

RESOLUTION NO. 2014-__

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ATTORNEYS' FEES; APPROVING ATTORNEYS' FEES AND COSTS FOR LEHTINEN SCHULTZ RIEDI CATALANO FUENTE, PLLC IN THE AMOUNT OF \$4,617.00; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village Council of the Village of Palmetto Bay engaged the law firm of Lehtinen Schultz Riedi Catalano Fuente, PLLC to provide Village Attorney legal services for the Village; and,

WHEREAS, Lehtinen Schultz Riedi Catalano Fuente, PLLC, submitted its statements to the Village for legal services rendered, and costs advanced, for the period ending April 30, 2014, in the amount of \$4,617.00; and,

WHEREAS, the amounts are reasonable and were necessarily incurred.

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

Section 1. Recitals. The above recitals are true and correct and incorporated herein by this reference.

Section 2. Approval. The statements for attorneys' fees and costs received from Lehtinen Schultz Riedi Catalano Fuente, PLLC, in the total amount of \$4,617.00, copies of which are attached, are approved for payment.

Section 3. Effective Date. This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this __ day of June, 2014.

Attest: _____
Meighan Alexander
Village Clerk

Shelley Stanczyk
Mayor

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2 APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
3 AND RELIANCE OF THE VILLAGE OF PALMETTO BAY, FLORIDA ONLY:
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5
6 _____
7 Dexter W. Lehtinen
8 Village Attorney
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10 FINAL VOTE AT ADOPTION:

11
12 Council Member Patrick Fiore _____
13
14 Council Member Tim Schaffer _____
15
16 Council Member Joan Lindsay _____
17
18 Vice-Mayor John DuBois _____
19
20 Mayor Shelley Stanczyk _____

Lehtinen Schultz Riedi Catalano Fuente
1111 Brickell Avenue, Suite 2200
Miami, Florida 33131

April 2014
Village of Palmetto Bay

Statement Period: April 2014
Client: Village of Palmetto Bay, Florida

<u>Date</u>	<u>Individual</u>	<u>Subject</u>	<u>Time</u>
4/2	DL	Meeting with Village Manager/staff and Palmer Trinity School representatives at Palmetto Bay regarding pending land use applications; prepare for meeting	3.6
4/2	EB	Meeting with Village Manager/staff and Palmer Trinity School representatives at Palmetto Bay regarding pending land use applications; attend at request of Village Attorney DL	2.0
4/3	DL	Prepare for meeting with Palmer Trinity School counsel regarding litigation and land use applications	2.1
4/4	DL	Conference at office of Palmer Trinity School counsel regarding existing litigation and pending land use applications	2.3
4/4	EB	Conference at office of Palmer Trinity School counsel regarding existing litigation and pending land use applications; attend at request of Village Attorney DL	2.3
4/7	DL	Attend meeting of the Local Planning Agency and Council of Palmetto Bay; prepare for meetings	4.4
4/10	DL	Review and analyze Palmer Trinity School land use issues and pending litigation	3.1
4/11	DL	Conference call with Village Manager and counsel for Montessori School regarding Charter requirement of neighbor concurrence for school expansion; prepare for discussion	1.3
4/21	DL	Attend agenda review meeting at Palmetto Bay; discussion With staff following meeting	1.4

(continued)

**Lehtinen Schultz Riedi Catalano Fuente
1111 Brickell Avenue, Suite 2200
Miami, Florida 33131**

**April 2014
Village of Palmetto Bay**

(continued – page two)

4/25	DL	Meetings with staff and Village Manager regarding land development issues, procedures, and miscellaneous matters	1.8
4/1- 4/30	DL	Discussions with Council Members, Village Manager and staff; review Palmetto Bay codes and procedures; general background preparation throughout month (no charge)	0/0

Monthly total hours.....24.3

Total amount due based on uniform rate (\$190/hour).....\$4,617.00

DL = Dexter Lehtinen
CR = Claudio Riedi
EB = Eve Boutsis



To: Honorable Mayor and Village Council

Date: May 23, 2014

From: Ron E. Williams, Village Manager

Re: Village-wide Tree Inventory
Agreement with E. Sciences

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.

BACKGROUND AND ANALYSIS:

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. The Village-wide inventory will result in a complete survey of all trees on Village owned public right-of-ways, Village facilities, and Village Parks. 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, and assist in the preparation for and recovery after storm events.

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. The bid was advertised in the Daily Business Review on February 14th, 2014. Bids for Village-wide Tree Inventory Services were received and opened and read aloud at a public meeting on March 18, 2014 with two (2) contractors submitting a bid.

Members of the Village's Tree Advisory Board were selected to evaluate and make recommendations regarding RFP No. 1314-11-005 proposal submittals. The selection committee individually evaluated the bid packages and summarized the submittals based on pricing, qualifications, methodology/approach, and references. After a thorough analysis of

the responses, the review committee ranked the second lowest bidder E. Sciences, Inc. as the highest ranked firm. The proposal submitted included all the required documentation and licenses. It was found that E. Sciences, Inc. procures superior qualifications, knowledge, and experience as compared to that of Ross GIS Consulting, Inc. (lowest bidder). E. Sciences Inc. provided the Village of Palmetto Bay with a comprehensive plan inclusive of exceptional references, cost per tree, extensive experience and the capacity to meet the requirements under the scope of Request for Proposal No. 1314-11-005 Village-wide Tree Inventory.

The administration requested and the Village Council approved via Resolution 2014-42 the administration request to 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. The subject negotiations as authorized via Resolution No. 2014-42 resulted in agreement of a governing contract in an amount of \$38,556.

FISCAL/BUDGETARY IMPACT

The Village budgets this item under "Special Revenue Funds Easements and Swales" in an amount not to exceed \$38,556 during Fiscal Year 2013-14; (\$15,000 will be reimbursed from (Urban and Community Forestry (U&CF)) grant funds in the Fiscal Year 2013-2014.

RECOMMENDATION

Approval is recommended.

RESOLUTION NO. _____

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 _____ 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 _____

Council Member Tim Schaffer _____

Council Member Joan Lindsay _____

Vice-Mayor John DuBois _____

Mayor Shelley Stanczyk _____

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

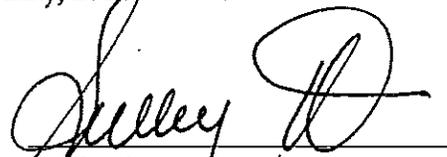
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

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	<u>YES</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>

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

Village of Palmetto Bay

ADDRESS

9705 E. Hibiscus Street
Palmetto Bay, FL 33157



BY _____

Ron E. Williams
Print Name

Village Manager
Title

ATTEST

Meighan J. Alexander
Village Clerk

APPROVED AS TO FORM BY

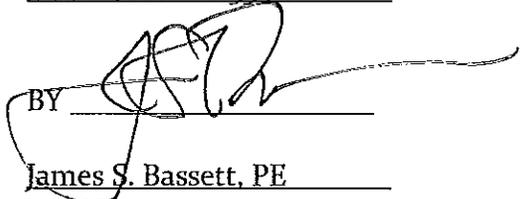
Village Attorney

CONSULTANT

E. Sciences, Inc.

ADDRESS

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



BY _____

James S. Bassett, PE
Print Name

Principal
Title

Witness

Print Name



ITEM 6C

To: Honorable Mayor and Village Council

Date: May 23, 2014

From: Ron E. Williams, Village Manager

Re: Contractor Selection for
Emergency Debris Removal
and Management Services

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO INVITATION TO BID 1314-11-006 EMERGENCY DEBRIS REMOVAL AND MANAGEMENT SERVICES; APPROVING THE SELECTION OF THREE CONTRACTORS TO PROVIDE EMERGENCY DEBRIS REMOVAL AND MANAGEMENT SERVICES TO THE VILLAGE; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE CONTRACT AGREEMENTS WITH BERGERON EMERGENCY SERVICES, INC., DRC EMERGENCY SERVICES, LLC, AND CERES ENVIRONMENTAL SERVICES, INC.; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS:

The Village of Palmetto Bay may experience destruction of property resulting from hurricanes, floods, tornadoes, and other weather related events as well as other natural disasters. In the event of a major disaster, the Village will not have adequate in-house resources to provide assistance and recovery services to the community. During this critical time, it is imperative that the Village have standby agreements with a minimum of three (3) contractors to provide quick response to expedite post-storm recovery clean-up in advance of the need for emergency debris removal services. Contracting for labor and equipment may be necessary if the magnitude of the emergency operation is beyond the capabilities of municipal resources, State resources, mutual aid agreements and volunteer labor and equipment.

On April 16, 2014, the Village issued a Request for Proposals (RFP) 1314-11-006 for Emergency Debris Removal and Management Services for the period of three (3) years. In addition, two (2) one-year extensions were provided for, upon mutual agreement by both parties. The RFP was advertised in the *Miami Daily Business Review* on April 16, 2014. Responses were received from five contractors. The contractors submitting proposals were: Bergeron Emergency Services, Inc. (Pembroke Pines, FL) SRS, Inc. (Mobile AL), DRC Emergency Services, LLC (Mobile, AL), T.F.R. Enterprises, Inc. (Leander, TX) and Ceres

Environmental Services, Inc. (Brooklyn Park, MN). The first firm is a large sized local firm, and the remaining contractors are national contractors with local representation.

A selection committee was established to evaluate and make recommendations regarding RFP No. 1314-11-006 proposal submittals. The selection committee individually evaluated the bid packages and summarized the submittals based on pricing, qualifications, scope of services/methodology and approach, and references. After a thorough analysis of the responses, the selection committee recommends that it is in the best interest of the Village to select the 3 highest ranking contractors in accordance with the attached evaluation tabulation for the purpose of post-storm debris cleanup and management services. The contractors recommended have the capacity and ability to rapidly respond to potential wide-scale debris volumes as generated by a hurricane, as well as small scale volumes typical of a tornado. During the administrative evaluation of the bid submittals for RFP No. 1314-11-006 it was found that Bergeron Emergency Services, Inc. (Pembroke Pines, FL), DRC Emergency Services, LLC Inc. (Mobile, AL), and Ceres Environmental Services, Inc. (Brooklyn Park, MN) were the three highest ranking contractors. These contractors submitted the most responsive and responsible proposals that detailed a comprehensive plan with exceptional references, licenses, procure superior qualifications, knowledge, and experience in the area of debris removal and management. The references listed provided positive feedback and further qualified their competence in completing projects of this nature.

As a result of the selection committee's evaluation of each proposal, the 3 highest ranking contractors in accordance with the attached evaluation tabulation are being recommended for approval. The selection committee recommends award to Bergeron Emergency Services, Inc., DRC Emergency Services, LLC, and Ceres Environmental Services, Inc. The recommendation for award is for the second, third and fourth lowest bidder. The lowest bidder, SRS, Inc. was missing information and the scope of services/methodology and approach was inadequate.

The Administration is requesting authorization from the Village Council for the Village Manager to execute agreements with the 3 highest ranking contractors (Bergeron Emergency Services, Inc., DRC Emergency Services, LLC, and Ceres Environmental Services, Inc.), which submitted the most responsive and responsible proposals for post-storm emergency debris removal and management services in accordance with Invitation to Bid No. 2011-PW-106. The term of the agreements shall be for 3 years, with an option to allow for the Village, at its sole discretion, to extend the agreements for an additional two, one year (12 month) terms. Under this arrangement, the Village will have the option of 3 emergency debris removal contractors on standby to respond quickly to a disaster creating problems beyond the Village's cleanup, or management capabilities.

FISCAL/BUDGETARY IMPACT

There is no fiscal impact at this time.

RECOMMENDATION

Approval is recommended.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO INVITATION TO BID 1314-11-006 EMERGENCY DEBRIS REMOVAL AND MANAGEMENT SERVICES; APPROVING THE SELECTION OF THREE CONTRACTORS TO PROVIDE EMERGENCY DEBRIS REMOVAL AND MANAGEMENT SERVICES TO THE VILLAGE; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE CONTRACT AGREEMENTS WITH BERGERON EMERGENCY SERVICES, INC., DRC EMERGENCY SERVICES, LLC, AND CERES ENVIRONMENTAL SERVICES, INC.; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Palmetto Bay may experience destruction of property resulting from hurricanes, floods, tornadoes, and other weather related events as well as other natural disasters.; and

WHEREAS, in the event of a major disaster, the Village will not have adequate in-house resources to provide assistance and recovery services to the community; and

WHEREAS, it is imperative that the Village have standby agreements with a minimum of three (3) contractors to provide quick response to expedite post-storm recovery clean-up in advance of the need for emergency debris removal services; and

WHEREAS, on April 16, 2014, the Village issued a Request for Proposals (RFP) 1314-11-006 for Emergency Debris Removal and Management Services for the period of three (3) years, with the option to allow for the Village, at its sole discretion, to extend the agreement for an additional two, one-year terms; and

WHEREAS, the RFP was advertised in the *Miami Daily Business Review* on April 16, 2014; and

WHEREAS, responses were received from five contractors; Bergeron Emergency Services, Inc. (Pembroke Pines, FL) SRS, Inc. (Mobile AL), DRC Emergency Services, LLC (Mobile, AL), T.F.R. Enterprises, Inc. (Leander, TX) and Ceres Environmental Services, Inc. (Brooklyn Park, MN); and

WHEREAS, A selection committee was established to evaluate and make recommendations regarding RFP No. 1314-11-006 proposal submittals; and

WHEREAS, after a thorough analysis of the responses, the selection committee recommends that it is in the best interest of the Village to select the 3 highest ranking contractors in accordance with the attached evaluation tabulation for the purpose of post-storm debris cleanup and management services; and

WHEREAS, during the administrative evaluation of the bid submittals for RFP No. 1314-11-006 it was found that Bergeron Emergency Services, Inc. (Pembroke Pines, FL), DRC

Emergency Services, LLC (Mobile, AL), and Ceres Environmental Services, Inc. (Brooklyn Park, MN) were the three highest ranking contractors; and

WHEREAS, these contractors submitted the most responsive and responsible proposals that detailed a comprehensive plan with exception references, licenses, procure superior qualifications, knowledge, and experience in the area of debris removal and management; and

WHEREAS, the selection committee recommends award to Bergeron Emergency Services, Inc., DRC Emergency Services, LLC, and Ceres Environmental Services, Inc.; and

WHEREAS, the Administration is requesting authorization from the Village Council for the Village Manager to execute agreements with the 3 highest ranking contractors Bergeron Emergency Services, Inc., DRC Emergency Services, LLC, and Ceres Environmental Services, Inc., which submitted the most responsive and responsible proposals for post-storm emergency debris removal and management services in accordance with Invitation to Bid No. 2011-PW-106; 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 execute the agreements attached hereto as Exhibit A (Bergeron Emergency Services, Inc.), Exhibit B (DRC Emergency Services, LLC) and Exhibit C (Ceres Environmental Services, Inc.), pursuant to the terms and conditions provided in the agreement for Emergency Debris Removal and Management Services on behalf of the Village.

Section 2. This Resolution shall become effective immediately.

PASSED AND ADOPTED this _____ 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 _____

Council Member Tim Schaffer _____

Council Member Joan Lindsay _____

Vice-Mayor John DuBois _____

Mayor Shelley Stanczyk _____

RESOLUTION NO. 2014-40

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO GRANTS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION; FURTHER AUTHORIZING THE VILLAGE MANAGER TO ACCEPT THE 2014 FLORIDA HIGHWAY BEAUTIFICATION COUNCIL GRANT FUNDING IN AN AMOUNT OF \$45,000 FOR BEAUTIFICATION OF US-1 MEDIANS WITHIN THE VILLAGE OF PALMETTO BAY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, each year, the Florida Department of Transportation (FDOT) provides grant funding to cities and counties for highway beautification plantings; and

WHEREAS, the Village Council approved Resolution 2013-71 authorizing the Department of Public Works to submit an application to solicit FY13-14 Florida Highway Beautification Council Grant funding in an amount not to exceed \$90,000; and

WHEREAS, the application as submitted has been selected by the Florida Highway Beautification Council to receive a grant to fund the design and installation of landscape for placement within the medians on that stretch of US-1 from south of SW 136th ST to north of SW 184th ST; and

WHEREAS, 50/50 match is required (50% grant/50% applicant); and grant in an amount of \$45,000, with the Village's \$45,000 match, can be used only for the cost allowed by Section 399.2405(11), Florida Statutes; and

WHEREAS, the Department of Public Works has funding in an amount of \$30,000 allocated for the Village's forestry program and the Planning and Zoning Department has \$15,000 from the Landscape Mitigation program.

WHEREAS, the landscape improvements proposed will provide and instantly create a welcoming and enjoyable experience to visitors and residents with landscape safely placed along this highly traveled state road and also identify the gateway points into the Village; and

WHEREAS, the Department of Public Works recommends that it is in the best interest of the Village Council to approve a resolution accepting the grant award (\$45,000) and terms as detailed in the attached award letter; and,

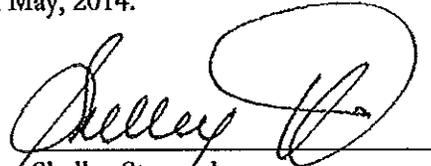
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. The Village Manager is authorized to accept a grant award of \$45,000 from FDOT Florida Highway Beautification Council and execute the required agreements within one year from the date of the award letter.

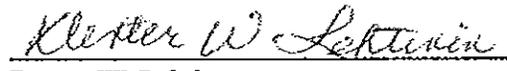
Section 2. This Resolution shall become effective immediately.

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	<u>YES</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>



To: Ron E. Williams, Village Manager

Date: March 11, 2014

From: Kristy Bada, Procurement Specialist

Re: RFP No. 1314-11-006
Emergency Debris Removal and
Management Services

The purpose of this memorandum is to inform you of a recommended course of action regarding the solicitation for Emergency Debris Removal and Management Services; and respectfully request your review and approval; as follows:

Actions to Date:

- In coordination with the Public Works Department, an RFP was developed for the solicitation of qualified vendors to provide Emergency Debris Removal and Management Services.

Recommended Course of Action:

- March 12th, 2014: Proposed/Draft RFP to be forwarded to the Manager for approval.
- March 17th, 2014: Approved RFP to be advertised and issued; Cone of Silence commences.
- March 25th, 2014: Mandatory Pre-Bid Meeting @ Village of Palmetto Bay Municipal Center @10:00 am.
- April 16th, 2014: RFP 1314-11-006 due by 3:00 pm.
- April 18th, 2014: Subsequent to bid opening, tabulate bids, review submittal documentation for completeness and accuracy, and contact references.
- April 21st, 2014: Prepare memo for Directors' review and approval of recommendation for award.
- April 22nd, 2014: Recommendation presented to the Village Manager with copies of tabulation sheet, bid submittal with all required forms and documentation, and reference inquiry.
- May 5th, 2014: Resolution to Council for approval of selection and Award of Contract.
- May 15th, 2014: Anticipated execution date.

By your signature below, I will proceed with the above described / recommended course of action.

Department Approval:

Corrice E. Patterson, Public Works Director / Date

Finance Department Approval:

Budgeted Funds Available: _____

Desmond Chin, Finance Director / Date

Manager Approval:

Ron E. Williams, Village Manager / Date



**REQUEST FOR PROPOSALS (RFP)
EMERGENCY DEBRIS REMOVAL &
MANAGEMENT SERVICES
NO. 1314-11-006**

MIAMI DAILY BUSINESS REVIEW

Published Daily except Saturday, Sunday and
Legal Holidays
Miami, Miami-Dade County, Florida

STATE OF FLORIDA
COUNTY OF MIAMI-DADE:

Before the undersigned authority personally appeared MARIA MESA, who on oath says that he or she is the LEGAL CLERK, Legal Notices of the Miami Daily Business Review f/k/a Miami Review, a daily (except Saturday, Sunday and Legal Holidays) newspaper, published at Miami in Miami-Dade County, Florida; that the attached copy of advertisement, being a Legal Advertisement of Notice in the matter of

VILLAGE OF PALMETTO BAY
REQUEST FOR PROPOSALS - NO. 1314-11-006

in the XXXX Court,
was published in said newspaper in the issues of

03/17/2014

Affiant further says that the said Miami Daily Business Review is a newspaper published at Miami in said Miami-Dade County, Florida and that the said newspaper has heretofore been continuously published in said Miami-Dade County, Florida, each day (except Saturday, Sunday and Legal Holidays) and has been entered as second class mail matter at the post office in Miami in said Miami-Dade County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me this

17 day of MARCH, A.D. 2014

(SEAL)

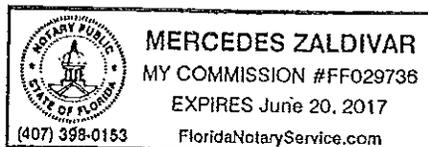
MARIA MESA personally known to me

The Village of Palmetto Bay is currently soliciting bids for Emergency Debris Removal and Management Services. The Village anticipates to contract with more than one contractor to provide Emergency Debris Removal and Management Services in accordance with applicable regulations of the Federal Emergency Management Agency (FEMA), Federal Highway Administration (FHWA), Florida Department of Transportation (FDOT), Florida Department of Health (FDH), Natural Resources Conservation Services (NRCS), South Florida Water Management District (SFWMD), and the Florida Department of Environmental Protection (FDEP) in conjunction with the Village's needs. Contracts must meet rules for Federal grants, as provided for in Title 44 Code of Federal Regulations (CFR) Part 13, (§13.36, Procurement) in order to be eligible for reimbursement under the Public Assistance Program. More than one contractor may be selected to provide differing elements or levels of scope of work in accordance with the capabilities and extent of involvement each respondent proposes. Contracts issued resulting from this RFP shall only be activated in the event of a declared emergency. There is no guarantee any contract resulting from the RFP will be activated or any work will be performed.

The Work involved with the Project shall include, but may not be limited to, the removal of all debris as the result of an anticipated or unanticipated storm, disaster, act of terrorism, etc. Debris is to be removed from the Streets and Avenues within the Village of Palmetto Bay and hauled to a designated staging area and/or disposal site. The Village is seeking contractors whose combination of experience and expertise will provide timely, cost-effective and quality debris removal and debris management services to the Village. Only contractors whose proposals demonstrate project management experience in FEMA-eligible debris removal projects of a similar size and scope as the aftermath of Hurricane Katrina and Hurricane Wilma and as further set forth in this RFP will be considered for award. FEMA experience shall also be required.

Sealed bids must be received by the Village Clerk at Village Hall, 9705 E. Hibiscus Street, Palmetto Bay, FL 33157, no later than **3:00 pm on or before Wednesday, April 16th, 2014**, (late submittals, email submittals, and facsimile submittals will not be accepted) at which time they will be publicly opened and read aloud. Official time will be measured by the time stamp of the Village Clerks Office. The respondent shall bear all costs associated with the preparation and submission of the response to the solicitation. Bid documents may be obtained on or after Monday, March 17th, 2014 at 8:30 am at the Village of Palmetto Bay Municipal Center at 9705 E. Hibiscus Street, Palmetto Bay, FL 33157. A \$30.00 non-refundable deposit per set of documents is required, made payable to Village of Palmetto Bay. There will be a mandatory pre-bid conference on Tuesday, March 25th, 2014 @ 10:00 am to discuss the scope of services and answer questions. The Pre-Bid Conference will be held at Village Council Chambers, Village Hall located at 9705 E. Hibiscus Street, Palmetto Bay, FL 33157. You must attend this pre-bid conference in order to submit a bid.

The Village of Palmetto Bay reserves the right to reject any and all proposals, to terminate the process at any time (and recommence it at a later time from the beginning), to waive any informalities, irregularities or technicality in bids received. There is no obligation on the part of the Village to award the bid in whole or in part to one or more respondents or to the lowest bidder. The Village reserves the right to award the bid to the bidder submitting a responsive bid with a resulting negotiated agreement which is most advantageous and in the best interest of the Village. The Village shall be the sole judge of the bid and the resulting negotiating agreement that is in its best interest and its decision shall be final. If additional information is required, please contact the Village of Palmetto Bay, Procurement Specialist at KBada@palmettobay-fl.gov. 3/17 14-B-214/2251481M.





April 16, 2014

REQUEST FOR PROPOSALS (RFP)
EMERGENCY DEBRIS REMOVAL & MANAGEMENT SERVICES
No. 1314-11-006

Bid sheets for each Proposer attached:

- Bergeron Emergency Services, Inc.
- SRS, Inc.
- TAG Grinding Services, Inc.
- DRC Emergency Services, Inc.
- TFR Enterprises, Inc.
- Ceres Environmental Services, Inc.
-
-
-
-

Opening conducted and verified by:

Meighan J. Alexander
Meighan J. Alexander
Village Clerk

Witnesses:

Krisny Bada
Print Name: Krisny Bada

04-16-14P03:00 RCVD

Missy Aracha
Print Name: Missy Aracha

Bergeron Emergency Services, Inc.

SECTION I: DEBRIS REMOVAL, PROCESSING & DISPOSAL				
#	DESCRIPTION	UNIT	QTY	COST
DRPD 1	Mobilize & demobilize	LUMP SUM	1 Unit	\$ 0
DRPD 2	Pick-up and haul of white goods.	EACH	1 Unit	\$ 100.00
DRPD 3	Pick-up and disposal of hazardous material	POUND	1 Unit	\$ 350.00
DRPD 4	Sweeping Curb and Gutter	HOURLY RATE	1 Unit	\$ 60.00
DRPD 5	Process stump based on FEMA conversion table, May 15, 2007 publication DAP9523.11	CUBIC YARD	1 Unit	\$ 6.15
DRPD 6	Hazardous stump removal, hauling and disposal 6" diameter to 11.99" diameter	EACH	1 Unit	\$
DRPD 7	Hazardous stump removal, hauling and disposal 12" diameter to 23.99" diameter	EACH	1 Unit	\$
DRPD 8	Hazardous stump removal & hauling, disposal 24" diameter to 47.99" diameter	EACH	1 Unit	\$ 275.00
DRPD 9	Hazardous stump removal, hauling and disposal 48" diameter and greater	EACH	1 Unit	\$ 375.00
DRPD 10	Dead animal collection, transportation and disposal	POUND	1 Unit	\$ 5.00
DRPD 11	Debris removal from public property (rights-of-way) hauling and disposal at final FDEP approved disposal site within Miami-Dade County	CUBIC YARD	1 Unit	\$ 8.00
DRPD 12	Debris removal from Public Property (rights-of-way) & hauling to DMS within the limits of the Village of Palmetto Bay	EACH CUBIC YARD	1 Unit	\$ 6.15
DRPD 13	Debris removal from DMS, hauling & disposal at FDEP approved site within Miami-Dade County	EACH CUBIC YARD	1 Unit	\$ 7.50
DRPD 14	Processing (grinding) of debris at DMS	EACH CUBIC YARD	1 Unit	\$ 3.00
DRPD 15	Hazardous tree removal 6 inch diameter to 11.99 inch diameter (excluding hauling and disposal)	EACH	1 Unit	\$ 0.00
DRPD 16	Hazardous tree removal 12 inch diameter to 23.99 inch diameter (excluding hauling and disposal)	EACH	1 Unit	\$ 0.00
DRPD 17	Hazardous tree removal 24 inch diameter to 47.99 inch diameter (excluding hauling and disposal)	EACH	1 Unit	\$ 200.00
DRPD 18	Hazardous tree removal 48 inch diameter and greater (excluding hauling and disposal)	EACH	1 Unit	\$ 300.00

**SECTION II: EMERGENCY ROAD CLEARANCE
(INITIAL CLEARANCE - NOT TO EXCEED 70 HRS)**

#	DESCRIPTION	UNIT	QTY	COST
ERC 1	Debris removal from private property & publicly owned property (other than right-of-way) to be hauled and dumped at the South Dade Landfill located at 23707 SW 97 th AV, Gate A, Miami, Florida 33032	CUBIC YARDS	1 Unit	\$ 8.50
ERC 2	Material, fill dirt for stump holes, purchased, placed & compacted	CUBIC YARDS	1 Unit	\$ 12.00
ERC 3	Leaning trees / hanging limbs	CUBIC YARDS EACH	1 Unit	\$ 85.00
ERC 4	Demolition of structures	HOURLY RATE CUBIC YARD	1 Unit	\$ 25.00

Price/Cost Form

Page 2 of 2

SECTION III: EQUIPMENT WITH OPERATOR - HOURLY RATES PER LINE ITEM

#	DESCRIPTION	UNIT	QTY	COST
EWO 1	JD544 or equal, wheel loader w/debris grapple	HOURLY RATE	1 Unit	\$ 115.00
EWO 2	JD644 or equal, wheel loader w/debris grapple	HOURLY RATE	1 Unit	\$ 120.00
EWO 3	JD544 or equal, wheel loader w/bucket	HOURLY RATE	1 Unit	\$ 115.00
EWO 4	JD644 or equal, wheel loader w/bucket	HOURLY RATE	1 Unit	\$ 120.00
EWO 5	Extend-a-boom forklift w/debris grapple	HOURLY RATE	1 Unit	\$ 115.00
EWO 6	753 Skid Steer w/debris grapple	HOURLY RATE	1 Unit	\$ 95.00
EWO 7	753 Skid Steer Loader w/bucket	HOURLY RATE	1 Unit	\$ 95.00
EWO 8	753 Skid Steer w/Broom	HOURLY RATE	1 Unit	\$ 95.00
EWO 9	Excavator type hoe on rubber w/grapple	HOURLY RATE	1 Unit	\$ 115.00
EWO 10	JD310 or equal TLB	HOURLY RATE	1 Unit	\$ 100.00
EWO 11	Hand fed debris chipper	HOURLY RATE	1 Unit	\$ 75.00
EWO 12	Diamond Z or equal 800 / 1,000 tub grinder	HOURLY RATE	1 Unit	\$ 550.00
EWO 13	40' / 60' Bucket Truck	HOURLY RATE	1 Unit	\$ 175.00
EWO 14	Service Truck	HOURLY RATE	1 Unit	\$ 100.00
EWO 15	Water Truck (2000 Gallons)	HOURLY RATE	1 Unit	\$ 100.00
EWO 16	Portable Light Tower (Lighting 4)	HOURLY RATE	1 Unit	\$ 45.00
EWO 17	Pick-up (w/o driver)	HOURLY RATE	1 Unit	\$ 25.00
EWO 18	Knuckle-boom w/grapple self-loading Dump type truck	HOURLY RATE	1 Unit	\$ 145.00
EWO 19	Single axle dump type truck, 5 / 12 CY	HOURLY RATE	1 Unit	\$ 55.00
EWO 20	Tandem axle dump type truck, 16 / 20 CY	HOURLY RATE	1 Unit	\$ 75.00
EWO 21	Trailer type truck/tractor 24 / 40 CY	HOURLY RATE	1 Unit	\$ 100.00
EWO 22	Trailer type truck/tractor 41 / 60 CY	HOURLY RATE	1 Unit	\$ 120.00
EWO 23	Trailer type truck/tractor 61 / 80 CY	HOURLY RATE	1 Unit	\$ 150.00

SECTION IV: LABOR & MATERIAL - HOURLY RATES PER LINE ITEM

#	DESCRIPTION	UNIT	QTY	COST
LM 1	Operating Manager	HOURLY RATE	1 Unit	\$ 75.00
LM 2	Superintendent w/truck, phone & radio	HOURLY RATE	1 Unit	\$ 65.00
LM 3	Foreman w/truck, phone & radio	HOURLY RATE	1 Unit	\$ 55.00
LM 4	Safety/quality control inspector w/vehicle, phone & radio	HOURLY RATE	1 Unit	\$ 75.00
LM 5	Inspector w/vehicle, phone & radio	HOURLY RATE	1 Unit	\$ 55.00
LM 6	Climber w/gear	HOURLY RATE	1 Unit	\$ 90.00
LM 7	Chain & Hand Saw Operator	HOURLY RATE	1 Unit	\$ 31.00
LM 8	Laborer & Flagman	HOURLY RATE	1 Unit	\$ 35.00
LM 9	Haz-Mat Professional	HOURLY RATE	1 Unit	\$ 150.00
LM 10	Certified Arborist	HOURLY RATE	1 Unit	\$ 150.00
LM 11	Project Manager / Haz-Mat Professional	HOURLY RATE	1 Unit	\$ 150.00

SRS, Inc.

