

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 Madrid Engineering Group, Inc., a Florida corporation dba Madrid CPWG (the “Firm”), headquartered at 2030 State Road 60 East, Bartow, FL 33830-4268 and whose Federal Employer Identification Number is 59-3156722.

WHEREAS, the County requires certain professional services in connection with 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 a responsive proposal 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.

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) Scope of Work (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 it providing the Services, the County shall pay

the Firm the lump sum amount of \$199,365.00, as stated in Exhibit "Aiii" Scope of Work, which is attached hereto and made a part of this Agreement.

3.1.2 For any additional, related services that are requested and authorized by the County separate and apart from the lump sum services described above, the Firm shall invoice the County based upon the Firm's fees that are stated on the attached Exhibit "B", "Fee Schedule", which is made a part of this Agreement. The Fee Schedule identifies all Firm job classifications which may perform billable services pursuant to this Agreement and the fee for each job classification, along with all equipment, materials, and supplies necessary in the performance of such services. The County shall not be obligated to pay the Firm (i) for any services performed by individuals whose job classifications are not listed on the Fee Schedule, and (ii) for the cost of any equipment, material, or supplies not listed on the Fee Schedule that the Firm may use in performing the services. Any additional services requested by the County will be authorized by the Board of County Commissioners through an amendment to this Agreement.

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:

Polk County Parks and Natural Resources Division
4177 Ben Durrance Road
Bartow, Florida 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 The Firm shall invoice the County monthly for the Project Services rendered as outlined in Exhibit "A-iii". All such invoices shall be based upon the percentage of

work completed for each Task/Milestone Item, as set forth on Exhibit “A-iii”, 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.

3.1.8 By submission of an invoice, the Firm’s Project Manager or designated payroll officer shall be deemed to be attesting to the correctness and accuracy of all fees, time charges and requested reimbursements for which the Firm seeks payment.

3.1.9 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.

3.1.10 Pursuant to Section 3.1.2, if a not to exceed fee is negotiated for any additional related services, invoices shall be accompanied by time and task records for all billable hours appearing on the invoice. Alternatively, if a lump sum amount is negotiated, invoices shall be made upon the completion of each phase of the work in proportion to the services performed. Additional documentation may be requested by the County and, if so requested, shall be furnished by the Firm to the County Auditor’s satisfaction.

3.2 Reimbursable Expenses

3.2.1 When a not to exceed price is negotiated for any additional related services hereunder, 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
Sub-Contractor

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.

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.

3.2.6 No reimbursable expenses shall be permitted or paid for the Firm's performance of the Services negotiated as a lump-sum payment.

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**

11.1 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.

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 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.

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 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.

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

11.2 The Firm shall provide the County original Certificates of Insurance satisfactory to the County to evidence such coverage before any work commences.

11.3 Polk County, a political subdivision of the State of Florida be an additional named insured on all policies related to the project; excluding workers' compensation and professional liability.

11.4 General Liability and Workers' Compensation policies shall contain a waiver of subrogation in favor of Polk County.

11.5 The Commercial General Liability Policy shall (by endorsement if necessary) provide contractual liability coverage for the contractual indemnity stated in Section 10, above.

11.6 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.

11.7 The Firm's self-insured retention or deductible per line of coverage shall not exceed \$25,000 without the permission of the County.

11.8 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.

12.0 Public Entity Crimes

The Firm declares and warrants that neither the Firm nor any of the Firm'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 Firm 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 Firm shall be in material default of this Agreement, and in such case, the County shall have the rights and remedies as provided herein.

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 Firm

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 Firms 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 and Natural Resources Division
4177 Ben Durrance Road
Bartow, Florida 33830
Attention: Division Director

For Firm: Madrid CPWG

2030 East State Road 60
Bartow, FL 33880
Attention: John Delashaw

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 Florida 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, sub-consultants, 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:"

Name: Lennon Jordan, PE

Name: Larry Lackey, PE

Name: Steve Tarte, CEO

Name: John Delashaw, PE

Name: Nancy Tolleson, PE

Name: Andre Kniazeff, PE

32.0 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).

33.0 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.

34.0 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.

35.0 Supplemental Federal Clauses

In accordance with the federal procurement standards set forth in 2 C.F.R. §§ 200.318 through 200.327, the Supplemental Conditions – Federal Clauses contained in RFP 23-572 are attached hereto as Exhibit “D” and fully incorporated herein by reference.

**(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 M. BUTTERFIELD
CLERK OF THE BOARD

Polk County, a political subdivision
of the State of Florida

By: _____
Deputy Clerk

By: _____
W.C. Braswell, Chairman
Board of County Commissioners

Date Signed By County _____

Reviewed as to form and legal sufficiency.

Sandra B. Hume 3/4/24
County Attorney's Office Date

ATTEST:

Madrid Engineering Group, Inc., a Florida
corporation dba Madrid CPWG

By: Niza Maul
Niza Maul
PRINT NAME
Assistant Accounting Manager
TITLE

By: John Delashaw
John Delashaw, PE
PRINT NAME
Principal
TITLE

Date: March 11, 2024

SEAL



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 _____