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VILLAGE OF ESTERO, FLORIDA

RESOLUTION NO. 2016 - 12

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE
VILLAGE OF ESTERO, FLORIDA, AUTHORIZING THE
WAIVING OF COMPETITIVE BIDDING PROCEDURES
AND AUTHORIZING THE VILLAGE MANAGER TO
EXECUTE A CONTRACT FOR DEVELOPMENT REVIEW
SERVICES WITH WALTER MCCARTHY; AND
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Village requires development review services for the Community Development department; and

WHEREAS, the proposal received from Walter McCarthy was found to be sufficient for the Village's needs. Walter McCarthy has extensive experience in development review. He previously held the position of Development Services Director in Lee County and is also a civil engineer. Walter has been providing services to the Village of Estero as a subcontractor to the Calvin, Giordano & Associates community development services contract. The proposal has an approximate recurring cost of \$85,000 per year and will be funded from the 2015-2016 fiscal year community development budget with a year-end budget amendment, if necessary, to fund the development review function; and

WHEREAS, staff is recommending a waiver of the competitive bidding procedures as provided in Ordinance 2015-06, Section 5, and requests authorization of the Village Manager to execute a contract with Walter McCarthy as provided in Ordinance 2015-06, Section 2(C).

NOW, THEREFORE, be it resolved by the Village Council of the Village of Estero, Florida:

Section 1. The competitive bid process is waived and the Village Manager is hereby authorized to execute a contract with Walter McCarthy.


Section 2. The fiscal impact of the contract is approximately \$85,000 per year and the current year amount will be funded from the 2015-2016 fiscal year community development budget with a year-end budget amendment, if necessary, to fund the development review function.

Section 3. This Resolution shall take effect immediately upon adoption.

45 **ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero, Florida this 1st
46 day of June, 2016.

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48 Attest:

VILLAGE OF ESTERO, FLORIDA

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51 By: 
52 Kathy Hall, MMC, Village Clerk

By: 
Nicholas Batos, Mayor

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55 Reviewed for legal sufficiency:

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57 By: 
58 Burt Saunders, Esq., Village Attorney
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INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is entered into as of the 1st day of June, 2016, between The Village of Estero ("Estero") and Walter McCarthy ("the Contractor") (collectively the "Parties").

1. Independent Contractor. Subject to the terms and conditions of this Agreement, Estero hereby engages the Contractor as an independent contractor to perform the services set forth herein, and the Contractor hereby accepts such engagement.

2. Services. The nature of the services to be provided by the Contractor, which include certain development review, zoning and public works services, are described in greater detail on the attached Exhibit "A". The Contractor agrees not to perform any services for Estero other than those specifically outlined in this Agreement.

3. Term. This engagement shall commence upon execution of this Agreement and shall continue in full force and effect for the remainder of the current fiscal year, or through September 30, 2016, or earlier upon completion of the Contractor's duties under this Agreement. In the event that the Parties wish to continue this Agreement beyond its natural expiration date, this Agreement shall continue upon a month to month basis, with the parties having the right to terminate this Agreement as set forth in Paragraph 11 of this Agreement.

4. Scheduling of Services Provided. The dates and times that services are performed are within the Contractor's sole discretion, however Contractor shall set and maintain a schedule acceptable to Estero. Should Contractor modify the schedule provided to Estero, Contractor will need to provide Estero with reasonable notice. Should Contractor be unavailable to perform services at the date and time scheduled, Contractor shall be solely responsible for notifying Estero of the cancellation. Any substitute service providers utilized by Contractor must be disclosed to Estero in advance, and must be approved in writing.

5. Setting of Rates Charged. Contractor shall be paid upon an agreed upon rate for the work performed pursuant to this Agreement. As of the date of the execution of this Agreement, the Parties have agreed that Contractor will be compensated at a rate of \$7,083 per month for providing the services set forth on Exhibit "A" to Estero.

6. Payment for Services Provided. Contractor shall receive payment for the services provided based upon invoices to be submitted by Contractor. Invoices for Contractor's services shall be submitted to Estero on a monthly basis at least three (3) business days prior to the end of the month. Contractor shall receive payment of all undisputed invoices within thirty (30) days following the receipt of the Contractor's request for payment for services rendered.

