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**RESOLUTION NO. 2016-53**

**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA; RELATING TO AWARDING A CONTRACT TO E. RODRIGUEZ LANDSCAPING INC., TO EXECUTE THE VILLAGE OF PALMETTO BAY LAWN MAINTENANCE AND SERVICES CONTRACT FOR A PERIOD OF TWO (2) YEARS WITH TWO (2) ADDITIONAL ONE (1) YEAR TERMS NOT TO EXCEED A TOTAL CONTRACT TERM OF FOUR (4) YEARS; ESTABLISHING THE RATE OF PAY FOR SERVICES TO BE PROVIDED; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to the powers granted by the Florida constitution, and applicable sections of Chapter 166 of the Florida Statutes, the Mayor and Council adopted Ordinance No. 08-19 on October 6, 2008, creating a Chapter 27 of the Village's Code of Ordinances entitled, "Lot Maintenance and Abandoned Property"; and

**WHEREAS**, the Village requires the assistance of a qualified vendor to implement the "Lot Maintenance and Abandoned Property" program; to ensure that abandoned properties do not become a nuisance to the community; and

**WHEREAS**, in an effort to procure these services for the Village, Request For Proposal (RFP) No. 1516-07-003 was submitted in accordance with established guidelines; and

**WHEREAS**, the Village desires to select the most responsive and cost-effective qualified proposer to provide services as delineated in the request for proposal; and

**WHEREAS**, E. Rodriguez Landscaping Inc. was determined to be the most responsive and cost-effective proposed vendor; and

**WHEREAS**, on June 6, 2016 via Resolution No. 2016-43, the Mayor and Village Council authorized the Village Manager to enter into negotiations with E. Rodriguez Landscaping Inc., as the most responsive proposer; and

**WHEREAS**, the Village Manager and E. Rodriguez Landscaping, Inc., have completed those negotiations and the contract is now being brought back to the Mayor and Village Council for approval; and

**WHEREAS**, the Mayor and Village Council desire to approve the contract between the Village of Palmetto Bay and E. Rodriguez Landscaping, Inc.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**

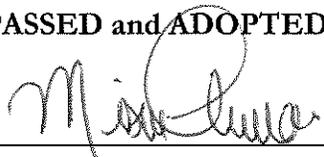
**Section 1.** The Mayor and Village Council hereby approve the contract between the Village and E. Rodriguez Landscaping, Inc. to provide lawn maintenance and services in support

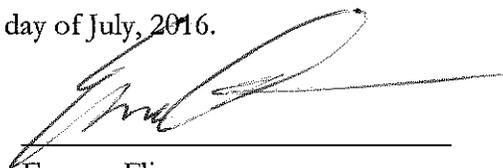
1 of the "Lot Maintenance and Abandoned Property" program pursuant to Request for Proposal  
2 (RFP) No. 1516-07-003. A copy of the contract is attached hereto as Exhibit 1.

3  
4 **Section 2.** This Resolution shall take effect immediately upon approval.  
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7 **PASSED and ADOPTED** this 11<sup>th</sup> day of July, 2016.  
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9  
10 Attest:

11   
12 Missy Arocha  
13 Village Clerk

14   
15 Eugene Flinn  
16 Mayor

17 APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE  
18 USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:  
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20   
21 Dexter W. Lehtinen  
22 Village Attorney  
23

24  
25  
26 FINAL VOTE AT ADOPTION:

27  
28 Council Member Karyn Cunningham YES

29  
30 Council Member Tim Schaffer YES

31  
32 Council Member Larissa Siegel Lara YES

33  
34 Vice-Mayor John DuBois YES

35  
36 Mayor Eugene Flinn YES

**CONTRACT BETWEEN  
THE VILLAGE OF PALMETTO BAY AND  
E. RODRIGUEZ LANDSCAPING, INC.**

This contract is made and entered into this 11<sup>th</sup> day of July, 2016, between the Village of Palmetto Bay, a Florida municipal corporation, located at 9705 E. Hibiscus Street, Palmetto Bay, Florida 33157 ("Village") and E. Rodriguez Landscaping Inc. a Florida Corporation, located at P.O. Box 971987, Miami, Florida 33197 ("Contractor").

