

**RESOLUTION NO. 2013-65**

**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO PARKS AND RECREATION; APPROVING THE VILLAGE MANAGER'S RECOMMENDATION OF TIP TOP ENTERPRISES INC. AS THE MOST RESPONSIVE BIDDER FOR THE LANDSCAPE/GROUNDS MAINTENANCE SERVICES; AND, FURTHER AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE CONTRACT FOR SERVICES UNDER RFP-2013-PR-002 TO TIP TOP ENTERPRISES INC., FOR THE LANDSCAPE/GROUND MAINTENANCE SERVICES AT A COST OF \$71,250; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, in an effort to re-established permanent landscape maintenance services for Village parks, RFP-2013-PR-002 was prepared and issued in accordance with procurement policies; and

**WHEREAS**, an evaluation committee met on June 26<sup>th</sup>, 2013 to discuss and rank all proposals received, and recommended Tip Top Enterprises, Inc., as the most responsive and qualified proposer meriting negotiations with the Village Manager and subsequent award of contract; and

**WHEREAS**, the Mayor and Council authorized the Village Manager to enter into said contract negotiations with Tip Top Enterprises, Inc., regarding Landscape/Ground Maintenance services pursuant to RFP-2013-PR-002 on July 11, 2013 via resolution no. 2013-59; and

**WHEREAS**, the subject negotiations, as authorized by Resolution 2013-59, resulted in agreement of a governing contract at a cost of \$71,250; and,

**WHEREAS**, have been identified and approved in the FY2012-2013 Annual Budget and; and,

**WHEREAS**, the Mayor and Council are recommended by the Village Manager to approve the contract with Tip Top Enterprises, Inc., for Landscape/Grounds Maintenance services as specified in RFP- PR-2013-002; at a cost of \$71,250 and pursuant to the terms and conditions provided in the agreed upon proposed contract.

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

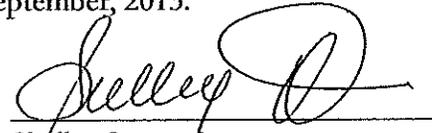
**Section 1.** The Village Council hereby approves the contract for Landscape/Grounds Maintenance services to Tip Top Enterprises, Inc., at a cost of \$71,250, as provided in the contract attached hereto as exhibit 1,

**Section 2.** The Village Manager is hereby authorized to enter into agreement with Tip Top Enterprises, Inc.; pursuant to agreed upon terms and conditions and at a cost of \$71,250, for Landscape/Grounds Maintenance services.

**Section 3.** This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 9<sup>th</sup> day of September, 2013.

Attest:   
Meighan J. Alexander  
Village Clerk

  
Shelley Stanczyk  
Mayor

APPROVED AS TO FORM:

  
Eye A. Boutsis  
Village Attorney

FINAL VOTE AT ADOPTION:

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

**AGREEMENT BETWEEN THE VILLAGE OF PALMETTO BAY  
AND TIP TOP ENTERPRISES, INC., FOR LANDSCAPE/GROUNDS MAINTENANCE**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the Village of Palmetto Bay, a Florida municipal corporation (the "Village"), and Tip Top Enterprises, Inc ("Contractor/Proposer").

**RECITALS**

1. The Village has under its control five (5) parks in which a myriad of activities occur, including special events, rental functions and self-directed activity such as walking and exercising; all of which require a safely maintained and aesthetically pleasing environment in which to recreate.

2. The Village desires to obtain landscape/grounds maintenance services to maintain the parks in a pristine condition pursuant to the terms of this agreement.

NOW, THEREFORE, in consideration of \$10.00, the mutual covenants and conditions contained herein, the receipt of which is acknowledged, the parties agree as follows:

**PURPOSE/AUTHORIZATION**

1. The purpose of this Agreement is to provide for the Village's retention of Contractor/Proposer to provide landscape/grounds maintenance services at various Village parks and/or Village facilities on a pre-scheduled basis and as described in Section 2 below.

