of these documents are Notices of Commencements, Certificates of Substantial and Final Completion and applications for permits from applicable agencies.

11.3 If in addition to the County's Designated Representative, the County designates any other person or entity with the right or duty to review the Consultant's submittals to the County, then the County shall specifically identify each such person and entity in a written notice to the Consultant.

#### 12.0 **Consultant's Standard of Care**

12.1 The Consultant's Services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. Within ten (10) days following issuance of the Notice to Proceed, the Consultant shall submit for the County's approval a schedule for the performance of the Consultant's Services. This schedule shall include allowances for periods of time required for the County's review, for the performance of the County's consultants, and for approval of submissions by authorities having jurisdiction over the Project. The Consultant or County shall not, except for reasonable cause, exceed time limits established by this schedule approved by the County.

12.2 Intentionally Omitted.

12.3 The Consultant shall maintain the confidentiality of information specifically designated as confidential by the County, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Consultant from establishing a claim or defense in an adjudicatory proceeding. The Consultant shall require of the Consultant's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the County.

12.4 Except with the County's knowledge and prior express written consent, the Consultant shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Consultant's professional judgment with respect to the Project.

12.5 The Consultant shall review laws, codes and regulations applicable to the Consultant's services. The Consultant shall design the Project to conform to the requirements imposed by governmental authorities having jurisdiction over the Project.

12.6 The Consultant shall be entitled to rely on the accuracy and completeness of services and information furnished by the County. The Consultant shall provide prompt written notice to the County if the Consultant becomes aware of any errors, omissions or inconsistencies in such services or information.

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

12.8 The 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.

12.9 The 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.

12.10 The Consultant shall use skilled and competent personnel to perform the Services.

### 13.0 **Insurance**

#### 13.1 **General Provisions**

13.1.1 The 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 coverage and amounts of coverage not less than those set forth below and provide the County with 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. Such certificates will provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to the County.

13.1.2 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 General Liability and Workers' Compensation policies shall contain a waiver of subrogation in favor of the County. All insurance coverage shall be written with an insurer having an A.M. Best Rating of at least the "A" category and size category of VIII.

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

13.1.4 Any failure by the Consultant to comply with the requirements of this section to provide insurance, the County may, at its option, on notice to the Consultant, suspend the work for cause until there is full compliance;

13.1.5 The 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.

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

13.1.7 All Consultants' sub-consultants shall be required to include County and Consultant as additional insured on their General Liability Insurance policies.

13.1.8 In the event that sub-consultants 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 sub-consultants' insurance coverage.

13.1.9 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.

13.2 Comprehensive Automobile Liability Insurance. \$1,000,000/\$1,000,000 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.

13.3 Commercial General Liability. \$1,000,000/\$2,000,000 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

13.3.1 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.

13.3.2 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)

13.3.3 Policy must include Separation of Insureds Clause.

13.4 Professional Liability Insurance. \$2,000,000/\$2,000,000 for design errors and omissions, exclusive of defense costs. The Consultant shall be required to provide continuing Professional Liability Insurance to cover the project for a period of two (2) years after the project is completed.

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

13.7 Employers' Liability. \$1,000,000.

14.0 Indemnification

14.1 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, the County and the Consultant agree to allocate such liabilities in accordance with this Section 14.0.

14.2 Indemnification.

14.2.1 The Consultant, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to the County) protect and hold the County, and its officers, employees and agents, free and harmless from and against any and all claims, actions, causes of action, liabilities (joint or several), penalties, forfeitures, damages, losses and expenses (including, without limitation, attorneys' fees and costs and expenses incurred during negotiation, through litigation and all appeals therefrom), and including, without limitation, those pertaining to the death of or injury to any person, or damage to any property, which directly or indirectly arise in connection with or result from (i) the failure of the Consultant to comply with applicable laws, rules or regulations, (ii) the breach by the Consultant of its obligations under any agreement with the County entered into pursuant to this solicitation, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of the Consultant's performance or non-performance of this Agreement, or (iv) the negligent acts, errors or omissions, or intentional or willful misconduct of the Consultant, its professional associates, sub-consultants, agents, and employees; provided, however, that the 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. The obligations imposed by this Section shall survive the expiration or earlier termination of this Agreement.