WITNESSETH:

**WHEREAS**, Village desires to engage and retain the services of the contractor to perform the work desired in this contract and the Contractor desires to accept the engagement.

**NOW THEREFORE**, in consideration of the sum and mutual promises and covenants contained in this contract, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by both parties, the parties agree as follows:

**Section 1.0** Definition. The words and terms as used in this Agreement shall have the following meanings unless some other meaning is plainly and clearly set forth:

"Agreement" shall mean this document.

"Contractor" shall mean E. Rodriguez Landscaping, Inc.

"Director" shall mean the Director of the Department of Planning and Zoning of the Village of Palmetto Bay.

"Services" shall mean the Scope of Services described in this Agreement.

"Subcontractor" shall mean any entity retained by the Contractor to participate in the performance of the work assigned by the Village to the Contractor.

**Section 2.0** Statement of Work.

2.1 The intent of this contract is to provide basic lawn maintenance services, secure exposed and/or unsafe pools, and remove yard debris from abandoned properties located within the jurisdictional boundaries of the Village of Palmetto Bay. Most of these properties are in foreclosure and are not maintained by the mortgage companies or other creditors that hold title to the properties. The abandoned nature of these properties has resulted in a nuisance to the community, and in some cases, a breeding ground for mosquitoes and rodents due to the overgrown lawn, un-maintained pools, and standing waters.

  
Contractor  
Village

2.2 All services identified in this Contract, including additional and miscellaneous services, shall be provided only when required and explicitly requested by the Village Manager or his/her designee through the issuance of a work order. The Contractor shall not commence or undertake any work or service until a work order has been approved by the Village Manager or designee. Additionally, all work performed pursuant to an approved work order, shall be approved by the Planning and Zoning Director or designee prior to the remittance of an invoice. Approval from the above mentioned Village employee(s) shall be a requisite for payment.

2.3 The work shall include, but may not be limited to the furnishing of all labor and materials. The Contractor shall specifically comply with the scope of services as described in RFP No. 1516-07-003, dated April 20, 2016. The basic scope of services is more particularly defined in Section 3 (Scope of Work).

2.4 The Contractor will supervise and direct the Work. He will be solely responsible for the means, methods, techniques, sequences and procedures of services. The Contractor will employ and maintain a qualified supervisor or superintendent at the work site who shall be designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor(s) shall be present at each site at all times as required to perform adequate supervision and coordination of the Work.

2.5 The Contractor will furnish all materials, equipment, labor, machinery, and tools necessary to complete the work.

2.6 The Contractor will not employ any Subcontractor, against whom the Village may have reasonable objection, nor will the Contractor be required to employ any Subcontractor who has been accepted by the Village, unless the Village determines that there is good cause for doing so.

a. The Contractor shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by him and of persons and organizations for whose acts any of them may be liable to the same extent that they are responsible for the acts and omissions of persons directly employed by them. Nothing in the Contract Documents shall create any contractual relationship between Village and any Subcontractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of Village to pay or to see to payment of any persons due subcontractor or other person or organization, except as may otherwise be required by law. Village may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to the Contractor on account of specified Work done in accordance with the schedule values.

b. The Contractor agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the Village.

c. All Work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor.

d. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of these General Conditions and other Contract Documents insofar as applicable to the Work of Subcontractors, and give the Contractor the same power as regards to terminating any subcontract that the Village may exercise over the Contractor under any provisions of the Contract Documents.

e. The Village will not undertake to settle any differences between the Contractor and their Subcontractors or between Subcontractors.

f. If any Subcontractor on the Project proves to be incompetent or otherwise unsatisfactory, they shall be promptly replaced by the Contractor if and when directed by the Village in writing.

