



To: Honorable Mayor and Village Council

Date: May 29, 2012

From: Ron E. Williams, Village Manager

Re: Phase IV Drainage
Improvements Completion

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO LOCALIZED DRAINAGE IMPROVEMENTS PHASE IV; RESCINDING THE PREVIOUSLY AUTHORIZED CONSTRUCTION SERVICES FOR DRAINAGE IMPROVEMENTS IN THE AREAS OF SW 81 AVENUE AT SW 144 ST, SW 86 AVENUE AT SW 150 TERRACE AND SW 149 TERRACE; SW 159 TERRACE FROM SW 89 AVENUE TO END; SW 85 AVENUE AT SW 144 STREET BY QUALITY PAVING CORPORATION VIA RESOLUTION 2011-12, DATED MARCH 7, 2011; AND FURTHER, AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO CONTRACT WITH MAGGOLC, INC. TO PROVIDE CONSTRUCTION SERVICES FOR DRAINAGE IMPROVEMENTS; CONTRACTING WITH THE SECOND LOWEST RESPONSIVE/RESPONSIBLE BIDDER ON INVITATION TO BID 2011-PW-101; AND AUTHORIZING THE VILLAGE MANAGER TO ISSUE A PURCHASE ORDER AND APPROVE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED \$157,195.00; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS:

The Village of Palmetto Bay Council approved Resolution No. 2011-12, dated March 7, 2011, authorizing Quality Paving Corp. to provide construction services for drainage improvements in the areas of SW 75 Avenue from SW 147 ST to end; SW 175 Street from SW 79 Place to SW 79 Court; SW 81ST Avenue at SW 144 ST, SW 86 Avenue at SW 150 Terrace and SW 149 Terrace; SW 159 Terrace from SW 89 Avenue to end; SW 83 Place from SW 182 Terrace to SW 183 Terrace including SW 182 Terrace and SW 183 Terrace from SW 83 Avenue to SW 83 Place; and SW 85 Avenue at SW 144 Street, Phase IV Drainage Improvements.

Quality Paving Corp. was selected through a competitive bid process for construction services of Phase IV drainage improvements with the issuance of Invitation to Bid No. 2011-PW-101. The bid was advertised in the Daily Business Review on January 5, 2011. Bids for drainage improvements were received and opened on February 4, 2011 with eighteen (18) contractors submitting a bid.

Quality Paving Corp. was issued a Notice to Proceed on April 18, 2011 for Contract No. 2011-PW-101. The construction work to be performed as shown, described, and detailed within the Drainage Improvements Phase IV contract document, project plans, and specifications included the installation of exfiltration trenches, drainage structures, connection to existing systems, and associated restoration at seven (7) locations within the Village. However, Village administration determined it was in the best interest of the Village to terminate the contract pursuant to Section 0700 Standard General Conditions of the Construction Contract, and Article 15.02(A) (B) and (C) of the construction contract, entitled "Owner may Terminate for Cause." The contract with Quality Paving Corp, Inc. approved for drainage construction was terminated as of August 12, 2011. Quality Paving Corp. completed three (3) of the seven (7) locations for drainage construction. The four (4) locations pending drainage construction under the scope of Phase IV drainage improvements are: SW 81 Avenue at SW 144 ST, SW 86 Avenue at SW 150 Terrace and SW 149 Terrace; SW 159 Terrace from SW 89 Avenue to end; and SW 85 Avenue at SW 144 Street.

The Department of Public Works commenced to seek an alternate contractor to complete the remaining four (4) locations pending drainage construction under the scope of Phase IV drainage improvements. A thorough analysis of the responses received in accordance with Invitation to Bid No. 2011-PW-101 were re-evaluated to determine the second lowest, most inclusive and responsible bid received and publicly opened by the Village on February 4, 2011. It was determined that the bid provided by Maggoc, Inc. was the second lowest, most inclusive and responsible bid, immediately preceding Quality Paving Corp. Maggoc, Inc. provided a base bid in the sum of \$157,195.00 to complete the four (4) locations pending drainage construction under the scope of Phase IV drainage improvements.

Maggoc, Inc. has agreed to provide all necessary services and resources to the Village for the completion of Phase IV Drainage Improvements utilizing the same pricing, terms and conditions set forth in their response to Invitation to Bid No. 2011-PW-101 submitted and opened on February 4, 2011 in an amount not to exceed the bid amount of \$157,195.00 for the four (4) remaining locations.

The Department of Public Works recommends that it is in the best interest of the Village to establish a contract with Maggoc, Inc., for drainage construction services. The Administration is requesting authorization from the Village Council to enter into an agreement with Maggoc, Inc. to provide drainage construction services for the completion of Phase IV drainage improvements.

FISCAL/BUDGETARY IMPACT

The Village budgets this item under "Special Revenue Fund- Stormwater Utility" for an amount of \$157,195.00 in the Fiscal Year 2011-2012.

RECOMMENDATION

Approval is recommended.

1
2 **WHEREAS**, the Department of Public Works commenced to seek an alternate contractor
3 to complete the remaining four (4) locations pending drainage construction under the scope of
4 Phase IV drainage improvements; and,
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6 **WHEREAS**, a thorough analysis of the responses received in accordance with Invitation to
7 Bid No. 2011-PW-101 were re-evaluated to determine the second lowest, most inclusive and
8 responsible bid received and publicly opened by the Village on February 4, 2011; and,
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10 **WHEREAS**, it was determined that the bid provided by Maggoc, Inc. was the second
11 lowest, most inclusive and responsible bid, immediately preceding Quality Paving Corp; and,
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13 **WHEREAS**, Maggoc, Inc. provided a base bid in the sum of \$157,195.00 to complete the
14 four (4) locations pending drainage construction under the scope of Phase IV drainage
15 improvements; and,
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17 **WHEREAS**, Maggoc, Inc. has agreed to provide all necessary services and resources to the
18 Village for the completion of Phase IV Drainage Improvements utilizing the same pricing, terms
19 and conditions set forth in their response to Invitation to Bid No. 2011-PW-101 submitted and
20 opened on February 4, 2011 in an amount not to exceed the bid amount of \$157,195.00 for the four
21 (4) remaining locations; and,
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23 **NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE**
24 **COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**
25

26 **Section 1:** The Village Manager is authorized to execute an agreement with Maggoc, Inc. to
27 provide construction services for the completion of Phase IV drainage improvements.
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29 **Section 2:** This resolution shall take effect immediately upon approval.
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32 **PASSED and ADOPTED** this ____ day of June, 2012.
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35 **ATTEST:** _____
36 Meighan Alexander Shelley Stanczyk
37 Village Clerk Mayor
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40 **READ AND APPROVED AS TO FORM:**
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45 Eve Boutsis

1 Village Attorney

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5 **FINAL VOTE AT ADOPTION:**

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7 Council Member Patrick Fiore _____

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9 Council Member Howard J. Tendrich _____