14.2.2 The County's 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.

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

14.3 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 Section 14.0 shall survive as if the Agreement were in full force and effect.

15.0 Independent Contractor

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

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

15.3 The Consultant shall work closely with the County in performing Services under this Agreement.

15.4 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.

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

16.0 **Authority to Practice**

16.1 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.

17.0 **Compliance with Laws**

17.1 In performance of the Services, the Consultant will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

## 18.0 **Subcontracting**

18.1 The County reserves the right to accept the use of any proposed subcontractor or sub-consultant of the Consultant (for purposes of this Section 18.0 referred to as a “sub-consultant”), or to reject the selection of a particular sub-consultant and to inspect all facilities of any sub-consultant.

18.2 If a sub-consultant fails to perform or make progress, as required by this Agreement, and it is necessary to replace the sub-consultant to complete the work in a timely fashion, the Consultant shall promptly do so, subject to acceptance of the new sub-consultant by the County. Failure of a sub-consultant to timely or properly perform its obligations shall not relieve Consultant of its obligations hereunder.

## 19.0 **Federal and State Taxes**

19.1 The County is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the County will provide an exemption certificate to the 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.

## 20.0 **Public Entity Crimes**

20.1 The Contractor declares and warrants that neither the Contractor nor any of the Contractor’s affiliates, as that term is defined in Section 287.133, Florida Statutes, are subject to the restrictions in Section 287.133, Florida Statutes, regarding the commission of a public entity crime. If during the term of this Agreement, the Contractor or any affiliate is convicted of a public entity crime or is otherwise prohibited from performing work for or transacting business with the County pursuant to Section 287.133, Florida Statutes, then the Contractor shall be in material default of this Agreement, and in such case, the County shall have the rights and remedies as provided herein.

## 21.0 **County’s Responsibilities**

21.1 The 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.

## 22.0 **Termination of Agreement**

22.1 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.

22.2 This Agreement may be terminated by the County, in whole or in part, at any time, for the County’s convenience with or without cause immediately upon written notice to the Consultant.

22.3 Unless the Consultant is in breach of this Agreement, subject to the cure period provided in Section 42.1 below, by delivering written notice to the Consultant.

22.4 After receipt of written notice of termination of this Agreement, and except as otherwise directed by the County, the Consultant shall:

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

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

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

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

22.5 The Consultant shall be paid for Services actually rendered to the County's satisfaction through the date of termination.

### 23.0 **Uncontrollable Forces (Force Majeure)**

23.1 Either party hereunder may be temporarily excused from performance if an Event of Force Majeure directly or indirectly causes its nonperformance. An "Event of Force Majeure" is defined as 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. Neither party shall be excused from performance if non-performance is due to forces which are reasonably preventable, removable, or remediable and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied prior to, during, or immediately after their occurrence. Within five (5) days after the occurrence of an Event of Force Majeure, the non-performing party shall deliver written notice to the other party describing the event in reasonably sufficient detail, along with proof of how the event has precluded the non-performing party from performing its obligations hereunder, and a good faith estimate as to the anticipated duration of the delay and the means and methods for correcting the delay. The non-performing party's obligations, so far as those obligations are affected by the Event of Force Majeure, shall be temporarily suspended during, but no longer than, the continuance of the Event of Force Majeure and for a reasonable time thereafter as may be required for the non-performing party to return to normal business operations. If excused from performing any obligations under this Agreement due to the occurrence of an Event of Force Majeure, the non-performing party shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations under this Agreement. During any such time period, the non-performing party shall keep the other party duly notified of all such actions required for it to be able to commence or resume performance of its obligations under this Agreement.

### 24.0 **Governing Law and Venue**

24.1 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.

### 25.0 **Non-Discrimination**

25.1 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.