2.7 The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. They will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to:

- a. All employees and other persons who may be affected thereby.
- b. All the Work and all materials or equipment to be incorporated therein.
- c. Other property at the site or adjacent thereto, including trees, shrubs, pavements, structures and utilities not designated for removal, relocation or replacement in the course of services.

The Contractor will designate the Superintendent as the responsible member of their organization at the site whose duty shall be the prevention of accidents. The Contractor has the option to designate another person other than the Superintendent to oversee the onsite project safety requirements. The name of the designated project safety employee shall be submitted in writing by the Contractor to the Village.

2.8 In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Village, is obligated to act, at his discretion, to prevent threatened damage, injury or loss. He will give the Village prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby..

2.9 The Contractor shall, at all times, conduct the Work in such a manner as to insure the least practicable obstruction to public travel. The convenience of the general public and of the residents along and adjacent to the area of Work shall be provided for in a satisfactory manner, that will not impact the road way and/or would provide services in a manner that would facilitate access to roadway should the roadway be impacted by the scope of Work. At any time that streets are required to be closed, the Contractor shall notify law enforcement agencies and in particular, the Palmetto Bay Policing Unit, before the street is closed and again as soon as it is opened.

The Contractor shall comply with Ordinance No. 08-07, the newly revised "Shannon Melendi Act of Miami-Dade County" for the purpose of conducting background investigations for all employees, agents or assigns, associated with the provision of services. Required background investigations shall be completed in accordance with the ordinance and provided to the Village upon 10 days prior written notice.

2.10 Any existing surface or subsurface improvements, such as pavements curbs, sidewalks, pipes or utilities, footings, or structures (including portions thereof), trees and shrubbery, not otherwise identified as part of the Work shall be protected from damage during maintenance activities. Any such improvements damaged during the execution of the work shall be restored at the expense of the Contractor to a condition equal to that existing at the time the work was performed.

2.11 The Contractor shall within forty-eight (48) hours of their discovery, and before such conditions are disturbed, notify the Village in writing, of:

a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or

b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally inherent in Work of the character provided for in this Contract. The Village shall promptly investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.

No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice as required above; provided, however, the time prescribed therefore may be extended by the Village. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

**Section 3.0** Scope of Work: This section describes the specifics regarding the actual work to be performed by the Contractor.

3.1 Contractor shall take before and after pictures of the job site. These pictures shall be submitted as an attachment to each invoice.

3.2 Grass to be mowed at an average height of 1 1/2" to 2 1/2" to be specified by Village staff. Staff reserves the right to notify the Contractor when to change the mowing height to accommodate the various growing patterns and weather conditions throughout the year. Damage to turf areas due to the use of dull blades or other factors could be considered as grounds for the immediate cancellation of any contract agreement.

3.3 Edging to be completed at each service will include around all curbs, sidewalks, and streets.

3.4 Clippings to be blown off driveways and walkways. The clippings shall not be blown into the street, adjacent properties, or storm drains.

3.5 Trimming around all obstacles, as needed.

3.6 Litter to be removed from all areas prior to each mowing. If there is excess litter on the property, the successful bidder shall contact the Village for an inspection of the property.

3.7 Report graffiti to the Village on first observation.

3.8 In the Contractor is prevented from completing maintenance as provided in the schedule because of reasons other than inclement weather, he/she shall complete these services so deferred prior to the next regular scheduled date.

3.9 Contractor shall accomplish the assignment in accordance with a schedule approved by the Village Manager or his designee. Where inclement weather, in the opinion of the Village Manager or his designee, prevents adherence to the regular schedule for two or less days in a given week, the areas so effected by the inclement weather shall be mowed or trimmed within the following one week period from the date of the scheduled mowing or trimming without the interruption of the regular schedule. The Contractor shall perform all extra work required by such inclement weather without additional charge.