2. **Scope of Services**

a. The Village grants to the Contractor/Proposer the non-exclusive right to provide landscape/grounds maintenance services at selected parks and/or facilities as contemplated herein. The Contractor shall adhere to established rules and conditions concerning landscape/grounds maintenance services at Village park facilities. Neglecting or intentionally failing to abide by these rules shall be grounds for contract termination.

b. The Contractor shall provide Landscape/Grounds Maintenance Services at Coral Reef Park, Palmetto Bay Park, Perrine Wayside Park, Ludovici Park and Thalatta Estate, as per specifications and frequencies which are designed to effectuate a level of consistency and aesthetically pleasing and usable parks agreed upon by the parties via work orders.

c. Contractor shall be licensed pursuant to requirements of the State of Florida, Miami-Dade County and Village of Palmetto Bay, and responsible for providing landscape/grounds maintenance services performed by qualified employees acceptable to the Village of Palmetto Bay. Duties shall include, but not necessarily limited to the mowing of grasses (with pick-up of any debris on grounds prior to mowing); edging; weed-eating/trimming; raking and disposal of leaves/debris; blowing; pruning shrubs; weed control; leaf control; maintaining written reports and/or logs as may be required; and responding to landscaping/grounds maintenance complaints/incidents/emergencies as they arise and investigate/remedy accordingly.

d. The Contractor shall provide the Village, with the bid, a copy of their occupational/business licenses. Contractor's certification as a Certified Landscape Professional (CLP) through the Professional Lawn Care Association of America (PLCAA) or similar certification is preferred. The Contractor warrants that the products and services supplied/performed to the Village shall conform in all respects to the standards set forth in the Occupational Safety and Health Act of 19780 (OSHA), as amended, and the failure to comply with this condition will be considered as a breach of contract. Any fines levied because of inadequacies to comply with these requirements shall be borne solely by the bidder responsible for same.

e. Contractor shall assign personnel that are to possess desirable qualities and knowledge to carry out specific tasks as delineated in the underlying RFP and to accomplish these specified services in such a manner as not to interfere with the normal conduct of the Village's business. Contractor shall hire personnel and train the personnel to ensure the Contractor can perform the services delineated in the RFP. Contractor shall instruct and require its personnel to perform the services specified herein in an orderly and efficient manner while enforcing the regulations of the Village with regards to safety and usability of facilities, and to accomplish these specified services in such a manner as not to interfere with the normal conduct of the Village's business. Contractor shall conduct and utilize personnel that have successfully passed a background investigation to include, but not limited to medical examination which includes drug screening; and free from any physical or emotional disorder handicap that would inhibit or preclude meeting the performance standards under this contract; all which shall be the financial responsibility of the Contractor. The Village may be provided access to personnel file(s) for review upon request of the Village to ensure that there is no violation of the Shannon Melendi Act by the employees/personnel of contractor. As required by state law, all personnel must be a Citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by an Alien Registration Receipt Card Form I-151.

f. Contractor shall not assign personnel to the Village if they have currently or have in the past been involved in military conduct resulting in dishonorable or undesirable discharge; any pattern of irresponsible behavior, including but not limited to unreasonable driving or a problem employment record; or any criminal conviction (felony and misdemeanor). The Village reserves the right to request the reassignment of Contractor's personnel for any reason, at anytime during this contract term. The Village has a zero tolerance policy towards nonperformance of contracts; the use of alcohol, drugs or non-prescription medications which effect job performance; inability to communicate (both verbally and in writing); theft; and unprofessional conduct. Contractor's personnel are not to be accompanied in their work area or performance of their duties as delineated in the RFQ by acquaintances, family members or other persons.

g. The Contractor is required to provide training to all of its personnel assigned to provide services under the RFQ, including on-site training as may be necessary, in order that the Village be assured said personnel are capable of assuming the responsibilities of respective assignments. The costs of any and all training shall be considered as a part of the Contractor's operational expenses. Records of training shall be maintained in the respective Contractor personnel files as to those persons assigned to provide services to the Village.

h. Contractor shall provide a maintenance supervisor or lead person to have supervisory responsibility over all of the Contractor's personnel on duties for respective assignment. The Contractor shall designate a person the directly handled any situations which may arise regarding required maintenance and/or the performance of same.

i. Reserved.

j. The Village parks are open to the public between the hours of 7:00 a.m. to 7:00 p.m., or sunrise and sunset, which ever is earlier. As such all services by Contractor are to be conducted while the parks are open, or at a minimum 30 minutes before sundown' Monday through Friday. Work performed at any other hours will require prior written approval from the Village Manager or appointed designee.

