

THIS AGREEMENT, is made and entered into this ___ day of _____, 2019 by and between the Village of Estero, a municipal corporation of the State of Florida, whose address is 9401 Corkscrew Palms Circle #101, Estero, Florida 33928, hereinafter referred to as the "Village," and Cougar Contracting LLC whose address is 5420 Division Drive, Fort Myers, FL 33905, hereinafter referred to as the "Bidder."

WITNESSETH

WHEREAS, the Village has determined that it is necessary to retain the Bidder for the purpose of providing Estero Parkway Roadway and Landscape Improvements; and

WHEREAS, these services have been competitively bid in accordance with Ordinance 2015-06; and

WHEREAS, the Bidder is qualified, willing and able to provide and perform all such services in accordance with the terms and conditions of Village of Estero Bid No. RFB 2019-06; and

WHEREAS, the Bidder's proposal was reviewed and selected pursuant to Bid RFB 2019-06 on September 18, 2019 by the Village Council; and

WHEREAS, the Village, has determined that it would be in the best interest of the Village to award a contract to Bidder for the rendering of those services described in the Scope of Services.

NOW, THEREFORE, the Village and the Bidder, in consideration of the mutual covenants contained herein, do agree as follows:

ARTICLE 1.

RECITALS & INCORPORATION OF DOCUMENTS

1.1. The above-stated recitals are incorporated by this reference and made part of this Agreement.

1.2 Village Bid Package RFB 2019-06 Estero Parkway Roadway and Landscape Improvements, consisting of pages 1 through and including 64 with four addendums and the Proposal submitted by Bidder dated September 12, 2019 are hereby specifically made part of this Agreement as if same had been set forth at length herein.

1.3 In the event of any conflict between the documents constituting this Agreement, the documents shall be given precedence in the following order:

- 1) Bid Package RFB 2019-06 Estero Parkway Roadway and Landscape Improvements and any Exhibits or Addenda thereto;
- 2) This Agreement and any Exhibits or Amendments thereto;
- 3) The Proposal submitted by Bidder.

ARTICLE 2.
BIDDER'S SCOPE OF SERVICES

2.1. Bidder agrees to perform all the services and provide all the materials requested and described in the Scope of Work which is attached hereto as Exhibit A and incorporated herein by this reference, which are hereinafter collectively referred to as the "Scope of Services."

2.2. Bidder agrees to provide its services and materials in the times allowed for performance contained in the Scope of Services. The Bidder will make no claims for additional compensation or damages owing to suspensions, delays, or hindrances which arise during the performance of this Agreement. Such suspensions, delays or hindrances may only be compensated for by an extension of time as the Village may decide. However, such extension will not operate as a waiver of any other rights of the Village.

2.3. In the event that Village desires Bidder to perform any additional services related to tasks not specifically contained in the Scope of Services, the Village Manager is authorized to approve such services based on the costs contained in Exhibit B provided the total amounts expended to do not exceed the limitation of paragraph 3.1.

ARTICLE 3.
COMPENSATION AND PAYMENT OF BIDDER'S SERVICES

3.1. Village will pay Bidder for those tasks listed in the Scope of Services actually performed by Bidder. The total payment to Bidder will not exceed \$8,258,640.89 (plus any contingency amount which may be approved) for Bidder's services under this Agreement, performed in accordance with the Scope of Services and this Agreement.

3.2. Payment for services rendered by Bidder will be made on a monthly basis for those tasks listed completed in the preceding month. Services completed will be subject to review and approval by the Village Manager or his designee.

3.3. Payment for tasks will be on a Grand Total basis as per Exhibit B attached hereto.

3.4. Bidder must submit all billings for payment of services rendered to the Project Manager with copies to the firm responsible for the CEI services and the Engineer of Record for the Project for processing. Billings will be detailed as to the nature of the services performed and must refer to the specific tasks listed in the Scope of Services that were actually performed by Bidder. When hourly billing is utilized, Bidder must report the number of hours on each task in 6-minute increments (tenths of an hour) in its invoices. Billings must include a summary of any amounts previously billed and any credits for amounts previously paid.

3.5. Bidder acknowledges that each billing must be reviewed and approved by the Village Manager or his designee. Should the Village Manager or his designee, determine that the billing is not commensurate with services performed, work accomplished or hours expended, Bidder must adjust billing accordingly. However, Bidder will be entitled to payment of any portion of a billing not in dispute.

