

## RFP NOTICE

Polk County, a political subdivision of the State of Florida, requests the submittal proposals from firms that are interested in providing *structural examination professional engineering services* 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:** 23-572, Structural Professional Engineering Services for Crystal Lake Park Boardwalk

**Description:** Provide professional engineering services to include but not limited to structural analysis, inspection, material testing, reporting, repair & replacement recommendations and support through completion of said project at Crystal Lake Park boardwalk. The county received Community Development Block Grant (CDBG) funds for this project, therefore, all services must be performed in accordance with applicable Federal, State & Local regulations, further described herein.

**Receiving Period:** Prior to 2:00 p.m., Wednesday, September 13, 2023

**Bid Opening:** Wednesday, September 13, 2023 at 2:00 p.m. or as soon as possible thereafter.

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

**Special Instructions:** A **MANDATORY** pre-proposal/ site visit meeting will be held Tuesday, August 29, 2023, 10:00 a.m. at Crystal Lake Park, located at 2500 North Crystal Lake Drive, Lakeland Florida (PIN: 24-28-21-239500-014010). 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.

To obtain a copy of the grant related HUD Davis Bacon – Section 3 Packet and Heavy Wage Decision, please go the following FTP site: <https://ftp3.polk-county.net>, you will be prompted for a User ID and Password. The User ID is *procurevendor* and the password is *solicitation*. After you have logged in to the FTP site, double click on the file folder “**RFP 23-572, RFP Grant Attachments.zip**”, select “Open” or “Save As” to download the Bid documents, drawings, and technical specifications. If you need assistance accessing this website due to ADA or any other reason, please email Danielle Rose at [daniellerose@polk-county.net](mailto:daniellerose@polk-county.net).

**Questions** regarding this RFP must be in writing and must be sent to Danielle Rose, Sr. Procurement Analyst, via email at [daniellerose@polk-county.net](mailto:daniellerose@polk-county.net) or via fax at (863) 534-6789. All questions must be received by, Tuesday, September 5, 2023, 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 firm's responsibility to verify if addenda have been issued.

RFP Number: 23-572

RFP Title: Structural Professional Engineering Services for Crystal Lake Park Boardwalk

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 #23-572, Structural Professional Engineering Services for Crystal Lake Park Boardwalk” 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>                   | 23-572                                                                                             |
| <b>RFP Title</b>                    | Structural Professional Engineering Services<br>for Crystal Lake Park Boardwalk                    |
| <b>Due Date/Time:</b>               | September 13, 2023, prior to 2:00 pm                                                               |
| <b>Submitted by:</b>                |                                                                                                    |
| <b>Deliver To:</b>                  | Polk County Procurement Division<br><br>330 West Church Street, Room 150, Bartow,<br>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 [daniellerose@polk-county.net](mailto:daniellerose@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 23-572, Tab 1"

"RFP 23-572, Tab 2"

"RFP 23-572, Tab 3"

"RFP 23-572, Tab 4"

"RFP 23-572, Tab 5"

"RFP 23-572, Tab 6"

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 Danielle Rose at [daniellerose@polk-county.net](mailto:daniellerose@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 23-572**

**Structural Professional Engineering Services for Crystal Lake Park Boardwalk**

Sealed proposals will be received in the Procurement Division, Wednesday, **September 13, 2023, 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 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 Danielle Rose, via email at [daniellerose@polk-county.net](mailto:daniellerose@polk-county.net) or via fax at (863) 534-6789. All questions must be received by September 5, 2023, 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 engineering services from qualified firms to conduct a comprehensive structural examination of our deteriorating boardwalk. Services to include but not limited to structural analysis, inspection, material testing, reporting, repair & replacement recommendations and support through completion of said project at Crystal Lake Park boardwalk, further described herein, “the Project”.

The project is wholly funded by the Community Development Block Grant (CDBG). All applicable services must be in accordance with the Housing and Neighborhood Development (HUD), Davis Bacon – Section 3 and Heavy Wage Decisions policies found within the referenced **RFP Grant Attachments** uploaded to the County’s FTP site to be downloaded and reviewed by all proposers prior to submitting a proposal on this project. All requirements of the grant will be applicable to the awarded and/ or any subconsultants for this project.

Polk County’s Selection Process for firms’ services is in accordance with Section 287.055, Florida Statutes, the Firms’ 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) 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 “Firms’ 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 boardwalk, located at Crystal Lake Park – 2500 North Crystal Lake Drive, Lakeland Florida (PIN: 24-28-21-239500-014010), has been in use for over ten years and is now exhibiting signs of significant rotting, compromising its safety and functionality. We are committed to ensuring the longevity and safety of this vital community asset and are therefore seeking an experienced engineer to assess the current condition, identify structural issues, and propose appropriate remedial measures.