#### 26.0 **Waiver**

26.1 A waiver by either the County or the 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.

#### 27.0 **Severability**

27.1 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.

27.2 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.

27.3 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.

27.4 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.

#### 28.0 **Entirety of Agreement**

28.1 The County and the Consultant agree that this Agreement sets forth the entire understanding between the parties as to the subject matter contained herein, and that there are no promises or understandings between the parties other than those stated herein.

28.2 This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the County and the Consultant pertaining to the Services, whether written or oral.

#### 29.0 **Modification**

29.1 This Agreement may not be modified, added to, superseded or otherwise altered unless such modifications, additions or other alterations are evidenced in writing signed by both the County and the Consultant. Such modifications shall be in the form of a written Amendment executed by both parties.

#### 30.0 **Successors and Assigns**

30.1 The County and the Consultant each binds itself and its partners, successors, assigns, executors, administrators and legal representatives to the other



party to this Agreement and to their partners, successors, executors, administrators, assigns, and legal representatives.

30.2 The Consultant shall not assign this Agreement without the prior express written approval of the County by written executed Amendment by both parties, which approval may be withheld in the County's sole and absolute discretion.

30.3 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.

### 31.0 **Contingent Fees**

31.1 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.

### 32.0 **Truth-In-Negotiation Certificate**

32.1 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 date of the Agreement.

32.2 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.

### 3.0 **Ownership of Documents**

33.1 The 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, drawings, or other information, except for the Instruments of Service, as defined in Section 47 herein, shall become the property of the County for its use and/or distribution as may be deemed appropriate by the County. The 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 the Consultant.

### 34.0 **Access and Audits**

34.1 The 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.

34.2 Misrepresentations of billable time or Reimbursable Expenses as determined by the County Auditor to Polk County, a political subdivision of the State of Florida 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.

34.3 Intentional misrepresentations of billable hours and Reimbursable Expenses will be criminally prosecuted to the fullest extent of the law.

34.4 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.

**35.0 Notice**

35.1 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, Drawer AS05  
Bartow, FL 33831-9005  
Attn: Procurement Director

As to Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

35.2 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. Email is acceptable notice effective when received, however, Emails 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.

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

**36.0 Service of Process**

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

As to Consultant: \_\_\_\_\_  
\_\_\_\_\_

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37.0 **Key Personnel**

37.1 The Consultant shall notify the 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 any such changes. The Consultant, at the 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. The County has the right to reject proposed changes in key personnel.

The following personnel shall be considered key personnel:

Name:

Name:

Name:

Name:

38.0 **Annual Appropriations**

38.1 The 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.

39.0 **Liquidated Damages**

39.1 The parties hereto agree that in lieu of actual damages liquidated damages in the amount of One Hundred Dollars (\$100) per day will be assessed against the Consultant as the County's remedy and not as a penalty, for Consultant's failure to meet the final Design Services deliverable dates stated in the Project schedule described in Section 3.2, above, with such liquidated damages assessed only if the Consultant is not delayed by reasons beyond Consultant's reasonable control. The parties agree that such assessment of liquidated damages is reasonable and appropriate, as it would be difficult or impossible to accurately determine the amount of actual damages the County would or may incur as a consequence of the Consultant's failure described above.

40.0 **Employment Eligibility Verification (E-VERIFY)**

A. Unless otherwise defined herein, terms used in this Section which are defined in Section 448.095, Florida Statutes, as may be amended from time to time, shall have the meaning ascribed in said statute.

B. Pursuant to Section 448.095(5), Florida Statutes, the consultant hereto, and any subconsultant thereof, must register with and use the E-Verify system to

verify the work authorization status of all new employees of the consultant or subconsultant. The consultant acknowledges and agrees that (i) the County and the consultant may not enter into this Agreement, and the consultant may not enter into any subcontracts hereunder, unless each party to this Agreement, and each party to any subcontracts hereunder, registers with and uses the E-Verify system; and (ii) use of the U.S. Department of Homeland Security's E-Verify System and compliance with all other terms of this Certification and Section 448.095, Fla. Stat., is an express condition of this Agreement, and the County may treat a failure to comply as a material breach of this Agreement.

