

RESOLUTION NO. 04-48

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO CONTRACTS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN AGREEMENT WITH P(3)SM, LLC. FOR PROFESSIONAL SURVEYING SERVICES TO SURVEY CORAL REEF PARK; AUTHORIZING THE VILLAGE MANAGER TO ISSUE A PURCHASE ORDER IN AN AMOUNT NOT TO EXCEED \$15,495.00; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the village has recently embarked on the development of its Parks Master Plan for the redevelopment of village parks; and,

WHEREAS, a survey of Coral Reef Park is necessary to complete the Parks Master Plan; and,

WHEREAS, a survey is needed for any future design and, or, construction projects; and,

WHEREAS, P(3)SM, LLC is the lowest bidder for a Coral Reef Park survey.

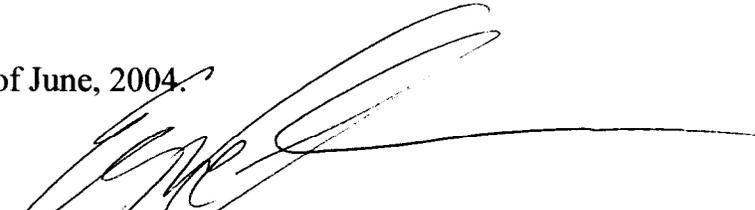
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. The village manager is authorized to execute the agreement, which is attached as App. 1, with P(3)SM, LLC, in which the P(3)SM shall provide surveyor services for the village for an amount not to exceed \$15,495.00.

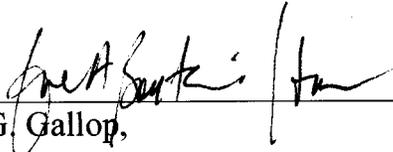
Section 2. This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this 14th day of June, 2004.

ATTEST: 
Meghan Pier
Village Clerk


Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:



Earl G. Gallop,
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>Yes</u>
Council Member Paul Neidhart	<u>Yes</u>
Council Member John Breder	<u>Yes</u>
Vice-Mayor Linda Robinson	<u>Yes</u>
Mayor Eugene P. Flinn, Jr.	<u>Yes</u>

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APPENDIX 1

**CONTRACT BETWEEN VILLAGE OF PALMETTO BAY
AND P(3)SM, LLC.**

This contract is made and entered into this ____ day of June, 2004 between the Village of Palmetto Bay (village), a Florida municipal corporation, located at 8950 SW 152nd Street, Palmetto Bay, Florida 33157 and P(3)SM, LLC., a Florida limited liability corporation, located at 3900 N.W. 79th Avenue, Suite 322, Miami, Florida 33166 (contractor).

W I T N E S S E T H :

WHEREAS, village desires to engage and retain the services of the contractor to perform the work described in this contract and the contractor desires to accept the engagement; and,

WHEREAS, the village has recently embarked on the development of its Parks Master Plan for the redevelopment of village parks; and,

WHEREAS, a survey of Coral Reef Park is necessary for the completion of our Parks Master Plan; and,

WHEREAS, a survey is needed for any future design and, or construction projects; and,

WHEREAS, P(3)SM, LLC. is the lowest bidder for a Coral Reef Park survey.

NOW THEREFORE, in consideration of the sum of \$10.00, the 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.

1. WHEREAS CLAUSES

1.1. The above whereas clauses are incorporated and made a part of this contract.

village

contractor

2. STATEMENT OF WORK

2.1 The statement of work for this project shall be as provided in the attached exhibit 1, which is incorporated and made a part of this contract.

3. COMMENCEMENT DATE AND TERM

3.1 The term shall commence upon the date of this contract and expire upon the earlier of _____ or the acceptance of full performance by the village.

3.2 Work shall commence upon the issuance of a written task 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. PAYMENT

4.1 The village shall pay the contractor the contract amount(s) provided in the statement of work. The amount shall be either a fixed price or shall be based on agreed charges for time and materials for an amount not to exceed the stated fixed amount. The amount to be paid shall be stated in the task order authorizing the work.

4.2 The village shall not be liable to pay, and shall not pay, charges for extra work, delay charges, or additional work, unless the village's contract officer specifically authorizes the extra or additional work, in a written task order before the commencement of the work.

5. TRANSFER AND ASSIGNMENT

5.1 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.

5.2 The contractor shall not assign, transfer or pledge any interest in this contract without the prior written consent of the village; provided, however,

village

contractor

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.