3.10 Contractor shall immediately correct and/or report to the Village any and all problems or conditions which may tend to create unsafe or hazardous conditions within the property boundaries.

Specifications for covering unsafe pools must include the following:

3.11 Contractor shall clean the area surrounding the pool prior to the installation of the pool cover.

3.12 Contractor shall immediately report to the Village any potential health or safety issues associated with the current condition of the pool.

3.13 Contractor shall consult the Village prior to installing the pool cover to ensure that the right cover is selected. The pool cover shall be made of wood or other Village approved materials capable of withstanding the elements. The pool cover shall be designed to provide an adequate safety barrier that would discourage the use of such structure by humans and/or animals. The standard size of a pool cover is 15' by 30'. If the pool requires a cover that exceeds the standard size, the successful bidder shall inform the Village prior to selecting the cover in order for the Village to identify the necessary funds to cover the additional costs associated with an oversized cover.

**Section 4.0** Commencement Date and Term

4.1 Work shall commence upon the issuance of a purchase order by the Village. Work shall proceed in substantial compliance with the schedule of services contained in the statement of work. Acceptance of work by the Village shall be evidenced by a notice of completion or by a notice of acceptance.

4.2 An agreement is contemplated for two (2) years. Providing the successful Contractor will agree to maintain the same terms and conditions of the current contract, this contract could be extended for two (2) additional one (1) year terms not to exceed a total contract term of four (4) years, if mutually agreed upon by the Contractor and the Village Manager as the Village's Contracting Officer.

**Section 5.0** Contract Sum

5.1 The Village shall pay the Contractor for the faithful performance of the contract, consistent with the prices provided in the fee schedule by the Contractor for the services to be performed to meet the requirements of the project's scope of work identified in Section 3.0 of this Agreement and RFP Package No. 1519-07-003. The fee schedule provided by the Contractor and approved by the Village as the lowest successful proposer is provided in Exhibit 1.

**Section 6.0** Transfer and Assignment

6.1 None of the work or services under this contract shall be subcontracted unless Contractor obtains prior written consent from the Village. Approved Subcontractors shall be subject to each provision of this contract and Contractor shall be responsible and indemnify the Village for all Subcontractors' acts, errors or omissions. The Contractor shall not assign, transfer or pledge any interest in this contract without the prior written consent of the Village; provided, however, that claims for money by the Contractor from the Village under this contract may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 10 days by the Contractor to the Village. Upon such re-assignment, the owner shall remain liable for all sums due to Contractor for the period prior to the effective date of such transfer, unless the transferee assume such obligation.

**Section 7.0** Modifications – Change Orders

7.1 The Village may, at any time, by written change order make changes to the scope of work, and to the means and methods of performing the work. The Village may order temporary stoppage of the work or delay in performance that does not alter the scope of work. Material modifications to this Contract, including any increase or decrease in the amount of the Contractor's compensation, shall be incorporated in written amendments to this contract.

7.2 All other modifications, including the need to increase the scope of work under a specific work order, the time required for performance of any part of the work under this contract the Village shall issue a written change order.

**Section 8.0** Termination for Default

8.1 Either party may terminate this contract prior to the expiration of the initial term or any subsequent renewal term on account of a material breach of this contract by the other party, which has not been cured within 10 days from the date of receipt of written notice of breach from the party seeking termination.

8.2 Termination shall be effective as of the end of the notice period in the case of any uncured material breach.

8.3 Contractor may terminate this contract prior to the expiration of the initial term or any subsequent renewal term upon not less than 30-days prior written notice to the Village in the event that Contractor is unable to complete the services identified in Section 3 due to causes beyond Contractor's control.

8.4 The Village shall have no liability to the Contractor for future profits or losses in the event of termination for default.

8.5 The rights and remedies of the Village provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**Section 9.0** Termination for Delay

9.1 If the project is suspended or the Contractor's services are delayed by the Village for more than 30 consecutive days, the Contractor may terminate this contract by giving not less than 30 days written notice.

