RESOLUTION NO. 2016-07

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO DRAINAGE IMPROVEMENT PROJECTS AT AREA 1 (SW 87TH AVE FROM SW 142ND ST TO SW 143RD ST); AREA 2 (SW 80TH AVE FROM SW 167TH ST TO 166TH ST); AREA 3 (80TH AVE FROM SW 155TH ST TO END OF CUL-DE-SAC); AREA 4 (SW 80TH AVE FROM SW 152ND ST TO SW 148TH ST); AREA 5 (EASTSIDE OF SW 84TH CT BETWEEN SW 147TH ST AND SW 147TH TER); AREA 6 (SW 88TH CT BETWEEN SW 156TH ST AND SW 159TH ST); AND AREA 7 (SW 145TH TER BETWEEN 73RD AVE AND SW 74TH AVE) WITHIN THE VILLAGE OF PALMETTO BAY; AUTHORIZING THE VILLAGE MANAGER TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH CIVIL WORKS, INC., A VILLAGE PRE-QUALIFIED CONTINUING SERVICE ENGINEER FOR ENGINEERING SERVICES FOR PLANNING, DESIGN AND PERMITTING OF DRAINAGE IMPROVEMENTS IN AN AMOUNT NOT TO EXCEED $77,193; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on April 28, 2014, the Village of Palmetto Bay (the" Village") adopted Resolution No. 2014-34 approving the execution of non-exclusive professional services agreements (the "Agreements") to allow firms to provide various engineering and architectural services for the Village; and,

WHEREAS, roadway flooding and property damage have been reported during recent major rainfall events in seven areas throughout the Village; and,

WHEREAS, in accordance with the terms of the Agreement and the provisions set forth in Resolution 2014-34, the Public Services Department solicited a proposal from Civil Works, Inc., to provide planning, design, and permitting services for seven localized areas with no history of severe flooding; and,

WHEREAS, Village staff has determined that Civil Works, Inc., would be best suited engineer to provide planning, design, and permitting services for the scope of work detailed in the attached proposal for drainage improvements; and,

WHEREAS, the selection of Civil Works would provide continuity and the Village would benefit from their existing professional understanding of the roadway flooding issues in the community of Palmetto Bay since the President of the company lives in close proximity to several of the proposed drainage improvement areas; and,

WHEREAS, Village staff has conducted preliminary negotiations with Civil Works, Inc., and the estimated the cost of providing services to the Village is approximately $77,193.00; and,

RESOLUTION NO. 2014-97

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO DRAINAGE IMPROVEMENT PROJECTS AT AREA 1 (SW 87TH AVE FROM SW 152ND ST TO SW 143RD ST), AREA 2 (SW 80TH AVE FROM SW 167TH ST TO 166TH ST); AREA 3 (80TH AVE FROM SW 155TH ST TO END OF CUL-DE-SAC); AREA 4 (SW 80TH AVE FROM SW 152ND ST TO SW 148TH ST), AREA 5 (EASTSIDE OF SW 84TH CT BETWEEN SW 117TH ST AND SW 117TH TER); AREA 6 (SW 88TH CT BETWEEN SW 156TH ST AND SW 159TH ST), AND AREA 7 (SW 145TH TER BETWEEN 73RD AVE AND SW 74TH AVE) WITHIN THE VILLAGE OF PALMETTO BAY; AUTHORIZING THE VILLAGE MANAGER TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH CIVIL WORKS, INC., A VILLAGE PRE-QUALIFIED CONTINUING SERVICE ENGINEER FOR ENGINEERING SERVICES FOR PLANNING, DESIGN AND PERMITTING OF DRAINAGE IMPROVEMENTS IN AN AMOUNT NOT TO EXCEED $77,192; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on April 28, 2014, the Village of Palmetto Bay (the "Village") adopted Resolution No. 2014-34 approving the execution of non-exclusive professional services agreements (the "Agreements") to allow firms to provide various engineering and architectural services for the Village; and,

WHEREAS, roadway flooding and property damage have been reported during recent major rainfall events in several areas throughout the Village; and,

WHEREAS, in accordance with the terms of the Agreement and the provisions set forth in Resolution 2014-11, the Public Services Department solicited a proposal from Civil Works, Inc., to provide planning, design, and permitting services for seven localized areas with a history of severe flooding; and,