6. MODIFICATIONS – CHANGE ORDERS

6.1 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. Changes, including any increase or decrease in the amount of the contractor's compensation, shall be incorporated in written amendments to this contract.

6.2 If any change causes an increase or decrease in the price charged, the maximum amount of the contract, or the time required for performance of any part of the work under this contract, or otherwise affects the conditions of this contract, the village shall make an equitable adjustment to the maximum amount, the price(s), the delivery schedule, or other affected terms, and shall modify the contract with a written change order.

7. TERMINATION FOR DEFAULT

7.1 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.

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

7.3 Contractor may terminate this contract prior to the expiration of the initial term or any subsequent renewal term upon not less than 10-days prior written notice to the village in the event that contractor is unable to complete the services identified in paragraph 2.1 due to causes beyond contractor's control.

7.4 The village shall have no liability to the contractor for future profits or losses in the event of termination for default.

7.5 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.

7.6 Should contractor provide the village with written notice of cancellation of contract, contractor will be required to refund a pro-rata share of the compensation identified in paragraph 4.

8. TERMINATION FOR DELAY

8.1 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 10 days written notice.

8.2 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.

9. TERMINATION FOR CONVENIENCE

9.1 The village may terminate this contract for convenience at any time by giving 10 days notice in writing to the contractor. 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.

9.2 In the event that the village improperly terminates the contract for default under paragraph 7, the termination shall be deemed a termination for convenience under this paragraph.

10. TERMINATION FOR LACK OF FUNDS

10.1 Notwithstanding any other provisions of the contract, if the funds anticipated by the village for the 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 federal or county government to release funds, or due to any other reason for the

_____ village

_____ contractor

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 10 days written notice of the lack of available funding.

10.2 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.

10.3. For any portion of the work that is funded by county, state or federal appropriations or grants, the liability of the village to contractor shall be limited to payment for services when payment is received by the village from the county, state or federal authority. The village shall submit all required documents requesting payment within a reasonable time. The village shall not be liable to contractor for work performed in the event that payment is not received by the village from a county, state or federal funding authority. This is a pay-when-paid clause.

11. NO DAMAGES FOR DELAY CLAUSE

11.1 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 for direct, indirect, consequential, impact, mobilization, demobilization, or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever; provided, however, that this provision shall not preclude recovery or damages by the contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the village or its agents. Otherwise, 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.

12. LIQUIDATED DAMAGES

12.1 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

village

contractor

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.

13. RIGHT TO WITHHOLD

13.1 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.

14. INTEREST PAYMENTS DUE TO LATE PAYMENT

14.1 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 Section 218.74, Florida Statutes.

14.2 Contractor shall not be entitled to any carrying charges or finance fees due to late payment by the village.

15. LIENS

15.1 The Contractor, subcontractors, suppliers and laborers are prohibited from placing a lien on village's property.

16. INDEPENDENT CONTRACTOR

16.1 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. INSURANCE AND INDEMNIFICATION

17.1 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.

17.2 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.

17.3 The contractor shall maintain during the term of this contract the following insurance:

A. Professional Liability Insurance in the amount of \$1,000,000.00 with deductible per claim if any, not to exceed 5% of the limit of liability providing for all sums which the contractor shall become legally obligated to pay as damages for claims arising out of the services performed by the contractor or any person employed by him in connection with this contract. This insurance shall be maintained for three years after completion of the construction and acceptance of any project covered by this contract. However, the contractor may purchase Specific Project Professional Liability Insurance which is also acceptable.

B. Comprehensive general liability insurance with broad form endorsement, including automobile liability, completed operations and products liability, contractual liability, severability of interest with cross liability provision, and personal injury and property damage liability with limits of \$1,000,000.00 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.

C. Workers' Compensation Insurance in compliance with Chapter 440, Florida Statutes, as presently written or hereafter amended.

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 of the village.

E. All of the insurance is to be placed with Best rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida.

17.4 The contractor shall furnish certificates of insurance to the village prior to the commencement of operations. The certificates shall clearly indicate that the contractor has obtained insurance in the type, amount, and classification as required for strict compliance with this paragraph and that no reduction in limits by endorsement during the policy term, or cancellation of this insurance shall be effective without 30 days prior written notice to the village.

17.5 Compliance with the foregoing requirements shall not relieve the contractor of its liability and obligations under this contract.

18. EQUAL EMPLOYMENT OPPORTUNITY

18.1 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.

B. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated 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.

C. 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.

D. 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.

E. 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.

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

G. 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.

H. 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.

I. 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.

19. MEDIATION

19.1 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.

19.2 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.

19.3 Contracts reached in mediation shall be enforceable as settlement contracts in the circuit court for the 11th judicial circuit for the State of Florida.

20. JURISDICTION AND VENUE

20.1 For the purposes of this contract, Florida law shall govern the terms of this contract. Venue shall be in Miami-Dade County, Florida.

21. SOVEREIGN IMMUNITY AND ATTORNEY'S FEES

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.

22. 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.

23. CONTRACTING OFFICER REPRESENTATION

23.1 For the purposes of this contract, the contracting officers are as follows:

To the Village: Village of Palmetto Bay
8950 SW 152nd Street
Palmetto Bay, Florida 33157
Attention: Village Manager

To Contractor: P(3)SM, LLC.
3900 NW 79th Avenue
Suite 322
Miami, Florida 33166
Eduardo M. Suarez, P.S.M., President

24. EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS

24.1 The village, or any of their duly authorized representatives, shall, until 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.

24.2 The contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as subparagraph 24.1 above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

24.3 The right to access and examination of records in subparagraph 24.1 shall continue until disposition of any mediation, claims, litigation or appeals.

25. OWNERSHIP OF DOCUMENTS

25.1 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 Florida Statutes chapter 119. 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.

26. SEVERABILITY

26.1 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.

27. ENTIRE CONTRACT

27.1 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 and the incorporated attachments constitute the entire understanding between the parties and integrates by its terms all previous contracts or understandings, oral or written, between the parties. In the event of any conflict, the terms of this contract will govern over the provisions of any incorporated documents.

28. CONTINGENCY FEE AND CODE OF ETHICS WARRANTY

28.1 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.

28.2 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.

28.3 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.

29. WARRANTY OF AUTHORITY

29.1 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.

30. MISCELLANEOUS

30.1 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.

[SIGNATURE PAGE TO FOLLOW]

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village

contractor

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: _____
Charles D. Scurr,
Village Manager

By: _____
Eduardo M. Suarez, P.S.M.,
President

ATTEST:

VILLAGE CLERK

By: _____
Meighan J. Pier

Approved as to form:

By: _____
Earl G. Gallop, Village Attorney
The Village of Palmetto Bay

CONTRACT BETWEEN VILLAGE OF
PALMETTO BAY AND P(3) SM, LLC.

EXHIBIT 1

STATEMENT OF WORK

P(3)SM, LLC.

3900 N.W 79th Avenue
SUITE No.322

MIAMI, FLORIDA 33166

TELEPHONE: (305) 463-0912 FACSIMILE: (305) 463-0913

E-MAIL: P3SM@P3SM.COM

Project: BID No. 2004-100 (CORAL REEF PARK)

General Surveying Services

SECTION 2 SCOPE OF WORK

2.01 Purpose (Job Site)

- **Coral Reef Park**
- **7895 S.W. 152ND Street**
- **Folio # 33-5022-000-0750 (48.4 acres)**

2.02 Minimum Specifications

- Boundary survey
- Topography / Elevations of all aboveground features (includes the surrounding 4 streets)
- Features to be located, but not limited to: trees, sidewalks, buildings, utilities, fences, paved area, parking area, etc...
- Provide finish floors elevations for all buildings
- Control points will set at site for future work and/or construction
- Trees (over 800 trees) will be labeled with name, type, height, width, canopy size, etc.
- Due to density in cluster area, located at western side of park; perimeter trees and cluster outline will be located only, interior trees will not be located unless requested by the Village Manager (see attached aerial)
- Canal will be located
- With clients permission, trees can be tagged with tin disks & numbered for inventory purposes
- Digital file in Autocad, together with printed hard copies, will be delivered

2.05 Work Schedule

- Field work will be completed 14 working days after commencement (weather, unforeseen events permitted)
- Written request for additional time for unseen delays, to be approved by Village Manager

2.07 Response Time

- Commencement of work will be 1 to 2 days after Receipt of Order

PROFESSIONAL FEE for Total Services: \$15,495.00

It is our policy to complete our work in the most efficient and cost-effective manner. Please rest assured that we would utilize our best efforts on the client's behalf. We are prepared to proceed with the work described above.

We appreciate the opportunity to submit our proposal and look forward to working with you on this project.