## **SCOPE OF SERVICES**

The scope of work is expected to include but may not be limited to examination of the boardwalk structure, documenting its current condition, and providing recommendations for repairs or replacements. The key tasks include but are not limited to:

1. Visual Inspection: Conduct a visual examination of the boardwalk to identify areas of significant rotting, decay, and structural compromise.
2. Structural Analysis: Perform a detailed structural analysis of the boardwalk, including load-bearing capacity, stability, and overall integrity.
3. Material Testing: Collect and analyze samples of the affected materials to determine the extent of decay and identify potential causes.
4. Report Generation: Prepare a comprehensive report documenting the findings, including an assessment of the current condition, identified structural issues, and proposed remedial actions.
5. Repair and Replacement Recommendations: Provide clear and detailed recommendations for repair and/or replacement of the damaged sections, ensuring compliance with relevant safety standards and regulations.
6. Cost Estimation: Provide a cost estimate for implementing the recommended repairs and replacements, including labor, materials, and any additional expenses.

## **AGREEMENT**

The term of this agreement is estimated for 138 Days 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) and license(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.
- f) Provide an overview of your firms experience and expertise.

- g) Affidavit Certification of Immigration Laws
- h) Employment Eligibility Verification (E-Verify) Certification Form
- i) Exhibit "A"-Certifications Regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters
- j) Exhibit "B" – Appendix A, 44 C.F.R Part 18 – Certification Regarding Lobbying.

## **Tab 2 – Approach to Project (40 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 regard to conducting the structural examination, including the methods and techniques you intend to use. Include any innovative approaches to providing the services and include the soundness and comprehensiveness of the proposed examination methodology and repair recommendations and 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 outlining the key milestones and deliverables for this project.

## **Tab 3 – Experience, Expertise, Personnel & Technical Resources (40 Points)**

- Provide a minimum of two (2) and a maximum of three (3) recent projects performed within the past ten (10) years as the prime firm performing the engineering services as it relates to examinations and repairs of similar structures size and scope. At least two (2) of the desired projects identified should demonstrate structural deterioration as it relates specifically to boardwalks. (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 firms 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 firm'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) Certifications/ Licenses held
  - d) 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 subconsultants to be used, if any. For each subconsultant 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 – 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, stormwater management permitting, consultation, governing regulations, and other related activities. Describe the firm's ability to work with the County's Parks and Natural Resources Division, Procurement Division, Health & Human Services 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, including, but not limited to SWFWMD and FDEP. (Limit response to one (1) page)

#### **Tab 5 – 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 6 – 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:
  - Surveys of Past Performance (Tab 6) 10 points
  - Subtotal Points 10 points

by the process stated under the corresponding Tab description as set forth on Page 9.

- 1) Each Selection Committee member shall score each Proposal on the following evaluation criteria:
  - Approach to Project (Tab 2) 40 Points
  - Experience, Expertise, (Tab 3) 40 Points  
Personnel, and Technical Resources
  - Interaction w/ County & Regulatory (Tab 4) 5 points  
Agencies
  - Timely Completion of Projects (Tab 5) 5 points
  - Subtotal Points 90 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
- Past performance
- Willingness to meet time and budget requirements
- Recent, current, and projected workloads

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 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 Firm 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 Firm to comply with applicable laws, rules or regulations, (ii) the breach by Firm of its obligations under this Agreement, (iii) any claim for trademark, patent, or copyright infringement arising out of the scope of Firm's performance or nonperformance of this Agreement, or (iv) the negligent acts, errors or omissions, or intentional or willful misconduct, of Firm or any persons or entities employed or utilized by Firm 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**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid or proposal on a contract to provide any goods or services to a public entity, may not submit a bid or proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a firm, contractor, supplier, subcontractor, or firm under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. By submitting this proposal, the proposer hereby certifies that they have complied with said statute.

### **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/boccsite/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 Professional Services 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 Firm 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 firm 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 firm 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 firm or subcontractor. The firm acknowledges and agrees that (i) the County and the firm may not enter into this Agreement, and the firm 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 firm 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 firm 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 firm, the firm may not be awarded a public contract for a period of 1 year after the date of termination. The firm 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.

### **PUBLIC RECORD LAWS**

(a) The Firm 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 Firm 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 Firm 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 Firm 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 Firm 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 Firm or keep and maintain public records required by the County to perform the service. If the Firm transfers all public records to the County upon completion of this Agreement, the Firm shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Firm keeps and maintains public records upon completion of this

Agreement, the Firm 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 FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FIRM'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**

**SCRUTINIZED COMPANIES AND BUSINESS OPERATIONS CERTIFICATION;  
TERMINATION**

**A. Certification(s)**

(I) By its execution of this Agreement, the Firm hereby certifies to the County that the Firm is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, nor is the Firm engaged in a boycott of Israel, nor was the Firm 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 Firm further certifies to the County as follows:

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

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

(d) the Firm 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 Firm hereby acknowledges that it is fully aware of the penalties that may be imposed upon the Firm 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 Firm 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 Firm is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.
  - (ii) The Firm 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 Firm 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).

