

# **Architectural/Engineering Services Agreement**

THIS AGREEMENT is entered into as of the Effective Date (defined in Section 1.1 below) by and between Polk County, a political subdivision of the State of Florida, 330 W. Church Street, Bartow, Florida 33830, hereinafter referred to as the "County", and The Lunz Group, a Florida Limited Liability Company, located at 58 Lake Morton Drive, Lakeland, FL 33801 herein referred to as the "Consultant", and whose Federal Identification Number is: 59-2853955.

**WHEREAS**, the County requires certain architectural and engineering services for the development of a master plan for the Polk County Agricultural Center Complex and design those elements adopted from the master plan in future phases (the "Project"); and,

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

**WHEREAS**, pursuant to the RFP, the County has selected the Consultant and the Consultant remains agreeable to providing the County the professional services described herein, and the Consultant represents that it is capable and prepared to do so according to the terms and conditions stated herein;

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

## **1.0 Effective Date; Term**

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

1.2 A timeline will be established for each Phase (as defined in Section 2.2) of the Project. The timeline for Phase I, Master Plan, design, cost estimate, and bidding and construction administration for an event arena, livestock barn(s), paddock area(s), trailer parking and a maintenance & operations building is included in the Phase I Scope Details and Assumptions attached hereto and incorporated herein as Exhibit "A-iii, and a timeline for each subsequent Phase will be included in an amendment to this Agreement.

## **2.0 Consultant Services - General**

2.1 The County does hereby retain the Consultant to furnish those services and to perform those tasks as set forth and described in (i) the County's Request for Proposal RFP #24-642, to include all attachments and addenda, (ii) the Consultant's responsive proposal thereto, and (iii) the Consultant's Scope of Work (collectively, (i), (ii), and (iii) are "RFP 24-642"), all of which are incorporated into this Agreement by this reference, attached as a composite Exhibit "A" and made a part of this Agreement, together with those services set forth and described on Exhibit B "Scope of Services" attached hereto and incorporated herein, and as may be otherwise set forth herein (collectively, the "Services").

2.2 At its option the County may choose to modify, add or delete and Services included within the phases as set forth and described in the Consultant's Project Approach portion of the RFP (Collectively, the "Phases"), contained in Exhibit A, by duly executing a written amendment(s) to this Agreement.

2.3 By execution of this Agreement, the County hereby engages the Consultant to perform the Phase I Services, master plan and base site design services, as outlined in Exhibit "A-iii."

### **3.0 Project Administration Services**

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

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

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

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

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

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

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

3.7.1 Intentionally omitted.

3.7.2 Intentionally omitted.

3.7.3 Intentionally omitted.

3.7.4 Intentionally omitted.

3.7.5 Intentionally omitted.

### **4.0 Evaluation and Planning Services**

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

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

## 5.0 Design Services

### 5.1 SCHEMATIC DESIGN DOCUMENTS

5.1.1 The Consultant shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

### 5.2 DESIGN DEVELOPMENT DOCUMENTS

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

### 5.3 CONSTRUCTION DOCUMENTS

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

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

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

## **6.0 Contract Administration Services**

### **6.1 GENERAL ADMINISTRATION**

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

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

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

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

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

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

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

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

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

### **6.2 EVALUATIONS OF THE WORK**

6.2.1 The Consultant, as a representative of the County, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the

County and the Consultant, (1) to become generally familiar with and to keep the County informed in writing about the progress and quality of the portion of the Work completed, (2) to guard the County against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Consultant shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

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

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

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

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

### 6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

6.3.1 The Consultant shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The Consultant's certification for payment shall constitute a representation to the County, based on the Consultant's evaluation of the Work as provided in Paragraph 6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of

subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Consultant.

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

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

#### 6.4 SUBMITTALS

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

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

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

#### 6.5 CHANGES IN THE WORK

6.5.1 The Consultant shall prepare Construction Change Directives and assist the County with the preparation of change orders and allowance authorizations for the County's approval and execution in accordance with the Contract Documents. The Consultant may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time, which are consistent with the intent of the Contract Documents.

If necessary, the Consultant shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified.