WHEREAS, Village staff has determined that Civil Works, Inc., would be best suited engineer to provide planning, design, and permitting services for the scope of work detailed in the attached proposal for drainage improvements; and,

WHEREAS, the selection of Civil Works would provide continuity and the Village would benefit from their existing professional understanding of the roadway flooding issues in the community of Palmetto Bay since the President of the company lives in close proximity to several of the proposed drainage improvement areas; and,

WHEREAS, Village staff has conducted preliminary negotiations with Civil Works, Inc., and the estimated the cost of providing services to the Village is approximately $77,192.00; and,

WHEREAS, the Village desires to continue negotiations in an effort to enter into an agreement with Civil Works, Inc., to provide planning, design, and permitting services for the scope of work detailed in the attached request for proposal for an amount not to exceed $77,193.00; and,

WHEREAS, the Village finds that this Resolution will promote the health, safety and welfare of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE OF PALMETTO BAY, FLORIDA, THAT:

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

Section 2. **Authorization.** In accordance with the terms and conditions of Resolution No. 2014-34, which approved the execution of non-exclusive professional services agreements (the "Agreement") to allow firms to provide various engineering and architectural services for the Village, the Village Manager is authorized, on behalf of the Village, to negotiate and enter into an Agreement with Civil Works, Inc., to provide planning, design, and permitting services for drainage improvements in seven localized areas in an amount not to exceed $77,193.00.

Section 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED and **ADOPTED** this 4th day of January, 2016.

Attest:

Meighan J. Alexander
Village Clerk

Eugene Flinn
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

WHEREAS, the Village desires to continue negotiations in an effort to enter into an agreement with Civil Works, Inc., to provide planning, design, and permitting services for the scope of work detailed in the attached request for proposal for an amount not to exceed $77,199.00; and

WHEREAS the Village finds that this Resolution will promote the health, safety and welfare of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE OF PALMETTO BAY, FLORIDA, THAT:

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

Section 2. Authorization. In accordance with the terms and conditions of Resolution No. 2014-31, which approved the execution of non-exclusive professional services agreements (the "Agreement") to allow firms to provide various engineering and architectural services for the Village, the Village Manager is authorized, on behalf of the Village, to negotiate and enter into an Agreement with Civil Works, Inc., to provide planning, design, and permitting services for drainage improvements at seven localized areas in an amount not to exceed $77,199.00.

Section 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED and ADOPTED this 5th day of January, 2016.

Attest: _____ _____

Meighan J. Alexander
Village Clerk

Eugene Flinn
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 Karyn Cunningham	YES
Council Member Tim Schaffer	YES
Council Member Larissa Siegel Lara	YES
Vice-Mayor John DuBois	YES
Mayor Eugene Flinn	YES

CWI A WBE/DBE firm

Civil Works, Inc.
Miami - Ft. Lauderdale - Orlando
305-591-4323 954-344-6568 407-339-0040
www.civilworks.com cwi@civilworks.com

Dec. 15, 2015

Ms. Corrice Patterson, Public Works Director
Village of Palmetto Bay
9705 East Hibiscus Street
Palmetto Bay, FL 33157

Re: Professional Engineering Services for the Phase VI Localized Drainage Improvements, CWI Project No. 15100.00

Dear Ms. Patterson:

Civil Works, Inc. **(CWI)** is pleased to submit this revised proposal to the Village of Palmetto Bay (Village) for Engineering Design Services. Based on the emailed scope of work, our services will include the preparation of construction documents and calculations for the drainage improvements. There will be seven (7) distinct locations, each designed with a complete set of plans and Drainage Report. The engineering services will also include the permitting for the proposed improvements. This letter and our Professional Services Agreement will serve as the agreement for the services described below.

Task 1 - Phase VI Localized Drainage Improvements Construction Documents
This Task includes the design and preparation of construction documents for the drainage improvements. These include design of new drainage exfiltration trenches, catch basins, manholes, swale improvements, and asphalt upgrades, where needed. This Task will include utility research of available as-builts, enginering analysis and preliminary cost estimates. This Task is divided into 7 areas, as listed below.

The Seven sets of Documents include:

- Cover Sheet including the location, Index of Sheets and General Notes
- Paving, Grading and Drainage Plan
- Drainage Details and Notes
- Drainage Report and Calculations
- Percolation Test, one for each location
- Topographic Survey, one for each location
- Permit Processing Assistance through Miami Dade County.