#### **DEFAULT AND REMEDY.**

- a. Process. If the Vendor materially defaults in the timely performance of any Contract obligation, or if the Vendor is otherwise in material default of the Contract, including, without limitation, the Vendor's failure to timely deliver any portion, or the entirety, of the Project Work in accordance with the Contract documents, then the County shall have the right to (i) with or without terminating the Contract, immediately engage other vendors or providers at the Vendor's sole cost and expense to provide those unperformed or deficient Contract obligations of the Vendor; (ii) set-off the monetary amount of any and all damages arising therefrom, whether direct or indirect, actual or liquidated, from the amounts due, Vendor pursuant to the Contract documents, (iii) immediately terminate the Contract by delivering written notice to the Vendor, and (iv) pursue any and all remedies available in law, equity, and under the Contract, including, without limitation, the recovery of any increased cost to the County to complete the Project Work due to the loss of CDBG funding caused, directly or indirectly, by the Vendor's delay. Upon any such termination pursuant to this Section, the County shall pay the Vendor the full amount due and owing for all services properly performed through the date of the Contract termination, less any amount subject to the County's right of set-off, and all liability of the County to the Vendor shall cease.
- b. Certain Material Defaults. Among other matters, including without limitation, the Vendor's failure to timely deliver any portion, or the entirety, of the Project Work in accordance with the Contract documents, as described immediately above, any of the following shall constitute the Vendor's material default of the Contract: the appointment of a receiver to take possession of all or substantially all of the Vendor's assets, a general assignment by the Vendor for the benefit of creditors, or any action taken by or suffered by Vendor under any insolvency or bankruptcy act; or the Vendor is convicted of a public entity crime, is determined to have violated federal or state law prohibiting discrimination as stated in Section 287.134, Florida Statutes, or is prohibited from performing work for or transacting business with the County pursuant to Section 287.133 or to Section 287.134, Florida Statutes; or an assignment of the Contract made without the express written consent of the County; or the submission of a false certification to the County or engagement in prohibited business operations, both as described in the Contract Documents.

**In accordance with the federal procurement standards at 2 C.F.R. sections 200.317 through 200.327 the following clauses are incorporated in this RFP, any resulting contract with the Prime Firm, and any resulting contracts between the Prime Firm and subconsultants. Where there is conflict, these Supplemental Conditions prevail unless the General Terms and Conditions are stricter.**

**Equal Employment Opportunity.** *(Applicable to construction contracts only)*

During the performance of this Contract, the Firm agrees as follows:

(1) The Firm will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The firm will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The firm agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The firm will, in all solicitations or advertisements for employees placed by or on behalf of the firm, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The firm will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the firm's legal duty to furnish information.

(4) The firm will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the firm's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The firm will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The firm will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the firm's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the firm may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

**Compliance with the Contract Hours and Safety Standards Act.** *(Applicable to all awarded contracts related to "mechanics and labors" with a value greater than \$100,000)*

(1) *Overtime requirements.* No firm or subconsultant contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the firm and any subconsultant responsible therefor shall be liable for the unpaid wages. In addition, such firm and subfirm shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* Polk County, a political subdivision of the State of Florida, shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the firm or subconsultant under any such contract or any other Federal contract with the same prime firm, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime firm, such sums as may be determined to be necessary to satisfy any liabilities of such firm or subconsultant for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The firm or subconsultant shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subfirms to include these clauses in any lower tier subcontracts. The prime firm shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs (1) through (4) of this section.

(c) In addition to the clauses contained in paragraph, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, Polk County, a political subdivision of the State of Florida, shall cause or require the contracting officer to insert a clause requiring that the firm or subconsultant shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, Polk County, a political subdivision of the State of Florida, shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the firm or subconsultant for inspection, copying, or transcription by authorized representatives of Polk County, a political subdivision of the State of Florida, and the Department of Labor, and the firm or subconsultant will permit such representatives to interview employees during working hours on the job.

**Davis Bacon Act and Copeland Anti-Kickback Act.** *(Applicable to all prime construction contracts in excess of \$2,000)*

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.
- b. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, D.
- c. In accordance with the statute, firms must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, firms must be required to pay wages not less than once a week.
- d. The Non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Firms and Subconsultants on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each firm or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to CBDG Program Supervisor.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and sub recipients. In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti-Kickback Act.”

**“Compliance with the Copeland “Anti-Kickback” Act.** *(Applicable if subject to Davis-Bacon Act)*

(1) Firm. The Firm shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The firm or subconsultant shall insert in any subcontracts the clause above and such other clauses as the CDBG Program Supervisor may by appropriate instructions require, and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime firm shall be responsible for the compliance by any subconsultant or lower tier subconsultant with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a firm and subconsultant as provided in 29 C.F.R. § 5.12.”

**Clean Air Act and the Federal Water Pollution Control Act.** *(For contracts and subgrants of amounts in excess of \$150,000)*

**Clean Air Act** *(Applicable to all contracts of amounts in excess of “\$150,000)*

(1) The firm agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The firm agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the Department of Housing And Urban Development, and the appropriate Environmental Protection Agency Regional Office.

(3) The firm agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by Department of Housing and Urban Development.

### **Federal Water Pollution Control Act**

(1) The firm agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The firm agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the Department of Housing And Urban Development, and the appropriate Environmental Protection Agency Regional Office.