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

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

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

## 6.6 PROJECT COMPLETION

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

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

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

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

## **7.0 Facility Operation Services**

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

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

## **8.0 Additional Services**

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

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

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

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

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

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

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

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

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

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

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

## **9.0 Compensation**

9.1 In consideration for its providing the Services, the County shall pay Consultant the lump sum amount of **\$1,572,400.00** for the Phase I Services, as set forth in Exhibit



“A-iii”, which amount is based on the Consultants hourly rate schedule set forth in Exhibit “C”, which is attached hereto and made a part of this Agreement.

9.2 Also, the County shall negotiate any of the additional Phase II and III Services’ lump sum amount(s) and base the amount(s) on the Consultant’s hourly rate schedule set forth in Exhibit “C.”

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

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

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

Polk County Facilities Management Division  
Attention: Division Director  
2160 Marshall Edwards Drive  
Bartow, FL 33830

9.6 In order for both parties herein to close their books and records for the Project, the Consultant will clearly state "Final Invoice" on the Consultant’s final/last billing to the County. This certifies that all Services have been properly performed and all charges and costs have been invoiced to the County. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the Consultant.

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

9.8 A contract amendment/change order may be executed by both parties, after Substantial Completion, to incorporate any additional design fees due to the Consultant. The amendment shall be based upon 5.8% of the additional cost of the Work that has been added to the Project where the Consultant participated in the design process.

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

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

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

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

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

#### **10.0 Reimbursable Expense**

10.1 All requests for payment of out-of-pocket expenses eligible for reimbursement under the terms of this Agreement shall be reimbursed per the negotiated Scope of Work (Exhibit A-iii) and in accordance with the County's Reimbursable Schedule that is attached hereto as Exhibit "D" and made a part of this Agreement. The Consultant's requests for payment shall include copies of paid receipts, invoices or other documentation acceptable to the County's Auditor. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Services described in this Agreement.

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

Overnight Deliveries

Reproduction

10.3 Mileage shall be reimbursed in accordance with Section 112.061, Florida Statutes, and County policy for pre-approved out-of-county travel (excluding travel from home offices located outside of Polk County to the Polk County line).

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

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

10.6 All assets, i.e. durable goods, purchased as reimbursable expenses become the property of the County upon completion of the work for which the asset was utilized. All such assets must be surrendered by delivery to the Polk County Facilities Management Division offices upon demand termination of the Agreement or the conclusion of the project, whichever occurs first.

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

#### **11.0 Project Team**

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

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

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

12.0 **Consultant's Standard of Care**

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

12.2 Intentionally Omitted.

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

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

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

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

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

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

12.9 The Consultant shall, at no additional cost to County, re-perform Services which fail to satisfy the foregoing standard of care or otherwise fail to meet the requirement of this Agreement.

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

### 13.0 **Insurance**

#### 13.1 **General Provisions**

13.1.1 The Consultant shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverage and amounts of coverage not less than those set forth below and provide the County with a certified copy of each policy applicable to this Agreement followed thereafter by an annual Certificate of Insurance satisfactory to the County to evidence such coverage before any work commences. Such certificates will provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to the County.

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

13.1.3 The Consultant's self-insured retention or deductible per line of coverage shall not exceed \$100,000.00 without the permission of the County.

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

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

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

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

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

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

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

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

13.3.1 Premises and Operations:

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

13.3.2 Independent Contractors:

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

13.3.3 Policy must include Separation of Insureds Clause.

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

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

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

14.0 Indemnification

14.1 General. Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, the County and the Consultant agree to allocate such liabilities in accordance with this Section 14.0.

14.2 Indemnification.

14.2.1 The Consultant, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to the County) protect and hold the County, and its officers, employees and agents, free and harmless from and against any and all claims, actions, causes of action, liabilities (joint or several), penalties, forfeitures, damages, losses and expenses (including, without limitation, attorneys' fees and costs and expenses incurred during negotiation, through litigation and all appeals therefrom), and including, without limitation, those pertaining to the death of or injury to any person, or damage to any property, which directly or indirectly arise in connection with or result from (i) the failure of the Consultant to comply with applicable laws, rules or regulations, (ii) the breach by the Consultant of its obligations under any agreement with the County entered into pursuant to this solicitation, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of the Consultant's performance or non-performance of this Agreement, or (iv) the negligent acts, errors or omissions, or intentional or willful misconduct of the Consultant, its professional associates, sub-consultants, agents, and employees; provided, however, that the Consultant shall not be obligated to defend or indemnify the County with respect to any such claims or damages arising out of the County's sole negligence. The obligations imposed by this Section shall survive the expiration or earlier termination of this Agreement.