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11 Council Member Joan S. Lindsay _____

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13 Vice-Mayor Brian W. Pariser _____

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15 Mayor Shelley Stanczyk _____

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RESOLUTION NO. 2011-12

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO VILLAGE-WIDE LOCALIZED DRAINAGE IMPROVEMENTS PHASE IV; APPROVING THE SELECTION OF QUALITY PAVING CORP., TO PROVIDE CONSTRUCTION SERVICES FOR DRAINAGE IMPROVEMENTS; AUTHORIZING THE VILLAGE MANAGER TO ISSUE A PURCHASE ORDER AND APPROVE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED \$313,168; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Village administration contracted with Corzo, Castella, Carballo, Thompson, Salman, P.A. (C3TS, P.A.) to provide drainage engineering and planning for the preparation of drainage improvements in the area of SW 75TH Avenue from SW 147 ST to end of cul-de-sac; SW 175TH Street from SW 79 Place to SW 79TH Court; SW 81ST Avenue at SW 144 ST, SW 86 Avenue at SW 150TH Terrace and SW 149TH Terrace; SW 159 Terrace from SW 89TH Avenue to end of cul-de-sac; SW 83RD Place from SW 182ND Terrace to SW 183RD Terrace, SW 182ND Terrace from SW 83RD Avenue to SW 83RD Place, and SW 183RD Terrace from SW 83RD Avenue to SW 83RD Place; SW 85TH Avenue at SW 144TH Street in accordance with the established guidelines and procedures utilized by Miami-Dade County Public Works Department, Florida Department of Transportation and the Department of Environmental Resource Management; and,

WHEREAS, Corzo Castella Carballo Thompson Salman, P.A. (C3TS) evaluated drainage improvements in localized areas with no history of flooding and according to data collection and field evaluations C3TS recommends implementing drainage improvements to reduce localized flooding during severe storm events; and,

WHEREAS, a competitive bid process was followed for construction services for drainage improvements with the issuance of Invitation to Bid No. 2011-PW-101; and,

WHEREAS, after a thorough analysis of the responses, the Village's engineer of record recommended and the Village concurred that Quality Paving, Corp. was the lowest, most inclusive and responsible bid; and,

WHEREAS, the Department of Public Works recommends that it is in the best interest of the Village to establish a contract with Quality Paving, Corp., which submitted the lowest, most inclusive and responsible bid to provide the requested drainage improvements in accordance with Invitation to Bid No. 2011-PW-101; and,

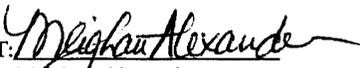
WHEREAS, the Administration is requesting authorization from the Village Council to enter into an agreement with Quality Paving, Corp. to provide construction services for drainage improvements in the areas mentioned above; and,

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

3
4 **Section 1:** The Village Manager is authorized to enter into an agreement with Quality Paving
5 Corp. regarding drainage improvements for the Village of Palmetto Bay in an amount not to exceed
6 \$313,168.

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8 **Section 2:** This resolution shall take effect immediately upon approval.

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11 **PASSED and ADOPTED** this 7th day of March, 2011.

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16 ATTEST: 
17 Meighan Alexander
18 Village Clerk

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Shelley Stanczyk
Mayor

21 **READ AND APPROVED AS TO FORM:**

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Eve Boutsis
Village Attorney

30 **FINAL VOTE AT ADOPTION:**

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|----|-----------------------------------|------------|
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| 32 | Council Member Patrick Fiore | <u>YES</u> |
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| 34 | Council Member Howard J. Tendrich | <u>YES</u> |
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| 36 | Council Member Joan Lindsay | <u>YES</u> |
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| 38 | Vice-Mayor Brian W. Pariser | <u>YES</u> |
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| 40 | Mayor Shelley Stanczyk | <u>YES</u> |
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VILLAGE OF PALMETTO BAY VILLAGEWIDE DRAINAGE IMPROVEMENTS PHASE IV

PROJECT NO.	1632-014
SHEET NO.	C1
DATE	11-15-2010



SCALE 1"=2000'

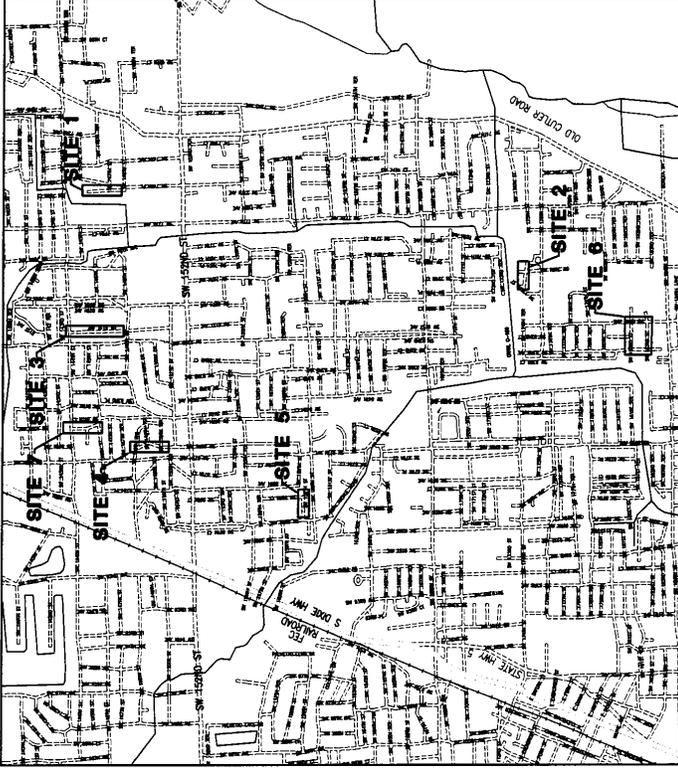


PREPARED FOR:
VILLAGE OF PALMETTO BAY
8950 SW 152nd STREET
PALMETTO BAY, FLORIDA 33157
PHONE (305) 259-1234

NOVEMBER 15, 2010

APPROVED BY:

CARLOS M. HERDOLCA
REGISTERED PROFESSIONAL ENGINEER NO. 47860
STATE OF FLORIDA



INDEX OF SHEETS

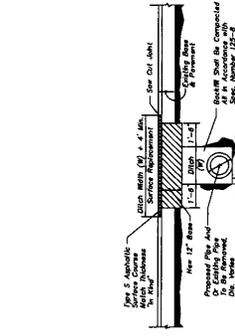
SHEET No.	SHEET DESCRIPTION
C1	COVER SHEET
C2	SITE 1 DRAINAGE PLAN
C3	SITE 2 DRAINAGE PLAN
C4	SITE 3 DRAINAGE PLAN
C5	SITE 4 DRAINAGE PLAN
C6	SITE 5 DRAINAGE PLAN
C7	SITE 6 DRAINAGE PLAN
C8	SITE 7 DRAINAGE PLAN
C9	CONSTRUCTION DETAILS
C10	SUMMARY OF DRAINAGE STRUCTURES