Task 2.0 - Additional Services/ Project Representation (if needed)
This task will include additional meetings over the above listed meetings with technical staff, team meetings, agency meetings and any follow-up that your organization may request. Any work performed under this task will be billed at our hourly rates shown below.

SCHEDULE
CWI is ready to begin the project immediately. We will comply with any reasonable design schedule that you require for the completion of this project.

DELIVERABLES

CWI will provide the following sets of plans for approvals and permits:
2 sets of 75% and 100% Construction Documents.
2 sets of Signed and Sealed Drainage Plans and calculations for County Approval.
2 sets of revised plans for final approval.

COMPENSATION

The fees for providing these Tasks are listed as a Lump Sum. The fees listed below are listed by drainage area, as requested. Any task not specifically listed above will be covered as an additional service.

Task 1 Area	Area Description	Engineering	Survey	Geotech-nical	Lump Sum	Budget
1	**SW 87 Ave, from SW 142 St to SW 143 St**	**$5,400**	**$3,096**	**$1,000**	**$9,496**	**N/A**
2	**SW 80 Ave, in front of #16625**	**$5,400**	**$2,732**	**$1,000**	**$9,132**	**N/A**
3	**SW 155 St, in front of #7990**	**$5,400**	**$2,732**	**$1,000**	**$9,132**	**N/A**
4	**SW 80 Ave, from SW 152 St to SW 148 St**	**$10,200**	**$5,805**	**$1,000**	**$17,005**	**N/A**
5	**SW 84 Ct, between SW 147 St and SW 147 Terr**	**$5,400**	**$3,096**	**$1,000**	**$9,496**	**N/A**
6	**SW 88 Ct, between SW 156 St. and SW 159 St.**	**$7,800**	**$5,000**	**$1,000**	**$13,800**	**N/A**
7	**SW 145 Terr, in front of 7330**	**$5,400**	**$2,732**	**$1,000**	**$9,132**	**N/A**
	Subtotal				**$77,193**	
Task 2	**Additional Services/ Project Representation (if needed)**				**N/A**	**$1,000**

This Agreement includes up to $200.00 in reproductions, printing and telecommunications costs. Costs over this amount will be invoiced separately. Any services not specifically mentioned in the tasks above will be additional services. If any additional services are requested, a new task order will be provided based upon the rates listed below.

HOURLY RATES

Category	Hourly Rates
Principal/Project Manager	$195.00
Senior Engineer (PE)	$175.00
Project Engineer	$145.00
Designer	$125.00
Senior Engineering Tech	$ 85.00
CADD Technician	$ 75.00
Administrative	$ 63.00
Clerical	$ 52.00

All fees and reimbursable expenses for these services must be paid in full before any final products are released. Any items which are not specifically mentioned are not part of this agreement.

CLIENT'S RESPONSIBILITIES

You will furnish **CWI** with an executed Task Order for this project and the following:

- Review, Permit and Application Fees.
- Bidding and Construction Phases Services will be provided under a separate work order.

It is understood that any environmental issues identified with the soil and/or water contamination on this site will be resolved by others. Therefore, no environmental testing, engineering services nor processing are included in the **CWI** services. Receipt of the executed Task Order will constitute our Notice to Proceed. Please call me at (305) 591-4323 if you have any questions. We look forward to working with you on this exciting project.

Accepted by

Sincerely,

Civil Works, Inc.

Linda Bell, P.E.
President

_____
Signature

_____
Printed Name

_____
Date

Palmetto-prp4-PaseVIdrainage.wpd

VILLAGE OF PALMETTO BAY, DEPARTMENT OF PUBLIC SERVICES

REQUEST FOR PROPOSAL FOR DESIGN & PROFESSIONAL SERVICES FOR PHASE VI LOCALIZED DRAINAGE IMPROVEMENTS

The Village of Palmetto Bay Department of Public Services is requesting a proposal from a Pre-Qualified Civil Engineering Firm to provide engineering & design services for Drainage Improvements at seven (7) locations throughout the Village. The project areas consist of roadways generally located as follows:

Area 1 (SW 87th AV from SW 142nd ST to SW 143 ST) roadway flooded by runoff; Area 2 (SW 80th AV in front of 16625); Area 3 (Standing water in front of 7990 SW 155th ST); Area 4 (SW 80th AV from SW 152nd ST to SW 148th ST) flooding has occurred in the low areas; Area 5 (Eastside of SW 84th CT between SW 147th ST and SW 147th TER) several low spots along the roadways; Area 6 (SW 88th Ct between SW 156th ST and SW 159th ST) roadway flooded by runoff; and Area 7 (Standing water in front of 7330 SW 145th TER).