3.6. Village will pay Bidder's monthly billings in accordance with Sections 218.70 through 218.80, Florida Statutes, known as the Local Government Prompt Payment Act.

3.7. It is expressly understood by the Village and the Bidder that funding for any successive fiscal years may be contingent upon appropriation of monies by the Village Council or other entities. In the event that funds are not available or appropriated, the Village reserve the right to terminate the Agreement without penalty or liability. Termination will occur (1) upon notice to the Bidder or automatically (2) on the last day of the then current fiscal year or (3) when the appropriation made for the then-current year or specific appropriation for the services covered by this Agreement is spent, whichever event occurs first.

ARTICLE 4. **BIDDER'S RESPONSIBILITIES**

4.1. Bidder will perform or furnish consulting and related services to a level of technical skill, ability, and diligence customarily provided by an experienced professional in their field of expertise when rendering the same services, and in accordance with sound principles and practices generally acknowledged by professionals in their field of expertise, as represented to the Bidder, both orally and in writing, to be possessed by Bidder, all in accordance with the standards contained elsewhere in this Agreement and in accordance with generally accepted standards of professional consulting practice and with the laws, statutes, ordinances, codes, rules and regulations governing Bidder's profession. The same standards of care will be required of any subconsultant or subcontractor engaged by Bidder.

4.2. Bidder will be solely responsible for providing their own business equipment, including any vehicles necessary for the performance of their work, and for paying all expenses incurred while performing the services set forth in this Agreement. Expenses to be borne by Bidder include, but are not limited to, license fees, memberships, and dues; automobile and other travel expenses; meals and entertainment; and any applicable insurance premiums. Bidder will be reimbursed for certain allowable expenses upon submission to the Village, used in connection with the services performed pursuant to this Agreement.

4.3. Bidder will, without additional compensation, correct and revise any errors, omissions, or other deficiencies in its work product, services, or materials arising from the negligent act, error or omission of Bidder or any subconsultant or subcontractor engaged by Bidder for one year after the completion of Bidder's services under this Agreement. The foregoing shall be construed as an independent duty to correct rather than a waiver of the Village's rights under any applicable statute of limitations. Village review of, approval of, acceptance of, or payment for any of Bidder's work product, services, or materials shall not be construed to operate as a waiver of any of the Village's rights under this Agreement, or cause of action Village may have arising out of the performance of this Agreement.

4.4. Bidder will, without additional compensation, correct and revise any minor deficiencies in its work product identified that can be addressed in process, even if the

deficiencies would not be deemed to arise from a negligent act, error or omission of the Bidder. Minor deficiencies include but are not limited to changes in Americans with Disability Act requirements.

4.5. Bidder will be responsible for notifying the Village promptly whenever a delay is anticipated or experienced, including a delay in approval by any governmental agency having jurisdiction over any work task. The Village shall allow the Bidder to extend response times for valid, documented delays. The Village shall be the sole determiner of the validity of the delays.

ARTICLE 5. OWNERSHIP AND USE OF DOCUMENTS

5.1. All documents, data, studies, surveys, analyses, sketches, tracings, specifications, plans, designs, design calculations, details, computations, drawings, maps, models, photographs, reports, and other documents and plans resulting from Bidder's services under this Agreement will become the property of and shall be delivered to the Village without restriction or limitation as to use regardless of the format of the document (paper or electronic). However, any use subsequent to or other than for the specific project for which such items were created, shall be at sole risk of the Village.

5.2. Bidder agrees that any software, computer systems and databases used for providing the documents necessary to this Agreement will be compatible with existing Village software and systems. It is anticipated that any software utilized will be run on windows based PC's and will consist of Microsoft Office 2013 (or newer) and Adobe Acrobat DC (or newer).

ARTICLE 6. VILLAGE'S RESPONSIBILITIES

6.1. The Village will perform the responsibilities contained in this Article 6 in a timely manner so as not to delay the services of Bidder.

6.2. The Village will furnish to Bidder, upon request of Bidder and at Village's expense, all existing studies, reports and other available data pertinent to the services to be performed under this Agreement which are within the Village's possession. However, Bidder will be required to evaluate all materials furnished hereunder using reasonable professional judgment before relying on such materials.