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

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

14.3 Survival. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Section 14.0 shall survive as if the Agreement were in full force and effect.

**15.0 Independent Contractor**

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

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

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

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

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

**16.0 Authority to Practice**

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

**17.0 Compliance with Laws**

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

**18.0 Subcontracting**

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

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

**19.0 Federal and State Taxes**

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

20.0 **Public Entity Crimes**

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

21.0 **County's Responsibilities**

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

## **22.0 Termination of Agreement**

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

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

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

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

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

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

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

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

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

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

23.1 Either party hereunder may be temporarily excused from performance if an Event of Force Majeure directly or indirectly causes its nonperformance. An "Event of Force Majeure" is defined as any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions. Neither party shall be excused from performance if non-performance is due to forces which are reasonably preventable, removable, or remediable and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied prior to, during, or immediately after their occurrence. Within five (5) days after the occurrence of an Event of Force Majeure, the non-performing party shall deliver written notice to the other party describing the event in reasonably sufficient detail, along with proof of how the event has precluded the non-performing party from performing its obligations hereunder, and a good faith estimate as to the anticipated duration of the delay and the means and methods for correcting the delay. The non-performing party's obligations, so far as those obligations are affected by the Event of Force Majeure, shall be temporarily suspended during, but no longer than, the continuance of the Event of Force Majeure and for a reasonable time thereafter as may be required for the non-performing party to return to normal business operations. If excused from performing any obligations under this Agreement due to the occurrence of an Event of Force Majeure, the non-performing party shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations under this Agreement. During any such time period, the



non-performing party shall keep the other party duly notified of all such actions required for it to be able to commence or resume performance of its obligations under this Agreement.

**24.0 Governing Law and Venue**

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

**25.0 Non-Discrimination**

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

**26.0 Waiver**

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

**27.0 Severability**

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

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

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

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

**28.0 Entirety of Agreement**

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

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

**29.0 Modification**

29.1 This Agreement may not be modified, added to, superseded or otherwise altered unless such modifications, additions or other alterations are evidenced in writing signed by

both the County and the Consultant. Such modifications shall be in the form of a written Amendment executed by both parties.

### **30.0 Successors and Assigns**

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

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

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

### **31.0 Contingent Fees**

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

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

32.1 Execution of this Agreement by the Consultant shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

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

### **33.0 Ownership of Documents**

33.1 The Consultant shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, drawings, or other information, except for the Instruments of Service, as defined in Section 47 herein, shall become the property of the County for its use and/or distribution as may be deemed appropriate by the County. The Consultant is not liable for any damages, injury or costs associated with the County's use or distribution of these documents for purposes other than those originally intended by the Consultant.

### **34.0 Access and Audits**

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

34.2 Misrepresentations of billable time or Reimbursable Expenses as determined by the County Auditor to Polk County, a political subdivision of the State of Florida shall result in the recovery of any resulting overpayments. The County's cost of recovery shall be the sole expense of the Consultant, including accounting and legal fees, court costs and administrative expenses.

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

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

### 35.0 **Notice**

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

As to County: Polk County Procurement Division  
P.O. Box 9005, Drawer AS05  
Bartow, FL 33831-9005  
Attn: Procurement Director

As to Consultant: Bradley Lunz  
The Lunz Group, LLC  
58 Lake Morton Drive  
Lakeland, FL 33801

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

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

### 36.0 **Service of Process**

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

As to Consultant: The Lunz Group, LLC  
58 Lake Morton Drive  
Lakeland, FL 33801

Attn: Bradley Lunz

37.0 **Key Personnel**

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

The following personnel shall be considered key personnel:

Name: Matt Lukens

Name: Emily Breheny

Name: Craig Fennig

Name: Trent Chamberlain

38.0 **Annual Appropriations**

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

39.0 **Liquidated Damages**

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

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

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

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

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

#### 41.0 **Limitation of Liability**

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

#### 42.0 **Default and Remedy**

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

all remedies available in law, equity, and under this Agreement. If the County materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the County receives written notice of the default from the Consultant, then the Consultant shall have the right to immediately terminate this Agreement by delivering written notice to the County. Upon any such termination, the County shall pay the Consultant the full amount due and owing for all Services performed through the date of Agreement termination.