k. Uniforms/Equipment

- i. Contractor is responsible for the appearance of all Contractor's personnel. It is the Village's understanding that Contractor has a uniform and grooming policy which requires all of Contractor's personnel to be well groomed and neatly uniformed while on-duty. Contractor advises that the uniforms supplied by Contractor shall include Contractor's name to easily identify Contractor's personnel assigned under the RFP. Contractor advises that all its personnel are required to wear protective eyewear and/or face guards to protect themselves from injury while performing services at Village parks.
- ii. Contractor in bidding under the RFP understood as services are provided at the Village's public parks, and as the Village provided standards under the RFP as to the services sought, the Contractor and its personnel shall adhere to the standards delineated in the RFP. The Contractor shall not permit the use of any unauthorized equipment such as chemical

- agents, concealed weapons/firearms, personal radios or other items not specifically delineated and authorized under the RFP and scope of services. Contractor and assigned personnel of Contractor shall adhere to all OSHA and state safety regulations.
- iii. All equipment used by the Contractor is also to be kept clean, well-maintained and in safe operating conditions at all times; free from defects or wear which may constitute a hazard to any persons on Village property. The Contractor shall provide the Village a complete inventory of all Contractor owned landscape/grounds maintenance equipment to be utilized under the RFP proposal, that has been accepted. All equipment to be utilized must be aesthetically appropriate, be reliable, and utilized in a safe manner. The Village shall immediately notify Contractor of any equipment that is perceived to be defective, inappropriate, unreliable or unsafe. That equipment will not be utilized in Village parks. Village designated person may periodically inspect the sharpness of mower blades on equipment to be utilized in the Village Parks. Contractor agrees to cooperate accordingly an schedule sharpening upon Village request.

l. Facilities. Village currently has jurisdiction over five (5) parks and request scheduled landscape/grounds maintenance services at each with frequencies as designated by the Village. Said landscape/grounds maintenance services incorporates all areas of the park excluding designated areas noted below:

- i. Coral Reef Park: 7895 SW 152 Street, Palmetto Bay; total acreage = 53  
Approximate acreage to be maintained = 35  
(20 acres Common Area; 15 acres Athletic Fields)
- Excludes trimming of any shrubbery within the Ken Robinson Meditation Garden
  - Excludes any areas within the Pineland Preserve
  - Excludes three (3) athletic fields unless authorized under optional services
- ii. Palmetto Bay Park: 17535 SW 95 Avenue, Palmetto Bay; total acreage = 25  
Approximate acreage to be maintained = 15
- excludes six (6) ball fields (within fence lines) unless authorized under optional services
- iii. Perrine Wayside Park: 16425 South Dixie Highway; total acreage = 2.5  
Approximate acreage to be maintained = 2.5
- exclusions: none
- iv. Ludovici Park: 17641 Old Cutler Road, Palmetto Bay; total acreage = 2.64  
Approximate acreage to be maintained = <1
- excludes butterfly garden areas
  - excludes bayside property of National Parks Service
  - excludes abutting Palmetto Bay Center property
- v. Thalatta Estate: 17301 Old Cutler Road, Palmetto Bay; total acreage = 4.5  
Approximate acreage to be maintained = 3
- excludes trimming of all trees and shrubbery..

m. Technical Specifications

i. Mowing

- Mowing shall be performed in a manner that ensures a smooth surface appearance without scalping or leaving any missed uncut grass. All liter, debris, branches, sticks and foreign objects shall be removed before mowing to avoid shredding and damage by propelled rocks, cans or other materials. Mowing wet grass shall be avoided when possible to prevent turf damage. Grass clippings or debris caused by mowing will be removed from all areas immediately. Any and all grass clippings accumulated on freshly cut grass areas following mowing shall be vacuumed or raked up as a part of the mowing task.
- The cutting height shall be a minimum of 2 ½ " to a maximum of 3" above soil level

unless otherwise directed by Village (e.g. Thalatta). All equipment shall be cleaned before and after each use with water at a high pressure as to not allow cross pollination of seeds. Mower blades shall be kept sharp so that the cut grass edge is clean and not torn or ragged.

- Mowing shall be done carefully so as not to bark trees or shrubs, intrude into ground cover beds, damage sodded berms, or cause damage to sprinkler heads, valves, manifolds, irrigation times, curbs or other facilities and/or amenities. Should any of the above listed damage occur, the Contractor will be held financially responsible for the replacement or repair. Vehicular damage of any type will be the responsibility of the Contractor for repair or replacement.
- Rotary mowers will be used on St. Augustine grass. Reel mowers or rotary mowers specially designed to cut Bermuda grasses shall be used on Bermuda grass. All mowing shall be done with finish mowers.