CTS
 ENGINEERS ARCHITECTS PLANNERS
 3030 GABLES, FLORIDA 33134
 (305) 448-2600
 FAX (305) 448-0337
 WWW.CTS-PA.COM

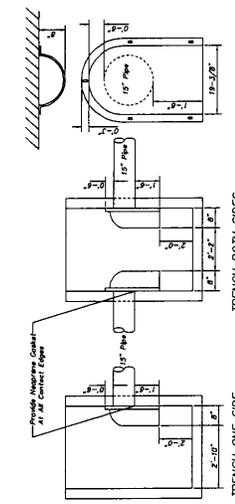
American Consulting
 Engineers Council
 Member
 Reporting Excellence
 in Engineering



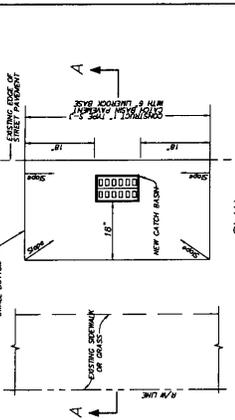
CTS PROJECT NO. 1632-014
CEZO CASTELA CARBALLO THOMPSON SAWAN, P.A.
 ENGINEERS ARCHITECTS PLANNERS
 3030 GABLES, FLORIDA 33134
 (305) 448-2600
 FAX (305) 448-0337
 WWW.CTS-PA.COM



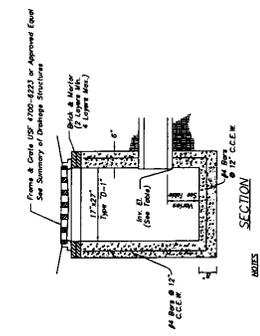
PAVEMENT RESTORATION DETAIL
N.T.S.



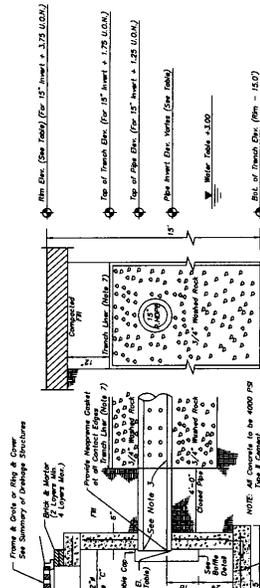
FIBERGLASS BAFFLE DETAIL FOR 15" PIPE
N.T.S.



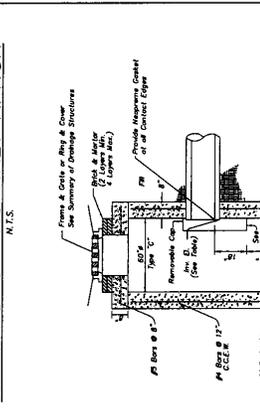
CATCH BASIN ASPHALT APRON
N.T.S.



17"x27" TYPE "D-1" CATCH BASIN DETAIL
N.T.S.



42" TYPE "C" CATCH BASIN AND EXFILTRATION TRENCH DETAIL
N.T.S.



60" TYPE "C" C.C.B. OR M.H. DETAIL
N.T.S.

REVISIONS

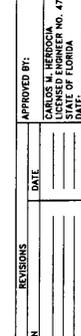
DESCRIPTION	DATE

CONSTRUCTION DETAILS

APPROVED BY: CARLOS M. HERRONIA
STATE OF FLORIDA
DATE: 11/18/10

DATE: 11/18/10
DRAWN: CARLOS M. HERRONIA
CHECKED: CARLOS M. HERRONIA
DATE: 11/18/10
OC: CARLOS M. HERRONIA
CARD FILE: 1332-314

PROJECT NO. 17690
VILLAGE OF PALMETTO BAY IMPROVEMENTS PHASE IV
SHEET NO. C9
110-22910



CARLO CASTILLA CARVALLO THOMPSON SUZMAN P.A.
ENGINEERS ARCHITECTS AND PLANNERS
10000 W. BOCA RATON BLVD., SUITE 600
BOCA RATON, FLORIDA 33433
P. 561.993.8888 F. 561.993.8888
WWW.CASTILLACASTILLA.COM

AGREEMENT ("CONTRACT")

BETWEEN OWNER AND CONTRACTOR

THIS CONTRACT is dated as of the 5 day of April in the year 2011 (which shall be the Effective Date of the Contract) by and between the Village of Palmetto Bay (hereinafter called "OWNER" or "VILLAGE") and Quality Paving Corporation (hereinafter called "CONTRACTOR").

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK. CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Construct various drainage improvements for the Village (Contract No. 2011-PW-101 at seven (7) locations identified in the attached drawings. The Project shall include but not be limited to drainage improvements and site restoration throughout the Project area. All labor, equipment, and materials necessary to construct the improvements described by these Drawings and Project Specifications will be provided by the contractor. Construction of this Project will require close coordination with the Village and Engineer.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

VILLAGE OF PALMETTO BAY (the "Owner" or the "Village")
VILLAGEWIDE DRAINAGE IMPROVEMENTS PHASE IV (the "Project")

Article 2. ENGINEER. The Project has been designed by the following:

ENGINEER

Corzo Castella Carballo Thompson Salman, P.A. (C3TS)
901 Ponce de Leon Blvd., Suite 900
Coral Gables, Florida 33134
Phone: (305) 445-2900

who is hereinafter called "ENGINEER" and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

- 3.1 The Work will be substantially completed within 110 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 140 calendar days after the date when the Contract Time commences to run.
- 3.2. Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Contract and that OWNER will suffer financial loss and other damages if the Work is not substantially or finally complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not substantially or finally complete on time. CONTRACTOR acknowledges and agrees that the actual delay damages which OWNER will suffer in the event of delay in achieving Substantial Completion or Final Completion of the Work are difficult, if not impossible, to determine and that the liquidated damages described herein are a fair and reasonable estimate of the delay damages which the OWNER is expected to suffer in the event of such delay. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree, that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER Five Hundred and 00/100 dollars (\$500.00) for each day that expires after the time specified in Paragraph 3.1 for Substantial Completion until the Work is substantially complete. Liquidated damages shall be deducted from the CONTRACTOR's Final Application for Payment. However, if at the time of the CONTRACTOR's Final Application for Payment, CONTRACTOR is owed insufficient amounts to fully cover the deduction for liquidated damages, then CONTRACTOR shall pay any amount due within 10 days of written demand by OWNER.

Article 4. CONTRACT PRICE.