7. General Business Expenses and Equipment. Contractor shall be solely responsible for providing his/her/its own business equipment, including any vehicles necessary for the performance of his work, and for paying all expenses incurred while performing the services set forth in this Agreement. Expenses to be borne by Contractor include, but are not limited to, license fees, memberships, dues; meals and entertainment; and any applicable insurance premiums. Contractor shall be reimbursed for certain allowable expenses upon submission to Estero, including but not limited to, charges for cellular telephone service for the telephone used in connection with the services performed pursuant to this Agreement, and certain charges for mileage driven on Estero business.

8. Special or Unique Expenses. In the event that Contractor travels to a location other than Estero to perform services, or in the event that specialized equipment or supplies are necessary for the performance of Contractor's services, Contractor must obtain prior approval from Estero in order to be eligible for reimbursement of any actual out-of-pocket expenses incurred in connection with the services being performed. Any expenses that have been approved for reimbursement should be listed in a separate section of Contractor's invoice, setting for the date the expense was incurred, the nature of the expense, and the total amount of the expenses. Contractor will be reimbursed for any approved expenses at the end of the calendar month in which the approved expense is incurred.

9. Written Reports. Estero may request that reports or progress updates be provided by Contractor on a monthly basis. Any reports shall be in such form and setting forth such information and data as is reasonably requested by Estero. The work product of Contract will be monitored at least quarterly by Estero to confirm that the services and activities have been performed in a timely and professional manner.

10. No Conflicts of Interest. The Contractor represents that he is free to enter into this Agreement and that this engagement does not violate the terms of any agreement between the Contractor and any other third party. Further, the Contractor, in rendering [his or her] duties shall not utilize any invention, discovery, development, improvement, innovation, or trade secret in which he does not have a proprietary interest. During the term of this Agreement, the Contractor shall devote as much of his productive time, energy and abilities to the performance of [his or her] duties hereunder as is necessary to satisfactorily perform the required duties in a timely and productive manner. The Contractor is expressly free to perform services for other parties while performing services for Estero.

11. Termination. Either Estero or the Contractor may terminate this Agreement at any time, upon fifteen (15) days advance written notice to the other party. In addition, if the Contractor is convicted of any crime or offense, fails or refuses to satisfactorily perform the services that are the subject of this Agreement, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement

12. Independent Contractor. This Agreement shall not render the Contractor an employee, partner, agent of, or joint venture with Estero for any purpose. The Contractor is and will remain an independent contractor in his relationship to Estero. Contractor shall not use or display Estero's identifying symbols at any time or in any way, without Estero's knowledge or permission. Estero shall not be responsible for withholding taxes with respect to the Contractor's compensation hereunder. The Contractor shall have no claim against Estero hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. It is expressly understood that the Contractor shall at no time serve or be considered as an employee of Estero during the term of this Agreement. The Contractor shall receive no employee benefits whatsoever as part of the consideration amount and shall work on a project by project basis. The Contractor is not required to attend any staff meetings or other functions scheduled by Estero except as set forth in this Agreement.

13. Insurance. The Contractor will carry liability insurance (including malpractice insurance, if warranted) relative to any service that he performs for Estero.

14. Licenses. The Contractor shall at all times be responsible for maintaining all applicable licenses pertinent to and/or required by the projects and scope of work to be undertaken herein. Failure to maintain active licensure and provide evidence to Estero that all licenses are current, shall be grounds for the termination of this Agreement.

15. Duty of Accounting and Maintenance of Records. The Contractor shall be responsible for the maintenance of proper records of all transactions undertaken during the scope and course of this Agreement and shall provide disclosure and/or accounting of such records upon request of Estero. Any wrongful taking of money, or any items of value, shall subject the Contractor to liability in the form of an action for civil theft or any other remedy that Estero shall deem appropriate in its best interest.