ii. Weed-Eating

- Weed-eating shall be performed during, or immediately following mowing, and may be accomplished by hand, hand powered shears or rotary nylon 'fish line' cutting machines. Weed-eating should leave grass at the same height as the mowed turf. Trimmings from weed-eating must be removed from around all obstacles in the turf such as posts, trees, walls and fences. Particular attention will be given to trimming around sprinkler heads and other irrigation system fixtures to assure their proper operation.

iii. Edging

- The Contractor shall trim and properly edge all shrubs and flower beds as well as tree rings, curbs, walks, underneath/around benches, lighting or other structures. This mechanical edging (vertical trimming) shall be done during or immediately following mowing to produce a neat vertical and uniform line. Contractor shall exercise care in edging tree rings and flowerbeds in order to protect roots/plants.
- Dirt and debris produced by edging or trimming will be removed completely from the site. Landscape lighting shall be wiped off or vacuumed as needed to prevent accumulation of clippings and dead insects. Damage to property or existing vegetation caused by improper trimming or edging shall be repaired within 48 hours of the occurrence at the Contractor's expense.

iv. Weed Control

- Weeds are to be manually removed from shrubs, hedges, ground cover and/or flower beds and tree rings during each frequency. Weeds are also to be removed from walkways, pavers, curbs, expansion joints and along fence lines.

v. Shrub/Hedge Trimming

- All trimming will be accomplished in accordance with standard practices using mechanical hedge trimmers. Machetes will not be permitted for any tasks/operation. Shrub and hedge trimming shall be done at a frequency of once per month.
- Hedges shall be maintained in a geometric form and may be sheared by manual or mechanical hedge shears to appropriate shape or shapes specifically requested by the Village. All cuttings and clippings shall be removed and disposed of off site by the Contractor, the same day trimming/hedging was performed. Upon request of the Village, invoices for dump tickets or other proof that vegetation and other debris has been properly disposed of shall be supplied by the Contractor.
- Contractor shall exercise care of complying with DOT standards with regards to the trimming of shrubs and/or hedges adjacent to roadway surfaces; e.g., maximum height, etc.
- Ground cover shall also be selectively cut back to encourage lateral growth, etc, at the collective agreement of both Contractor and Village.

vi. Litter/Debris/Leaf Control

- Litter removal from all locations shall be done for all areas maintained by the contractor during each frequency visit, including grass areas, plant beds, etc;

specifically removing paper, glass, trash, downed fronds/limbs or any undesirable material or debris.

- During each frequency visit, all accumulation of leaves from any and all areas shall be either vacuumed up or raked and bagged for proper disposal by Contractor

vii. Frequency of Services:

- Coral Reef Park; Palmetto Bay Park; Ludovici Park:  
Mowing/Weed-eating/Edging/Weed Control/Litter Control:
  - o April 1<sup>st</sup> through September 30<sup>th</sup> = once every 10 days
  - o October 1<sup>st</sup> through March 31<sup>st</sup> = once every 14 days
- Perrine Wayside Dog Park:  
Mowing/Weed-eating/Edging/Weed Control/Litter Control:
  - o 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month; schedule to be provided via work orders
- Thalatta Estate:  
Mowing/Weed-eating/Edging/Weed Control/Litter Control:
  - o March 1<sup>st</sup> through October 31<sup>st</sup> = once every 7 days on day-of-week specified by Village
  - o November 1<sup>st</sup> through February 28<sup>th</sup> = once every 14 days on  
Work order shall issue for necessary work relating to landscaping services required.

n. The Provisions of the underlying RFP are incorporated by reference and attached hereto as a part of this Contract. If a conflict between the provisions of this agreement and any attachment, the provisions of this agreement shall take precedent over any attachment.

3. Optional Tasks/Bid: The Contractor may also be requested to perform optional work over and above the annually contracted landscape/grounds maintenance tasks described herein, at pre-determined prices as per RFP-2013-PR-002 or as may be negotiated; as follows, and a work order to issue:

- a) Stump-Grinding: Stumps shall be grind down to a level a minimum six-inches below the level of existing grounds; debris removed and filled with soil. Bid is to be based per inch ref diameter of stump.
- b) Mowing of Athletic Fields at Coral Reef Park (3): These Bermuda fields shall be mowed with frequencies as determined by the Village; e.g., once a week from October 15 through April 15 and twice per week during the growing season of April 16 through October 14, for a total of 80 cuts per year. Mowing must be accomplished with a reel type mower, or rotary mowers also designed for Bermuda fields, and cut at a height between 3/4" to 1" above soil level, unless otherwise directed by Village. Mowers shall be cleaned prior to and after mowings, and maintained/sharpened accordingly.
- c) Emergency Post-Storm Clean-up of Debris: In the event the Village requires the services of the Contractor to assist in a post-storm clean-up of Village parks, the Contractor shall provide immediate assistance upon request.
- d) Contractor shall provide additional services to the Village as determined by the Village Manager or his designee and that are mutually agreeable by both parties.