- 4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents and the Schedule of Values provided for payment request purposes in current funds as follows:

Contract Price	<u>§ 313,168.00</u>
Contract Price (in words)	<u>Three Hundred Thirteen Thousand</u> <u>One Hundred Sixty Eight</u>

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1. Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or before the 28th day of each month during construction as provided below. The Application for Payment shall be in AIA format. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values provided in paragraph 14.01 of the General Conditions and the requirements of the Contract Documents.
 - 5.1.1 Prior to Substantial Completion, progress payments will be in an amount equal to: 90% of the Work completed and 90% of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.
 - 5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions.
- 5.2. Final Payment. Upon Final Completion and acceptance of the Work in accordance with paragraph 14.07.B.1 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.B.1.

Article 6. INTEREST. Not Applicable

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into the Contract, CONTRACTOR makes the following representations:

- 7.1. CONTRACTOR has thoroughly and to its full satisfaction familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work. CONTRACTOR has: (a) examined the Contract Documents, Project Specifications and Drawings thoroughly to its full satisfaction and has undertaken the responsibility to determine, within the scope of CONTRACTOR's competence as a licensed General Contractor, that the Project Specifications and Drawings are fit and proper for the performance of the Work and to the best of CONTRACTOR's knowledge are: (i) free from material errors, omissions, and/or inconsistencies; and (ii) are in compliance with applicable laws, statutes, building codes, ordinances, rules and regulations, recognizing

however, that CONTRACTOR is not responsible for the design of the Project; (b) visited the site to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work; (c) examined the Project Site to its full satisfaction, including any existing work or improvements in place, and has determined that the same are fit and proper to receive the Work in their present condition and CONTRACTOR waives all claims that same are not in accordance with all data and information with respect to the Project as specified in the Drawings and Project Specifications and/or as provided by OWNER and Engineer; (d) familiarized himself with federal, state and local laws, ordinances, rules, policies, and regulations that may in any manner affect cost, progress or performance of the Work; (e) studied and carefully correlated CONTRACTOR's observations with the Contract Documents; and (f) at CONTRACTOR's own expense, made or obtained any additional examinations, investigations, explorations, tests and studies, and obtained any additional information and data which pertain to the physical conditions (surface, sub-surface and underground facilities) at or contiguous to the Project or otherwise which may affect cost, progress, performance or furnishing of the Work and which CONTRACTOR deems necessary to determine its Contract Price for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

- 7.2. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
- 7.4. CONTRACTOR has correlated and considered the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents and in reaching the Contract Price and Contract Time.
- 7.5. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR. CONTRACTOR shall not rely on any conflicts, errors or discrepancies that CONTRACTOR knew or should have known exist in the Contract Documents as a basis for a claim for an extra to the Contract Price or Contract Time.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire Contract between OWNER and CONTRACTOR are attached to this Contract, made a part hereof and consist of the following:

- 8.1. This Contract (pages 1 to 7, inclusive)
- 8.2. Exhibits to this Contract
- 8.3. Performance and Payment Bonds
- 8.4. Notice of Intent to Award
- 8.5. General Conditions (pages 1 to 40, inclusive)
- 8.6. Supplementary Conditions (pages 1 to 16, inclusive, and all Exhibits to the Supplementary Conditions)
- 8.7. Specifications bearing the
Engineer's Project No. 01632-014
- 8.8. Drawings bearing the following general title:
Villagewide Drainage Improvements – Phase IV
- 8.9. Addenda
- 8.10. CONTRACTOR'S BID
- 8.11. Documentation submitted by CONTRACTOR prior to Notice of Intent to Award
- 8.12. Any Modifications, including Change Orders, duly delivered after execution of the Contract.
- 8.13. Advertisement for Bids.
- 8.14. Contractor Affidavit and Partial Release (Appendix A)
- 8.15. Contractor Affidavit and Final Release (Appendix A)
- 8.16. Waiver and Release of Lien Upon Progress Payment (Appendix A)
- 8.17. Waiver and Final Release of Lien (Appendix A)
- 8.18. Project Dispute Resolution Protocol (Appendix A)

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

Article 9. MISCELLANEOUS

- 9.1. Terms used in this Contract which are defined in Article 1 of the General

Conditions shall have the meanings indicated in the General Conditions.

- 9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3. OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4. This Contract may be executed in counterparts.
- 9.5. Should there be any action brought to enforce the terms of this Contract, the prevailing party shall be entitled to recovery of attorney's fees (including paralegal fees) incurred through mediation, arbitration, or the appellate processes.
- 9.6. The OWNER shall retain the ownership of all shop drawings and design drawings once payment therefore is made.
- 9.7. OWNER and CONTRACTOR hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action or proceeding based upon the Contract Documents or arising out of, under, or in connection with the Work or the Project.

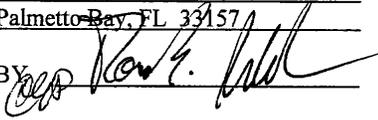
IN WITNESS WHEREOF, the parties hereto have signed 6 copies of this Contract. At least one counterpart each has been delivered to OWNER, CONTRACTOR, and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on OWNER'S behalf.

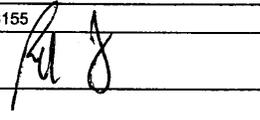
OWNER
Village of Palmetto Bay

CONTRACTOR
Quality Paving Corporation

ADDRESS
9705 E. Hibiscus Street
Palmetto Bay, FL 33157

ADDRESS
7875 SW 40 ST; Suite 229
Miami, FL 33155

BY 

BY 

RON E. WILLIAMS
Print Name
VILLAGE MANAGER
Title

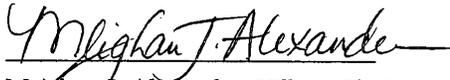
RICHARD GONZALEZ
Print Name
PRESIDENT
Title

WITNESS 

WITNESS 

(CORPORATE SEAL)

(CORPORATE SEAL)


Meighan J. Alexander, Village Clerk


Eve A. Boutsis, Village Attorney

END OF SECTION

NOTICE TO PROCEED

TO: Quality Paving Corporation
Contractor

7875 SW 40 ST ; Suite 229
Street Address

Miami, FL 33155
City

ATTN: Richard Gonzalez, President
Name and Title

PROJECT: Village of Palmetto Bay
Villagewide Drainage Improvements – Phase IV

Gentlemen:

One executed copy of your Contract for the above Project has been forwarded to you through the Engineer. The Commencement date is April 18, 2011. Completion date shall be September 4, 2011.

Your attention is invited to the provision whereby you shall start to perform your obligations under the Contract Documents on the Commencement date. Said date shall begin the Contract Time.

The Engineer in charge of the Work for the Village of Palmetto Bay will be:

Sean Compel, P.E.