SCOPE OF SERVICES:

Design & Permitting Phase:

Engineering field review of existing conditions, limited engineering survey of roadway centerline elevations and low points as needed to establish flow patterns and collection points, perform usual open-hole hydraulic conductivity tests, perform limited utility investigation, engineering analysis and design of new drainage systems or system improvements/modifications, (drainage will be design to handle the basin runoff from a 5-yr storm), preparation of construction sketches sufficient for construction, preparation of construction cost estimate, and assistance in permitting approval through Miami-Dade County DERM.

The improvements shall consist of new drainage exfiltration trenches, catch basins, manholes, swale improvements, and asphalt upgrade where needed.

Bidding and Construction Phases are not a part of this proposal.

TERMS AND CONDITIONS:

All terms and conditions shall be per our Continuing Services Agreement for Engineering Services. The Village of Palmetto Bay will be responsible for any permit fees, and shall not be included in the below fees. Fees for the below services shall be lump sum:

Design & Permitting Phase:

Area#1 $ 9,496 **Area #2 $** 9,132 **Area#3 $** 9,132

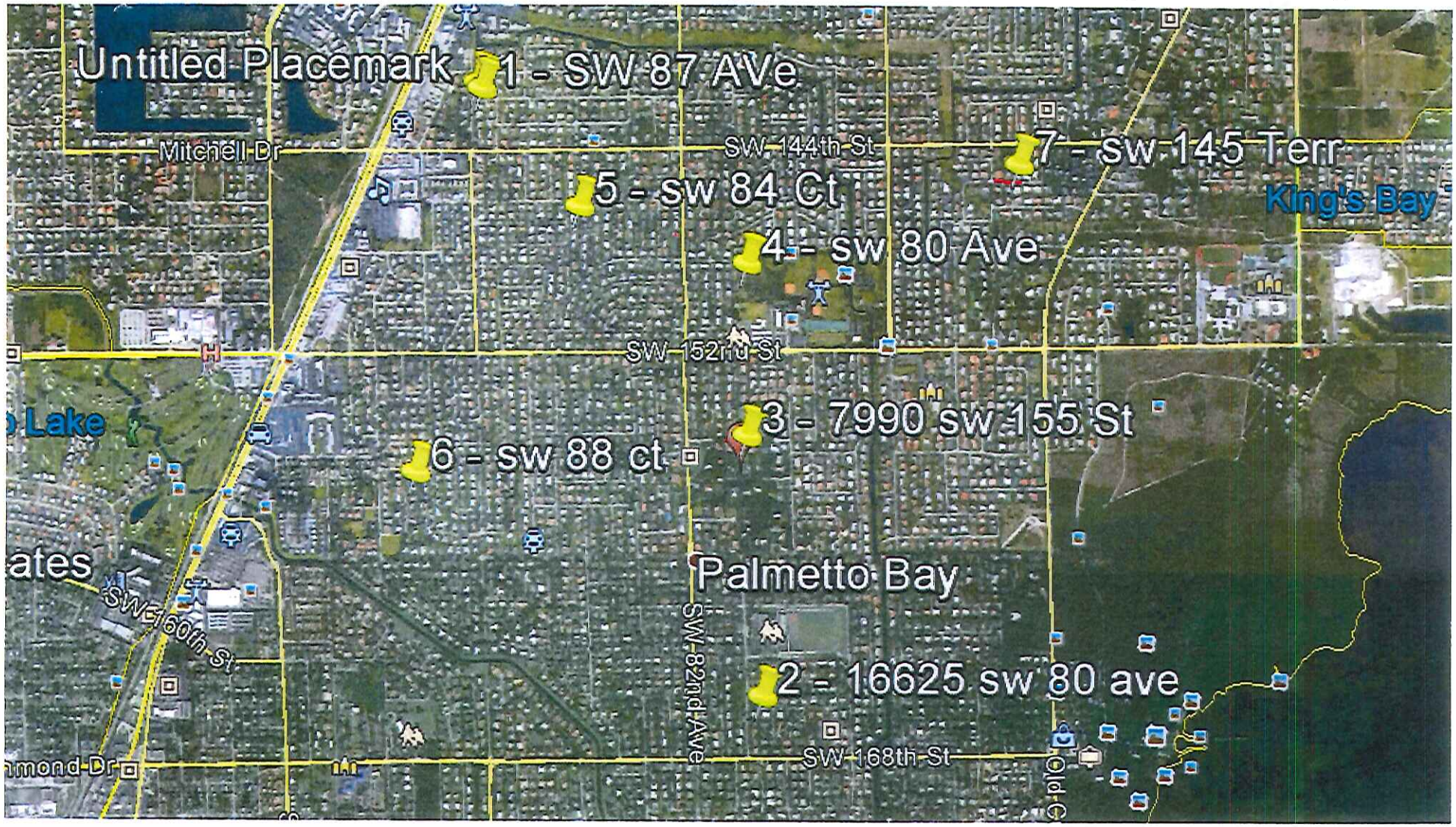
Area #4 $ 17,005 **Area#5 $** 9,496 **Area #6 $** 13,800