SECTION I: DEBRIS REMOVAL, PROCESSING & DISPOSAL

#	DESCRIPTION	UNIT	QTY	COST
DRPD 1	Mobilize & demobilize	LUMP SUM	1 Unit	\$ 0.00
DRPD 2	Pick-up and haul of white goods	EACH	1 Unit	\$ 54.00
DRPD 3	Pick-up and disposal of hazardous material	POUND	1 Unit	\$ 64.00
DRPD 4	Sweeping Curb and Gutter	HOURLY RATE	1 Unit	\$ 0.00
DRPD 5	Process stump based on FEMA conversion table, May 15, 2007 publication DAP9523.11	CUBIC YARD	1 Unit	\$ 9.67
DRPD 6	Hazardous stump removal, hauling and disposal 6" diameter to 11.99" diameter	EACH	1 Unit	\$
DRPD 7	Hazardous stump removal, hauling and disposal 12" diameter to 23.99" diameter	EACH	1 Unit	\$
DRPD 8	Hazardous stump removal & hauling, disposal 24" diameter to 47.99" diameter	EACH	1 Unit	\$ 297.00
DRPD 9	Hazardous stump removal, hauling and disposal 48" diameter and greater	EACH	1 Unit	\$ 547.00
DRPD 10	Dead animal collection, transportation and disposal	POUND	1 Unit	\$ 3.97
DRPD 11	Debris removal from public property (rights-of-way) hauling and disposal at final FDEP approved disposal site within Miami-Dade County	CUBIC YARD	1 Unit	\$ 6.97
DRPD 12	Debris removal from Public Property (rights-of-way) & hauling to DMS within the limits of the Village of Palmetto Bay	EACH CUBIC YARD	1 Unit	\$ 6.27
DRPD 13	Debris removal from DMS, hauling & disposal at FDEP approved site within Miami-Dade County	EACH CUBIC YARD	1 Unit	\$ 4.27
DRPD 14	Processing (grinding) of debris at DMS	EACH CUBIC YARD	1 Unit	\$ N/A
DRPD 15	Hazardous tree removal 6 inch diameter to 11.99 inch diameter (excluding hauling and disposal)	EACH	1 Unit	\$
DRPD 16	Hazardous tree removal 12 inch diameter to 23.99 inch diameter (excluding hauling and disposal)	EACH	1 Unit	\$
DRPD 17	Hazardous tree removal 24 inch diameter to 47.99 inch diameter (excluding hauling and disposal)	EACH	1 Unit	\$
DRPD 18	Hazardous tree removal 48 inch diameter and greater (excluding hauling and disposal)	EACH	1 Unit	\$

**SECTION II: EMERGENCY ROAD CLEARANCE
(INITIAL CLEARANCE - NOT TO EXCEED 70 HRS)**

#	DESCRIPTION	UNIT	QTY	COST
ERC 1	Debris removal from private property & publicly owned property (other than right-of-way) to be hauled and dumped at the South Dade Landfill located at 23707 SW 97 th AV, Gate A, Miami, Florida 33032	CUBIC YARDS	1 Unit	\$ 6.77
ERC 2	Material, fill dirt for stump holes, purchased, placed & compacted	CUBIC YARDS	1 Unit	\$ 9.77
ERC 3	Leaning trees / hanging limbs	CUBIC YARDS EACH	1 Unit	\$ 54.00
ERC 4	Demolition of structures	HOURLY-RATE CUBIC YARD	1 Unit	\$ 397.00

Price/Cost Form

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SECTION III: EQUIPMENT WITH OPERATOR - HOURLY RATES PER LINE ITEM

#	DESCRIPTION	UNIT	QTY	COST
EWO 1	JD544 or equal, wheel loader w/debris grapple	HOURLY RATE	1 Unit	\$ 130.00
EWO 2	JD644 or equal, wheel loader w/debris grapple	HOURLY RATE	1 Unit	\$ 140.00
EWO 3	JD544 or equal, wheel loader w/bucket	HOURLY RATE	1 Unit	\$ 130.00
EWO 4	JD644 or equal, wheel loader w/bucket	HOURLY RATE	1 Unit	\$ 135.00
EWO 5	Extend-a-boom forklift w/debris grapple	HOURLY RATE	1 Unit	\$ 85.00
EWO 6	753 Skid Steer w/debris grapple	HOURLY RATE	1 Unit	\$ 75.00
EWO 7	753 Skid Steer Loader w/bucket	HOURLY RATE	1 Unit	\$ 70.00
EWO 8	753 Skid Steer w/Broom	HOURLY RATE	1 Unit	\$ 70.00
EWO 9	Excavator type hoe on rubber w/grapple	HOURLY RATE	1 Unit	\$ 125.00
EWO 10	JD310 or equal TLB	HOURLY RATE	1 Unit	\$ 135.00
EWO 11	Hand fed debris chipper	HOURLY RATE	1 Unit	\$ 125.00
EWO 12	Diamond Z or equal 800 / 1,000 tub grinder	HOURLY RATE	1 Unit	\$ 325.00
EWO 13	40' / 60' Bucket Truck	HOURLY RATE	1 Unit	\$ 135.00
EWO 14	Service Truck	HOURLY RATE	1 Unit	\$ 105.00
EWO 15	Water Truck (2000 Gallons)	HOURLY RATE	1 Unit	\$ 140.00
EWO 16	Portable Light Tower (Lighting 4)	HOURLY RATE	1 Unit	\$ 10.00
EWO 17	Pick-up (w/o driver)	HOURLY RATE	1 Unit	\$ 20.00
EWO 18	Knuckle-boom w/grapple self-loading Dump type truck	HOURLY RATE	1 Unit	\$ 130.00
EWO 19	Single axle dump type truck, 5 / 12 CY	HOURLY RATE	1 Unit	\$ 95.00
EWO 20	Tandem axle dump type truck, 16 / 20 CY	HOURLY RATE	1 Unit	\$ 100.00
EWO 21	Trailer type truck/tractor 24 / 40 CY	HOURLY RATE	1 Unit	\$ 65.00
EWO 22	Trailer type truck/tractor 41 / 60 CY	HOURLY RATE	1 Unit	\$ 85.00
EWO 23	Trailer type truck/tractor 61 / 80 CY	HOURLY RATE	1 Unit	\$ 105.00

SECTION IV: LABOR & MATERIAL - HOURLY RATES PER LINE ITEM

#	DESCRIPTION	UNIT	QTY	COST
LM 1	Operating Manager	HOURLY RATE	1 Unit	\$ 65.00
LM 2	Superintendent w/truck, phone & radio	HOURLY RATE	1 Unit	\$ 65.00
LM 3	Foreman w/truck, phone & radio	HOURLY RATE	1 Unit	\$ 55.00
LM 4	Safety/quality control inspector w/vehicle, phone & radio	HOURLY RATE	1 Unit	\$ 55.00
LM 5	Inspector w/vehicle, phone & radio	HOURLY RATE	1 Unit	\$ 50.00
LM 6	Climber w/gear	HOURLY RATE	1 Unit	\$ 40.00
LM 7	Chain & Hand Saw Operator	HOURLY RATE	1 Unit	\$ 35.00
LM 8	Laborer & Flagman	HOURLY RATE	1 Unit	\$ 30.00 EA
LM 9	Haz-Mat Professional	HOURLY RATE	1 Unit	\$ 75.00
LM 10	Certified Arborist	HOURLY RATE	1 Unit	\$ 70.00
LM 11	Project Manager / Haz-Mat Professional	HOURLY RATE	1 Unit	\$ 75.00

DRC Emergency Services, Inc.

SECTION I: DEBRIS REMOVAL, PROCESSING & DISPOSAL				
#	DESCRIPTION	UNIT	QTY	COST
DRPD 1	Mobilize & demobilize	LUMP SUM	1 Unit	\$ 0.00
DRPD 2	Pick-up and haul of white goods	EACH	1 Unit	\$ 150.00
DRPD 3	Pick-up and disposal of hazardous material	POUND	1 Unit	\$ 100.00
DRPD 4	Sweeping Curb and Gutter	HOURLY RATE	1 Unit	\$ 85.00
DRPD 5	Process stump based on FEMA conversion table, May 15, 2007 publication DAP9523.ii	CUBIC YARD	1 Unit	\$ 20.00
DRPD 6	Hazardous stump removal, hauling and disposal 6" diameter to 11.99" diameter	EACH	1 Unit	\$
DRPD 7	Hazardous stump removal, hauling and disposal 12" diameter to 23.99" diameter	EACH	1 Unit	\$
DRPD 8	Hazardous stump removal & hauling, disposal 24" diameter to 47.99" diameter	EACH	1 Unit	\$ 325.00
DRPD 9	Hazardous stump removal, hauling and disposal 48" diameter and greater	EACH	1 Unit	\$ 475.00
DRPD 10	Dead animal collection, transportation and disposal	POUND	1 Unit	\$ 1.00
DRPD 11	Debris removal from public property (rights-of-way) hauling and disposal at final FDEP approved disposal site within Miami-Dade County	CUBIC YARD	1 Unit	\$ 7.86
DRPD 12	Debris removal from Public Property (rights-of-way) & hauling to DMS within the limits of the Village of Palmetto Bay	EACH CUBIC YARD	1 Unit	\$ 6.86
DRPD 13	Debris removal from DMS, hauling & disposal at FDEP approved site within Miami-Dade County	EACH CUBIC YARD	1 Unit	\$ 3.43
DRPD 14	Processing (grinding) of debris at DMS	EACH CUBIC YARD	1 Unit	\$ 3.00
DRPD 15	Hazardous tree removal 6 inch diameter to 11.99 inch diameter (excluding hauling and disposal)	EACH	1 Unit	\$ 65.00
DRPD 16	Hazardous tree removal 12 inch diameter to 23.99 inch diameter (excluding hauling and disposal)	EACH	1 Unit	\$ 110.00
DRPD 17	Hazardous tree removal 24 inch diameter to 47.99 inch diameter (excluding hauling and disposal)	EACH	1 Unit	\$ 260.00
DRPD 18	Hazardous tree removal 48 inch diameter and greater (excluding hauling and disposal)	EACH	1 Unit	\$ 360.00

**SECTION II: EMERGENCY ROAD CLEARANCE
(INITIAL CLEARANCE - NOT TO EXCEED 70 HRS)**

#	DESCRIPTION	UNIT	QTY	COST
ERC 1	Debris removal from private property & publicly owned property (other than right-of-way) to be hauled and dumped at the South Dade Landfill located at 23707 SW 97 th AV, Gate A, Miami, Florida 33032	CUBIC YARDS	1 Unit	\$ 6.86
ERC 2	Material, fill dirt for stump holes, purchased, placed & compacted	CUBIC YARDS	1 Unit	\$ 15.00
ERC 3	Leaning trees / hanging limbs	CUBIC YARDS EACH	1 Unit	\$ 85.00
ERC 4	Demolition of structures	HOURLY RATE CUBIC YARD	1 Unit	\$ 14.62

Price/Cost Form

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SECTION III: EQUIPMENT WITH OPERATOR - HOURLY RATES PER LINE ITEM

#	DESCRIPTION	UNIT	QTY	COST
EWO 1	JD544 or equal, wheel loader w/debris grapple	HOURLY RATE	1 Unit	\$ 115.00
EWO 2	JD644 or equal, wheel loader w/debris grapple	HOURLY RATE	1 Unit	\$ 140.00
EWO 3	JD544 or equal, wheel loader w/bucket	HOURLY RATE	1 Unit	\$ 115.00
EWO 4	JD644 or equal, wheel loader w/bucket	HOURLY RATE	1 Unit	\$ 140.00
EWO 5	Extend-a-boom forklift w/debris grapple	HOURLY RATE	1 Unit	\$ 85.00
EWO 6	753 Skid Steer w/debris grapple	HOURLY RATE	1 Unit	\$ 85.00
EWO 7	753 Skid Steer Loader w/bucket	HOURLY RATE	1 Unit	\$ 85.00
EWO 8	753 Skid Steer w/Broom	HOURLY RATE	1 Unit	\$ 85.00
EWO 9	Excavator type hoe on rubber w/grapple	HOURLY RATE	1 Unit	\$ 150.00
EWO 10	JD310 or equal TLB	HOURLY RATE	1 Unit	\$ 125.00
EWO 11	Hand fed debris chipper	HOURLY RATE	1 Unit	\$ 225.00
EWO 12	Diamond Z or equal 800 / 1,000 tub grinder	HOURLY RATE	1 Unit	\$ 350.00
EWO 13	40' / 60' Bucket Truck	HOURLY RATE	1 Unit	\$ 225.00
EWO 14	Service Truck	HOURLY RATE	1 Unit	\$ 85.00
EWO 15	Water Truck (2000 Gallons)	HOURLY RATE	1 Unit	\$ 85.00
EWO 16	Portable Light Tower (Lighting 4)	HOURLY RATE	1 Unit	\$ 100.00
EWO 17	Pick-up (w/o driver)	HOURLY RATE	1 Unit	\$ 25.00
EWO 18	Knuckle-boom w/grapple self-loading Dump type truck	HOURLY RATE	1 Unit	\$ 150.00
EWO 19	Single axle dump type truck, 5 / 12 CY	HOURLY RATE	1 Unit	\$ 90.00
EWO 20	Tandem axle dump type truck, 16 / 20 CY	HOURLY RATE	1 Unit	\$ 100.00
EWO 21	Trailer type truck/tractor 24 / 40 CY	HOURLY RATE	1 Unit	\$ 110.00
EWO 22	Trailer type truck/tractor 41 / 60 CY	HOURLY RATE	1 Unit	\$ 120.00
EWO 23	Trailer type truck/tractor 61 / 80 CY	HOURLY RATE	1 Unit	\$ 130.00

SECTION IV: LABOR & MATERIAL - HOURLY RATES PER LINE ITEM

#	DESCRIPTION	UNIT	QTY	COST
LM 1	Operating Manager	HOURLY RATE	1 Unit	\$ 110.00
LM 2	Superintendent w/truck, phone & radio	HOURLY RATE	1 Unit	\$ 90.00
LM 3	Foreman w/truck, phone & radio	HOURLY RATE	1 Unit	\$ 85.00
LM 4	Safety/quality control inspector w/vehicle, phone & radio	HOURLY RATE	1 Unit	\$ 75.00
LM 5	Inspector w/vehicle, phone & radio	HOURLY RATE	1 Unit	\$ 60.00
LM 6	Climber w/gear	HOURLY RATE	1 Unit	\$ 90.00
LM 7	Chain & Hand Saw Operator	HOURLY RATE	1 Unit	\$ 45.00
LM 8	Laborer & Flagman	HOURLY RATE	1 Unit	\$ 37.00
LM 9	Haz-Mat Professional	HOURLY RATE	1 Unit	\$ 85.00
LM 10	Certified Arborist	HOURLY RATE	1 Unit	\$ 150.00
LM 11	Project Manager / Haz-Mat Professional	HOURLY RATE	1 Unit	\$ 95.00

TFR Enterprises, Inc.

SECTION I: DEBRIS REMOVAL, PROCESSING & DISPOSAL				
#	DESCRIPTION	UNIT	QTY	COST
DRPD 1	Mobilize & demobilize	LUMP SUM	1 Unit	\$ 0.00
DRPD 2	Pick-up and haul of white goods	EACH	1 Unit	\$ 48.00
DRPD 3	Pick-up and disposal of hazardous material	POUND	1 Unit	\$ 2.00
DRPD 4	Sweeping Curb and Gutter	HOURLY RATE	1 Unit	\$ 225.00
DRPD 5	Process stump based on FEMA conversion table, May 15, 2007 publication DAP9523.11	CUBIC YARD	1 Unit	\$ 18.00
DRPD 6	Hazardous stump removal, hauling and disposal 6" diameter to 11.99" diameter	EACH	1 Unit	\$
DRPD 7	Hazardous stump removal, hauling and disposal 12" diameter to 23.99" diameter	EACH	1 Unit	\$
DRPD 8	Hazardous stump removal & hauling, disposal 24" diameter to 47.99" diameter	EACH	1 Unit	\$ 300.00
DRPD 9	Hazardous stump removal, hauling and disposal 48" diameter and greater	EACH	1 Unit	\$ 450.00
DRPD 10	Dead animal collection, transportation and disposal	POUND	1 Unit	\$ 1.00
DRPD 11	Debris removal from public property (rights-of-way) hauling and disposal at final FDEP approved disposal site within Miami-Dade County	CUBIC YARD	1 Unit	\$ 16.50
DRPD 12	Debris removal from Public Property (rights-of-way) & hauling to DMS within the limits of the Village of Palmetto Bay	EACH CUBIC YARD	1 Unit	\$ 8.75
DRPD 13	Debris removal from DMS, hauling & disposal at FDEP approved site within Miami-Dade County	EACH CUBIC YARD	1 Unit	\$ 12.50
DRPD 14	Processing (grinding) of debris at DMS	EACH CUBIC YARD	1 Unit	\$ 3.00
DRPD 15	Hazardous tree removal 6 inch diameter to 11.99 inch diameter (excluding hauling and disposal)	EACH	1 Unit	\$ 125.00
DRPD 16	Hazardous tree removal 12 inch diameter to 23.99 inch diameter (excluding hauling and disposal)	EACH	1 Unit	\$ 255.00
DRPD 17	Hazardous tree removal 24 inch diameter to 47.99 inch diameter (excluding hauling and disposal)	EACH	1 Unit	\$ 690.00
DRPD 18	Hazardous tree removal 48 inch diameter and greater (excluding hauling and disposal)	EACH	1 Unit	\$ 1,800.00

**SECTION II: EMERGENCY ROAD CLEARANCE
(INITIAL CLEARANCE - NOT TO EXCEED 70 HRS)**

#	DESCRIPTION	UNIT	QTY	COST
ERC 1	Debris removal from private property & publicly owned property (other than right-of-way) to be hauled and dumped at the South Dade Landfill located at 23707 SW 97 th AV, Gate A, Miami, Florida 33032	CUBIC YARDS	1 Unit	\$ 7.90
ERC 2	Material, fill dirt for stump holes, purchased, placed & compacted	CUBIC YARDS	1 Unit	\$ 26.00
ERC 3	Leaning trees / hanging limbs	CUBIC YARDS EACH	1 Unit	\$ 25.00
ERC 4	Demolition of structures	HOURLY RATE CUBIC YARD	1 Unit	\$ 18.00

Price/Cost Form

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SECTION III: EQUIPMENT WITH OPERATOR - HOURLY RATES PER LINE ITEM

#	DESCRIPTION	UNIT	QTY	COST
EWO 1	JD544 or equal, wheel loader w/debris grapple	HOURLY RATE	1 Unit	\$ 175.00
EWO 2	JD644 or equal, wheel loader w/debris grapple	HOURLY RATE	1 Unit	\$ 175.00
EWO 3	JD544 or equal, wheel loader w/bucket	HOURLY RATE	1 Unit	\$ 175.00
EWO 4	JD644 or equal, wheel loader w/bucket	HOURLY RATE	1 Unit	\$ 175.00
EWO 5	Extend-a-boom forklift w/debris grapple	HOURLY RATE	1 Unit	\$ 125.00
EWO 6	753 Skid Steer w/debris grapple	HOURLY RATE	1 Unit	\$ 100.00
EWO 7	753 Skid Steer Loader w/bucket	HOURLY RATE	1 Unit	\$ 100.00
EWO 8	753 Skid Steer w/Broom	HOURLY RATE	1 Unit	\$ 100.00
EWO 9	Excavator type hoe on rubber w/grapple	HOURLY RATE	1 Unit	\$ 125.00
EWO 10	JD310 or equal TLB	HOURLY RATE	1 Unit	\$ 175.00
EWO 11	Hand fed debris chipper	HOURLY RATE	1 Unit	\$ 175.00
EWO 12	Diamond Z or equal 800 / 1,000 tub grinder	HOURLY RATE	1 Unit	\$ 900.00
EWO 13	40' / 60' Bucket Truck	HOURLY RATE	1 Unit	\$ 200.00
EWO 14	Service Truck	HOURLY RATE	1 Unit	\$ 160.00
EWO 15	Water Truck (2000 Gallons)	HOURLY RATE	1 Unit	\$ 100.00
EWO 16	Portable Light Tower (Lighting 4)	HOURLY RATE	1 Unit	\$ 100.00
EWO 17	Pick-up (w/o driver)	HOURLY RATE	1 Unit	\$ 25.00
EWO 18	Knuckle-boom w/grapple self-loading Dump type truck	HOURLY RATE	1 Unit	\$ 275.00
EWO 19	Single axle dump type truck, 5 / 12 CY	HOURLY RATE	1 Unit	\$ 100.00
EWO 20	Tandem axle dump type truck, 16 / 20 CY	HOURLY RATE	1 Unit	\$ 150.00
EWO 21	Trailer type truck/tractor 24 / 40 CY	HOURLY RATE	1 Unit	\$ 175.00
EWO 22	Trailer type truck/tractor 41 / 60 CY	HOURLY RATE	1 Unit	\$ 220.00
EWO 23	Trailer type truck/tractor 61 / 80 CY	HOURLY RATE	1 Unit	\$ 250.00

SECTION IV: LABOR & MATERIAL - HOURLY RATES PER LINE ITEM

#	DESCRIPTION	UNIT	QTY	COST
LM 1	Operating Manager	HOURLY RATE	1 Unit	\$ 75.00
LM 2	Superintendent w/truck, phone & radio	HOURLY RATE	1 Unit	\$ 120.00
LM 3	Foreman w/truck, phone & radio	HOURLY RATE	1 Unit	\$ 100.00
LM 4	Safety/quality control inspector w/vehicle, phone & radio	HOURLY RATE	1 Unit	\$ 100.00
LM 5	Inspector w/vehicle, phone & radio	HOURLY RATE	1 Unit	\$ 100.00
LM 6	Climber w/gear	HOURLY RATE	1 Unit	\$ 65.00
LM 7	Chain & Hand Saw Operator	HOURLY RATE	1 Unit	\$ 45.00
LM 8	Laborer & Flagman	HOURLY RATE	1 Unit	\$ 35.00
LM 9	Haz-Mat Professional	HOURLY RATE	1 Unit	\$ 100.00
LM 10	Certified Arborist	HOURLY RATE	1 Unit	\$ 60.00
LM 11	Project Manager / Haz-Mat Professional	HOURLY RATE	1 Unit	\$ 100.00

Ceres Environmental Services, Inc.

SECTION I: DEBRIS REMOVAL, PROCESSING & DISPOSAL				
#	DESCRIPTION	UNIT	QTY	COST
DRPD 1	Mobilize & demobilize	LUMP SUM	1 Unit	\$ 0.00
DRPD 2	Pick-up and haul of white goods	EACH	1 Unit	\$ 45.00
DRPD 3	Pick-up and disposal of hazardous material	POUND	1 Unit	\$ 5.95
DRPD 4	Sweeping Curb and Gutter	HOURLY RATE	1 Unit	\$ 158.00
DRPD 5	Process stump based on FEMA conversion table, May 15, 2007 publication DAP9523.11	CUBIC YARD	1 Unit	\$ 14.99
DRPD 6	Hazardous stump removal, hauling and disposal 6" diameter to 11.99" diameter	EACH	1 Unit	\$
DRPD 7	Hazardous stump removal, hauling and disposal 12" diameter to 23.99" diameter	EACH	1 Unit	\$
DRPD 8	Hazardous stump removal & hauling, disposal 24" diameter to 47.99" diameter	EACH	1 Unit	\$ 464.83
DRPD 9	Hazardous stump removal, hauling and disposal 48" diameter and greater	EACH	1 Unit	\$ 500.00
DRPD 10	Dead animal collection, transportation and disposal	POUND	1 Unit	\$ 1.99
DRPD 11	Debris removal from public property (rights-of-way) hauling and disposal at final FDEP approved disposal site within Miami-Dade County	CUBIC YARD	1 Unit	\$ 8.09
DRPD 12	Debris removal from Public Property (rights-of-way) & hauling to DMS within the limits of the Village of Palmetto Bay	EACH CUBIC YARD	1 Unit	\$ 7.68
DRPD 13	Debris removal from DMS, hauling & disposal at FDEP approved site within Miami-Dade County	EACH CUBIC YARD	1 Unit	\$ 4.50
DRPD 14	Processing (grinding) of debris at DMS	EACH CUBIC YARD	1 Unit	\$ 3.99
DRPD 15	Hazardous tree removal 6 inch diameter to 11.99 inch diameter (excluding hauling and disposal)	EACH	1 Unit	\$ 65.00
DRPD 16	Hazardous tree removal 12 inch diameter to 23.99 inch diameter (excluding hauling and disposal)	EACH	1 Unit	\$ 145.00
DRPD 17	Hazardous tree removal 24 inch diameter to 47.99 inch diameter (excluding hauling and disposal)	EACH	1 Unit	\$ 249.00
DRPD 18	Hazardous tree removal 48 inch diameter and greater (excluding hauling and disposal)	EACH	1 Unit	\$ 294.00

**SECTION II: EMERGENCY ROAD CLEARANCE
(INITIAL CLEARANCE - NOT TO EXCEED 70 HRS)**

#	DESCRIPTION	UNIT	QTY	COST
ERC 1	Debris removal from private property & publicly owned property, (other than right-of-way) to be hauled and dumped at the South Dade Landfill located at 23707 SW 97 th AV, Gate A, Miami, Florida 33032	CUBIC YARDS	1 Unit	\$ 12.17
ERC 2	Material, fill dirt for stump holes, purchased, placed & compacted	CUBIC YARDS	1 Unit	\$ 13.00
ERC 3	Leaning trees / hanging limbs	CUBIC YARDS EACH	1 Unit	\$ 98.00
ERC 4	Demolition of structures	HOURLY RATE CUBIC YARD	1 Unit	\$ 14.49

Price/Cost Form

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SECTION III: EQUIPMENT WITH OPERATOR - HOURLY RATES PER LINE ITEM

#	DESCRIPTION	UNIT	QTY	COST
EWO 1	JD544 or equal, wheel loader w/debris grapple	HOURLY RATE	1 Unit	\$ 155.00
EWO 2	JD644 or equal, wheel loader w/debris grapple	HOURLY RATE	1 Unit	\$ 165.00
EWO 3	JD544 or equal, wheel loader w/bucket	HOURLY RATE	1 Unit	\$ 150.00
EWO 4	JD644 or equal, wheel loader w/bucket	HOURLY RATE	1 Unit	\$ 160.00
EWO 5	Extend-a-boom forklift w/debris grapple	HOURLY RATE	1 Unit	\$ 87.00
EWO 6	753 Skid Steer w/debris grapple	HOURLY RATE	1 Unit	\$ 87.00
EWO 7	753 Skid Steer Loader w/bucket	HOURLY RATE	1 Unit	\$ 85.00
EWO 8	753 Skid Steer w/Broom	HOURLY RATE	1 Unit	\$ 79.00
EWO 9	Excavator type hoe on rubber w/grapple	HOURLY RATE	1 Unit	\$ 145.00
EWO 10	JD310 or equal TLB	HOURLY RATE	1 Unit	\$ 115.28
EWO 11	Hand fed debris chipper	HOURLY RATE	1 Unit	\$ 149.00
EWO 12	Diamond Z or equal 800 / 1,000 tub grinder	HOURLY RATE	1 Unit	\$ 399.00
EWO 13	40' / 60' Bucket Truck	HOURLY RATE	1 Unit	\$ 269.00
EWO 14	Service Truck	HOURLY RATE	1 Unit	\$ 100.87
EWO 15	Water Truck (2000 Gallons)	HOURLY RATE	1 Unit	\$ 89.00
EWO 16	Portable Light Tower (Lighting 4)	HOURLY RATE	1 Unit	\$ 45.00
EWO 17	Pick-up (w/o driver)	HOURLY RATE	1 Unit	\$ 15.00
EWO 18	Knuckle-boom w/grapple self-loading Dump type truck	HOURLY RATE	1 Unit	\$ 209.00
EWO 19	Single axle dump type truck, 5 / 12 CY	HOURLY RATE	1 Unit	\$ 72.00
EWO 20	Tandem axle dump type truck, 16 / 20 CY	HOURLY RATE	1 Unit	\$ 85.00
EWO 21	Trailer-type truck/tractor 24 / 40 CY	HOURLY RATE	1 Unit	\$ 88.00
EWO 22	Trailer type truck/tractor 41 / 60 CY	HOURLY RATE	1 Unit	\$ 90.00
EWO 23	Trailer type truck/tractor 61 / 80 CY	HOURLY RATE	1 Unit	\$ 92.00

SECTION IV: LABOR & MATERIAL - HOURLY RATES PER LINE ITEM

#	DESCRIPTION	UNIT	QTY	COST
LM 1	Operating Manager	HOURLY RATE	1 Unit	\$ 84.00
LM 2	Superintendent w/truck, phone & radio	HOURLY RATE	1 Unit	\$ 75.00
LM 3	Foreman w/truck, phone & radio	HOURLY RATE	1 Unit	\$ 63.00
LM 4	Safety/quality control inspector w/vehicle, phone & radio	HOURLY RATE	1 Unit	\$ 69.00
LM 5	Inspector w/vehicle, phone & radio	HOURLY RATE	1 Unit	\$ 69.00
LM 6	Climber w/gear	HOURLY RATE	1 Unit	\$ 59.00
LM 7	Chain & Hand Saw Operator	HOURLY RATE	1 Unit	\$ 39.00
LM 8	Laborer & Flagman	HOURLY RATE	1 Unit	\$ 37.00
LM 9	Haz-Mat Professional	HOURLY RATE	1 Unit	\$ 59.00
LM 10	Certified Arborist	HOURLY RATE	1 Unit	\$ 69.00
LM 11	Project Manager / Haz-Mat Professional	HOURLY RATE	1 Unit	\$ 69.00

Village of Palmetto Bay
 Finance Department Procurement Action
 AWARD RECOMMENDATION



To: Corrice E. Patterson, Public Works Director

From: Kristy Bada, Procurement Specialist

Date: May 19th, 2014

RFP/ITB#: 1314-11-006 Item/Service: Emergency Debris Removal & Management Services

Attached are apparent low bid(s) and a tabulation for subject items/services requisitioned by your department. Please complete the applicable portion(s) of this form for proper presentation and recommendations by your department for Council approval. Please return this form to the Procurement Specialist as soon as possible. An executed copy of this form will be returned to your department for resolution memo/item preparation.

I. Procurement Comments:

During the administrative review of the bid submittals for RFP 1314-11-006 it was found that Bergeron Emergency Services, Inc., DRC Emergency Services, Inc., and Ceres Environmental Services, Inc. were the most responsive and responsible bidders. The proposal submittals included the majority of the required documentation (please refer to Section II), qualifications and experience, bond capacity referral, references and addendum acknowledgements. The references listed provided positive feedback and further qualified their competence in completing projects of this nature.

II. Recommendation:

a. Which bid is being recommended? Bergeron Emergency Services, Inc., DRC Emergency Services, Inc., and Ceres Environmental Services, Inc.

b. Does the response being recommended for award meet the specifications as per the request and as advertised? Yes ___ No X

If No, is the variance considered: Minor X Major ___

Explain: Response from DRC Emergency Services, LLC included an expired Certificate of Insurance as requested by solicitation. These items do not affect the total bid price and have been requested from the bidder.

c. Is the recommendation the lowest bid received? Yes ___ No X

List the bids that are low but which you believe DO NOT meet specifications and list reasons why each does not meet specifications; please attach a memorandum of explanation to this form if necessary:

The recommendation for award is for the second, third and fourth lowest bidder. The first lowest bidder, SRS Inc., was missing required information, did not acquire the experience on similar projects as the other bidders, and the scope of services/methodology and approach was inadequate.

(attach an additional sheet if further comment or explanation is required)

III. Procurement Action/Recommendation(s):

The review committee, comprised of Corrice E. Patterson, Public Works Director; Danny Casals, Field Operations Supervisor; Darby DelSalle, Planning and Zoning Director; and Kirk Hearin, Parks and Recreation Manager evaluated all proposals received. Kristy Bada, Procurement Specialist, further reviewed all proposal submittals and tabulated the evaluations completed by the review committee, which resulted in Bergeron Emergency Services, Inc., DRC Emergency Services, Inc., and Ceres Environmental Services, Inc. as the highest ranked contractors. Kristy Bada concurs with the results of the review committee evaluations, therefore it is recommended for award the most responsive, and responsible bidders, which is Bergeron Emergency Services, Inc., DRC Emergency Services, Inc., and Ceres Environmental Services, Inc.

IV. Recommendation Approval:

Signature/Date [Signature] 5/19/14
 Kristy Bada, Procurement Specialist

Signature/Date [Signature]
 Corrice E. Patterson, Public Works Director

Signature/Date [Signature] 5/21/14
 Desmond Chin, Finance Director

Signature/Date [Signature]
 Ron E. Williams, Village Manager

V. FDOT Concurrence:

Signature/Date N/A

Name/Title N/A

Village of Palmetto Bay

Price Form Tabulation Breakdown

Emergency Debris Removal & Management Services - RFP 1314-11-006

Bid Open Date: April 16th, 2014 at 3:00pm



SECTION I: DEBRIS REMOVAL, PROCESSING & DISPOSAL				Ceres Environmental Services Inc.	TFR Enterprises, Inc.	SRS INC.	Bergeron Emergency Services, Inc.	DRC Emergency Services, LLC
#	DESCRIPTION	UNIT	QTY	COST	COST	COST	COST	COST
DPD1	Mobile & Demolition	LUMP SUM	1 Unit	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
DPD2	Pick-up and haul of white goods	Unit	1 Unit	\$45.00	\$48.00	\$54.00	\$100.00	\$150.00
DPD3	Pick-up and disposal of hazardous material	POUND	1 Unit	\$5.95	\$2.00	\$64.00	\$350.00	\$1.00
DPD4	Sweeping Curb and Gutter	HOURLY RATE	1 Unit	\$158.00	\$225.00	\$0.00	\$60.00	\$85.00
DPD5	Process stamp based on FEMA conversion to SIC, May 19, 2007 publication DAF553.11	CUBICYARD	1 Unit	\$14.99	\$18.00	\$9.67	\$6.15	\$20.00
DPD6	Hazardous stump removal, hauling and disposal 4" diameter to 16.5" diameter	EACH	1 Unit					
DPD7	Hazardous stump removal, hauling and disposal 16.5" diameter to 24" diameter	EACH	1 Unit					
DPD8	Hazardous stump removal & hauling, disposal 24" diameter to 47.5" diameter	EACH	1 Unit	\$464.83	\$300.00	\$297.00	\$275.00	\$325.00
DPD9	Hazardous stump removal, hauling and disposal 47.5" diameter and greater	EACH	1 Unit	\$500.00	\$450.00	\$547.00	\$375.00	\$475.00
DPD10	Dead animal collection, transportation and disposal	POUND	1 Unit	\$1.99	\$1.00	\$3.97	\$5.00	\$1.00
DPD11	Debris removal from public property (rights-of-way) hauling and disposal at final FDEP approved disposal site within March-Dade County	CUBICYARD	1 Unit	\$8.09	\$16.50	\$6.97	\$8.00	\$7.86
DPD12	Debris removal from Public Property (rights-of-way) to be hauled to OMS within the limits of the Village of Palmetto Bay	EACH CUBIC YARD	1 Unit	\$7.68	\$8.75	\$6.27	\$6.15	\$6.86
DPD13	Debris removal from OMS, hauling & disposal at FDEP approved site within March-Dade County	EACH CUBIC YARD	1 Unit	\$4.50	\$12.50	\$4.27	\$7.50	\$3.43
DPD14	Processing (grinding) of debris at OMS	EACH CUBIC YARD	1 Unit	\$3.99	\$3.00	N/A	\$3.00	\$3.00
DPD15	Hazardous tree removal 6 inch diameter to 16 inch diameter (including hauling and disposal)	EACH	1 Unit	\$65.00	\$125.00	N/A	\$0.00	\$65.00
DPD16	Hazardous tree removal 16 inch diameter to 24 inch diameter (including hauling and disposal)	EACH	1 Unit	\$145.00	\$255.00	N/A	\$0.00	\$110.00
DPD17	Hazardous tree removal 24 inch diameter to 47.5 inch diameter (including hauling and disposal)	EACH	1 Unit	\$249.00	\$690.00	N/A	\$200.00	\$260.00
DPD18	Hazardous tree removal 47.5 inch diameter and greater (including hauling and disposal)	EACH	1 Unit	\$194.00	\$1,800.00	N/A	\$300.00	\$360.00
SECTION II: EMERGENCY ROAD CLEARANCE (NETAL CLEARANCE - NOT TO EXCEED 24 HRS)								
#	DESCRIPTION	UNIT	QTY	COST	COST	COST	COST	COST
EC1	Debris removal from private property & publicly owned property (other than rights-of-way) to be hauled and disposed at the South Dade Landfill located at 23707 SW 97 th Ave, Gate A, Miami, Florida 33131	CUBIC YARDS	1 Unit	\$12.17	\$7.90	\$6.77	\$8.50	\$6.86
EC2	Material fill dirt for stump holes, purchased, placed & compacted	CUBIC YARDS	1 Unit	\$13.00	\$26.00	\$9.77	\$12.00	\$15.00
EC3	Leaving trees/hanging limbs	CUBIC YARDS	1 Unit	\$98.00	\$125.00	\$54.00	\$85.00	\$85.00
EC4	Demolition of structures	HOURLY RATE CUBIC YARD	1 Unit	\$14.49	\$18.00	\$397.00	\$25.00	\$14.62
SECTION III: EQUIPMENT WITH OPERATOR - HOURLY RATES PER LINE ITEM								
#	DESCRIPTION	UNIT	QTY	COST	COST	COST	COST	COST
EWO1	J2544 or equal wheel loader w/debris grapple	HOURLY RATE	1 Unit	\$155.00	\$175.00	\$130.00	\$115.00	\$115.00
EWO2	J2544 or equal wheel loader w/debris grapple	HOURLY RATE	1 Unit	\$165.00	\$175.00	\$140.00	\$110.00	\$110.00
EWO3	J2544 or equal wheel loader w/bucket	HOURLY RATE	1 Unit	\$150.00	\$175.00	\$130.00	\$115.00	\$115.00
EWO4	J2544 or equal wheel loader w/bucket	HOURLY RATE	1 Unit	\$160.00	\$175.00	\$135.00	\$120.00	\$140.00
EWO5	Extended-reach forklift w/debris grapple	HOURLY RATE	1 Unit	\$87.00	\$125.00	\$85.00	\$115.00	\$85.00
EWO6	753 Skid Steer w/debris grapple	HOURLY RATE	1 Unit	\$87.00	\$100.00	\$75.00	\$95.00	\$85.00
EWO7	753 Skid Steer Loader w/bucket	HOURLY RATE	1 Unit	\$85.00	\$100.00	\$70.00	\$95.00	\$85.00
EWO8	753 Skid Steer w/broom	HOURLY RATE	1 Unit	\$79.00	\$100.00	\$70.00	\$95.00	\$85.00
EWO9	Excavator type hoe on rubber w/grapple	HOURLY RATE	1 Unit	\$145.00	\$125.00	\$125.00	\$115.00	\$150.00
EWO10	J2030 or equal TLB	HOURLY RATE	1 Unit	\$115.28	\$175.00	\$135.00	\$100.00	\$125.00
EWO11	Hand fed debris chopper	HOURLY RATE	1 Unit	\$149.30	\$175.00	\$125.00	\$75.00	\$225.00
EWO12	Diamond Z or equal 600/1000 lbs generator	HOURLY RATE	1 Unit	\$399.00	\$900.00	\$325.00	\$550.00	\$350.00
EWO13	47' 6" Bucket Truck	HOURLY RATE	1 Unit	\$269.00	\$200.00	\$135.00	\$175.00	\$225.00
EWO14	Service Truck	HOURLY RATE	1 Unit	\$100.87	\$150.00	\$105.00	\$100.00	\$85.00
EWO15	Water Truck (2000 Gallons)	HOURLY RATE	1 Unit	\$89.00	\$100.00	\$100.00	\$100.00	\$85.00
EWO16	Portable Light Tower (Lighting)	HOURLY RATE	1 Unit	\$45.00	\$100.00	\$10.00	\$45.00	\$100.00
EWO17	Pickup (no driver)	HOURLY RATE	1 Unit	\$15.00	\$25.00	\$20.00	\$25.00	\$25.00
EWO18	Extend-reach w/grapple self-loading Dump type truck	HOURLY RATE	1 Unit	\$209.00	\$275.00	\$130.00	\$145.00	\$150.00
EWO19	Single axle dump type truck, 5/10 CY	HOURLY RATE	1 Unit	\$71.00	\$100.00	\$95.00	\$55.00	\$90.00
EWO20	Single axle dump type truck, 15/20 CY	HOURLY RATE	1 Unit	\$85.00	\$150.00	\$100.00	\$75.00	\$110.00
EWO21	Trailer type truck/tractor 21/43 CY	HOURLY RATE	1 Unit	\$88.00	\$75.00	\$65.00	\$100.00	\$110.00
EWO22	Trailer type truck/tractor 41/63 CY	HOURLY RATE	1 Unit	\$90.00	\$220.00	\$85.00	\$120.00	\$120.00
EWO23	Trailer type truck/tractor 61/83 CY	HOURLY RATE	1 Unit	\$92.00	\$250.00	\$105.00	\$150.00	\$130.00
SECTION IV: LABOR & MATERIAL - HOURLY RATES PER LINE ITEM								
#	DESCRIPTION	UNIT	QTY	COST	COST	COST	COST	COST
LM1	Operating Manager	HOURLY RATE	1 Unit	\$84.00	\$75.00	\$55.00	\$75.00	\$110.00
LM2	Superintendent w/truck, phone & radio	HOURLY RATE	1 Unit	\$75.00	\$120.00	\$65.00	\$65.00	\$90.00
LM3	Foreman w/truck, phone & radio	HOURLY RATE	1 Unit	\$63.00	\$100.00	\$55.00	\$55.00	\$85.00
LM4	Safety/quality control Inspector w/vehicle	HOURLY RATE	1 Unit	\$69.00	\$100.00	\$55.00	\$75.00	\$75.00
LM5	Inspector w/vehicle, phone & radio	HOURLY RATE	1 Unit	\$69.00	\$100.00	\$50.00	\$55.00	\$60.00
LM6	Climber w/gear	HOURLY RATE	1 Unit	\$59.00	\$55.00	\$40.00	\$60.00	\$90.00
LM7	Crush & Hand Saw Operator	HOURLY RATE	1 Unit	\$39.00	\$45.00	\$35.00	\$31.00	\$45.00
LM8	Laborer & Flagman	HOURLY RATE	1 Unit	\$37.00	\$35.00	\$30.00	\$35.00	\$37.00
LM9	Haz-Mat Professional	HOURLY RATE	1 Unit	\$59.00	\$100.00	\$75.00	\$110.00	\$85.00
LM10	Certified Arborist	HOURLY RATE	1 Unit	\$69.00	\$60.00	\$70.00	\$150.00	\$150.00
LM11	Project Manager / Haz-Mat Professional	HOURLY RATE	1 Unit	\$69.00	\$100.00	\$75.00	\$150.00	\$95.00
Total				\$5,729.33	\$9,286.65	\$4,610.69	\$5,557.30	\$5,836.63

Note: \$0.00 through denotes mathematical error by bidder.