Corzo Castella Carballo Thompson Salman, P.A. (C3TS)
901 Ponce de Leon Blvd., Suite 900
Coral Gables, Florida 33134
305-445-2900

Sincerely yours,



Corrice E. Patterson
Public Works Director

END OF SECTION

NP-1

01632-014



VILLAGE OF PALMETTO BAY

August 1, 2011
Richard Gonzalez, President
Quality Paving Corporation
7875 SW 40th Street, Suite 229
Miami, Florida 33155

Sub: Termination of Construction Services under Contract No. 2011-PW-101

Dear Mr. Gonzalez,

Quality Paving was issued a Notice to Proceed on Monday, April 18th 2011 for Contract No. 2011-PW-101. The construction work to be performed as shown, described, and detailed within the Drainage Improvements Phase IV contract document, project plans and specifications included the installation of exfiltration trenches, drainage structures, connection to existing systems, and associated restoration at seven (7) locations within the Village. The entire scope of this project was to be substantially complete within 110 days, more specific, August 5, 2011 and final completion 30 days thereafter, more specifically, September 4, 2011.

The Village of Palmetto Bay has determined that it is in the Villages best interest to terminate this contract pursuant to Section 0700 Standard General Conditions of the Construction Contract, and Article 15.02(A) (B) and (C) of the construction contract, entitled "Owner May Terminate for Cause." Quality Paving's persistent failure to perform work in compliance with the contract documents is cause for the Village to terminate subject contract. Quality Paving failed to remove materials or to perform work that has been rejected as defective or unsuitable by the Villages engineer of record. In the past 30 days, the speed of the work on construction site #2, #6 and #1 has been declining, until it came to a standstill on July 13, 2011. We informed you about the outstanding issues, and have sent you numerous notices but you failed to proceed expeditiously and without delay despite written notices. Deficient work was noted at several site meetings attended by Quality Paving, C3TS and the Village (see attachments).

Quality Paving Corp. is directed to immediately stop all work, terminate subcontracts, and place no further orders. Quality Paving will be paid for allowable costs incurred up to the termination. The Village will not be liable for payment to the Contractor related to the terminated portion of the work or any work performed or costs incurred by Contractor after the effective date of termination. Any acceptance by the Village of Palmetto Bay of delinquent goods or services will be solely for the purpose of mitigating damages, and it is

9705 East Hibiscus Street, Palmetto Bay, FL 33157
Tel: (305) 250-1224 ♦ www.palmettobay-fl.gov

not the intention of the Village to disregard any delinquency or waive any rights the Village has under the contract.

This contract is hereby terminated, in whole, effective within seven (7) days after receipt of written notice of the intent to terminate.

Sincerely,



Corrice E. Patterson
Public Works Director

Cc: Ron E. Williams, Village Manager
Eve Boutsis, Village Attorney
Sean Compel, P.E., C3TS
Charles D. Nielson, Berkley Regional Insurance Company

Attachments

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.

OFFICIAL USE

7009 2820 0001 8717 9339

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)	08-04-11P03:07 CFMD	
Total Postage & Fees	\$	

Sent To
 Richard Gonzalez, Quality Paving Corp
 Street, Apt. No. or PO Box No. 7875 SW 40 St Ste 229
 City, State ZIP+4 Miami, FL 33155
 PS Form 3800, August 2006 See Reverse for Instructions

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Print Name) <i>RG</i> C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p>Richard Gonzalez, President Quality Paving Corp 7875 SW 40 St; Ste 229 Miami, FL 33155</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7009 2820 0001 8717 9339</p>
<p>PS Form 3811, February 2004</p>	<p>Domestic Return Receipt 102595-02-M-1540</p>

14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

→ 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this

Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the

MAGGOLC INC.

ENGINEERING CONTRACTOR - LIC: E-251302
11020 SW 55 ST., MIAMI, FL 33165
PHONE: 786-291-2949 FAX: 786-472-8831
maggolc@yahoo.com

Miami, May 22, 2012

Village of Palmetto Bay
9705 E. Hibiscus Street
Palmetto Bay, FL 33157

Maggolc Inc. will construct the four (4) remaining Drainage Improvements Sites, under the scope of Phase IV Drainage Improvement. The Contractor will also honor the prices, terms and conditions based on the response to Invitation to Bid No. 2011-PW-101 provided by Maggolc Inc. in an amount not to exceed the bid amount of \$ 157,195.00 for three four (4) locations.

Remaining sites are as follow:

- SW 81 Ave at SW 144 Street
- SW 86 Ave at SW 150 Terrace and SW 149 Terrace
- SW 159 Terr from SW 89 Ave to end
- SW 85 Ave at SW 144 Street

Sincerely,



Mario Gonzalez
Maggolc Inc/ President



To: Honorable Mayor and Village Council

Date: May 29, 2012

From: Ron E. Williams, Village Manager

Re: Committee of the Whole
Meeting dates

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO COUNCIL MEETING PROCEDURES; ANNOUNCING THE MEETING SCHEDULE OF COMMITTEE OF THE WHOLE WORKSHOPS FOR THE YEAR 2012; PROVIDING AN EFFECTIVE DATE. (Sponsored by Mayor Shelley Stanczyk)

BACKGROUND AND ANALYSIS:

This item is sponsored by Mayor Shelley Stanczyk. She has requested the Clerk to draft this Resolution in order to establish set dates and procedures concerning the Committee of the Whole meetings.

FISCAL/BUDGETARY IMPACT: No additional costs are involved.

RECOMMENDATION: Council direction.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO COUNCIL MEETING PROCEDURES; ANNOUNCING THE MEETING SCHEDULE OF COMMITTEE OF THE WHOLE WORKSHOPS FOR THE YEAR 2012; PROVIDING AN EFFECTIVE DATE. (Sponsored by Mayor Shelley Stanczyk)

WHEREAS, the Mayor and Village Council of the Village of Palmetto Bay desires to announce the 2012 schedule for the Village of Palmetto Bay Committee of the Whole Workshops; and

WHEREAS, the Council shall utilize the Village Hall Council Chambers, 9705 E. Hibiscus Street, to hold its meetings.

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

Section 1. The purpose of a Committee of the Whole Meeting is defined in the Village's ordinances, as follows:

Committee of the whole: The council may refer a matter or a motion to a committee of the whole to investigate, evaluate, report and make recommendations to the council.

Section 2. In order to allow for the proper preparation of a Committee of the Whole meeting, members of the Village Council shall provide their subject matters to the Village Manager no later than five days prior to the set meeting. A copy of the Agenda shall be provided to the Council no later than three days prior to the meeting. Agenda items not timely provided shall not be placed on the Agenda.

Village staff shall publish the Agenda electronically by the close of business following the day the Village Council receives the Agenda. Additionally, the Committee of the Whole meetings shall be broadcast and live-streamed.

Section 3. The dates for the Committee of the Whole Workshops for the year 2012, to be held at the Village Hall Council Chambers, 9705 East Hibiscus Street, Palmetto Bay at 7:00 p.m., are as follows:

- | | |
|--------------------|-------------------|
| June 13, 2012 | July 18, 2012 |
| September 19, 2012 | October 10, 2012 |
| November 14, 2012 | December 12, 2012 |

Section 4. This resolution shall take effect immediately upon approval.

PASSED and **ADOPTED** this ____ day of June, 2012.

