

**PIGGYBACK AGREEMENT FOR CONSTRUCTION
MANAGEMENT AT RISK SERVICES**

This Agreement is made on the **3rd day of April 2024** (the “Effective Date”), by and between the **Village of Estero**, a Florida municipal corporation (the “Client”) and **Wright Construction Group, Inc.**, located at 5811 Youngquist Road, Fort Myers, FL 33901 (the “Contractor”), collectively referred to as the “Parties”.

WHEREAS, the Client has determined that it requires certain construction management services for various projects planned for its current and future fiscal years; and

WHEREAS, on September 27th 2022, Lee County, a political subdivision of the State of Florida (“County”) issued RFP # CMR220546NAT (“RFP”) for the purpose of receiving bids for continuing construction management services as further described in the RFP (the “Services”); and

WHEREAS, the Contractor responded to the RFP and County subsequently selected the Contractor as a responsive, responsible bidder; and

WHEREAS, on February 1st 2023, the Contractor and County entered into a Construction Manager at Risk-Annual Services Agreement (the “County Contract”) wherein the Contractor agreed to perform the Services for the County with a Term beginning March 7th 2023 in accordance with the terms and conditions described therein and in subsequent separate project-specific contracts; and

WHEREAS, § 2-184(b) of the Estero Procurement Code authorizes the Client to accept, in lieu of soliciting competitive proposals as otherwise required by the Code or Florida Statutes § 255.20, a competitively-solicited contract which has been made between another Florida governmental agency and a vendor of commodities or services where that contract was solicited pursuant to lawful competitive procedures which are equal to or more stringent than the Client’s; and

WHEREAS, the Client’s legal counsel has analyzed the RFP process used by the County and has determined that it was conducted in compliance with Florida Statutes § 255.20 and was otherwise a competitive solicitation process able to be “piggybacked” pursuant to § 2-184(b) of the Village Code; and

WHEREAS, the Client desires to piggyback onto the County Contract for the purposes of receiving the same Services from Contractor as are being provided to County under the County Contract; and

WHEREAS, the Village Manager or designee has obtained confirmation from an authorized representative of the Contractor that the Contractor consents to the formation of this contractual relationship by way of Client’s piggybacking onto the County Contract under the terms provided for herein.

NOW, THEREFORE, in consideration of the mutual agreements set forth hereafter and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Performance of the Services. The Contractor shall make available to Client, and provide to Client as requested, the same Services as are available and provided to County in accordance with the terms and conditions of the County Contract, at the prices specified therein. All references to the “County” or “Lee County” in the County Contract shall, for purposes of this Agreement, mean Client.
2. Unit Pricing. The Contractor’s work shall be performed at the same unit prices as are set forth in its Proposal (if any).

3. Scope of Work. The Contractor shall perform the work as set forth in the Scope of Work as set forth in the County Contract, and as further elaborated in the separate project-specific contract between the Parties awarded pursuant to § 4.2 of the RFP.
4. Additional Services. This Agreement is only for the provision of those Services provided by or made available by Contractor to County in the County Contract. The Parties understand that any other contracting services Client may wish to acquire may or may not be acquired from Contractor, and will be acquired in accordance with applicable law and Client's procurement code and administrative policies.
5. Incorporation by Reference; Order of Precedence. This Agreement incorporates and makes a part hereof by reference the following documents: (i) the RFP, (ii) the Contractor's Proposal, and (iii) the County Contract (including any amendments and extension notices related thereto). Notwithstanding any term in the County Contract to the contrary, in the event of any irreconcilable conflict between the terms of these respective documents, the terms in this Agreement shall prevail over the above-listed documents. In the event of any irreconcilable conflict between the terms of the three above-listed documents, the County Contract shall prevail first, followed by the RFP, followed by the Contractor's Proposal.
6. Term; Renewal; Termination. The Term of this Agreement shall commence on the Effective Date, shall have an expiration date of **March 7th 2026** (the termination date established in the County Contract award letter), and may be renewed for up to an additional three one-year terms, which renewals may be exercised by the Client notwithstanding the County's exercise of its own renewal option. This Agreement may be terminated as provided for in the same manner as is set forth in § 26.6 of the RFP incorporated into the County Contract.
7. Staff Title References and Language Substitutes. To the extent the County Contract refers to Project Manager, Project Administrator, or certain other County officials or employees authorized to act under the County Contract, the Parties agree that for purposes of this Agreement, references to such officials or employees shall mean the Village Manager, or her/his designee. The following terms in the County Contract are revised as follows:

Section 28 of the RFP incorporated into the County Contract is revised to read:

Contractor shall submit invoices to Client by submitting them to Client, attn: Village Manager, at 9401 Corkscrew Palms Circle, Estero FL 33928. If the Village disputes any portion of a submitted invoice, or determines any invoice is incomplete, it will follow the procedures set forth in the Florida Local Government Prompt Payment Act located at Part VII of Florida Statutes Chapter 218.

