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RESOLUTION NO. 07-64

14 A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE
15 VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO BUILDING
16 AND PERMITTING SERVICES; AUTHORIZING THE VILLAGE
17 MANAGER TO ENTER INTO A CONTRACT WITH CAP
18 GOVERNMENT, INC., IN SUBSTANTIALLY THE FORM ATTACHED,
19 TO PROVIDE BUILDING AND PERMITTING SERVICES TO THE
20 VILLAGE FOR A TERM OF TWO (2) YEARS WITH AN OPTION TO
21 RENEW FOR TWO (2) ADDITIONAL ONE (1) YEAR TERMS; AND,
22 PROVIDING AN EFFECTIVE DATE.

23 **WHEREAS**, building and permitting services are being provided to the Village of
24 Palmetto Bay ("Village") by CAP Government, Inc., formerly CSA Southeast, Inc., through an
25 extension to their contract until such time as the Village completes a competitive selection
26 process for acquiring said services; and

27 **WHEREAS**, in accordance with its procurement process, the Village solicited proposals
28 for building and permitting services through issuance of RFQ #07-CD-01, received proposal
29 submissions in response to said RFQ, and conducted an evaluation process through
30 appointment of a Building & Permitting Selection Committee; and

31 **WHEREAS**, following the conclusion of the evaluation process by the Selection
32 Committee, the Village Council adopted a resolution on April 9th, 2007, accepting the
33 recommendation of the Building & Permitting Selection Committee to select CAP Government,
34 Inc., directing the Village Manager to negotiate a contract with CAP Government, Inc for said
35 services based upon its proposal, and further directing the Village Manager to present the
36 negotiated contract to the Village Council for its consideration and approval.

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

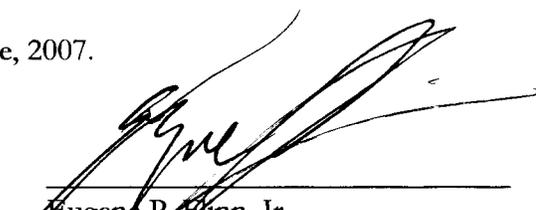
31 **Section 1:** The Village Manager is hereby authorized to enter into a contract, in
32 substantially the form attached, with CAP Government, Inc. to provide the Village with building
33 and permitting services for a term of two years with an option to renew for two additional one
34 year terms.

35 **Section 2:** This resolution shall take effect immediately upon adoption.
36

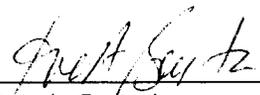
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PASSED and ADOPTED this 11th day of June, 2007.

Attest: 
Meighan Rader
Village Clerk


Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:


Eve A. Boutsis
Office of the Village Attorney

FINAL VOTE AT ADOPTION:

- Council Member Ed Feller YES
- Council Member Paul Neidhart YES
- Council Member Shelley Stanczyk YES
- Vice-Mayor Linda Robinson YES
- Mayor Eugene P. Flinn, Jr. YES

**CONTRACT BETWEEN
THE VILLAGE OF PALMETTO BAY
AND C.A.P. GOVERNMENT, INC., FOR
BUILDING AND PERMITTING SERVICES**

THIS AGREEMENT is made and entered into this ____ day of June, 2007, by and between the Village of Palmetto Bay, (hereinafter referred to as the Village) a Florida municipal corporation, and CAP Government, Inc., (hereinafter referred to as CAP) a Florida corporation. The effective start date of services and all provisions of this agreement shall be July 1, 2007.

NOW THEREFORE, in consideration of the sum of \$10.00, the mutual promises and covenants contained in this agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are acknowledged by both parties, the parties agree to the following:

1. PURPOSE; AUTHORIZATION

1.1. The purpose of this agreement is to provide for the engagement of CAP by the Village to perform building and permitting services as described in Section 2 below. In performing all services it is understood that all CAP employees, while performing services for the Village shall report to the Village's Building Official, or his designee, and the Office Manager. CAP agrees to work cooperatively with the Village's Building Official and Office Manager to ensure that services are provided in a coherent and uniform process. The Building Official shall be the principal agent of the Village relating to enforcement of this contract. However, the Village Manager shall be the ultimate decision maker relating to Section 9, termination provisions.

1.2. CAP's employees assigned to perform services for the Village shall be authorized to enforce the Village code under the Village's constitutional home rule powers.

