

RESOLUTION NO. 2014-46

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO INVITATION TO BID 1314-11-005 VILLAGE-WIDE TREE INVENTORY; AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO AN AGREEMENT WITH E. SCIENCES, INC., TO PROVIDE VILLAGE-WIDE TREE INVENTORY SERVICES IN ACCORDANCE WITH THE URBAN AND COMMUNITY FORESTRY GRANT MEMORANDUM OF AGREEMENT; IN AN AMOUNT NOT TO EXCEED \$38,556.00; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Department of Public Works recommended that it is in the best interest of the Village to establish a contract with E. Sciences, Inc., the second lowest bidder that submitted the most responsive and responsible bid to provide Village-wide tree inventory services; and

WHEREAS, A competitive bid process was followed to identify a consultant that specializes in the development of street tree inventory master plan with the issuance of Request for Proposal No. 1314-11-005; and

WHEREAS, members of the Village's Tree Advisory Board evaluated and made recommendations regarding RFP No.1314-11-005 proposal submittals; and

WHEREAS, as a result of the selection committee's evaluation of each proposal, E. Sciences, Inc., the highest ranking firm was recommended for approval; and

WHEREAS, the administration requested, and the Village Council approved via Resolution No. 2014-42, that the Administration negotiate a contract agreement with E. Sciences, Inc. for the provision of Village-wide Tree Inventory Services in an amount not to exceed \$38,556; and

WHEREAS, the subject negotiations as authorized via Resolution No. 2014-42 resulted in agreement of a governing contract in an amount of \$38,556; and

WHEREAS, the Mayor and Village Council are recommended by the Village Manager to approve the contract with E. Sciences, Inc., for Village-wide Tree Inventory Services as specified in RFP No.1314-11-005 in an amount not to exceed \$38,556 pursuant to the terms and conditions provided in the contract as negotiated; and

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 hereby authorized to enter into an agreement with E. Sciences, Inc. pursuant to the terms and conditions provided in the contract, attached as Exhibit A, in an amount not to exceed \$38,556 for Village-wide Tree Inventory Services.

Section 2. This Resolution shall become effective immediately.

PASSED AND ADOPTED this 2nd day of June, 2014.

Attest: 
Meighan J. Alexander
Village Clerk


Shelley Stanczyk
Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE VILLAGE OF PALMETTO BAY, FLORIDA ONLY:


Dexter W. Lehtinen
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore	<u>Absent</u>
Council Member Tim Schaffer	<u>YES</u>
Council Member Joan Lindsay	<u>YES</u>
Vice-Mayor John DuBois	<u>YES</u>
Mayor Shelley Stanczyk	<u>YES</u>

RESOLUTION NO. 2014-42

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO INVITATION TO BID 1314-11-005 VILLAGE-WIDE TREE INVENTORY; APPROVING THE SELECTION OF E. SCIENCES, INC., AS THE MOST RESPONSIVE BIDDER TO PROVIDE VILLAGE-WIDE TREE INVENTORY SERVICES IN ACCORDANCE WITH THE URBAN AND COMMUNITY FORESTRY GRANT MEMORANDUM OF AGREEMENT; AND FURTHER AUTHORIZING THE VILLAGE MANAGER TO ISSUE A PURCHASE ORDER AND APPROVE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED \$38,556.00; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council approved Resolution No. 2013-29 authorizing the Department of Public Works to submit an application for an Urban Community Forestry Grant in an amount not to exceed \$20,000; and

WHEREAS, the Urban and Community Forestry (U&CF) grant funds provided through the USDA Forest Service are administered in each of the fifty states through the Office of the State Forester, and these funds are nationally authorized by the 1995 Farm Bill; and

WHEREAS, 50/50 match is required (50% grant/50% applicant); and

WHEREAS, the Department of Public Works allocates \$50,000 on a yearly basis for the Village's forestry program in order to comply with the Tree City USA recognition requirements; therefore no additional allocation of funds is necessary for the Village's 50% match requirement;

WHEREAS, the application as submitted was selected and awarded a grant in the amount of \$15,000 funded through the Urban and Community Forestry Grant Program; and