(3) The firm agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by Department of Housing and Urban Development.

### **Applicability** (§ 183.10, *Applicable to all contracts of amounts in excess of \$50,000.00*)

(a) This part applies only to grants and cooperative agreements that are expected to exceed \$50,000 and that are performed outside the United States, including U.S. territories, and that are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. It does not apply to the authorized intelligence or law enforcement activities of the Federal Government.

(b) All elements of this part are applicable until the date of expiration as provided in law.

### **Debarment and Suspension (Exhibit "A")**

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the firm is required to verify that none of the firm, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The firm must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by Polk County, a political subdivision of the State of Florida (the "County"). If it is later determined that the firm did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Department of Housing And Urban Development, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended) (Exhibit "B")***(Applicable to all contracts in excess of \$100,000)*

Firms who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal

appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

#### **Procurement of Recovered Materials.**

The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(1) In the performance of this contract, the Firm shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

#### **Domestic Preferences (2 CFR § 200.322)**

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**Affirmative Action.**

In accordance with 2 CFR §200.321, the County is committed to taking all necessary steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. The Firm shall also take such affirmative steps in the selection of its subconsultants, laborers and materialmen. Affirmative steps include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

**Access to Records.** The following access to records requirements applies to this bid and the awarding contract:

(1) The Firm agrees to provide the County, Department of Housing and Urban Development, the Department of Housing and Urban Development Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Firm which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Firm agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Firm agrees to provide the Department of Housing and Urban Development Administrator or his authorized representatives' access to installation or other work sites pertaining to the work being completed under the contract.

**DHUD Seal, Logo, and Flags**

The Firm shall not use the DHUD seal(s), logos, crests, or reproductions of flags or likenesses of DHUD agency officials without specific Department of Housing and Urban Development pre- approval.

**Compliance with Federal Law, Regulations, and Executive Orders.**

This is an acknowledgement that Department of Housing and Urban Development financial assistance will be used to fund the contract only. The firm will comply with all applicable federal law, regulations, executive orders, Department of Housing and Urban Development policies, procedures, and directives.

**No Obligation by Federal Government.**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, firm, or any other party pertaining to any matter resulting from the contract.

**Program Fraud and False or Fraudulent Statements or Related Acts.**

The Firm acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the firm's actions pertaining to this contract.

## 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 firm must complete and submit this form prior to award. The Successful firm 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 Firm submitting a proposal package. This is accomplished by sending survey forms to past customers. The customers should return the forms directly to the Firm. The Firm is to include all surveys in their proposal package.

#### **Sending the Survey**

The surveys shall be sent to all clients for whom the Firm 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 Firm 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 (Engineering Services for Hillsborough County Parks & Recreation), Etc. |
| COST OF SERVICES | Cost of services (\$200,000)                                                                |
| DATE COMPLETE    | Date when the services were completed. (i.e. 8/31/2013)                                     |

2. The Firm 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 Firm 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 Firm should enter the past clients' contact information, and project information on each survey form for each reference. The Firm should also enter their name as the Firm being surveyed.
3. The Firm is responsible for ensuring all references/surveys are included in their submittal under Tab 6.
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 23-572, Structural Professional Engineering Services for Crystal Lake Park Boardwalk**

To: \_\_\_\_\_ (Name of Person completing survey)

\_\_\_\_\_ (Name of Client Company/Firm)

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

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

Subject: Past Performance Survey of Similar work:

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

Name of Firm 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 Firm /individual again) and 1 representing that you were very unsatisfied (and would never hire the Firm /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 | Overall Client satisfaction and comfort level in hiring                          | (1-10) |       |
| 11 | Ability to offer solid recommendations                                           | (1-10) |       |
| 12 | 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 FIRM 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 FIRM 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)

**EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY) CERTIFICATION**  
(Florida Statutes, Section 448.095)

PROJECT NAME: Structural Professional Engineering Services for Crystal Lake Park Boardwalk

The undersigned, as an authorized officer of the firm identified below (the “**Firm**”), having full knowledge of the statements contained herein, hereby certifies to Polk County, a political subdivision of the State of Florida (the “**County**”), by and on behalf of the Firm in accordance with the requirements of Section 448.095, Florida Statutes, as related to the contract entered into by and between the Firm and the County on or about the date hereof, whereby the Firm will provide labor, supplies, or services to the County in exchange for salary, wages, or other remuneration (the “**Contract**”), as follows:

1. Unless otherwise defined herein, terms used in this Certification 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.

2. Pursuant to Section 448.095(5), Florida Statutes, the Firm, and any subcontractor under the Contract, must register with and use the E-Verify system to verify the work authorization status of all new employees of the Firm or subcontractor. The Firm acknowledges and agrees that (i) the County and the Firm may not enter into the Contract, and the Firm may not enter into any subcontracts thereunder, unless each party to the Contract, and each party to any subcontracts thereunder, 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 the Contract, and the County may treat a failure to comply as a material breach of the Contract.