2. SCOPE OF SERVICES

CAP shall provide the following services to the Village:

2.1. Building and Permitting Services

2.1.1. Process all building permit applications for the Village and verify contractor's licenses.

2.1.2. Review building plans for structural, plumbing, electrical, mechanical and other requirements as contained in the Florida Building Code, and compliance with applicable zoning regulations, including but not limited to the Miami-Dade County zoning regulations, and any amendments thereto. Additionally, as the Village adopts its own Land Development Code, CAP shall review all plans for compliance under the Village's Land Development Code.

2.1.3. Services shall include all services listed in the Request for Qualifications for Building and Permitting Services, Request for Proposal Number 07-CD-01, which include:

a. Process permit applications

- b. Review plans for permitting
- c. Issue permits and conduct plan review.
- d. Inspect all permitted jobsites.
- e. Issue Certificates of Use (CU)
- f. Enforce the requirements of the building code.
- g. Collect and report all permit-related revenues per the Village's permit fee schedule.
- h. Conduct Certificate of Use inspections.
- i. Submit monthly reports including trial balance reports, permit activities, rejection rates, number of permits issues, plans reviewed, and inspections performed, report of revenues collected, and any amount forwarded to the Village.
- j. Process records relating to permits and storage and archiving of permit files. Under the supervision of the Office Manager and Building Official CAP staff shall assist in developing an archiving system, process for cross-referencing, locating permits, and for properly scanning the documents.
- k. Provide administrative and clerical staff to support permitting and enforcement and the telephone operator's functions, which staff shall be under the supervision of the Village's Building Department Office Manager to perform these duties.
- l. Consult with architects/engineers and contractors for building code guidance on large projects.
- m. Meet with architects/engineers, homeowners, contractors and other permit holders when requested, to discuss any questions, problems or concerns on plans or permits.
- n. Provide emergency 24-hour building code service to respond to damage to structures.
- o. Verify notices of commencement.
- p. Provide adequate communication capabilities through utilization of available equipment (cellular phones, two-way radios, pagers, etc.) to all personnel.
- q. Maintain satisfactory workload/service level demands through utilization of increases and, or decreases in staffing, including weekends, whenever required. Under Section 16, infra, CAP agrees to provide adequate service levels for the staffing persons identified therein and as provided under Exhibits "A" and "C".
- r. Verify contractor's license and appropriate insurance upon acceptance of permit application.
- s. Receive and respond to, in a timely manner, questions and, or complaints, relating to the building code.
- t. Attend Village staff and council meetings upon request of the Building Official, Village Manager or Village Council.

2.1.4. CAP shall maintain the following service standards, as outlined in the RQF # 07-CD-01:

- a. The first plan review for single family residences will be completed within seven (7) working days upon receipt of a final set of plans. In order to attain this goal, as well as issue a permit within the same time frame, the permit processing staff shall call/fax/e-mail the plan reviewer's results to the appropriate designer of record or contractor as each trade completes its review. Plan reviews of single family residence of much less complexity will be completed within one to three (1-3) working days.

b. Commercial building, multi-dwelling units, and similar types of construction projects will have plan review completed within fifteen (15) working days for the first review. The permit processing staff shall call/fax/e-mail results to the appropriate designer of record or contractor as each trade completes its review. Permit issuance will depend upon the size and complexity of the project and length of time taken by the designer to return plans with corrections to conform to the building code.

c. Inspections will be performed within 24 business hours from the time they are called into the Village. Inspection requests may be submitted via phone, fax or e-mail to the Village. Inspections shall be performed within a 4-hour scheduled time.

d. Consumer's questions and/or complaints will be responded to within a reasonable time not exceeding two (2) working days.

e. Provide "walk-thru" permitting for specified types of work. This "walk-thru" program shall begin as a trial pilot program, which program shall consist of twice (2) weekly, two (2) hour periods, for the first three (3) months of this contract, to provide "walk-thru" permitting, with building discipline representatives present during the two (2) hour period(s). If the "walk-thru" pilot program fails to provide sufficient work or use of CAP resources and jointly determined by CAP and the Village, the "walk-thru" program shall be discontinued at the end of the three (3) month test period. If the "walk-thru" program succeeds, the program shall be continued as part of basic services (not an additional service).

f. Respond to building applicants' questions and/or complaints within two (2) business days.

g. Provide enhanced customer services which enhanced services shall include:

1. The Village Manager and Building Official shall establish the customer service standards for office personnel who shall report to a Village Office Manager under the supervision of the Building Official, for the purpose of providing building services, which CAP employees shall adhere to.

2. The Village Manager and Building Official shall establish an employee code of conduct towards customers consisted with the provisions of this agreement, which CAP employees shall adhere to.

3. Staff, including Office Manager and Building Official shall greet each customer coming into the office and on the telephone with courtesy.