WHEREAS, this grant in an amount of \$15,000, with the Village's \$15,000 match, will fund the development of a local tree inventory/hazardous tree inventory on nonfederal public properties (includes parks, right-of-ways and preserves); and

WHEREAS, the Village-wide inventory will result in a complete survey of all trees on Village owned public right-of-way, at Village facilities, and in Village Parks; and

WHEREAS, this information will make known the location, age, and condition of each street tree species; provide guidelines for where new street tree planting can be implemented, provide a work program that is more efficient and cost effective to manage and maintain that are healthy, and assist in the preparation for and recovery after storm events; and

WHEREAS, A competitive bid process was followed to identify a consultant that specializes in the development of street tree inventory master plan with the issuance of Request for Proposal No. 1314-11-005; and

WHEREAS, the bid was advertised in the Daily Business Review on February 14th, 2014;
and

WHEREAS, Village-wide Tree Inventory Services proposals were received and opened
and read aloud at a public meeting on March 18th, 2014 with two (2) contractors submitting a bid;
and

WHEREAS, members of the Village's Tree Advisory Board were selected to evaluate
and make recommendations regarding RFP No.1314-11-005 proposal submittals; and

WHEREAS, the selection committee individually evaluated the bid packages and
summarized the submittals based on pricing, qualifications, methodology/approach, and
references; and

WHEREAS, as a result of the selection committee's evaluation of each proposal, E.
Sciences, Inc., the highest ranking firm in accordance with the attached evaluation tabulation, is
being recommended for approval; and

WHEREAS, the selection committee recommended and the Village concurs with the
recommendation to award a contract to E. Sciences, Inc., the second lowest bidder, as they
submitted the most responsive and responsible bid, to provide Village-wide Tree Inventory
services in accordance with RFP No.1314-11-005 in an amount not to exceed \$38,556; and

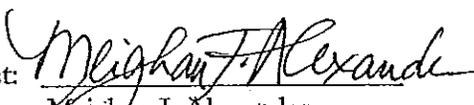
**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE
COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**

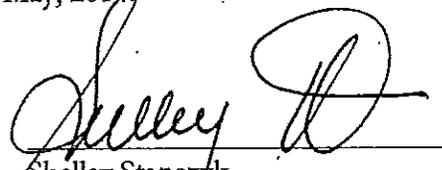
Section 1. The Village Manager is to negotiate a contract agreement with E.
Sciences, Inc. to provide Village-wide Tree Inventory Services in an amount not to exceed
\$38,556.

Section 2. This Resolution shall become effective immediately.

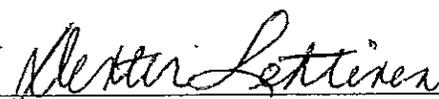
PASSED AND ADOPTED this 5th day of May, 2014.

Attest:


Meighan J. Alexander
Village Clerk


Shelley Stanczyk
Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE VILLAGE OF PALMETTO BAY, FLORIDA ONLY:


Dexter W. Lehtinen
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore YES

Council Member Tim Schaffer YES

Council Member Joan Lindsay YES

Vice-Mayor John DuBois YES

Mayor Shelley Stanczyk YES

SECTION 10.0: Exhibits

Exhibit A

VILLAGE OF PALMETTO BAY

VILLAGE-WIDE TREE INVENTORY & GPS SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2014, by and between the Village of Palmetto Bay, a Florida municipal corporation (hereinafter referred to as "Village"), and E. Sciences Inc., authorized to do business in the State of Florida, (hereinafter referred to as "Consultant" and jointly referred to as the Parties.

WITNESSETH:

WHEREAS, the Village advertised a Request for Proposals ("RFP") on 1314-11-005, and

WHEREAS, Consultant submitted a Proposal dated February 14th, 2014 in response to the Village's request, and

WHEREAS, at a meeting held on May 5th, 2014, the Village Council awarded the Consultant and agreed to enter into an Agreement with Consultant to perform the services described in the RFP and Consultant's Proposal submitted in response to the RFP ("Services"),

NOW THEREFORE, in consideration of the promises and the mutual covenants herein named, the parties hereto agree as follows:

Article 1 Incorporation by Reference.