Date Added & Modified: March 17th, 2014
Publication: Daily Business Review

Created and Modified by: Meghan A. Alexander, Village Desk

Village of Palmetto Bay
Price Form Tabulation Breakdown
Emergency Debris Removal & Management Services - RFP 1314-11-006
Bid Open Date: April 16th, 2014 at 3:00pm



	Ceres Environmental Services Inc.	TFR Enterprises, Inc.	SRS INC.	Bergeron Emergency Services, Inc.	DRC Emergency Services, LLC
Total Bid:	\$5,779.13	\$9,286.65	\$4,610.69	\$5,577.30	\$5,836.63
	<i>Proposal Amount</i>				
	<i>Proposal Checklist</i>				
Pre-Bid Conference	✓	✓	✓	✓	✓
Price Form completed and executed in accordance with the Terms and Conditions, and the Scope of Services	✓	✓	✗	✓	✓
Bonding Capacity Letter	✓	✓	✓	✓	✓
Bidder Qualifications	✓	✓	✓	✓	✓
Completeness of Proposal Submittal	✓	✓	✗	✓	✗
Copies of Bid	✓	✓	✓	✓	✓
Submittal of Village Required Forms	✓	✓	✓	✓	✓
Addendum Acknowledgment	✓	✓	✓	✓	✓
References:	✓	✓	✓	✓	✓

Note: Strikethrough denotes mathematical error by bidder.

Date Advertised: Monday, March 17th, 2014
 Publication(s): Daily Business Review

Opened and Received By: Morgan J. Alexander,
 Village Clerk



Village of Palmetto Bay
Emergency Debris Removal and Management Services
 RFP 1314-11-006
Proposal Evaluations Final Score Tabulation

Vendor	1	2	3	4	Total (Max. 400 pts.)	Average Score (Max. 100)	Ranking
Bergeron Emergency Services, Inc.	98	87	69	86	340	85.00	1
DRC Emergency Services, Inc.	90	86	70	91	337	84.25	2
Ceres Environmental Services, Inc.	90	88	66.5	87	331.5	82.88	3
SRS Inc.	85	75	85.5	84	329.5	82.38	4
TFR Enterprises, Inc.	70	62	48.5	76	256.5	64.13	5

Date Advertised: Monday, March 17th, 2014
 Publication(s): Daily Business Review

Opened and Received By: Melgran J. Alexander,
 Village Clerk

Exhibit A

VILLAGE OF PALMETTO BAY

EMERGENCY DEBRIS REMOVAL & MANAGEMENT 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 BERGERON EMERGENCY SERVICES, INC. authorized to do business in the State of Florida, (hereinafter referred to as "Vendor" and jointly referred to as the Parties.

WITNESSETH:

WHEREAS, the Village advertised a Request for Proposals ("RFP") on Monday, March 17, 2014, and

WHEREAS, Vendor submitted a Proposal dated Wednesday, April 16, 2014 in response to the Village's request, and

WHEREAS, at a meeting held on Monday, June 2, 2014, the Village Council awarded the Vendor and agreed to enter into an Agreement with Vendor to perform the services described in the RFP and Vendor'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, Addenda's prepared by the Village for Emergency Debris Removal & Management Services RFP No. 1314-11-006 (Exhibit 1).
- (ii) Proposal for the Village of Palmetto Bay prepared by Vendor dated Wednesday, April 16, 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. Vendor 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. Vendor 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

Vendor and the individual executing this Agreement on behalf of the Vendor warrant to the Village that the Vendor is a Florida corporation duly constituted and authorized to do business in the State of Florida, is in good standing and that Vendor 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. Vendor acknowledges that due to the nature of this contract, that Vendor must take all necessary precautions to avoid accidents and shall comply with all local, state and federal regulations that apply. Vendor 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 Vendor 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 shall be submitted to the Village's authorized representative on a biweekly basis unless otherwise directed by the Village. All invoices must be submitted in the form of a hard copy. The invoice detail must consist of a tabular report listing all ticket information required by the Village. Invoice detail submittals will be checked against Village records. Village records are the basis of all payment approvals. Only one hundred percent (100%) accurate and complete invoices shall be forwarded by the Village authorized representative to the Village for payment.

A ten percent (10%) retainage will be withheld from each reconciled invoice until the end of the project. In order to recover the retainage, the Vendor(s) must successfully complete, and receive a letter of completion from the Village, for all work zones. Retainage will be held until final reconciliation is complete. Portions of the retainage may be held by the Village to repair damages caused by the Vendor(s) to public or private property.

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. The Village has up to thirty (30) days to review, approve and pay all invoices after receipt.

Article 5 Reports

A. Prior to commencement of operations under this Agreement, the Vendor 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 Vendor 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 Vendor 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 Vendor's performance). Termination or cancellation of the contract will not relieve the Vendor of any obligations or liabilities resulting from any acts committed by the Vendor 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 Vendor 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 Vendor agrees that in the event this Contract is terminated for the Village's breach, the damages that Vendor 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 8 Contract Term

The term of this agreement shall be for three (3) years, with an option to allow for the Village, at its sole discretion, to extend this agreement for an additional two, one year (12 months) terms. In the event the Village decides to exercise the one year (12 months) extension option provided for in this section, the Village shall provide thirty (30) days written notice to the Bidder prior to the expiration of the original agreement, providing the successful bidder will agree to maintain the same terms and conditions of the current agreement.

Article 9 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 Vendor under this Agreement, audit, or cause to be audited, those books and records of Vendor which are related to Vendor's performance under this Agreement. Vendor 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 Vendor's facilities and perform such inspections, as the Village deems reasonably necessary, to determine whether the services required to be provided by Vendor under this Agreement conform to the terms hereof and/or the terms of the Solicitation Documents, if applicable. Vendor 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 10 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 Vendor. The Vendor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the Village, nor is the Vendor authorized to use the Village's Tax Exemption Number in securing such materials.

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

Article 11 Indemnification

Vendor 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 Vendor or its employees, agents, servants, partners, principals or sub-Vendors. Vendor 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. Vendor expressly understands and agrees that any insurance protection required by this Agreement or otherwise

provided by Vendor 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.

Contractor will have to indemnify the Village from all Public Assistance (PA) Funding Deobligations related to negligence, lack of due diligence &/or failure to perform services or comply with PA Program under sections 403(a)(3)(A), 406, 497 and 502(a)(5) of the Stafford Act.

Article 12 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 Vendor. 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 13 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 14 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 15 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 16 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 Vendor of the same, or any other provision or the enforcement thereof. The Village's consent to or approval of any act by Vendor 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 Vendor, whether or not similar to the act so consented to or approved.

Article 17 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

Vendor:

Ronald M. Bergeron, Jr., President
Bergeron Emergency Services, Inc.
19612 SW 69th Place
Ft. Lauderdale, FL 33332

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 18 Independent Vendor

Vendor is and shall remain an independent Vendor and is not an employee or agent of the Village. Services provided by Vendor shall be by employees of Vendor 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. Vendor 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 Vendor. The rights granted to Vendor hereunder are nonexclusive, and the Village reserves the right to enter into agreements with other persons or Vendors to perform services including those hereunder.

Article 19 Assignment

The Vendor 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 Vendor 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 Vendor 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 Vendor to the Village. None of the work or services under this Contract shall be subcontracted unless the Vendor obtains prior written consent from the Village. Approved subVendors shall be subject to each provision of this Contract and the Vendor shall be responsible and indemnify the Village for all subVendors' acts, errors or omissions.

Article 20 Prohibition Against Contingent Fees

Vendor warrants that it has no employees or retained any Vendor or person, other than a bona fide employee working solely for Vendor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), Vendor, corporation, individual or Vendor, other than a

bond fide employee working solely for Vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

Article 21 Attorneys Fees

Should any dispute arise hereunder, the Village shall be entitled to recover against the Vendor 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 22 Conflict of Interest

Vendor 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 23 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 24 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 25 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 26 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 27 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 28 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 29 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 30 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 31 Permits, Licenses and Filing Fees

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

Article 32 Safety Provisions

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

Article 33 Public and Employee Safety

Whenever the Vendor'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 34 Preservation of Village Property

The Vendor 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 Vendor's operations, it shall be replaced or restored at the Vendor's expense. The facilities shall be replaced or restored to a condition as good as when the Vendor began work.

Article 35 Immigration Act of 1986

The Vendor warrants on behalf of itself and all sub-Vendors 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 36 Vendor Non-Discrimination

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

Article 37 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. Vendors 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 Vendor and all sub-Vendors 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 Vendor to inquire prior to proposal submittal. Failure to so inquire shall cause any such ambiguity or defect to be construed against the Vendor. An ambiguity or defect shall be considered patent if it is of such a nature that the Vendor, 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 Vendor or sub-Vendors 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 Vendor 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, Vendor shall immediately notify the Village in writing, and the Vendor and all sub-Vendors 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 Vendor'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 38 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 39 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.

Article 40 Liquidated Damages

Should the Vendor fail to complete requirements set forth in this scope of work, the Village will suffer damage. The amount of damage suffered by the Village is difficult, if not impossible to determine at this time. Therefore the Vendor shall pay the Village, as liquidated damages, the following:

- a. The Vendor shall pay the Village, as liquidated damages, \$1,000.00 per calendar day of delay to mobilize in the Village with the resources required to begin debris removal operations, within seventy-two (72) hours of being issued Notice to Proceed.
- b. The Vendor shall pay the Village, as liquidated damages, \$500.00 per load of disaster debris collected in the Village that is not disposed of at a Village approved DMS or Village approved Final Disposal Site and/or any associated fines levied by a third party. Application of liquidated damages does not release the Vendor of all liability associated with hauling and depositing material to an unauthorized location.
- c. The Vendor shall pay the Village, as liquidated damages, \$500.00 per incident where the Vendor fails to repair damages that are caused by the Vendor or subcontractor(s). Application of liquidated damages does not release the Vendor from the responsibility of resolving or repairing damages.

The amounts specified above are mutually agreed upon as reasonable and proper amount of damage the Village should suffer by failure of the Vendor to complete requirements set forth in the scope of work.

Article 41 Bonds

The Vendor will be required to provide Performance and Payment Bonds in the amount of \$1,000,000 within three (3) calendar days of a written 'Notice to Proceed' by the Village. Once activated, the Payment and Performance Bonds shall be in force for a period of not less than one (1) year from the date of original execution by the Bond Surety.

Article 42 Waiver of Liens

Prior to final payment of the Contract Sum, a final waiver of lien shall be submitted by all suppliers, sub vendors, and/or Vendors who worked on the project that is the subject of this Agreement. Payment of the invoice and acceptance of such payment by the Contractor shall release Village from all claims of liability by Contractor in connection with the agreement.

Article 43 Independent Contractor

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Vendor is an independent contractor under this Agreement and not the Village's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Vendor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Vendor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Vendor, which policies of Vendor shall not conflict with Village, State, or United States policies, rules or regulations relating to the use of Vendor's funds provided for herein. The Vendor agrees that it is a separate and independent enterprise from the Village, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Vendor and the Village and the Village will not be liable for any obligation incurred by Vendor, including but not limited to unpaid minimum wages and/or overtime premiums.

Continued on next page.

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

OWNER

Village of Palmetto Bay

ADDRESS

9705 E. Hibiscus Street
Palmetto Bay, FL 33157

BY _____

Ron E. Williams
Print Name

Village Manager
Title

ATTEST

Meighan J. Alexander
Village Clerk

APPROVED AS TO FORM BY

Dexter Lehtinen
Village Attorney

VENDOR

Bergeron Emergency Services, Inc.

ADDRESS

19612 SW 69TH Place
Ft. Lauderdale, FL 33332

BY _____

Ronald M. Bergeron, Jr.
Print Name

President
Title

Witness

Print Name

Exhibit B

VILLAGE OF PALMETTO BAY

EMERGENCY DEBRIS REMOVAL & MANAGEMENT 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 DRC Emergency Services, LLC authorized to do business in the State of Florida, (hereinafter referred to as "Vendor" and jointly referred to as the Parties.

WITNESSETH:

WHEREAS, the Village advertised a Request for Proposals ("RFP") on Monday, March 17, 2014, and

WHEREAS, Vendor submitted a Proposal dated Wednesday, April 16, 2014 in response to the Village's request, and

WHEREAS, at a meeting held on Monday, June 2, 2014, the Village Council awarded the Vendor and agreed to enter into an Agreement with Vendor to perform the services described in the RFP and Vendor'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, Addenda's prepared by the Village for Emergency Debris Removal & Management Services RFP No. 1314-11-006 (Exhibit 1).
- (ii) Proposal for the Village of Palmetto Bay prepared by Vendor dated Wednesday, April 16, 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. Vendor 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. Vendor 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

Vendor and the individual executing this Agreement on behalf of the Vendor warrant to the Village that the Vendor is a Florida corporation duly constituted and authorized to do business in the State of Florida, is in good standing and that Vendor 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. Vendor acknowledges that due to the nature of this contract, that Vendor must take all necessary precautions to avoid accidents and shall comply with all local, state and federal regulations that apply. Vendor 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 Vendor 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 shall be submitted to the Village's authorized representative on a biweekly basis unless otherwise directed by the Village. All invoices must be submitted in the form of a hard copy. The invoice detail must consist of a tabular report listing all ticket information required by the Village. Invoice detail submittals will be checked against Village records. Village records are the basis of all payment approvals. Only one hundred percent (100%) accurate and complete invoices shall be forwarded by the Village authorized representative to the Village for payment.

A ten percent (10%) retainage will be withheld from each reconciled invoice until the end of the project. In order to recover the retainage, the Vendor(s) must successfully complete, and receive a letter of completion from the Village, for all work zones. Retainage will be held until final reconciliation is complete. Portions of the retainage may be held by the Village to repair damages caused by the Vendor(s) to public or private property.

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. The Village has up to thirty (30) days to review, approve and pay all invoices after receipt.

Article 5 Reports

A. Prior to commencement of operations under this Agreement, the Vendor 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 Vendor 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 Vendor 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 Vendor's performance). Termination or cancellation of the contract will not relieve the Vendor of any obligations or liabilities resulting from any acts committed by the Vendor 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 Vendor 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 Vendor agrees that in the event this Contract is terminated for the Village's breach, the damages that Vendor 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 8 Contract Term

The term of this agreement shall be for three (3) years, with an option to allow for the Village, at its sole discretion, to extend this agreement for an additional two, one year (12 months) terms. In the event the Village decides to exercise the one year (12 months) extension option provided for in this section, the Village shall provide thirty (30) days written notice to the Bidder prior to the expiration of the original agreement, providing the successful bidder will agree to maintain the same terms and conditions of the current agreement.

Article 9 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 Vendor under this Agreement, audit, or cause to be audited, those books and records of Vendor which are related to Vendor's performance under this Agreement. Vendor 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 Vendor's facilities and perform such inspections, as the Village deems reasonably necessary, to determine whether the services required to be provided by Vendor under this Agreement conform to the terms hereof and/or the terms of the Solicitation Documents, if applicable. Vendor 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 10 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 Vendor. The Vendor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the Village, nor is the Vendor authorized to use the Village's Tax Exemption Number in securing such materials.

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

Article 11 Indemnification

Vendor 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 Vendor or its employees, agents, servants, partners, principals or sub-Vendors. Vendor 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. Vendor expressly understands and agrees that any insurance protection required by this Agreement or otherwise

provided by Vendor 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.

Contractor will have to indemnify the Village from all Public Assistance (PA) Funding Deobligations related to negligence, lack of due diligence &/or failure to perform services or comply with PA Program under sections 403(a)(3)(A), 406, 497 and 502(a)(5) of the Stafford Act.

Article 12 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 Vendor. 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 13 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 14 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 15 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 16 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 Vendor of the same, or any other provision or the enforcement thereof. The Village's consent to or approval of any act by Vendor 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 Vendor, whether or not similar to the act so consented to or approved.

Article 17 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

Vendor:

Byron Jorns, Director of Governmental Affairs
DRC Emergency Services, LLC
500 South Australian Avenue, Suite 600
West Palm Beach, FL 33401

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 18 Independent Vendor

Vendor is and shall remain an independent Vendor and is not an employee or agent of the Village. Services provided by Vendor shall be by employees of Vendor 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. Vendor 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 Vendor. The rights granted to Vendor hereunder are nonexclusive, and the Village reserves the right to enter into agreements with other persons or Vendors to perform services including those hereunder.

Article 19 Assignment

The Vendor 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 Vendor 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 Vendor 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 Vendor to the Village. None of the work or services under this Contract shall be subcontracted unless the Vendor obtains prior written consent from the Village. Approved subVendors shall be subject to each provision of this Contract and the Vendor shall be responsible and indemnify the Village for all subVendors' acts, errors or omissions.

Article 20 Prohibition Against Contingent Fees

Vendor warrants that it has no employees or retained any Vendor or person, other than a bona fide employee working solely for Vendor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), Vendor, corporation, individual or Vendor, other than a

bond fide employee working solely for Vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

Article 21 Attorneys Fees

Should any dispute arise hereunder, the Village shall be entitled to recover against the Vendor 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 22 Conflict of Interest

Vendor 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 23 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 24 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 25 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 26 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 27 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 28 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 29 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 30 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 31 Permits, Licenses and Filing Fees

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

Article 32 Safety Provisions

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

Article 33 Public and Employee Safety

Whenever the Vendor'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 34 Preservation of Village Property

The Vendor 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 Vendor's operations, it shall be replaced or restored at the Vendor's expense. The facilities shall be replaced or restored to a condition as good as when the Vendor began work.

Article 35 Immigration Act of 1986

The Vendor warrants on behalf of itself and all sub-Vendors 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 36 Vendor Non-Discrimination

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

Article 37 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. Vendors 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 Vendor and all sub-Vendors 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 Vendor to inquire prior to proposal submittal. Failure to so inquire shall cause any such ambiguity or defect to be construed against the Vendor. An ambiguity or defect shall be considered patent if it is of such a nature that the Vendor, 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 Vendor or sub-Vendors 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 Vendor 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, Vendor shall immediately notify the Village in writing, and the Vendor and all sub-Vendors 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 Vendor'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 38 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 39 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.

Article 40 Liquidated Damages

Should the Vendor fail to complete requirements set forth in this scope of work, the Village will suffer damage. The amount of damage suffered by the Village is difficult, if not impossible to determine at this time. Therefore the Vendor shall pay the Village, as liquidated damages, the following:

- a. The Vendor shall pay the Village, as liquidated damages, \$1,000.00 per calendar day of delay to mobilize in the Village with the resources required to begin debris removal operations, within seventy-two (72) hours of being issued Notice to Proceed.
- b. The Vendor shall pay the Village, as liquidated damages, \$500.00 per load of disaster debris collected in the Village that is not disposed of at a Village approved DMS or Village approved Final Disposal Site and/or any associated fines levied by a third party. Application of liquidated damages does not release the Vendor of all liability associated with hauling and depositing material to an unauthorized location.
- c. The Vendor shall pay the Village, as liquidated damages, \$500.00 per incident where the Vendor fails to repair damages that are caused by the Vendor or subcontractor(s). Application of liquidated damages does not release the Vendor from the responsibility of resolving or repairing damages.

The amounts specified above are mutually agreed upon as reasonable and proper amount of damage the Village should suffer by failure of the Vendor to complete requirements set forth in the scope of work.

Article 41 Bonds

The Vendor will be required to provide Performance and Payment Bonds in the amount of \$1,000,000 within three (3) calendar days of a written 'Notice to Proceed' by the Village. Once activated, the Payment and Performance Bonds shall be in force for a period of not less than one (1) year from the date of original execution by the Bond Surety.

Article 42 Waiver of Liens

Prior to final payment of the Contract Sum, a final waiver of lien shall be submitted by all suppliers, sub vendors, and/or Vendors who worked on the project that is the subject of this Agreement. Payment of the invoice and acceptance of such payment by the Contractor shall release Village from all claims of liability by Contractor in connection with the agreement.

Article 43 Independent Contractor

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Vendor is an independent contractor under this Agreement and not the Village's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Vendor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Vendor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Vendor, which policies of Vendor shall not conflict with Village, State, or United States policies, rules or regulations relating to the use of Vendor's funds provided for herein. The Vendor agrees that it is a separate and independent enterprise from the Village, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Vendor and the Village and the Village will not be liable for any obligation incurred by Vendor, including but not limited to unpaid minimum wages and/or overtime premiums.

Continued on next page.

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

OWNER

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

BY _____

Ron E. Williams
Print Name

Village Manager
Title

ATTEST

Meighan J. Alexander
Village Clerk

APPROVED AS TO FORM BY

Dexter Lehtinen
Village Attorney

VENDOR

DRC Emergency Services, LLC
ADDRESS
500 South Australian Avenue, Suite 600
West Palm Beach, FL 33401

BY _____

Byron Jorns
Print Name

Director of Governmental Affairs
Title

Witness

Print Name

Exhibit C

VILLAGE OF PALMETTO BAY

EMERGENCY DEBRIS REMOVAL & MANAGEMENT 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 Ceres Environmental Services, Inc. authorized to do business in the State of Florida, (hereinafter referred to as "Vendor" and jointly referred to as the Parties.

WITNESSETH:

WHEREAS, the Village advertised a Request for Proposals ("RFP") on Monday, March 17, 2014, and

WHEREAS, Vendor submitted a Proposal dated Wednesday, April 16, 2014 in response to the Village's request, and

WHEREAS, at a meeting held on Monday, June 2, 2014, the Village Council awarded the Vendor and agreed to enter into an Agreement with Vendor to perform the services described in the RFP and Vendor'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, Addenda's prepared by the Village for Emergency Debris Removal & Management Services RFP No. 1314-11-006 (Exhibit 1).
- (ii) Proposal for the Village of Palmetto Bay prepared by Vendor dated Wednesday, April 16, 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. Vendor 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. Vendor 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

Vendor and the individual executing this Agreement on behalf of the Vendor warrant to the Village that the Vendor is a Florida corporation duly constituted and authorized to do business in the State of Florida, is in good standing and that Vendor 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. Vendor acknowledges that due to the nature of this contract, that Vendor must take all necessary precautions to avoid accidents and shall comply with all local, state and federal regulations that apply. Vendor 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 Vendor 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 shall be submitted to the Village's authorized representative on a biweekly basis unless otherwise directed by the Village. All invoices must be submitted in the form of a hard copy. The invoice detail must consist of a tabular report listing all ticket information required by the Village. Invoice detail submittals will be checked against Village records. Village records are the basis of all payment approvals. Only one hundred percent (100%) accurate and complete invoices shall be forwarded by the Village authorized representative to the Village for payment.

A ten percent (10%) retainage will be withheld from each reconciled invoice until the end of the project. In order to recover the retainage, the Vendor(s) must successfully complete, and receive a letter of completion from the Village, for all work zones. Retainage will be held until final reconciliation is complete. Portions of the retainage may be held by the Village to repair damages caused by the Vendor(s) to public or private property.

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. The Village has up to thirty (30) days to review, approve and pay all invoices after receipt.

Article 5 Reports

A. Prior to commencement of operations under this Agreement, the Vendor 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 Vendor 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 Vendor 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 Vendor's performance). Termination or cancellation of the contract will not relieve the Vendor of any obligations or liabilities resulting from any acts committed by the Vendor 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 Vendor 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 Vendor agrees that in the event this Contract is terminated for the Village's breach, the damages that Vendor 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 8 Contract Term

The term of this agreement shall be for three (3) years, with an option to allow for the Village, at its sole discretion, to extend this agreement for an additional two, one year (12 months) terms. In the event the Village decides to exercise the one year (12 months) extension option provided for in this section, the Village shall provide thirty (30) days written notice to the Bidder prior to the expiration of the original agreement, providing the successful bidder will agree to maintain the same terms and conditions of the current agreement.

Article 9 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 Vendor under this Agreement, audit, or cause to be audited, those books and records of Vendor which are related to Vendor's performance under this Agreement. Vendor 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 Vendor's facilities and perform such inspections, as the Village deems reasonably necessary, to determine whether the services required to be provided by Vendor under this Agreement conform to the terms hereof and/or the terms of the Solicitation Documents, if applicable. Vendor 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 10 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 Vendor. The Vendor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the Village, nor is the Vendor authorized to use the Village's Tax Exemption Number in securing such materials.

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

Article 11 Indemnification

Vendor 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 Vendor or its employees, agents, servants, partners, principals or sub-Vendors. Vendor 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. Vendor expressly understands and agrees that any insurance protection required by this Agreement or otherwise

provided by Vendor 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.

Contractor will have to indemnify the Village from all Public Assistance (PA) Funding Deobligations related to negligence, lack of due diligence &/or failure to perform services or comply with PA Program under sections 403(a)(3)(A), 406, 497 and 502(a)(5) of the Stafford Act.

Article 12 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 Vendor. 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 13 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 14 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 15 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 16 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 Vendor of the same, or any other provision or the enforcement thereof. The Village's consent to or approval of any act by Vendor 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 Vendor, whether or not similar to the act so consented to or approved.

Article 17 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

Vendor:

Steven M. Johnson, Corporate Secretary
Ceres Environmental Services, Inc.
3825 85TH Avenue North
Brooklyn Park, MN 55443

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 18 Independent Vendor

Vendor is and shall remain an independent Vendor and is not an employee or agent of the Village. Services provided by Vendor shall be by employees of Vendor 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. Vendor 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 Vendor. The rights granted to Vendor hereunder are nonexclusive, and the Village reserves the right to enter into agreements with other persons or Vendors to perform services including those hereunder.

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Vendor 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.

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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.

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Whenever the Vendor'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 34 Preservation of Village Property

The Vendor 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 Vendor's operations, it shall be replaced or restored at the Vendor's expense. The facilities shall be replaced or restored to a condition as good as when the Vendor began work.

Article 35 Immigration Act of 1986

The Vendor warrants on behalf of itself and all sub-Vendors 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 36 Vendor Non-Discrimination

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

Article 37 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. Vendors 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 Vendor and all sub-Vendors 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 Vendor to inquire prior to proposal submittal. Failure to so inquire shall cause any such ambiguity or defect to be construed against the Vendor. An ambiguity or defect shall be considered patent if it is of such a nature that the Vendor, 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 Vendor or sub-Vendors 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 Vendor 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, Vendor shall immediately notify the Village in writing, and the Vendor and all sub-Vendors 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 Vendor'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 38 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 39 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.

Article 40 Liquidated Damages

Should the Vendor fail to complete requirements set forth in this scope of work, the Village will suffer damage. The amount of damage suffered by the Village is difficult, if not impossible to determine at this time. Therefore the Vendor shall pay the Village, as liquidated damages, the following:

- a. The Vendor shall pay the Village, as liquidated damages, \$1,000.00 per calendar day of delay to mobilize in the Village with the resources required to begin debris removal operations, within seventy-two (72) hours of being issued Notice to Proceed.
- b. The Vendor shall pay the Village, as liquidated damages, \$500.00 per load of disaster debris collected in the Village that is not disposed of at a Village approved DMS or Village approved Final Disposal Site and/or any associated fines levied by a third party. Application of liquidated damages does not release the Vendor of all liability associated with hauling and depositing material to an unauthorized location.
- c. The Vendor shall pay the Village, as liquidated damages, \$500.00 per incident where the Vendor fails to repair damages that are caused by the Vendor or subcontractor(s). Application of liquidated damages does not release the Vendor from the responsibility of resolving or repairing damages.

The amounts specified above are mutually agreed upon as reasonable and proper amount of damage the Village should suffer by failure of the Vendor to complete requirements set forth in the scope of work.

Article 41 Bonds

The Vendor will be required to provide Performance and Payment Bonds in the amount of \$1,000,000 within three (3) calendar days of a written 'Notice to Proceed' by the Village. Once activated, the Payment and Performance Bonds shall be in force for a period of not less than one (1) year from the date of original execution by the Bond Surety.

Article 42 Waiver of Liens

Prior to final payment of the Contract Sum, a final waiver of lien shall be submitted by all suppliers, sub vendors, and/or Vendors who worked on the project that is the subject of this Agreement. Payment of the invoice and acceptance of such payment by the Contractor shall release Village from all claims of liability by Contractor in connection with the agreement.

Article 43 Independent Contractor

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Vendor is an independent contractor under this Agreement and not the Village's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Vendor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Vendor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Vendor, which policies of Vendor shall not conflict with Village, State, or United States policies, rules or regulations relating to the use of Vendor's funds provided for herein. The Vendor agrees that it is a separate and independent enterprise from the Village, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Vendor and the Village and the Village will not be liable for any obligation incurred by Vendor, including but not limited to unpaid minimum wages and/or overtime premiums.

Continued on next page.

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

OWNER

Village of Palmetto Bay
Inc.

ADDRESS

9705 E. Hibiscus Street
Palmetto Bay, FL 33157

BY _____

Ron E. Williams
Print Name

Village Manager
Title

ATTEST

Meighan J. Alexander
Village Clerk

APPROVED AS TO FORM BY

Dexter Lehtinen
Village Attorney

VENDOR

Ceres Environmental Services, Inc.

