

**AGREEMENT BETWEEN POLK COUNTY AND D-R MEDIA AND INVESTMENTS,
LLC, FOR COUNTY DESIGNATED PUBLICLY ACCESSIBLE WEBSITE FOR
PUBLICATION OF LEGAL NOTICES**

This Agreement (“Agreement”) is made and entered by and between Polk County, a political subdivision of the State of Florida (“County”), and D-R Media and Investments, LLC, a Florida limited liability company (“Contractor”) (each a “Party” and collectively referred to as the “Parties”).

RECITALS

A. During the 2022 legislative session, the Florida Legislature enacted House Bill 7049, which created Section 50.0311, Florida Statutes.

B. Effective January 1, 2023, Section 50.0311, Florida Statutes, authorizes a local governmental agency to publish legal notices under specified conditions on a publicly accessible website, owned or designated by the applicable county, instead of in a print newspaper.

C. Pursuant to Section 50.0311, Florida Statutes, County has designated Contractor as County’s publicly accessible website (“Website”) for publication of notices and advertisements (“Publications”), subject to the terms and conditions set forth herein.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa. For purposes of this Agreement, the following capitalized terms shall mean the following:

1.1. **“Applicable Law”** means all applicable laws, codes, advisory circulars, rules, regulations, or ordinances of any federal, state, county, municipal, or other governmental entity, as may be amended.

1.2. **“Board”** means the Board of County Commissioners of Polk County, Florida.

1.3. **“Code”** means the Polk County Code of Ordinances.

1.4. “**Contract Administrator**” means the Communications Division Director, or such other person designated by the Communications Division Director.

1.5. “**Governmental Agency**” has the meaning ascribed in Section 50.0311, Florida Statutes; *provided, however*, that such term shall exclude the County. The County and the Contractor acknowledge and agree that a Governmental Agency shall not have any rights under this Agreement unless and until said Governmental Agency has executed a Participation Agreement with the County and said Participation Agreement remains valid and enforceable.

1.6. “**Notice**” means the publication of text or other information issued by a Governmental Agency under this Agreement.

1.7. “**Optional Notice**” means a notice, in the County’s or Governmental Agency’s sole discretion, published in a newspaper of general circulation although it is only required to be published on the publicly accessible website.

1.8. “**Participation Agreement**” means an agreement dually authorized and entered into by and between the County and a Governmental Agency in substantially the same form as Exhibit D.

1.9. “**Required Notice**” means a notice, in the County’s or Governmental Agency’s sole discretion, that are required to published in a newspaper of general circulation by local, state or federal law or regulation.

1.10. “**Services**” means all work required of Contractor under this Agreement, including without limitation all deliverables, consulting, training, project management, other services specified in the Scope of Services set forth in Exhibit A, and any other services procured under this Agreement pursuant to an Order.

1.11. “**State Website**” means the statewide website established and maintained pursuant to Section 50.0211, Florida Statutes, as an initiative of the Florida Press Association as a repository for such notices located at the following address: www.floridapublicnotices.com, as may be amended.

ARTICLE 2. EXHIBITS

The following exhibits, as referenced throughout this Agreement, are attached hereto and fully incorporated herein by reference:

Exhibit A:	Scope of Services
Exhibit B:	Rates
Exhibit C:	Order Form
Exhibit D:	Form Participation Agreement
Exhibit E:	ETS Security Requirements

ARTICLE 3. SCOPE OF SERVICES, TRAINING, AND METHOD OF ORDERING

3.1. Services Description. Contractor shall provide a publicly accessible website ("Website") that complies with the requirements of Exhibit A and such additional Services as the County or Governmental Agencies may order through an appropriate Order (as defined in Section 3.2 below). The Website will provide on-demand access to an unlimited number of users, and concurrent users, support an unlimited number of submitted Notices, and offer 24/7 access. Contractor shall provide all necessary software, licensing, maintenance, and training required to deliver access to the Website for each Governmental Agency that issues an Order, and to provide public access to all Notices posted on the Website. Contractor shall ensure that the Website complies with all applicable Florida and federal laws, including without limitation, the relevant provisions of Chapter 50, Florida Statutes, and the Americans with Disabilities Act, 42 U.S.C. § 12101. Notwithstanding the foregoing, Contractor shall not be liable for any non-compliant content of Notices published on the Website by or at the request of The County or any Governmental Agencies.

3.2. Method of Ordering Services. The County and a Governmental Agency may select the type, amount, and timing of Services pursuant to an order ("Order") in substantially the form set forth in Exhibit C executed by the County or a Governmental Agency. The County will not place an Order on behalf of a Governmental Agency. Contractor may not comply with an Order from a Governmental Agency on behalf of the County. Each Governmental Agency shall be able to make an Order completely independently of any

other Governmental Agency or the County, provided an applicable Participation Agreement exists between the County and the Governmental Agency making the Order. Prior to accepting an Order, Contractor shall ensure the applicable Governmental Agency has a valid and existing Participation Agreement dually executed by County and Governmental Agency. If a Governmental Agency has a valid and existing Participation Agreement with the County, then Contractor shall accept all Orders issued by that Governmental Agency for so long as such Participation Agreement remains in full force and effect. Contractor may not provide any Services to a Governmental Agency pursuant to this Agreement if a Participation Agreement has expired without an extension or renewal, has been terminated by either party thereto, or is otherwise not in full force and effect at the time an Order is placed or Services are requested. For each Order accepted by Contractor pursuant to this Section 3.3, Contractor shall perform all Services specified therein; each Order is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks that are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, illegal, or unconscionable.

3.3. Website Improvements. Contractor may continually develop, alter, deliver, and provide to the County or the Governmental Agencies ongoing innovation to the Services, in the form of new features and functionalities. Contractor reserves the right to modify the Services from time to time, provided the Services continue to provide at least the minimum functionality stated in Exhibit A. Improvements to the website must be made available at least three (3) weeks in advance of public implementation in a test environment to validate their functionality. If Contractor modifies Services to such an extent that the Website no longer provides the minimum functionalities stated in Exhibit A, then Contractor shall be deemed to have materially breached this Agreement. Any modifications or improvements to the Services will be provided to the County or the Governmental Agencies at no additional charge.

3.4. Website Crash. If the County, Governmental Agencies, or the public cannot access the Website due to a crash or other defect, that continues and is not cured within the Cure Period, then Contractor shall be in breach of this Agreement. Contractor shall make reasonable efforts to notify County and the applicable Government Agencies in writing

immediately when Contractor become aware of a crash. Any written acknowledgement by the County or applicable Governmental Agencies of their receipt of the Contractor's crash notification can be construed as written notice of a breach for purposes of Section 9.1. Contractor shall have eight (8) hours from learning of the crash to have the services restored ("Cure Period"). Failure by Contractor to restore services within the Cure Period shall be required for such crash to be treated as a breach of this Agreement.

ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1. Term. This Agreement begins on the date it is fully executed by the Parties ("Effective Date") and shall continue for a period of five (5) years ("Initial Term"), unless otherwise terminated or extended as provided herein. The Initial Term, any Extension Term(s), and any Additional Extension as defined in this article are collectively referred to as the "Term."

4.2. Extensions. Parties may extend this Agreement for up to four (4) additional two (2) year terms (each an "Extension Term") on the same rates, terms, and conditions stated in this Agreement. To initial the Extension Term, a party must send notice to the other party before one hundred and eighty (180) days prior to the expiration of the then current term. The County Manager is authorized to exercise any Extension Term(s) and notice of same to Contractor. Notice of Extensions shall be effective and sufficient only if received by electronic mail.

4.3. Additional Extension. If (1) unusual or exceptional circumstances, as determined in the sole discretion of the County Manager, render the exercise of an Extension Term not practicable, or if (2) no Extension Term remains available and expiration of this Agreement would, as determined by the County Manager, result in a gap in Services deemed necessary by County, then the County Manager may extend this Agreement for period(s) not to exceed six (6) months in the aggregate ("Additional Extension") on the same rates, terms, and conditions as existed at the end of the then-current term. The County Manager may exercise the Additional Extension by written notice to Contractor at least thirty (30) days prior to the end of the then-current term stating the duration of the Additional Extension. The Additional Extension shall be within the authority of the County Manager, or otherwise authorized by the Board.

4.4. Annual Appropriations. The continuation of this Agreement beyond the end of any County fiscal year is subject to both the appropriation and the availability of funds pursuant to Chapter 129 and, if applicable, Chapter 212, Florida Statutes. Contractor 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 Contractor under this Agreement is contingent upon annual appropriations being made for that purpose.

4.5. Time of the Essence. Time is of the essence for Contractor's performance of the duties, obligations, and responsibilities required by this Agreement. Notwithstanding the foregoing, Contractor shall only be liable or responsible for delays or failures of performances caused by the action or inaction of Contractor, or the action or inaction of any of the Contractor's subcontractors, vendors, or suppliers.

ARTICLE 5. RATES AND COMPENSATION

5.1. Rates. The rates for the Services to be provided to Governmental Agencies pursuant to executed Orders under this Agreement are set forth in Exhibit B.

5.2. Method of Billing and Payment. The County or the Governmental Agency issuing the Order shall make the Payments only for services actually purchased pursuant to said Order. Contractor shall accept the amount paid as full compensation for all such services.

5.2.1. Contractor Invoice Procedure. Unless otherwise stated in Exhibit B, Contractor shall submit invoices no more often than once annually, no more than ninety (90) days prior to end of the current Order term. Contractor shall ensure invoices identify the Order for which Services are being invoiced. The County or the Governmental Agency who issued the Order shall pay the invoice for services within forty-five (45) days after receipt of a proper invoice, in accordance with the

Florida Local Government Prompt Payment Act (Section 218.70-80, *et. seq.*, Fla. Stat.).

5.2.2. Subcontractor Payment Procedure. Contractor shall pay Subcontractors and suppliers within fifteen (15) days after receipt of payment for such subcontracted work or supplies. If Contractor withholds an amount as retainage from Subcontractors or suppliers, then it will release such retainage and pay same within fifteen (15) days after receipt of payment of retained amounts. Failure to pay a Subcontractor or supplier in accordance with this subsection shall be a material breach of this Agreement, unless Contractor demonstrates to Contract Administrator's satisfaction that such failure to pay results from a bona fide dispute with the Subcontractor or supplier and, further, Contractor promptly pays the applicable amount(s) to the Subcontractor or supplier upon resolution of the dispute. Contractor shall include requirements substantially similar to those set forth in this subsection in its contracts with Subcontractors and suppliers.

5.2.3. County Without Obligation. Contractor shall be solely responsible for invoicing the entity making the Order directly for the Services. County will not have any obligation, financial or otherwise, to either (1) pay Contractor for services provided to any Governmental Agency, or (2) to assist Contractor in obtaining payment from a Governmental Agency procuring Services from Contractor pursuant to this Agreement. The County shall only be responsible for Orders made by the County.

5.3. Reimbursable Expenses. Contractor may not be reimbursed for any expenses it incurs unless expressly provided for in this Agreement.

5.4. Subcontractors. Contractor shall invoice Subcontractor fees only in the actual amount paid by Contractor, without markup or other adjustment.

5.5. Overcharges. If an audit reveals overcharges of any nature by Contractor in excess of five percent (5%) of the total amount billed in the invoice where the overcharge occurred, then Contractor shall refund the overbilled amount within forty-five (45) days after demand by the applicable Governmental Agency. Likewise, the County may also

demand a refund of the overbilled amount in cases where the County has placed the Order.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

6.1. Representation of Authority. Contractor represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Contractor, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Contractor has with any third party or violates Applicable Law. Contractor further represents and warrants that execution of this Agreement is within Contractor's legal powers, and each individual executing this Agreement on behalf of Contractor is duly authorized by all necessary and appropriate action to do so on behalf of Contractor and does so with full legal authority.

6.2. Solicitation Representations. Contractor represents and warrants that all statements and representations made by Contractor to County in connection with the negotiation or award of this Agreement were true and correct when made and are true and correct as of the date Contractor executes this Agreement, unless otherwise expressly disclosed in writing by Contractor.

6.3. Contingency Fee. Contractor represents and warrants that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

6.4. Truth-In-Negotiation Representation. Contractor's compensation under this Agreement is based upon its representations and warranties to County, and Contractor certifies that the wage rates, factual unit costs, and other information supplied to substantiate Contractor's compensation, including without limitation those made by Contractor during the negotiation of this Agreement, are accurate, complete, and current as of the date Contractor executes this Agreement. If the County finds within the course of this Agreement that the information supplied by the Contractor as the basis for the Contractor's compensation was inaccurate, incomplete, or noncurrent, then the County may, in its sole discretion, reduce the compensation owed to the Contractor to correct for the inaccurate, incomplete, or noncurrent information.

6.5. Public Entity Crime Act. Contractor represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Contractor further represents that there has been no determination that it committed a “public entity crime” as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether Contractor has been placed on the convicted vendor list. Contractor understands and acknowledges that this Agreement will be voidable by the County in the event the conditions stated in Section 287.133, Fla. Stat., relating to conviction for a public entity crime apply to Contractor.