16. Compliance with Laws. Contractor shall comply with all federal, state and local laws and regulations regarding compensation, hours of work, or other conditions of employment for himself/herself, or any employees, including but not limited to, all laws and regulations regarding workers compensation, minimum wage requirements, overtime pay, and equal employment opportunity requirements.

17. Indemnification. Contractor shall protect, defend, hold harmless and indemnify Estero, its agents and employees, from and against any and all claims, demands, actions, liabilities, losses and expenses allegedly or actually suffered by any person, including but not limited to injury or death of persons or damage to property, arising out of or in any way relating to the work, services, or activities of Contractor or any of its officers, employees or agents.

18. Choice of Law. The laws of the State of Florida shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto.

19. Mandatory Mediation. Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall first be subject to presentation to Estero's representative for the Department of Community Development for the purposes of informal resolution. In the event that the information resolution process does not resolve the dispute, the parties agree that they will submit the dispute to mandatory mediation, to be conducted within the first ninety (90) days of the notice of any dispute. The mediation shall be conducted in Lee County, Florida, and the identity of the mediator shall be agreed upon by both parties. The mediator's fee shall be equally split by both parties, and shall be payable directly to the mediator upon the date of the mediation.

20. Attorneys' Fees. If any proceeding is brought concerning anything about this Agreement, the prevailing party shall recover from the other all reasonable attorney fees and costs incurred in the proceeding, in addition to any other relief to which it may be entitled.

21. Headings. Section headings are not to be considered a part of this Agreement and are not intended to be a full and accurate description of the contents hereof.

22. Waiver. Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.

23. Assignment. The Contractor shall not assign any of his rights under this Agreement, or delegate the performance of any of his duties hereunder, without the prior written consent of Estero.

24. Notices. Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand or other communication is given by mail, such notice shall be conclusively deemed given five days after deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as follows:

If to the Contractor:

Walter McCarthy
24600 S. Tamiami Trail Suite 212
Bonita Springs, FL 34134

If to ESTERO:

Steven Sarkozy
Village Manager
Village of Estero
9401 Corkscrew Palms Circle
Estero, Florida 33928

Any party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

25. Modification or Amendment. No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto.

26. Entire Understanding. This document and any exhibits attached constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.

27. Unenforceability of Provisions. If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year first written above. The parties hereto agree that facsimile signatures shall be as effective as if originals.

Village of Estero:

Contractor:

By: _____ [signature]

By: _____ [signature]

Its: _____ [title or position]

Its: _____ [title or position]

EXHIBIT A

LIST OF WORK ITEMS AND TIME FRAME

<u>TASK</u>	<u>TIME FRAME</u>
1. <u>Zoning & Development Review Activities</u> <ul style="list-style-type: none"> a. Process applications for Development Orders, Limited Development Orders, Development Order Extensions and Minor Changes, Plats and Vacations, Concurrency renewals, and Zoning related applications. b. Review applications for Development Order changes, Limited Development Orders, Development Order extensions and Minor Changes, Concurrency renewals, and Zoning applications and amendments. c. Develop procedures for community development related functions d. Develop and implement GIS and computer management systems. e. Attend meetings and hearings conducted by the Design Review Board, Planning and Zoning Board, and the Village Council f. Coordinate with other third parties regarding the Comprehensive Plan as related to development review and zoning policy. 	<ul style="list-style-type: none"> a. May 2016-Sept 2016 b. May 2016-Sept 2016 c. May 2016-Sept 2016 d. May 2016-Sept 2016 e. May 2016-Sept 2016 f. May 2016-Sept 2016
2. <u>Public Works, Technical & Capital Improvement Program Activities</u> <ul style="list-style-type: none"> a. Develop and implement a Capital Improvement Plan and budget. b. Oversee contracts for technical services with Village contractors including contract for Miscellaneous Professional (engineer and technical) Services. c. Oversee and interpret the Village-Wide Traffic Study and other traffic-related matters, recommend action to be taken by Estero if necessary. d. Develop and recommend contracts for technical services to the Village. 	<ul style="list-style-type: none"> a. May 2016-Sept 2016 b. May 2016-Sept 2016 c. May 2016-Sept 2016 d. May 2016-Sept 2016