6.3. The Village will provide reasonable access and entry to all public property required by Bidder to perform the services described in this Agreement. All such access and entry shall be provided at the Village's expense. The Village will also use reasonable efforts to obtain permission for reasonable access and entry to any private property required by Bidder to perform the services described in this Agreement.

6.4. The Village will review all documents, plans, or other materials provided by Bidder in a timely manner so as to not delay the process of the Bidder.

ARTICLE 7.
TERM / TERMINATION

7.1. The term of this Agreement will begin on the date and year first written above and shall be continued until superseded by a subsequent Village agreement, the monetary limit in 3.1 is reached, or unless otherwise terminated in accordance herewith.

7.2. The Village will have the right at any time upon thirty (30) calendar days written notice to the Bidder to terminate the services of the Bidder and, in that event, the Bidder must cease work and will deliver to the Village all documents, (including reports, designs, specifications, and all other data) prepared or obtained by the Bidder in connection with its services. The Village will, upon receipt of the aforesaid documents, pay to the Bidder, and the Bidder will accept as full payment for its services, fees for all tasks completed in accordance with Scopes of Services.

7.3. In the event that the Bidder has abandoned performance under this Agreement, then the Village may terminate this Agreement upon three (3) calendar day's written notice to the Bidder indicating its intention to terminate. The written notice will state the evidence indicating the Bidder's abandonment. Payment for services performed prior to the Bidder's abandonment will be as stated in Section 3 above.

ARTICLE 8.
NOTICES

8.1. Any notice required or permitted to be sent herein shall be sent certified mail, return receipt requested to the parties at the addresses listed above to the designated contacts below:

Bidder: Cougar Contracting LLC

Village: Steve Sarkozy

8.2. Each party shall immediately notify the other of any changes in address or designated contact.

ARTICLE 9.
ASSIGNMENT

9.1. This Agreement, or any interest herein, will not be assigned, transferred or otherwise encumbered, under any circumstances by Bidder without the prior written consent of the Village. Further, no portion of this Agreement may be performed by subcontractors or subconsultants without written notice to and approval of such action by the Village. The Village and Bidder each binds themselves, their agents, successors, assigns and legal representatives to the other party hereto, their agents, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in this Agreement any obligations incorporated herein.

ARTICLE 10.
EXTENT OF AGREEMENT / SEVERABILITY / MODIFICATION

10.1. This Agreement represents the entire and integrated agreement between the Village and Bidder and supersedes all prior negotiations, representations or agreements, either written or oral.

10.2. In the event any provision of this Agreement be held invalid and unenforceable, the remaining provisions will remain valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition or covenant will not be construed by the other party as a waiver of any subsequent breach.

10.3. No modification, amendment or alteration in the terms or conditions contained herein will be effective unless contained in a written document executed by both parties.

10.4. This is a nonexclusive contract. The Village has the right to enter into contracts with other providers providing similar services.

ARTICLE 11.
GOVERNING LAW / VENUE

11.1. This Agreement shall be governed and construed in accordance with Florida law. In the event any litigation arises between the parties in connection with this Agreement, venue for such litigation shall lie exclusively in Lee County, Florida.

ARTICLE 12.
INDEPENDENT CONTRACTOR STATUS

12.1. Bidder is an independent contractor and is not an employee, servant, agent, partner or joint venturer of the Village.

12.2. Neither the Village nor any of its employees will have any control over the conduct of Bidder or any of Bidder's employees, except as herein set forth, and Bidder expressly warrants not to represent at any time or in any manner that Bidder or any of Bidder's agents, servants or employees are in any manner agents, servants or employees of the Village. It is understood and agreed that Bidder is, and will remain at all times remain, a wholly independent contractor and that Bidder's obligations to the Village are solely as prescribed by this Agreement.

ARTICLE 13.
AUDIT AND RECORDS REQUIREMENTS

13.1. Bidder will maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which will be available and accessible at Bidder's local offices for the purpose of inspection, audit, and copying during normal business hours by the Village, or any of its authorized representatives. Such records must be retained for a minimum of five (5) years after completion of the

services. Prior to destruction of any records, the Bidder will notify the Village and deliver to the Village any records the Village requests. Bidder will require all subconsultants and subcontractors to comply with the provisions of this paragraph by insertion of the requirements hereof in a written contract agreement between Bidder and the subconsultant or subcontractor.