Area#7 $ 9,132

TOTAL $ $77,193

The Village of Palmetto Bay reserves the right to reject any or all proposals, to waive technical or legal deficiencies, to accept any proposal and to negotiate such terms and conditions of any proposal that may be in the best interest of the Village.

Contract award is dependent upon available funds. Please submit proposal for the Village's consideration by no later than December 15th, 2015.


Untitled Placemark
1 - SW 87 AVe
Mitchell Dr
SW 144th St
7 - sw 145 Terr
5 - sw 84 Ct
King's Bay
4 - sw 80 Ave
SW 152nd St
Lake
3 - 7990 sw 155 St
6 - sw 88 ct
ates
Palmetto Bay
SW 160th St
SW 82nd Ave
2 - 16625 sw 80 ave
SW 168th St
mond Dr

CONTINUING SERVICES

AGREEMENT

Between

VILLAGE OF PALMETTO BAY, FLORIDA

And

CIVIL WORKS, INC.

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CONTINUING SERVICES

AGREEMENT

Between

VILLAGE OF PALMETTO BAY, FLORIDA

And

CIVIL WORKS, INC.

THIS AGREEMENT is made between the Village of Palmetto Bay, Florida, a Florida municipal corporation, (hereinafter referred to as the "village ") and CIVIL WORKS, INC. licensed and authorized to do business in the State of Florida, (hereinafter referred to as the "consultant "), whose place of business is 7855 NW 12 ST, Suite 202, Doral, FL 33126.

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

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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
m. Public Works permitting and inspections.

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[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.

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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.

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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.

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3.5 **Termination for Lack of Funds.** Not withstanding 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.

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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.

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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 Statues.

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.

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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.

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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.

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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

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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.

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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.

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SECTION 20. COST AND ATTORNEY'S FEES/WAIVER 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

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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.

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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: 7855 NW 12 ST, Suite 202
Doral, FL 33126

FOR CONSULTANT:

CIVIL WORKS, INC.
7855 NW 12 ST, Suite 202
Doral, FL 33126
Telephone: (305) 591-4323
Facsimile: (305) 591-4074

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

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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.

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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.]

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ATTEST: VILLAGE OF PALMETTO BAY

_____ By: _____

Village Clerk Ron E. Williams, Village Manager

Date: _____

APPROVED AS TO FORM:

_____

Village Attorney

ATTEST:

CIVIL WORKS, INC.

By: _____

Linda M. Bell

President

Date: 3/13/14

WITNESSES:

_____

Print Name: VAUGHN SOARES

_____

Print Name: ELDEIS DIAZ

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EXHIBIT "A"

PROJECT AGREEMENT

Between

VILLAGE OF PALMETTO BAY, FLORIDA

And

CIVIL WORKS, INC.

for

Work Authorization No. [ ]

[INSERT NAME OF PROJECT]

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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.]

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ATTEST:

VILLAGE OF PALMETTO BAY

Village Clerk

By: _____
Ron E. Williams, Village Manager

Date: 4-28-14

APPROVED AS TO FORM:

Village Attorney

ATTEST:

CIVIL WORKS, INC.