ADDRESS

3825 85th Avenue North
Brooklyn Park, MN 55443

By: _____

Steven M. Johnson
Print Name

Corporate Secretary
Title

Witness

Print Name

RESOLUTION NO. _____

1
2
3 A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE
4 VILLAGE OF PALMETTO BAY, FLORIDA; CREATING REQUISITE
5 BALLOT LANGUAGE FOR SUBMISSION TO ELECTORS OF A
6 PROPOSED AMENDMENT TO THE VILLAGE CHARTER; CREATING
7 SECTION 10.4, OF THE VILLAGE OF PALMETTO BAY'S CHARTER;
8 PROVIDING FOR COPIES OF THE CHARTER AMENDMENT TO BE
9 AVAILABLE FOR PUBLIC INSPECTION; PROVIDING FOR THE
10 VILLAGE CLERK TO UTILIZE THE SERVICES OF MIAMI-DADE
11 COUNTY SUPERVISOR OF ELECTIONS TO PLACE THE CHARTER
12 AMENDMENT ON THE BALLOT; PROVIDING FOR SEVERABILITY
13 AND AN EFFECTIVE DATE. (Sponsored by Mayor Shelley Stanczyk)
14

15 WHEREAS, the Mayor and Village Council desire to create a proposed charter
16 amendment, to be numbered Section 10.4, which shall be submitted to the electorate for approval or
17 disapproval at the next regularly scheduled General Election, currently scheduled for November 4,
18 2014; and,
19

20 WHEREAS, the Mayor and Village Council desire to provide requisite ballot language for
21 submission to electorate, providing for copies of this charter amendment to be available for public
22 inspection, and providing for the Village Clerk to utilize the services of Miami-Dade County
23 Supervisor of Elections.
24

25 BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE
26 VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:
27

28 **Section 1.** *Whereas clauses.* The above whereas clauses are incorporated by reference into
29 this Resolution.
30

31 **Section 2.** *Proposed Amendment to the Village Charter.* The Mayor and Village Council
32 propose an amendment to the Village Charter that shall be voted upon by the Village electorate.
33 Those proposed amendment is commonly referred to by the following ballot title: **Lighting**
34 **Prohibition.** The amendment is as follows:
35

Section 10.4

36 Lighting shall not be installed or used for outdoor recreational areas, except for
37 underwater swimming pool lighting, by religious facilities, private schools, child care
38 facilities or other non-governmental public assembly uses in any single-family
39 residential zoning district. This provision shall be self-executing and become effective
40 upon the date of adoption by the electorate.
41

42
43 **Section 3.** *Form of Ballot.* The form of ballot of the Charter amendments provided for in
44 this Resolution shall be as follows:
45

1 **Proposed Palmetto Bay Charter Amendment:**
2 **LIGHTING PROHIBITION [Section 10.4].**
3

4 Lighting shall not be installed or used for outdoor recreational areas, except for
5 underwater swimming pool lighting, by religious facilities, private schools, child care
6 facilities or other non-governmental public assembly uses in any single-family
7 residential zoning district. This provision shall be self-executing and become effective
8 upon the date of adoption by the electorate.
9

10 Shall the above described amendment be adopted?

11
12 YES []
13 NO []
14

15 **Section 4.** *Charter Amendment to be Available for Public Inspection, and for the Village Clerk to*
16 *Utilize the Services of Miami-Dade County Supervisor of Elections.* The place, information and the full text
17 of the proposed Village Charter amendment is available at the office of the Village Clerk located at
18 9705 East Hibiscus Street, Palmetto Bay, Florida 33157. Copies of this resolution providing the
19 charter amendment subject to this referendum approval is on file in the office of the Village Clerk
20 and available for public inspection during regular business hours. The Village Clerk is authorized to
21 utilize the services of Miami-Dade County Supervisor of Elections for any assistance required in the
22 administration of the election.
23

24 **Section 5.** *Providing for Adoption of Enabling Resolution.* The Village Council shall enable
25 the submittal of the proposed amendments to the electorate pursuant to section 6.03 of the Miami-
26 Dade County Charter.
27

28 **Section 6.** If any section, clause, sentence, or phrase of this resolution is for any reason
29 held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the
30 validity of the remaining portions of this resolution.
31

32 **Section 7.** This resolution shall take effect immediately upon enactment.
33

34 PASSED AND RESOLVED this ____ day of June, 2014.
35
36
37

38 Attest: _____
39 Meighan Alexander
40 Village Clerk
41
42

Shelley Stanczyk
Mayor

1 APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
2 AND RELIANCE OF THE VILLAGE OF PALMETTO BAY, FLORIDA ONLY:
3

4
5
6 _____
7 Dexter W. Lehtinen
8 Village Attorney
9

10
11
12 FINAL VOTE AT ADOPTION:
13

- 14 Council Member Patrick Fiore _____
- 15
- 16 Council Member Tim Schaffer _____
- 17
- 18 Council Member Joan Lindsay _____
- 19
- 20 Vice-Mayor John DuBois _____
- 21
- 22 Mayor Shelley Stanczyk _____
- 23



ITEM 10B

To: Honorable Mayor and Village Council

Date: May 23, 2014

From: Ron E. Williams, Village Manager

Re: Landscape Design Services for
Beautification of US-1 Medians

Ron E. Williams

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO BEAUTIFICATION OF US-1 MEDIANS WITHIN THE VILLAGE OF PALMETTO BAY; FURTHER AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO AN AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE LANDSCAPE DESIGN SERVICES AND TO APPROVE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED \$45,000; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

The Village Council approved Resolution No. 2013-71 authorizing the Department of Public Works to submit an application to solicit FY 2013-14 Florida Highway Beautification Council Grant funding in an amount not to exceed \$90,000. A 50/50 match is required (50% grant/50% applicant).

The application as submitted was selected by the Florida Highway Beautification Council to receive a grant to fund the design and installation of landscape for placement within the medians on the stretch of US-1 from south of SW 136th ST to north of SW 184th ST. At the May 5, 2014 Village Council meeting, Council approved Resolution No. 2014-40 accepting the grant award (\$45,000) and terms as detailed in the award letter and further authorized the Village Manager to execute the required agreements within one year from the date of the award letter.

FDOT's first priority in the design, construction, and maintenance of every highway landscape project is safety. The landscape project for beautification of the US-1 corridor within the boundaries of the Village must be safe, cost effective, aesthetically pleasing, compatible with Florida's ecology, and practical to maintain. The landscape improvements proposed will provide and instantly create a welcoming and enjoyable experience to visitors and residents with landscape safely placed along this highly traveled state road along with identifying the gateway points into the Village.

In response to the Village's needs, the Department of Public Works requested a proposal from Kimley-Horn and Associates, Inc. for the preparation of US-1 Median Landscape design inclusive of a maintenance plan to be implemented in three (3) phases.

At the May 6, 2013 Village Council meeting, the Council approved the selection of Kimley-Horn and Associates, Inc. via Resolution No. 2013-40 to provide ongoing Landscape Architecture services for the Village of Palmetto Bay. The professional services listed in the proposal prepared by Kimley-Horn and Associates include the following:

- Task 1. - Conceptual design
- Task 2. – Planting & Irrigation Design
- Task 3. – Permit Processing Assistance

The Administration is requesting authorization to enter into an agreement with Kimley-Horn and Associates, Inc. to commence preparation of a landscape design for beautification of the US-1 medians on the stretch of US-1 from south of SW 136th ST to north of SW 184th ST.

FISCAL/BUDGETARY IMPACT

Funding is available and budgeted for this item under "Special Revenue Funds - New Local Option Gas Tax – Easement/Swales" in an amount not to exceed \$30,000.00 and the Planning and Zoning Department has \$15,000 available in the Landscape Mitigation program in FY 2013-14 to cover the balance of the \$45,000 (\$22,500 will be reimbursed from the Florida Highway Beautification Council grant funds in the Fiscal Year 2013-2014).

RECOMMENDATION:

Approval is recommended.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO BEAUTIFICATION OF US-1 MEDIANS WITHIN THE VILLAGE OF PALMETTO BAY; FURTHER AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO AN AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE LANDSCAPE DESIGN SERVICES AND TO APPROVE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED \$45,000.00; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council approved Resolution No. 2013-71 authorizing the Department of Public Works to submit an application to solicit FY 2013-14 Florida Highway Beautification Council Grant funding in an amount not to exceed \$90,000; and

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

WHEREAS, the Village was selected by the Florida Highway Beautification Council to receive grant funding for the design and installation of landscape for placement within the medians on the stretch of US-1 from south of SW 136th ST to north of SW 184th ST; and

WHEREAS, the Village Council approved Resolution No. 2014-40 accepting the grant award in the amount \$45,000 which further authorized the Village Manager to execute the required agreements; and

WHEREAS, the landscape project for beautification of the US-1 corridor within the boundaries of the Village must be safe, cost effective, aesthetically pleasing, compatible with Florida's ecology, and practical to maintain; and

WHEREAS, the landscape improvements proposed will provide and instantly create a welcoming and enjoyable experience to visitors and residents with landscape safely placed along this highly traveled state road along with identifying the gateway points into the Village; and

WHEREAS, the Department of Public Works requested a proposal from Kimley-Horn and Associates, Inc. for the preparation of US-1 Medians Landscape design inclusive of a maintenance plan; and,

WHEREAS, construction of the US-1 Medians Landscape improvements will be constructed in three (3) phases; and

WHEREAS, the fee established to provide the professional services for this project is \$45,000.00; and

WHEREAS, as per Resolution No. 2013-40 approved on May 6, 2013, Kimley-Horn and Associates, Inc. is qualified to provide ongoing Landscape Architecture services for the Village of Palmetto Bay; and

WHEREAS, Kimley-Horn and Associates, Inc. is currently under contract with the Village of Palmetto Bay to provide continuing professional services in Civil Engineering until June 2016; and

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

Section 1. Funding is available and budgeted for this item under "Special Revenue Funds - New Local Option Gas Tax - Easement/Swales" in an amount not to exceed \$30,000.00, and Planning and Zoning Department has \$15,000 available in the Landscape Mitigation program in FY 2013-14 to cover the balance of the \$45,000 (\$22,500 will be reimbursed from the Florida Highway Beautification Council grant funds in Fiscal Year 2013-2014).

Section 2. The Village Manager is authorized to enter into an agreement with Kimley-Horn and Associates Inc. to commence preparation of a landscape design for beautification of the US-1 medians on the stretch of US-1 from south of SW 136th ST to north of SW 184th ST in an amount not to exceed \$45,000.00.

Section 3. This Resolution shall become effective immediately.

PASSED AND ADOPTED this _____ 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 _____

Council Member Tim Schaffer _____

Council Member Joan Lindsay _____

Vice-Mayor John DuBois _____

Mayor Shelley Stanczyk _____

EXHIBIT "A"

PROJECT AGREEMENT

Between

VILLAGE OF PALMETTO BAY, FLORIDA

And

Kimley-Horn and Associates, Inc.

For

Work Order No. 1314-012

Landscape Design Services for
Beautification of US-1 Medians

PROJECT AGREEMENT
Between

THE VILLAGE OF PALMETTO BAY, FLORIDA

And

Kimley-Horn and Associates, Inc.

For

Work Order No. 1314-012

Landscape Design Services for
Beautification of US-1 Medians

Pursuant to the provisions contained in the "continuing services agreement" between the VILLAGE OF PALMETTO BAY, FLORIDA, 9705 E Hibiscus Street, Palmetto Bay, Florida 33157 (the "village") and Kimley-Horn and Associates, Inc., ("consultant") dated June 20th, 2013, this project agreement authorizes the consultant to provide the services as set forth below:

The village and consultant agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 The consultant shall provide engineering services to the village for the project as described in the "Project Description" attached as Exhibit "1."

1.2 The "Scope of Services and Project Schedule" and tasks to be provided by the consultant for this project are those services and tasks as listed in Exhibit "2."

1.3 The village may request changes that would increase, decrease, or otherwise modify the Scope of Services. The changes must be contained in a written change order executed by the parties in accordance with the provisions of the continuing services agreement, prior to any deviation from the terms of the project agreement, including the initiation of any extra work.

SECTION 2. DELIVERABLES

As part of the Scope of Services and Project Schedule, the consultant shall provide to the village the following Deliverables:

Task 1 Conceptual Design

Task 2 Planting & Irrigation Design
Task 3 Permit Processing Assistance

SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE

3.1 **Term.** This project agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless otherwise terminated pursuant to section 6 or other applicable provisions of this project agreement. The village manager, in his sole discretion, may extend the term of this agreement through written notification to the consultant. The extension shall not exceed 30 days. No further extensions of this agreement shall be effective unless authorized by the village council.

3.2 **Commencement.** The consultant's services under this project agreement and the time frames applicable to this project agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the consultant from the village. The consultant shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. Consultant must receive written notice from the village manager or his designee prior to the beginning the performance of services.

3.3 **Contract Time.** Upon receipt of the Notification of Commencement, the consultant shall commence services to the village on the Commencement Date, and shall continuously perform services to the village, without interruption, in accordance with the time frames set forth in the "Project Schedule," a copy of which is attached and incorporated into this agreement as Exhibit "2". The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the project or the date of actual completion of the project, whichever shall last occur, shall constitute the Contract Time.

3.4 **Liquidated Damages.** Unless otherwise excused by the village in writing, in the event that the consultant fails to meet to the contract time for completion of services as determined by the Project Schedule, the consultant shall pay to the village the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$0.00 per day. The consultant may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the consultant shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this agreement. When the village reasonably believes that completion will be inexcusably delayed, the village shall be entitled, but not required, to withhold from any amounts otherwise due the consultant an amount then believed by the village to be adequate to recover liquidated damages applicable to the delays. If and when the consultant overcomes the delay in achieving completion, or any part thereof, for which the village has withheld payment, the village shall promptly release to the consultant those funds withheld, but no longer applicable, as liquidated damages.

3.5 All limitations of time set forth in this agreement are of the essence.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 **Lump Sum Compensation.** Village agrees to pay consultant as compensation for performance of all services described in Exhibit "2" \$45,000.00. [OR, IF HOURLY, "VILLAGE AGREES TO PAY CONSULTANT COMPENSATION AT CONSULTANT'S HOURLY RATES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED \$45,000.00.]

4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations, long distance telephone calls, facsimile, courier services, mileage (at a rate approved by the village), photo and reproduction services. All document reproductions are also reimbursable, at a rate approved by the village.

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

5.1 Invoices

5.1.1 **Lump Sum Compensation and Reimbursable Expenses.** Consultant shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with the Payment Schedule set forth in Exhibit "3", to this project agreement. Invoices for each phase shall not exceed amounts allocated to each phase of the Project plus reimbursable expenses accrued during each phase. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the village. The village shall pay consultant within 30 days of approval by the village manager of any invoices submitted by consultant to the village.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the village for payment to the consultant is disputed, or additional backup documentation is required, the village shall notify the consultant within 15 working days of receipt of the invoice of the objection, modification or additional documentation request. The consultant shall provide the village with additional backup documentation within five working days of the date of the village's notice. The village may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the consultant. The village, at its sole discretion, may pay to the consultant the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the village becomes credibly informed that any representations of the consultant, provided pursuant to subparagraph 5.1, are wholly or partially inaccurate, or in the event that the consultant is not in compliance with any term or condition of this project agreement, the village may withhold payment of sums then or in the future otherwise due to the consultant until the inaccuracy, or other breach of project agreement, and the cause thereof, is corrected to the village's reasonable satisfaction.

5.4 **Retainage.** The village reserves the right to withhold retainage in the amount of 10 percent of any payment due to the consultant until the project is completed. Said retainage may

be withheld at the sole discretion of the village manager and as security for the successful completion of the consultant's duties and responsibilities under the project agreement.

5.5 **Final Payment.** Submission of the consultant's invoice for final payment and reimbursement shall constitute the consultant's representation to the village that, upon receipt from the village of the amount invoiced, all obligations of the consultant to others, including its consultants, incurred in connection with the project, shall be paid in full. The consultant shall deliver to the village all documents requested by the village evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the village by the consultant.

SECTION 6. TERMINATION/SUSPENSION

6.1 **For Cause.** This project agreement may be terminated by either party upon five calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that consultant abandons this project agreement or causes it to be terminated by the village, the consultant shall indemnify the village against any loss pertaining to this termination. In the event that the consultant is terminated by the village for cause and it is subsequently determined by a court of competent jurisdiction that the termination was without cause, the termination shall thereupon be deemed a termination for convenience under section 6.2 of this project agreement and the provision of section 6.2 shall apply.

6.2 **For Convenience.** This project agreement may be terminated by the village for convenience upon 14 days' written notice to the consultant. In the event of termination, the consultant shall incur no further obligations in connection with the project and shall, to the extent possible, terminate any outstanding subconsultant obligations. The consultant shall be compensated for all services performed to the satisfaction of the village and for reimbursable expenses incurred prior to the date of termination. The consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of paragraph 5.1 of this project agreement. Under no circumstances shall the village make any payment to the consultant for services which have not been performed.

6.3 **Assignment upon Termination.** Upon termination of this project agreement, a copy of all of the consultant's work product shall become the property of the village and the consultant shall, within 10 working days of receipt of written direction from the village, transfer to either the village or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the consultant pertaining to this project agreement. Further, upon the village's request, the consultant shall assign its rights, title and interest under any subcontractor's agreements to the village.

6.4 **Suspension for Convenience.** The village shall have the right at any time to direct the consultant to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to 30 calendar days. If the

suspension is directed by the village, the consultant shall immediately comply with same. In the event the village directs a suspension of performance as provided for herein through no fault of the consultant, the village shall pay to the consultant its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for the suspension.

SECTION 7. INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICE AGREEMENT

7.1 This project agreement incorporates the terms and conditions set forth in the continuing services agreement dated June 20th, 2013 between the parties as though fully set forth herein. In the event that any terms or conditions of this project agreement conflict with the continuing services agreement, the provisions of this specific project agreement shall prevail and apply.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.]

ATTEST:

VILLAGE OF PALMETTO BAY

Village Clerk

By: _____
Ron E. Williams, Village Manager

Date: _____

APPROVED AS TO FORM:

Village Attorney

ATTEST:

Kimley-Horn and Associates, Inc.

By: _____
Aaron Buchler, P.E.
Vice President

Date: _____

WITNESSES:

Print Name: _____

Print Name: _____

EXHIBIT 1, 2, & 3

Kimley»Horn

May 20, 2104

Ms. Corrice E. Patterson, Director
Public Works Department
Village of Palmetto Bay
9495 SW 180th Street
Palmetto Bay, Florida 33157

RE: U.S. 1 Medians Landscape Design

Dear Ms. Patterson:

Kimley-Horn and Associates, Inc. ("KHA" or "Consultant") is pleased to submit this letter agreement ("Agreement") to the Village of Palmetto Bay ("Client" or "Village") for providing professional landscape architectural consulting services associated with the landscape design of the existing U.S.1 medians between S.W. 136th Street and SW 184th Street. All work under this scope will be in accordance with the terms and conditions of the "Landscape Architecture Continuing Services Agreement" dated June 25, 2013 (2013-PW-100), between the Village of Palmetto Bay and KHA.

PROJECT UNDERSTADING

The Client has requested that KHA develop planting and irrigation designs for the existing U.S. 1 medians between SW 136th Street and S.W. 184th Street (approximately 6 miles and 24 medians). Planting and irrigation contract documents (existing medians only) will be presented to FDOT for a Right of Way Landscape Permit that will be prepared and permitted in three (3) separate packages as follows:

- Phase 1 Submittal Set: SW 184th Street to SW 168th Street
- Phase 2 Submittal Set: SW 168th Street to SW 152nd Street
- Phase 3 Submittal Set: SW 152nd Street to SW 136th Street

Planting Design:

- New trees, palms, shrubs and groundcovers will be incorporated into the medians following FDOT design standards.
- Where needed, existing trees and palms will be removed in order to incorporate the new planting design.

Irrigation Design:

- All the medians will be irrigated using a potable water source
- It is our understanding that the Village prefers to use solar-powered controllers and that no new electrical service will be required to power the system.

- It is our understanding that the Village prefers spray heads and bubblers to water the plantings in the medians. We will verify this with the Client and recommend a solution that closely meets the anticipated maintenance for the medians.

The proposed scope of services and fees follow.

SCOPE OF SERVICES

TASK 1- CONCEPTUAL DESIGN

Data Collection and Analysis: KHA will gather information, and analyze Client provided data, to gain a better understanding of the site and surrounding conditions. This will be facilitated with a meeting at the site between the Village's representative and KHA to review all of the existing base data and site documentation available to the Village. After reviewing the available information, KHA will make recommendations for securing any additional documentation that may be critical to the design process.

Critical to KHA's work is a digital site aerial and a boundary/topographic/tree survey in AutoCAD format. These digital images, along with the existing base information, will be the basis for our planning and design process. After working with the Village's representative in gathering the necessary base information, KHA will prepare the following:

- Conceptual Design Alternatives:** KHA will prepare two (2) Preliminary Conceptual Design alternatives for review and comments by the Client. The Conceptual Design will show the proposed planting design for two (2) typical medians within the project limits. Based on Client comments, KHA will prepare one (1) Final Conceptual Design Plan.
- Image and Material Exhibit:** KHA will prepare one (1) image and material exhibit depicting the proposed landscape materials envisioned for the project.
- Task 1 Meetings:** KHA proposes to attend meetings with the Client during this task. Our proposal includes the following:
 - Two (2) meetings with Client in Palmetto Bay to be attended by one KHA representative. (meetings are assumed at 3 hours max in length including travel time)
 - Any additional meetings requested by Client will be billed on an hourly basis.
- Task 1 Deliverables:** KHA will make the following submittals for the Conceptual Design phase:
 - Conceptual Design Review Set, bound with all sheets (5 copies)

E. Task 1 Duration:

- Conceptual Design package: 4 weeks from notice to proceed and receipt of required base information.

TASK 2- PLANTING & IRRIGATION DESIGN

When authorized by Client, KHA shall prepare landscape architectural contract documents setting forth in detail the requirements for the construction of the proposed landscape improvements based upon the established design scheme approved by the Client during Task 1. KHA will make two (2) formal submittals during the Planting & Irrigation Design task at the 75% and Final percent completion of the landscape architectural contract documents.

For this task, KHA will prepare and submit landscape architectural contract documents as three (3) separate packages (phases 1, 2 & 3 as described in the "Project Understanding") for submittal to FDOT for a Right of Way Landscape Permit. This task consists of the following:

- A. Planting Plans:** KHA will prepare planting plans, planting notes, schedules and details that will delineate proposed plant material species, size, condition and quantities.
- B. Tree Disposition Plan:** KHA will prepare a Tree Disposition Plan and Schedule showing the existing trees and palms within the project site and whether they will remain, be relocated or be removed. The final location of all trees to remain and be relocated will be shown on the planting plan.
- C. Irrigation Plans:** KHA will prepare irrigation plans and details for an irrigation system designed to provide 100% irrigation coverage for the project medians. KHA will provide the following irrigation design services:
 - Coordination with the Client to determine preferred equipment, installation detailing, and other factors that will affect the irrigation design.
 - Calculation of irrigation system requirements based on water application per week and water window availability as determined by local municipality and within parameters of then-current Water Management District watering restrictions.
 - Coordination with Client for irrigation mainline routing.
 - Coordination with Client for proposed sleeve and conduit locations.
 - Recommendation for irrigation controller location(s).
 - Solar powered or battery powered controllers will be specified – no electrical engineering is necessary
 - Preparation of irrigation details
 - Preparation of material legend of all components
 - Preparation of dripline and/or head layout, schedule, notes and specifications for irrigation system

- D. **Opinion of Probable Construction Cost:** KHA will prepare an opinion of probable construction cost (OPCC) at the completion of the first landscape design submittal milestone (75%). Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- E. **Maintenance Plan:** KHA will prepare a maintenance plan that will describe the required ongoing maintenance for the proposed planting and irrigation improvements for the project.
- F. **Task 2 Meetings:** KHA proposes to attend meetings with the Client during this task. Our proposal includes the following:
- Two (2) meetings with Client in Palmetto Bay to be attended by one KHA representative. (meetings are assumed at 3 hours max in length including travel time)
 - Any additional meetings requested by Client will be billed on an hourly basis.
- G. **Task 2 Deliverables:** KHA will make the following submittals for the Conceptual Design phase:
- Separate 75% Contract Documents packages for Phases 1, 2 & 3 (5 copies of each)
 - Separate Final Contract Documents packages for Phases 1, 2 & 3 (5 copies of each)
 - Separate Opinion of Probable Construction Cost for Phases 1, 2 & 3
 - Separate Opinion of Probable Construction Cost for Phases 1, 2 & 3
 - Maintenance Plan (One maintenance plan for all three phases)
 - CD of Final Contract Documents packages for Phases 1, 2 & 3 in AutoCAD format
- H. **Task 2 Duration:**
- 75% Contract Documents package: 4 - 6 weeks from Client approval of the Final Conceptual Design Plan.
 - Final Contract Documents package: 3 weeks from receipt of written Client comments of 75% Contract Documents package.

- I. KHA will provide the first submittal to the Client for review and comment. Client feedback and comments will be incorporated into the contract documents and a Final set of construction drawings and specifications will be submitted to FDOT for permit approval. Plans will be submitted in 11" x 17" format, to scale. PDFs will be sent to the Client for use as bidding instruments. Revisions to plans based on Client and FDOT comments are limited to a total of two (2) rounds of re-submittals.
- J. Although this scope of services does not include the preparation of Maintenance of Traffic (MOT) plans, MOT will be noted to reference the FDOT standard specification and design index, with specific notes as required for the permit. These MOT notes will be used by the Contractor during the preparation of MOT plans as part of the Contractor's construction contract.

TASK 3- PERMIT PROCESSING ASSISTANCE

KHA will assist the Client with FDOT permit applications by providing supporting documentation for the Client's signature and subsequent transmittal to the following regulatory agencies:

- FDOT District VI
- A. If separate or additional submittals are requested by any of the jurisdictional agencies, the client or any of the client's consultant, said submittals will be made as an additional service.
 - B. Permit fees and impact fees are not included. KHA will address reasonable comments or agency requests for additional information (RAIs) as part of this task in conjunction with this project.
 - C. After KHA has submitted permit applications and received comments from FDOT, we will upgrade the permit documents to full contract documents. The plans will be prepared reflecting comments and/or conditions set forth by the regulatory agencies during the permitting process. Any changes requested beyond this point will be addressed as additional services.
 - D. **Task 3 Meetings:** KHA proposes to attend meetings with the Client during this task. Our proposal includes the following:
 - Two (2) meetings with Client and/or FDOT in Miami to be attended by one KHA representative. (meetings are assumed at 3 hours max in length including travel time)
 - Any additional meetings requested by Client will be billed on an hourly basis.

ADDITIONAL SERVICES

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Electrical engineering for service to median(s)
- Civil engineering for water service connection(s) and/or roadway improvements
- Hardscape Design
- Lighting Design
- Permitting services beyond those described above
- Construction phase services
- MOT notes in excess of the scope described above
- Revisions to the plans due to substantial changes in project scope, budget, and/or concept
- Hand drawn or computer generated 3D renderings
- Improvements outside the originally agreed-upon project limits
- Meetings, presentations or coordination in addition to those described in Task 1 - Task 3
- Services and deliverables not specifically included within "Scope of Services"

INFORMATION PROVIDED BY CLIENT

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by KHA during the project, including but not limited to the following:

- Topographic, Boundary and Tree Survey
- Village of Palmetto Bay preferred irrigation equipment list
- Define the Client's requirements for the project, including any schedule constraints, desired or required materials or products (tree/plant species, etc.) design standards, and deliverable formats.

FEE AND EXPENSES

The fee established to provide the professional services for this project is \$45,000.

Lump Sum Fees

The Consultant will provide the services described in Task 1 through Task 3 on a lump sum basis. Individual task amounts are informational only. Lump sum fees will be invoiced monthly based upon

the overall percentage of services performed. All permitting, application, and similar project fees will be paid directly by the Client. Payment to the Consultant will be in accordance with the general services agreement referenced above. The following task items represent a breakdown of the lump sum amount for reference:

<u>Task</u>	<u>Description</u>	<u>Total</u>
Task 1	Conceptual Design	\$8,500
Task 2	Planting & Irrigation Design	\$32,000
Task 3	Permit Processing Assistance	\$4,500
Total Lump Sum Fee		\$45,000

Expenses for the project such as in-house duplicating, facsimile, local mileage, telephone, postage, in-house blueprinting, and word-processing are included in the lump sum fees shown above.

In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, large format reproductions (larger than 11" x 17"), air travel, and other direct expenses will be billed at cost.

Hourly Fees

The Consultant will perform Additional Services on a labor fee plus expense basis. Labor fee will be billed on an hourly basis according to our then current hourly rates:

Task 4	Additional Meetings	Hourly
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CLOSURE

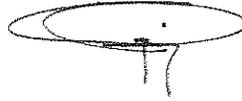
If you concur in the foregoing and wish to direct KHA to proceed with the aforementioned services, please execute the enclosed copy of this letter agreement in the space provided and return the same to the undersigned. Fees and times stated in this agreement are valid for sixty (60) days after the date of agreement by the Consultant.

With Kimley-Horn, you should expect more and will experience better. Please contact me at (305) 535-7756 or george.puig@kimley-horn.com should you have any questions.

Sincerely,



Aaron Buchler, P.E.
Vice President



George Puig, RLA
Senior Project Manager

VILLAGE OF PALMETTO BAY

Agreed to this _____ day of _____, 2014

By: _____

(Print or Type Name)

Title: _____
(As Authorized by Law)

(Email Address)

_____, Witness

(Print or Type Name)

Official Seal:

Copy To: Aaron Buchler/File

CONTINUING SERVICES

AGREEMENT

Between

VILLAGE OF PALMETTO BAY, FLORIDA

And

Kimley-Horn & Associates, Inc.

CONTINUING SERVICES

A G R E E M E N T

Between

VILLAGE OF PALMETTO BAY, FLORIDA

And

Kimley-Horn and Associates, Inc.

THIS AGREEMENT is made between the Village of Palmetto Bay, Florida, a Florida municipal corporation, (hereinafter referred to as the "village ") and Kimley-Horn and Associates, Inc. licensed and authorized to do business in the State of Florida, (hereinafter referred to as the "consultant "), whose place of business is 5200 NW 33 Avenue, Suite 109, Ft. Lauderdale, FL 33309.

WHEREAS, pursuant to section 287.055, Florida Statutes, the village requested qualifications from qualified engineers and selected the consultant to provide professional *Landscape Architecture, General Planning, and General Civil Engineering* services; and

WHEREAS, the consultant is willing and able to perform such professional, services for the village within the basic terms and conditions set forth in this agreement (hereinafter referred to as "continuing services agreement or agreement"); and

WHEREAS, the purpose of this continuing services agreement is not to authorize the consultant to perform a specific project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for specific projects or services when required.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the village and consultant agree as follows:

SECTION 1. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this agreement and apply unless the context indicates a different meaning:

1.1 **Compensation:** The total amount paid by the village for the consultant's professional services for a specific project, exclusive of reimbursable expenses.

1.2 **Reimbursable Expenses:** the direct non-salary expenses directly attributable to the project. reimbursable expenses include long-distance communications, application and permit fees paid for securing approval of authorities having jurisdiction over the specific project; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents; postage; travel expenses; and subconsultant's fees.

1.3 **Specific Project Agreement or Project Agreement:** an agreement to provide services for a particular project.

1.4 **Subconsultant Fee:** the direct and actual cost of the subconsultant with no markup, as reflected by actual invoices of the subconsultant.

1.5 **Travel Expenses:** is a reimburseable expense and provides reimbursement entitlement to consultant for: actual mileage at 50¢ per mile, meals and lodging expenses incurred directly for the specific project for travel outside of Miami-Dade County. No overnight travel or out-of-town travel outside of Miami-Dade County shall be reimbursed unless the consultant has secured advance written authorization for such travel from the village manager. Reimbursement for authorized travel expenses shall be at the rates provided for in Chapter 112, Florida Statutes, as may be amended from time to time, which rates shall by reference be made a part of this agreement as though set forth in full.

SECTION 2. SPECIFIC PROJECTS/SCOPE OF SERVICES

2.1 In accordance with the Consultants' Competitive Negotiation Act, the consultant may provide professional services to the village for specific projects as authorized from time to time by either the village council or village manager as authorized by subsection 2.6. The services shall be for the following types of projects or similar disciplines:¹

- a. NPDES Permitting and stormwater management;
- b. Drainage facilities;
- c. Road construction and maintenance;
- d. Civil Engineering;
- e. GIS Mapping assistance;
- f. Utility infrastructure evaluation and review;
- g. Plat and site plan review;
- h. Park and park land development;
- i. Environmental engineering;
- j. Surveying;
- k. Project management;
- l. Opinion of probable cost of construction; and

¹ The disciplines listed below are more extensively defined and identified in RFQ _____ Section 2.2 Scope of Services; which RFQ is incorporated by reference as exhibit C to this contract.

m. Public Works permitting and inspections.

2.2 When the need for services for a specific project occurs, the village manager may, enter into negotiations with the consultant for that specific project under the terms and conditions of this agreement. The village shall initiate said negotiations by providing the consultant with a "Scope of Services Request," requesting from the consultant a proposal to provide professional services for the specific project. The consultant shall prepare a proposal which includes those subjects specified in subsection 2.3 (a) through (g). The village manager and consultant shall negotiate the terms of the specific project in accordance with the provisions of subsection 2.3.

2.3 The village and consultant shall utilize as the agreement for each specific project a standard project agreement ("project agreement"), a copy of which is attached and incorporated into this agreement as Exhibit "A". Each supplemental agreement for a specific project will, by mutual agreement, set forth, among other things, the following:

- a. The Scope of Services;
- b. The Deliverables;
- c. The Time and Schedule of Performance and Term;
- d. The amount of Compensation;
- e. The Personnel assigned to the specific project;
- f. Any additional contractual requirements of section 287.055, Florida Statutes, for consultant agreements; and
- g. Any modifications to the project agreement, if mutually agreed upon by the parties.

2.4 When required and in lieu of a lump sum compensation package, the consultant shall charge the village for professional services at those hourly fees as specified in Exhibit "B." The project agreement shall specify that the consultant's services shall be provided on an hourly basis with a maximum amount of compensation that may not be exceeded without additional approval.

2.5 The professional services to be rendered by the consultant shall commence subsequent to the execution of each project agreement. Performance of work by consultant prior to execution of a project agreement shall be at consultant's sole risk.

2.6 The Village Manager is authorized to negotiate and execute a project agreement for projects in which the consultants' services do not exceed \$25,000.00.

2.7 The Contract Documents for each specific project shall incorporate this continuing services agreement. In the event that any of the terms or conditions of this agreement conflict with the project agreement, the provisions of the project agreement shall apply.

SECTION 3. TERM/TERMINATION

3.1 Term of Agreement. This continuing agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless and until terminated pursuant to section 3.2 or other applicable sections of this agreement. Each project agreement shall specify the period of service agreed to by the village and consultant for services to be rendered under the project agreement. There should be a term limit, two year, with two one year renewals, upon prior approval of the village manager.

3.2 Termination For Convenience. The village may terminate this agreement for convenience at any time by giving 30 days notice in writing to the consultant. The consultant will be paid for the value of services performed pursuant to the schedule contained in the statement of work, up to and including the termination date. Consultant will be permitted to complete on-going investigations and shall be paid for all satisfactory work completed. The village shall not be liable for future profits or losses. In the event that the village improperly terminates the agreement for default under paragraph 3.3, the termination shall be deemed a termination for convenience under this paragraph.

3.3 Termination For Default. Either party may terminate this agreement prior to the expiration of the initial term or any subsequent renewal term on account of a material breach of this agreement by the other party, which has not been cured within 10 days from the date of receipt of written notice of breach from the party seeking termination. Termination shall be effective as of the end of the notice period in the case of any uncured material breach. Consultant may terminate this agreement prior to the expiration of the initial term or any subsequent renewal term upon not less than 10-days prior written notice to the village in the event that consultant is unable to complete the services identified in section 2 due to causes beyond consultant's control. The village shall have no liability to the consultant for future profits or losses in the event of termination for default. The rights and remedies of the village provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement. Should consultant provide the village with written notice of cancellation of agreement, consultant will be required to refund a pro-rata share of the compensation identified in section 2.

3.4 Termination for Delay. If the project is suspended or the consultant's services are delayed by the village for more than 30 consecutive days, the consultant may terminate this agreement by giving not less than 10 days written notice. The liability of the village upon termination by the consultant for suspension or delay of the project shall be for the value of services performed pursuant to the schedule contained in the statement of work rendered by consultant to the time of termination by consultant. The village shall not be liable for future profits or losses.