3. Pricing/Cost of Services: The Village's costs for specified services shall be pursuant to those enumerated on the attached Exhibit 'B' subsequent to prices offered by the Proposer in RFP #2013-PR-002 and as approved by the Village Council via Resolution No. \_\_\_\_\_; and may not be increased or in any way revised during the term of this agreement unless with the express written approval of both parties. As Contractor is an independent vendor, the pricing is as provided in the RFP response and no cost-of-living, consumer price index or the like shall be applied in an attempt to increase costs upon the start of a new contract year or any other time. Supervisory personnel, as assigned by the Village, shall inspect each facility

following services to confirm that all required tasks have been completed. Should any task be found to be incomplete, the Contractor shall be notified and given 24-hours to rectify. Should the Contractor fail to respond, the specific dollar amount designated for the subject tasks shall be deducted from the total invoiced amount; and processed accordingly.

Upon completion of scheduled landscape/grounds maintenance services, the Contractor shall forward an invoice for payment to the Village. Assigned Village supervisory personnel shall inspect each facility following scheduled frequency, and should any task be found to be incomplete, the Contractor shall be notified and given 24-hours to rectify. Should the Contractor fail to respond, the specific dollar amount designated for the subject task(s) shall be deducted from the total invoiced amount, and processed accordingly. Upon receipt of said invoice, the Village shall remit payment within a thirty (30) day period.

4. Term/Renewal.

a. Term. This Agreement shall become effective upon execution by both parties and shall continue for a period of three years, unless earlier terminated the provisions of this Agreement.

b. Renewal. The Village shall have the option to renew this Agreement upon the same terms and conditions for up to two (2) additional one (1) year extensions. (the "Option"). The Option may be exercised at the sole discretion of the Village Manager. Such extension shall be effective upon written notice from the Village Manager to the Contractor/Proposer no later than 30 days prior to the date of termination of the Term or any renewal term.

5. Termination.

The occurrence of any of the following shall cause this Agreement to be terminated by the Village Manager, or his designee, upon the terms and conditions also set forth below: The Village Manager shall make the final decision on behalf of the Village as to the Contractor's compliance with the terms of the Agreement, quality of services, and termination. The Village and/or Village Manager shall have no liability to the Contractor for future profits or losses in the event of termination. The rights and remedies of the Village Manager 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.

a. Automatic Terminations:

- i. Institution of proceedings in voluntary bankruptcy or reorganization by the Contractor.
- ii. Institution of proceedings in voluntary bankruptcy against the Contractor if such proceedings continue for a period of ninety (90) days.
- iii. Assignment by Contractor for the benefit of creditors.
- iv. Abandonment or discontinuation of operations for more than a 24 hour period without prior written approval from the Village.
- v. The discovery of any misstatement in the Contractor proposal leading to award of this Agreement, which in the determination of the Village significantly affects the Contractor's qualifications to perform under the Agreement.
- vi. Unapproved change of ownership interest in Contractor and/or failure to submit the ownership list within 24 hours upon the request of the Village.
- vii. Failure to cease any activity which may cause limitation of Village's use of the Park.
- viii. A material default of this agreement, relating to the safety and security of the public at-large and of Village personnel including but not limited to a violation of the Shannon Melendi Act, any

misdemeanor or felony activities, malfeasance, misfeasance, etc., shall result in immediate termination of the agreement.

b. **Termination after seven (7) calendar days** written notice by the Village either by posting on or at the agreement premises and by certified or registered mail to any known address of Contractor for doing any of the following:

i. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the seven (7) calendar day period from receipt of written notice.