3. By entering into the Contract, the Firm 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 Firm shall maintain a copy of such affidavit for the duration of the Contract. Failure to comply will lead to termination of the Contract, or if a subcontractor knowingly violates the statute or Section 448.09(1), Fla. Stat., the subcontract must be terminated immediately. If the Contract 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 the Contract is terminated for a violation of Section 448.095, Fla. Stat., by the Firm, the Firm may not be awarded a public contract for a period of 1 year after the date of termination. The Firm shall be liable for any additional costs incurred by the County as a result of the termination of the Contract. Nothing in this Certification shall be construed to allow intentional discrimination of any class protected by law.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**ATTEST:**

By: \_\_\_\_\_  
PRINTED NAME: \_\_\_\_\_  
Its: \_\_\_\_\_

**FIRM:**

By: \_\_\_\_\_  
PRINTED NAME: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**  
**CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION, PROPOSED**  
**DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

**For all awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, the Offeror must complete and sign the following:**

The Offeror certifies, to the best of its knowledge and belief, that-

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the firm is required to verify that none of the firm, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The firm must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by Polk County, a political subdivision of the State of Florida (the "County"). If it is later determined that the firm did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Florida Division of Parks and Natural Resources, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

SIGNATURE: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

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

**EXHIBIT B**  
**APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned \_\_\_\_\_ certifies, to the best of his or her knowledge, that: (FIRM)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Firm, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Firm understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Firm's Authorized Official

\_\_\_\_\_  
Name and Title of Firm's Authorized Official

\_\_\_\_\_  
Date

## **ATTACHMENT “A” - PROFESSIONAL SERVICE AGREEMENT**

**THIS PROFESSIONAL SERVICE AGREEMENT** (the “Agreement”) is entered into as of the Effective Date (defined in Section 1, below) by and between Polk County (the “County”), a political subdivision of the State of Florida, situated at 330 West Church Street, Bartow, Florida 33830, and [Firm legal name] (the “Firm”) a [state] [Corporation/LLC/Partnership], headquartered at [Firm address] whose Federal Employer Identification Number is [FEIN].

**WHEREAS**, the County requires certain professional services in connection with the structural professional engineering services for Crystal Lake Park boardwalk; and,

**WHEREAS**, the County has solicited for these services via RFP 23-572, 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 Firm and the Firm remains agreeable to providing the County the professional services described herein, and the Firm 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 (the “Effective Date”) of its execution by the County, and shall continue until the Firm completes all Services as identified in Section 2, below, unless the Agreement is otherwise sooner terminated as provided herein.

1.2 The Firm shall complete the Project within 138 calendar days or until completion of the construction project, subject to an Event of Force Majeure as defined in Section 30.0, unless otherwise approved by the County in its sole and absolute discretion, commencing upon issuance of the Notice to Proceed.

### **2.0 Firm Services**

2.1 The County does hereby retain the Firm to furnish those services and to perform those tasks (collectively, the “Services”) further described in (i) the County’s Request for Proposal RFP # 23-572, to include all attachments and addenda, (ii) the Firm’s responsive proposal thereto, and (iii) the Scope of Services (collectively, (i) (ii), and (iii) are “RFP 23-572”), all of which are incorporated into this Agreement by this reference, attached as a composite Exhibit “A” and made a part of this Agreement.

### 3.0 Compensation

#### 3.1 General

3.1.1 In consideration for its providing the Services, the County shall pay the Firm the lump sum amount of \$\_\_\_\_\_ stated in Exhibit "A-III", Scope of Services, which is based on the Firm's hourly rate schedules set fourth in Exhibit "B", Fee Schedule, both of which are attached hereto and made a part of this Agreement.

3.1.2 At its option the County may engage the Firm to performs additional, related consulting services beyond the Scope of Services for which the County shall pay the Frim in accordance with the hourly rate schedules set forth in Exhibit "B".

3.1.3 All the Firm's invoices for payment must reference this Agreement and must be submitted using a form approved by the County Auditor.

3.1.4 Each invoice shall be due and payable forty-five (45) days after the date the County receives 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:

Park & Natural Resources Division  
4177 Ben Durrance Rd  
Bartow, FL 33830

3.1.5 The Firm will clearly state "Final Invoice" on the Firm's final/last billing for the Services rendered to the County. The Firm's submission of a Final Invoice is its certification that all Services have been properly performed and all charges and costs have been invoiced to the County. This account will be closed upon the County's receipt of a Final Invoice. The Firm hereby waives any charges not properly included on its Final Invoice.

3.1.6 The County's payment of a Final Invoice shall not constitute evidence of the County's acceptance of the Firm's performance of the Services or its acceptance of any of the Firm's Project work.

3.1.7 By submission of an invoice, the Firm's Project Manager or designated payroll officer is attesting to the correctness and accuracy of all charges and requested reimbursements for which the Firm seeks payment.

