

AGREEMENT FOR LAND USE HEARING OFFICER SERVICES

THIS AGREEMENT is made and entered into effective as of April 1, 2023 (the “Effective Date”), by and between Polk County, a political subdivision of the State of Florida (the “County”) and Neysa J. Borkert, Esquire, of Garganese, Weiss, D’Agresta & Salzman, PA, a Florida corporation, 111 N. Orange Ave, Ste 2000, Orlando, FL 32801 (the “Law Firm”).

WHEREAS, Section 975 of the Polk County Land Development Code (the “Code”) authorizes the County to appoint qualified land use hearing officers who have the authority to conduct hearings regarding applications for variances and special exceptions, to decide appeals of administrative decisions and determinations, and to perform any other tasks or take any other action authorized by the Code, as may be amended, or by resolution of the Board of County Commissioners; and

WHEREAS, Neysa J. Borkert, Esquire, (the “Land Use Hearing Officer” or “LUHO”) is an attorney employed by the Law Firm, and has previously provided land use hearing officer services to the County pursuant to selection via the County’s procurement process; and

WHEREAS, the LUHO represents that she is an active member of, and in good standing with, the Florida Bar; and

WHEREAS, the County desires to contract with the LUHO and her Law Firm for the services as further set forth herein, as such services will inure to the benefit of the citizens of Polk County.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the County, the LUHO, and the Law Firm agree as follows:

1. The recitals set forth above are true and correct and fully incorporated into the body of this Agreement. Capitalized terms used in this Agreement shall have the meaning ascribed in the Code, unless otherwise specifically defined herein.

2. The LUHO is hereby appointed to serve a term of three (3) years beginning on the Effective Date. This Agreement shall expire upon completion of the land use hearing officer services on March 31, 2026. The County or Law Firm may terminate this Agreement without cause upon no less than thirty (30) days prior written notice to the other party. In the event of such termination, the LUHO shall complete all pending orders prior to the termination date set forth in the notice.

3. The LUHO shall faithfully perform the duties set forth in the Polk County Land Development Code. During the term of this Agreement, the LUHO shall not (i) hold any other employment or contractual relationship whatsoever with Polk County, or hold other appointive or elective office or position in government during her term; or (ii) act as an agent or attorney in any proceeding, application or matter in the area of land use planning before any governmental authority of Polk County, involving property which is the subject of an application during the time the LUHO is in office. Further, the LUHO, and the Law Firm and any other firm with which she is or may be associated, is, for a period of one (1) year from the date of termination of this Agreement, expressly prohibited from acting as agent or attorney in any proceeding, application or matter before any commission, board, agent or other office of Polk County government, involving property which was the subject of any application during the time the LUHO was in office.

4. Compensation.

(a) The County shall compensate the LUHO through payment to the Law Firm at the rate of one hundred and fifty dollars (\$150) per hour for actual time spent at Hearings by the LUHO. "Hearings" shall mean a hearing set in accordance with the Code, noticed to the public, at which an agenda is followed. In the event that the actual time spent by the LUHO at Hearings on any given single date is less than two (2) hours,

then the County shall nevertheless compensate the Law Firm in the amount of \$300 for the services rendered by the LUHO at the Hearings on such date.

(b) Additionally, the County shall compensate the LUHO through payment to the Law Firm at the rate of one hundred and fifty dollars (\$150) per hour for actual time spent by the LUHO for any task completed outside of the hearing date that is germane to the hearing of a case including, without limitation, the review of the case file and staff report, research, site visits, and drafting and issuing written orders (collectively, the “Ancillary Services”), subject to the following limitations:

(i) Compensation for Ancillary Services rendered by the LUHO related to applications for Variances, Special Exceptions and Temporary Special Exceptions shall be capped at three (3) hours per case.

(ii) Compensation for Ancillary Services rendered by the LUHO related to appeals of Administrative Decisions, Administrative Determinations including Non-Conforming Rights Determinations, and Waivers shall not be subject to any cap.

(iii) Compensation for Ancillary Services rendered by the LUHO related to any other type of Hearing or matter assigned to the LUHO pursuant to the Code, as may be amended, shall be subject to a cap of six (6) hours per case.

(c) Notwithstanding the caps set forth in subsections (b)(i) and (iii), above, the LUHO shall complete all necessary tasks outside of the Hearings to finalize orders for cases at no additional cost to the County, unless otherwise authorized to exceed the above-stated caps in writing by the Polk County Land Development Director.