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

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

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

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

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

(1) keep and maintain public records required by the County to perform the services required under this Agreement;

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

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

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

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

**RECORDS MANAGEMENT LIAISON OFFICER**

**POLK COUNTY**

**330 WEST CHURCH ST.**

**BARTOW, FL 33830**

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

**EMAIL: [RMLO@POLK-COUNTY.NET](mailto:RMLO@POLK-COUNTY.NET)**

**45.0 Americans with Disabilities Act**

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

**46.0 Additional Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

46.6 **Substantial Completion** means the Contractor has ascertained that the Work or portions thereof is ready for the Consultant and Consultant substantial completion inspection. It is understood that the Contractor will provide a list of incomplete items to the County and Consultant prior to this inspection. After the County's and Consultant's inspection, the Contractor will prepare a schedule for a completion of the list, indicating completion dates for the County's review. The County and Consultant will issue a Certificate of Substantial Completion when the work on the Contractor's pre-substantial punch-list has been accomplished, to the best of the Contractor's ability.

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

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

##### 47.1 INSTRUMENTS OF SERVICE

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

47.1.2 Upon execution of this Agreement, the Consultant grants to the County a nonexclusive license to reproduce the Consultant's Instrument of Service and thereafter use the same solely for purposes of constructing, using and maintaining, repairing and making additions and modifications to the Project, provided that the County shall comply with all obligations, including prompt payment of all sums when due, under the Agreement. The Consultant shall obtain similar nonexclusive licenses from the Consultant's sub-consultants



consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate the license. Upon such termination, the County shall refrain from making further reproductions of Instrument of Service. If and upon the date the Consultant is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the County to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

47.1.3 Except for the licenses granted in Section 47.1.2, no other license or right shall be deemed granted or implied under this Agreement. The County shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Consultant. However, the County shall be permitted to authorize the Contractor, Subcontractors, and sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service to and for use in their execution of the Work by license granted in Section 47.1.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Consultant and the Consultant's sub-consultants. The County agrees to pay the Consultant a reasonable, mutually agreed upon amount for any reuse of the Instruments of Service beyond this Agreement. The County shall not be responsible to pay the Consultant for the use of the designs, Drawings or Specifications when used for reference purposes only.

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

## 47.2 CHANGE IN SERVICES

47.2.1 Change in Services of the Consultant, including services required of the Consultant's sub-consultants may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, and if the Consultant's Services are affected as described in Section 47.2.2. Except for a change due to fault of the Consultant, Change in Services of the Consultant shall entitle the Consultant to an adjustment in compensation pursuant to Section 9.9, and to any Reimbursable Expenses described in Section 10.0.

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

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

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

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

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

47.3 ACCELERATED COMPLETION OF DESIGN PACKAGES. In order to minimize construction problems and change orders, the Consultant's standard practice requires the completion of detailed working drawings, submission for review and comment by reviewing agencies and incorporation of those comments and/or changes prior to bidding and entering into firm construction contracts. However, County may choose to accelerate the completion of the Project so that it may be completed in a shorter time period than would normally be required. Should the County choose to make this selection, it shall not be considered Fast Track, or in any way relieve the Consultant of its responsibilities and obligations set forth herein.

47.4 PHOTOGRAPHY. Consultant shall have the right to retain a photographer for the photography of the entire Project except those portions of the Project, which, in the reasonable judgment of the Client/Owner, would seriously compromise Client/Owner's business interests or facility security. The costs incurred for photography commissioned by Consultant shall be paid by Consultant except in the event Client/Owner requests copies for its own use. Owner shall then share in a mutually agreed upon portion of the photography and processing costs. With the execution of the Agreement, Owner grants Consultant the unlimited right to publish photographs of the Project as described above.