3.1.8 The County's review, approval, acceptance, or payment for any of the Firm's Services shall not be construed to: (i) operate as a waiver of any rights the County possesses under this Agreement; or (ii) waive or release any claim or cause of action arising out

of the Firm's performance or nonperformance of this Agreement. The Firm shall be and will always remain liable to the County in accordance with applicable law for any and all damages to the County caused by the Firm's negligent or wrongful performance or nonperformance of any of the Services to be furnished under this Agreement.

### **3.2 Reimbursable Expenses**

3.2.1 All Firm requests for payment of expenses eligible for reimbursement under the terms of this Agreement shall be reimbursed per the County's Reimbursable Schedule that is attached hereto as Exhibit "C" and made a part of this Agreement. The Firm's request for payment shall include copies of paid receipts, invoices or other documentation acceptable to the County Auditor. To qualify for reimbursement, the Firm's documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Services performed in accordance with this Agreement.

3.2.2 Reimbursable Expenses are the actual, pre-approved, expenses the Firm incurred directly in connection with the performance of the Services performed in accordance with this Agreement:

Overnight Deliveries  
Reproduction  
Subconsultant

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

3.2.4 All assets, i.e. durable goods, purchased as reimbursable expenses become the property of the County upon completion of any Project work for which the asset was utilized. All such assets must be surrendered by delivery to the applicable County Division responsible for the Project immediately upon (i) demand, (ii) termination of the Agreement, or (iii) the conclusion of the applicable Project, whichever occurs first.

3.2.5 Firm shall maintain a current inventory of all such assets.

### **4.0 Firm's Responsibilities**

4.1 The Firm shall be responsible for the professional quality, accuracy, competence, methodology, and the coordination of all Services performed pursuant to this Agreement.

4.2 The County's review, approval, acceptance, or payment for any of the Firm's Services shall not be construed to: (i) operate as a waiver of any rights the County possesses under this Agreement; or (ii) waive or release any claim or cause of action arising out of the Firm's performance or nonperformance of this Agreement. The Firm shall be and will always remain liable to the County in accordance with applicable law for any and all damages to the County caused by the Firm's negligent or wrongful performance or nonperformance of any of the Services to be furnished under this Agreement.

#### **5.0 Ownership of Documents**

All analyses, reference data, bills, completed reports, or any other form of written instrument or document created or resulting from the Firm's performance of the Services pursuant to this Agreement, subject to the cure period provided in Section 26.0, shall become the property of the County after payment is made to the Firm for such instruments or documents.

#### **6.0 Termination**

6.1 The County may terminate this Agreement, in whole or in part, at any time, either for the County's convenience or because of the failure of the Firm to fulfill its obligations under this Agreement, subject to the cure period provided in Section 26.0, by delivering written notice to the Firm. Upon receipt of such notice, the Firm shall:

6.1.1 Immediately discontinue all affected Services unless the notice directs otherwise, and

6.1.2 Deliver to the County all data, reports, summaries, and any and all such other information and materials of whatever type or nature as may have been accumulated by the Firm in performing this Agreement, whether completed or in process.

6.2 Unless in dispute or subject to the County's right of set-off or other remedy, the Firm shall be paid for Services actually rendered to the date of termination.

6.3 The rights and remedies of the County provided for in this Section 6 are in addition and supplemental to any and all other rights and remedies provided by law or under this Agreement.

#### **7.0 No Contingent Fees**

The Firm warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Firm to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a

bona fide employee working solely for the Firm, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from award of or making of the Agreement. For the breach or violation of this provision, the County shall have the right to terminate the Agreement at its sole discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

#### **8.0 Assignment**

The Firm shall not assign, transfer, or encumber this Agreement, or any interest herein, under any circumstances, without obtaining the prior written consent of the County, which consent may be withheld in the County's exercise of its reasonable discretion.

#### **9.0 Professional Associates and Subcontractors**

If the Firm requires the assistance of any professional associates or subcontractors in connection with its providing the Services the Firm must obtain the prior express written approval of the County, which the County may withhold in its discretion, before any such professional associate or subcontractor may perform any work for the County. If after obtaining the County's approval the Firm utilizes any professional associates or subcontractors in the delivery of the Services then the Firm shall remain solely and fully liable to the County for the performance or nonperformance of all such professional associates and subcontractors. The failure of a professional associate or subcontractor to timely or properly perform any of its obligations to the Firm shall not relieve the Firm of its obligations to the County under this Agreement.

#### **10.0 Indemnification of County**

Firm, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to County) 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 (including, without limitation, attorneys' fees costs and expenses incurred during negotiation, through litigation and all appeals therefrom) whatsoever including, but not limited, to those pertaining to the death of or injury to any person, or damage to any property, arising out of or resulting from (i) the failure of Firm to comply with applicable laws, rules or regulations, (ii) the breach by Firm of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of Firm's performance or nonperformance of this Agreement, or (iv) the negligent acts, errors or omissions, or intentional or willful misconduct, of Firm, its professional associates, subcontractors, agents, and employees

provided, however, that Firm 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.