Section 32 and Special Condition 9.1 of the RFP incorporated into the County Contract, addressing the County's local vendor preference rules, are deleted.

In the event the Scope of Work set forth in any separate contractual work assignment issued pursuant to this Agreement exceeds \$100,000, the Contractor must provide the Client, and file a copy with the Clerk of Court, a payment and performance bond in favor of the Client in the form and manner as set forth in Florida Statutes § 255.05.

Contractor shall provide insurance coverages to the Client, and indemnification of the Client, in the same manner it provides the County in the County Contract.

In the event the County exercises its right to terminate the County Contract early, this Agreement shall survive through the Termination Date unless the Village, independently, exercises its own termination rights as provided for in § 6 of this Agreement.

8. Public Records Act Compliance. The Contractor shall comply with all applicable requirements contained in the Florida Public Records Law, including but not limited to any applicable provisions in Florida Statutes § 119.0701. Pursuant to that statute, the Contractor shall:

- (a) Keep and maintain public records required by the Client to perform the Services provided hereunder.
- (b) Upon request from the Client's custodian of public records, provide the Client 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.
- (c) 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 Contractor does not transfer the records to the Client.
- (d) Upon completion of the Agreement, transfer, at no cost, to the Client all public records in the possession of the Contractor or keep and maintain public records required by the Client to perform the service. If the Contractor transfers all public records to the Client upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, it shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Client, upon request from the Client's custodian of public records, in a format that is compatible with the information technology systems of the Client.

If the Contractor fails to comply with the requirements in this Section, the Client may enforce these provisions in accordance with the terms of this Agreement. If the Contractor fails to provide the public records to the Client within a reasonable time, it may be subject to penalties under Florida Statutes § 119.10.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTRACTOR SHOULD CONTACT THE CLIENT'S CUSTODIAN OF PUBLIC RECORDS: BY TELEPHONE (239.221.5035), E-MAIL (records@estero-fl.gov), OR MAIL (VILLAGE OF ESTERO, OFFICE OF THE VILLAGE CLERK, 9401 Corkscrew Palms Cir., Estero, FL 33928.

9. Notices. All notices given pursuant to this Agreement, except as may otherwise be specified in the applicable Account Documentation, shall be sent by certified U.S. mail, return receipt requested, or by tracked overnight courier, or by in-person hand delivery, to the official and address provided below:

Client:
Village of Estero
Attn: Village Manager
9401 Corkscrew Palms Cir.
Estero, FL 33928

Contractor:
Wright Construction Group, Inc.
Attn: Fred Edman, President
5811 Youngquist Rd
Fort Myers, FL 33901

10. Representations; Warranties; Fee Disclosure.

- a. The Parties represent and warrant to each other that this Agreement constitutes a legal, valid, and binding obligation enforceable in accordance with its terms, and that the execution and performance of the Agreement (i) does not breach any agreement of such Party with any third party, (ii) does not violate any law, rule or regulation, (iii) is within its organizational powers, and (iv) has been authorized by all necessary action of such Party.
- b. Each Party to this Agreement further represents and warrants that all appropriate authority exists so as to duly authorize the person executing this Agreement to execute the same and fully bind the Party on whose behalf he or she is executing.
- c. Pursuant to Florida Statutes § 218.80(3), Contractor will have to pay before or during construction the following permits or fees before or during construction:

The Village of Estero Community Development Fee Schedule is available at the following link:

<https://estero-fl.gov/wp-content/uploads/library-ada/Community%20Development%20Applications/Building%20Permit%20Applications/Miscellaneous/Fee%20Schedule%20rev.%205.4.22.pdf>

The following is a listing of all other governmental entities that may have additional permits or fees generated by the project:

Such information may vary depending on individual project assignment/scope, and so will be provided at the time of work assignment.

11. Miscellaneous.

- a. This Agreement, together with the documents incorporated by reference, constitutes the entire agreement between the Parties and supersedes any prior understanding or agreement between the Parties, either verbal or written, respecting the same subject.
- b. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as deemed expedient. The failure of one Party at any time to require performance by the other Party of any term in this Agreement shall in no way affect the right of the demanding Party thereafter to enforce same. Nor shall waiver by one Party of any breach of any term of this Agreement by the other Party be taken or held to be a waiver of any succeeding breach of such term or as a waiver of any term itself. To be effective, any waiver shall be in writing and signed by the Party granting such waiver. Any such waiver shall be limited to the particular right so waived and shall not be deemed to waive any other right under this Agreement.
- c. No assignment of this Agreement or any right or responsibility occurring under this Agreement, shall be made in whole or in part by the Contractor without the express written consent of the Client. The Client shall have the right to approve or deny, with or without cause, any proposed or actual

assignment by the Contractor. Any assignment of this Agreement made by the Contractor without the express written consent of the Client shall be null and void and shall be grounds for the Client to declare a default of this Agreement.