ATTEST: _____
Meighan Alexander
Village Clerk

Shelley Stanczyk
Mayor

READ AND APPROVED AS TO FORM:

Eve Boutsis
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore _____

Council Member Howard J. Tendrich _____

Council Member Joan S. Lindsay _____

Vice-Mayor Brian W. Pariser _____

Mayor Shelley Stanczyk _____

Weiss Serota Helfman Pastoriza
Cole & Boniske, P.L.

Memo

To: Steven Alexander, Town Manager
From: Chad S. Friedman, Town Attorney
Date: May 29, 2012
Re: Amended & Restated Interlocal Agreement Relating to Green Corridor
Property Assessed Clean Energy (PACE) District (the "District")

I. Introduction.

During the approval process for the initial Interlocal Agreement, which established the District, several municipalities raised concerns that municipalities within the District would be required to: (1) execute financing agreements; and (2) levy the non ad valorem special assessments. When discussing this concern with the municipalities involved, the Town of Cutler Bay staff committed to proposing a legislative amendment to Section 163.08, Florida Statutes, which would eliminate this concern. Following through with this commitment, the Town's lobbyist filed an amendment to House Bill 7117 (the "HB 7117"), which would allow for the District, instead of the municipalities within the District, to execute the financing agreements and levy the non ad valorem special assessments.

Fortunately, the Florida Legislature passed HB 7117 on the last day of the legislative session and the Governor allowed for the bill to go into law on April 14, 2012. It was this change in the law that was the impetus for the changes to the Interlocal Agreement. After it was decided that a change in the Interlocal Agreement was necessary, we decided to review the Agreement in its entirety in order to provide further clarifications within the agreement. You have asked us to provide a summary of the amendments made to the Interlocal Agreement. Per your request, below is a summary of the relevant changes.

II. Summary of Changes.

- A. Financing Agreements and Special Assessments. As a result of the change in state law, the Interlocal Agreement was amended to reflect that the District will

sign the financing agreements and levy the special assessments instead of the municipalities involved.

- B. Board Appointments. The individuals eligible to serve on the District Board has been expanded to include any property owner instead of just elected officials. In addition, it was clarified that the District Board can be expanded beyond seven people if so desired by the Board. Furthermore, to provide flexibility, the at large member may be appointed by the Board at anytime instead of at the first meeting.
- C. Third Party Administrator. The Interlocal Agreement was updated to clarify that the Town had selected Ygrene as the Third Party Administrator through a public procurement process.
- D. District Staff & Attorney. It was clarified that if the District decides not to utilize the Town Manager and Town Attorney after the initial 2 years, that the Town would not pay for the costs and expenses of the new staff and attorney.
- E. District Liability. The Interlocal Agreement was further clarified that the municipalities would not be responsible for the liabilities of the District. In addition, it was clarified that entering into this Interlocal Agreement did not waive sovereign immunity.
- F. Indemnification. Although clearly stated in the Third Party Administrator agreement, the Interlocal Agreement was amended to acknowledge that the Third Party Administrator's indemnification of the District also extended to the member municipalities. It was also expressly provided that the Third Party Administrator regardless of who it is shall always indemnify the District and the municipalities within.
- G. Third Party Beneficiaries & Recordation. It was clarified that there are no third party beneficiaries to the Interlocal Agreement and that the Agreement will be effective upon recordation.

III. Conclusion.

If you have any questions or concerns about these changes please feel free to contact me.

1 WHEREAS, the original Interlocal Agreement clarified the various obligations for future
2 cooperation between all the municipalities participating in the District program, including financing
3 of qualifying improvements within the district; and,
4

5 WHEREAS, since execution of the original Interlocal Agreement, due to concerns raised by
6 potential members of the district, Cutler Bay proposed a legislative amendment to Section 163.08,
7 Florida Statutes, which would eliminate the concern relating to executing financing agreements; and
8 the levy the non ad valorem special assessments; and,
9

10 WHEREAS, following through with this commitment, the Town of Cutler Bay's lobbyist
11 filed an amendment to House Bill 7117 (the "HB 7117"), which would allow for the District, instead
12 of the municipalities within the District, to execute the financing agreements and levy the non ad
13 valorem special assessments; and,
14

15 WHEREAS, the Florida Legislature passed HB 7117 on the last day of the legislative session
16 and the Governor allowed for the bill to go into law on April 14, 2012, and as such, this change in
17 the law is impetus for the changes to the Interlocal Agreement; and,
18

19 WHEREAS, based upon the changes in state law, the proposed amended interlocal contains
20 the following proposed modifications:
21

- 22 A. Financing Agreements and Special Assessments. As a result of the change in state law, the
23 Interlocal Agreement was amended to reflect that the District will sign the financing
24 agreements and levy the special assessments instead of the municipalities involved.
25
- 26 B. Board Appointments. The individuals eligible to serve on the District Board has been
27 expanded to include any property owner instead of just elected officials. In addition, it was
28 clarified that the District Board can be expanded beyond seven people if so desired by the
29 Board. Furthermore, to provide flexibility, the at large member may be appointed by the
30 Board at anytime instead of at the first meeting.
31
- 32 C. Third Party Administrator. The Interlocal Agreement was updated to clarify that the Town
33 had selected Ygrene as the Third Party Administrator through a public procurement process.
34
- 35 D. District Staff & Attorney. It was clarified that if the District decides not to utilize the Town
36 Manager and Town Attorney after the initial 2 years, that the Town would not pay for the
37 costs and expenses of the new staff and attorney.
38
- 39 E. District Liability. The Interlocal Agreement was further clarified that the municipalities
40 would not be responsible for the liabilities of the District. In addition, it was clarified that
41 entering into this Interlocal Agreement did not waive sovereign immunity.
42
- 43 F. Indemnification. Although clearly stated in the Third Party Administrator agreement, the
44 Interlocal Agreement was amended to acknowledge that the Third Party Administrator's
45 indemnification of the District also extended to the member municipalities. It was also

1 expressly provided that the Third Party Administrator regardless of who it is shall always
2 indemnify the District and the municipalities within.

3
4 G. Third Party Beneficiaries & Recordation. It was clarified that there are no third party
5 beneficiaries to the Interlocal Agreement and that the Agreement will be effective upon
6 recordation.

7
8 and,

9
10 WHEREAS, pursuant to Village Ordinance 17-1.(i), the Village is entitled to adopt
11 amendments to the underlying interlocal agreement by resolution; and,

12
13 WHEREAS, the Village of Palmetto Bay desires to execute the attached Amended Interlocal
14 Agreement and supports the establishment of the District.

15
16
17 NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE
18 COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

19
20 Section 1. The Above Whereas Clauses are incorporated by reference.

21
22 Section 2. The Village of Palmetto Bay authorizes the execution of the attached
23 Amended Interlocal Agreement.

24
25 Section 3. This resolution shall take effect immediately upon approval.

26
27 PASSED and ADOPTED this ____ day of June, 2012.