6.6. Claims Against Contractor. Contractor represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Contractor, threatened against or affecting Contractor, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of Contractor to perform its obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Contractor or on the ability of Contractor to conduct its business as presently conducted or as proposed or contemplated to be conducted.

6.7. Warranty of Performance. Contractor represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Services. Contractor represents and warrants that each person and entity that will provide Services is duly qualified to perform such Services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. Contractor represents and warrants that the Services shall be performed in a skillful and respectful manner, and that the quality of all Services shall equal or exceed prevailing industry standards for the provision of such services.

6.8. Prohibited Telecommunications Equipment. Contractor represents, warrants, and certifies that Contractor and all Subcontractors do not use any equipment, system, or

service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. Contractor shall not provide or use such covered telecommunications equipment, system, or services during the Term. Contractor may not enter into agreements with Subcontractors pursuant to this Agreement who Contractor knows or reasonably believes or suspects of using aforementioned covered telecommunications equipment or services. Contractor shall include language in all agreements with Subcontractors pursuant to this Agreement forbidding the use of such technology.

6.9. Breach of Representations and Warranties. Contractor acknowledges that County is materially relying on the representations, warranties, and certifications of Contractor stated in this article, and County shall be entitled to exercise any or all of the following remedies if any such representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of this Agreement without any further liability to Contractor; (c) set off from any amounts due Contractor the full amount of any damage incurred; and (d) debarment of Contractor.

ARTICLE 7. INDEMNIFICATION

Contractor shall indemnify, hold harmless, and defend County, each Governmental Agency, and all of County's and each Governmental Agency's officers, agents, and employees (collectively, "Indemnified Party") from and against any and all third-party causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part by any breach of this Agreement by Contractor, or any intentional, reckless, or negligent act or omission of Contractor, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Contractor shall, upon written notice from County, defend each Indemnified Party with counsel satisfactory to County. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

ARTICLE 8. INSURANCE

The Contractor shall maintain at all times the following minimum levels of insurance and shall, without in any way altering its liability, obtain, pay for and maintain insurance for the coverage and amounts of coverage not less than those set forth below. The Contractor shall provide the County original Certificates of Insurance satisfactory to the County to evidence such coverage before any work commences. The County shall be named as an additional insured on General and Automobile Liability policies. General Liability and Workers' Compensation policies shall contain a waiver of subrogation in favor of Polk County. The commercial General Liability Policy shall (by endorsement if necessary) provide contractual liability coverage for the contractual indemnity stated in Section 10, above. All insurance coverage shall be written with a company having an A.M. Best rating of at least the "A" category and size category of VIII. The Contractor's self-insured retention or deductible per line of coverage shall not exceed \$25,000 without the permission of the County. In the event of any failure by the Contractor to comply with the provisions of this Section 11, the County may, at its option, upon notice to the Contractor suspend Contractor's performance of the Services for cause until there is full compliance. Alternatively, the County may purchase such insurance at the Contractor's expense, provided that the County shall have no obligation to do so and if the County shall do so, the Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverage.

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

Premises and Operations:

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

Independent Contractors:

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

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

ARTICLE 9. TERMINATION

9.1. Termination for Cause. If a Party is in breach of this Agreement and has failed to remedy the breach within ten (10) days following receipt of written notice from the aggrieved Party identifying the breach, then the aggrieved Party may terminate this Agreement for cause. This Agreement may be terminated for cause by County for reasons including, but not limited to, Contractor's failure to suitably or continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement, or repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices. Unless otherwise stated in this Agreement, termination for cause may be by the County Manager, the County representative expressly authorized under this Agreement, or the County representative (including any successor) who executed the Agreement on behalf of County. If County erroneously, improperly, or unjustifiably terminates this Agreement for cause, then such termination shall be deemed a termination for convenience pursuant to Section 9.2 effective thirty (30) days after such notice was provided and Contractor shall be eligible for the compensation provided in Section 9.2 as its sole remedy.

9.2. Termination for Convenience. The County Manager may terminate this Agreement for convenience with at least ninety (90) days advance written notice to Contractor. Contractor acknowledges that it has received good, valuable, and sufficient consideration for County's right to terminate this Agreement for convenience, including in the form of County's obligation to provide advance notice to Contractor of such termination in accordance with this section.

9.3. Termination Notice. Notice of termination shall be provided in accordance with the “Notices” section of this Agreement, except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

9.4. Remedies for Termination. In addition to any termination rights stated in this Agreement, County shall be entitled to seek any and all available remedies, contractual or otherwise, available at law or in equity.

9.5. Termination of Orders.

9.5.1. Termination of Orders for Cause. An Order may be terminated for cause by Contractor, or by the County for those Orders involving the County, or by the applicable Governmental Agency if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. An Order may be terminated for cause by the County or by a Governmental Agency for reasons including, but not limited to, Contractor’s failure to suitably or continuously perform the Services in a manner calculated to meet or accomplish the objectives in an Order, or repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices.

9.5.2. Termination of Orders for Convenience. An Order may be terminated by the County for those Orders involving the County, or the applicable Governmental Agency for convenience with at least thirty (30) days advance written notice to the other party. The Contractor acknowledges that it has received good, valuable, and sufficient consideration for the Governmental Agency’s right to terminate an Order for convenience including in the form of the Governmental Agency’s obligation to provide advance notice of such termination in accordance with this section.

9.5.3. Notice of termination of an Order shall be provided in accordance with the “Notices” section of this Agreement to the addresses listed on the Order.

ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY

No Party may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender

identity and expression in the performance of this Agreement. Contractor shall include the foregoing or similar language in its contracts with all Subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

ARTICLE 11. MISCELLANEOUS

11.1. Contract Administrator Authority.

11.1.1. County Contract Administrator. The Contract Administrator is authorized to coordinate and communicate with Contractor to manage and supervise the performance of this Agreement. Contractor acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise materially modify the Scope of Services except as expressly set forth in this Agreement. Unless expressly stated otherwise in this Agreement, the Contract Administrator may exercise ministerial authority in connection with the day-to-day management of this Agreement. The Contract Administrator may also approve in writing minor modifications to the Scope of Services or any Order issued by the County that do not increase the total cost to County or waive any rights of County.

11.1.2. Governmental Agency Contract Manager. Governmental Agency may appoint a Contract Manager that is authorized to coordinate and communicate with Contractor to manage and supervise the performance of its Order(s). Contractor Acknowledges that the Governmental Agency Contract Manager has no authority to modify this Agreement, and only has authority over Order(s) issued by that Governmental Agency and not over Order(s) issued by any other Governmental Agency.