3.5 Termination for Lack of Funds. Notwithstanding any other provisions of the agreement, if the funds anticipated by the village for the for the payment of work under this agreement are at any time not forthcoming, through the failure of the village to appropriate funds, the failure of Miami-Dade County, the Florida Legislature, or the U.S. Congress to appropriate funds, or the refusal of the administrative branch of the federal or county government to release funds, or due to any other reason for the unavailability of funds in succeeding fiscal years, or the discontinuance or material alteration of the program under which funds are to be provided, the village shall have the right to terminate the agreement without penalty by giving not less than 10 days written notice of the lack of available funding.

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

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

3.6 Effect on Project Agreement – Nothing in this section shall be construed to create a right by either party to terminate any ongoing project agreement(s). Termination of a project agreement shall be exclusively through the termination provisions of the specific project agreement.

3.7 Non-Exclusive Agreement - Notwithstanding the provisions of subsection 3.1, the village manager may issue requests for proposals for this professional discipline at any time and may utilize the services of any other consultants retained by the village under similar continuing services agreements. Nothing in this agreement shall be construed to give the consultant a right to perform services for a specific project.

SECTION 4. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

4.1 Changes Permitted. The village shall not be liable to pay, and shall not pay, charges for extra work, delay charges, or additional work, unless the village's contract officer specifically authorizes the extra or additional work, in a written task order before the commencement of the work. Changes in the scope of services of a project agreement consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the village by change order without invalidating the project agreement.

4.2 Change Order Defined. Change order shall mean a written order to the consultant executed by the village, issued after execution of a project agreement, authorizing and directing a change in the scope of services or an adjustment in the contract price or the contract time, or any combination thereof. The contract price and/or the contract time may be changed only by change order.

4.3 Effect of Executed Change Order. The execution of a change order by the village and the consultant shall constitute conclusive evidence of the consultant's agreement to the ordered changes in the scope of services or an adjustment in the contract price or the contract time, or any combination thereof. The consultant, by executing the change order, waives and forever releases any claim against the village for additional time or compensation for matters relating to or arising out of or resulting from the services included within or affected by the executed change order.

4.4 Authority to Execute Changes or Requests for Additional Services. The village manager is authorized to negotiate and execute change orders, in an amount not to exceed \$25,000.00 per contract. Changes, which exceed \$25,000.00, shall be approved by the village council.

SECTION 5. NO DAMAGES FOR DELAY CLAUSE

5.1 No claim for damages or any claim other than for an extension of time shall be made or asserted against the village by reason of any delays. The consultant shall not be entitled to an increase in the agreement sum or payment of compensation of any kind from the village for direct, indirect, consequential, impact, mobilization, demobilization, or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever; provided, however, that this provision shall not preclude recovery or damages by the consultant for hindrances or delays due solely to fraud, bad faith or active interference on the part of the village or its agents. Otherwise, the consultant shall be entitled only to extension of the agreement time as the sole and exclusive remedy for a resulting delay, in accordance with and to the extent specifically provided above.

SECTION 6. RIGHT TO WITHHOLD

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

SECTION 7. INTEREST PAYMENTS

7.1 The village shall make payment to consultant within 30 days of receipt of the original written invoice and sufficient backup documentation and acceptance of the work by the village. Interest shall accrue on unpaid invoices as provided by section 218.74, Florida Statutes.

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

SECTION 8. SURVIVAL OF PROVISIONS

8.1 Any terms or conditions of either this agreement or any subsequent project agreement that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 9. VILLAGE'S RESPONSIBILITIES

9.1 Assist consultant by placing at its disposal all available information as may be requested in writing by the consultant and allow reasonable access to all pertinent information relating to the services to be performed by consultant.

9.2 Furnish to consultant, at the consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by consultant, in possession of the village.

9.3 Arrange for access to and make all provisions for consultant to enter upon public property as required for consultant to perform services.

SECTION 10. CODE OF ETHICS

10.1 The code of ethics of the Florida Engineering Society shall be incorporated in this agreement by this reference.

10.2 Consultant warrants and represents that its employees will abide by the Conflict of Interest and Code of Ethics Ordinances set forth section 2-11.1 of the Miami-Dade County Code, and village code, as these codes may be amended from time to time.

SECTION 11. POLICY OF NON-DISCRIMINATION/WAGES

11.1 The consultant shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in performing under this agreement.

11.2 The consultant shall comply with the wage provisions of section 287.055, Florida Statutes. If the project is subject to federal or state grant funding that requires specific wage and non-discrimination provisions, the consultant shall be required to comply with applicant grant requirements.

SECTION 12. OWNERSHIP OF DOCUMENTS/DELIVERABLES

12.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the village or furnished by the consultant pursuant to any project agreement, shall become the property of the village, whether the project for which they are made is completed or not, and shall be delivered by consultant to the village within five calendar days after receipt of written notice requesting delivery of said documents or digital files. The consultant shall have the right to keep one record set of the documents upon completion of the project, however, in no event shall the consultant, without the village's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

12.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the consultant for each specific project shall provide that all documents and rights obtained by virtue of the subcontracts shall become the property of the village.

12.3 All final plans and documents prepared by the consultant shall bear the endorsement and seal of a person duly registered as a professional engineer, architect, landscape architect, professional geologist, or land surveyor, as appropriate, in the State of Florida and date approved and/or sealed. Consultant shall within three business days of ascertaining or determining that the registered professional engineer, landscape architect, professional geologist or land surveyor is no longer affiliated with consultant or barred from practicing under his/her license, shall notify village of the event and obtain the services of another, duly qualified and registered professional.

SECTION 13. RECORDS/AUDITS

13.1 Consultant shall maintain and require subconsultants to maintain, complete and correct records, books, documents, papers and accounts pertaining to the specific project. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the village manager or any authorized village representative with reasonable notice and shall be kept for a period of three years after the completion of each project agreement. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the village of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the village.

13.2 The consultant shall comply with Chapter 119, Florida Statutes, as applicable.

13.3 Refusal of the consultant to comply with these provisions shall be grounds for immediate termination for cause by the village of this agreement or any project agreement.

SECTION 14. NO CONTINGENT FEE

14.1 Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for consultant, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement. In the event the consultant violates this provision, the village shall have the right to terminate this agreement or any project agreement, without liability, and at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 15. INDEPENDENT CONTRACTOR

15.1 The consultant is an independent contractor under this agreement and any project agreements and nothing in this agreement shall create any association, partnership, or joint venture between the parties, or any employer – employee relationship. Personal services provided by the consultant shall be by employees of the consultant and subject to supervision by the consultant, and not as officers, employees, or agents of the village, personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this agreement or any project agreements shall be those of the consultant.

SECTION 16. ASSIGNMENT; AMENDMENTS

16.1 This agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by consultant, without the prior written consent of the village.

16.2 No modification, amendment or alteration in the terms or conditions of this agreement shall be effective unless contained in a written document executed with the same formality as this agreement.

SECTION 17. INDEMNIFICATION/HOLD HARMLESS

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

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

17.3 Pursuant to section 725.08, Florida Statutes, the consultant shall indemnify and hold harmless the village and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the consultant or any persons employed or utilized by the consultant in the performance of this or any project agreement.

SECTION 18. INSURANCE

18.1 The consultant shall secure and maintain throughout the duration of this agreement and any project agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the village against hazards or risks of loss as specified below. The insurance coverages shall include a minimum of:

- A. Professional Liability Insurance in the amount of \$1,000,000.00 with deductible per claim if any, not to exceed 5% of the limit of liability providing for all

sums which the consultant shall become legally obligated to pay as damages for claims arising out of the services performed by the consultant or any person employed by him in connection with this agreement. This insurance shall be maintained for three years after completion of the construction and acceptance of any project covered by this agreement. However, the consultant may purchase Specific Project Professional Liability Insurance which is also acceptable.

B. Comprehensive general liability insurance with broad form endorsement, including automobile liability, completed operations and products liability, contractual liability, severability of interest with cross liability provision, and personal injury and property damage liability with limits of \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The policy or policies shall name village as additional insured and shall reflect the hold harmless provision contained herein. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

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

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

18.3 All of the insurance is to be placed with Best rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida and have agents upon whom service of process may be made in the State of Florida.

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

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

18.6 Prior to the execution of this agreement, consultant shall provide the village manager with evidence of insurability from the consultant's insurance carrier or a certificate of insurance. Prior to execution of any project agreement, the consultant shall provide to the village manager, certificates of insurance evidencing the required insurance coverages. The certificates of insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this and any project agreement and shall state that such insurance is as required by this and any project agreement. The village reserves the right to require the consultant to provide a certified copy of such policies, upon written request by the village. If a policy is due to expire prior to the completion of the services, renewal certificates of insurance or policies shall be furnished 30 days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than 30 days' written notice shall be provided to the village before any policy or coverage is cancelled or restricted. Acceptance of the certificate(s) is subject to approval of the village manager.

18.7 Compliance with the foregoing requirements shall not relieve the consultant of its liability and obligations under this agreement.

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

SECTION 19. REPRESENTATIVE OF VILLAGE AND CONSULTANT

19.1 **Village Representative.** It is recognized that questions in the day-to-day conduct of this agreement will arise. The village designates the Director of Public Work, as the person to whom all communications pertaining to the day-to-day conduct of this agreement shall be addressed.

19.2 **Consultant Representative.** Consultant shall inform the village representative, in writing, of the representative of the consultant to whom all communications pertaining to the day-to-day conduct of this agreement shall be addressed.

SECTION 20. COST AND ATTORNEY'S FEES/WAIYER OF JURY TRIAL

20.1 The village does not waive sovereign immunity for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this agreement, 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.

20.2 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.

SECTION 21. MEDIATION

21.1 Any claim or dispute arising out of or related to this agreement shall be subject to informal mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Both parties waive any right to arbitration.

21.2 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Miami-Dade County, Florida, unless another location is mutually agreed upon.

21.3 Agreements reached in mediation shall be enforceable as settlement agreements in the circuit court for the 11th judicial circuit for the State of Florida.

SECTION 22. ALL PRIOR AGREEMENTS SUPERSEDED

22.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms of the agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 23. CONSULTANT'S RESPONSIBILITIES

23.1 The consultant and any and all drawings, plans, specifications, or other construction or contract documents prepared by the consultant shall be accurate, coordinated and adequate for construction and shall comply with all applicable village codes, state and federal laws, rules and regulations.

23.2 The consultant shall exercise the same degree of care, skill and diligence in the performance of the services for each project agreement as is ordinarily provided by a

professional engineer, architect, landscape architect, surveyor or mapper under similar circumstances. If at any time during the term of any project agreement or the construction of the project for which the consultant has provided engineering, architectural landscape architectural, surveying or mapping services under a prior project agreement, it is determined that the consultant's documents are incorrect, defective or fail to conform to the Scope of Services of the particular project, upon written notification from the village, the consultant shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the village for any other services and expenses made necessary thereby, save and expect any costs and expenses which the village would have otherwise paid absent the consultant's error or omission. The village's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this agreement, the project agreement, by law, equity or otherwise.

23.3 The consultant's obligations under this section of this agreement shall survive termination of this agreement or any project agreement.

SECTION 24. SUBCONSULTANTS

24.1 None of the work or services under this agreement shall be subcontracted unless consultant obtains prior written consent from the village. Approved subcontractors shall be subject to each provision of this agreement and consultant shall be responsible and indemnify the village for all subcontractors' acts, errors or omissions.

24.2 The consultant shall not assign, transfer or pledge any interest in this agreement without the prior written consent of the village; provided, however, that claims for money by the consultant from the village under this agreement 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.

24.3 In the event the consultant requires the services of any subconsultants or other professional associates in connection with services covered by any project agreement, the consultant must secure the prior written approval of the village manager. The consultant shall utilize his/her best efforts to utilize subconsultants where principal place of business is located within the Village of Palmetto Bay, Florida.

24.4 Any subcontract with a subconsultant shall afford to the consultant rights against the subconsultant which correspond to those rights afforded to the village against the consultant herein, including but not limited to those rights of termination as set forth herein.

24.5 No reimbursement shall be made to the consultant for any subconsultants that have not been previously approved by the village for use by the consultant.

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

SECTION 25. NOTICES

25.1 Whenever either party desires to give notice to the other, it must be given by hand delivery, facsimile, or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice and identified the following persons as the contracting officers:

FOR CONSULTANT:

Kimley-Horn Associates, Inc.
5200 NW 33 Avenue, Suite 109
Ft. Lauderdale, FL 33309
Telephone: (954) 535-5100
Facsimile: (954) 739-2247

FOR VILLAGE:

Village of Palmetto Bay
Attention: Corrice E. Patterson, Director of Public Works
9495 SW 180TH Street
Palmetto Bay, Florida 33157
Telephone: (305) 969-5011
Facsimile: (305) 969-5091

SECTION 26. TRUTH-IN-NEGOTIATION CERTIFICATE

26.1 Signature of this agreement by consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this agreement or any project agreement are accurate, complete, and current at the time of contracting. Each project agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the village determines the project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual

unit costs. All such adjustments shall be made within one year following the end of each project agreement.

SECTION 27. CONSENT TO JURISDICTION

27.1 The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this agreement or any project agreement. Venue of any action to enforce this agreement or any project agreement shall be in Miami-Dade County, Florida.

SECTION 28. GOVERNING LAW

28.1 This agreement and any project agreement shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 29. HEADINGS

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

SECTION 30. EXHIBITS

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

SECTION 31. SEVERABILITY

31.1 If any provision of this agreement or any project agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 32. COUNTERPARTS

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

SECTION 33. WARRANTY OF AUTHORITY

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

SECTION 34. CONTINGENCY FEE AND CODE OF ETHICS WARRANTY

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

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

34.3 A violation of this paragraph will result in the termination of the agreement and forfeiture of funds paid, or to be paid, to the consultant.

IN WITNESS WHEREOF, the parties execute this agreement on the respective dates under each signature: The village, signing by and through its village manager, attested to by its village clerk, duly authorized to execute same and by consultant by and through its assistant secretary, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.]

ATTEST:

VILLAGE OF PALMETTO BAY

Mignon Alexander By: Ron E. Williams
 Village Clerk Ron E. Williams, Village Manager
 Date: 6-20-13

APPROVED AS TO FORM:

[Signature]
 Village Attorney

ATTEST:

Kimley-Horn and Associates, Inc.

By: [Signature]
 Gary Ratay, P.E.
 Project Manager

Date: 5/23/13

WITNESSES:

[Signature]
 Print Name: Shanda S. Layne

[Signature]
 Print Name: Stewart Robertson

EXHIBIT "A"

PROJECT AGREEMENT

Between

VILLAGE OF PALMETTO BAY, FLORIDA

And

[Insert Company Name]

for

Work Authorization No. [REDACTED]

[INSERT NAME OF PROJECT]

PROJECT AGREEMENT
Between

THE VILLAGE OF PALMETTO BAY, FLORIDA

And

[Insert Company Name]

For

Work Authorization No. _____

[INSERT NAME OF PROJECT]

Pursuant to the provisions contained in the "continuing services agreement" between the VILLAGE OF PALMETTO BAY, FLORIDA, 9705 E Hibiscus Street, Palmetto Bay, Florida 33157 (the "village") and [Insert Company Name], _____ ("consultant") dated _____, this project agreement authorizes the consultant to provide the services as set forth below:

The village and consultant agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 The consultant shall provide engineering services to the village for the project as described in the "Project Description" attached as Exhibit "1."

1.2 The "Scope of Services and Project Schedule" and tasks to be provided by the consultant for this project are those services and tasks as listed in Exhibit "2."

1.3 The village may request changes that would increase, decrease, or otherwise modify the Scope of Services. The changes must be contained in a written change order executed by the parties in accordance with the provisions of the continuing services agreement, prior to any deviation from the terms of the project agreement, including the initiation of any extra work.

SECTION 2. DELIVERABLES

As part of the Scope of Services and Project Schedule, the consultant shall provide to the village the following Deliverables:

SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE

3.1 **Term.** This project agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect _____, unless otherwise terminated pursuant to section 6 or other applicable provisions of this project agreement. The village manager, in his sole discretion, may extend the term of this agreement through written notification to the consultant. The extension shall not exceed 30 days. No further extensions of this agreement shall be effective unless authorized by the village council.

3.2 **Commencement.** The consultant's services under this project agreement and the time frames applicable to this project agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the consultant from the village. The consultant shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. Consultant must receive written notice from the village manager or his designee prior to the beginning the performance of services.

3.3 **Contract Time.** Upon receipt of the Notification of Commencement, the consultant shall commence services to the village on the Commencement Date, and shall continuously perform services to the village, without interruption, in accordance with the time frames set forth in the "Project Schedule," a copy of which is attached and incorporated into this agreement as Exhibit "2". The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the project or the date of actual completion of the project, whichever shall last occur, shall constitute the Contract Time.

3.4 **Liquidated Damages.** Unless otherwise excused by the village in writing, in the event that the consultant fails to meet to the contract time for completion of services as determined by the Project Schedule, the consultant shall pay to the village the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$0 per day. The consultant may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the consultant shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this agreement. When the village reasonably believes that completion will be inexcusably delayed, the village shall be entitled, but not required, to withhold from any amounts otherwise due the consultant an amount then believed by the village to be adequate to recover liquidated damages applicable to the delays. If and when the consultant overcomes the delay in achieving completion, or any part thereof, for which the village has withheld payment, the village shall promptly release to the consultant those funds withheld, but no longer applicable, as liquidated damages.

3.5 All limitations of time set forth in this agreement are of the essence.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 Lump Sum Compensation. Village agrees to pay consultant as compensation for performance of all services described in Exhibit "2" \$_____. [OR, IF HOURLY, "VILLAGE AGREES TO PAY CONSULTANT COMPENSATION AT CONSULTANT'S HOURLY RATES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED \$_____.]

4.2 Reimbursable Expenses. The following expenses are reimbursable at their actual cost: travel and accommodations, long distance telephone calls, facsimile, courier services, mileage (at a rate approved by the village), photo and reproduction services. All document reproductions are also reimbursable, at a rate approved by the village.

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

5.1 Invoices

5.1.1 Lump Sum Compensation and Reimbursable Expenses. Consultant shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with the Payment Schedule set forth in Exhibit "3", to this project agreement. Invoices for each phase shall not exceed amounts allocated to each phase of the Project plus reimbursable expenses accrued during each phase. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the village. The village shall pay consultant within 30 days of approval by the village manager of any invoices submitted by consultant to the village.

5.2 Disputed Invoices. In the event that all or a portion of an invoice submitted to the village for payment to the consultant is disputed, or additional backup documentation is required, the village shall notify the consultant within 15 working days of receipt of the invoice of the objection, modification or additional documentation request. The consultant shall provide the

village with additional backup documentation within five working days of the date of the village's notice. The village may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the consultant. The village, at its sole discretion, may pay to the consultant the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the village becomes credibly informed that any representations of the consultant, provided pursuant to subparagraph 5.1, are wholly or partially inaccurate, or in the event that the consultant is not in compliance with any term or condition of this project agreement, the village may withhold payment of sums then or in the future otherwise due to the consultant until the inaccuracy, or other breach of project agreement, and the cause thereof, is corrected to the village's reasonable satisfaction.

5.4 **Retainage.** The village reserves the right to withhold retainage in the amount of 10 percent of any payment due to the consultant until the project is completed. Said retainage may be withheld at the sole discretion of the village manager and as security for the successful completion of the consultant's duties and responsibilities under the project agreement.

5.5 **Final Payment.** Submission of the consultant's invoice for final payment and reimbursement shall constitute the consultant's representation to the village that, upon receipt from the village of the amount invoiced, all obligations of the consultant to others, including its consultants, incurred in connection with the project, shall be paid in full. The consultant shall deliver to the village all documents requested by the village evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the village by the consultant.

SECTION 6. TERMINATION/SUSPENSION

6.1 **For Cause.** This project agreement may be terminated by either party upon five calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that consultant abandons this project agreement or causes it to be terminated by the village, the consultant shall indemnify the village against any loss pertaining to this termination. In the event that the consultant is terminated by the village for cause and it is subsequently determined by a court of competent jurisdiction that the termination was without cause, the termination shall thereupon be deemed a termination for convenience under section 6.2 of this project agreement and the provision of section 6.2 shall apply.

6.2 **For Convenience.** This project agreement may be terminated by the village for convenience upon 14 days' written notice to the consultant. In the event of termination, the consultant shall incur no further obligations in connection with the project and shall, to the extent possible, terminate any outstanding subconsultant obligations. The consultant shall be

compensated for all services performed to the satisfaction of the village and for reimbursable expenses incurred prior to the date of termination. The consultant shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of paragraph 5.1 of this project agreement. Under no circumstances shall the village make any payment to the consultant for services which have not been performed.

6.3 Assignment upon Termination. Upon termination of this project agreement, a copy of all of the consultant's work product shall become the property of the village and the consultant shall, within 10 working days of receipt of written direction from the village, transfer to either the village or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the consultant pertaining to this project agreement. Further, upon the village's request, the consultant shall assign its rights, title and interest under any subcontractor's agreements to the village.

6.4 Suspension for Convenience. The village shall have the right at any time to direct the consultant to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to 30 calendar days. If the suspension is directed by the village, the consultant shall immediately comply with same. In the event the village directs a suspension of performance as provided for herein through no fault of the consultant, the village shall pay to the consultant its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for the suspension.

SECTION 7. INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICE AGREEMENT

7.1 This project agreement incorporates the terms and conditions set forth in the continuing services agreement dated _____ between the parties as though fully set forth herein. In the event that any terms or conditions of this project agreement conflict with the continuing services agreement, the provisions of this specific project agreement shall prevail and apply.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.]

ATTEST:

VILLAGE OF PALMETTO BAY

Village Clerk

By: _____
Ron E. Williams, Village Manager

Date: _____

APPROVED AS TO FORM:

Village Attorney

ATTEST:

[Insert Company Name]

By: _____
[Insert Name]
[Insert Job Title]

Date: _____

WITNESSES:

Print Name: _____

Print Name: _____

Exhibit "1"

Project Description

[TO BE INSERTED]

Exhibit "2"

Scope of Services and Project Schedule

[TO BE INSERTED]

EXHIBIT "3"

Payment Schedule

[TO BE INSERTED]

EXHIBIT "B"

PAGE 1 OF 2

CONSULTANT'S BILLING RATE

[TO BE INSERTED]

B-1

EXHIBIT "B"

PAGE 1 OF 2

CONSULTANT'S BILLING RATE

KIMLEY-HORN AND ASSOCIATES, INC.*

Principal.....	\$213.00
Project Manager.....	\$191.00
Senior Engineer.....	\$153.00
Engineer.....	\$120.00
Construction Manager.....	\$120.00
Construction Observation.....	\$ 93.00
Senior Draftsman/Technical/CADD Operator.....	\$ 93.00
Draftsman.....	\$ 76.00
Data Processing/Clerical.....	\$ 65.00

*NOTE: Beginning on July 1, 2013, CONSULTANT's hourly rates will be increased by up to three percent (3%) per year on July 1st of each year.

EXHIBIT "B"

PAGE 2 OF 2

GENERAL DESCRIPTION OF EMPLOYEE CATEGORIES

Principal - Senior level managers of the firm.

Project Manager – Registered Engineer that assumes project responsibility. Coordinates and communicates project issues to identify, establish, and maintain the project goals, scopes, budgets, and schedule.

Senior Engineer – Registered Engineer that assumes technical responsibility. Plans and develops projects or phases of projects with unique or complex problems. Also included in this category are senior level individuals with experience in specific areas of disciplines.

Engineer - Degreed professional individuals responsible for production of Engineering, Planning, Landscape, Architectural, and Environmental.

Construction Manager – Individual responsible for coordinating construction administration and onsite observations.

Construction Observation– Technical personnel responsible for observing construction projects.

Senior Draftsman/Technical/CADD Operators - CADD Operators and Designers responsible for CADD technical support and design.

Draftsman - Manual drafters, designers, and technicians responsible for providing production support.

Data Processing/Clerical/Administrative - Staff members responsible for providing clerical and secretarial support to the organization.

EXHIBIT "C"

**PROFESSIONAL SERVICES
REQUEST FOR QUALIFICATIONS DOCUMENT
NO. 2013-PW-100**

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**REQUEST FOR QUALIFICATIONS
PROFESSIONAL SERVICES; RFQ#: 2013-PW-100**

INFORMATION FOR THE PROPOSERS

1.0 INTRODUCTION

The Village of Palmetto Bay (the Village), a municipality located in Miami-Dade County, Florida, wants to engage qualified firms or teams of firms (the Consultants) to obtain Professional Consulting Services in the following disciplines: Architecture, Landscape Architecture, Civil Engineering/Surveying, Mechanical Engineering, Electrical Engineering, Structural Engineering, General Planning Services and Transportation Planning and Engineering. Qualifications are accepted for other services including but not limited to Geotechnical Engineering/Testing and Construction Management.

The Village intends to execute an agreement with selected Consultants to provide on a rotating as needed basis Professional Consulting Services. The Consultants will provide these Services on a non-exclusive basis. The Village does not guarantee that any or all of the services identified in this Request for Qualifications (RFQ) will be assigned to the Consultants during the term of their Agreement.

1.1 PURPOSE

The purpose of this document is to provide information on the Services needed by the Village, requirements and guidelines for submitting Response to this RFQ (the Response or the Qualifications package), Consultant selection process and the schedule.

1.2 SCHEDULE OF EVENTS

No	Event	Date*	Time* (EST)
1	Advertisement/ Distribution of RFQ & Cone of silence begins	2/4/13	N/A
2	Mandatory Pre-RFQ-Response Meeting	2/25/13	10:00 AM
3	Deadline to Submit Questions	3/4/13	5:00 PM
4	Deadline for Village Responses to Questions	3/8/13	5:00 PM
5	Deadline to Submit RFQ-Response	3/15/13	3:00 PM
6	Announcement of short-listed Consultants	3/25/13	5:00 PM
7	Oral presentations	4/10-4/12/13	TBA
8	Announcement of selected Consultants/ Cone of silence ends	5/6/13	7:00 PM

*The Village reserves the right to change the scheduled dates and time.

1.3 ELIGIBILITY

In addition to other requirements stated in this document, to be eligible to respond to this RFQ, the Consultant must have successfully provided within the past three years services similar to those in Section 2.2 of this RFQ. Each Consultant shall meet all legal, technical and professional requirements for providing the requested Services.

The respondents shall furnish such additional information as the Village may reasonably require. This includes information that indicates financial resources as well as ability to provide and maintain the system and/or services. The Village reserves the right to make investigations of the respondents' qualifications or any of its sub-consultants, to contact former employers or clients to confirm qualifications as it deems appropriate.

1.4 MANDATORY PRE-RFQ-RESPONSE MEETING

The Village will conduct a Pre-RFQ-Response Meeting (the Meeting) on February 25, 2013 at 10:00 AM Eastern Standard Time (EST) at the following address:

Edward and Arlene Feller Community Center
At Ludovici Park
17641 Old Cutler Road
Palmetto Bay, FL 33157

ATTENDANCE AT THIS MEETING IS MANDATORY. Failure by a Prime Consultant to attend and/or be represented at the Meeting shall result in its Response being deemed non-responsive, if submitted. Each attendee shall identify specifically only one firm he/she is representing. For persons with disabilities, auxiliary aids or services will be provided upon request with at least five (5) days notice prior to the date of the Meeting by calling the Village at (305) 969-5011.

The purpose of the Meeting is to provide an open forum for the Village to review this document and respond to questions regarding this RFQ. The Consultants are encouraged to submit their questions in writing at least two (2) days before the Meeting. Questions arising before and after the Meeting will be addressed per the schedule given in Section 1.2 of this document. For submission of questions, please refer to Section 1.9 of this RFQ.

The Village will not be bound by any information conveyed verbally. The Village will provide, in writing, any clarifications, changes and/or other information, deemed to be necessary, as addenda to this RFQ. Addenda will only be provided to Mandatory Pre-RFQ Response meeting attendees.

1.5 CONE OF SILENCE

COMMUNICATIONS BETWEEN ANY PROPOSER OR ITS REPRESENTATIVES AND ANY VILLAGE COUNCIL MEMBER, VILLAGE OFFICIALS, STAFF, AND CONSULTANTS; AND/OR TECHNICAL EVALUATION COMMITTEE MEMBERS ON

THE SUBJECT OF THIS RFQ ARE STRICTLY PROHIBITED FROM THE DATE AND TIME OF THE ADVERTISEMENT THROUGH THE DATE OF SELECTION ANNOUNCEMENT (See Section 1.2 for the time and dates), with the exception of the following conditions.

- A. Written requests regarding information or clarification in reference to this RFQ must be submitted within the timeframe identified in #3 of Section 1.2 and should be sent to the attention of:

Kristy Bada, Administrative Assistant
Public Works Department
9495 SW 180th Street
Palmetto Bay, Florida 33157
Fax: 305-969-5091
kbada@palmettobay-fl.gov

- B. Any official recorded communication during the mandatory Meeting (see Section 1.4).

1.6 ADDENDA

If the Village finds it necessary to add to, or amend this document prior to the Response submittal deadline, the Village will issue written addenda/addendum after the Meeting and distribute it to all persons attending the Meeting. Each Consultant must acknowledge receipt of each addendum by signing the acknowledgement (Appendix A) and providing it with its Response.

1.7 PRESENTATION COSTS

The Village shall not be liable for any costs, fees, or expenses incurred by any Consultant in responding to this RFQ, subsequent inquiries or presentations relating to its response.

1.8 CERTIFICATION

The signer of the Response (to this RFQ) must declare by signing Appendices A and B that the person(s), firm(s) and parties identified in the Response are interested in and available for providing the services; that the Response is made without collusion with any other person(s), firm(s) and parties; that the Response is fair in all respects and is made in good faith without fraud; and that the signer of the cover letter of the Response has full authority to bind the person(s), firm(s) and parties identified in the Response.

1.9 PUBLIC RECORDS

Florida law provides that municipal records should be open for inspection by any person under Section 119, F.S. Public Records law. All information and materials received by the Village in connection with responses shall become property of the Village and shall be deemed to be public records subject to public inspection.

1.10 RETENTION OF RESPONSES

The Village reserves the right to retain all Responses submitted and to use any ideas contained in any Response, regardless of whether that Consultant is selected.

1.11 QUESTIONS AND CLARIFICATIONS:

All requests for information and/or clarification should be submitted in writing to:

Kristy Bada, Administrative Assistant
Village of Palmetto Bay
Public Works Department
9495 SW 180th Street
Palmetto Bay, Florida 33157
Fax: 305-969-5091
Email: kbada@palmettobay-fl.gov

1.12 VILLAGE AUTHORITY

Proposals will be selected at the sole discretion of the Village. The Village reserves the right to waive any irregularities in the request process, to reject any or all proposals, or to reject a proposal which is in any way incomplete or irregular. Proposals received after the deadline will not be considered (See Section 1.2 for the time and dates).

2.0 SERVICES NEEDED BY THE VILLAGE

2.1 GENERAL BACKGROUND

The Village is committed to efficient government administration. A small core of the Village staff has been serving its residents, businesses and visitors exceptionally well through their dedication and with the help of consultants, contractors, and service providers who also have been committed to providing quality products at competitive prices. We expect to continue this tradition.

Pursuant to Chapter 287.055, Florida Statutes, the Village intends to retain consultants to provide professional services in the Service Areas identified in Section 1.0 and described further in the Section 2.2. In order to fulfill the needs of quick response and professional expertise, the Village intends to retain three (3) Consultants in each Service Area.

While pursuing this RFQ process, the Village reserves the right to award contracts to Consultants who will best serve the interests of the Village and whose Responses are considered by the Village to be the most technically qualified responsive and responsible.

The Village reserves the right to accept or reject any or all Responses, based upon its deliberations and opinions. In making such determination, the Village reserves the right to

investigate the financial capability, integrity, experience and quality of performance of each Consultant, including officers, principals, senior management and supervisors as well as the staff identified in the Response.

The Village also reserves the right to waive minor variations or irregularities in the Responses.

2.2 SCOPE OF SERVICES

The Consultants can expect to provide services including, but not limited to the tasks identified below:

2.2.1 Architecture

Planning and design of building renovations and/or alterations; design according to general principles of the Leadership in Energy & Environmental Design(LEED) Green Building Rating System; park design; park systems master planning; design/build bid process, historic preservation, environment friendly facility design, specifications preparation and construction documents; space planning and reconfiguration; cost estimating; construction/structural planning; construction inspection and architectural construction management; and review of developers' plans for the Village, and Geographical Information System (GIS) support.

2.2.2 Landscape Architecture

Landscape design; updating of park facility master plan; phase design of park and recreational facilities within the framework of existing master plan, streetscape plan/design and analysis, bicycle and pedestrian path design; turf and urban interface; integration of parks, canopy design and preservation, tree risk and hazard assessment, environmental analysis, landscaped and open spaces and recreational facilities with the Village's residential and commercial districts and GIS support.

2.2.3 General Civil Engineering

Roadway, parking lots, parking spaces and intersection design; storm water facility design and management, preparation of construction documents and specifications, cost estimating; engineering construction management and inspections, geotechnical analysis, and GIS support.

2.2.4 Transportation Planning and Engineering Services

Transportation planning and traffic engineering, traffic-impact and safety studies, parking studies; neighborhood traffic management; multi-modal traffic planning and design, bicycle and pedestrian paths and integrated mobility options; traffic calming; collection of traffic counts and reports; preparation of construction documents and specifications; signal timing analysis and warrant studies; signs and pavement markings and GIS support.

2.2.5 General Planning Services

Planning studies, comprehensive plan amendment, evaluator and appraisal report, school planning, strategic planning, Green House Gas (GHG) Inventory, climate action plan, neighborhood planning, community planning and public participation, historic and cultural resources planning, economic development analysis and plan, land use analysis and plan, infrastructure and community facility analysis plan, natural resources analysis and protection plan, and implementation strategic and capital improvement planning.

2.2.6 Electrical Engineering

The upgrades and replacement of major equipment and distribution components of mechanical, electrical and plumbing systems; installation of building lighting, equipment and environmental control systems; installation of life safety systems including new fire alarm and fire sprinkler systems, a smoke evacuation system, emergency generator, and emergency command center; structural upgrades; landscape and paving improvements; restroom and concession improvements and new sports flooring.

2.2.7 Structural Engineering

Design structures to range from houses, concession stands, garages, sports complex, and recreation centers. Analyze existing structures to range from buildings, bridges and other structures to determine whether or not they are structurally sound, examine buildings design of new structures, stress calculations, preparation of construction drawings, simulate and model possible situations, cost estimates, construction oversight and/or construction contract management.

3.0 RESPONSE SUBMISSION REQUIREMENTS AND EVALUATION

Only one firm shall be identified as the Prime Consultant for each Response. If other firms are part of the same Response, they shall be identified as subconsultants. A Prime Consultant shall submit only one Response for each Service Area and a separate Response is required for each Service Area, identified in Section 1.0.

A Prime Consultant shall not be a part of any other team as a subconsultant in the same Service Area. Subconsultants can join any number of Prime consultants submitting a Response to this RFQ.

Ten signed (one original and nine photo copies) Responses for each Service Area shall be submitted in one sealed package, clearly marked on the outside "RFQ 2013-PW-100, PROFESSIONAL SERVICES: The Name of the Service Area". The outside of the sealed envelope shall also show the name of the Prime Consultant and those of the subconsultants, if any.