(d) In the event that the Code is amended subsequent to the Effective Date of this Agreement to authorize Hearing Officers be assigned other types of quasi-judicial Hearings, cases and matters (in addition to Variances, Special Exceptions, Temporary Special Exceptions, Administrative Decisions, Administrative Determinations including Non-Conforming Rights Determinations, and Waivers), then the County shall compensate the LUHO through payment to the Law Firm for the LUHO's attendance at an initial training meeting with County staff to review the portions of the Land Development Code pertinent to such new assignment(s) at the hourly rate specified in subsection (a) above.

(e) Neither the LUHO nor the Law Firm shall be entitled to claim any reimbursable expenses under this Agreement.

5. The Law Firm agrees to submit billing to the County no later than twenty-one (21) days after each hearing date in which services have been provided by the LUHO. The Law Firm agrees to submit billing to the County that contains a faithful recitation of time spent to the nearest tenth of an hour. The Law Firm agrees to include in billing submitted to the County pursuant to this Agreement, the land development case numbers, the names of the respective property owners, and the hearing date on which services were provided.

6. The Law Firm agrees to maintain a system of bookkeeping and accounting which shall produce an adequate account and record of the services rendered pursuant to this Agreement. The County shall have the right to inspect and audit such books, accounts and records of the Law Firm to determine their accuracy. If the County determines at any time the records of the Law Firm do not allow for a proper audit of the services rendered to County, the County shall have the right to specify additional bookkeeping and accounting requirements which are reasonably necessary for a proper audit, and the Law Firm shall implement same.

7. Billing and invoices shall be submitted to:

ATTENTION: Polk County Land Development Director
P.O. Box 9005, Drawer GM03
Bartow, Florida 33830
Ph.: 863.534.6792

8. To the extent applicable, the LUHO shall be subject to the provisions of Section 112.3145, Florida Statutes, insofar as they relate to local officers. Such financial disclosures shall be filed with the Polk County Supervisor of Elections. The failure to comply with the provisions of this Section shall constitute just cause for immediate removal of the LUHO from office, without regard to the notice provision set forth in Section 2 above.

9. The LUHO shall disqualify herself from a particular case when it reasonably appears that she has a conflict of interest. When the LUHO disqualifies herself, the case shall be assigned by the County to another LUHO.

10. The Law Firm shall not assign, sublicense, or otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the County.

11. This Agreement shall be construed in accordance with the laws of the State of Florida and venue shall lie in Polk County, Florida or in the Federal Middle District of Florida, Tampa Division, as appropriate. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of any other covenants, conditions or provisions contained herein.

12. None of the provisions of this Agreement are intended to create, nor shall be deemed or construed to create, any relationship between the County and the LUHO or the Law Firm, other than that of independent parties contracting with each other solely for the purpose of effectuating the provisions of this Agreement. The parties hereto shall be considered to be

independent, and neither of them, nor any of their respective representatives, employees or agents shall be construed to be the agent, employee, servant or representative of the other.

13. In providing all services pursuant to this Agreement, the LUHO and the Law Firm shall abide by all statutes, ordinances, rules, and regulations pertaining to or regulating the provisions of such services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement, and shall entitle the County to terminate this Agreement immediately upon delivery of written notice of termination to the Law Firm, without regard to the notice provision set forth in Section 2 above.

14. Public Records Law

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

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

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

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

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

(4) upon completion of this Agreement, transfer, at no cost, to the County all public records in possession of the Law Firm or keep and maintain public records required by the County to perform the service. If the Law Firm transfers all public records to the County upon

completion of this Agreement, the Law Firm shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Law Firm keeps and maintains public records upon completion of this Agreement, the Law Firm shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

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

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

15. This Agreement contains all of the terms and provisions agreed upon by the parties. Any alterations variations, amendments, waivers, or modifications must be in writing and duly executed by the parties.

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

17. Simultaneously with the execution of this Agreement, the Law Firm has executed the Scrutinized Companies and the Employment Eligibility Verification certifications attached as Exhibits "A" and "B" hereto, respectively.