11.2. Public Records. Notwithstanding anything else in this Agreement to the contrary, any action taken by County in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119, Florida Statutes, shall not constitute a breach of this Agreement. If Contractor is acting on behalf of County as stated in Section 119.0701, Florida Statutes, then Contractor shall:

11.2.1. Keep and maintain public records required by County to perform the Services;

11.2.2. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by Applicable Law;

11.2.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law for the duration of this Agreement and after completion or termination of this Agreement if the records are not transferred to County; and

11.2.4. Upon expiration of the Term or termination of this Agreement, transfer to County, at no cost, all public records in possession of Contractor or keep and maintain public records required by County to perform the services. If Contractor transfers the records to County, then Contractor shall destroy any duplicate public records that are exempt or confidential and exempt. If Contractor keeps and maintains the public records, then Contractor shall meet all requirements of Applicable Law for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

If Contractor receives a request for public records regarding this Agreement or the Services, then Contractor must immediately notify the Contract Administrator in writing and provide all requested records to County to enable County to timely respond to the public records request. County will respond to all such public records requests.

Contractor shall separately submit and conspicuously label as “RESTRICTED MATERIAL – DO NOT PRODUCE” any material (a) that Contractor contends constitutes or contains its trade secrets under Chapter 688, Florida Statutes, or (b) for which Contractor asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, “Restricted Material”). In addition, Contractor shall, simultaneous with the submission of any Restricted Material, provide a sworn affidavit from a person with personal knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing

the applicable Florida statute and specifying the factual basis for each such claim. Upon request by County, Contractor shall promptly identify the specific applicable statutory section that protects any particular document. If a third party submits a request to County for records designated by Contractor as Restricted Material, then County shall refrain from disclosing such material unless otherwise ordered by a court of competent jurisdiction, authorized in writing by Contractor, or the claimed exemption is waived. If Contractor fails to strictly comply with the requirement of this section, then the Contractor will be deemed to have waived the obligation of County to treat the records as Restricted Materials. Contractor shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to nondisclosure of Restricted Material in response to a third-party request.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION
OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'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

11.3. Audit Rights and Retention of Records. County and Governmental Agency shall have the right to audit the books, records, and accounts of Contractor and all Subcontractors that are related to this Agreement. Contractor and all Subcontractors shall keep such books, records, and accounts as may be necessary to record complete and correct entries related to this Agreement and performance under this Agreement.

Contractor and all Subcontractors shall keep all such books, records, and accounts in written form, or in a form capable of conversion into written form within a reasonable time. Upon a records request, Contractor and all Subcontractors shall make the books, records and accounts available in written form at no cost to County or Governmental Agency. Contractor shall provide County and Governmental Agency with reasonable access to Contractor's facilities.

Contractor and all Subcontractors shall preserve and make available, at reasonable times within the County where Contractor's primary place of business is located, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. This article shall survive any dispute or litigation between the Parties, and Contractor expressly acknowledges and agrees to be bound by this article throughout the course of any dispute or litigation with County. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Contractor hereby grants County the right to conduct such audit or review at Contractor's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

11.4. Independent Contractor. Contractor is an independent contractor of County, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services, neither Contractor nor its agents shall act as officers, employees, or agents of County. Contractor shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

11.5. Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a Party to this Agreement and not in its regulatory capacity. If County exercises its regulatory authority, then the exercise of such authority and the enforcement of Applicable Law shall have occurred pursuant to County's regulatory authority as a governmental

body separate and apart from this Agreement, and shall not be attributable in any manner to County as a Party to this Agreement.

11.6. Sovereign Immunity. Nothing contained in this Agreement shall be deemed a waiver, expressed or implied, of POLK COUNTY'S sovereign immunity or the sovereign immunity of a Governmental Agency or an increase in the limits of liability pursuant to Section 768.28, Florida Statutes, regardless of whether any such obligations are based in tort, contract, statute, strict liability, negligence, product liability or otherwise nor shall anything included herein be construed as consent by County or a Governmental Agency to be sued by third parties in any matter arising out of this Agreement.

11.7. Third-Party Beneficiaries. Any Governmental Agency that has executed a Participation Agreement and an Order is expressly made a third-party beneficiary of this Agreement with full power and authority to enforce this Agreement to the same effect as if it had expressly been made a party hereto. Other than a Governmental Agency with an executed Participation Agreement and at least one Order, neither Contractor nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

11.8. Notice. Unless otherwise stated herein, for notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

For County

County Manager
Polk County Board of County Commissioners
P.O. Box 9005
Bartow, Florida 33830

With a copy to:
County Attorney
Polk County Board of County Commissioners
P.O. Box 9005, Drawer AT01
Bartow, Florida 33830

For Contractor

(Insert)

11.9 Assignment. Contractor shall ensure all Subcontractors are expressly identified in this Agreement or otherwise approved in advance and in writing by County's Contract Administrator. The County has already approved and acknowledges that Columa is a subcontractor is approved to provide services under this agreement. Except for approved subcontracting, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Contractor without the prior written consent of County. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity. County reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence and an additional fee paid to County to reasonably compensate it for the performance of any such due diligence.

11.10 Conflicts. Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the Term, none of Contractor's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which they or Contractor is not a party, unless compelled to by legal process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of such person's expert opinion that is adverse or prejudicial to the interests of County in connection with any such

pending or threatened legal or administrative proceeding unless compelled to by legal process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If Contractor is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, then Contractor shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

11.11 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of this Agreement. For a waiver to be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

11.12 Compliance with Laws. Contractor and the Services must comply with all Applicable Law, including, without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.

11.13 Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, then that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

11.14 Joint Preparation. This Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either Party.

11.15 Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include any other gender, and the singular shall include the plural, and vice versa, unless the context

otherwise requires. Terms such as “herein” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated. Any reference to approval by County shall require approval in writing, unless otherwise expressly stated.

11.16 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement, or any Order, and any provision within an article or section of this Agreement, then the article or section shall prevail and be given effect.

11.17 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Tenth Judicial Circuit in and for Polk County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Middle District of Florida in Hillsborough County (Tampa Division). **EACH PARTY HEREBY EXPRESSLY, VOLUNTARILY, INTENTIONALLY, IRREVOCABLY, AND KNOWINGLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

11.18 Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of County and Contractor.

11.19 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions. All

commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

11.20 Payable Interest.

11.20.1. Payment of Interest. Unless prohibited by Applicable Law, Governmental Agency shall not be liable for interest to Contractor for any reason, whether as prejudgment interest or for any other purpose, and Contractor waives, rejects, disclaims, and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement.