#### **11.0 Insurance Requirements**

The Firm shall maintain at all times the following minimum levels of insurance and shall, without in any way altering its liability, obtain, pay for and maintain insurance for the coverage and amounts of coverage not less than those set forth below. The Firm shall provide the County original Certificates of Insurance satisfactory to the County to evidence such coverage before any work commences. The County shall be named as an additional insured on General and Automobile Liability policies. General Liability and Workers' Compensation policies shall contain a waiver of subrogation in favor of Polk County. The Commercial General Liability Policy shall (by endorsement if necessary) provide contractual liability coverage for the contractual indemnity stated in Section 10, above. 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 of this Section 11, the County may, at its option, upon notice to the Firm suspend Firm's performance of the Services 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 coverage.

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

Professional Liability. \$2,000,000 for errors and omissions, exclusive of defense costs.

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

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.

**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)

Workers Compensation. The Firm shall provide, pay for, and maintain workers compensation insurance on all employees, its agents or subcontractors as required by Florida Statutes.

**12.0 Public Entity Crimes**

The Firm understands and acknowledges that this Agreement will be voidable by the County in the event the conditions stated in Florida Statutes, Section 287.133 relating to conviction for a public entity crime apply to the Firm.

**13.0 Non-Discrimination**

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

**14.0 Designation of Party Representatives**

14.1 Upon receipt of a request from the Firm, the County shall designate in writing one or more of its employees who are authorized to act by and on behalf of the County to transmit instructions, receive information and interpret and define the County's policy and decisions with respect to the Services to be provided pursuant to this Agreement.

14.2 The Firm shall designate or appoint one or more Firm representatives who are authorized to act on behalf of and to bind the Firm regarding all matters involving the conduct of its performance pursuant to this Agreement.

**15.0 All Prior Agreements Superseded**

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document or its designated exhibits. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior

representations or agreements, whether oral or written.

#### **16.0 Modifications, Amendments or Alterations**

No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless agreed to and executed in writing by both parties to this Agreement in a form acceptable to the County.

#### **17.0 Independent Consultant**

Nothing stated in this Agreement is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties, or as constituting the Firm (including its officers, employees, and agents) as the agent, representative, or employee of the County for any purpose, or in any manner, whatsoever. The Firm is to be and shall remain forever an independent Firm with respect to all Services performed under this Agreement. The Firm shall not pledge the County's credit or make the County a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and the Firm shall have no right to speak for or bind the County in any manner.

#### **18.0 Public Records Law**

(a) The Firm 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 Firm 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 Firm 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 Firm 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 Firm 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 Firm or keep and maintain public records required by the County to perform the service. If the Firm transfers all public records to the County upon completion of this Agreement, the Firm shall destroy any duplicate public records that are exempt or confidential

and exempt from public records disclosure requirements. If the Firm keeps and maintains public records upon completion of this Agreement, the Firm 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 FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FIRM'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**

**19.0 Compliance with Laws and Regulations**

In providing all Services pursuant to this Agreement, the Firm shall comply with applicable regulatory requirements including federal, state, special district, and local laws, rules regulations, orders, codes, criteria and standards, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement, and shall entitle the County to terminate this Agreement immediately upon delivery of written notice of termination to the Firm.

**20.0 Governing Law and Venue**

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 in the United States District Court, Middle District of Florida, located in Hillsborough County, Florida. Each party shall be responsible for its own attorneys' fees and other legal costs and expenses.

**21.0 Notices**

Whenever either party desires to give notice unto the other, it must be given by written notice, delivered (i) in person, (ii) via registered or certified United States mail, postage prepaid with return receipt requested, or (iii) via nationally recognized overnight delivery service, and addressed to the party for whom it is intended at the place last specified by each party. The place for giving of notice shall remain such until it is changed by written notice delivered in compliance

with the provisions of this Section 21. For the present, the parties designate the following as the respective places for giving of notice, to wit:

**For County:**

Polk County Parks & Natural Resources Division  
4177 Ben Durrance Rd.  
Drawer PW06  
Bartow, Florida 33830  
Attention: Division Director

**For Firm:**

[Company Name]  
[Street]  
[City/State/Zip Code]  
Attention: [Project Manager]

**22.0 Severability**

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; 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. 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. 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.

**23.0 Annual Appropriations**

Firm acknowledges that during any fiscal year the County 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. Accordingly, any agreement, verbal or written, the County may make in violation of this fiscal limitation is null and void, and no money may be paid on such agreement. The County may enter into agreements whose duration exceeds one year; however, any such agreement shall be executory only for the value of the services to be rendered which the County agrees to pay as allocated in its annual budget for each succeeding fiscal year. Accordingly, the County's performance and obligation to pay the Firm under this Agreement is contingent upon annual appropriations being made for that purpose.

**24.0 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 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.

## **25.0 Firm Representations**

25.1 The Firm hereby represents and warrants the following to the County:

25.1.1 Firm is a corporation that is duly organized and existing in good standing under the laws of the State of \_\_\_\_\_ with full right and authority to do business within the State of Florida.

25.1.2 Firm's performance under this Agreement will not violate or breach any contract or agreement to which the Firm is a party or is otherwise bound, and will not violate any governmental statute, ordinance, rule, or regulation.