By: _____
Linda M. Bell, P.E.
President

Date: 3/13/14

WITNESSES:

Print Name: VAUGHN SOARES

Print Name: ELDEIS DIAZ

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PROJECT AGREEMENT
Between

THE VILLAGE OF PALMETTO BAY, FLORIDA

And

CIVIL WORKS, INC.

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 CIVIL WORKS, INC., 7855 N.W. 12 Street, Suite 202, Doral, Florida 33126 ("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.

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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.

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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

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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 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

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Exhibit "1"

Project Description

[TO BE INSERTED]

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Exhibit "2"

Scope of Services and Project Schedule

[TO BE INSERTED]

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EXHIBIT "3"

Payment Schedule

[TO BE INSERTED]

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EXHIBIT "B"

PAGE 1 OF 2

CONSULTANT'S BILLING RATE

[TO BE INSERTED]

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EXHIBIT "B"

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.

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EXHIBIT "C"

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

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RESOLUTION NO. 2014-34

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES; APPROVING THE QUALIFICATION OF THE REMAINING FIRMS SHORT LISTED TO PROVIDE CONTINUING SERVICES IN TRANSPORTATION PLANNING & ENGINEERING SERVICES, ENGINEERING SERVICES FOR ELECTRICAL ENGINEERING, MECHANICAL ENGINEERING & PLUMBING SYSTEMS, STRUCTURAL ENGINEERING, LANDSCAPE ARCHITECTURE, GENERAL PLANNING SERVICES, ARCHITECTURE, AND GENERAL CIVIL ENGINEERING SERVICES TO THE VILLAGE; AND FURTHER AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO CONTRACT NEGOTIATIONS WITH R.J. BEHAR AND COMPANY, INC., CIVIL WORKS INC., PMM CONSULTING ENGINEERS, CORP., PISTORINO & ALAM CONSULTING ENGINEERS, INC., AMEC, BERMELLO AJAMIL & PARTNERS, INC., ILER PLANNING, INC., MC HARRY ASSOCIATES, INC., AND CALVIN, GIORDANO & ASSOC., INC.; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Request for Qualifications (RFQ) 2013-PW-100 was advertised in the Miami Daily Business Review on February 4, 2013 soliciting qualified firms or teams of firms to obtain Professional Services in seven service areas; and,

WHEREAS, RFQ #2013-PW-100 documented a detailed two-part screening process that consisted of proposal submission and an oral presentation; and,

WHEREAS, each proposal was individually evaluated and the five (5) highest ranking proposals in each Service Area were invited to make an oral presentation before the committee; and,

WHEREAS, as a result of the two part screening process and deliberations, at the May 6, 2013 Council meeting, the selection committee recommended and the Village Council approved the selection of the three (3) highest ranking firms in each professional service area via Resolution No. 2013-40; and,

WHEREAS, the Council expressed their desire to expand the list from three (3) to five (5) consultants at the February 3, 2014; and,

WHEREAS, the Council voted 5-0, authorizing the Village Manager to proceed with the necessary steps required to increase the pre-qualified professional engineering consultants list from three (3) to five (5) consultants at the February 3rd, 2014 Council meeting; and,

WHEREAS, the Department of Public Works sent letters extending an opportunity to the fourth and fifth highest ranking firms that participated in RFQ# 2013-PW-100 pre-qualification processes; and,

WHEREAS, the fourth and fifth highest ranking firms provided letters of concurrence with the Village's request to add their firms to the existing list of consultants for professional engineering services; and,

WHEREAS, Village administration is recommending Village Council approval to add the fourth and fifth highest ranking firms that participated in RFQ# 2013-PW-100 to the current list of consultants approved via Resolution No. 2013-40 for a term of two (2) years, with the option to extend the contract for two (2) one–year terms; and,

WHEREAS, the eventual contracting for these services is in the best interest of Village improvements and in certain instances their end products are mandated; 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 enter into contract negotiation with the selected Consultants to provide professional engineering services.

Section 2. This Resolution shall become effective immediately.

PASSED and **ADOPTED** this 7th day of April 2014.

Attest:
Meighan J. Alexander
Village Clerk

Shelley Stanczyk
Mayor

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

Dexter W. Lehtinen
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore	YES
Council Member Tim Schaffer	YES
Council Member Joan Lindsay	YES
Vice-Mayor John DuBois	YES
Mayor Shelley Stanczyk	YES