11.20.2. Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, then the annual rate of interest payable by Governmental Agency under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under Applicable Law, one quarter of one percent (0.25%) simple interest (uncompounded).

11.21 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

11.22 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

11.23 Use of County Name or Logo. Contractor may not use County's name or logo in marketing or publicity materials without prior written consent from the Contract Administrator.

11.24 Additional Security Requirements. Contractor shall comply with the ETS Security Requirements attached hereto as Exhibit E, which shall be applicable to the Website and all Services provided pursuant to Orders issued under this Agreement.

11.25 Limitation of Liability

IN NO EVENT SHALL EITHER PARTY HEREUNDER BE LIABLE TO THE OTHER 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 WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

11.26 Scrutinized Companies and Business Operations Certification; Termination.

A. Certification(s).

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

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

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

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

(ii) The Contractor 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 Contractor 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).

11.27. 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.

11.28 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.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have signed this Agreement and through their duly authorized signatories on the dates noted below their names.

Stacy M. Butterfield
Clerk to the Board

POLK COUNTY, a
political subdivision of the
State of Florida

By: _____
Deputy Clerk

By: _____
W. C. Braswell, Chairman

Date: _____

Reviewed as to form and legal sufficiency

County Attorney's Office

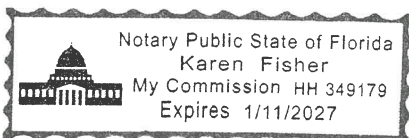
ATTEST:

D-R Media and Investments, LLC,
a Florida limited liability company

Karen Fisher
Signature of Corporate Secretary

Karen Fisher
Print Name

Date: 5/29/24



John D. Shank
Signature

JOHN SHANK
Print Name

PUBLISHER
Title

Date: 5-29-24

Exhibit A

Scope of Services

Contractor Services. Contractor shall provide a Website with a design approved by the Communication Director and meets the Website Requirement below. Contractor shall submit final Website design and layout to County's Contract Administrator for approval. Contractor may not, intentionally or unintentionally, publish, release, or cause the Website to "go-live" to the public, or be useable by the County or Governmental Agencies for publication of Notices, until County's Contract Administrator has issued written approval of the final Website design and layout. Functional users shall be allowed access to perform appropriate user acceptance testing four (4) weeks prior to the service going live to the public. Contractor shall be the sole owner of the URL, domain, and Website, and the Parties agree that County is simply designating Website as its publicly accessible website pursuant to this Agreement.

Separate website. The County shall have its own separate and unique website. Likewise, each Governmental Agency shall have its own separate and distinct site. Governmental Agencies may not have access to any other site. Contractor may not design a website which requires a Governmental Agency to rely on a separate and distinct Governmental Agency for their Notices or Website needs under this Agreement.

Website Requirements. The Contractor shall provide at least the following functionality for the Website:

- a. All text and content output must be machine-readable or have appropriate alt-text.
- b. Notices must be searchable by any available criteria, including but not limited to, agency, date of publication, key word, title, and category (e.g., procurement, land use, etc.).
- c. The Website must indicate the date and time the Notice was first published on the Website, any date where the Notice was modified subsequently to first being published, and the date and time the Notice is taken down or removed from the Website.

- d. The Website must offer the County and Governmental Agencies the ability to link procurement notices to external websites.
- e. The Website must be capable of generating an affidavit of proof of publication form consistent with Section 50.041, Florida Statutes. D-R Media shall be responsible for providing the required affidavit for publications on the Website which meets the requirements of Florida Statutes.
- f. The Website must provide the ability to attach a PDF (or other document format) as part of the Notice. Likewise, the Website must validate that if an image was attached, an alternative alt-text has also been provided.
- g. The Website must provide the ability to create templates to facilitate the creation and distribution of specific Notices.
- h. The Website must provide the public the ability to request mail or e-mail notification of the County, and the applicable Governmental Agency of any and all Notices published by the County itself or that particular Governmental Agency to the Website, provide notice to the County and each applicable Governmental Agency of all such requests, and provide the ability for the County and the applicable Governmental Agency to download a registry of the names, addresses, and e-mail addresses of persons who have submitted such requests.
- i. For Notices by e-mail, the Website must autogenerate and send the Notices once published by the County or Governmental Agency. For Notices by first-class mail, the County or participating Governmental Agency will be responsible for mailing applicable Notices.
- j. The Website must be responsive in design and able to function on desktops, tablets, and the most current and previous two iterations of mobile web browsers and platforms, including compatibility with Edge, Chrome, Safari, Firefox, and all current browsers on Microsoft (Windows), Google (Chrome, Android), and Apple operating systems, and, at the request of the Contract Administrator, future web browsers and platforms that may become available.

k. The Website must require industry standards methods of authentication of the user in the system.

l. The Website must provide for workflows that will allow for systematic approvals prior to publishing to the public facing site. Workflows must contain an audit trail that shows what was entered and approved and by which authenticated user.

Training Requirements. Contractor shall provide a quarterly training session open to all Governmental Agencies that have issued or executed a Participation Agreement. As part of this training, Contractor shall provide updates regarding Contractor's product road map, new features, and functionalities. Contractor shall announce the quarterly training date no less than thirty (30) days before the training date. Subject to County approval, Contractor may hold the training(s) at a location within Polk County or online.

Project Schedule; Go-Live Date. Contractor shall complete all Website design, configuration, testing, including user acceptance testing for each agency, and other required preparatory activity to enable Governmental Agencies access to the Website for the publication of Notices no later than sixty (60) days after the execution of this Agreement.

Contractor Support.

- a. Contractor shall use commercially reasonable efforts to perform the Services in a manner consistent with applicable industry standards, including SOC-2 compliance for Platform and Software, maintaining Services availability 24 hours a day, 7 days a week, and live support and notifications and coordination of planned outages. Contractor shall provide County and Governmental Agencies with 24/7 access to a help center. Live support will only be provided during normal business hours, which is defined as weekdays, 9:00 a.m. to 5:00 p.m., not including federal holidays.
- b. Contractor shall provide live support engineers based in the domestic United States to respond to basic questions concerning use and configuration, to diagnose software code related errors, and to proactively identify potential systems issues. Contractor's support engineers serve a preliminary function in the agile

development process and escalate defects to software developers or architects for remediation. For security purposes, Contractor's support engineers may not modify user accounts and permissions, nor distribute access outside of accounts established by means of a support interaction for testing. Governmental Agency delegated Users may receive tutorials and guidance on account modifications but will perform the action themselves.