Consistent with subsection (h) below, for termination under this subsection, the Contractor must remove all items and quit the premises within seven (7) calendar days.

c. **Termination after fourteen (14) days** from receipt of Agreement of written notice having either been posted on or at the Agreement or by certified or registered mail to the address of the Contractor:

i. Non-performance or improper performance of any requirement, covenant or term of this Agreement and failure of the Contractor to remedy such breach within fourteen (14) calendar day period from receipt of the written notice.

ii. A final determination in court of law in favor of the Village in litigation institute by the Contractor against the Village or brought by the Village against the Contractor.

d. Should the Agreement be terminated for "no fault," or for the convenience of the Village the Village shall solely be responsible to pay the Contractor for a prorated monetary amount relating to actual services provided.

e. **Termination of Agreement:** Contractor shall have the right upon thirty (30) calendar days from receipt of written notice to the Village by certified or registered mail to the address set forth in this Agreement to terminate this Agreement at any time after the occurrence of one or more of the following events:

i. Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Agreement for the purposes set forth herein, and the remaining in force of said injunction for a period of more than thirty (30) calendar days.

ii. A breach by the Village of any of the terms, covenants or conditions contained in this Agreement and the failure to the Village to remedy such breach for a period of ninety (90) calendar days after receipt of written notice sent by registered or certified mail, return receipt requested, from the Contractor, of the existence of such breach.

iii. Failure to pay Contractor as provided herein.

6. **Designated Representative.** The Contractor shall appoint, in writing, at the time of the execution of this Agreement, a representative that shall be the sole and exclusive contact with the Village Manager, or his designee.

#### 7. **Insurance.**

a. The Contractor shall furnish to the Village certificates of insurance evidencing the insurance coverages specified by this Section at the request of the Village Manager and required under the RFP. The required certificates of insurance shall name the type of policy provided and shall list the Village as an additional insured, refer specifically to this Agreement, and state that such insurance is as required by this Agreement.

b. The Contractor shall name the Village, and its respective officers, agents, servants and employees, as an additional insured on the Comprehensive General Liability Policy. This insurance policy shall state, after the above-referenced additional named insured that "this coverage is primary to all of the coverage the additional insured may have." Proof of insurance shall be provided at the time of the signing of this Agreement and incorporated herein as exists there forth in full.

c. Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the Village's Risk Manager prior to the commencement of this Agreement. The required insurance coverage is not to cease and is to remain in full force throughout the Term of this Agreement. All policies must be endorsed to provide Village with at least thirty (30) calendar days' notice of cancellation and/or restriction. If any of the insurance coverage will expire prior to the termination of this Agreement, copies of renewal policies shall be furnished at least sixty (60) calendar days' prior to the date of their expiration.

d. Any insurance required of Contractor pursuant to this Agreement must also be required by any sub-contractor of Contractor/Proposer in the same limits and with all requirements as provided herein, including naming the Village as an additional insured, if any work is subcontracted unless such subcontractor is covered by the protection afforded by the Contractor and provided proof of such coverage is provided to Village. The Contractor and any sub-contractor of Contractor shall maintain such policies during the term of this Agreement.

e. Financial Ratings must not be less than "A-VI." Insurance shall be in force until the obligations required to be fulfilled under the terms of the Contract are satisfied. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this contract, then in that event, the Contractor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract and extension there under is in effect.

f. Contractor shall name the Village (and others) as an additional insured on each of the policies required herein. Contractor shall provide Worker's Compensation Insurance..

g. Throughout the term of this Agreement, the Contractor agrees to maintain in force at their own expense insurance as follows:

Comprehensive General Liability insurance to cover liability for bodily injury and property damage. Exposures to be covered are premises, operations, completed operations, and contractual liability. Coverage must be written on an occurrence basis, with the following limits of liability

- A. Bodily Injury/Property Damage
  - 1. Each Occurrence \$1,000,000
  - 2. Annual Aggregate \$1,000,000
- B. Personal Injury
  - 1. Annual Aggregate \$1,000,000

Worker's Compensation Insurance shall be maintained during the life of this contract to comply with Florida statutory limits for all employees. Contractor shall provide Worker's Compensation insurance under Statutory limits, regardless of any state law exemption. The following limits must be maintained:

- A. Worker's Compensation Statutory
- B. Employer's Liability \$100,000 each accident  
\$500,000 Disease-policy limit

\$100,000 Disease-employee

If Contractor/Proposer claims to be exempt from this requirement, Contractor shall provide Village proof of such exemption along with a written request for Village to exempt Contractor, written on Contractor letterhead.

Comprehensive Auto Liability -- coverage shall include owned, hired and non-owned vehicles.