4. Staff shall return all inquiries and telephone calls/messages within two (2) business days.

5. One (1) office staff person shall be dedicated to exclusively answer phones and handle matters that can be conducted via telephone. When time permits, this employee may also handle other departmental responsibilities, including but not limited to filing and scanning of plans.

6. The Village Manager and Building Official shall develop a customer service evaluation form to gather constructive feedback from customers, which CAP shall adhere to.

7. The Village Manager and Building Official shall create a system

for processing complaints and establish a process for promptly responding to complaints, and to provide written follow-up regarding complaints, and improvements to the building services, and CAP employees shall adhere to same.

8. Attend, annual educational seminar for property owners and contractors on building permitting requirements and procedures.

9. When applicable, coordinate code compliance efforts between code compliance officers and building inspectors.

10. CAP shall provide personnel to assist in the task of orderly outsourcing the imaging of plans.

2.1.5. Provide all necessary vehicles, mobile phones or radios and equipment for CAP employees to perform the services required by this agreement. CAP shall provide clearly marked Village identification on all vehicles used in conjunction with the performance of this agreement. Village, at its option, shall provide uniforms (shirts) to CAP.

2.2. Village Projects.

2.2.1. CAP shall provide plan review, inspection and permitting services for Village projects as directed by the Village Manager.

2.3. Additional Services.

2.3.1. CAP shall provide other additional building department services to the Village as mutually agreed to by the Village Manager and CAP.

2.3.2. CAP shall provide additional services of zoning inspection (other than certificate of use inspections which shall be part of the scope of services described at 2.1) as mutually agreed to by the Village Manager and CAP.

2.3.3. Provide jobsite disaster preparation and follow-up service. Provide flexible staff work schedules for employees to extend office hours and services on certain days of the week and/or on weekends, following a hurricane, to carry out special code compliance sweeps, to enforce building code regulations, etc., which services will be compensated in accordance with Exhibit "B".

2.3.4. Certificates of occupancy (CO), in conjunction with appropriate review and inspections as required by the Building Official. A zoning inspector will be utilized to perform CO inspections and will be compensated in accordance with Exhibit "B". Zoning inspection funds received by the village shall not be considered part of the month permit fees identified in Section 4. CO funds shall be considered part of the monthly revenues. And the zoning funds shall deposited into a separate account by the Village.

2.3.5. Provide building code damage assessment services for emergencies and natural disasters.

2.3.6. Provide expedited plan review for an additional fee.

2.3.7. Provide after-hours and weekend inspections and appointments with key personnel, by appointment, for an additional fee.

2.3.8. CAP understands and agrees that the Village shall not be liable to pay, and shall not pay, charges for extra work, delay charges, or additional work, unless the Village Manager or his designee specifically authorizes the extra or additional work, in a written task order before the commencement of the work.

2.3.9. None of the work or services under this Contract shall be subcontracted, unless CAP obtains prior written consent from the Village Manager. Should the subcontractor be approved, CAP shall be subject to each provision of this Contract and CAP shall be responsible and indemnify the Village for all subcontractors' actions.

2.3.10. Provide automation and computer support and/or software for servicing permits, inspections and Building Code activities (Village uses PTWIN 32 software by Black Bear Systems, Inc.).

2.4 Change Orders

2.4.1 The Village or CAP, may at any time, upon mutual agreement and by written order, make changes within the general scope of this Contract in the services to be performed provided such changes/modifications comply with the RFP and procurement policies and procedures. The Village may, from time to time, request changes in the services of CAP to be performed hereunder. Such changes, including any increase or decrease in the amount of the CAP's compensation, which are mutually agreed upon between the parties shall be incorporated in written amendments to this Contract.

2.4.2 If any such changes causes an increase or decrease in the prices charged, the maximum amount of the Contract, or the time required for performance of any part of the work under this Contract, whether or not changed by the order, or otherwise affects the conditions of this Contract, the Village shall make an equitable adjustment in the maximum amount, the price(s), the delivery schedule, or other affected terms, and shall modify the Contract with a mutually negotiated written Change Order.

3. VILLAGE RESPONSIBILITIES

3.1. The Village shall provide a Building Official and an Office Manager.

3.2. The Village shall provide badges and photo identification for CAP employees, which shall be worn by CAP employees at all times while conducting Village official functions.

3.3. The Village shall provide workspace, furniture, computer software and hardware, fax line and telephones (in office) for all administrative staff, inspectors and plan examiners provided by CAP to perform the services required by this agreement.