9.2 The liability of the Village upon termination by the Contractor for suspension or delay of the project shall be for the value of services performed pursuant to the schedule contained in the statement of work rendered by Contractor to the time of termination by Contractor. The Village shall not be liable for future profits or losses.

**Section 10.0** Termination for Convenience

10.1 The Village or Contractor may terminate this contract for convenience at any time by giving 30 days notice in writing. The Contractor will be paid for the value of services performed pursuant to the schedule contained in the statement of work, up to and including the termination date. Contractor will be permitted to complete on-going investigations and shall be paid for all satisfactory work completed. The Village shall not be liable for future profits or losses.

10.2 In the event that the Village improperly terminates the contract for default under Section 8, the termination shall be deemed a termination for convenience under this paragraph.

**Section 11.0** Termination for Lack of Funds

11.1 Notwithstanding any other provisions of the contract, if the funds anticipated by the Village for the payment of work under this contract are at any time not forthcoming, through the failure of the Village to appropriate funds, the failure of Miami-Dade County, the Florida Legislature, or the U.S. Congress to appropriate funds, or the refusal of the administrative branch of the Village government to release funds, or due to any other reason for the unavailability of funds in succeeding fiscal years, or the discontinuance or material alteration of the program under which funds are to be provided, the Village shall have the right to terminate the contract without penalty by giving not less than 30 days written notice of the lack of available funding.

11.2 In the event the Village declines to appropriate funds for payment of the contract for future fiscal years, Contractor shall be paid for work performed under the contract with funds that are appropriated for the current fiscal year. The liability of the Village to Contractor shall be limited to the obligation to budget and appropriate funds for work performed during the current fiscal year.

**Section 12.0** No Damages for Delay Clause

12.1 No claim for damages or any claim other than for an extension of time shall be made or asserted against the Village by reason of any delays. The Contractor shall not be entitled to an increase in the contract sum or payment of compensation of any kind from the Village. The Contractor shall be entitled only to extension of the contract time as the sole and exclusive remedy for a resulting delay, in accordance with and to the extent specifically provided above.

**Section 13.0** Liquidated Damages

13.1 It is mutually agreed that time is of the essence in the performance of this contract. Should the Contractor fail to complete the work within the specified time, or any authorized extension thereof, there shall be deducted from the compensation otherwise to be paid to the Contractor, and the Village will retain the amount of, \$100.00 per calendar day as fixed, agreed, and liquidated damages for each calendar day elapsing beyond the specified time for completion or any authorized extension of time. The sum shall represent the actual damages which the Village will have sustained by failure of the Contractor to complete the work within the specified time; it being further agreed that the sum is not a penalty, but is the stipulated amount of damage sustained by the Village in the event of a default by the Contractor.

**Section 14.0** Right to Withhold

14.1 If work under this contract is not performed in accordance with the terms hereof, the Village has the right to withhold any payment due to the Contractor, of any sums as the Village may deem sufficient to protect it against loss, or to ensure payment of claims, and, at its option, the Village may apply the sums in the manner as the Village may deem proper to secure itself or to satisfy the claims. The Village will provide Contractor with 10 days prior written notice in the event that it elects to exercise its right to withhold under this paragraph.

**Section 15.0** Interest Payment Due to Late Payment

15.1 The Village shall make payment to Contractor within 30 days of receipt of the original written invoice and sufficient backup documentation and acceptance of the work by the Village. Interest shall accrue on unpaid invoices as provided by Florida Statutes Section 218.74. Contractor shall not be entitled to any carrying charges or finance fees due to late payment by the Village.

**Section 16.0** Liens.

16.1 The Contractor, Subcontractors, suppliers and laborers are prohibited from placing a lien on Village's property.

**Section 17.0** Independent Contractor

17.1 The Contractor is furnishing its services as an independent Contractor and nothing in this contract shall create any association, partnership or joint venture between the parties, or any employer-employee relationships.