28
29
30 Attest: _____
31 Meighan Alexander Shelley Stanczyk
32 Village Clerk Mayor

33
34
35 APPROVED AS TO FORM:

36
37 _____
38 Eve A. Boutsis
39 Village Attorney

40
41 FINAL VOTE AT ADOPTION:

42
43
44 Council Member Patrick Fiore _____
45
46 Council Member Howard Tendrich _____

1
2 Council Member Joan Lindsay _____
3
4 Vice-Mayor Brian W. Pariser _____
5
6 Mayor Shelley Stanczyk _____
7

**AMENDED AND RESTATED
INTERLOCAL AGREEMENT BETWEEN THE TOWN OF
CUTLER BAY, VILLAGE OF PALMETTO BAY, VILLAGE OF
PINECREST, CITY OF SOUTH MIAMI, MIAMI SHORES VILLAGE, & CITY OF MIAMI**

This Amended and Restated Interlocal Agreement (the "Interlocal Agreement") is entered into between the Town of Cutler Bay, Florida, a Florida municipal corporation; Village of Palmetto Bay, Florida, a Florida municipal corporation; Village of Pinecrest, a Florida municipal corporation; City of South Miami, a Florida municipal corporation; Miami Shores Village, a Florida municipal corporation; and the City of Miami, a Florida municipal corporation (Collectively, the "Parties").

RECITALS

WHEREAS, Section 163.01, Florida Statutes, the "Florida Interlocal Cooperation Act of 1969," authorizes local government units to enter into interlocal agreements for the mutual benefit of governmental units; and

WHEREAS, Section 163.01 (7), Florida Statutes, allows for the creation of a "separate legal entity" constituted pursuant to the terms of the interlocal agreement to carry out the purposes of the interlocal agreement for the mutual benefit of the governmental units; and

WHEREAS, the Parties desire to enter into an interlocal agreement creating a separate legal entity entitled the Green Corridor Property Assessment Clean Energy (PACE) District, hereinafter referred to as the "District;" and

WHEREAS, Section 166.021, Florida Statutes, authorizes the Parties to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Section 163.08, Florida Statutes, provides that a "local government," defined as a county, municipality, a dependent special district as defined in Section 189.403, Florida Statutes, or a separate legal entity created pursuant to Section 163.01(7), Florida Statutes may finance energy related "qualifying improvements" through voluntary assessments; and

WHEREAS, Section 163.08, Florida Statutes, provides that improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption and assists in the fulfillment of the state's energy and hurricane mitigation policies; and

WHEREAS, Section 163.08(5), Florida Statutes, provides that local governments may enter into a partnership with one or more local governments for the purpose of providing and financing qualifying improvements; and

WHEREAS, the Parties to this Interlocal Agreement have expressed a desire to enter into this Interlocal Agreement in order to authorize the establishment of the District as a means of implementing and financing a qualifying improvements program within the District; and

WHEREAS, the Parties have determined that it is necessary and appropriate to create the District and to clarify various obligations for future cooperation between the Parties related to the financing of qualifying improvements within the District; and

WHEREAS, the Parties agree and understand that each member of the District will have complete control over the administration, governance, and implementation of their own PACE program, which includes, but is not limited to, the ability to review and approve program documents, marketing strategies, and determining eligible property types and improvements; and

WHEREAS, the Parties have determined that it shall serve the public interest to enter into this Interlocal Agreement to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage to provide for the financing of qualifying improvements within the District.

NOW, THEREFORE, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree as follows:

Section 1. Recitals Incorporated. The above recitals are true and correct and incorporated herein.

Section 2. Purpose. The purpose of this Interlocal Agreement is to consent to and authorize the creation of the District, pursuant to Section 163.08, Florida Statutes in order to facilitate the financing of qualifying improvements for property owners within the District. The District shall be a separate legal entity, pursuant to Section 163.01(7), Florida Statutes.

Section 3. Qualifying Improvements. The District shall allow the financing of qualifying improvements as defined in Section 163.08, Florida Statutes.

Section 4. Enabling Ordinance or Resolution. The Parties to this Interlocal Agreement agree to approve and keep in effect such resolutions and ordinances as may be necessary to approve, create and maintain the District. Said ordinances and resolutions shall include all of the provisions as provided for in Sections 163.01 and 163.08, Florida Statutes, for the creation of a partnership between local governments as a separate legal entity. The District shall be created upon the execution of this Interlocal Agreement by the Parties hereto and the adoption of an ordinance or resolution of support by the Parties establishing the District. Additional local governments may join in and enter into this Interlocal Agreement by approval of the Board (as defined in Section 6 below), execution of this Interlocal Agreement and adoption of an ordinance or resolution of support establishing the District.

Section 5. District Boundaries. The boundaries of the District shall be the legal boundaries of the local governments that are Parties to this Interlocal Agreement. As contemplated in this Interlocal Agreement, the District will levy voluntary assessments on the benefitted properties within the boundaries of the District to help finance the costs of qualifying improvements for those individual properties. Upon petition by the landowners of individual properties desiring to be benefitted, those properties receiving financing for qualifying improvements shall be assessed from time to time, in accordance with the applicable law. Notwithstanding a Parties termination of participation within this Interlocal Agreement, those properties that have received financing for qualifying improvements shall continue to be a part of the District, until such time that all outstanding debt has been satisfied.

Section 6. Governing Board of the District. The District shall be governed by a governing board (the "Board,") which shall be comprised of property owners within the jurisdictional boundaries of the Parties to this Interlocal Agreement and one at large property owner from within the District. The maximum number of members of the Board serving at any given time shall be no more than seven (7) and the minimum number of members shall be not less than three (3). Notwithstanding the foregoing, the maximum number of members on the Board may be increased by a majority vote of the Board. The initial Board shall serve for an initial four (4) year term and shall consist of one (1) representative appointed by each Party from within their jurisdictional boundaries. The initial at large member of the Board shall be appointed by a majority vote of the Board. All subsequent renewal terms shall be for four (4) years. Following the initial Board appointments, the Parties to this Interlocal Agreement shall nominate appointees to be elected to the Board by current sitting Board members. In the event a Board member is no longer eligible to serve on the Board, that Party to this Interlocal Agreement shall appoint a replacement to fulfill the remaining term of that member. The Board's administrative duties shall include all duties necessary for the conduct of the Board's business and the exercise of the powers of the District as provided in Section 11.

Section 7. Decisions of the Board. Decisions of the Board shall be made by majority vote of the Board. The Board may adopt rules of procedure. In the absence of the adoption of such rules of procedure, the fundamental parliamentary procedures of Roberts Rules of Order shall apply.

