

**AGENDA ITEM SUMMARY SHEET**  
**VILLAGE COUNCIL MEETING**  
**January 4<sup>th</sup>, 2017**

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**Agenda Item:**

Approval of the Construction Contractor Agreement with Pritchard Construction, LLC.

**Action Requested:**

The Village Council is being asked to adopt Resolution No. 2017-03 waiving competitive bidding requirements and authorizing the Village Manager to execute the Construction Contractor Agreement with Pritchard Construction, LLC, for various transportation maintenance projects to be completed within the Village. The stated maximum allowable cost for this contract is \$50,000.

**Description:**

In order to provide for daily transportation maintenance activities, which the Village is set to assume responsibility for on January 7<sup>th</sup>, 2017, the Village has approved multiple contracts, including: mowing maintenance, landscape maintenance, irrigation maintenance and street sweeping. Given the limited scope of these activities, the scale of the work Village-wide and the inherently repetitive nature of the tasks, these contracts were easily developed as “piggybacks” to previously enacted contracts.

The agreement being brought to the Council for their approval is for a variety of services not easily scoped or planned well in advance. These services could include pothole patching, sidewalk repairs, ditch cleaning or signage repairs/replacements, among other tasks. Currently, Pritchard Construction performs such an assortment of tasks for the City of Bonita Springs, and comes well regarded. In other words, this contract provides the Village with the on-site expertise to quickly and effectively address maintenance issues the Village may incur, without requiring the Village to greatly expand our staff or “bundle” sets of issues together (as most larger contractors would dictate).

The City of Bonita Springs and Pritchard Construction do not presently have a formal contract in place for such work, but rather, utilize a basic price sheet and negotiate

prices on varied issues as they arise. The Council is being provided with a formal contract, price sheet, Certificate of Insurance and Maintenance of Traffic Certification for Pritchard Construction, so as to formalize this agreement to the extent that it can be done. This agreement comes with the understanding that as work scope shifts, from issue to issue, that the total cost of work will shift as well.

**Financial Impact:**

The financial impacts of the approval of the Construction Contractor Agreement with Pritchard Construction are somewhat unclear at the present time. Given the nature of the work, it is difficult to estimate the exact costs that will have to be expended. However, it is expected that this contract will be "bid-out" in the months to come, and as such, this contract has been capped at \$50,000. Therefore, it can be accurately stated that the financial impact of this agreement will not exceed \$50,000.

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**VILLAGE OF ESTERO, FLORIDA**

**RESOLUTION NO. 2017 - 03**

**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 ROAD AND RIGHT-OF-WAY MAINTENANCE SERVICES WITH PRITCHARD CONSTRUCTION LLC; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Village requires the services of a local, cost efficient firm for various road and right-of-way maintenance projects; and

**WHEREAS**, the proposal received from Pritchard Construction LLC which currently provides similar service to the City of Bonita Springs was reviewed by members of the Village staff and legal counsel. The proposal was found to be of sufficient quality for the Village's needs, as the firm has extensive experience providing comparable services in this region, at a high quality level. The prices offered by Pritchard Construction LLC are highly competitive, well below the prices which larger, more specialized firms could provide. The proposal has been capped at \$50,000 annually. The costs per service are provided in the accompanying appendix to the contract, but come with the understanding that such prices could change based on the scope of the specific issue being addressed in the field; and

**WHEREAS**, the Village assumes road maintenance responsibilities from Lee County on January 7<sup>th</sup>, 2017, and work will need to be completed to maintain acceptable community standards. It is staff's determination that Pritchard Construction LLC is the only way to provide these services in the time allowed; and

**WHEREAS**, in order to initiate these services in the time frame required, 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 Pritchard Construction LLC as provided in Ordinance 2015-06, Section 2(B).

**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 Pritchard Construction LLC.

**Section 2.** The fiscal impact of the contract has a maximum annual cost of \$50,000. These costs are provided for in the 2016-2017 fiscal year budget in the Transportation line item.

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

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48            **ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero, Florida this 4<sup>th</sup>  
49 day of January, 2017.