- c. If a reported problem cannot be solved during the first support interaction, then Contractor shall provide Governmental Agency with a ticket number that will be used as communication method throughout ticket escalation until a solution is provided. Support service does not include support for errors caused by third party products or applications for which Contractor is not responsible.

Warranty. Contractor warrants that the Services and Website will perform substantially in accordance with Contractor's documentation and marketing proposals, and free of any material defect. Contractor warrants to the Governmental Agency that, upon notice given to Contractor of any defect in design or fault or improper workmanship, Contractor shall remedy any such defect. Contractor makes no warranty regarding, and will have no responsibility for, any claim arising out of: (i) a modification of the Services made by anyone other than Contractor, even in a situation where Contractor approves of such modification in writing; or (ii) use of the Services in combination with a third-party service, web hosting service, or server not authorized by Contractor.

Exhibit B

Rates

The following rates apply to all Orders issued pursuant to this Agreement:

County Rates:

Publication of Notice on Website: \$0 (No charge)

Publication on State Website: \$0 (No charge)

Publication of Required Notices in newspaper: \$0 (No charge)

Notices emailed to requestors: \$0 (No charge)

Notices mailed to requestors: \$ insert.

Publication of Optional Notices in newspaper: Standard Rate as ordered and published charged to other governmental agencies.

Governmental Agency Rates:

Publication of Notice on Website: \$0 (No charge)

Publication on State Website: \$0 (No charge)

Publication of Required Notices in newspaper: Standard Rate charged to other governmental agencies.

Notices emailed to requestors: \$0 (No charge)

Notices mailed to requestors: \$ insert.

Publication of Optional Notices in newspaper: Standard Rate charged to other governmental agencies.

Exhibit C

Governmental Agency Order

D-R Media and Investments, LLC Publicly Accessible Website Agreement

This Order is between County/[Governmental Agency] (“County”)/ (“Governmental Agency”) and D-R Media and Investments, LLC (“Contractor” or “D-R Media”) pursuant to Contractor’s Agreement with Polk County. Contractor affirms that the representations and warranties in the Agreement are true and correct as of the date this Order is executed by Contractor. In the event of any inconsistency between this Order and the Agreement, the provisions of the Agreement shall govern and control.

Services to be provided pursuant to this Order:

[COMPOSE SIMPLE SUMMARY INCLUDING GO-LIVE DATE]

The time period for this Order, unless otherwise extended or terminated by either party, is as follows: _____.

Contractor shall provide notices on the Publicly Accessible Website at no charge to the County/Governmental Agency as provided in the Agreement.

Additional Terms:

- a. **Form of Notice.** County/Governmental Agency shall comply with all applicable requirements, obligations, duties, and procedures set forth in Chapter 50, Florida Statutes (“Notice Requirements”), as may be amended from time to time, relating to any Notices published on the Website. County/Governmental Agency shall be solely responsible for compliance with the Notice Requirements.
- b. **Sovereign Immunity.** Nothing contained in this Agreement shall be deemed a waiver, expressed or implied, of the County/Governmental Agency’s sovereign immunity or an increase in the limits of liability pursuant to Section 768.28, Florida Statutes, regardless of whether any such obligations are based in tort, contract, statute, strict

liability, negligence, product liability or otherwise nor shall anything included herein be construed as consent by County/Governmental Agency to be sued by a third party in any matter arising out of this Order.

c. Notices. Parties shall ensure any Notices are provided in accordance with the “Notices” section of the Agreement at the address for Contractor listed in the Agreement and the address for County/Governmental Agency listed in the Participation Agreement.

d. Public Records. The provisions of Section 119.0701 are hereby incorporated as if fully set forth herein. Governmental Agency’s public records custodian is as follows:

_____.

Warranties and Disclaimer.

a. Each person signing this Order, represents and warrants that they are duly authorized and have legal capacity to execute and bind the respective party to the terms and conditions of this Order. Each party represents and warrants to the other that the execution and delivery of the Order and the performance of such Party’s obligations thereunder have been duly authorized and that this Order is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

b. D-R Media warrants that the Services will perform substantially in accordance with the Agreement, documentation, and marketing proposals, and free of any material defect. D-R Media warrants to the Governmental Agency that, upon notice given to D-R Media of any defect in design or fault or improper workmanship, D-R Media shall remedy any such defect. D-R Media makes no warranty regarding, and will have no responsibility for, any claim arising out of: (i) a modification of the Services made by anyone other than D-R Media, even in a situation where D-R Media approves of such modification in writing; or (ii) use of the Services in combination with a third-party service, web hosting service, or server not authorized by D-R Media.

c. EXCEPT FOR THE EXPRESS WARRANTIES IN THE AGREEMENT AND THIS ORDER, D-R MEDIA HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A PRIOR COURSE OF DEALING.

d. EACH PROVISION OF THIS ORDER THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS ORDER BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY D-R MEDIA TO GOVERNMENTAL AGENCY AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS ORDER.

Ownership and Content Responsibility.

a. Upon completion of the Initial Implementation and go-live date, County/Governmental Agency shall assume full responsibility for County/Governmental Agency Content maintenance and administration. County/Governmental Agency, not D-R Media, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Governmental Agency Content.

b. At any time during the term of the applicable Order, County/Governmental Agency shall have the ability to download the County/Governmental Agency Content and export the County/Governmental Agency data through the Services.

Responsibilities of the Parties.

a. D-R Media will not be liable for any failure of performance that is caused by or the result of any act or omission by Governmental Agency or any entity employed/contracted on the Governmental Agency's behalf.

b. County/Governmental Agency shall be responsible for all activity that occurs under County/Governmental Agency's accounts by or on behalf of County/Governmental Agency. County/Governmental Agency agrees to (a) be solely responsible for all designated and authorized individuals chosen by Governmental Agency ("User") activity, which must be in accordance with this Order; (b) be solely responsible for County/Governmental Agency content and data; (c) obtain and maintain during the term

all necessary consents, agreements and approvals from end-users, individuals, or any other third parties for all actual or intended uses of information, data, or other content County/Governmental Agency will use in connection with the Services; (d) use commercially reasonable efforts to prevent unauthorized access to, or use of, any User's log-in information and the Services, and notify D-R Media promptly of any known unauthorized access or use of the foregoing; and (e) use the Services only in accordance with applicable laws and regulations.

c. The Parties shall comply with all applicable local, state, and federal laws, treaties, regulations, and conventions in connection with its use and provision of any of the Services or D-R Media Property.

d. In the event of a security breach at the sole fault of the negligence, malicious actions, omissions, or misconduct of D-R Media, D-R Media, as the data custodian, shall comply will all remediation efforts as required by applicable federal and state law.