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

A. **Certification(s).**

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

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

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

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

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

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

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

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

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

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

49.0 **Unauthorized Alien(s)**

49.1 The Consultant shall not employ or utilize unauthorized aliens in the performance of the Services. The County shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the County. The Form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" will be signed by the Consultant and submitted as part of this Agreement.

50.0 **No Construction Against Drafter**

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

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

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

Attest:

STACY BUTTERFIELD  
CLERK OF THE BOARD

POLK COUNTY,  
a political subdivision of the State of Florida

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

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

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

Reviewed as to form and legal sufficiency:

*Neah McNeer* *5/20/25*  
County Attorney's Office      Date

ATTEST:

*S. Giles*  
Corporate Secretary

Sarah Giles  
Print Name

Date: May 21, 2025

The Lunz Group, LLC  
a Florida Limited Liability Company

By: *[Signature]*

BRADLEY LUNZ  
Print Name

PRESIDENT  
Title

Date: MAY 21<sup>st</sup>, 2025



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## Detail by Entity Name

Florida Limited Liability Company

**THE LUNZ GROUP, LLC**

### Filing Information

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### Principal Address

58 LAKE MORTON DRIVE  
LAKELAND, FL 33801

### Mailing Address

58 LAKE MORTON DRIVE  
LAKELAND, FL 33801

### Registered Agent Name & Address

LUNZ, BRADLEY T  
58 LAKE MORTON DRIVE  
LAKELAND, FL 33801

### Authorized Person(s) Detail

#### **Name & Address**

#### **Title President**

**Lunz, Bradley**

58 LAKE MORTON DRIVE  
LAKELAND, FL 33801

#### **Title Manager**

Giles, Sarah

58 LAKE MORTON DRIVE  
LAKELAND, FL 33801

**Title Manager**

Fennig, Craig  
58 LAKE MORTON DRIVE  
LAKELAND, FL 33801

**Annual Reports**

Report Year	Filed Date
2024	01/12/2024
2025	02/10/2025
2025	04/17/2025

**Document Images**

<a href="#">04/17/2025 -- AMENDED ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
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<a href="#">01/23/2023 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">01/12/2022 -- Florida Limited Liability</a>	<a href="#">View image in PDF format</a>

Florida Department of State, Division of Corporations

**AFFIDAVIT CERTIFICATION  
IMMIGRATION LAWS**

SOLICITATION NO.: RFP 24-642

PROJECT NAME: Polk County Agriculture Center

POLK COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA (COUNTY), WILL NOT INTENTIONALLY AWARD COUNTY CONTRACTS TO ANY CONTRACTOR 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").

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

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

Company Name: The Lunz Group

Signature

Title

Date

STATE OF: Florida

COUNTY OF: Polk

The foregoing instrument was signed and acknowledged before me this 21 day of

May, 2025, by Bradley Lunz who has produced  
(Print or Type Name)

DL/L388-173-15-0000 as identification.

(Type of Identification and Number)

Notary Public Signature

Sarah Sikes Giles

Printed Name of Notary Public

HH 642344 5/16/29

Notary Commission Number/Expiration





**EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY) CERTIFICATION**

(Florida Statutes, Section 448.095)

PROJECT NAME: Polk County Administration Center

The undersigned, as an authorized officer of the contractor identified below (the "**Contractor**"), 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 Contractor in accordance with the requirements of Section 448.095, Florida Statutes, as related to the contract entered into by and between the Contractor and the County on or about the date hereof, whereby the Contractor 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 Contractor, 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 Contractor or subcontractor. The Contractor acknowledges and agrees that (i) the County and the Contractor may not enter into the Contract, and the Contractor 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 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 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 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 the Contract. Nothing in this Certification shall be construed to allow intentional discrimination of any class protected by law.

Executed this 21 day of May, 20  .

ATTEST:

By: Sarah EilesPRINTED NAME: Sarah EilesIts: Corporate Secretary

CONTRACTOR:

By: Dwight LutzPRINTED NAME: Dwight LutzIts: President



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

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

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

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

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

Further Affiant sayeth naught.

THE Lutz Group  
NONGOVERNMENTAL ENTITY

[Signature]  
SIGNATURE

Bradley Lutz  
PRINT NAME

President  
TITLE

5/21/25  
DATE