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51 Attest:

**VILLAGE OF ESTERO, FLORIDA**

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54 By: \_\_\_\_\_  
55        Kathy Hall, MMC, Village Clerk

By: \_\_\_\_\_  
      Nicholas Batos, Mayor

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58 Reviewed for legal sufficiency:

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61 By: \_\_\_\_\_  
62        Burt Saunders, Esq., Village Attorney

**THIS AGREEMENT**, is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2017 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 Pritchard Construction, a Florida limited liability company, whose address is 14250 Drawdy Ct., Fort Myers, Florida 33906, hereinafter referred to as the "Contractor."

### **WITNESSETH**

**WHEREAS**, the Village has determined that it is necessary to retain a Contractor for the purposes making minor repairs and conducting emergency maintenance within the recently acquired road right-of-way network from Lee County; and

**WHEREAS**, these services are needed on an emergency and temporary basis until such time as such services can be competitively bid in accordance with Ordinance 2015-06; and

**WHEREAS**, pursuant to Section 6 of Ordinance 2015-06, the Village Council has waived competitive bidding procedures provided total expenditures under this Agreement shall not exceed \$50,000; and

**WHEREAS**, the Contractor is qualified, willing and able to provide and perform all such services in accordance with the terms of this Agreement.

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

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

### **ARTICLE 1.** **RECITALS**

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

### **ARTICLE 2.** **CONTRACTOR'S SCOPE OF SERVICES**

2.1. Contractor 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. Contractor agrees to provide its services and materials in the times allowed for performance contained in the Scope of Services. The Contractor shall 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 shall not operate as a waiver of any other rights of the Village.

2.3. In the event that Village desires Contractor to perform any additional services related to tasks not specifically contained in the Scope of Services, the parties shall provide an addition to the Scope of Services Appendix, which provides for the provision of such additional services by Contractor and payment therefore by Village, based on the costs contained in Exhibit B. The Village Manager is authorized to approve such services provided the total amounts expended to do not exceed the limitation of paragraph 3.1.

### **ARTICLE 3. COMPENSATION AND PAYMENT OF CONTRACTOR'S SERVICES**

3.1. Village shall pay Contractor for those tasks listed in the Scope of Services actually performed by Contractor. The total payment to Contractor shall not exceed Twenty-Five Thousand Dollars (\$50,000.00) for Contractor's services under this Agreement, performed in accordance with the Scope of Services and this Agreement.

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

3.3. Payment for tasks shall be an hourly rate and not to exceed the amount shown in Exhibit B attached hereto.

3.4. Contractor shall submit all billings for payment of services rendered on a monthly basis to the Village Finance Director for processing. Billings shall be detailed as to the nature of the services performed and shall refer to the specific tasks listed in the Scope of Services that were actually performed by Contractor. Contractor shall report the number of hours on each task in 6-minute increments (tenths of an hour) in its invoices. Billings shall include a summary of any amounts previously billed and any credits for amounts previously paid.

3.5. Contractor 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, Contractor shall adjust billing accordingly. However, Contractor shall be entitled to payment of any portion of a billing not in dispute.

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

### **ARTICLE 4. CONTRACTOR'S RESPONSIBILITIES**

4.1. Contractor shall perform or furnish consulting and related services to a level of technical skill, ability, and diligence customarily provided by an experienced professional in his or her field of expertise when rendering the same services, and in accordance with sound principles and practices generally acknowledged by professionals in his or her field of expertise, as represented to the Contractor, both orally and in writing,

to be possessed by Contractor, 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 Contractor's profession. The same standards of care shall be required of any subconsultant or subcontractor engaged by Contractor.

4.2. Contractor shall be solely responsible for providing his 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, and dues; automobile and other travel expenses; meals and entertainment; and any applicable insurance premiums. Contractor shall be reimbursed for certain allowable expenses upon submission to the Village, 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 Village business.

4.3. Contractor shall, 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 Contractor or any subconsultant or subcontractor engaged by Contractor for one year after the completion of Contractor'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 Contractor'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. Contractor shall, without additional compensation, correct and revise any minor deficiencies in its work product identified during construction that can be addressed in the field, even if the deficiencies would be deemed to arise from a negligent act, error or omission of the Contractor. Minor deficiencies include but are not limited to changes in Americans with Disability Act requirements resulting from minor right-of-way improvements.