3.4. The Village shall be the record custodian for all records and shall be responsible for the cost of imaging.

3.5. Upgrades to and/or cost of outsourcing the imaging of plans shall be provided by the Village, however, CAP shall provide personnel to assist in the task of orderly outsourcing the imaging of plans.

3.6. CAP has developed a team of highly trained, professional building and permitting experts. The Village is discouraged from approaching or hiring any of CAP's staff.

3.7. Village uses PTWIN 32 software by Black Bear Systems, Inc., and shall provide CAP access to same.

4. COMPENSATION

4.1 For all building and zoning services provided by CAP as described in Section 2.1 of this agreement, the Village shall pay CAP a monthly fee equal to 75% of all fees collected monthly, up to \$66,667.00. The balance of the fees not paid to CAP shall be retained by the Village. In any month when fees collected exceed \$66,667.00 the overage shall be split 80 % to CAP and 20 % to the Village. The village has enacted an art in public places ordinances. Village staff shall conduct all reviews and analysis associated with this ordinance. The art funds shall go into the Village's art trust fund and any fees associated therewith shall be deposited in the art fund. The art in public places fees shall not be part of the CAP contract for compensation.

4.2 Additional services such as disaster preparation and follow-up services, zoning inspections, and expedited plan review for an additional fee paid by the applicant, shall be billed at the hourly rates shown on Exhibit B to the contract. Certificate of Use inspections shall not be considered an additional service.

4.3 For all additional services as described in Section 2.3 of this agreement, the Village shall pay CAP a fee mutually agreed to by the Village Manager and CAP.

4.4 The Village shall pay CAP monthly based on the permit fees collected by the Village for the preceding month. CAP will submit an invoice within the first seven (7) calendar days of the month and payment shall be made within 15 calendar days of receipt of the invoice.

5. RECORDS; RIGHT TO INSPECT AND AUDIT

5.1 All original sketches, tracings, drawings, computations, details, design, calculations, plans, permits, work papers and all other documents and plans (collectively referred to as records) that result from CAP providing services to the Village under this agreement shall be the property of the Village and will be kept at a place designated by the Village.

5.2 The Village Manager, shall, during the term of this agreement, have access to, and the right to examine and audit, any records of CAP involving transactions related to this agreement during normal business hours upon five (5) days prior written notice.

5.3 CAP has the right to examine and audit any records of the Village regarding the permit collections and transactions related to this agreement upon five (5) days prior written notice.

5.4. The Village may cancel this agreement because of the refusal by CAP to allow access by the Village Manager or designee to any records pertaining to work performed under this agreement.

5.5. Public access to records shall be governed by Chapter 119 and other applicable provisions of the Florida Statutes.

6. INDEMNIFICATION

6.1 CAP shall defend, indemnify, and hold harmless the Village, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgments or damages, and statutory fines and penalties (collectively referred to as loss or losses) arising out of, related to, or in any way connected with CAP's performance, errors, acts or omissions under any provision of this agreement including, but not limited to, liabilities arising from contracts between CAP and third parties made pursuant to this agreement, except to the extent the losses are caused by or arise out of any act or omission of the Village, its officers, agents and employees. CAP shall reimburse the Village for all its expenses, including reasonable attorneys' fees and costs, incurred in and about the defense of any claim or investigation and for any loss arising out of, related to, or in any way connected with CAP's performance, errors, acts or omissions under this agreement, except to the extent the losses are caused by or arise out of any act or omission of the Village, its officers, agents and employees.

6.2 The Village shall defend, indemnify, and hold harmless CAP, its shareholders, directors, officers, agents, employees and affiliates, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, and statutory fines and penalties (collectively referred to as loss or losses) arising out of, related to, or in any way connected with this agreement, except to the extent the losses are caused by or arise out of any act or omission of CAP, its shareholders, directors, officers, agents, employees and affiliates. The Village shall reimburse CAP for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any claim or investigation and for any losses arising out of, related to, or in any way connected with the Village's performance, errors, acts or omissions under this agreement, except to the extent the losses are caused by or arise out of any act or omission of CAP, its shareholders, directors, officers, agents, employees and affiliates.

6.3 CAP shall defend, indemnify and hold the Village harmless from all claims, including but not limited to claims presented to EEOC, FHRC and MDCEOC, losses, injuries or damages and wages or overtime compensation due its employees in rendering services pursuant to this agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act or any other federal, state, or local law.

6.4 The provisions of this section shall survive termination of this agreement.

7. INSURANCE

7.1 CAP shall maintain, at its sole cost and expense, during the term of the agreement, standard professional liability insurance in the minimum amount of \$1,000,000 per occurrence.

