

FORM OF CONTRACT/LEGAL REQUIREMENTS

AGREEMENT FOR ENGINEERING AND RELATED SERVICES FOR WATER UTILITIES

This Agreement is entered into between LEVY COUNTY, a political subdivision of the State of Florida, P.O. Box 310, Bronson, FL 32621 (the "County") and Wright-Pierce, Inc., (the "Consultant") on _____, 2023.

RECITALS:

WHEREAS, on May 12, 2023, the County issued a Request for Qualifications No. 2023_003 for the described services in Article II below (the "RFQ") in accordance with the Consultants' Competitive Negotiation Act ("CCNA") Section 287.055, Florida Statutes and other applicable law and County procurement policies and procedures;

WHEREAS, Consultant submitted a response to the RFQ and was selected by the County to provide the services; and

WHEREAS, the County desires to acquire engineering and related services from Consultant, and Consultant desires to provide such services in accordance with the RFQ, Consultant's Response, and subsequent negotiations between the parties;

NOW, THEREFORE, in consideration of mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

ARTICLE 1 – INCORPORATION OF DOCUMENTS

1.1 The RFQ consisting of 43 pages, addenda dated June 7, 2023 (the "Addenda") and the response submitted by Consultant dated June 13, 2023 (the "Response"), all of which are on file in the County Procurement Department, are made a part of this Agreement. In the event of any conflict, the documents will be given precedence in the following order:

- 1) This Agreement;
- 2) RFQ_2023_003 and the Addenda issued thereto; and
- 3) The Response submitted by Consultant dated June 13, 2023.

ARTICLE 2 – SCOPE OF SERVICES

2.1 The Project consists of the following Scope of Services:

(Insert final negotiated scope)

ARTICLE 3 CONSULTANT'S RESPONSIBILITIES

3.1 Consultant shall perform the Scope of Services in strict accordance with the provisions of this Agreement and with such professional care, technical skill, ability and diligence as required of similar Consultants having the level of skill, expertise and specialized knowledge, as represented to County to be possessed by Consultant.

3.2 Consultant agrees that, to the best of its ability, the key personnel identified in the Response will be retained by Consultant throughout the term of this Agreement. If Consultant is unable to retain any

of the key personnel identified in its Response, it shall provide prompt notice including the names and qualifications of the replacement personnel to the County.

3.3 Consultant shall obtain and maintain throughout the term of this Agreement, all necessary licenses and permits as required by law, including, but limited to, being licensed pursuant to Chapter 471, Florida Statutes.

3.4 Consultants shall comply with all federal, state, and local statutes, rules, codes, ordinances, and regulations that apply to performance of this Agreement.

3.5 As required by 119.0701, Florida Statutes, the following notice is given to the Consultant's duty to comply with Florida's public records laws (Chapter 119, Florida Statutes), as the same may be amended. Failure to comply shall constitute a breach of this Agreement. Specifically, but not by way limitation, Consultant shall:

- (i) Keep and maintain public records required by County to perform the services;
- (ii) Upon request by County's custodian of public records, provide 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;
- (iii) 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 the services to be provided by Consultant under this Agreement if Consultant does not transfer the records to County; and
- (iv) Upon completion of the services to be provided under this Agreement, transfer, at no cost, to County all public records in possession of Consultant or keep and maintain public records required by County to perform the services. If Consultant transfers all public records to County upon completion of this Agreement, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of this Agreement, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County, upon requests from County's custodian of public records, in a format that is compatible with the information technology systems of County.

The definitions contained in Chapter 119, Florida Statutes, apply to terms used in this section, unless alternate or more specific definitions for any such terms are provided in this Agreement. For the purposes of this Agreement, the term "custodian of public records" shall mean the County Coordinator or County or his/her designee.

IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

TELEPHONE: (352) 486-5218
EMAIL: LEVYBOCC@LEVYCOUNTY.ORG
MAILING ADDRESS: P.O. BOX 310, BRONSON, FL 32621

ARTICLE 4 – COUNTY’S RESPONSIBILITIES

- 4.1 County shall perform the responsibilities contained in this Article in a timely manner so as not to delay the services of Consultant.
- 4.2 County shall furnish to Consultant, upon request of Consultant and at County expense, all existing studies, reports, and other available data pertinent to the services to be performed under this Agreement which are within the County’s possession. However, Consultant shall be required to evaluate all materials furnished hereunder using reasonable professional judgement before relying on such materials.
- 4.3 County shall provide reasonable access and entry to all public property required by Consultant to perform the services described in this Agreement. All such access and entry shall be provided at County expense. County shall also use reasonable efforts to obtain permission for reasonable access and entry to any private property required by Consultant to perform the services in this Agreement.