All sealed Qualification packages must be received at the receptionist's desk in the Village Hall located at 9705 E Hibiscus Street, Palmetto Bay, FL 33157 by 3:00 p.m. on March 15, 2013, at which time their receipt will be publicly documented by the Village Clerk or his/her designee(s).

All Responses must be received by the Village Clerk by the due date and time. All Responses received after the due date and time will be returned to the proposer unopened.

3.1 RESPONSE/(QUALIFICATION PACKAGE) PREPARATION

Each consultant shall submit one (1) original and nine (9) bound photocopies of each Response. Each Response shall be limited to twenty (20) pages (paper size 8.5"x11,"printed on only one side of the paper, single or the larger spacing, font size not less than 11) excluding the Certificates and Appendices A, B and C. The sections shall follow the order given on the next page. The twenty (20)-page limit is for items 1 to 9 on the next page. No material other than that listed in this Section shall be included in the Response.

1. A one-page cover letter indicating the Consultants' interest in providing the services to the Village and a statement on why the consultant should be selected for the award. The letter shall include the name of the Prime Consultant and those of the subconsultants, explanation of the type of contractual agreement between them, if different from that of Prime and subconsultant. A representative who is authorized to contractually bind the Consultant shall sign this letter.
2. A one-page table of contents identifying the sections and page numbers.
3. A one-page proposed organization chart identifying key professionals, their area(s) of responsibility and extent of their availability.
4. A one-page history of all the consultant(s).
5. Up to four (4), one-page resumes of the persons, including the Project Manager that will be assigned to the Village projects, if the Village selects the Consultant.
6. Up to two (2) pages, a table showing all current and recently completed (after December 20, 2007) private and public (local municipal, county, regional, state and federal) sector clients of all the consultants. The table shall include for each client: (a) the length of the contract; (b) the scope of services provided; (c) the type of contract (pro bono, retainer, project based fee, other); (d) specific accomplishments, if any; and (e) a contact name, phone number and e-mail address for each client. If the Consultant team includes subconsultant, there must be at least one project for each subconsultant. The Consultant may select suitable clients/projects, if the list exceeds two-page limit.
7. Up to a two (2) pages, a narrative on projects completed on time and in budget after (December 20, 2005).
8. Up to five (5) pages, a description of projects providing services similar to those identified in the scope of services over the last five years. The emphasis shall be given to the projects in Florida AND the tasks performed by the four persons identified in the Response.
9. Up to three (3) pages, copies of any press articles, profiles, commendations, awards etc. The emphasis shall be given to the projects completed in Florida AND the projects of the four persons identified in the Response.
10. Six (6) pages, completed Appendices A, B and C.
11. Proofs of authorization to transact business in the State of Florida from the Florida Secretary of State, prime as well as sub-consulting firms.

3.2 RESPONSE EVALUATION CRITERIA

The selection committee will evaluate the Responses based on the criteria listed below. The points assigned to each criterion are also given:

1. Compliance with the Response preparation and submission requirements (5)
2. Credentials and accomplishments of the Consultant in general (10)
3. Credentials and accomplishments of the Consultant Project Manager (15)
4. Credentials and accomplishments of the other (up to 3) members (25)
5. Quality of the projects and accomplishments of the Consultant(s) in providing these services to entities comparable to the Village (20)
6. Consultant's track record of on time and within budget project performance (20)
7. Commitment of the Consultant to inclusion and diversity (5).

3.3 SHORT-LIST FOR ORAL PRESENTATIONS AND FINAL SELECTION

The five (5) highest ranking proposals in each Service Area will be short listed and invited to an oral presentation. All Prime Consultants and subconsultants in their teams shall be present at the assigned time for a 20-minute presentation followed by up to a ten (10)-minute questions-and-answer session. The Consultants are encouraged to be represented only by the Project Manager and the staff identified in the Response. Additional details on the oral presentations may be provided to the short-listed Consultants. The oral presentation will be worth 20% in the final selection (and the Response will be worth 80%)

4.0 OTHER CONDITIONS

4.1 TERM OF ENGAGEMENT

An agreement is contemplated for two (2) years, with the option to extend the contract for two (2) one-year terms. The Village or the Consultant may terminate the agreement with thirty (30)-days notice without giving any reason.

4.2 PERMITS, TAXES, LICENSES

The Consultant shall, at its own expense, obtain all necessary permits, pay all licenses, fees and taxes required to comply with all local ordinances, state and federal laws, rules, regulations and professional standards that would apply to this contract.

4.3 LAWS, ORDINANCES

The Consultant shall observe and comply with all federal, state and local laws, ordinances, rules, regulations and professional standards that would apply to this contract.

4.4 INSURANCE

Prior to execution of an agreement with the Village, the successful Consultant shall provide certificates evidencing insurance coverage as required hereunder. Companies

authorized to do business under the laws of the State of Florida shall issue all insurance policies. The Certificates shall clearly indicate that the successful Consultant has obtained insurance of the type, amount, and classification as required and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the Village's representative. Compliance with the foregoing requirements shall not relieve the successful Consultant of its liability and obligations under the agreement.

The successful Consultant shall maintain during the term of the agreement, standard Professional Liability insurance in the minimum amount of one-million-dollars (\$1,000,000) per occurrence.

The successful Consultant shall maintain during the life of the agreement, commercial general liability, including contractual liability insurance in the amount of one-million-dollars (\$1,000,000) per occurrence to protect it and the Village from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under the agreement, whether such operations be by the successful Consultant or by anyone directly employed by or contracting with the successful Consultant.

The successful Consultant shall maintain, during the life of the agreement, comprehensive automobile liability insurance in the minimum amount of five-hundred-thousand-dollars (\$500,000) combined single limit for bodily injury and property damage liability to protect it from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non owned automobiles, including rented automobiles whether such operations be by the successful Consultant or by anyone directly or indirectly employed by the successful Consultant.

The successful Consultant shall maintain, during the life of the agreement, as law requires adequate Worker's Compensation Insurance and Employer's Liability insurance in at least such amounts as for all of its employees per Florida Statute 440.02.

The Consultant shall also maintain other required insurance coverage specific to the services to be provided.

4.5 NEGOTIATIONS

Fees negotiated will be for the underlying contracts and will be negotiated in accordance with Florida Statutes.

APPENDIX A

ACKNOWLEDGEMENT, WARRANTY AND ACCEPTANCE

A. Consultant warrants that it is willing and able to comply with all applicable State of Florida laws, rules and regulations.

B. Consultant warrants that they have read, understand and are willing to comply with all of the requirements of the RFQ and the addendum/ addenda nos.

C. Consultant warrants that it will not delegate or subcontract its responsibilities under an agreement without the prior written permission of the Council.

D. Consultant warrants that all information provided by it in connection with this proposal is true and accurate.

E. CONTINGENCY FEE AND CODE OF ETHICS WARRANTY:

Consultant warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and Consultant has not, and will not, pay a fee the amount of which is contingent upon the Village awarding this contract. Consultant warrants that neither it, nor any principal, employee, agent, representative has procured, or attempted to procure, this contract in violation of any of the provisions of the Miami-Dade County conflict of interest and code of ethics ordinances. Further, Consultant acknowledges that a violation of this warranty will result in the termination of the contract and forfeiture of funds paid, or to be paid, to the Consultant, if the Consultant is chosen for performance of the contract.

Signature of Official: _____

Name (typed): _____

Title: _____

Consultant: _____

Date: _____

APPENDIX B

NON-COLLUSIVE AFFIDAVIT

State of _____

SS:

County of _____

_____ being first duly sworn, deposes and says

that:

(1) He/she is the, (Owner, Partner, Officer, Representative or Agent) of:

_____ the Consultant that has submitted the attached Proposal;

(2) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;

(3) Such Proposal is genuine and is not a collusive or a sham Proposal;

(4) Neither the said Consultant nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Consultant or person to submit a collusive or sham response in connection with the work for which the attached Proposal has been submitted, or to refrain from responding in connection with such work, or have in any manner, directly or indirectly, sought by agreement or collusion, communication, or conference with any Consultant or person to fix this Proposal or to secure through any collusion, conspiracy, connivance, or unlawful agreement, any advantage against the Village of Palmetto Bay, or any person interested in the proposed Work;

Signed, sealed and delivered
In the presence of

_____ By: _____

(Printed Name)

(Title)

ACKNOWLEDGMENT

State of Florida

County of _____

On this _____ day of _____, 20____, before me, the undersigned

Notary Public of the State of Florida personally appeared

and whose name(s) is/are subscribed to the within instrument, and he/she/they acknowledge that he/she/they executed it.

WITNESS my hand
and official seal

NOTARY PUBLIC, STATE OF FLORIDA

NOTARY PUBLIC
SEAL OF OFFICE:

(Name of Notary Public: Print, Stamp or
Type as commissioned.)
 Personally known to me, or
 Produced identification:

(Type of Identification Produced)
 Did take an oath. or
 Did not take an oath.

APPENDIX C

**SWORN STATEMENT PURSUANT TO
SECTION 287.133 (3)(a) FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to the VILLAGE OF PALMETTO BAY, FLORIDA

By _____

For _____

Whose business address is: _____

And (if applicable) its Federal Employer Identification Number (FEIN) is: _____

(if the entity has no FEIN, include the Social Security Number of the individual signing this

Sworn statement - S.S. # _____)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with any agency or political subdivision of any other State or of the United States, including, but not limited to, any Proposal or contract for goods or services to be provided to any public entity or an agency or any political subdivision of any other state or of the United States and involving antitrust fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result or a jury verdict, non jury trial, or entry of a plea or guilty or nab contenders.

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, and means:

- A. A predecessor or successor of a person convicted of a public entity crime; or
- B. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which Proposals or applies to Proposal on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of any entity.

Signed, sealed and delivered

In the presence:

By:

(Printed Name)

(Title)

Appendix-C Page 2 of 3

ACKNOWLEDGMENT

State of Florida

County of _____

On this _____ day of, 20____, before me, the undersigned Notary Public of the State of Florida personally appeared _____ and whose name(s) is/are subscribed to the within instrument, and he/she/they acknowledge that he/she/they executed it.

WITNESS my hand
and official seal

NOTARY PUBLIC, STATE OF FLORIDA

NOTARY PUBLIC
SEAL OF OFFICE:

(Name of Notary Public: Print, Stamp or
Type as commissioned.)
o Personally known to me, or
o Produced identification:

(Type of Identification Produced)
o Did take an oath or
o Did not take an oath.

Appendix-C Page 3 of 3



March 1, 2013

To: All Interested Parties

From: Corrice E. Patterson, Public Works Director
Village of Palmetto Bay
9495 SW 180th Street
Palmetto Bay, Florida 33157

Re: Request For Qualifications – Professional Services RFQ# 2013-PW-100

ADDENDUM NO. 1

Response to questions submitted for clarification at the February 25th, 2013 Mandatory Pre-RFQ Response Meeting.

1. **Question:** How can questions to the RFQ be submitted and to whom should the questions be submitted?

Response: In accordance with section 1.5 (A) Written requests regarding information or clarification in reference to this RFQ must be submitted within the timeframe identified in #3 of Section 1.2 and should be sent to the attention of: Kristy Bada, Administrative Assistant, Public Works Department 9495 SW 180th Street, Palmetto Bay, Florida 33157 Fax: 305-969-5091 or email kbada@palmettobay-fl.gov

2. **Question:** Does an architecture firm have to provide all services?

Response: In accordance with section 2.2 Scope of Services: The Consultants can expect to provide services including, but not limited to the tasks identified below in 2.2.1 Architecture.

3. **Question:** How many separate packages do each firm have to submit?

Response: 3.1 RESPONSE /(QUALIFICATION PACKAGE) PREPARATION states that each consultant shall submit one (1) bound original and nine (9) bound photocopies in one sealed package for each Service Area in which the prime is providing in response to this RFQ.

4. **Question:** Would each firm provide a separate package or one general package?

Response: Only the prime is qualified to submit a response to this RFQ in accordance with section 3.1 RESPONSE /(QUALIFICATION PACKAGE) PREPARATION states that each consultant shall submit one (1) bound original and nine (9) bound photocopies in one sealed package for each Service Area in which the prime is providing in response to this RFQ.

5. Question: Can a sub-consultant be selected by various Prime firms in the same discipline?

Response: Sub-consultants can join any number of Prime consultants submitting a Response to this RFQ.

6. Question: If an electrical firm is submitting as a Prime, can that firm work with a sub-consultant in an architecture category?

Response: Yes

7. Question: What is the procedure if the Village selects the Prime firm and the pool of sub-consultants under that firm is not selected?

Response: The selection committee will evaluate the Responses submitted by the Prime firm based on the criteria listed in section 3.2. While pursuing this RFQ process, the Village reserves the right to award contracts to a Prime Consultant Firms who will best serve the interests of the Village and whose Responses are considered by the Village to be the most technically qualified responsive and responsible including committee review of all sub-consultant information submitted in the response. If the prime firm is selected, all sub-consultants submitted under the scope of the prime firm(s) team are selected to performed work associated with projects awarded prime firm.

8. Question: How many sub-consultants can be listed under the Prime firm?

Response: There is no limitation on the number of sub-consultants a Prime firm can list in response to this RFQ

9. Question: In the Architecture category, can the architecture firm have different and several sub-consultants and up to how many?

Response: There is no limitation on the number of sub-consultants a Prime firm can list for each service area in which a response is submitted for this RFQ process.

10. Question: Should the submittal package include the Resumes of the sub-consultants? How many sub-consultants are allowed?

Response: The Prime should submit four (4), one-page resumes of the persons, including the Project Manager that will be assigned to the Village projects, if the Village selects the Consultant. Submit resumes for team members that will be assigned to Village projects. There is no limitation on the number of sub-consultants a Prime firm can list for each service area in which a response is submitted for this RFQ process.

11. Question: Are sub-consultants required to have a Miami-Dade County technical certification?

Response: Proof of authorization to transact business in the State of Florida from the Florida Secretary of State is required.

12. Question: Can sub-consultants be located outside Miami-Dade County; for example Ft. Lauderdale?

Response: Yes, with proof of authorization to transact business in the State of Florida from the Florida Secretary of State, prime as well as sub-consulting firms

13. Question: If the Prime firm attended the mandatory Pre-RFQ Meeting, and the sub-consultants did NOT attend, will the submittal response be accepted?

Response: Yes

14. Question: Was it mandatory to have all Primes attend the mandatory Pre-RFQ Meeting?

Response: ATTENDANCE AT THIS MEETING IS MANDATORY. Failure by a Prime Consultant to attend and/or be represented at the Meeting shall result in its Response being deemed nonresponsive, if submitted.

15. Question: How will the submittal responses be produced? In person or electronically?

Response: The five (5) highest ranking proposals in each Service Area will be short listed and invited to an oral presentation. The Village will not be bound by any information conveyed verbally. The Village will provide, in writing, information deemed to be necessary in the selection process of this RFQ via email in accordance with Sec 1.2 of the Schedule of Events for this RFQ.

16. Question: How many firms are allowed for each discipline and/or category?

Response: The Village intends to retain three (3) Consultants in each Service Area.

17. Question: What are some examples of future potential projects related to professional consulting services?

Response: See attached Exhibit A

18. Question: Is any of the future potential projects part of the Village's capital improvement project?

Response: Yes

19. Question: How many resumes are allowed for the Prime? Is four (4) the maximum?

Response: 3.1 RESPONSE / (QUALIFICATION PACKAGE) PREPARATION No.5 states; up to four (4), one-page resumes of the persons, including the Project Manager that will be assigned to the Village projects.

20. Question: Is the response evaluation criteria considered the same criteria for the technical aspect?

Response: The evaluation criteria detailed in section 3.2 Evaluation Criteria will be used by the evaluation committee members to evaluate the all proposals submitted by the prime firm. The five (5) highest ranking proposals in each Service Area will then be short listed and invited to an oral presentation.

21. Question: Has the Village had the same or similar project/contract in the years before?

Response: Yes

22. Question: What are the names of the firms that have been contracted by the Village for professional services in the past?

Response: See attached Exhibit B

23. Question: What will be the Village's evaluation process if the Village does not have the top five ranking proposals in each service area?

Response: If less than five responses are received in one (1) or more of service areas, the selection committee will evaluate the Response(s) submitted by the Prime firm based on the evaluation criteria listed in section 3.2. The prime firm proposal submissions will be ranked and if needed, the firms will be invited to an oral presentation. Following the evaluation RFQ process, the Village reserves the right to award contracts to a Prime Consultant Firms who will best serve the interests of the Village and whose Responses are considered by the Village to be the most technically qualified responsive and responsible.

24. Question: Who should the one-page cover letter be addressed to?

Response: Ms. Corrice E. Patterson, Public Works Director, 9705 E Hibiscus Street, Palmetto Bay, FL 33157

25. Question: What happens if a firm exceeds the 20 -page limit for the response preparation?

Response: The twenty (20)-page limit is the maximum pages allowable for response to items 1 to 9 in 3.1 RESPONSE /(QUALIFICATION PACKAGE) PREPARATION. The selection committee will evaluate the Response received based on the criteria listed.

26. Question: What is the percentage (%) of future new design, inspections, and new projects associated with the professional services project?

Response: The percentage (%) of future new design, inspections, and new projects associated with the professional services project has not been determines Village does not guarantee that any or all of the services identified in this Request for Qualifications (RFQ) will be assigned to the Consultants during the term of their Agreement. See attached Exhibit A for the Village's 5 year CIP.

27. Question: Why is Geographical Information System (GIS) support classified under the Architecture category and not under the General Civil Engineering category?

Response: Geographical Information System (GIS) support is identified under 2.2.3 General Civil Engineering

28. Question: Does the Village anticipate Geographical Information System (GIS) support projects in the near future?

Response: The Village does not guarantee that any or all of the services identified in this Request for Qualifications (RFQ) will be assigned to the Consultants during the term of their Agreement.

29. Question: Under the Electrical Engineering category, what are the additional components of mechanical engineering?

Response: In section 2.2 Scope of Services the title for "2.2.6 Electrical Engineering" has been amended as follows, "2.2.6 Engineering Services for Electrical Engineering, Mechanical Engineering and Plumbing Systems."

30. **Question:** Do we need to submit a CD-disc with the submittal response? Is it required?

Response: No, a CD-disc is not required. Submit response in accordance with 3.1 RESPONSE / (QUALIFICATION PACKAGE) PREPARATION. One (1) bound original and nine (9) bound photocopies in one sealed package for each Service Area the prime is submitting in response to this RFQ.

31. **Question:** Will a copy of the sign-in sheets be emailed to those who attended the meeting? How will the copy be distributed?

Response: Click on the following link
<http://www.palmettobay-fl.gov/sites/all/files/2013-pw-103-profsvc-signin-2-25-13.pdf>

32. **Question:** Is there a deadline for the Addendums associated with this RFQ?

Response: Please refer to Sec 1.2 of the Schedule of Events Line Item No. 4 for addendum deadline for this RFQ.

33. **Question:** When will the Addendums be released and/or issued?

Response: All addendums will be released / issued on or before the date and time referenced in Sec 1.2 of the Schedule of Events Line Item No. 4 for addendum deadline for this RFQ.

34. **Question:** Is there a restriction on how many teams a sub-consultant can be on?

Response: Sub-consultants can join any number of Prime consultants submitting a Response to this RFQ.

35. **Question:** Does the Village want to know who the sub-consultants are prior to the submittal?

Response: No, submit information in accordance with 3.1 RESPONSE / (QUALIFICATION PACKAGE) PREPARATION on or before the deadline time and date as referenced in Sec 1.2 of the Schedule of Events Line Item No. 4 for addendum deadline for this RFQ.

36. **Question:** Does the Prime have to commit working with the sub-consultants they list for the next couple of years? Can the listed sub-consultants be changed over a period of time?

Response: The continuing service agreement when executed will establish the notification protocol required for transfer of contract and changes to prime firm organizational chart structure and/or addition – replacement of sub-consultants.

37. **Question:** Under the Architecture category, can the architecture firm submit a response on its self without a sub?

Response: It is not mandatory for a prime firm to include sub-consultants in the submittal response if no sub-consultant is required as part of the prime firms submittal response.

38. Question: Does the Architecture firm need to include all the qualifications of the sub-consultants?

Response: The Prime Consultant should include all qualifications of the sub-consultant that may be suitable for submissions as part of the prime firm submittal response.

39. Question: Under Section 3.1 of the RFQ, page no. 7, question no. 4, who are you asking this information of? Specifically state.

Response: Provide the history of all consultants that will be responsible for responding to the Village's request for services under this continuing service agreement.

40. Question: On a project that requires architecture services, will the Village decide who the geo-tech is out of the team selected? Will the team be assembled by the Village or the team itself if the team has different areas?

Response: The prime will be required to establish a team that is capable of providing all services listed in 2.2.1 Architecture to complete a project awarded by the Village. If the project requires transportation engineering services, the Village will request a separate proposal from one of the pre-qualified Transportation Engineering firms to provide those services if the firm is not pre-qualified in that service area.

41. Question: Is it beneficial for a Civil Engineering Firm to have a geo-tech as a sub-consultant?

Response: The Consultants can expect to provide services including, but not limited to the tasks identified in section 2.2.3 General Civil Engineering

42. Question: How many individuals will be on the evaluation criteria panel and who are the individuals?

Response: There are six (6) individuals on the evaluation committee (Corrice Patterson, Fanny-Carmona-Gonzalez, Ed Silva, Darby DeSalle, Eric Tullberg, and Vishnu Rajkumar)

43. Question: Will a Prime and/or sub-consultant be disqualified if that firm has had a bad reputable experience with any individual on the evaluation criteria panel or if the firm has any pending lawsuits?

Response: The Village reserves the right to accept or reject any or all Responses, based upon its deliberations and opinions. In making such determination, the Village reserves the right to investigate the financial capability, integrity, experience and quality of performance of each Consultant, including officers, principals, senior management and supervisors as well as the staff identified in the Response. The evaluation criteria detailed in section 3.2 Evaluation Criteria will be used by the evaluation committee members to evaluate the all proposals submitted by the prime firm. The five (5) highest ranking proposals in each Service Area will then be short listed and invited to an oral presentation.

44. Question: What firms have pending lawsuits with the Village?

Response: A public records request is recommended if information in regard to any pending lawsuits with the Village is needed.

45. Question: Should all sub-consultants be listed on the Organizational Chart?

Response: Yes, include sub-consultants on organizational chart

46. **Question:** In reference to Section 3.1 of the RFQ, page no. 7, item no. 6, can the Village consider the term to 10 years?

Response: No, submit response in accordance with section 3.1 response/Qualification Package Preparation Item 6.

47. **Question:** If a firm is submitting a response as a Prime, can that firm be a sub-consultant for another firm?

Response: A firm can submit a proposal as Prime consultant in a service area and participate as a sub-consultant under a prime consultant in different service areas. A firm can't be a prime and sub-consultant in the same service area.

Yaharris Flores from R.J. Behar & Company, Inc. submitted the following question(s):

48. **Question:** Could you please clarify number 6 on page 7 of 15 of this RFQ? What if you cannot fit all of your current and recently completed projects on 2 pages?

Response: Section 3.1 Response / (Qualification Package) Preparation, subsection 6 states "The Consultant may select suitable clients/projects, if the list exceeds two-page limit," therefore the Consultant may select suitable clients/projects in order not to exceed the two-page limit.

Vanessa Bermudez, CPSM, LEED AP from TLC Engineering for Architecture submitted the following question(s):

49. **Question:** As per the pre-bid meeting, a sub-consultant can submit as a prime and also as part of the team. At the same time, an architectural firm can submit with a complete design team including sub-consultants. However, the Village would like to have some control over the sub-consultants used at the projects but the RFP requirements do not leave much space to provide information about the sub-consultants. In similar contracts, the municipalities select sever consultants for each discipline, then when a project requires more than one discipline they ask the architect to select from a list of selected sub-consultants that the City has already evaluated. Would this be something that the Village would consider? This way the architect will submit only as architect and in the event that a project requires MEP or Structural engineering, they would select the sub-consultants from the "pre-approved" list.

Response: A firm that is submitting as a prime is not eligible to be a sub-consultant in the same service area and a sub-consultant is not eligible to be a prime if they are a sub-consultant to a prime in the same service area but they can be a sub-consultant to multiple primes in the same service area.

The Village intends to execute continuing service agreements with three (3) Prime Consultant Firms in each Service Area. The prime is required to establish a team that is capable of providing services including, but not limited to the task identified in the service area(s) that the prime is submitting in response to this RFQ. When a project requires services from multiple service areas, the Village will select from the list of pre-qualified prime consultant firms and request proposals for each service area required to complete the project scope of work.

Melissa Betancourt from Bolton Perez & Associates submitted the following question(s):

50. **Question:** If we want to submit for 2 disciplines: General Civil Engineering and Structural Engineering we have to submit 2 separate packages, is that correct?

Response: Section 3.0 Response Submission Requirements and Evaluation, states the following "Only one firm shall be identified as the Prime Consultant for each Response. If other firms are part of the same Response, they shall be identified as sub consultants. A Prime Consultant shall submit only one Response for each Service Area and a separate Response is required for each Service Area, identified in Section 1.0."

Matia I. Gonzalez from I.A.D., P.A. submitted the following question(s):

51. Question: Has the City, in the past, selected firms that provided all disciplines or has the city selected firms with one discipline such as an Architectural firm with no subs?

Response: The Village has selected firms in the past who will best serve the interests of the Village and whose Responses are considered by the Village to be the most technically qualified responsive and responsible. The Village has retained the service of firms that are pre-qualified in multiple service areas with teams that are capable of providing the services identified under 2.2 Scope of Services.

Yiris C. Smith from Baljet Environmental, Inc. submitted the following question(s):

52. Question: #4 Please define specifically what you mean by 'history'? Does this mean evolution of the Prime Consultant's firm, its project history, etc.? Should we also include this information as it pertains to the sub-consultants? Does the one page allotment include one page for the Prime Consultant and one page for each of the subs?

Response: History as defined by *Merriam-Webster* is "a chronological record of significant events (as affecting a nation or institution) often including an explanation of their causes; a branch of knowledge that records and explains past events; events that form the subject matter of a history." The information contained in the history page is at the discretion of the prime consultant submitting the response. As stated in Section 3.1 Response / (Qualification Package) Preparation, subsection 4, the history section is a "one-page history of all the consultant(s)."

53. Question: #5 Do the total of 4 resumes include those of the sub-consultants?

Response: Section 3.1 Response / (Qualification Package) Preparation, subsection 5 states the following "Up to four (4), one-page resumes of the persons, including the Project Manager that will be assigned to the Village projects, if the Village selects the Consultant."

54. Question: #8 Would you prefer this list in the form of a narrative or a table?

Response: Section 3.1 Response / (Qualification Package) Preparation, subsection 8 states the following "Up to five (5) pages, a description of projects providing services similar to those identified in the scope of services over the last five years. The emphasis shall be given to the projects in Florida and the tasks performed by the four persons identified in the Response." The format of this requirement is at the discretion of the prime consultant submitting the response.

All other terms and conditions stipulated in the original Village of Palmetto Bay Request for Proposal shall remain in force.

Thank you for your participation in our bidding process.



Corrice E. Patterson, Director of Public Works
Village of Palmetto Bay

EXHIBIT A

Table 1
 Village of Palmetto Bay
 Capital Improvements Program - Schedule
 Fiscal Years 2012-13 through 2016-17

Item No.	Project Description	Meet or Maintain Adopted Level of Service (LOS)	Project Status	Financial Instruments	Fiscal Years					Total	
					2012-13	2013-14	2014-15	2015-16	2016-17		
PARKS AND RECREATION DEPARTMENT											
25	Palmetto Bay Park Construction of two additional parking cages	Yes	Programmed	Parks & Recreation Capital Improvement Budget	\$ 90,000.00						\$ 90,000
26	Palmetto Bay Park Existing Quad restroom and Rest Room restroom renovations (air walks, epoxy flooring, new fixtures, etc.)	Yes	Programmed	Parks & Recreation Capital Improvement Budget	\$ 45,000.00						\$ 45,000
27	Palmetto Bay Park Playground patching and installation of mature trees to create shade canopy.	Yes	Programmed	Parks & Recreation Capital Improvement Budget	\$ 75,000.00						\$ 75,000
28	Palmetto Bay Park Modification of irrigation system w/ installation of water sources between fields 1/2 2/3 and 3/4.	Yes	Programmed	Parks & Recreation Capital Improvement Budget	\$ 10,000.00						\$ 10,000
29	Palmetto Bay Park Conversion of Soccer Park to Mini Soccer Fields with synthetic turf	Yes	Programmed	Parks & Recreation Capital Improvement Budget	\$ 250,000.00						\$ 250,000
30	Coral Reef Park New Lighting (obscure) for tennis center courts	Yes	Programmed	Parks & Recreation Capital Improvement Budget	\$ 250,000.00						\$ 250,000
31	Coral Reef Park Rehabilitation of SE (concrete) bridge	Yes	Programmed	Parks & Recreation Capital Improvement Budget	\$ 60,000.00						\$ 60,000
32	Coral Reef Park New roof for outside restroom building	Yes	Programmed	Parks & Recreation Capital Improvement Budget	\$ 25,000.00						\$ 25,000

EXHIBIT A

Table 1
Village of Palmetto Bay
Capital Improvements Program - Schedule
Fiscal Years 2012-13 through 2016-17

Item No.	Project Description	Meet or Maintain Adopted Level of Service (LOS)	Project Status	Financial Instruments	Fiscal Years					Total
					2012-13	2013-14	2014-15	2015-16	2016-17	
W18	Right Turn Lane Intersection Improvements	Yes	Planned	Special Revenue Fund - Transportation Sub-Tier					\$ 1,500,000	
W19	Safe Routes to School Improvements - Child Care Elementary	Yes	Implemented	Florida Dept. of Transportation Grant	\$ 133,100				\$ 133,100	
W20	Safe Routes to School Improvements - Howard Drive Elementary	Yes	Implemented	Florida Dept. of Transportation Grant	\$ 9,000				\$ 9,000	
W21	Safe Routes to School Improvements - Prince-Bismarck	Yes	Implemented	Florida Dept. of Transportation Grant			\$ 542,224		\$ 542,224	
W22	Sidewalk Conversion to Tennis Courts - Covered all adjacent to tennis courts within the Village of Palmetto Bay	Yes	Outgoing	Special Revenue Fund - Transportation Sub-Tier	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 100,000	
W23	14th Street 12 Drainage Improvements - Area south of Stadium Drive (SW 24th Street) north of SW 17th Street, west of Old Cedar Road, and east of SW 20th Avenue	Yes	Implemented	Special Revenue Fund - Stormwater Utilities	\$ 22,000				\$ 22,000	
W24	14th Street 11 Drainage Improvements - Area south of SW 17th Street, north of SW 15th Street, west of SW 17th Street, west of SW 10th Avenue and east of SW 16th Avenue	Yes	Implemented	Special Revenue Fund - Stormwater Utilities	\$ 22,000				\$ 22,000	
W25	14th Street 10 Drainage Improvements - Area south of SW 17th Street, north of SW 15th Street, west of SW 17th Street, west of SW 10th Avenue and east of SW 16th Avenue	Yes	Implemented	Special Revenue Fund - Stormwater Utilities					\$ 22,000	
W26	14th Street 9 Drainage Improvements - Area south of SW 17th Street, north of SW 15th Street, west of SW 17th Street, west of SW 10th Avenue and east of SW 16th Avenue	Yes	Implemented	Special Revenue Fund - Stormwater Utilities					\$ 22,000	
W27	14th Street 8 Drainage Improvements - Area south of SW 17th Street, north of SW 15th Street, west of SW 17th Street, west of SW 10th Avenue and east of SW 16th Avenue	Yes	Implemented	Special Revenue Fund - Stormwater Utilities					\$ 22,000	
W28	14th Street 7 Drainage Improvements - Area south of SW 17th Street, north of SW 15th Street, west of SW 17th Street, west of SW 10th Avenue and east of SW 16th Avenue	Yes	Implemented	Special Revenue Fund - Stormwater Utilities					\$ 22,000	
W29	14th Street 6 Drainage Improvements - Area south of SW 17th Street, north of SW 15th Street, west of SW 17th Street, west of SW 10th Avenue and east of SW 16th Avenue	Yes	Implemented	Special Revenue Fund - Stormwater Utilities					\$ 22,000	
W30	14th Street 5 Drainage Improvements - Area south of SW 17th Street, north of SW 15th Street, west of SW 17th Street, west of SW 10th Avenue and east of SW 16th Avenue	Yes	Implemented	Special Revenue Fund - Stormwater Utilities					\$ 22,000	
W31	14th Street 4 Drainage Improvements - Area south of SW 17th Street, north of SW 15th Street, west of SW 17th Street, west of SW 10th Avenue and east of SW 16th Avenue	Yes	Implemented	Special Revenue Fund - Stormwater Utilities					\$ 22,000	
W32	14th Street 3 Drainage Improvements - Area south of SW 17th Street, north of SW 15th Street, west of SW 17th Street, west of SW 10th Avenue and east of SW 16th Avenue	Yes	Implemented	Special Revenue Fund - Stormwater Utilities					\$ 22,000	
W33	14th Street 2 Drainage Improvements - Area south of SW 17th Street, north of SW 15th Street, west of SW 17th Street, west of SW 10th Avenue and east of SW 16th Avenue	Yes	Implemented	Special Revenue Fund - Stormwater Utilities					\$ 22,000	
W34	14th Street 1 Drainage Improvements - Area south of SW 17th Street, north of SW 15th Street, west of SW 17th Street, west of SW 10th Avenue and east of SW 16th Avenue	Yes	Implemented	Special Revenue Fund - Stormwater Utilities					\$ 22,000	

EXHIBIT A

Table 1
Village of Palmetto Bay
Capital Improvements Program - Schedule
Fiscal Years 2012-13 through 2016-17

Item No.	Project Description	Meet or Maintain Adopted Level of Service (LOS)	Project Status ¹	Financial Instruments	Fiscal Years					Total
					2012-13	2013-14	2014-15	2015-16	2016-17	
W25	21/2 Mile Lane at SW 714th Street - Construction of 1/2 Mile x 1/2 Mile Urban Street from US1 to Old Cutler Road.	Yes	Planning	Special Revenue Funds - Transportation Sub-Tax					\$ 1,078,000	\$ 1,078,000
W26	Traffic Calming Study within the Boundaries of the Village	Yes	On-Going	Special Revenue Funds - Transportation Sub-Tax	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 375,000
W27	Bus Pick-up and Drop-off Facility	Yes	Preparations	Subtotal Transit Services Funds - Transit Sub-Tax	\$ 240,000					\$ 240,000
W28	West Arm Street in Replacement	No	Preparations	Special Revenue Funds - Transportation Sub-Tax	\$ 47,600					\$ 47,600
	Subtotal - Public Works Department				\$ 2,157,747	\$ 2,515,264	\$ 2,409,499	\$ 3,507,171	\$ 4,480,542	\$ 15,259,220
	Grand Total - Capital Improvement Projects				\$ 3,384,747	\$ 3,515,264	\$ 2,409,498	\$ 3,607,171	\$ 4,968,540	\$ 16,560,220

Note:
1) For scheduling purposes the CIP projects are divided in three groups: a) programmed projects, are scheduled for completion in Fiscal Years: 2012-13 through 2013-14;
b) planning projects are scheduled for completion in the last three fiscal years of the CIP and c) on-going projects are scheduled for every fiscal year of the CIP

Prepared: PWD Budget

EXHIBIT B

Architecture:

- Corzo Castella Carballo Thompson Salman, P.A. (C3TS)
- Bermello Ajamil and Partners
- Wolfberg Alvarez and Partners

Landscape Architecture:

- Calvin Giordano and Associates
- O'Leary Richards Design Associates Inc.
- Kimley-Horn and Associates

General Civil Engineering/Surveying:

- Kimley-Horn and Associates
- Calvin Giordano and Associates
- Corzo Castella Carballo Thompson Salman, P.A. (C3TS)

Transportation Planning and Engineering:

- The Corradino Group
- Corzo Castella Carballo Thompson Salman, P.A. (C3TS)
- Calvin Giordano and Associates

Electrical Engineering:

- Wolfberg Alvarez and Partners
- Corzo Castella Carballo Thompson Salman, P.A. (C3TS)
- Fraga Engineers

Structural Engineering:

- Corzo Castella Carballo Thompson Salman, P.A. (C3TS)
- Mactec Engineering and Consulting
- BCC Engineering, Inc.