C. By entering into this Agreement, the consultant becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subconsultants to provide an affidavit attesting that the subconsultant does not employ, contract with, or subcontract with, an unauthorized alien. The consultant shall maintain a copy of such affidavit for the duration of this Agreement. Failure to comply will lead to termination of this Agreement, or if a subconsultant knowingly violates the statute or Section 448.09(1), Fla. Stat., the subcontract must be terminated immediately. If this Agreement is terminated pursuant to Section 448.095, Fla. Stat., such termination is not a breach of contract and may not be considered as such. Any challenge to termination under this provision must be filed in the Tenth Judicial Circuit Court of Florida no later than 20 calendar days after the date of termination. If this Agreement is terminated for a violation of Section 448.095, Fla. Stat., by the consultant, the consultant may not be awarded a public contract for a period of 1 year after the date of termination. The consultant shall be liable for any additional costs incurred by the County as a result of the termination of this Agreement. Nothing in this Section shall be construed to allow intentional discrimination of any class protected by law.

#### 41.0 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 AGREEMENT BY THE COUNTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.**

#### 42.0 Default and Remedy

42.1 If the Consultant materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the Consultant receives written notice of the default from the County, then the County shall have the right to (i) immediately terminate this Agreement by delivering written notice to the Consultant, and (ii) pursue any and all remedies available in law, equity, and under this Agreement. If the County materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the County receives written notice of the default from the Consultant, then the Consultant shall have the right to immediately

terminate this Agreement by delivering written notice to the County. Upon any such termination, the County shall pay the Consultant the full amount due and owing for all Services performed through the date of Agreement termination.

#### 43.0 **Attorneys' Fees and Costs**

43.1 Except as stated in Section 14.2.1, above, in connection with any dispute or any litigation arising out of, or relating to this Agreement, each party shall be responsible for its own legal and attorneys' fees, costs and expenses, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

#### 44.0 **Public Records Law**

(a) The Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant or keep and maintain public records required by the County to perform the service. If the Consultant transfers all public records to the County upon completion of this Agreement, the Consultants shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of this Agreement, the Consultant 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 CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S**

**DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT,  
CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

**RECORDS MANAGEMENT LIAISON OFFICER**

**POLK COUNTY**

**330 WEST CHURCH ST.**

**BARTOW, FL 33830**

**TELEPHONE: (863) 534-7527**

**EMAIL: RMLO@POLK-COUNTY.NET**

**45.0 Americans with Disabilities Act**

45.1 The Consultant shall conform its Drawings and Specifications to the requirements of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), but County shall be responsible for compliance with the remaining provisions of the Americans with Disabilities Act ("ADA"). County and Consultant further recognize that interpretations of ADA by governmental officials and/or courts of law may vary or change. Should such variance or change adopted after the date the 100% Design Development are completed, require the Consultant to make the required modifications, such modifications shall be considered as Contingent Additional Services.

## 46.0 **Additional Definitions**

46.1 **Contract Documents** means this Agreement, the County's Construction Contract with the Contractor, the Plans, Specifications, General Conditions and related Construction Documents or any other documents incorporated by reference.

46.2 **Cost of the Work** shall be the total cost or, to the extent the Project is not completed, the estimated cost to the County of all elements of the Project designed or specified by the Consultant.

46.2.1 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the County and equipment designed, specified, selected or specially provided for by the Consultant, including the costs of management or supervision of construction or installation provided by a separate construction manager/contractor or Consultant.

46.2.2 The Cost of the Work does not include the compensation of the Consultant and the Consultant's sub-consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the County.

46.3 **Final Completion** means that the following items have been completed or satisfied:

46.3.1 Construction of the Work is completed, in accordance with the Contract Documents and certified as such by the County and Consultant.