17.2 Neither the Contractor nor Village intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third-party beneficiaries to this Agreement and that no third-party shall be entitled to assert a claim against either of them based upon this Agreement.

**Section 18.0** Insurance and Indemnification

18.1 The Village shall not be held liable or responsible for any claims which may result from acts, errors or omissions of the Contractor or its Subcontractors, suppliers or laborers. In reviewing, approving or rejecting any submissions or acts of the Contractor, the Village in no way assumes responsibility or liability for the acts, errors or omissions of the Contractor or Subcontractors.

18.2 The Contractor does hereby agree to defend, indemnify and hold the Village, its Council, Village Manager, agents, employees, attorneys, successors and assigns harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the Contractor/Proposer, its agents, employees, volunteers, guests and invitees in connection with this Agreement. The provisions of this Section shall expressly survive any expiration or termination of this Agreement.

18.3 The Contractor shall not commence work under this contract until it has obtained all insurance required by the Village. The Contractor shall defend, indemnify and hold the Village harmless from any and all claims, liability, losses, expenses and causes of action arising solely out of a negligent act, error, or omission or misconduct of the Contractor, or the Contractor's Subcontractors, suppliers and laborers incident to the performance of the Contractor's services under this contract. The Contractor shall pay all claims, losses, fines, penalties, costs and expenses of any nature whatsoever resulting from its intentional misconduct or negligence.

18.4 The Contractor shall maintain during the term of this contract the following insurance:

a. Worker's Compensation Insurance Coverage in accordance with Florida State Statutes. Workers' Compensation Insurance in compliance with Chapter 440, Florida Statutes, as presently written or hereafter amended, and applicable federal law. The policies must include Employer's Liability with minimum limits of \$500,000 per accident.

b. Comprehensive general liability insurance with broad form endorsement, including completed operations and products liability, contractual liability, severability of interest with cross liability and property damage liability with limits of \$500,000.00 combined single limit per occurrence for bodily injury and property damage. The policy or policies shall name Village as additional insured and shall reflect the hold harmless provision contained herein. Coverage must be afforded in a form not more restrictive than the latest edition of the Commercial General Liability Policy without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

c. Automobile Liability Insurance covering all owned, hired, and non-owned vehicles with Personal Protection Insurance and Property Protection Insurance to comply with the provisions of Florida No-Fault Insurance Law, including residual liability insurance with a minimum combined single limit of \$1,000,000 each accident for bodily injury and property damage.

d. The policies shall contain waiver of subrogation against the Village where applicable and shall expressly provide that the policy or policies are primary over any other insurance that the Village may have. The Village reserves the right to request a copy of the required policies for review. All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment to the Village.

e. The Village is to be specifically included as an additional insured for the liability of the Village resulting from operations performed by or on behalf of Contractor in performance of this or any project agreement. Successful bidder's insurance, including that applicable to the Village as an additional insured shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each insured or additional insured in the same manner as if separate policies has been issued to each.

f. Prior to the execution of this agreement, the Contractor shall provide the Village Manager with evidence of insurability from the Contractor's insurance carrier or a certificate of insurance. Contractor shall add the Village as an additional insured on each of the policies required herein, with the exception of the Contractor's Worker's Compensation policy. Prior to execution of any project agreement, the Contractor shall provide to the Village Manager, certificates of insurance with required insurance coverage's. The certificates of insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this and any project agreement and shall state that such insurance is as required by the and any project agreement. The Village reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the services, renewal certificates of insurance or policies shall be furnished 30

days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than 30 days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the certificate(s) is subject to approval of the Village Manager.

g. Compliance with the foregoing requirements shall not relieve the Contractor of its liability and obligations under any awarded agreement.

h. All deductibles or self-insured retentions must be declared to and be approved by the Village Manager. The Contractor shall be responsible for the payment of any deductible or self-insured retention in the event of any claim. The Village manager may require the Contractor, as a condition of execution of a particular project agreement, to provide a bond or other monetary consideration to cover the Contractor's deductible for professional liability insurance.