13.2 If the records are unavailable locally, it will be the Bidder's responsibility to insure that all required records are provided at the Bidder's expense including payment of travel and maintenance costs incurred by the Village's authorized representatives or designees in accessing records maintained out of the county. The direct costs of copying records, excluding any overhead cost, will be at the Village's expense.

13.3. Bidder must fully cooperate with all public records requests by providing the necessary records to the Village promptly upon notice unless the records are exempt from Section 24 (a) of Article I of the State Constitution and Chapter 119, Florida Statutes. Failure by Consultant to promptly respond to notices requesting records constitutes grounds for unilateral cancellation by the Village at any time, with no recourse available to Bidder. Records may be provided in the form or format in which they are kept including electronic files. Bidder's right to claim an exemption from disclosure will not be deemed failure to comply with this article.

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 CONTRACT, CONTACT THE ESTERO VILLAGE CLERK (CUSTODIAN OF PUBLIC RECORDS) AT 239-221-5035, hall@estero-fl.gov, OR VILLAGE HALL, 9401 CORKSCREW PALMS CIRCLE, ESTERO, FL 33928.

ARTICLE 14. **INDEMNIFICATION**

14.1. For ten dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Bidder will pay on behalf of or indemnify and hold harmless the Village, its officials, officers, employees, agents and volunteers from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, including attorneys' fees and court costs (whether such fees and costs are incurred in negotiations, collection of attorneys' fees or at the trial level or on appeal), suits or liabilities, of whatever kind of nature, caused by any negligent or intentional act, error, omission, or default of Bidder or Bidder's officers, employees, agents, servants, volunteers or subcontractors or consultants, if any, caused by the performance or failure to perform under the terms of this Agreement.

14.2 Bidder must carry a commercial liability insurance policy in coverage amounts as determined by the Village Manager and naming the Village of Estero as additional insured.

PURSUANT TO FS 558.0035, EMPLOYEES OF THE CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT.

**ARTICLE 15.
EMPLOYEE RESTRICTIONS**

15.1. The Village of Estero will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act (“INA”)]. The Village shall consider employment by any contractor or subconsultant or subcontractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Bidder of the employment provisions contained in Section 274A(e) of the INA will be grounds for termination of this Agreement by the Village.

15.2. If an owner (except a stockholder in a publicly traded corporation) or an employee of the Bidder has been convicted of any offenses requiring registration as a sexual offender or sexual predator, regardless of the location of conviction, the Bidder will ensure that the offender’s or predator’s work on the project is consistent with the terms of their probation and registry requirements.

15.3. The Bidder will incorporate the terms of paragraphs 15.1 and 15.2 into all contracts with any subconsultants or subcontractors.

**ARTICLE 16.
NO CONTINGENT FEES**

16.1. Bidder certifies that it has not employed or retained any company or person, other than a bona fide employee working solely for Bidder to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Bidder any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, Village has the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**ARTICLE 17.
TRUTH-IN-NEGOTIATION CERTIFICATE**

17.1. If applicable, in accordance with Section 287.055(4), Florida Statutes, signature of this Agreement by Bidder shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to

exclude any significant sums by which Village determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused the execution of these premises as of the date and year first above written.

Cougar Contracting LLC

WITNESSES:

Signed By: _____

Signed by: _____

Print Name: _____

Print Name: _____

Date: _____

Title: _____

Signed By: _____

Date: _____

Print Name: _____

Date: _____

VILLAGE OF ESTERO

By: _____

Steve Sarkozy, Village Manager

Date: _____

ATTEST:

By: _____

Kathy Hall, MMC, Village Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____

Burt Saunders, Village Attorney

Exhibit List:

Exhibit A – Scope of Services

Exhibit B – Pricing Proposal

EXHIBIT A

ESTERO PARKWAY ROADWAY AND LANDSCAPE IMPROVEMENTS

STATEMENT OF WORK

A. PROJECT OVERVIEW

To provide roadway and landscape improvements along Estero Parkway as specified in RFB 2019-06.

B. SCOPE OF SERVICES

Services shall include, but are not limited to those as specified within RFB 2019-06.

C. SCHEDULE

As scheduled and requested.

D. COMPENSATION

Total (see Exhibit B).

EXHIBIT B

PRICING PROPOSAL

Per pricing submitted in response to RFB 2019-06 – Total: \$8,258,640.89