ARTICLE 5 – TERM/TERMINATION

- 5.1 The term of this Agreement shall begin on the date and year first above written and shall continue for five (5) years. The parties shall have the right to extend the initial term of this Agreement for up to five (5) consecutive (1) year terms upon agreement of the parties expressed in a written amendment to this Agreement.
- 5.2 This Agreement may be terminated by County without cause upon no less than thirty (30) calendar days’ advance written notice to Consultant. This Agreement may be terminated by the County for cause upon no less than ten (10) calendar days’ advance written notice to Consultant, which notice specified the cause of termination and allows the Consultant a reasonable period in which to cure the cause of termination. This Agreement may be immediately terminated by the County in the following circumstances; funds necessary to pay for the Consultant’s services are no longer available, the Consultant is placed either in voluntary or involuntary bankruptcy or makes any assignment for the benefit of creditors, or the Consultant fails to comply with Florida’s public records laws.
- 5.3 In the event of termination, Consultant shall be entitled to compensation for services rendered and costs incurred through the effective date of termination. All finished or unfinished documents, data, studies, surveys, analyses, sketches, tracings, specifications, plans, designs, design calculations, details, computations, drawings, maps, models, photographs, reports, and other work product prepared by Consultant shall become the property of County and shall be delivered by Consultant to County immediately upon the effective date of termination.
- 5.4 Notwithstanding the foregoing, the Consultant shall not be relieved of liability for damages sustained by the County from breach of the Agreement by Consultant and the County may reasonably withhold payment to Consultant for the purposes of set-off until such time as the exact amount of damages due the County from the Consultant is determined.

ARTICLE 6 – PAYMENT

6.1 County shall pay the Consultant the sums indicated for each Task Order for Services actually performed by Consultant, in the manner indicated in each individual Task Order.

6.2 Consultant shall submit all billings for payment for Services rendered to the County Construction and Maintenance Department for processing. Billings shall be detailed as to nature of services performed and shall refer to the particular Task Order and any line item(s) in such Task Order to which the Services apply. Billings shall include a summary of any amounts previously billed and any credits for amounts previously paid.

6.3 Consultant acknowledges that each billing must be reviewed and approved by the County Construction and Maintenance Director or his/her designee. Should the County Construction and Maintenance Director, or his/her designee, determine that the billing is not commensurate with the applicable Task Order, the Services performed, work accomplished or hours expended, Consultant shall adjust billing accordingly. However, Consultant shall be entitled to payment of any portion of a billing not in dispute.

6.4 County shall pay Consultant's monthly invoices in accordance with the Florida Local Government Prompt Payment Act.

6.5 The County's performance and obligation to pay under this Agreement is contingent upon annual appropriation for its purpose by the County Commission. In the event budgeted funds which are sufficient for the County to pay the amounts provided for under this Agreement are not available for any upcoming fiscal period, the County shall notify the Consultant of such occurrence and this Agreement shall terminate on the last day of the then current fiscal period without penalty or expense to the County.

ARTICLE 7 – STANDARDS AND CORRECTIONS

7.1 Consultant shall perform or furnish to County all services for the Project to a level of technical skill, ability, and diligence as required of professionals having the level of skill, expertise and specialized knowledge, as represented to the County, both orally and in writing, to be possessed by Consultant. All services shall be provided in accordance with the standards of professional engineering practice and with the laws, statutes, ordinances, codes, rules and regulations governing Consultant's profession. The same standards of care shall be required of any subconsultants engaged by Consultant.

7.2 Consultant 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 Consultant or any subconsultant or subconsultant(s) engaged by Consultant under this Agreement. The foregoing shall be construed as an independent duty to correct rather than a waiver of County's rights under any applicable statute of limitations. County review of, approval of, acceptance of, or payment for any of Consultant's work product, services, or materials shall not be construed to operate as a waiver of any County's rights under this Agreement, or cause of action County may have arising out of the performance of this Agreement. The provisions of this section shall survive the termination of this Agreement.

ARTICLE 8 - COUNTY PROPERTY

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 Consultant's services under this Agreement shall become property of and shall be delivered to County without restriction or limitation as to use. If requested, Consultant shall deliver the documents to the County within fifteen (15) calendar days. Any use for other than for the specific project for which such items were created shall be at sole risk of County. Any other use by Consultant or other parties requires prior written approval by the County, which may be granted or denied in the sole discretion of the County.