Section 8. District Staff and Attorney. The Town Manager of Cutler Bay shall serve as the staff to the District. In addition, the Town Attorney for Cutler Bay shall serve as the counsel to the District. To the extent not paid by the Third Party Administrator of the District (the "TPA"), all of the District's staff and attorney expenses shall be borne by the Town of Cutler Bay. After the District has been operating for two years, the Board may choose to hire different District staff and/or Attorney. If the Board chooses to hire different District staff and/or Attorney, the Town of Cutler Bay will no longer pay for the staff and/or attorney expenses to the extent they are not paid by the TPA.

Section 9. Financing Agreement. The Parties agree that the District shall enter into a financing agreement, pursuant to Section 163.08(8), Florida Statutes, with property owner(s) who obtain financing through the District.

Section 10. Procurement. The Parties agree and understand that the initial procurement for the TPA for the District was performed by the Town of Cutler Bay in accordance with its adopted competitive procurement procedures (Request for Proposal 10-05). The Parties further agree and understand that the Town of Cutler Bay has selected Ygrene Energy Fund, Florida, LLC (the "Ygrene") as the initial TPA. The Town of Cutler Bay, on the behalf of the District, has entered into an Agreement between the Town of Cutler Bay and Ygrene, dated August 16, 2011, which was assigned to the District.

Section 11. Powers of the District. The District shall exercise any or all of the powers granted under Sections 163.01 and 163.08, Florida Statutes, as may be amended from time to time, which include, without limitation, the following:

- a. To finance qualifying improvements within the District boundaries;
- b. In its own name to make and enter into contracts;
- c. To employ agencies, employees, or consultants;
- d. To acquire, construct, manage, maintain, or operate buildings, works, or improvements;
- e. To acquire, hold, or dispose of property;
- f. To incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the Parties to this Interlocal Agreement;
- g. To adopt resolutions and policies prescribing the powers, duties, and functions of the officers of the District, the conduct of the business of the District, and the maintenance of records and documents of the District;
- h. To maintain an office at such place or places as it may designate within the District or within the boundaries of a Party to this Interlocal Agreement;
- i. To cooperate with or contract with other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by Section 163.08, Florida Statutes, and to accept funding from local and state agencies;
- j. To exercise all powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized in Section 163.08, Florida Statutes; and

- k. To apply for, request, receive and accept gifts, grants, or assistance funds from any lawful source to support any activity authorized under this Agreement.

Section 12. Quarterly Reports. A quarterly report of the District shall be completed in accordance with generally accepted Government Auditing Standards by an independent certified public accountant. At a minimum, the quarterly report shall include a balance sheet, statement of revenues, expenditures and changes in fund equity and combining statements prepared in accordance with generally accepted accounting principles. All records such as, but not limited to, construction, financial, correspondence, instructions, memoranda, bid estimate sheets, proposal documentation, back charge documentation, canceled checks, reports and other related records produced and maintained by the District, its employees and consultants shall be deemed public records, and shall be made available for audit, review or copying by a Party to this Interlocal Agreement upon reasonable notice.

Section 13. Term. This Interlocal Agreement shall remain in full force and effect from the date of its execution; provided, however, that any Party may terminate its involvement in the District and its participation in this Interlocal Agreement upon ten (10) days' written notice to the other Parties. Should a Party terminate its participation in this Interlocal Agreement, be dissolved, abolished, or otherwise cease to exist, the District and this Interlocal Agreement shall continue until such time as all remaining Parties agree to terminate.

Section 14. Consent. This Interlocal Agreement and any required resolution or ordinance of an individual Party shall be considered the Parties' consent to the creation of the District as required by Sections 163.01 and 163.08, Florida Statutes.

Section 15. Liability. The Parties hereto shall each be individually and separately liable and responsible for the actions of its own officers, agents and employees in the performance of their respective obligations under this Interlocal Agreement. Except as specified herein, the Parties shall each individually defend any action or proceeding brought against their respective agency pursuant to this Interlocal Agreement and shall be individually responsible for all of their respective costs, attorneys' fees, expenses and liabilities incurred as a result of any such claims, demands, suits, actions, damages and causes of action, including the investigation or the defense thereof, and from and against any orders, judgments or decrees which may be entered as a result thereof. The Parties shall each individually maintain throughout the term of this Interlocal Agreement any and all applicable insurance coverage required by Florida law for governmental entities. Nothing in this Agreement shall be construed to affect in any way the Parties' rights, privileges, and immunities, including the monetary limitations of liability set forth therein, under the doctrine of "sovereign immunity" and as set forth in Section 768.28 of the Florida Statutes.

Section 16. Indemnification. The Parties agree that the TPA for the District shall always indemnify and hold harmless the Parties and the District. The Parties understand and acknowledge that the indemnification provisions included in Section 11

"Indemnification" of the Agreement between the Town of Cutler Bay and Ygrene, dated August 16, 2011, which will be assigned to the District, extend to all of the members of the District.

Section 17. Notices. Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or it must be given by written certified U.S. mail, with return receipt requested, addressed to the Party for whom it is intended, at the place specified. For the present, the Parties designate the following as the respective places for notice purposes:

If to Cutler Bay: Town Manager
 Town of Cutler Bay
 10720 Caribbean Boulevard, Suite 105
 Town of Cutler Bay, Florida 33189

With a Copy to: Weiss Serota Helfman
 Pastoriza Cole & Boniske, P.L.
 2525 Ponce de Leon Boulevard
 Suite 700
 Coral Gables, Florida 33134

Section 18. Amendments. It is further agreed that no modification, amendment or alteration in the terms or conditions herein shall be effective unless contained in a written document executed by the Parties hereto and the District.

Section 19. Filing. It is agreed that this Interlocal Agreement shall be filed with the Clerk of the Circuit Court of Miami-Dade County, as required by Section 163.01(11), Florida Statutes.

Section 20. Joint Effort. The preparation of this Interlocal Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

Section 21. Merger. This Interlocal Agreement incorporates and includes all prior negotiations, correspondence, agreements or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Interlocal Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by all Parties to this Interlocal Agreement.

Section 22. Assignment. The respective obligations of the Parties set forth in this Interlocal Agreement shall not be assigned, in whole or in part, without the written consent of the other Parties hereto.

Section 23. Records. The Parties shall each maintain their own respective records and documents associated with this Interlocal Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.

Section 24. Governing Law and Venue. This Interlocal Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Venue for any claim, objection or dispute arising out of the terms of this Interlocal Agreement shall be proper exclusively in Miami-Dade County, Florida.

Section 25. Severability. In the event a portion of this Interlocal Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

Section 26. Third Party Beneficiaries. This Interlocal Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in the Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Parties any right, remedy, or claims under or by reason of this Interlocal Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Parties.

Section 27. Effective Date. This Interlocal Agreement shall become effective upon the execution by the Parties hereto and recordation in the public records of the applicable county.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Interlocal Agreement on this ____ day of _____, 2012.

ATTEST:

TOWN OF CUTLER BAY, a municipal corporation of the State of Florida

BY: _____
Town Clerk

BY: _____
Town Manager

(Affix Town Seal)

Approved by Town Attorney
as to form and legal sufficiency

Town Attorney