The following documents are hereby incorporated by reference and made part of this Agreement.

- (i) Specifications and Proposal Documents prepared by the Village for Village-wide Tree Inventory RFP No. 1314-11-005 (Exhibit 1).
- (ii) Proposal for the Village of Palmetto Bay prepared by Consultant dated February 14th, 2014. (Exhibit 2).

All exhibits may also be collectively referred to as the "Documents". In the event of any conflict between the Documents or any ambiguity or missing specifications or instructions, the following priority is established:

- A. This Agreement
- B. Exhibit 1
- C. Exhibit 2

Article 2 Scope of Work

A. Consultant agrees to provide the Services (hereinafter inclusively referred to as the "Services") as specifically described, and under the terms and conditions set forth in Exhibit 1 and Exhibit 2.

B. Consultant represents and warrants to the Village that: (i) it possesses all qualifications, licenses and expertise required for the performance of the Services: (ii) it is not delinquent in the payment of any sums due the Village: (iii) all personnel assigned to perform the Services are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each: and (iv) the Services will be performed in the manner described in Exhibit 1.

Article 3 Qualifications

Consultant and the individual executing this Agreement on behalf of the Consultant warrant to the Village that the Consultant is a Florida corporation duly constituted and authorized to do business in the State of Florida, is in good standing and that Consultant possesses all of the required licenses and certificates of competency required by the State of Florida, Miami Dade County, and the Village to perform the work herein described. Consultant acknowledges that due to the nature of this contract, that Consultant must take all necessary precautions to avoid accidents and shall comply with all local, state and federal regulations that apply. Consultant shall be solely responsible for the payment of any fines or penalties incurred as a result of its actions.

Article 4 Payment and/or Fees

The Consultant shall submit invoices detailing the services provided, project, professional staff, and hours. Please note that failure to provide a detailed invoice could result in delay of payment and include termination of any agreement.

Invoices, unless otherwise indicated, must show purchase order numbers and shall be submitted in DUPLICATE to the Village of Palmetto Bay, Public Works Department, 9495 S. W. 180 Street, Palmetto Bay, FL 33157.

Article 5 Reports

A. Prior to commencement of operations under this Agreement, the Consultant shall secure in writing from the Village approval of all records to be used for the purpose of temporarily or permanently recording the operations of the Consultant under this Agreement.

B. For the purposes of the administration of this Agreement, the following shall apply: The Village Manager or his designee is hereby designated as the Contract Administrator for this Agreement. Reports and information as the Village may reasonably require regarding the administration of this Contract should be addressed to the Village Manager.

Article 6 Termination

A. Termination/Cancellation of Contract Without Cause

Either Party may terminate this Contract without cause upon thirty (30) days prior written notice to the other party. Termination or cancellation of the contract will not relieve the Consultant of any deliverables and work product due prior to the termination of the Contract (this will include but not be limited to reports, statements of accounts, payments due the Village and any other records requested by the Village prior to the termination of the Contract, or after termination in the Village's discretion if needed for a post contract audit of money due on

Consultant's performance). Termination or cancellation of the contract will not relieve the Consultant of any obligations or liabilities resulting from any acts committed by the Consultant prior to the termination of the contract.

B. Termination Because of Default

Without waiving the right to terminate without cause on thirty (30) days' notice, a party may issue a written notice to the other claiming that the other party is in breach of contract and giving the other party ten (10) calendar days to cure the default. If the alleged breach of contract is not cured, then the party serving the notice may terminate the Contract and be excused from further performance following termination. However, termination of the Contract will not relieve the Consultant of any deliverables and work product due prior to the termination of the Contract (this will include but not be limited to reports, statements of accounts, payments due the Village and any other records requested by the Village prior to the termination of the Contract.)