7.2 CAP shall maintain, at its sole cost and expense, during the life of the agreement, commercial general liability, including contractual liability insurance, in the amount of \$1,000,000 per occurrence to

protect it from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damage which may arise from any operations under the agreement, whether the operations be by CAP or by anyone directly employed by or contracting with CAP.

7.3. CAP shall maintain, at its sole cost and expense, during the life of the agreement, comprehensive automobile liability insurance in the minimum amount of \$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 the use of the vehicle be by CAP or by anyone directly or indirectly employed by CAP.

7.4. CAP shall maintain, at its sole cost and expense, during the life of the agreement, adequate worker's compensation insurance and employer's liability insurance as required by Chapter 440, Florida Statutes.

7.5. CAP shall maintain each of the insurance policies throughout the term of this agreement and any extensions of this agreement.

7.6. CAP shall provide the Village with a current copy of each of the above insurance policies, and any renewals.

7.7. The underwriter of the insurance shall be qualified to do business in Florida, be Best rated A-8 or better, and have agents upon whom service of process may be made in the State of Florida.

7.8. 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 the Village may have. All policies shall contain a "severability of interest" or "cross-liability" clause without obligation for premium payment by the Village.

7.9. All deductibles or self-insured retentions must be declared to and be approved by the Village Manager. The successful Respondent shall be responsible for the payment of any deductible or self-insured retention in the event of any claim.

7.10. The Certificates shall clearly indicate that CAP 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, and shall include the Village of Palmetto Bay as an additional insured.

7.11. CAP shall require its approved consultants and subconsultants, if any, to procure and maintain insurance coverage in the required amounts or alternatively insure the activities provided by any consultants or subconsultants in CAP's own policies. Compliance with the foregoing requirements shall not relieve CAP of its liability and obligations under the agreement.

8. TERM

8.1. This agreement shall become effective on the date signed below and shall remain in force for a period of two years, unless earlier terminated as provided in Section 9.

8.2. The Village shall have the option to renew this agreement for the two additional one-year terms upon the same terms and conditions contained in this agreement upon a 60 day written notice to CAP.

9. TERMINATION

9.1 Without Cause.

9.1.1 The Village may terminate this contract at any time, without cause, upon 90-day's prior written notice. Contractor shall be entitled to payment for services rendered upon the effective date termination but shall not be entitled to future lost profits, consequential or compensatory damages, or other costs or expenses. Upon receipt of written notice of termination, CAP shall not enter into any third party agreements and shall incur only those expenses specifically approved or directed in writing by the Village Manager. Upon written notice of termination, the Village Manager may elect not to use the services of CAP.

9.1.2 CAP may terminate this agreement at any time by giving the Village written notice at least 90 calendar days prior to the effective date of termination, or if the reason for termination is non-payment, by giving written notice fifteen (15) calendar days prior to the effective date of termination.

9.1.3 In the event of termination or expiration of this agreement, CAP and the Village shall cooperate in good faith in order to effectuate a smooth and harmonious transition from CAP to the Village, or to any other person or entity the Village may designate, and to maintain during the period of transition the same services provided to the Village pursuant to the terms of this agreement.

9.1.4 CAP will take all reasonable and necessary actions to transfer all books, records and data of the Village in its possession in an orderly fashion to either the Village or its designee in a hard copy and electronic format.

9.1.5 Subsequent to the termination of this agreement, the Village may contract with CAP at a mutually agreed upon amount to perform specified services on an as-needed basis.

9.1.6 The Village shall compensate CAP in the event of termination of the contract under 9.1 for all services provided prior to the date of termination and pay all reasonable expenses associated with those services incurred by CAP.

9.2 For Cause.

9.2.1 If, through any cause, CAP shall fail to fulfill in a timely and proper manner his obligations under this Contract, or if CAP shall violate any of the covenants, agreements, or stipulations of this Contract, the Village shall thereupon have the right to terminate this Contract by giving written notice to CAP of such termination and specify the effective date of termination, at least 15 days prior. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CAP under this Contract shall, at the option of the Village, become its property. CAP shall be entitled to receive just and equitable compensation for any work satisfactorily completed and not yet billed and/or paid to CAP.

9.2.2 Notwithstanding the above, CAP shall not be relieved of liability to the Village for damages sustained by the Village by virtue of any breach of the Contract by CAP, and the Village may withhold any payments to CAP for the purpose of set-off until such time as the exact amount of damages due the Village from CAP is determined.

9.2.3 CAP may terminate this agreement for non-payment, by giving written notice fifteen (15) calendar days prior to the effective date of termination.