46.3.2 The Project is suitable for full use and occupancy as determined by the County and Consultant.

46.3.3 All Punch list items have been completed or otherwise disposed of or accounted for to the County's satisfaction and approval.

46.3.4 A final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.

46.3.5 All required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, warranties and maintenance books including the Final Completion form have been delivered to the County.

46.4 **Punch list** means a list of items of work to be completed and deficiencies to be corrected, which items shall not affect the attainment of Substantial Completion. Such items shall be complete or otherwise disposed of prior to final acceptance.

46.5 **Schedule of Values** means the schedule to be used as a basis for progress payments to be made to the Contractor by the County during performance of the work, based on the then current percentage of progress of construction of the Project, subject to the approval of the Consultant.

46.6 **Substantial Completion** means the Contractor has ascertained that the Work or portions thereof is ready for the Consultant and Consultant substantial completion inspection. It is understood that the Construction Manager/Contractor will provide a list of incomplete items to the County and Consultant prior to this inspection. After the County's and Consultant's inspection, the Contractor will prepare a schedule for

a completion of the list, indicating completion dates for the County's review. The County and Consultant will issue a Certificate of Substantial Completion when the work on the Contractor's pre-substantial punch-list has been accomplished, to the best of the Contractor's ability.

**46.7 Substantial Completion Date** means the date, certified by the Consultant, that the Project, or designated portion thereof, is sufficiently complete, in accordance with the Construction Documents and a Certificate of Occupancy issued, so that the County can reasonably occupy or utilize the Project, or designated portion thereof, for its intended use.

#### **47.0 Additional Terms and Conditions**

##### **47.1 INSTRUMENTS OF SERVICE**

47.1.1 Original drawings, specifications and other documents, including those in electronic form (but not including functionally required elements of a building, standard configuration of spaces, and other standard, functional design elements not subject to copyright protection) prepared by the Consultant and the Consultant's sub-consultants are Instruments of Service for use solely with respect to this Project. The Consultant and the Consultant's sub-consultants shall be deemed the authors of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

47.1.2 Upon execution of this Agreement, the Consultant grants to the County a nonexclusive license to reproduce the Consultant's Instrument of Service and thereafter use the same solely for purposes of constructing, using and maintaining, repairing and making additions and modifications to the Project, provided that the County shall comply with all obligations, including prompt payment of all sums when due, under the Agreement. The Consultant shall obtain similar nonexclusive licenses from the Consultant's sub-consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate the license. Upon such termination, the County shall refrain from making further reproductions of Instrument of Service. If and upon the date the Consultant is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the County to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

47.1.3 Except for the licenses granted in Section 47.1.2, no other license or right shall be deemed granted or implied under this Agreement. The County shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Consultant. However, the County shall be permitted to authorize the Contractor, Subcontractors, and sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service to and for use in their execution of the Work by license granted in Section 47.1.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Consultant and the



Consultant's sub-consultants. The County agrees to pay the Consultant a reasonable, mutually agreed upon amount for any reuse of the Instruments of Service beyond this Agreement. The County shall not be responsible to pay the Consultant for the use of the designs, Drawings or Specifications when used for reference purposes only.

47.1.4 If the Consultant is required to deliver any Services hereunder in the form of electronic encoded media, the printed representation of such media furnished by the Consultant shall be the official records of the Consultant's service provided upon completion of those Services and payment in full. The County shall have a right to rely on such printed representation in connection with any subsequent modification of such electronic media and agrees to hold the Consultant harmless from all cost and expense, including attorney's fees, from claims which arise out of modification or re-use of such electronic media or printed representation by or on behalf of the County without the Consultant's consent. Under no circumstances shall transfer of Drawings and other Instruments of Service on electronic media for use by the County, be deemed a sale by the Consultant, and the Consultant makes no warranties of merchantability or fitness for a particular purpose.

## 47.2 CHANGE IN SERVICES

47.2.1 Change in Services of the Consultant, including services required of the Consultant's sub-consultants may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, and if the Consultant's Services are affected as described in Section 47.2.2. Except for a change due to fault of the Consultant, Change in Services of the Consultant shall entitle the Consultant to an adjustment in compensation pursuant to Section 9.8, and to any Reimbursable Expenses described in Section 10.0.