Article 7. Hold Harmless and Indemnification of the Village

The Village shall not be liable for any damages or claims of any type including but not limited to lost profits, special damages, consequential damages or business interruption on account of the Village's decision to terminate this Contract. Additionally, the Consultant agrees that in the event this Contract is terminated for the Village's breach, the damages that Consultant may have against the Village shall be limited to actual damages for a period of thirty (30) days given the fact that this Contract may be terminated by the Village without cause on thirty (30) days' notice.

Article 7. Term

The term of this Agreement shall commence upon the date of execution hereof and shall remain in effect for a period of six (6) months, or until terminated by the Village as herein set forth. Continuation of this Agreement beyond the initial six (6) month period is at the discretion of the Village, and not a right of the Consultant. This option will only be exercised by the Village when such continuation is clearly in the best interest of the Village. Should the Village exercise its option to continue this this agreement, it shall be only for the Services (as defined within) agreed to in this Agreement.

Article 8. Audit and Inspection Rights

The Village may, at reasonable times, and for a period of up to three (3) years following the date of final performance of Services by the Consultant under this Agreement, audit, or cause to be audited, those books and records of Consultant which are related to Consultant's performance under this Agreement. Consultant agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement. The Village may, at reasonable times during the term hereof, inspect Consultant's facilities and perform such inspections, as the Village deems reasonably necessary, to determine whether the services required to be provided by Consultant under this Agreement conform to the terms hereof and/or the terms of the Solicitation Documents, if applicable. Consultant shall

make available to the Village all reasonable facilities and assistance to facilitate the performance of inspections by the Village's representatives. All inspections shall be subject to, and made in accordance with, the provisions of the Village Code as same may be amended or supplemented, from time to time.

Article 9 Federal and State Tax

The Village is exempt from payment of Florida State Sales and Use Taxes. The Village will sign an exemption certificate submitted by the Consultant. The Consultant shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the Village, nor is the Consultant authorized to use the Village's Tax Exemption Number in securing such materials.

The Consultant shall be responsible for payment of its own and its share of its employee taxes and Social Security benefits.

Article 10 Indemnification

Consultant shall indemnify and hold harmless the Village and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Village or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Consultant or its employees, agents, servants, partners, principals or sub-Consultants. Consultant shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Village, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Consultant expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Consultant shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Village or its officers, employees, agents and instrumentalities as herein provided. 1% of the contract amount shall represent the consideration to be provided for this indemnification. Nothing contained herein shall be deemed a waiver of sovereign immunity.

Article 11 Insurance

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) calendar days after Village notification to Consultant. Certificates of Insurance must be submitted to the Procurement Division, Certificates of Insurance that indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- Comprehensive General Liability - \$1,000,000 combined single limit for each occurrence for bodily injury and property damage – designating the Village as Additional Insured
- Workers Compensation - Statutory Limits

- Automobile Liability - \$1,000,000 per occurrence for all claims arising out of bodily injuries or death and property damages.
- errors and omissions or Consultant liability insurance - \$1,000,000

All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida. The companies must be rated no less than "B+" as to management and no less than "Class V" as to strength by the latest edition of Best's Insurance guide, published by A.M. Best Company, Olwick, New Jersey, or its equivalent, or the companies must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to do Business in Florida," issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Consultant hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the Village.

Compliance with the foregoing requirements shall not relieve the Consultant of this liability and obligation under this section or under any other section in the Agreement.

If the insurance certificate is received within the specified time frame but not in the manner prescribed in the Agreement, the Consultant shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the Village. If the Consultant fails to submit the required insurance documents in the manner prescribed in the Agreement within fifteen (15) calendar days after Village notification to comply, the Consultant shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the Village.

The Consultant shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the Village. If insurance certificates are scheduled to expire during the contractual period, the Consultant shall be responsible for submitting new or renewed insurance certificates to the Village at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the Village shall suspend the Contract until such time as the new or renewed certificates are received by the Village in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the Village may, at its sole discretion, terminate this contract.

Article 12 Modification/Amendment

This writing and exhibits contains the entire Agreement of the parties. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify and amend the terms of this Agreement, unless executed in writing with the same formality as this Document.