9.3 **Right To Withhold.**

9.3.1 If work under this Contract is not performed in accordance with the terms hereof, the Village has the right to withhold any payment due to CAP, of any sums as the Village may deem ample to protect it against loss, or to ensure payment of claims arising there from, and, at its option, the Village may apply such sums in such manner as the Village may deem proper to secure itself or to satisfy such claims. The Village will provide CAP with fifteen (15) days prior written notice in the event that it elects to exercise its right to withhold under this Section.

9.4 **Remedies - Termination For Default.**

9.4.1 Either party may terminate this contract prior to the expiration of the initial term or any subsequent renewal term on account of a material breach of this contract by the other party, which has not been cured within three days of the date of receipt of written notice of breach from the party seeking termination. Should Contractor fail to cure within 30 days, the Village may then immediately terminate the contract "for cause."

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

9.4.3 Contractor may terminate this contract prior to the expiration of the initial term or any subsequent renewal term upon not less than 60-days prior written notice to the Village in the event that contractor is unable to complete the services identified in section 2 due to causes beyond contractor's control.

9.4.4 The Village shall have no liability to CAP for future profits or losses in the event of termination for default.

9.4.5 The rights and remedies of the Village provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

10. ENTIRE AGREEMENT; MODIFICATION/AMENDMENT

10.1. This writing contains the entire agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

10.2 No agent, employee, or other representative of either party is empowered to modify and amend the terms of this agreement, unless executed with the same formality as this document.

11. SEVERABILITY

11.1 If any term or provision of this agreement shall to any extent be held invalid or unenforceable, the remainder of this agreement shall not be affected thereby, and each remaining term and provision of this agreement shall be valid and be enforceable to the fullest extent permitted by law.

12. GOVERNING LAW

12.1 This agreement shall be construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any litigation arising under or related to this agreement shall be in Miami-Dade County, Florida.

13. WAIVER

13.1 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.

14. NOTICES; AUTHORIZED REPRESENTATIVES

14.1 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, or by registered or certified mail with postage prepaid, return receipt requested, addressed to the parties at the following addresses:

For the Village:

Village of Palmetto Bay
Attention: Ron E. Williams, Village Manager
8950 SW 152 Street
Palmetto Bay, Florida 33157
Telephone: (305) 259 -1234

With a copy to:

Nagin, Gallop Figueredo, P.A., Village Attorneys
Attention: Eve A. Boutsis
18001 Old Cutler Road
Suite 556
Palmetto Bay, FL 33157
Phone: (305) 854-5353

For CAP:

Carlos A. Penin, P.E., President
C.A.P. Government, Inc.

8350 NW 52 Terrace
Suite 209
Doral, FL 33166
Phone: (305) 448-1711
Facsimile: (305) 448-1712

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

15. INDEPENDENT CONTRACTOR

15.1. CAP is, and shall be, in the performance of all work, services and activities under this agreement, an independent contractor and not an employee, agent or servant of the Village. Services provided by CAP shall be by employees of CAP and nothing in this agreement shall create an employment relationship between the Village and any CAP employee. CAP agrees that it is a separate and independent enterprise from the Village.

15.2. CAP shall be solely responsible for all employee insurance benefits, civil service benefits, compensation, including, but not limited to, unpaid minimum wages and overtime, and, or, any status or rights during the course of employment with CAP. Accordingly, the Village shall not be called upon to assume or share any liability for, or direct payment of, any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits under Chapter 440, Florida Statutes, or any other benefits of employment to any CAP personnel performing services, duties and responsibilities under this agreement for the benefit of the Village, or any other liabilities whatsoever. This agreement shall not create any joint employment relationship between CAP and the Village, and the Village will not be liable for any obligation incurred by CAP and, or regarding its employees.

15.3. CAP understands and agrees that CAP shall not represent other clients in matters adverse to the Village, and shall make promptly known any conflicts or potential conflicts. If said conflict(s) cannot be satisfactorily resolved to the Village's satisfaction, the Village reserves the right to suspend and/or terminate the services of CAP and procure services elsewhere. A conflict of interest shall be defined as provided for under the Village's Conflict of Interest Code, and section 2-11.1, Miami-Dade County Code of Ordinances.

15.4. CAP, 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.

15.5. CAP, shall, at its own expense, continue with any continuing education requirements for state professional licensing purposes.

16. STAFFING

16.1. CAP shall provide CAP employees in the job classifications contained in Exhibit "A" to perform all services provided for in this agreement.