47.2.2 If any of the following circumstances affect the Consultant's Services for the Project, the Consultant shall be entitled to an appropriate adjustment in the Consultant's schedule and compensation:

47.2.2.1 Change in the instructions or approvals given by the County that constitute material changes to the Project parameters set forth above and which necessitate revisions in Instruments of Service;

47.2.2.2 Enactment or revision of codes, laws or regulations or official interpretations, which necessitate changes to previously prepared Instruments of Service;

47.2.2.3 Significant change in the Project including, but not limited to, size, quality, complexity, the County's schedule or budget, or procurement method; or

47.2.2.4 Preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Consultant is party thereto.

47.3 ACCELERATED COMPLETION OF DESIGN PACKAGES. In order to minimize construction problems and change orders, the Consultant's standard practice requires the completion of detailed working drawings, submission for review and comment by reviewing agencies and incorporation of those comments and/or changes

prior to bidding and entering into firm construction contracts. However, County may choose to accelerate the completion of the Project so that it may be completed in a shorter time period than would normally be required. Should the County choose to make this selection, it shall not be considered Fast Track, or in any way relieve the Consultant of its responsibilities and obligations set forth herein.

48.0 **Scrutinized Companies and Business Operations Certification; Termination.**

A. Certification(s).

(i) By its execution of this Agreement, the Vendor hereby certifies to the County that the Vendor is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, nor is the Vendor engaged in a boycott of Israel, nor was the Vendor on such List or engaged in such a boycott at the time it submitted its bid, proposal, quote, or other form of offer, as applicable, to the County with respect to this Agreement.

(ii) Additionally, if the value of the goods or services acquired under this Agreement are greater than or equal to One Million Dollars (\$1,000,000), then the Vendor further certifies to the County as follows:

(a) the Vendor is not on the Scrutinized Companies with Activities in Sudan List, created pursuant to Section 215.473, Florida Statutes; and

(b) the Vendor is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; and

(c) the Vendor is not engaged in business operations (as that term is defined in Florida Statutes, Section 287.135) in Cuba or Syria; and

(d) the Vendor was not on any of the Lists referenced in this subsection A(ii), nor engaged in business operations in Cuba or Syria when it submitted its proposal to the County concerning the subject of this Agreement.

(iii) The Vendor hereby acknowledges that it is fully aware of the penalties that may be imposed upon the Vendor for submitting a false certification to the County regarding the foregoing matters.

B. Termination. In addition to any other termination rights stated herein, the County may immediately terminate this Agreement upon the occurrence of any of the following events:

(i) The Vendor is found to have submitted a false certification to the County with respect to any of the matters set forth in subsection A(i) above, or the Vendor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

(ii) The Vendor is found to have submitted a false certification to the County with respect to any of the matters set forth in subsection A(ii) above, or the

Vendor is found to have been placed on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, and the value of the goods or services acquired under this Agreement are greater than or equal to One Million Dollars (\$1,000,000).

**49.0 Unauthorized Alien(s)**

49.1 The Consultant shall not employ or utilize unauthorized aliens in the performance of the Services. 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 this Agreement.

**50.0 No Construction Against Drafter**

The Parties acknowledge that this Agreement and all the terms and conditions contained herein have been fully reviewed and negotiated by the Parties. Accordingly, any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

**(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE WITH THE PARTIES' SIGNATURES.)**

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

Attest:

STACY BUTTERFIELD  
CLERK OF THE BOARD

POLK COUNTY,  
a political subdivision of the State of Florida

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

By: \_\_\_\_\_  
Chairman, T.R. Wilson  
Board of County Commissioners

Date Approved by Board: \_\_\_\_\_

Reviewed as to form and legal sufficiency:

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

ATTEST:

\_\_\_\_\_  
Consultants Name

\_\_\_\_\_  
Corporate Secretary

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_