4.5. Contractor shall 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 Contractor 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 Contractor's services under this Agreement shall 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. Contractor agrees that any software, computer systems and databases used for providing the documents necessary to this Agreement shall 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 AutoCAD release 2007, ICPR, Microsoft Word 2010, Microsoft Excel 2010, Microsoft Project 2010, Microsoft PowerPoint 2010, and Adobe Reader 8.

## **ARTICLE 6.** **VILLAGE'S RESPONSIBILITIES**

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

6.2. The Village shall furnish to Contractor, upon request of Contractor 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, Contractor shall be required to evaluate all materials furnished hereunder using reasonable professional judgment before relying on such materials.

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

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

## **ARTICLE 7.** **TERM / TERMINATION**

7.1. The term of this Agreement shall begin on the date and year first written above and shall be continue 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 shall have the right at any time upon thirty (30) calendar days written notice to the Contractor to terminate the services of the Contractor and, in that event, the Contractor shall cease work and shall deliver to the Village all documents, (including reports, designs, specifications, and all other data) prepared or obtained by the Contractor in connection with its services. The Village shall, upon receipt of the aforesaid documents, pay to the Contractor, and the Contractor shall 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 Contractor has abandoned performance under this Agreement, then the Village may terminate this Agreement upon three (3) calendar day's written notice to the Contractor indicating its intention to terminate. The written notice shall state the evidence indicating the Contractor's abandonment. Payment for services performed prior to the Contractor's abandonment shall 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:

Contractor: Leslie Pritchard, III

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, shall not be assigned, transferred or otherwise encumbered, under any circumstances by Contractor 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.

**ARTICLE 10.**  
**EXTENT OF AGREEMENT / SEVERABILITY / MODIFICATION**

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

10.2. In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition or covenant shall 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 shall 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 contractors providing similar services, only upon notice from the Village that this Agreement has been specifically superseded by another agreement shall this Agreement terminate.

**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. Contractor 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 shall have any control over the conduct of Contractor or any of Contractor's employees, except as herein set forth, and Contractor expressly warrants not to represent at any time or in any manner that Contractor or any of Contractor's agents, servants or employees are in any manner agents, servants or employees of the Village. It is understood and agreed that Contractor is, and shall at all times remain as to the Village, a wholly independent contractor and that Contractor's obligations to the Village are solely as prescribed by this Agreement.

**ARTICLE 13.**  
**AUDIT AND RECORDS REQUIREMENTS**

13.1. Contractor shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which shall be available and accessible at Contractor'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 shall be retained for a minimum of five (5) years after completion of the services. Prior to destruction of any records, the Contractor shall notify the Village and deliver to the Village any records the Village requests. Contractor shall 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 Contractor and the subconsultant or subcontractor.

13.2 If the records are unavailable locally, it shall be the Contractor's responsibility to insure that all required records are provided at the Contractor'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, shall be at the Village's expense.

13.3. Contractor shall 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 Contractor to promptly respond to notices requesting records constitutes grounds for unilateral cancellation by the Village at any time, with no recourse available to Contractor. Records may be provided in the form or format in which they are kept including electronic files. Contractor's right to claim an exemption from disclosure shall not be deemed failure to comply with this article.

**ARTICLE 14.**  
**INDEMNIFICATION**

14.1. For ten dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Contractor shall 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 Contractor or Contractor'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 Contractor shall carry a commercial liability insurance policy in coverage amounts as determined by the Village Attorney and naming the Village of Estero as additional insured.

**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 Contractor of the employment provisions contained in Section 274A(e) of the INA shall 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 Contractor has been convicted of any offenses requiring registration as a sexual offender or sexual predator, regardless of the location of conviction, the Contractor shall ensure that the offender's or predator's work on the project is consistent with the terms of his probation and registry requirements.

15.3. The Contractor shall incorporate the terms of paragraphs 17.1 and 17.2 into all contracts with any subconsultants or subcontractors.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

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

Pritchard Construction, 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 dated January 4, 2017

Exhibit B – Contract pricing dated January 4, 2017