16.2 CAP shall certify that each of its staff persons used to staff the Village engagement has undergone a criminal background investigation. CAP shall ensure that no staff person has been convicted of a felony, crime of moral turpitude or violent crime; that no staff person that has been convicted of a felony or a misdemeanor, which misdemeanor concerns allegations of assault, sexual offender, theft or violence shall be assigned to staff the Village. Failure to do the background screening or failure to provide the background screening information to the Village shall be cause for immediate, for cause, termination of services. The knowing or negligent use of staff convicted of a felony, crime of moral turpitude, or violent crime shall be cause for immediate termination of the contract, without provision for liquidated damages.

16.3 CAP agrees to perform annual State-wide background checks of its staff pursuant to section 16.2 and shall advise the Village Manager of any instances of concern as identified under section 16.2. Based upon the information provided, the Village Manager, within his discretion, is entitled to request that CAP replace such staff persons for Village engagement staffing purposes.

16.4 The Village Manager may request that CAP, if at any time during the term of this agreement the Village Manager becomes dissatisfied with the performance of any CAP employee or approved subconsultant assigned to provide professional services under this agreement, transfer the employee within two (2) business days of notification by the Village Manager. CAP agrees to act in good faith and to use its best efforts to resolve any problems experienced by the Village, and CAP agrees that if the issue is not resolved, the Village Manager's request for transfer of a CAP staff person shall be complied with.

16.5 CAP shall identify at Exhibit "C", the proposed staff persons to be used to staff the Village engagement of services. CAP may not change the principal person(s) in the engagement without the express permission of the Village. Should staff listed in Exhibit "C" be changed due to circumstances beyond CAP's control (i.e. retirement, resignation) or due to a request from the Village Manager to replace the staff person as provided under this agreement, CAP shall provide relevant information under section 16.3 to the Village Manager as to the replacement staff person.

17. ASSIGNMENT

17.1 This agreement shall not be assignable by CAP without the prior approval of the Village Council. The Village Council shall not unreasonably withhold the assignment of the contract.

17.2 MT Causley is an approved subcontractor for services under this agreement as identified as Exhibit "C". No other work or services under this contract shall be subcontracted unless contractor obtains prior written consent from the Village. Approved subcontractors shall be subject to each provision of this contract and contractor shall be responsible and indemnify the Village for all subcontractors' acts, errors or omissions.

17.3 CAP 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 CAP 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 30 days by CAP to the Village.

18. PROHIBITION AGAINST CONTINGENT FEES

18.1 CAP warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CAP, to solicit or secure this agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for CAP, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement.

19. WARRANTIES OF CAP

19.1 CAP warrants and represents that at all times during the term of this agreement it shall maintain in good standing all licenses and certificates required under federal, state and local laws necessary to perform the scope of services specified in this agreement.

19.2 CAP warrants and represents that its employees have received sexual harassment training that it maintains appropriate sexual harassment and non-discrimination policies, and it has implemented procedures for enforcing its sexual harassment and non-discrimination policies.

19.3 CAP warrants and represents that its employees will abide by the conflict of interest and code of ethics ordinances sets forth in Section 2-11.1 of the Village code and Section 2-11.1 of the Miami-Dade County Code, as these codes may be amended from time to time.

19.4 CAP, its approved subcontractors, suppliers and laborers ("subcontractors") are prohibited from placing a lien on the Village's property. CAP shall execute a similar contract with subcontractors, as applicable, confirming that subcontractors are prohibited from placing liens on the Village's property. Further, both contractor and subcontractor warrant not to file or record liens or notices of liens against the Village's property.

19.5 CAP warrants that it: (a) is duly licensed by the State of Florida and Miami-Dade County to provide the services identified in Section 2 of this contract; (b) has not provided a commission, bonus or other benefit or payment to any person to procure this contract other than paying the salaries of employees in the ordinary course of business; (c) has not committed a violation of a public entity crime statute and is not otherwise disqualified by the State of Florida from entering into this Agreement; and (d) no member, officer, or employee of the Village shall or for one year after current tenure, have any interest, direct or indirect, in this contract.

20. ATTORNEYS' FEES

20.1 In the event of any litigation arising out of this agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels; provided, however, any award of attorneys' fees against the Village shall not exceed \$35,000.00. The Village does not waive sovereign immunity under 768.28, Florida statutes. Neither party shall be liable for prejudgment interest.

20.2 The Village does not waive sovereign immunity for any claim of prejudgment interest and prejudgment interest shall not be awarded against the Village.

21. WAIVER OF JURY TRIAL

21.1 In the event of any litigation arising out of this agreement, each party waives its right to trial by jury.

22. TIME OF THE ESSENCE

22.1 Time shall be of the essence for each and every provision of this agreement.

23. MISCELLANEOUS.

23.1 In the event a court must interpret any word or provision of this agreement, the word or provision shall not be construed against either party by reason of drafting or negotiating this agreement.