General Planning:

- The Corradino Group
- Kimley-Horn and Associates
- Calvin Giordano and Associates



Acknowledgement of
Addendum of Solicitation

Amendment/Modification No.: 1
Amendment of RFQ No.: 2013-PW-100
Title of RFQ: Professional Services

Name of Proposer _____

Date Addendum Received _____

Total Pages of Addendum including Acknowledgement 15

Signature

Please return acknowledgement of Addendum to the Village of Palmetto Bay Public Works Department via facsimile (305) 969-5091.

The addendum will also need to be submitted along with the remainder of the bid package. Bid submittals without the addendum will be considered unresponsive.



To: Honorable Mayor and Village Council

Date: May 23, 2014

From: Ron E. Williams, Village Manager

Re: Lighting Report

I. THE BEGINNING

On May 5, 2014, Councilman Schaffer introduced a proposed ordinance which sought to permit the lighting of recreational and athletic fields for non-residential uses. After some discussion and public comment, the item was tabled, date certain, to the June 2, 2014, Village Council meeting so that a staff report may be provided to address the proposed ordinance as well as the comments and questions that resulted from the public hearing. This report is staff's response to that request.

In offering this report for consideration, several topics are reviewed. Section II provides a brief history of the ordinance subject to this request. Section III of the report provides a general description of light terminology, measurement and other equivalencies thereto in order to have a shared understanding of lighting in context. Section IV is a review of how other jurisdictions regulate athletic field lighting. Section V seeks to address the proposed ordinance in the broader context of its application, desired development standards, and the handful of questions offered at the May 5, 2014 hearing. Section VI analyzes the proposed ordinance to the review criteria found at Section 30-30.7(b) of the Land Development Code.

Please note, there was insufficient time to secure the services of a licensed professional in the lighting field in the time allotted to produce this report. The representations made herein are driven primarily by information that was researched via the internet, documentation readily available on Municode.com, and existing in-house data. The author of this report is not a lighting engineer and therefore does not represent himself as an expert to the more technical lighting aspects of this review.

II. FROM DAWN TO DUSK – (An abridged History)

How did we get here? In 2007, as part of an ongoing effort to adopt its own Code following incorporation, the Village established regulations that pertained to lighting standards and private school facilities and their accessory uses. Those provisions largely mirrored those of Miami-Dade County's code which were utilized by the Village prior to the adoption of their own. Subsequently, starting in and around 2009-2010, there became an expressed desire to fulfill the interpreted intent of the first goal of the Village's Comprehensive Plan that was adopted in 2005. Specifically, that

goal identified, among others intents, the desire to provide “quality neighborhood protection.” The result of that movement was the establishment of certain provisions within the Village Charter that eventually led to amendments to the Land Development Code. Chief among them was Charter provision 10.2 which stated that “[a]ll single-family residential properties shall be protected from the negative impacts of adjacent or nearby non-single family residential uses.” The Land Development Code amendments implemented to fulfill that Charter provision were adopted on November 5, 2012, and are collectively known as the “Neighborhood Protection Ordinance” or NPO. Within the collection of ordinances adopted that day, the biggest change came to Division 30-110 which was reorganized to consolidate all non-governmental places of public assembly into one cohesive code that would provide uniformity of development standards across all such uses. Germane to this matter in particular was an amendment prohibiting the lighting of nongovernment recreational and athletic fields. Also modified that day, and peripherally relevant, was Section 30-60.6 which regulates lighting. The modification there reduced maximum permitted lighting levels as measured from the property line from .5 FC to .3 FC and added an additional .01 FC permitted maximum when measured ten (10) feet off the property.

As stated above, the proposed ordinance was offered by Councilman Shaffer at the May 5, 2014, Village Council Hearing. The expressed desire presented by Mr. Schaffer was to permit privately owned athletic fields to have the same right of recreational and athletic field illumination as enjoyed by public facilities.¹ Councilman Tim Schaffer’s proposed ordinance effectively repeals that portion of the 2012, Village Council legislative action that sought to prohibit athletic field lighting for nongovernmental public assembly uses. In so doing, the regulation of such lighted facilities falls principally upon Section 30-60.6 which provides standards for maximum illumination at the property line and as averaged across the site². His proposed ordinance also includes permitting night time illumination until 10:00 PM, Sunday through Thursday, and until 11:00 PM on Friday and Saturday.

III. SHED SOME LIGHT ON THE MATTER (Lighting in context)

What is a foot candle (FC) anyway? Lighting is generally measured in a standard known as a foot candle. A foot candle is the amount of light a single candle will generate in a one square foot area when measured one foot away from the emitting source (See Figure 1). Light output is also measured in a standard called LUX which calculation parameter mirrors that of a foot candle; however the distance and area is one yard and one

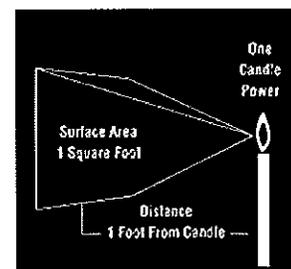


Figure 1

¹ Public facilities are governed by the site plan zoning procedures establish at Section 30-50.21 of the LDC and require Council Approval at a public hearing.

² In addition to the standards identified in the previous paragraph (ie. .3 and .01 FCs, measurement maximum standards, respectively) Section 30-60.6 also requires that an average of 6.0 FC not be exceeded across the entirety of the site.

square yard respectively. The Village's code refers to foot candles when establishing its lighting standards.

Data collection of light also provides for two different methodologies, horizontal and vertical. In the simplest of terms, horizontal measurements capture the general spread of light whereas vertical measurements are more likely to capture glare. Horizontal measures are captured by having the light meter face upwards towards the sky, whereas vertical measures are captured by pointing the device towards, or in some cases, away from the light source(s). Both measurements, as a standard, are generally taken at three (3) feet above grade. Horizontal measurements are most commonly used, whereas vertical measurements are typically implemented in conjunction with high performance demands associated with television broadcasting and professional sports. Some municipal jurisdictions require both vertical and horizontal measures. The Village measurement technique is horizontal as measured at base elevation (the ground).

How much light is that? Although the description above seems simple enough, it is still difficult to understand in every day practical terms just how much light any one source may emit. Figure 2 represents in both LUX and Foot Candles (FC), typical measurement outcomes based on different natural lighting scenarios throughout a given day. By way of comparison to that chart, a 40 watt incandescent bulb produces approximately 25-29 FC; a 100 watt incandescent bulb produces approximately 137 FC. Miami-Dade County requires open parking lots to maintain a minimum of 1.0 FC but provides for a 12:1 FC ratio, meaning, the lighting standard may be as high as 12 FC but never lower than 1 FC. Closed and properly secured parking lots are permitted to be half that standard. As a general rule of applicability, the 1.0/.5 FC measurement is typically the maximum measure of ambient illumination permitted at the property line. The Village of Palmetto Bay code conforms to the County standard for parking surfaces, however goes further by requiring measurements of .3 FC at the property line and .01 FC ten (10) feet off the property.

	Condition	Light Level (LUX)	Foot Candles (FC)
Day Time	Sunlight	107,527	10,000
	Daylight	10,752.70	1,000
	Overcast Day	1,075.30	100
	Very Dark Day	107.53	10
	Twilight	10.75	1
Night Time	Deep Twilight	1.08	0.1
	Full Moon	0.108	0.01
	Quarter Moon	0.0108	0.001
	Starlight	0.0011	0.0001
	Overcast Night	0.0001	0.00001

Figure 2

How many FC does it take to light the center of an athletic field? There is no typical method that applies to any one type of athletic field as there may be several variables that go into such considerations. However, in lighting parlance, the sports themselves are generally broken into two (2) broad categories, Aerial Sports or Ground Sports. In addition, each of the two categories are parsed by whether the sport is Multi-Directional or Uni-Directional. Multi-Directional Aerial Sports

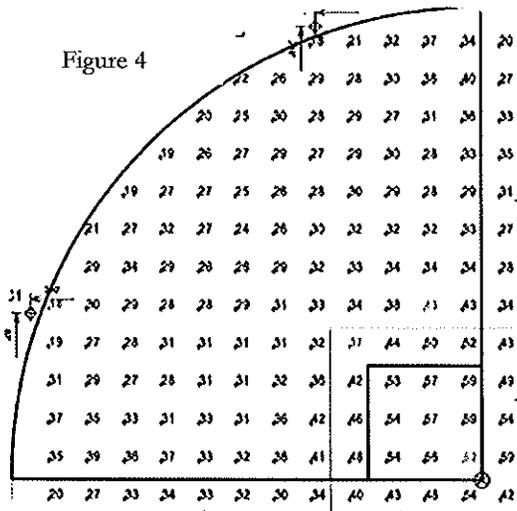
are generally those that involve a ball that is or may be air born part of the time and require viewing from multiple angles. Such examples would include football, baseball and soccer. Uni-Directional Aerial Sports require viewing typically from just one direction as would be the case with a golf driving range or skeet shooting. Ground Sports are primarily those where the focus of play is directed towards the playing surface. Multi-Directional Ground Sports include field hockey or skating. Uni-Directional Ground Sports include archery or bowling.

Figure 3

Another consideration regarding the lighting of athletic fields relates to the level of competition and provisions for spectators. Figure 3 represents how differing levels of competition may fall into the four (4) classes of lighting. Those athletic competitions with highest demands for spectator capacity fall into the first and most demanding class for lighting. These fields are generally designed for suitability to televised broadcasts and thus also include vertical measurements of foot candle power. Although not all of the facilities within the Village were evaluated, it appears the lighted athletic and recreational fields within the Village are Class III or less. By way of example, the typical ball field at Palmetto Bay Park is a Multi-Directional Aerial Class III ball field with an approximate average horizontal FC of 50 in the infield and 30 FC in the outfield as emitted from 1500 Watt lights mounted on 60 foot poles (Figure 4). The tennis courts at a Coral Reef Park are also Multi-Directional Aerial Class III facility with an approximate average horizontal FC of 50 as emitted from 1500 Watt lights mounted on 40 foot poles (figure 5). The Village currently employs the highest quality lighting system consistent with the prescribed class level of usage.

FACILITY	CLASS			
	I	II	III	IV
Professional	X			
College	X	X		
Semi-Professional	X	X		
Sport Clubs	X	X	X	
Amateur Leagues		X	X	X
High Schools		X	X	X
Training Facilities			X	X
Elementary Schools				X
Recreational Events				X
Social Events				X

Class I - Facilities with spectator capacity over 5,000
 Class II - Facilities with spectator capacity under 5,000
 Class III - Facilities with some provision for spectators
 Class IV - Facilities with no provision for spectators



Palmetto Bay Park Soft Ball Field

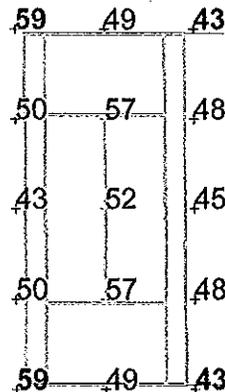


Figure 5
 Coral Reef Park Tennis Court

Enforceability of lighting standards. As a final note to this section, a presentation is offered as to general enforceability of lighting measurement. The challenge that exists resides primarily with lighting from multiple sources. Light spreads indiscriminately. Any measure of lighting at a property line will likely capture more than just a single source. There may be an adjacent street light, porch light, or landscape lighting that may skew the result. This is not to say that there does not exist scenarios where the offending source is obvious, it simply means that achievement of lighting standards may be thwarted by other sources. Thus, the best tool available to ensure lighting compliance is a photometric plan that is submitted at sight planning or permitting, as the case may be, to ensure the product performs within code tolerances.

IV. THE LIGHTING SPECTRUM (Other Jurisdictions)

In conducting research into the development standards practiced by other cities, staff utilized a search tool that is available to subscription members of the website Municode.com. The search words enter were, "outdoor lighting", "athletic fields", and "athletic lighting". The search was limited to those jurisdictions within the State of Florida that publish their code on Municode.com. The search resulted in countless hits, however very few that were useful to addressing specific regulations pertaining to the use of athletic field lighting. In fact, most of the codes researched were silent as to athletic field lighting entirely. At least one city, the Town of Davie, exempted athletic fields from lighting regulations and at least two out-right prohibited them³.

Most of the codes, as applied to out-door lighting in general, provided some language requiring reduction of light spillage to the maximum extent possible, however not all of them provided a measurable standard. Of those that did, the range fell primarily between 1.0 and .5 FC. A few provided for height standards as well as setback requirements. Monroe County permits a maximum height of 35 feet. That height standard may preclude certain Multi-Directional Aerial Sports as it may not be possible, or at the very least difficult, to see the ball at a height that exceeds the luminary. Alachua County limits the heights of athletic field poles to that maximum permitted in the adjacent zoning district when located within 100 feet thereto. Miami-Dade County permits pole heights that are up to 90% of the distance they are setback from an adjoining property line under separate ownership. Another element found in the various codes was the concept of "Cut-Off" lights. This would be lights that have shields to control the direction of the illumination. None of the Codes addressed how to completely block all visibility of a luminary. Given such, it is likely any desire to permit athletic and recreational field lighting may coincide with some degree of tolerance of visibility to the lighting source. Setbacks, height limitations, and landscaping may not always ensure complete blockage of the luminary from any given viewing angle.

³ Southwest Ranches and Loxahatchee Groves have identical code provisions regarding athletic field lighting. Both prohibit such usage.

V. FOR YOUR ENLIGHTENMENT (Proposed ordinance in context and other questions)

During the May 5, 2014 discussion, several questions and amendments were suggested to the proposed ordinance and were specifically requested to be addressed in this report. Some of those questions/suggestions are touched upon in the sections above (ie., heights, setbacks, and hours of operation). This section shall build upon that foundation. Other questions such as, a state school sanctioned athletic program exemption, and a discussion of 'shall' versus 'may' is also included in this section. Finally, a brief discussion is provided regarding private and public facilities.

How far, how high? To speak to the first question grouping is to answer principally what the proposed ordinance does not do. Specifically, it does not regulate height or setback and merely relies upon maximum permitted lighting standards as provided 30-60.6. Presuming for a moment that such a standard can be met regardless of height or setback, outstanding questions remain. First, should a mast or pole be taller than it is setback from an adjacent residential property? Second, if the goal is to somehow eliminate from view the luminary, what site distance is required when coupled with a landscape buffer. Alachua and Miami-Dade County provide some guidance with this regard, however neither deal with the question of site distance. And as stated in Section IV above, it is unlikely that complete elimination of visibility of the lighting source may be achieved from all viewable angles. Thus it becomes a policy question of community standards and tolerances.

Till what hour? Selection of hours of operation and days of the week are limitations that may be implemented, however enforcement may present some challenge. Limited scheduling, which may include certain days of the week or multiple fields, requires a high degree of coordination between the facility and multiple regulating agencies. Staff believes the most effective approach would be to provide a universal cut-off time that may differentiate between weekends and weekdays and limit lighting to one field at a time. It should be noted, this approach would accommodate the illumination of privately held athletic fields and may eliminate or cut into multi-day tournaments that require multiple fields.

Who gets what? One suggestion limited lighted fields to those sporting events that are part of a state sanctioned athletic program. Notwithstanding the disparate application of such a provision to the exclusion of other possible less intensive activities, such a suggestion also comes with compliance challenges. For example, there may be an institution with an eligible program, but the field is lit for another reason, possibly band practice, pep rally, or general assembly. Once the activity is under way, and its participants are numerous, it may be difficult to ascertain whether the event qualifies, and possibly unwise to try to completely shut down.

An alternative question to ask is what distinguishes a public high school baseball game from that of an optimist league of the same age grouping. It does not appear on its face that either operates

differently. Further, the optimist could in fact be a lessee to a privately held field that complies with the suggestion above. If it is desired that there be provisions for athletic field lighting for privately owned facilities, staff believes it be of general applicability and not limited to a particular type of program.

Shall v. May. As is generally understood in the context of a code provision, 'shall' means if the criteria is met, the request is granted, whereas 'may' general allows for some interpretation and flexibility. Though 'may' as a term is used in code writing parlance, it is generally discouraged. In cases that deal with constitutional rights, particularly whereby the outcome may result in denial despite substantially competent evidence to the contrary, it is illegal. Section 30-110 regulates uses that enjoy such protections such as places of worship. Thus, if the desire is to permit lighted athletic and recreational fields, staff prefers clear-cut standards that minimize discretionary decision making to the maximum extent possible.

Public v. Private. One of the arguments offered at the May 5, 2014, hearing was a concept of "government over the people." The idea was couched on the concept of allowing private sector development to be on par with those afforded to the public sector. Inherent to the argument was one of equality and constitutionality. No doubt the argument has tremendous resonance with individuals as it suggests a sense of fair play.

Similar to many other governmental entities, the Village has a Code provision that requires a site plan review separate from the rules that guide private development. These rules are often established regardless of prevailing zoning regulations. They nonetheless require public hearing regardless of the scale or scope of development and often involve a public review component more extensive than that provided for in the private development review standards. The reason for such is simple, the government provides services that are available to all, not just a selected few. They are services commonly provided for and enjoyed by its residents and beyond. Further, many government facilities have development standards that cannot readily be accommodated by traditional zoning, yet are commonly needed services that are demanded by the public they serve. Traditional site plan procedures would likely inhibit a government's ability to site such demanded uses.

VI. ANALYSIS:

The proposed ordinance was reviewed for consistency with the criteria established in Section 30-30.7(b), of the Village's Code of Ordinances. The Sections provided above shall be incorporated into each criterion delineated below. This Section is a review of those criteria.

Please note, notwithstanding the review of the criteria below, the exclusion/inclusion of privately held lighted recreational and athletic fields into the Code ultimately hinges upon what one's

interpretation of Comprehensive Plan Goal 1 and the Village Charter at Section 10.2. The challenge therein is that both standards are highly subjective and prone to interpretations that may vary widely. In light of this subjectivity, the review below attempts to strike a balance as to what would be desired if the intent were to permit such usage.

Criteria (1): Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the Village's Concurrency Management Program.

Analysis: The Village's Comprehensive Plan is silent as to whether athletic fields should be permitted. However, Goal 1 of the Comprehensive Plan reads as follows:

To guide the Village of Palmetto Bay from birth to early maturity as an outstanding and truly livable community in Southeast Florida by building, and improving, the existing land use blueprint through visionary planning and place-making, cost efficient provision of high quality facilities and services, *quality neighborhood protection*, and enhancement of its unique and beautiful coastal environmental resources. *(Emphasis added)*

It is the italicized portion of Goal 1 above that requires consideration as to whether any proposed ordinance provides for quality protection. Goal 1 only provides a broad statement upon which an interpretation can vary widely. Hence, any argument for or against athletic field lighting has the potential to become subjective. What is suggested here, is that any proposed ordinance take *quality neighborhood protection* into consideration.

The proposed ordinance relies upon Section of 30-60.6 to ensure light spillage does not exceed .3 FC at the property line and 6.0 FC as averaged across the entirety of the site. That standard is more stringent than the Miami-Dade County code and all of the other jurisdictions evaluated as part of this report. This provision, however, will not prevent fully blocking from view the luminary itself. It is unlikely such a standard could be achieved given the multitude of potential view angles and scenarios. However, requiring a setback standard in filled with landscaping may be appropriate if the desire is to adopt the proposed ordinance. Both Miami-Dade County and Alachua County provided some guidance (please see Sections IV and V above).

Finding: Conditionally complies in so far as the addition of a setback and landscaping standards further pillars the intent of Goal 1 to provide *quality neighborhood protection*.

Criteria (2): Whether the proposal is in conformance with all applicable requirements of Chapter 30.

Analysis: Please see Criteria (1). There does not appear to be any particular section within Chapter 30 that conflicts with the proposed ordinance. However, Goal 1 of the Comprehensive Plan guided in part, the establishment of Charter provision 10.2 which, as stated in an earlier Section of this report, requires “[a]ll single-family residential properties shall be protected from the negative impacts of adjacent or nearby non-single family residential uses.” Though the Charter Amendment provided greater specificity than that found in Goal 1, the regulation can still be broadly interpreted and provides specifically the provision will be implemented by ordinance. Adoption of the NPO served to provide the development regulations in Chapter 30 that would fulfill the statements of Goal 1 and Charter Section 10.2.

Herein the analysis runs similar to that presented in the Analysis of Criteria 1. The NPO was created to provide a clear vehicle to guide nonresidential development in a manner that would mitigate any impacts to residential areas. Again, Section 30-60.6, as amended by the NPO provides a stringent standard. And if the desire is to provide for lighted recreational and athletic fields, inclusion of a setback and landscape standard would further that intent of the Charter Section 10.2.

Findings: Conditionally complies in so far as the addition of setback and landscaping requirements provides an additional protective standard as required by Village Charter Section 10.2.

Criteria (3) Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether the changes support or work against the proposed change in land use policy.

Analysis: Please see Section II of this report and Criteria (1) and (2) of this Analysis. The current provision prohibiting privately held lighted recreational and athletic fields was adopted November 5, 2012. In that relatively short amount of time it is not entirely clear what has changed with regard to the general practice of land planning that would warrant professional support or opposition to the proposed amendment. The decision of change, rather, is of a policy decision to be established by the Mayor and Village Council.

Findings: As determined by the Village Council.

Criteria (4) Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and locations of uses involved, the impact on the adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land uses.

Analysis: Please refer to the full text in Criteria (1) and (2) as to the full response to this Criteria.

Finding: Conditionally complies in so far as the addition of setback and landscaping requirements provides an additional protective standard.

Criteria (5) Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and service; would exceed the capacity of the facilities and services, existing or programmed, including: transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.

Analysis: Any existing facility or proposed facility would be required to comply with the above regardless of whether or not it is lit at night. Further, the proposed amendment does not appear to impact the transportation system as the proposed night time activities would fall outside the hours of rush hour traffic.

Finding: Complies.

Criteria (6) Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of groundwater aquifer wildlife habitats, and vegetative communities.

Analysis: Any existing facility or proposed facility would be required to comply with the above regardless of whether it is lit at night. Some argument may be made however as to ambient illumination of the sky, though this may be mitigated through the times such facilities may be lighted. The lighting hours of the cities studied ranged between 9:30 PM and 11:30 PM. The number of nights per week a field may be illuminated may also be included, however adoption of such a limit should be uniform. It should be noted that not all sporting activities occur during the same day of the week.

Finding: Conditionally consistent provided hours of operation are established consistent with the community's desire.

Criteria (7) Whether, and to the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis: The research completed did not include data regarding the effects of lighted athletic fields on property values.

Findings: As determined by the Village Council.

Criteria (8) Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on land use pattern shall be identified.

Analysis Please refer to the full text in Criteria (1) and (2) as to the full response to this Criteria.

Findings: Conditionally complies in so far as the addition of setback and landscaping requirements provides an additional protective standard.

Criteria (9) Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose of Chapter 30.

Analysis: Please refer to the full text in Criteria (1) and (2) as to the full response to this criteria.

Findings: Conditionally complies in so far as the addition of setback and landscaping requirements provides an additional protective standard.

Criteria (10) Other matters which the local planning agency or Village Council in its legislative discretion may deem appropriate.

Analysis: As per the direction of the Village Council.

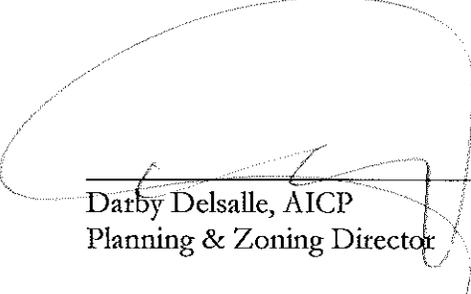
Finding: As determined by the Village Council.

VII. FISCAL/BUDGETARY IMPACT:

There does not appear to be any fiscal or budgetary impact of this amendment.

VIII. RECOMMENDATION:

Decision for the Village Council.



Darby Delsalle, AICP
Planning & Zoning Director

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; MODIFYING DIVISION 30-110 RELATING TO RELIGIOUS FACILITIES, PRIVATE SCHOOLS, CHILD CARE FACILITIES, AND OTHER NON-GOVERNMENTAL PUBLIC ASSEMBLY USES; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. (Sponsored by Councilman Tim Schaffer.)

WHEREAS, the Mayor and Village Council of the Village of Palmetto Bay desire to amend Division 30-110.

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

Section 1. Recitals. The above recitals are true and correct and incorporated herein by this reference.

Section 2. Chapter 30, of the Village's Land Development Code, at Division 30-110 is amended to read as follows:

DIVISION 30-110. – RELIGIOUS FACILITIES, PRIVATE SCHOOLS, CHILD CARE FACILITIES, AND OTHER NON-GOVERNMENTAL PUBLIC ASSEMBLY USES

Sec. 30-110.1. - Applicability, purpose and definitions.

This Division shall apply to religious facilities, private schools, child care facilities and other nongovernmental public assembly uses as may be provided for in the underlining zoning district. The purpose of this Division is to ensure such uses are consistent with all applicable land use regulations and development standards provided below prior to the issuance of a development permit. That such approvals are based upon the provision and availability of adequate public facilities and services coincident with the impact of the public assembly use, to ensure compliance with the Village's Comprehensive Plan, Future Land Use Element, Goal 1, and Policy 1.1.6, to ensure quality neighborhood protection, that would serve the immediate needs of the residential community on compatible sites subject to adequate design and buffering, and to ensure that such facilities and services further public health, safety, comfort, order, appearance, convenience, morale and general welfare. It is the intent of this ordinance that such uses do not burden adjoining properties or public rights-of-way by contributing to or causing recurrent stormwater ponding. Buildings for public assemblage shall mean all buildings or other structures or any part thereof, which provide occupancy for assembly in one room as an auditorium, religious facility, non-profit fraternal club, private school, and similar occupancies.

Such uses intended to be controlled by this Division include, but are not limited to, the following:

- (1) *Day care/nurseries.* Child care for infants and children up to and including the age of six (6).
- (2) *After school care.* Child care and recreation for children above the age of five (5) years old when no formal schooling program is conducted and where the care provided is generally after school, on weekends, school holidays and vacations.
- (3) *Babysitting service for shoppers:* Child care for limited time periods (maximum three (3) hours) provided within a shopping center solely for the convenience of the patrons, and limited to not more than 40 children at any one (1) time.
- (4) *Kindergarten.* Child care and preschool programs for children ages four (4) through six (6) years old.
- (5) *Elementary, middle and senior high schools.* References to these schools are to be loosely interpreted to encompass any schools, graded or ungraded, whose students are within the age ranges typically found at these school levels, as more fully defined at Division 30-120.1.
- (6) *Family day care homes:* Child care and recreation with a maximum of five (5) children including the day care operator's own children.
- (7) *Private school.* Any private institution providing child care or instruction at any level from kindergarten through college.
- (8) *Private college/university.* An institution of higher learning beyond the high school level.
 - a. Private colleges and universities with sites of 30 acres or less shall meet the minimum standards established herein for high school facilities. In addition to said minimum standards, facilities with sites exceeding 30 acres shall be subject to review by the Village Council. Trade schools and satellite schools are not considered under this definition and shall be restricted to Village's commercial district.
- (9) *Religious Facility.* A religious facility regulated by this Division are those that conform to the definition at Section 30-40.
- (10) *Private Club.* Private clubs shall be registered as a nonprofit organization and shall conform to the definition of such as provided for at Section 30-40 [club, private].
- (11) *Student, pupil or child.* The terms "child", "Student" or "pupil" and their plurals are to be used interchangeably in this Division.
- (12) Duly constituted "*missions*" are permitted under the same conditions and in the same zoning districts that churches are permitted. For the purposes of this section, a "mission" shall mean any body, association, or organization for doing religious and charitable work, devoted entirely to the moral, religious and social improvement of those in need of such missionary work and assistance, which does not constitute a church but is sponsored by a duly constituted church.

* * *

Sec. 30-110.2. - Public hearing required.

The establishment, expansion or modification of any use regulated by this Division in existing or new buildings, is authorized in zoning districts that allow such use as a permitted use, after public hearing and upon a determination that the standards established in this Division have been met.

Applicant shall comply with the applicable requirements of Division 30-30. Applicable definitions and rules of construction found at Division 30-40 shall also be complied with.

Sec. 30-110.3. - Required information.

The applicant shall submit the following information to the Village's Planning & Zoning Department for review by the department and for consideration at a public hearing:

- (1) *Written information – all applications:*
 - a. Total size of the site;
 - b. Number of parking spaces provided for staff, visitors, and operations vehicles and justification that those spaces are sufficient for the facility;
 - c. Number of and pick-up and drop-off spaces provided for automobile and bus use and justification that those spaces are sufficient for the transportation needs of the facility;
 - d. Days and hours of operation; weekly and annually;
 - e. An explanation of any such activities anticipated to be conducted in association with the facility but typically conducted outside of the hours of;
 - f. Means of compliance with requirements of the Florida Building Code, the National Uniform Building Code, and the departmental requirements of the Miami-Dade County Fire Department, Miami-Dade County Department of Public Health, the Florida Department of Health and Rehabilitative Services, and any federal or state regulations applicable to the specific application and occupancy.
 - g. Means of compliance with Section 30-30.2(d), unity of title or declaration of restriction in lieu of unity of title.

- (2) *Written information – schools and child care facilities:*
 - a. Maximum number of students to be served;
 - b. Grades or age groups that will be served;
 - c. Maximum number of teachers, administrative and clerical personnel;
 - d. Maximum number of classrooms and total square footage of classroom space;
 - e. Total square footage of non-classroom, administrative office space;
 - f. Total square footage of non-classroom, student activity space;
 - g. Amount and location of exterior recreational/play area in square footage; and
 - h. Maximum number and type of vehicles that will be used in conjunction with the operation of the facility.

- (3) *Graphic information.* The following graphic information shall be prepared by a Florida registered design professional:
 - a. A plan indicating existing zoning on the site and adjacent areas.
 - b. A site plan indicating the following:
 1. Location of all structures.

2. Parking layout, automobile/bus stacking areas (parent pickup, school bus delivery/pickup, and special needs locations), drives and circulation.
 3. Walkways.
 4. Location of recreation areas and play equipment which shall include surrounding fences and/or walls, which shall comply with 30-60.2.
 5. Any other features which can appropriately be shown in plan form.
- c. Floor plans and elevations of all proposed structures.
 - d. Landscape plan listing quantities, size, and names of all plants consistent with Section 30-100.1(d).

Sec. 30-110.4. - Physical space requirements for multiple-use facilities.

Where a private educational facility is to be operated in a structure simultaneously used as a residence, church or other facility, the area which will be specifically used for a private school or child care facility during the hours of operation shall be clearly defined. The area so delineated shall be used as the basis for determining physical space requirements as provided in this Division. No physical space credit will be given for interior or exterior areas that are not restricted to the school or child care use during the hours of operation of said facility. Classroom space and open recreational space shall be considered physical space.

Sec. 30-110.5. - Residential use.

No combination of residential use and private school facility or private club shall be permitted on the same property except for the use and occupancy by the owner-operator or caretaker.

Sec. 30-110.6. - Physical standards.

The following shall be the minimum permitted physical standard for all uses regulated by the Division.

(1) *Physical standards - all applications:*

- a. *Setbacks.* Buildings and other improvements for public assemblage shall comply with the applicable district regulations, located in Division 30-50, and the following additional requirements:
- b. No building for public assemblage shall be located closer than 25 feet from any property line which abuts a public highway or alley, or closer than 50 feet from any property line abutting or adjacent to another lot or closer than 75 feet from an existing residential building, or within a required landscape buffer.
- c. In E-1, E-1C and E-2 Districts, where the setback from the front building line is greater than the minimum specified by this section, buildings for public assemblage shall set back at least the minimum distance of 50 feet from the front property line.

- d. No building for public assemblage in E-M, E-S, E-1, E-1C, and E-2 Districts shall be closer than 75 feet from any property line abutting a lot under ownership other than that on which the structure is to be placed.
- e. Landscaping and trees shall be identified and provided in accordance with Division 30-100 of this Code for the underlying zoning district.
- f. *Prohibited locations for child care facilities.* Child care facilities as described in this Division shall be prohibited from operating on property abutting or containing a water body such as a pond, lake, canal, irrigation well, river, bay or ocean or other body of water unless a safety barrier is provided which totally encloses or affords complete separation from such water hazards and at a minimum comply with section 30-60.4. Swimming pools and permanent wading pools in excess of 18 inches in depth shall be totally enclosed and separated from the balance of the property so as to prevent unrestricted admittance. All such barriers shall be a minimum of 48 inches in height and shall comply with the following standards:
 - 1. *Gates.* Gates shall be of the spring back type so that they shall automatically be in a closed and fastened position at all times. Gates shall also be equipped with a safety lock and shall be locked when the area is without adult supervision.
 - 2. *Safety barriers.* All safety barriers shall be constructed in accordance with the standards established in this Code, except that screen enclosures shall not constitute a safety barrier for these purposes.
- g. Compliance with Section 30-50.1(h), relating to odors, liquids, gases, dust, smoke, vibration or noise.
- h. *Signs.* Signs shall comply with district regulations as contained in Division 30-90 of this Code for the underlying zoning i. Compliance with Section 30-110.7(4)a. relating to a mandatory six (6) foot wall and buffer.
- j. A child day care facility within a business district shall comply with the setback requirements of the business district within which it is located.