25.1.3 Firm has the full right and authority to enter into this Agreement and to perform its obligations in accordance with its terms.

25.1.4 Firm now has and will continue to maintain all licenses and approvals required for conducting its business, and that it will at all times conduct its business activities in a reputable manner.

25.1.5 Firm has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

25.1.6 Firm has the personnel and experience necessary to perform all Services in a professional and workmanlike manner.

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

25.1.8 Firm shall, at no additional cost to County, re-perform those Services which fail to satisfy the foregoing standard of care or which otherwise fail to meet the requirements of this Agreement.

25.1.9 Each individual executing this Agreement on behalf of the Firm is authorized to do so

## **26.0 Default and Remedy**

If the Firm materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the Firm 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 Firm, 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 Firm, then the Firm 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 Firm the full amount due and owing for all Services performed through the date of Agreement termination.

#### **27.0 Limitation of Liability**

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

#### **28.0 Waiver**

A waiver by either County or Firm 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 of this Agreement. The making or acceptance of a payment by either party with the knowledge of the other party's existing default or breach of the Agreement shall not waive such default or breach, or any subsequent default or breach of this Agreement, and shall not be construed as doing so.

#### **29.0 Attorneys' Fees and Costs**

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

#### **30.0 Force Majeure**

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.

### **31.0 Key Personnel**

The Firm shall notify the County if any of the Firm's Key Personnel (as defined, below) change during the Term of the Agreement. To the extent possible, the Firm shall notify the County at least ten (10) days prior to any proposed change in its Key Personnel. At the County's request the Firm shall remove without consequence to the County any of the Firm's contractors, sub-contractors, subconsultants, agents or employees and replace the same with an appropriate substitute having the required skill and experience necessary to perform the Services. The County shall have the right to reject the Firm's proposed changes in Key Personnel. The following individuals shall be considered "Key Personnel:"

(Key Personnel should be the names provided in their proposal)

### **32.0 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).

### 33. **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.

**34. Unauthorized Alien(s)**

The Firm shall not employ or utilize unauthorized aliens in the performance of the Services provided pursuant to this Agreement. The County shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a) and a cause for the County's unilateral termination of this Agreement. When delivering executed counterparts of this Agreement to the County, the Firm shall also deliver a completed and executed counterpart of the attached "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" form.

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

DRAFT

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

**ATTEST:**

STACY M. BUTTERFIELD  
CLERK OF THE BOARD

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

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

By: \_\_\_\_\_  
George Lindsey, Chairman  
Board of County Commissioners

Date Signed By County \_\_\_\_\_

Reviewed as to form and legal sufficiency:

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

\_\_\_\_\_  
Date

**ATTEST:**

Legal name of company,  
a [state] Corporation/LLC

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

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

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

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

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
TITLE

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

SEAL

ACKNOWLEDGEMENT OF FIRM IF A LIMITED LIABILITY COMPANY

STATE OF \_\_\_\_\_ County OF \_\_\_\_\_

The foregoing instruments was acknowledged before me by means of ☐ physical presence or ☐ online notarization this \_\_\_\_\_ (Date) by \_\_\_\_\_ (Name of officer or agent) as \_\_\_\_\_ (title of officer or agent) of the Company

on behalf of the Company, pursuant to the powers conferred upon him/her by the Company.

He/she personally appeared before me at the time of notarization, and ☐ is personally known to me or ☐ has produced \_\_\_\_\_ as identification and did certify to have knowledge of the matters stated in the foregoing instrument and certified the same to be true in all respects. Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ (Date) \_

\_\_\_\_\_ (Official Notary Signature and Notary Seal)

\_\_\_\_\_ (Name of Notary typed, printed or stamped)

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

ACKNOWLEDGEMENT OF FIRM, IF A CORPORATION

STATE OF \_\_\_\_\_ County OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this \_\_\_\_\_ (Date) by \_\_\_\_\_ (Name of officer or agent) as \_\_\_\_\_ (title of officer or agent) of the Corporation

on behalf of the Corporation, pursuant to the powers conferred upon him/her by the Corporation.

He/she personally appeared before me at the time of notarization, and ☐ is personally known to me or ☐ has produced \_\_\_\_\_ as identification and did certify to have knowledge of the matters stated in the foregoing instrument and certified the same to be true in all respects. Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ (Date) \_

\_\_\_\_\_ (Official Notary Signature and Notary Seal)

\_\_\_\_\_ (Name of Notary typed, printed or stamped)

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

ACKNOWLEDGEMENT OF FIRM, IF AN INDIVIDUAL

STATE OF \_\_\_\_\_ County OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this \_\_\_\_\_ (Date) By \_\_\_\_\_

(Name of acknowledging) who personally appeared before me at the time of notarization, and ☐ is personally known to me or ☐ has produced \_\_\_\_\_ as identification and did certify to

have knowledge of the matters in the foregoing instrument and certified the same to be true in all respects. Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ (Date) \_

\_\_\_\_\_ (Official Notary Signature and Notary Seal)

\_\_\_\_\_ (Name of Notary typed, printed or stamped)

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