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

WITNESSES:

C.A.P. Government, Inc.

By: _____

Carlos A. Penin, P.E., President

Print Name: _____

Print Name: _____

Date: _____

ATTEST:

VILLAGE OF PALMETTO BAY

Meighan Rader, Village Clerk

By: _____

Ron E. Williams, Village Manager

Date: _____

APPROVED AS TO FORM:

Eve A. Boutsis,
Nagin Gallop & Figueredo, P.A.
Office of Village Attorney

EXHIBIT "A"

Job Classifications: The following job classifications will be staffed to achieve the required level of services:

- A. **Building Official** certified by the Miami-Dade County Board of Rules and Appeals. This position will supervise all activities for the Village Building Department and coordinate with the code enforcement unit. (As requested by the Village Manager).
- B. **Structural Plan Reviewer** certified by the Miami-Dade County Board of Rules and Appeals. This professional engineer performs structural review of building permit plans as mandated by the Florida Building Code requirements.
- C. **Chief Building Inspector / Building Plans Examiner / Inspector** certified by the Miami-Dade County Board of Rules and Appeals and will perform all plans review (certified plans examiner) and field inspection of structural, building, A.D.A (certified building inspector) and roofing components (certified roofing inspector). The certified Chief Building Inspector is responsible for supervising the building plan review activities and mandatory building and roofing inspections for purposes of determining that all work is performed per requirements the Florida Building Code.
- D. **Chief Mechanical, Chief Plumbing and Chief Electrical** are delegated power by the building official to enforce the Florida Building Code and to interpret the code requirements of their respective trades.
- E. **Zoning Official** will be used to perform zoning plan reviews and zoning code and ordinance interpretations as directed by the Village Manager.

EXHIBIT "B"

SCHEDULE OF HOURLY COST FOR ADDITIONAL SERVICES

• Principal	\$200.00
• Building Official	\$125.00
• Professional Structural Engineer / Plans Examiner	\$125.00
• Professional Civil, Electrical, Mechanical Engineer	\$100.00
• Project Manager	\$100.00
• Engineer / Designer / Plans Examiner (Other than structural)	\$85.00
• CADD Technician	\$65.00
• Field Inspector	\$75.00
• Zoning Inspector	\$55.00
• Administrative Assistant	\$45.00
• Clerical	\$30.00
• Photocopies	\$0.35/Copy
• Blueprints (24"x36")	\$1.30/Sheet
• CADD Plots	\$25.00/Sheet
• Vehicle Travel	\$0.495/Mile
• Out of Pocket (pass-thru)	Cost + 10%
• Soft ware service update services	\$85.00

EXHIBIT "C" – PROPOSED STAFF

Elio Alvarez	Electrical Plans Examiner & Inspector
Adalberto Vicedo, P.E.	Structural Plans Examiner
Pedro Auchet, E.I.	Building Plans Examiner & Inspector
Thomas J. Bassing	Plumbing Plans Examiner & Inspector
Eduardo Kriger, P.E.	Structural Plans Examiner
Tomas Menendez	Electrical Plans Examiner & Inspector
Jan Pierre Perez	Mechanical Plans Examiner & Inspector
Burt Saymon, P.E.	Mechanical Plans Examiner
Aurelio J. Ramos, R.A.	Building & Roofing Plans Examiner & Inspector
Angel R. Rivas, E.I.	Building & Roofing Plans Examiner & Inspector
Raul Rodriguez	Building Official
Jorge Hernandez	Building & Roofing Plans Examiner & Inspector
Peter Wagoner, P.E.	Building & Roofing Plans Examiner & Inspector
Henry Willis	Building & Roofing Standard Plans Examiner & Standard Inspector
Joseph Garcell	Building & Roofing Standard Plans Examiner & Standard Inspector
Miguel Arronte	Building & Roofing Standard Plans Examiner & Standard Inspector
Felix Pousa	Electrical Standard Plans Examiner & Standard Inspector
Orlando Hernandez	Mechanical Standard Plans Examiner & Standard Inspector
Don Bender	Plumbing Standard Plans Examiner & Standard Inspector
Carlos Naumann, P.E.	Structural Plans Examiner
Elisa Vera	Zoning
Morelia Rodriguez	Administrative Assistant
Natalie Winters	Permit Clerk
Estela Cassau	Permit Clerk
Debbie Gutierrez	Permit Clerk
Sonia Perez	Permit Clerk
Ailyn Jimenez	Permit Clerk
Adriana Molina	Permit Clerk