[SIGNATURE PAGE FOLLOWS]

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

ATTEST:
STACY M. BUTTERFIELD
CLERK OF THE BOARD

Polk County, a political subdivision
of the State of Florida

By: _____
Deputy Clerk

By: _____
George Lindsey, III, Chairman
Board of County Commissioners

Date Signed By County _____

Reviewed as to form and legal sufficiency:

Sandra B. Hart 3/8/23
County Attorney's Office Date

Melanie R. Kelly
Print Name: Melanie R. Kelly
Witness #1

Sheri Shcil
Print Name: Sheri Shcil
Witness #2

Sheri Shcil
Print Name: Sheri Shcil
Witness #1

Melanie R. Kelly
Print Name: MELANIE R KELLY
Witness #2

Neysa J. Borkert
Neysa J. Borkert, Esquire

Garganese, Weiss, D'Agresta & Salzman,
PA, a Florida corporation

By: _____
Print Name: Gary Salzman
Title: Secretary

Date: 3/2/2023

Exhibit "A"

SCRUTINIZED COMPANIES CERTIFICATION

(Florida Statutes, Section 287.135)

PROJECT NAME: **Land Use Hearing Officer Services**
 (the "Contract")

The undersigned, as **NEYSA J. BORKERT, ESQUIRE** of **Garganese, Weiss, D'Agresta & Salzman, PA, PA**, a Florida corporation (the "Contractor"), hereby certifies the following to Polk County, a political subdivision of the State of Florida, by and on behalf of the Contractor in accordance with the requirements of Section 287.135, Florida Statutes:

- (i) 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 to the County with respect to the Contract.
- (ii) Additionally, if the value of the goods or services acquired under the Contract 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 (ii), nor engaged in business operations in Cuba or Syria when it submitted its bid to the County with respect to the Contract.
- (iii) The Contractor 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.
- (iv) The Contractor hereby acknowledges that, in addition to any other termination rights stated in the Contract, the County may immediately terminate the Contract upon the occurrence of any of the following events:
 - (a) The Contractor is found to have submitted a false certification to the County with respect to any of the matters set forth in subsection (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.
 - (b) The Contractor is found to have submitted a false certification to the County with respect to any of the matters set forth in subsection (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 Contract are greater than or equal to One Million Dollars (\$1,000,000).

(v) The undersigned is duly authorized to execute this Certification by and on behalf of the Contractor.

Executed this 2nd day of March, 2023.

ATTEST:

Garganese, Weiss, D'Agresta & Salzman, PA,
a Florida corporation

By: Melanie R Kelly
PRINTED NAME: MELANIE R KELLY
Its: AttLegal

By: Neysa J. Borkert
PRINTED NAME: NEYSA J. BORKERT, ESQUIRE
Its: ATTORNEY OF RECORD

Exhibit "B"

EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY) CERTIFICATION

(Florida Statutes, Section 448.095)

PROJECT NAME: **Land Use Hearing Officer Services for Polk County** (the "Project")

The undersigned, as an authorized officer of the contractor identified below (the "Contractor"), having full knowledge of the statements contained herein, hereby certifies the following to Polk County, a political subdivision of the State of Florida (the "County"), by and on behalf of the Contractor in accordance with the requirements of Section 448.095, Florida Statutes, as related to the contract (the "Contract") entered into by and between the Contractor and the County governing the Project:

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

2. Pursuant to Section 448.095(2)(a), Florida Statutes, effective January 1, 2021, public employers, contractors and subcontractors shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. The Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

(a) All persons employed by the Contractor to perform employment duties during the term of the Contract; and

(b) All persons (including subvendors/subconsultants/subcontractors) assigned by the Contractor to perform work pursuant to the Contract.

3. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System and compliance with all other terms of this Certification is an express condition of the Contract, and the County may treat a failure to comply as a material breach of the Contract. By entering into the Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the Contract. Failure to comply will lead to termination of the Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Tenth Judicial Circuit Court of Florida no later than 20 calendar days after the date of termination. If the Contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination. The Contractor shall be liable for any additional costs incurred by the County as a result of the termination of the Contract. Nothing in this Certification shall be construed to allow intentional discrimination of any class protected by law.

Executed this 2 day of March, 2023.

ATTEST:

By: Sheri Shell

PRINTED NAME: Sheri Shell

Its: Final Administrator

CONTRACTOR:

Garganese, Weiss, D'Agresta & Salzman, PA, a Florida corporation

By: Neysa J. Borkert

PRINTED NAME: NEYSA J. BORKERT, ESQUIRE

Its: ATTORNEY OF RECORD