- d. The laws of the State of Florida shall govern the rights, obligations, duties and liabilities of the Parties to this Agreement and shall govern the interpretation of this Agreement. Any and all legal or equitable actions necessary to enforce this Agreement shall be held and maintained solely in the state and federal courts in and for Lee County, Florida. Venue shall lie exclusively in Lee County.
- e. Notwithstanding any provision of the County Contract to the contrary, in any civil, administrative, bankruptcy, or other proceeding concerning this Agreement, each Party shall pay all of their own costs, attorneys' fees and expenses, including all costs, fees, and expenses incurred in any administrative hearing, trial, appeal, and mediation, notwithstanding the outcome of those proceedings. Each Party hereby waives any award of attorney fees it might otherwise recover as the prevailing Party in such proceedings.
- f. The Contractor shall at all times comply with all laws now in effect or hereafter enacted, which are applicable in any way to the Contractor's officers, employees, agents, or subcontractors, or the delivery of the Contractor's Services to Client.
- g. In case any provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof, and this Agreement shall remain operative and binding on the Parties.
- h. Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties, it being understood and agreed that nothing contained herein, nor any acts of the Parties, shall be deemed to create any relationship between the Parties other than the relationship of independent contractors.
- i. This Agreement only provides rights and remedies for the Client and Contractor. Notwithstanding anything else contained herein, this Agreement does not provide any rights or remedies for any other Person. There are no third-party beneficiaries under this Agreement.
- j. Pursuant to Florida Statutes § 287.135, the Contractor is not eligible to enter into, or renew, this Agreement if:
 - (i) The Contractor is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List (as identified in Florida Statutes § 215.473);
 - (ii) The Contractor engages in business operations in Cuba or Syria; or
 - (iii) The Contractor is on the Scrutinized Companies that Boycott Israel List (as identified in Florida Statutes § 215.4725), or is engaged in a boycott of Israel.

By entering into this Agreement, the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, and that it is not engaged in a boycott of Israel. The Contractor acknowledges that it will execute a certification to this effect at the time it executes this Agreement.

The Contractor shall notify the Client if, at any time during the term of this Agreement, it is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, or that it is engaged in a boycott of Israel. Such notification shall be in writing and provided by the Contractor to the Client within ten (10) days of the date of such occurrence.

In the event the Client determines, using credible information available to the public, that the Contractor has submitted a false certification or that Contractor is found to have been placed on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel, the Client may, in its sole discretion, terminate this Agreement and seek a civil penalty and other damages and relief against the Contractor, pursuant to Florida Statutes § 287.135. In addition, the Client may pursue any and all other legal remedies against the Contractor.

- k. Immigration Compliance; E-Verify. Contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, U.S.C. § 1324, et seq., and regulations relating thereto. Failure to comply with the above statutory provisions shall be considered a material breach and shall be grounds for immediate termination of this Agreement. The Contractor's employment of unauthorized aliens is a violation of § 274(e) of the Federal Immigration and Employment Act. The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of this Agreement, and shall require the same verification procedure of any Subcontractors authorized by the Client.

Pursuant to Florida Statutes § 448.095(2), Contractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. Contractor's contract with Client cannot be renewed unless, at the time of renewal, Contractor certifies in writing to the Client that it has registered with and uses the E-Verify system. If Contractor enters into a contract with a subcontractor to perform Services under this Agreement, the subcontractor must provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien and Contractor shall maintain a copy of such affidavit for the duration of the contract. If Contractor develops a good faith belief that any subcontractor with which it is contracting has knowingly violated Florida Statutes § 448.09(1) (making it unlawful for any person knowingly to employ, hire, recruit, or refer, either for herself or himself or on behalf of another, for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States) Contractor shall terminate the contract with the subcontractor. If the Client develops a good faith belief that Contractor has knowingly violated Florida Statutes § 448.09(1) (making it unlawful for any person knowingly to employ, hire, recruit, or refer, either for herself or himself or on behalf of another, for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States) the Client shall terminate this contract. Pursuant to Florida Statutes § 448.095(2)(c)(3), termination under the above-circumstances is not a breach of contract and may not be considered as such.

- l. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

Signature Page to Follow

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective authorized officers as of the Effective Date.

Village of Estero

Wright Construction Group, Inc.

By: _____
Steve Sarkozy, Village Manager

By: _____
Fred Edman, President