No waiver of any provision of this Agreement shall be valid or enforceable unless such waiver is in writing and signed by the party granting such waiver.

Article 13 Severability

If any term or provision of this Agreement shall to any extent be held invalid, or illegal by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

Article 14 Governing Law

This Agreement shall be construed in accordance with and governing by the laws of the State of Florida. Exclusive venue for any litigation shall be in Miami-Dade County, Florida.

Article 15 Waiver

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct. No waiver by the Village of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by Consultant of the same, or any other provision or the enforcement thereof. The Village's consent to or approval of any act by Consultant requiring the Village's consent or approval shall not be deemed to render unnecessary the obtaining of the Village's consent to or approval of any subsequent consent or approval of Consultant, whether or not similar to the act so consented to or approved.

Article 16 Notices/Authorized Representatives

Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered mail with postage prepaid return receipt delivery, by registered or certified mail with postage prepaid return receipt requested, or by Federal Express addressed to the parties at the following address:

Village:

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

Consultant:

E. Sciences Inc.
111 NE 1ST Street, Suite 906
Miami, FL 33316

Either party shall have the right to change its address for notice purposes by sending written notice of such change of address to the other party in accordance with the provisions herein.

Article 17 Independent Consultant

Consultant is and shall remain an independent Consultant and is not an employee or agent of the Village. Services provided by Consultant shall be by employees of Consultant and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the Village. Consultant shall be responsible for all

compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with Consultant. The rights granted to Consultant hereunder are nonexclusive, and the Village reserves the right to enter into agreements with other persons or Consultants to perform services including those hereunder.

Article 18 Assignment

The Consultant shall not assign, transfer, convey, sublet or otherwise dispose of this Contract, including any or all of its right, title or interest therein, or his or its power to execute such Contract to any person, company or corporation without prior written consent of the Village. The Consultant shall not assign, transfer or pledge any interest in this contract without the prior written consent of the Village; provided, however, that claims for money by the Consultant 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 Consultant to the Village. None of the work or services under this Contract shall be subcontracted unless the Consultant obtains prior written consent from the Village. Approved subcontractors shall be subject to each provision of this Contract and the Consultant shall be responsible and indemnify the Village for all subcontractors' acts, errors or omissions.

Article 19 Prohibition Against Contingent Fees

Consultant warrants that it has no employees or retained any Consultant or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), Consultant, corporation, individual or Consultant, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

Article 20 Attorneys Fees

Should any dispute arise hereunder, the Village shall be entitled to recover against the Consultant all costs, expenses and attorney's fees incurred by the Village in such dispute, whether or not suit be brought, and such right shall include all of such costs, expenses and attorney's fees through all appeals or other actions. Neither party shall be entitled to prejudgment interest.

Article 21 Conflict of Interest

Consultant agrees to adhere to and be governed by the Village's Conflict of Interest Ordinance 2-121, et seq, which is incorporated by reference herein as if fully set forth herein, in connection with the Agreement conditions hereunder.

Article 22 Binding Effect

All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

Article 23 Entire Agreement

No statements, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this Agreement, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Agreement is executed.

Article 24 Captions and Paragraph Headings

Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Agreement, nor the intent of any provisions hereof.

Article 25 Joint Preparation

The preparation of this Agreement has been a joint effort of the parties, 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. It is the parties' further intention that this Agreement be construed liberally to achieve its intent.

Article 26 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

Article 27 Exhibits are Inclusionary

All exhibits attached hereto or mentioned herein which contain additional terms shall be deemed incorporated herein by reference. Typewritten or handwritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

Article 28 Jurisdiction And Venue

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

Article 29 Sovereign Immunity And Attorney's Fees.

The Village does not waive sovereign immunity under 768.28, Florida Statutes, for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs in any state or federal administrative, circuit court and appellate court proceedings. In the event of any litigation arising out of this agreement or project agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury.

Article 30 Permits, Licenses and Filing Fees

The Consultant shall procure all permits and licenses, pay all charges and fees, and file all notices as they pertain to the completion of the Consultant's work.