ARTICLE 9 - NOTICES

Any notice required or permitted to be sent hereunder shall be sent by United States first class mail, postage prepaid, or hand-delivered to the parties at the addresses listed below:

If to County:

County Coordinator
P.O. Box 310
Bronson, FL 32621

If to Consultant:

Richard G. Protasowicki, PE/Vice President
601 South Lake Destiny Road, Suite 290
Maitland, FL 32751

with a copy to:

Director of Construction and Maintenance Department
P.O. Box 310
Bronson, FL 32621

ARTICLE 10 - NO CONTINGENT FEES

Consultant certifies that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant 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 Consultant 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, County shall have 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 11 - NO ASSIGNMENT

11.1 Neither this Agreement, nor any interest herein, shall be assigned, transferred or otherwise encumbered, under any circumstances by Consultant without prior written approval of County.

11.2 Consultant shall not subcontract any services or work to be provided to County without the prior written approval of the County. The County reserves the right to accept the use of a subconsultant or subconsultant or to reject the selection of a particular subconsultant or subconsultant and to inspect all facilities of any subconsultants in order to determine the capability of the subconsultant or subconsultant to perform properly under this Agreement. The County's acceptance of a subconsultant

or subconsultant shall not be unreasonably withheld. The Consultant is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

ARTICLE 12 - INDEMNIFICATION

12.1 The Consultant agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless County and all of County's elected officials, officers, agents, and employees from and against all claims, liability, loss, and expense, including reasonable costs, collection expenses, attorneys' fees, and court costs which may arise because of the negligence (whether active or passive), misconduct, or other fault, in whole or in part (whether joint, concurrent, or contributing), of Consultant or its officers, agents or employees in performance or non-performance of its obligations under an agreement. Consultant recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to County when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of valuable consideration provided by County in support of these indemnification, legal defense and hold harmless contractual obligation in accordance with the laws of the State of Florida. This clause shall survive the termination of this Agreement. Compliance with any insurance requirements required elsewhere within this Agreement shall not relieve Consultant of its liability and obligation to defend, hold harmless and indemnify County as set forth in this provision. Nothing herein shall be construed to extend County's liability beyond that provided in Section 768.28, Florida Statutes.

In the event that Consultant qualifies as a "design professional" and the performance of services under this Agreement constitutes a "professional services contract" (as those terms are defined in Section 725.08, Florida Statutes) the following will replace the foregoing indemnification provisions: Consultant shall indemnify and hold harmless County, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of Consultant and other persons employed or utilized by Consultant in the performance of Consultant's services under this Agreement.

12.2 The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of the County to enforce any of the provisions hereof shall not be construed to be a waiver of the right of the County thereafter to enforce such provisions.

12.3 The provisions of this Article shall survive the termination of the Agreement.

ARTICLE 13 - INSURANCE

Before performing any work, the Consultant shall, at its sole cost and expense, procure and maintain throughout the term of this Agreement, insurance policies in coverages and limits required below, or to the extent and in such amounts as required and authorized by Florida law.

In addition, for those policies that are allowed by law to carry an additional named insured, Consultant will provide declarations pages from policies or insurance policies (other similar evidence) of insurance executed by a licensed insurance broker, brokerage or similar licensed insurance professional evidencing such coverage, listing coverages and limits, expirations dates, terms of policies and all endorsements, and shall include the RFQ/Project Name, and naming "Levy County, a political subdivision of the State of

Florida, its elected officials, officers, employees, agents, and volunteers,” as a named, additional insured, as well as furnishing County with a certified copy, or copies, of said insurance policies.

In addition, each policy required below shall require that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverages or limits, written notice thereof shall be given to County. Any and all deductibles to any insurance policy shall be the responsibility of the Consultant. Said insurance coverages procured by Consultant as required herein shall be considered, as primary insurance over and above any other insurance, or self-insurance, available to County, and that any other insurance, or self-insurance available to County shall be considered secondary to, or in excess of, the insurance coverage(s) procured by County as required herein. Nothing herein shall be construed to extend County’s liability beyond that provided in Section 768.28, Florida Statutes.