## **Section 19.0 Equal Employment Opportunity**

19.1 During the performance of this contract, the Contractor agrees as follows:

a. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation or national origin.

c. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, color, religion, sex, sexual orientation or national origin. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

d. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the contracting officer that explain this clause.

e. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin.

f. The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining contract or other contract or understanding, the notice to be provided by the contracting officer advising the labor union or workers' representatives of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

g. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

h. The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with the rules, regulations, and orders.

i. In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Governmental contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

j. The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each Subcontractor or vendor. The Contractor shall take the action with respect to any subcontract or purchase orders as the Department of Labor may direct as a means of enforcing the provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of the direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### **Section 20.0** Mediation

20.1 Any claim or dispute arising out of or related to this contract shall be subject to informal mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Both parties waive any right to arbitration. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Miami-Dade County, Florida, unless another location is mutually agreed upon. Contracts reached in mediation shall be enforceable as settlement contracts in the circuit court for the 11<sup>th</sup> judicial circuit for the State of Florida.

#### **Section 21.0** Sovereign Immunity, Attorney's Fees, Waivers of Jury Trial

21.1 The Village does not waive sovereign immunity for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs in any state or federal administrative, circuit court, appellate court and post judgment proceedings. Neither party shall be responsible for prejudgment interest. **In the event of any litigation arising out of this agreement or project agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury.**

21.2 The Contractor hereby assumes all financial, administrative and legal responsibility in connection with, related to, or arising out of the scope of services. Nothing in this Agreement will be construed to affect in any way the Village's rights, privileges, and immunities, including the monetary limitations of liability set forth in Section 768.28 of the Florida Statutes of \$100,000 on any claim or judgment, or portions thereof. The provisions of this Section will survive the termination or expiration of this Agreement.

**Section 22.0** Notices

22.1 All notices given or required under this contract shall be deemed sufficient if sent by certified mail, return receipt requested, to the addresses of the Contractor and to the Village specified in this contract, unless either party shall specify to the other party a different address for the giving of the notices. For the purposes of this contract, notice shall be provided to the as follows:

To the Village: Village of Palmetto Bay  
Village Manager  
9750 E Hibiscus Street  
Palmetto Bay, FL 33157  
Telephone: 305-259-1234

To Contractor: E. Rodriguez Landscaping Inc.  
PO Box 971987  
Miami, FL 33197  
Esteban Rodriguez, President  
Telephone: 786-286-7112

**Section 23.0** Examination and Retention of Contractor's Records

a. The Village, or any of their duly authorized representatives, shall, until three (3) years after final payment under this contract, have access to and the right to examine any of the Contractor's books, ledgers, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

b. The right to access and examination of records shall continue until disposition of any mediation, claims, litigation or appeals.

c. If litigation has been initiated during the period identified under subsection "a.", the Contractor shall continue to maintain relevant records despite any expiration of the three (3) year period until the end of the litigation.

**Section 24.0** Ownership of Documents

24.1 All documents, reports, plans, specifications or other records, including electronic records, resulting from the professional services rendered by the Contractor under this contract shall be deemed the property of the Village and the Village shall have all rights incident to this ownership. The Contractor acknowledges that all documents prepared under this contract shall be public records, and shall be subject to public inspection and copying, as provided by Chapter 119, Florida Statutes. Upon conclusion of this contract and any extensions, all documents shall be delivered by the Contractor to the Village. The Contractor shall have the right to retain copies of the documents at the Contractor's expense.

**Section 25.0 Severability**

25.1 Should any paragraph or any part of any paragraph of this contract be rendered void, invalid or unenforceable by any court of law, for any reason, the determination shall not render void, invalid or unenforceable any other section or part of any section of this contract.

**Section 26.0 Entire Contract**

26.1 The contract, when signed by all of the parties, constitutes the full and complete understanding and contract of all parties and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This contract takes precedence, then the request for proposal RFP# 1516-07-003 and Contractors bid documents. All shall be interpreted with the same order.