A. Bodily Injury and Property Damage combined single limit

1.	Each Occurrence	\$1,000,000
2.	Annual Aggregate	\$1,000,000

8. **Damage/Restoration/Conditions.**

a. Village does not expressly or impliedly warrant the condition of any facility. The Contractor waives the right to a claim for any damages Contractor its agents, employees, volunteers, guests or invitees from any use of Village or assigned property.

b. Village shall not be liable for any loss, damage or injury of any kind or character, including vandalism and theft, to any person or property (i) caused by any defect in the Contractor's services; (ii) caused by or arising from any act or omission of Contractor, or of any of its agents, employees, volunteers, guests or invitees; (iii) arising from any accident which may occur while Contractor is providing services; or (iv) arising from any other cause. Such actions would be considered a material breach of the Contractor and would provide for termination of services as provided under Section (5)(a)(viii).

c. The Contractor shall deliver the assigned property to the Village in the same condition as it is received.

9. **Liability.** The Contractor hereby assumes all financial, administrative and legal responsibility in connection with, related to, or arising out of the providing of landscape/grounds maintenance services on selected properties.. Nothing in this Agreement will be construed to affect in any way the Village's rights, privileges, and immunities, including the monetary limitations of liability set forth in Section 768.28 of the Florida Statutes (no liability for punitive damages or interest for the period before judgment; nor any claim or judgment which exceeds the sum of \$200,000 for one person, or \$300,000 total for all claims arising from the same incidence of occurrence). The provisions of this Section will survive the termination or expiration of this Agreement.

10. **Indemnification.** The Contractor does hereby agree to defend, indemnify and hold the Village, its Council, Village Manager, agents, employees, attorneys, successors and assigns harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the Contractor, its agents, employees, volunteers, guests and invitees in connection with this Agreement. The provisions of this Section shall expressly survive any expiration or termination of this Agreement.

11. **Assignment.** The Contractor/Proposer shall not assign, transfer, or otherwise dispose of this Agreement, or any portion thereof, or be subcontracted under this agreement unless Contractor obtains prior written consent from the Village. Approved Subcontractor shall be subject to each provision of this contract and Contractor shall be responsible and indemnify the Village for all Subcontractor' acts, errors or omissions. The Contractor shall not assign, transfer or pledge any interest in this contract without the prior written consent of the Village; provided, however, that claims for money by the Contractor from the Village under this contract may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 10 days by the Contractor to the Village.

12. **Non-Discrimination.** In the providing of security guard services, Contractor, its employees, agents, volunteers, and any parties under the direction or control of Contractor may not discriminate against any person on the basis

of sex, age, race, color, religion, ancestry, national origin, physical handicap or sexual orientation by refusing to furnish to such person any accommodation, facility, service or privilege offered to or enjoyed by the general public. In the performance of this Agreement, Contractor, its employees, agents, volunteers, and any parties under the control or direction of Contractor may not discriminate against any employee or applicant for employment on the basis of sex, age, race, color, religion, ancestry, national origin, physical handicap, or sexual orientation.

13. **Records/Village's Right to Inspect.**

a. Village has the right at all reasonable times to conduct whatever inspections of the facilities the Village deems reasonably necessary to determine if Contractor is complying with the terms and conditions of this Agreement. Except for emergency situations, Village inspections will not hinder or interfere with the normal operation of the Contractor's services.

b. All records, books, documents, papers and financial information (the "Records") that result from Contractor's services to the Village under this Agreement shall be available to the Village upon request. The Village shall have the right to retain copies of the documents at the Village's discretion and expense. All records shall be retained for three (3) years after completion or termination of this contract, or if litigation has ensued, through the termination of any said litigation, including any appeals.

14. **Third Parties.** Neither the Contractor nor Village intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third-party shall be entitled to assert a claim against either of them based upon this Agreement.

15. **Notices.** All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") and addressed as follows (or to any other address which either party may designate by Notice):

**To Contractor:**

Joseph A. Porter, President  
Tip Top Enterprises, Inc  
18101 SW 98 Ct  
Palmetto Bay, Florida 33157  
Phone: 305- 255-8198  
Fax:  
Email:

**To Village:**

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

**With a copy to:**

Village Attorneys  
Attention: Eve A. Boutsis, Esquire  
18001 Old Cutler Road, Suite 533  
Phone: (305) 235-9344  
Facsimile: (305) 235-9372

Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service.

16. **Supervision.** All Contractor activities relating to landscape/grounds maintenance services must be supervised by Contractor at all times.

17. **Entire Agreement/Modification/Amendment.**

a. This Agreement sets forth the entire agreement between Village and Contractor with respect to the subject matter of this Agreement. This agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties.

b. 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.

18. **Severability.** If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of the agreement between the parties.