(Signatures appear on the following page.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Order, effective as of the date the last party signs this Order.

GOVERNMENTAL AGENCY NAME

ATTEST:

By: _____

GOVERNMENTAL AGENCY NAME/TITLE

CITY CLERK

Print Name
_____ day of _____, 20____

Contractor

Signature

Print/Type Name

Title

Exhibit D
**Form Participation Agreement for Publication of Legal Notices on County
Designated Publicly Accessible Website**

This Form Participation Agreement (“Participation Agreement”) is made and entered into by and between Polk County, a political subdivision of the State of Florida (“County”), and _____, a local government existing under the laws of the State of Florida (“Local Government”) (each a “Party,” and collectively the “Parties”).

RECITALS

- A. During the 2022 legislative session, the Florida Legislature enacted House Bill 7049, which created Section 50.0311, Florida Statutes.
- B. Effective January 1, 2023, Section 50.0311, Florida Statutes, authorizes a local governmental agency to publish legal notices under specified conditions on a publicly accessible website, owned or designated by the applicable county, instead of in a print newspaper.
- C. Local Government represents that it is a governmental agency as defined in Section 50.0311, Florida Statutes. Local Government desires to utilize County’s designated publicly accessible website for certain required notices and advertisements.
- D. Pursuant to Section 50.0311, Florida Statutes, County designated the website operated by D-R Media (“Website”) as County’s publicly accessible website for publication of notices and advertisements (“Publications”).

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. Recitals. The truth and accuracy of each clause set forth above is acknowledged by the Parties.
- 2. Designation of Website. County has entered into an agreement with Website (“Website Contract”) for Publications. County may at any time, upon at least ninety (90) days prior to written notice to Local Government in accordance with the Notices section

of this Participation Agreement, designate a different entity as County's publicly accessible website pursuant to Section 50.0311, Florida Statutes. Parties shall consider any such new designation as automatically effective upon the date stated in County's notice without the need for an amendment to this Participation Agreement, and upon the effective date the new website shall be the "Website" for purposes of this Participation Agreement.

3. Utilization of Website. Local Government may utilize the Website for its Publications if and to the extent it elects to do so. Nothing in this Participation Agreement obligates Local Government to utilize the Website for any Publication. However, any utilization of Website by Local Government for Publications pursuant to Section 50.0311, Florida Statutes, shall be obtained exclusively through the Website Contract and not through any other contract or procurement method. Local Government agrees that no other website is County's designated publicly accessible website, and Local Government agrees it may not take any action to challenge or otherwise attempt to disqualify the designation of Website (or any substitute website pursuant to Section 2 above) as the properly designated website of County pursuant to Section 50.0311, Florida Statutes.

4. Term. The term of this Participation Agreement shall commence upon the date it is fully executed by the Parties ("Effective Date") and shall continue until terminated by either Party as otherwise provided herein.

5. Compliance with Notice Requirements. For the duration of this Participation Agreement, Local Government shall comply with all applicable requirements, obligations, duties, and procedures set forth in Chapter 50, Florida Statutes ("Notice Requirements"), as may be amended from time to time, relating to any Publications published on the Website. County shall have no responsibility for ensuring that Local Government, the Website, or the Publications comply with the Notice Requirements or any other applicable law, rule, or regulation.

6. County Actions are Ministerial. Local Government acknowledges that any and all Publications of Local Government are prepared by Local Government and not by County. Local Government shall construe any and all actions of County in conjunction with, or

relating to, the designation of the Website for use by Local Government as, purely ministerial acts.

7. Costs and Payment. Local Government shall be solely responsible for the timely payment of all fees and costs associated with its Publications and use of the Website. Local Government shall utilize the Website Contract to obtain from Website any applicable services Local Government requires relating to Publications and shall pay Website directly for all such services provided in connection with Publications. Additionally, Local Government shall be solely responsible for payment of any and all mailing costs or other costs associated with the Publications or otherwise incurred relating to the Publications pursuant to Chapter 50, Florida Statutes, including without limitation Section 50.0311(6), Florida Statutes. County shall not be responsible for any fees or costs associated with: (a) use of the Website by Local Government; (b) any Publication; or (c) compliance with Chapter 50, Florida Statutes. Local Government recognizes and agrees that if Local Government fails to timely pay Website, then Website may terminate Local Government's access to the Website, and County shall have no liability to Local Government for such termination or lack of access, or any subsequent costs which Local Government might incur due to such termination or lack of access. Likewise, Local Government acknowledges that County has no control over payment processing services.

8. Sovereign Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Participation Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by either Party nor shall anything included herein be construed as consent by either Party to be sued by a third party in any matter arising out of this Participation Agreement.

9. Indemnification. Local Government shall indemnify and hold harmless County and all of County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Participation Agreement, and caused

or alleged to be caused, in whole or in part, by any breach of this Participation Agreement by Local Government, or any intentional, reckless, or negligent act or omission of Local Government, its officers, employees, or agents, arising from, relating to, or in connection with this Participation Agreement or any Publication. The obligations of this section shall survive the expiration or earlier termination of this Participation Agreement.

10. Termination.

10.1. Termination without cause. Either Party may terminate this Participation Agreement without cause upon at least ninety (90) days' prior written notice to the other Party.

10.2. Termination with cause. If the Party in breach has not corrected the breach within thirty (30) days after receipt of written notice from the aggrieved Party identifying the breach, then the aggrieved Party may terminate this Participation Agreement for cause.

10.3. Automatic Termination. If the publication of electronic notices is determined to be illegal by a court of competent jurisdiction, or if the Florida Legislature modifies Florida law to prohibit utilization of County's designated publicly accessible website for Publications, then this Participation Agreement will be deemed automatically terminated upon such finding becoming final or such law becoming effective, as applicable.

11. Notices. In order for a notice to a Party to be effective under this Participation Agreement, notice must be sent via U.S. first-class mail, with a contemporaneous copy sent via e-mail, to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR COUNTY:

County Manager

Polk County Board of County Commissioners

P.O. Box 9005

Bartow, Florida 33830

With a copy to:
County Attorney
Polk County Board of County Commissioners
P.O. Box 9005, Drawer AT01
Bartow, Florida 33830

FOR LOCAL GOVERNMENT:

Email address: _____

12. Prior Agreements. Parties shall consider this Participation Agreement as representing the final and complete understanding of the subject matter of this Participation Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Participation Agreement are contained herein.

13. Assignment. Neither this Participation Agreement nor any term or provision hereof or right hereunder may be assignable by either Party without the prior written consent of the other Party. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective.