**Section 27.0 Contingency Fee and Code of Ethics Warranty**

a. Contractor warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and Contractor has not, and will not, pay a fee the amount of which is contingent upon the Village awarding this contract to Contractor.

b. Contractor warrants that neither it, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this contract in violation of any of the provisions of the Miami-Dade County or the Village of Palmetto Bay conflict of interest and code of ethics ordinances.

c. A violation of this paragraph will result in the termination of the contract and forfeiture of funds paid, or to be paid, to the Contractor.

d. Public Entities Crime Statement. A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, 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 section 287.017, F.S. for category two for a period of 36 months from the date of being placed on the convicted vendor list. Contractor affirms compliance with this requirement for the duration of the underlying Agreement. If at any time during the contract period, Contractor is convicted of a public entity crime, the Contractor's contract shall immediately terminate.

**Section 28.0 Warranty of Authority**

28.1 The signatories to this contract warrant that they are duly authorized by action of their respective Village commission, board of directors or other authority to execute this contract and to bind the parties to the promises, terms, conditions and warranties contained in this contract.

 Contractor  
Village

**Section 29.0** Reserved.

**Section 30.0** Consent to Jurisdiction

30.1 The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this agreement or any project agreement. Venue of any action to enforce this agreement or any project agreement shall be in Miami-Dade County. This contract shall be construed in accordance with and governed by the laws of the State of Florida.

**Section 31.0** Headings

31.1 Headings are for convenience of reference only and shall not be considered in any interpretation of this agreement.

**Section 32.0** Exhibits

32.1 Each Exhibit referred to in this agreement forms an essential part of this agreement. The Exhibits if not physically attached, should be treated as part of this agreement, and are incorporated by reference.

**Section 33.0** Counterparts

33.1 This agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument

**Section 34.0** Miscellaneous Provision

34.1 In the event a court must interpret any word or provision of this agreement, the word or provision shall not be construed against either party by reason of drafting or negotiating this agreement.

34.2 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

34.3 Force Majeure. The performance of any act by the Village or Contractor hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any cause beyond the reasonable control of such party, provided however, the Village shall have the right to provide substitute service from third parties or Village forces and in such event the Village shall withhold payment due Contractor for such period of time. If the condition of force majeure exceeds a period of 14 days the Village may, at its option and discretion, cancel or renegotiate this Agreement.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized officers, have executed this contract as of the date first above written.

The Village of Palmetto Bay

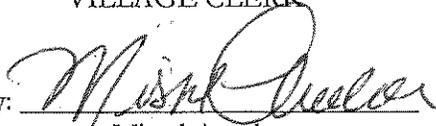
Contractor

By:   
Edward Silva  
Village Manager

By:   
Esteban Rodriguez, President  
E. Rodriguez Landseaping Inc.

ATTEST:

VILLAGE CLERK

By:   
Missel Arocha

Approved as to form:

By:   
Dexter Lehtinen, Village Attorney  
The Village of Palmetto Bay

Exhibit 1

Village of Palmetto Bay, Florida - Lawn Maintenance Services - RFP No. 1516-07-003

**Exhibit 1**

**FEE SCHEDULE**

<u>Basic Town Maintenance &amp; Other Services</u>	<u>Description</u>	<u>Unit Cost</u>
Residential Mowing	Flat Rate	\$ 35.00
Residential - Debris Collection and Disposal	Cubic Yard	\$ 10.00
Pool Covering	Standard size 15' X 30'	\$ 400.00
Pool Covering Beyond the Standard Size	Over 15' X 30' Covering	\$ 500.00
Empty Lot - Mowing Services	Acres (Minimum 6 Acres)	\$ 50.00 / acre
Empty Lot - Debris Collection and Disposal	Cubic Yard	\$ 10.00

Page 6 of 6.

 Contractor  
Village