(2) *Physical standards – schools and child care facilities:*

- a. *Minimum site sizes.* The following are the minimum site sizes that shall be required, based on the proposed maximum number of children who will use the facility at any one time. All calculations for the number of children/students shall be based on the total proposed maximum enrollment. When the number of children permitted results in a fractional number, any such fraction equal to or greater than one-half shall be rounded up to the next highest whole number. When grade levels overlap, the more restrictive standard shall be used.
 - 1. *Minimum site size for grades kindergarten through the sixth grade.* The maximum number of children for kindergarten through the sixth grade shall not exceed 60 children per acre.
 - 2. *Minimum site size for grades seven through 12.* The maximum number of students for seventh through twelfth grades shall not exceed the following:

Minimum Site Size for Grades Seven Through Twelve

Square Feet of Site Area	Maximum Number of Students
From zero acres to two acres	45 students per acre
From more than two acres up to four acres	50 students per acre
From more than four acres up to six acres	55 students per acre
From more than six acres up to eight acres	60 students per acre
From more than eight acres up to ten acres	65 students per acre
From more than ten acres	67 students per acre

- b. *Outdoor recreational areas.* Outdoor recreation/play areas shall meet the following minimum standards, calculated in terms of the proposed maximum number of children for attendance at the school at any one time, unless otherwise indicated. Where there are age category combinations, each age classification shall be calculated individually. All outdoor recreational areas shall be located in the rear yard area. Whenever possible, the outdoor recreational/play areas shall not be immediately adjacent to single-family residences, or section line roads, nor create incompatible impacts on other immediately adjacent properties. Adequate screening in the form of a wall and landscaping shall be provided wherever the outdoor/play area abuts a property under different ownership. Where the front or side street property line of a child care facility described as a day care or day nursery, kindergarten or Family day care home, abuts a section line or half section line right-of-way no outdoor recreation playground/play area shall be located between the right-of-way and the building line parallel to the right-of-way. Within two (2) years after the Director mails notice of the requirement of this ordinance all existing child care facilities shall either comply with the foregoing requirement or install a safety barrier from vehicular traffic designed by a professional engineer and approved by the Public Works Department. For any existing child care facility which is required to either relocate its outdoor recreation playground/play area or provide a safety barrier, any resulting reduction in outdoor recreation playground/play area shall be deemed in compliance with the minimum playground/play area requirements of this Division relating to Physical Standards relating to outdoor areas. Any such reduction shall also be deemed to be in substantial compliance with any site plan previously approved at public hearing. In event that such a child care facility whose site plan was approved at public hearing seeks to relocate its playground/play area, such relocation shall be subject to approval after public hearing upon appropriate application. No fee shall be charged for such application. This subsection shall not be deemed to allow the future expansion of any child care facility to occur without complying with the requirements of the physical standards relating to outdoor areas.

Minimum Standards for Outdoor Recreation Areas

Type School	Required Square Footage
Day nursery, kindergarten, preschool and afterschool care	45 sq. ft. per child calculated in terms of half of the proposed maximum number of children for attendance at the school at one time
Elementary school (grades 1-6)	500 sq. ft. per student for the first 30 students; thereafter, 300 sq. ft. per student
Middle and senior high school (grades 7-12)	800 sq. ft. per student for the first 30 students; 300 sq. ft. per student for the next 300 students; thereafter, 150 sq. ft. per student

Where there are category combinations, each classification shall be calculated individually.

- c. *Signs.* Signs shall comply with district regulations as contained in Division 30-90 of this Code for the underlying zoning district. The exterior facade of child care facilities approved within a residential area shall be compatible with the residential character of the adjoining properties and signs shall not exceed six square feet in size.
- d. *Automobile stacking.* Stacking space, defined as that space in which pickup and delivery of children can take place, may be provided in the form of specified parking stalls and/or areas clear of vehicular drive aisles. Stacking space shall be provided for a minimum of two automobiles for private schools or child care facilities with 20 to 40 children; private schools providing elementary, middle or senior high curricula or child care facilities with 40 to 60 children shall provide four spaces; thereafter there shall be provided a space sufficient to stack five vehicles. However, the department may require a traffic and/or circulation study to demonstrate adequate vehicular circulation.
- e. *Bus stacking.* Stacking space shall be provided to accommodate the transportation needs of the children to the facility without causing backup on to adjacent public rights-of-way or substantial disruption to adjacent uses.
- f. *Parking requirements.* Shall be as required by the Miami-Dade County Public School Board for the type and size of private school or child care facility proposed and shall comply with Division 30-70.
- g. *Classroom size.* All spaces shall be calculated on the effective net area usable for instruction or general care of the group to be housed. This space shall not include kitchen areas, bathrooms, and hallways. The minimum classroom space shall be determined by multiplying the maximum proposed number of pupils for attendance at any one time by the minimum square footage, as provided in table below. Where a private educational facility is non-graded, calculations shall be based on the age level that corresponds to the grade level in the public school system. Where a school includes more than one of the following categories, each category shall be individually computed.

Minimum Standards for Classroom Area

Type School	Required Square Feet
Day nursery, kindergarten, preschool and after school care	35 sq. ft. per pupil
Elementary grades (1-6)	30 sq. ft. per pupil
Middle and senior high grades (7-12)	25 sq. ft. per pupil
Baby-sitting service	22 sq. ft. of room area per child

- h. *Structure height.* The structure height shall not exceed the height permitted for the underlying zoning district as delineated in Division 30-50.
 - i. *Exemption.* Baby-sitting services are exempt from the requirements relating to outdoor areas, auto stacking, parking and trees.
- (3) *Physical standards – Athletic fields and Amenities.* If provided as part of the application, as ancillary uses, the applicant shall comply with the following conditions:
- a. Lighting of outdoor recreational areas shall not be permitted.
 - b. A swimming pool may solely provide interior lighting below the surface of the water and comply with Section 30-60.4.
 - c. High school or Olympic sized pools shall have a sound proof wall, or other mitigating structures separating the pool area from adjacent residential uses. The mitigating structure or sound proof wall shall be installed prior to the utilization of the pool. The design and construction method of the mitigating structure or sound proof wall shall be determined by a certified acoustical engineer paid for by the applicant. The Village may hire its own acoustical engineer to review the findings of the applicant's expert. The pool may be completely enclosed in a building in lieu of the sound proof wall. An Olympic sized pool is a pool designed to be 50 meters in length (164 feet), and 25 meters (82 feet in length) with 10 lanes, with each lane width to be 2.5 meters (8 feet, two inches wide). The standard size of a high school pool is at least 25 yard in length.
 - d. Any outdoor athletic field(s)/court(s)/pool(s) on non-residential properties shall be situated to minimize impacts to adjacent single family residential uses. Exemptions include a single-family size pool, a single tennis court, or a single basketball court.
 - e. Fencing for a tennis court(s) shall be required as provided under Section 30-60.2(h).

Sec. 30-110.7. - Additional site plan review standards.

In addition to site plan review as required by this Code, the following review standards shall be utilized by the Village:

- (1) *Planning and neighborhood studies.* Planning and neighborhood studies accepted or approved by the Village Council that include recommendations relevant to the facility and site shall be used in the review process.
- (2) *Scale.* Scale of proposed private school and child care facilities shall be compatible with surrounding proposed or existing uses and shall be made compatible by the use of buffering elements.
- (3) *Compatibility.* The design of private school and child care facilities shall be compatible with the design, kind and intensity of uses and scale of the surrounding area.
- (4) *Landscaping and Buffers.* Buffering elements shall be utilized for visual screening and substantial reduction of noise levels at all property lines consistent with Section 30-60.29. For the purposes of this code, "buffer" and landscape strip shall be used interchangeably. Below shall be the minimum requirements as to the landscaping and buffering:
 - a. A six (6) foot concrete wall built consistent with Section 30-60.2, and a landscaped buffer shall be constructed where the non-residential use abuts a single-family residential use regardless of zoning district.
 - b. The wall shall be finished and maintained on both sides by the applicant consistent with Section 30-60.2(b)(3).
 - c. Landscaping within the buffer areas shall be maintained perpetually consistent with the landscape plan consistent with 30-100.1(d).
 - d. The wall and buffer shall be constructed prior to the issuance of any permits for structures or improvements.
 - e. All minimum landscaping requirements of Section 30-100 of the Village's Code of Ordinances, Chapter 24 of the Miami-Dade County Code and conditions imposed by Miami-Dade County PERA shall be met. All development orders shall put the applicant on notice that despite any permits issued by PERA, applicant is to comply with all development orders and conditions contained in this Division relating to landscaping and maintenance.
 - f. No improvements shall be permitted within the buffer area (i.e. no roads, parking, storage sheds, recreational areas, pedestrian access or any other use except landscaping and unpaved maintenance access). No motorized vehicles may be used within the buffer area. Landscape maintenance shall comply with Section 30-100.3.
 - g. Existing trees shall be preserved whenever possible during the development. If trees must be removed, the applicant shall be required to mitigate the impact in accordance with Village and PERA requirements. If the relocated trees do not survive, the applicant shall be required to replace the trees in compliance with Village and PERA requirements and the requirements of Section 30-100.4.

- i. The plants required and selected for the buffer area shall provide both visual and acoustic buffering between the adjacent homes and the proposed structures and the expected noise sources. The buffer should consist of canopy trees, understory trees and shrubs. When possible, the shrubs should be of a type of planting material that would provide the required buffering within two years of planting. A berm may be included in the buffer to absorb sound and increase the vegetation height, as long as irrigation is provided and runoff retention requirements are met. A berm may not substitute for a required fence or wall.
- j. Canopy trees must be a minimum of 25 feet on center for the entire buffer. Understory trees are to be dispersed through the buffer in a manner to accommodate their natural growth and standard planting distance accepted by landscape architects.
- k. The design of the buffer is to be determined and approved by a certified acoustical engineer (licensed by the State of Florida) and landscape architect, paid for by the applicant, when deemed appropriate. The Village may also hire its own acoustical engineer to review the findings of applicant's experts. The experts are to evaluate the uses, the site, the proposed buffer, which is intended to be a visual and sound barrier. The experts shall evaluate the plantings and determine an efficient mechanism for minimizing the noise generating elements of the site from the adjacent properties.

(5) Traffic

- a. Where a traffic study is required by Village Code, applicant shall utilize a certified traffic engineer, licensed in the State of Florida, paid for by the applicant, and shall conduct a traffic study and traffic operations plan, and prepare a report of that study for the Village. The Village may hire its own Traffic engineer to review the findings of applicant's expert.
- b. The applicant shall be responsible for compliance with Comprehensive Plan, relating to traffic concurrency requirements.
- c. Local roads as prescribed by the Comprehensive Plan shall not be used for the delivery of goods or services by commercial vehicles, when possible.
- d. Applicant shall be responsible for all expenses relating to traffic control, police involvement, and police participation in traffic movements. The traffic plan for the roadways relating to the daily use of the property or any special events on the property shall be subject to approval of Village Police Department and Public Works of Miami-Dade County and the Village, as applicable. Police officers are to be hired by and paid for by Applicant to manage traffic at property entrance(s) and off-site locations affected by traffic conditions.
- e. The applicant shall be required to provide additional on-site stacking of automobiles to accommodate any spill-over onto neighborhood streets.
- f. No driveway or driveway access shall be within 10 feet of the buffers abutting residential properties, when feasible.
- g. No helicopter or fixed wing landing zones shall be permitted except for emergency medical services.

- h. Main access shall be provided directly from a collector road or main arterial road, whenever feasible.
 - i. Applicant shall comply with the provisions of Section 30-70.4.
 - j. Applicant shall comply with the provisions of Section 30-60.1 relating to public rights-of-way.
 - k. Pedestrian and vehicular circulation shall be separated insofar as is practicable, and all circulation systems shall adequately serve the needs of the facility and be compatible and functional with circulation systems outside the facility consistent with Division 30-70. Automobile and bus stacking spaces shall be provided to accommodate the drop-off and pick-up needs without causing substantial disruption to adjacent right-of-ways or the surrounding uses.
- (6) *Service areas.* Wherever service areas are provided they shall be screened and so located as not to interfere with the livability of the adjacent residential properties.
- (7) *Parking areas.*
- a. Parking areas shall be screened/obscured and so located as not to interfere with the livability of the adjacent residential properties.
 - b. Vehicle parking shall not be permitted in any on-site buffer areas.
 - c. Ample parking shall be provided on-site for required parking and off all right-of-way areas. Surplus parking may be provided off-site, provided however, it is not located within the rights-of-way.
 - d. Parking structures (for more than six vehicles) shall not be permitted on residentially zoned properties.
 - e. Loading zones shall be situated towards the center of the property and if feasible away from any buffer abutting a residential zone.
 - f. Loading zones may be located within building structures provided the buildings meet setback requirements.
 - g. Ample parking facilities for buildings for public assemblage shall be provided off of rights-of-way. Parking facilities for a building of public assemblage in a residential district may be permitted in the same district with the religious facility, school or other buildings used for noncommercial purposes, provided no parking lot or special parking area is closer than 25 feet from any residential property and shall comply with the parking requirements found at Division 30-70, of this Code.
 - h. Compliance with the requirements of 30-70.4.
 - i. Reflect all off-street parking areas.
 - j. Public assembly uses may enter into parking agreements with adjacent property owners within 500 feet of the public assembly use to accommodate surplus parking needs above and beyond parking code requirements of Division 30-70. The parking agreement shall demonstrate that the lease of such spaces will not create a parking deficiency for the off-site property and a copy of the agreement shall be provided to the Village Planning & Zoning Department.

(8) *Commercial impacts.* Where schools are permitted in commercial areas it shall be clearly demonstrated in graphic form how the impact of the commercial area has been minimized by design techniques.

(9) *Lighting*

- a. All lighting shall require a detailed site lighting plan with location, height, type of lights, shades, deflectors, beam directions, and photometric data. All plans shall be consistent with the requirements of Section 30-60.6.
- b. All ~~E~~ exterior lighting intensities shall be controlled to assure that light spillage and glare are not directed onto adjacent properties or streets and all direct illumination is kept within property boundaries, consistent with the requirements of 30-60.6(2). All ~~E~~ exterior lighting shall be controlled so as not to adversely affect adjacent properties and motorists, consistent with 30-60.6.
- c. No building or structure shall have any up lighting, directional soffit lights or wall-pac lights, provided, however, wall-pac lighting may be placed within an interior courtyard without violating this provision. One way down lights on walls, columns, covered terraces or walkways shall be permitted.
- d. Lighting shall ~~not~~ be permitted to be installed (or used) for outdoor recreational areas consistent with Section 30-60.6. (~~Underwater lighting used for the illumination of a swimming pool, fountain and other water features may shall be permitted~~) consistent with Section 30-60.6.
- e. Parking area, circulation, and security light fixtures shall be installed which project the light rays directly to the ground surface and shall include shields which restrict projection of light rays outward to adjacent properties and also restrict the upward projection of light rays into the night sky. Consistent with 30-60.6(4), it is not intended here to regulate permitted sign lights and it is not the intent to modify, amend or repeal any portion of the Florida Building Code, or the home rule powers of Miami-Dade County. Applicant shall comply with Division 30-90, relating to signage.
- f. The parking area, circulation and security lights shall not exceed a maximum overall height of fifteen (15) feet.
- g. Compliance with the Village's Sustainable Building Standards found at Section 5-51 through 5-63, relating to energy saving fixtures and LED lighting shall be required.
- h. The parking area and internal circulation lights shall be installed consistent with Miami-Dade County Code, the Florida Building Code, and comply with 30-60.6(4).
- i. All lighting on recreational areas are to be turned off on Sundays through Thursdays at 10:00 pm and turned off on Fridays and Saturdays at 11:00 p.m. This does not include swimming pools, fountains, or other water features.

(10) *Noise*

- a. The sound level of site operation shall not exceed the decibel levels in the Village Noise Ordinance, 30-60.29.

- b. Sound pressure levels shall be measured at the property line upon which the emission occurs consistent with 30-60.29.
- c. When determined necessary and applicable, applicant is to hire an acoustical engineer, to determine whether the wall, buffer, and landscaping, as well as proposed activities would limit the effects felt by the community due to the proposed use of the site and to confirm that the noise levels will comply with the Village's noise ordinance. The Village may also hire an acoustical engineer to review the findings of Applicant's expert.

(11) *Trash Pickup Location:*

- a. Trash pickup location shall be situated so as to not interfere with the livability of the adjacent residential properties, and away from the buffer, when feasible.
- b. Any trash enclosure that has any food waste shall be enclosed and screened with landscaping.
- c. Comply with section 30-60.7(f).

(12) *Required Zoning Workshop.*

- a. The Zoning Workshop shall not be considered part of the quasi-judicial hearing. Each application shall be evaluated based upon the record presented at the Village Council hearing(s) on the application.
- b. Upon submission of an application for any of the above described uses, the applicant shall present a planned development to the public during a zoning workshop, which is to be held within 90 days of submittal of the application. Notice of the workshop shall be provided to the public consistent with the requirements of this Division.
- c. The zoning workshop shall be held to provide a forum for the public to learn about the proposed development within the residential zoning district(s). During this workshop members of the public may ask questions and provide feedback or input to the applicant(s). Representatives of the applicant shall be available to answer questions. Color renderings of the proposed structures, along with a site plan and any other visual materials shall be provided in a form viewable by all in the meeting room at least 30 minutes prior to the scheduled start time. A public comment period shall be provided. Developments may be presented to the public simultaneously, in several locations within the meeting site. During this workshop members of the public are encouraged to ask questions and to provide feedback to the applicant about the proposed development.
- d. In addition, representatives of the applicant shall be available to answer questions that members of the public may have about the proposed development. A second workshop may be scheduled within 30 days of the first, provided, however the meeting date is established prior to the conclusion of the first workshop. Upon completion of the workshop procedure, the application shall be scheduled for the next available zoning

hearing, provided the application and staff review is complete and consistent with notification requirements at Section 30-30.11.

- e. The members of the Village Council may be present during the workshop but may not participate in the discussion. The Village Council shall comply with the Village's quasi-judicial procedures found at Section 2-105, and disclosure requirements of Section 2-106, of the Village's Code of Ordinances.

(13) As a condition of approving the plot use or site plan, the Village shall require a recorded covenant establishing the calculations and conditions and restricting the area designated for child care to child care use only.

(14) As part of the site plan the Applicant is to provide graphic information, prepared by a design professional(s), such as registered Florida architects and landscape architects, a plan indicating the existing zoning on the site and adjacent areas; location of all structures; parking layout and drives; walkways, location of recreation areas and play equipment which shall include surrounding fences and walls; floor plans and elevations of all proposed structures; landscaping as further detailed herein; and any other features which can appropriately be shown in plan form.

(15) *General conditions.*

- a. Applicant shall comply with the provisions of Section 30-60.3 relating to utility sheds, accessory buildings, and screened enclosures.
- b. Applicant shall comply with the provisions of Section 30-60.5 relating to generators.
- c. Applicant shall comply with the provisions of Section 30-60.7 relating to outdoor storage.
- d. Applicant shall comply with the provisions of Section 30-60.8 relating to residential boat storage; recreational and camping equipment; tents; awnings and canopies.
- e. Applicant shall comply with the provisions of Section 30-60.18 relating to Special events; temporary uses.
- f. Applicant shall comply with the provisions of Section 30-60.21 relating to maintenance of structures.
- g. Applicant shall comply with the provision of Section 30-60.24, relating to permits not to be issued for violations
- h. Applicant shall comply with the provision of Section Sec. 30-60.25 relating to certificates of use. The certificate of use and occupancy shall be automatically renewable annually by the Department upon compliance with all the terms and conditions including maintenance of the facility in accordance with the approved plan.
- i. Applicant shall comply with the provision of Section 30-60.30 and 30-60.52 relating to telecommunications towers, antennas and satellite dishes
- j. Applicant shall comply with the provisions of Section 30-100.6, relating to floodplain management regulations.

- k. Applicant shall comply with the provisions of Section 30-100.5, relating to multi-agency review of natural resource issues.
- l. Applicant shall comply with the provisions of Section 30-100.7, relating to conservation and emergency water restrictions.
- m. Applicant shall comply with the provisions of Division 30-150, relating to historic preservation.
- n. Applicant shall comply with the provisions of Division 30-160, relating to art in public places.
- o. Applicant shall comply with the provisions of Sections 14-19 through 14-30, relating to false alarms.
- p. Applicant shall comply with the provisions of Section 27-51 through 27-90, relating to lot maintenance.
- q. Applicant shall comply with the provisions of Section 29-51 through 29-56 relating to utility line clearing.

Sec. 30-110.8. Operational Standards

- 1. Service and delivery vehicles, including but not limited to solid waste pick-up, shall be restricted to Monday through Friday between the hours of 7:00 a.m. to 7:00 p.m. [consistent with 30-60.29(e)(7) of the Code]. Weekend deliveries shall be allowed between 8:00 a.m. and 5:00 p.m.
- 2. Service, delivery and storage areas and equipment shall be adequately screened and located away from view of adjacent single family residential properties.
- 3. Operational hours of the non-residential use shall be such that the impact upon the immediate residential neighborhood is minimized.
- 4. Where services areas are provided they shall be screened and so located as not to interfere with the livability of the adjacent residential properties.

Section 30-110.9 Preconstruction Requirements

- 1. The applicant shall comply with the requirements of Section 30-60.11 relating to pre-construction and construction standards for sites.
- 2. Compliance with 30-60.10 and 30-60.29 relating to demolition requirements.

Section 30-110.10 Enforcement, Vested Rights, and Nonconforming Uses

- 1. Enforcement shall be provided as per the requirements of 2-205, of the Village's Code of Ordinances.
- 2. Vested Rights shall be determined in compliance with 30-10.3, of the Village's Code of Ordinances.
- 3. Nonconformity of use shall be determined in compliance with 30-10.4, of the Village's Code of Ordinances.
- 4. Any proposed minor changes to existing schools that were approved prior to the adoption of this Division may be approved by the Director, provided that such modifications do not violate the resolution approved as part of the plan. Such minor

changes shall include, but not be limited to, enlargement of the play area, additions, such as storage areas, additional restrooms, and expansion of kitchen facilities.

Section 3. Conflicting Provisions. The provisions of the Code of Ordinances of the Village of Palmetto Bay, Florida and all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Codification. It is the intention of the Village Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the Village of Palmetto Bay, Florida, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This ordinance shall take effect immediately upon enactment.

PASSED and ENACTED this ____ day of June, 2014.

First Reading: _____

Second Reading: _____

Attest: _____
Meighan Alexander
Village Clerk

Shelley Stanczyk
Mayor

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

Dexter W. Lehtinen
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore _____

Council Member Tim Schaffer _____

Council Member Joan Lindsay _____

Vice-Mayor John DuBois _____

Mayor Shelley Stanczyk _____



To: Honorable Mayor and Village Council

Date: May 23, 2014

From: Ron E. Williams, Village Manager

Re: Shed Administrative Variances
Ordinance for 2nd Reading

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AMENDING SECTION 30-30.3(d), "ADMINISTRATIVE (DE MINIMUS) VARIANCES", TO AMEND THE ADMINISTRATIVE VARIANCE REVIEW CRITERIA AND PROCEDURES RELATING TO SHEDS AND SIMILAR ACCESSORY STRUCTURES; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE. [Cosponsored by Mayor Shelly Stanczyk and Council Person Patrick Fiore]

UPDATE SINCE 1st READING:

On May 5, 2014, the proposed ordinance was heard on first hearing. After some discussion the Mayor and Village Council moved to forward the item to second reading with the inclusion of a modification which provides a cut-off date upon which an existing shed would be eligible for consideration. A place holder date of May 5, 2014, was requested until additional research could be completed to determine the date of the Village's last geographic information system (GIS) update of aerial data and the date the application window for the shed amnesty ordinance expired.

The Village Council desired a cut-off date to honor the original intent of the Shed Amnesty Program while avoiding the creation a procedure permitting owners of newer sheds to circumvent recently adopted shed setback standards. The challenge presented therein was to identify a date that could be relied upon to reasonably achieve that desire while being verifiable. As a starting point it is worth noting that the application for the Shed Amnesty program closed on August 2, 2010. The most current layer in the Village's GIS aerial imagery series was created on December 19, 2012 and is labeled Aerial2013. The creation date for next layer in that series, titled Aerial2012, was not available at the time the report was completed. There are no 2010 or 2011 aerial layers within the series. Applying the date of either layer would be acceptable though neither fits neatly into the August 2, 2010 date.

With the exception of the Recommendation Section, the remainder of this report is unchanged since first reading.

BACKGROUND:

On March 19, 2014, during a Committee of the Whole (COW) meeting, the Village Council directed the Village Manager to have staff prepare an administrative variance procedure for sheds and other like structures utilizing criteria consistent with the administrative approval authority provided by the 2009 Shed Amnesty Program (Ordinance No. 09-03). The attached proposed ordinance is in fulfillment of that request.

The discussion during the March 19, 2014, COW was a continuation of other actions taken by the Village Council in an ongoing effort to bring as many nonconforming sheds into compliance within parameters acceptable to Village residents. Such efforts included modification of interior setbacks for sheds 144 square feet or less when located in a residential district, and an increase in approval authority for administrative variance from 5% to 10% of a required interior and rear yard setback. Although those efforts provided a legalization path for some sheds constructed without the benefit of a permit, it still fell short of the scope provided by the original Shed Amnesty Program.

Much of the Village Council's discussion centered around providing relief program consistent with that 2009 action. Initial suggestions envisioned reestablishment of the Shed Amnesty Program, however such a remedy was deemed to be short lived and thus inadequate to address what has been observed to be a longer term code compliance matter. Hence, the suggestion was to provide a long term solution through an administrative variance measure consistent with the standards utilized by the 2009 Shed Amnesty Program. The impact would be to provide a path to legalization without the limitation of a narrow application window associated with an amnesty program.

The 2009 Shed Amnesty Program, among other things, provided for an administrative approval authority for existing, unpermitted sheds 150 square feet in size or smaller, that were sited no closer than three (3) feet to any interior or rear property line. Eligible sheds could not exceed eight (8) feet in height. The proposed administrative variance amendment employs the same criteria. All other sheds built without the benefit of a permit that do not comply with the parameters of this proposed amendment may seek a public hearing variance before the Mayor and Village Council for relief.

ANALYSIS:

The proposed ordinance was reviewed for consistency with the criteria established in Section 30-30.7(b), of the Village's Code of Ordinances. The Background Section provided above and shall be incorporated into each criterion delineated below. The following is a review of those criteria.

Criteria (1): Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the Village's Concurrency Management Program.

Analysis: The Comprehensive Plan does not address variances.

Finding: Not applicable.

Criteria (2): Whether the proposal is in conformance with all applicable requirements of Chapter 30.

Analysis: See Background Section. There does not appear to be any particular provision of Chapter 30 that conflicts with the proposed ordinance. The proposed modification offers greater flexibility to an applicant seeking relief from provisions of the Code while remaining consistent with a prior directive of the Mayor and Village Council via the Ordinance No. 09-03, AKA Shed Amnesty Ordinance. The proposed ordinance is consistent with the administrative standards previously authorized in the Shed Amnesty Ordinance.

Findings: Consistent.

Criteria (3) Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether the changes support or work against the proposed change in land use policy.

Analysis: See Background Section and Criteria 2. By way of its action in 2009 through the creation of the Shed Amnesty Program, the Mayor and Village Council identified and established development parameters for existing sheds built without the benefit of permits, and within required setbacks. Because the amnesty program only provided for a limited application window, the full impact of the program was limited. The proposed amendment is not as full in scope as the original program for it only seeks to continue the administrative review procedure as therein provided. By establishing the administrative procedures in a more permanent manner, it ensures a more consistent application of the law as originally envisioned in the 2009 program.

Findings: Consistent.

Criteria (4) Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and locations of uses involved, the impact on the adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land uses.

Analysis: See Background Section and Criteria 3. Implementation of the proposed amendment will be provided for consistency in application of the law as was originally applied in the Shed Amnesty Program for sheds eligible for administrative review.

Finding: Consistent.

Criteria (5) Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and services; would exceed the capacity of the facilities and services, existing or programmed, including: transportation, water and

wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.

Analysis: The proposed amendment does not impact on the above systems as they are principally a function of use and not physical development standards of a structure.

Finding: Not applicable.

Criteria (6) Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of groundwater aquifer wildlife habitats, and vegetative communities.

Analysis: The proposed amendment does not impact on the above systems as they are principally a function of use and not physical development standards of a structure.

Finding: Not applicable.

Criteria (7) Whether, and to the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis: See Background Section and Criteria (3) and (4) above. The proposed ordinance does not appear to affect property values or the general welfare.

Findings: Consistent.

Criteria (8) Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on land use pattern shall be identified.

Analysis: See Background Section and Criteria (3) and (4) above.

Findings: Consistent.

Criteria (9) Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose of Chapter 30.

Analysis: See Background Section Criteria (2), (3) and (4) above. As reflected in the Criteria above, there appears to be no conflict to the public interest.

Findings: Consistent.

Criteria (10) Other matters which the local planning agency or Village Council in its legislative discretion may deem appropriate.

Analysis: As per the direction of the Village Council.

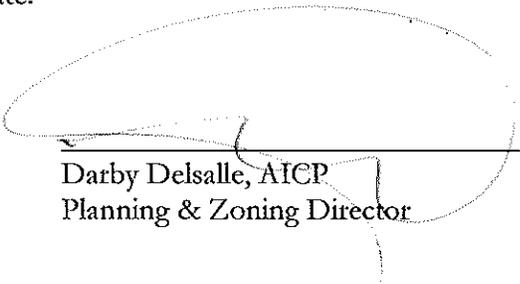
Finding: As determined by the Village Council.

FISCAL/BUDGETARY IMPACT:

There does not appear to be any fiscal or budgetary impact of this amendment.

RECOMMENDATION:

Decision for the Village Council. Any final decision should include a motion to modify the proposed ordinance to reflect a desired cut-off date.



Darby Delsalle, AICP
Planning & Zoning Director

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AMENDING SECTION 30-30.3(d), "ADMINISTRATIVE (DE MINIMUS) VARIANCES", TO AMEND THE ADMINISTRATIVE VARIANCE REVIEW CRITERIA AND PROCEDURES RELATING TO SHEDS AND SIMILAR ACCESSORY STRUCTURES; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE. [Cosponsored by Mayor Shelly Stanczyk and Council Person Patrick Fiore]

WHEREAS, in 2002 the Village of Palmetto Bay incorporated and shortly thereafter adopted Miami-Dade County's Zoning Code for the purpose of regulation land development matters until such time that the Mayor and Village Council could adopt their own code provisions; and

WHEREAS, on February 2, 2009, the Mayor and Village Council adopted Ordinance 09-03, commonly referred to as the "Shed Amnesty Ordinance", whereby sheds built without the benefit of a building permit, whether within required setbacks or not, where given the opportunity to come into building and zoning compliance; with the program authorized to run for a period of 18 months after the adoption of the Ordinance; and

WHEREAS, the Shed Amnesty Ordinance granted administrative approval authority for existing, unpermitted sheds sited no closer than three (3) feet to any interior or rear property line, with all others going before the Mayor and Village Council for variance approval; and

WHEREAS, on August 20, 2009, the Mayor and Village Council adopted Division 30-50, which, among other provisions, provided setback standards for sheds in residential districts which were in some cases, more stringent than that provided by the Miami-Dade County Code; and subsequently amended those provisions on April 7, 2014 restoring the previous shed setback standards; and

WHEREAS, on August 20, 2009, the Mayor and Village Council of the Village of Palmetto Bay created Section 30-30.3(d), entitled "Administrative (de minimus) variances", so as to provide relief from certain provisions of the Village's Land Development Code; and subsequently amended those provisions on January 6, 2014, by expanding the permitted scope of administrative variance requests and adjusting the review criteria to minimize subjective determinations; and

Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, deletions are shown as ~~strikethrough~~, and deletions after first reading are shown as ~~double-strikethrough~~.

WHEREAS, there continues to be numerous existing unpermitted sheds throughout the Village that are no longer eligible to participate in the Shed Amnesty Program, that are within the required setbacks, but are at least three (3) feet from the property line; and

WHEREAS, the Mayor and Village Council desire amend Section 30-30.3(d) to implement a long term strategy to address unpermitted sheds that are no closer than three (3) feet to the side or rear property line in a manner similar to the criteria employed by the Shed Amnesty Ordinance.

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

Section 1. Recitals. The above recitals are true and correct and incorporated herein by this reference.

Section 2. Code Amendment. Section 30-30.3(d) of the Code of Ordinances of the Village of Palmetto Bay, Florida, is hereby amended to read as follows:

DIVISION 30-30. DEVELOPMENT APPROVAL PROCEDURES

* * *

Sec. 30-30.3. Administrative development approvals.

* * *

(d) *Administrative (de minimus) variances.* When the literal or strict enforcement of the provisions of the Village's Land Development Code cause unusual, exceptional, unnecessary difficulties or undue hardship or injustice because of the size of the tract, parcel or lot, the topography, the condition or nature of adjoining areas, or the existence of other unusual physical conditions, the planning and zoning director may grant an administrative variance for lot coverage, setback, height, buffer, lot dimension and/or floor area ratio (FAR) requirements in accordance with the following requirements:

* * *

(5) To approve an administrative variance application, the Department Director shall find:

(A) No more than two sides of the encroaching construction shall be considered for a setback adjustment (all prior setback variances, administrative adjustments and alternative site development options

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shall count toward this limitation). The front set back is precluded from using an administrative variance process.

- (B) No prior approved setback, lot coverage or building spacing variance(s), administrative adjustment(s) or alternative site development option(s) shall be further changed by administrative adjustment.
 - (C) The property owner shall certify in writing that any and all easement areas as shown on the recorded plat remain unencumbered by the encroaching construction, unless a release of interest by the easement holder(s) is obtained and submitted prior to permit issuance.
 - (D) The applicant provide written certification from a registered architect or engineer that the existing encroaching construction complies, or can be made to comply with all applicable construction codes, including but not limited to the Florida Building Code, the applicable fire prevention code and other zoning regulations.
 - (E) The proposed accessory structure is a normal and customary accessory residential use.
 - (F) The impacts associated with the deviation requested are adequately mitigated through alternative measures.
 - (G) Protection of natural features, including trees, wetlands, archeological sites and similar circumstances.
 - (H) Conditions and safeguards. In granting an administrative adjustment, the director may prescribe conditions and safeguards deemed necessary to protect the interests served by the underlying zoning district regulations, including, but not limited to: Landscape materials, walls, and fences as required buffering; modification of the orientation or deletion of any openings; modification of site arrangements; and modification of plans.
- (6) ~~Pre-existing~~ Sheds and similar accessory structures that existed prior to May 5, 2014, that are 150 square feet in size or less which do not exceed eight (8) feet in height, shall be granted an administrative variance provided the structure is located no closer than three (3) feet to an interior or rear property line, that the request is consistent 30-30.3(d)(5) above, and that the application includes an affidavit(s) of approval from the property owner(s) that abut the property boundary where the reduction is requested.
- (76) The planning and zoning director shall give written notice of his/her preliminary determination regarding the administrative variance to the adjacent property owners and shall hear any objections regarding the

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preliminary determination during a subsequent 30-day period. Administrative (de minimus) variance request for non-residential uses and multifamily residential uses shall be noticed according to Section 30-30.11(o) as per mailing radius for variances. At the conclusion of the 30-day period the Village shall approve, approve with conditions, or deny the administrative variance by written order. Any written objection received from a property owner within the notice radius within the 30-day notice time period shall result in a denial of the request and the applicant may seek a variance as provided under section 30-30. Notice of intent to issue the administrative variance will be posted on the property and noticed on the Village. Posting of the property and notice on the Village web site shall be considered supplementary in nature and a complementary service to the public and shall in no way compromise the outcome of the final disposition of the preliminary decision.

Section 3. Conflicting Provisions. The provisions of the Code of Ordinances of the Village of Palmetto Bay, Florida and all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Codification. It is the intention of the Mayor and Village Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the Village of Palmetto Bay, Florida, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This ordinance shall take effect immediately upon enactment.

First reading: _____

Second reading: _____

PASSED AND ENACTED this _____ day of _____, 2014.

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Attest: _____
Meighan 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 Lehtinen
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore _____

Council Member Joan Lindsay _____

Council Member Tim Schaffer _____

Vice-Mayor John DuBois _____

Mayor Shelley Stanczyk _____

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