Article 31 Safety Provisions

The Consultant shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.

Article 32 Public and Employee Safety

Whenever the Consultant's operations create a condition hazardous to the public or Village employees, it shall, at its expense and without cost to the Village, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.

Article 33 Preservation of Village Property

The Consultant shall provide and install suitable safeguards, approved by the Village, to protect Village property from injury or damage. If Village property is injured or damaged resulting from the Consultant's operations, it shall be replaced or restored at the Consultant's expense. The facilities shall be replaced or restored to a condition as good as when the Consultant began work.

Article 34 Immigration Act of 1986

The Consultant warrants on behalf of itself and all sub-consultants engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

Article 35 Consultant Non-Discrimination

In the award of subcontracts or in performance of this work, the Consultant agrees that it will not engage in, nor permit such sub-consultants as it may employ, to engage in discrimination in employment of persons on any basis prohibited by State or Federal law.

Article 36 Accuracy of Specifications

The specifications for this project are believed by the Village to be accurate and to contain no affirmative misrepresentation or any concealment of fact. Consultants are cautioned to undertake an independent analysis of any test results in the specifications, as Village does not guaranty the accuracy of its interpretation of test results contained in the specifications package. In preparing its proposal, the Consultant and all sub-consultants named in its proposal shall bear sole responsibility for proposal preparation errors resulting from any misstatements or omissions in the specifications that could easily have been ascertained by examining either the

project site or accurate test data in the Village's possession. Although the effect of ambiguities or defects in the specifications will be as determined by law, any patent ambiguity or defect shall give rise to a duty of Consultant to inquire prior to proposal submittal. Failure to so inquire shall cause any such ambiguity or defect to be construed against the Consultant. An ambiguity or defect shall be considered patent if it is of such a nature that the Consultant, assuming reasonable skill, ability and diligence on its part, knew or should have known of the existence of the ambiguity or defect. Furthermore, failure of the Consultant or sub-consultants to notify Village in writing of specification defects or ambiguities prior to proposal submittal shall waive any right to assert said defects or ambiguities subsequent to submittal of the proposal.

To the extent that these specifications constitute performance specifications, the Village shall not be liable for costs incurred by the successful Consultant to achieve the project's objective or standard beyond the amounts provided therefore in the proposal.

In the event that, after awarding the contract, any dispute arises as a result of any actual or alleged ambiguity or defect in the specifications, or any other matter whatsoever, Consultant shall immediately notify the Village in writing, and the Consultant and all sub-consultants shall continue to perform, irrespective of whether or not the ambiguity or defect is major, material, minor or trivial, and irrespective of whether or not a change order, time extension, or additional compensation has been granted by Village. Failure to provide the hereinbefore described written notice within one (1) working day of Consultant's becoming aware of the facts giving rise to the dispute shall constitute a waiver of the right to assert the causative role of the defect or ambiguity in the plans or specifications concerning the dispute.

Article 37 Warranty Of Authority

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

Article 38 Miscellaneous Provision

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.

Continued on next page.

IN WITNESS WHEREOF the undersigned parties have executed this Agreement on the date indicated above.

OWNER

CONSULTANT

Village of Palmetto Bay

E. Sciences, Inc.

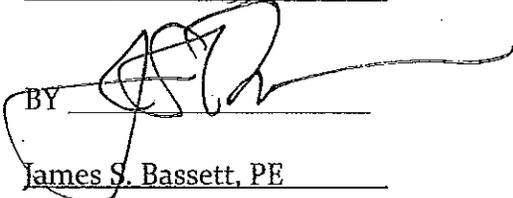
ADDRESS

9705 E. Hibiscus Street
Palmetto Bay, FL 33157

ADDRESS

111 NE 1st Street; Suite 906
Miami, Florida 33316

 BY _____

 BY _____

Ron E. Williams
Print Name

James S. Bassett, PE
Print Name

Village Manager
Title

Principal
Title

ATTEST

Meighan J. Alexander
Village Clerk

Witness

APPROVED AS TO FORM BY

Print Name

Village Attorney