Coverages and limits for the insurance required herein shall be as follows:

- A. **Worker’s Compensation:** Coverage is to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include Employers’ Liability with a limit of \$500,000 each accident, \$500,000 each employee, \$500,000 policy limit for disease.
- B. **Professional Liability Insurance:** Coverage of a minimum one million dollars (\$1,000,000) in coverage for this project.
- C. **Public Liability Insurance:** Policy must include bodily injury and property damage, Combined Single Limits (CSL) of \$300,000 minimum.
- D. **Commercial General Liability – Occurrence Form Required:** Commercial General Liability (CGL) insurance with a limit of not less than \$500,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location/project in the amount of \$1,000,000. Products and completed operations aggregate shall be \$1,000,000. CGL insurance shall be written on an occurrence form and shall include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury and advertising injury. Damage to rented premises shall be included at \$100,000.
- E. **Commercial Automobile Liability Insurance:** Automobile liability insurance with a limit of not less than \$300,000 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos). The policy shall be endorsed to provide contractual liability coverage.

ARTICLE 14 - CONTACT PERSONS

Upon written request of Consultant, the County Coordinator shall designate one or more County employee(s) to whom all communication pertaining to the day-to-day conduct of the performance of this Agreement shall be addressed.

ARTICLE 15 - SEVERABILITY

In the event that a court having appropriate jurisdiction deems any provision of this Agreement invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. This Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all terms and provisions hereof. 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.

ARTICLE 16 - GOVERNING LAW/VENUE/WAIVER OF JURY TRIAL/SOVEREIGN IMMUNITY

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any dispute or controversy arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder shall be brought exclusively in the Eighth Judicial Circuit in and for Levy County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. In the event it becomes necessary for the County file a lawsuit to enforce any term or provision under this Agreement, then the County shall be entitled to its costs and attorney's fees at the pretrial, trial and appellate levels. BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the County pursuant to Section 768.28, Florida Statutes.

ARTICLE 17 - INDEPENDENT CONSULTANT

Consultant enters into this Agreement as, and shall continue to be, an independent Consultant. All services shall be performed only by Consultant and its employees, subconsultants and subconsultants. Under no circumstances shall Consultant, its employees, subconsultants or subconsultants look to the County as his/her employer, or as a partner, agent of principal. Neither Consultant, nor any of and its employees, subconsultants and subconsultants, shall be entitled to any benefits accorded to the County's employees, including without limitation worker's compensation, disability insurance, vacation or sick pay. Consultant shall be responsible for providing, at Consultant's expense, and in Consultant's name, unemployment, disability, worker's compensation and other insurance as well as licenses and permits usual and necessary for conducting the services to be provided under this Agreement.

ARTICLE 18 - THIRD PARTY BENEFICIARIES

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

ARTICLE 19 – MISCELLANEOUS PROVISIONS

19.1 Pursuant to Section 215.4725, Florida Statutes, contracting with any entity listed on the Scrutinized Companies that Boycott Israel List or that is engaged in the boycott of Israel is prohibited. Any contract for goods or services of One Million Dollars (\$1,000,000) or more may be terminated at the County's option if it is discovered that the Consultant submitted false documents of certification, is listed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with

Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

19.2 As required by Section 287.133(3)(a), Florida Statutes: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases or real property to a public entity; may not be awarded or perform work as a Consultant, supplier, subconsultant, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list."

19.3 If it is discovered that Consultant provided false statements in the Non-Collusion Affidavit submitted with its proposal, or it is discovered that collusion existed between Consultant and any other proposers or parties, the responses of all participants in such collusion will be rejected and/or this Agreement terminated and no participants in the collusion will be considered in future procurement processes.

19.4 The Consultant must comply, as applicable, with the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Florida Civil Rights Act, and Levy County Resolution 2011-59, and other laws that prohibit harassment and discrimination, all as the same may be amended. Specifically, but not by way of limitation, the Consultant agrees that:

- No person shall, on the grounds of race, color, sex, religion, age, disability, national origin, genetics, pregnancy or marital status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, activity or service funded through this Contract.
- Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, national origin, genetics, pregnancy or marital status. Consultant agrees to post notice in a conspicuous place, available to employees and applicants for employment, setting forth the provision of this non-discrimination clause.
- Consultant will, in all solicitations or advertisements regarding program activities, services provided or applications for employment, state that all qualified applicants will receive consideration for services or employment without regard to race, color, religion, sex, age, disability, national origin, genetics, pregnancy or marital status.
- County may require Consultant to submit reports, and permit the County access to Consultant's books, records, accounts and other sources of information and its facilities, as may be reasonably necessary to determine Consultant's compliance with laws that prohibit harassment and discrimination.

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

BOARD OF COUNTY COMMISSIONERS
LEVY COUNTY, FLORIDA
Matt Brooks, Chair

Date: _____

ATTEST: Danny Shipp, Clerk of the
Circuit Court and Ex-Officio Clerk of
the Board of County Commissioners

Danny Shipp, Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Nicolle M. Shalley, County Attorney