14. Interpretation. The headings contained in this Participation Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Participation Agreement. All personal pronouns used in this Participation Agreement shall include any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein" refer to this Participation Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Participation Agreement, such reference is to the section or article

as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.

15. Third-Party Beneficiaries. Neither Local Government nor County intends to directly or substantially benefit a third party by this Participation Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Participation Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Participation Agreement.

16. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Participation Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Participation Agreement shall be in the state courts of the Tenth Judicial Circuit in and for Polk County, Florida. If any claim arising from, related to, or in connection with this Participation Agreement must be litigated in federal court, then the exclusive venue for any such lawsuit shall be in the United States District Court, or the United States Bankruptcy Court, for the Middle District of Florida. EACH PARTY EXPRESSLY, VOLUNTARILY, INTENTIONALLY, IRREVOCABLY, AND KNOWINGLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS PARTICIPATION AGREEMENT.

17. Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Participation Agreement and executed on behalf of County and Local Government, respectively, by persons authorized to execute same on their behalf.

18. Representation of Authority. Each individual executing this Participation Agreement on behalf of a Party represents and warrants that they are, on the date they sign this Participation Agreement, duly authorized by all necessary and appropriate action to execute this Participation Agreement on behalf of such Party and that they do so with full legal authority.

19. Counterparts and Multiple Originals. This Participation Agreement may be executed in multiple originals, and may be executed in counterparts, whether signed

physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Participation Agreement.

20. Materiality and Waiver or Breach. Each requirement, duty, and obligation set forth herein was bargained for at arm's-length. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Participation Agreement, and each is, therefore, a material term. Any Party's failure to enforce any provision of this Participation Agreement shall not be deemed a waiver of such provision or modification of this Participation Agreement. A waiver of any breach of a provision of this Participation Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Participation Agreement. For a waiver to be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

21. Compliance with Laws. Each Party shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Participation Agreement.

(Remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, the Parties have signed this Agreement and through their duly authorized signatories on the dates noted below their names.

ATTEST:

Stacy M. Butterfield
Clerk to the Board

POLK COUNTY

a political subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
County Manager

Date: _____

ATTEST:

Local Government .

Signature

Signature

Print Name

Print Name

Title

Title

Exhibit E

ETS Security Requirements – Low Risk

Definitions.

“Equipment” means the hardware being provided by Contractor under the Agreement.

“Software” means software provided or licensed by Contractor pursuant to the Agreement or an Order, including software-as-a-service (“SaaS”) products.

“Contractor Platform” means the web-based platform on which Contractor provides any SaaS or hosting Services under the Agreement or an Order, including any system or other solution that stores, hosts, or transmits County or Governmental Agency data.

All other capitalized terms not expressly defined within this exhibit shall retain the meaning ascribed to such terms in the Agreement. If a capitalized term is not defined herein or within the Agreement, then it shall be defined by the plain language meaning appropriate to the context in which it is used.

1. Software Installed in County’s Network. To the extent Contractor provides any Software to be installed in County’s network, Contractor shall:

1.1. Advise County of all versions of any third-party software (e.g., Java, Adobe Reader) to be installed and support updates for critical vulnerabilities that might allow cyber attackers to, for example, gain control of the system, shut down the system, or steal information, which are discovered in applicable third-party or open source software;

1.2. Ensure that the Software is developed based on industry standards and best practices, including, but not limited to, supplying certification of SOC-2 Compliance certification for the developed software and the infrastructure it is placed on, following secure programming techniques, and incorporating security throughout the Software-development life cycle;

1.3. Mitigate critical or high-risk vulnerabilities, as defined by Common Vulnerability and Exposures (CVE) scoring system, to the Software or Contractor platform within thirty (30) days after patch release, notifying County of proposed

mitigation steps to be taken. If Contractor is unable to apply a patch to remedy the vulnerability within thirty days after patch release, then Contractor shall provide County with a timeline for resolution of the issue;

1.4. Ensure the Software provides for role-based access controls and runs with least privilege access, enables auditing by default for any privileged access or changes, and supports electronic delivery of digitally signed upgrades from Contractor's or the third-party licensor's website;

1.5. Ensure the Software is not within three (3) years from its end-of-life date and provide County with end-of-life-schedules for all applicable Software;

1.6. Support encryption using at a minimum Advanced Encryption Standard 256-bit encryption keys ("AES-256") or current industry security standards, whichever is higher, for confidential data at rest and use transport layer security (TLS) 1.2 or current industry standards, whichever is higher, for data in motion; and

1.7. Upon request by County or Governmental Agency, provide an attestation letter identifying date of the most recent security vulnerability testing performed and any vulnerabilities identified and mitigated (must be dated within six (6) months after any major release).

2. Equipment Leased or Purchased from Contractor. To the extent Contractor is the Original Equipment Manufacturer (OEM) or an authorized reseller for the OEM for any Equipment provided under this Agreement or an Order, Contractor shall:

2.1. Ensure that physical security features to prevent tampering are included in any Equipment provided to County or Governmental Agency and ensure, at a minimum, industry-standard security measures are followed during the manufacture of the Equipment;

2.2. Ensure any Equipment provided does not contain any embedded remote-control features unless approved in writing by County's Contract Administrator or Governmental Agency's Contract Manager, as applicable, and disclose any default

accounts or backdoors that exist for access to County or Governmental Agency's network;

2.3. Shall supply a patch, firmware update, or workaround approved in writing by County's Contract Administrator or Governmental Agency's Contract Manager, as applicable, within thirty (30) days after identification of a new critical or high security vulnerability and notify County or Governmental Agency of proposed mitigation steps taken;

2.4. Develop and maintain Equipment to interface with County-supported or Governmental Agency-supported and approved operating systems and firmware versions;

2.5. Upon request by County or Governmental Agency, make available any required certifications as may be applicable per compliance and regulatory requirements (e.g., Common Criteria, Federal Information Processing Standard 140);

2.6. Ensure the Equipment is not within three (3) years from its end-of-life date at the time of delivery and provide County or Governmental Agency with end-of-life-schedules for all applicable Equipment;

2.7. Solely if the Contractor is an OEM, support electronic delivery of digitally signed upgrades of any applicable Equipment firmware from Contractor's or the original Equipment manufacturer's website; and

2.8. Solely if the Contractor is an OEM, upon request by County or Governmental Agency, provide an attestation letter identifying date of the most recent security vulnerability testing performed and any vulnerabilities identified and mitigated (must be dated within six (6) months after any major release).

3. SaaS or Hosting Services. Contractor shall use reasonable efforts to immediately notify County and the applicable Governmental Agency of any information security breach or unauthorized access or modification of County or Governmental Agency data.