19. **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the Laws of the State of Florida applicable to contracts made and to be performed entirely in the State. The parties agree that venue for and legal action instituted in connection with this Agreement shall be in Miami-Dade County Florida.

20. **Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

21. **Independent Contractor.** Nothing herein contained shall be deemed in any way to constitute Village or Contractor a partner of the other in its business or otherwise, or a joint venturer or a member of a joint enterprise with the other. For all intents and purposes hereunder, Contractor shall be considered an independent Contractor and not an employee or agent of the Village. The Contractor 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 Contractor.

22. **Attorney's Fees.** In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred including reasonable attorney's fees, the fees and expenses of any paralegals, law clerks and legal assistants and costs for services rendered in connection with any enforcement of this Agreement, including appellate proceedings and post judgment proceedings. Neither party shall be responsible for pre-judgment interest.

23. **Miscellaneous.**

a. It is further expressly understood and agreed that no real or personal property is leased to Contractor and that Contractor shall comply with each and all of the undertakings, provision, agreements, covenants, stipulations and conditions contained herein.

b. This Agreement may be signed in two or more counterparts, each of which constitutes the agreement of the parties and each of which will be treated as an original.

c. All terms, conditions, covenants and obligations of Village and Contractor hereunder shall survive the termination or expiration of this Agreement as necessary and appropriate for such parties to fulfill their obligations that accrued during the Term of this Agreement.

d. Contractor and its agents, employees or volunteers shall not be permitted to consume or otherwise possess any alcoholic beverages, tobacco products or other such products as determined by the Village, while providing services.

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

24. **Force Majeure:**

The performance of any act by the Village or Contractor hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any cause beyond the reasonable control of such party, provided however, the Village shall have the right to provide substitute service from third parties or Village forces and in such event the Village shall withhold payment due Contractor for such period of time. If the condition of force majeure exceeds a period of 14 days the Village may, at its option and discretion, cancel or renegotiate this Agreement.

25. **Waiver Of Jury Trial:**

The Village and the Contractor knowingly, irrevocably voluntarily and intentionally waive any right either may have to a trial by jury in State or Federal Court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract Documents or the performance of the Work there under.

26. **Contingency Fee and Code of Ethics.** Contractor warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and Contractor has not, and will not, pay a fee the amount of which is contingent upon the Village awarding this contract to Contractor. Contractor warrants that neither it, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this contract 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. A violation of this paragraph will result in the termination of the contract and forfeiture of funds paid, or to be paid, to the Contractor.

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

28. **Taxes.** During the period of this agreement, Contractor shall pay any and all taxes of whatever nature lawfully levied upon or assessed that arise out of the operations of the Contractor in connection with this agreement.

29. **RFP.** Contractor agrees to comply with any provisions of the RFP which are not in conflict with this Agreement, and to comply with and honor any written representations, clarifications and exceptions made by Contractor/Proposer during the RFP process.

30. **Compliance with Law.** Contractor shall comply with all applicable laws in the performance of its services hereunder, and represents that it possesses all required licenses and certifications to perform the services.

31. **Shannon Melendi Act.** The Contractor shall comply with the “Shannon Melendi Act of Miami-Dade County”, and as adopted by the Village, which act is incorporated by reference for the purpose of conducting background investigations for all coaches, managers, officials, umpires, members, employees, and/or volunteers or participants (“Volunteers”) associated with the operation of programs and/or activities for the Contractor. Required background investigations shall be completed by Contractor in accordance with the Melendi Act.

32. **Non-Waiver.** Any waiver or any breach of covenants herein contained to be kept and performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the Village from declaring a forfeiture for any succeeding breach, either of the same condition or covenants or otherwise.

33. **Public Entities Crime Statement.** person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes. for category two for a period of 36 months from the date of being placed on the convicted vendor list. Contractor affirms compliance with this requirement for the duration of the underlying agreement. If at any time during the contract period, Contractor is convicted of a public entity crime, the Contractor’s contract shall immediately terminate.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK].

IN WITNESS WHEREOF the parties hereto have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2013.

**Village:**

ATTEST:

Village Palmetto Bay, a Florida municipal corporation

By: \_\_\_\_\_  
Meighan J. Alexander, Village Clerk

By: \_\_\_\_\_  
Ron E. Williams, Village Manager

Approved as to form and legality for the use  
and benefit of the Village of Palmetto Bay  
only

**Contractor/Proposer:**

\_\_\_\_\_  
Village Attorney

By: \_\_\_\_\_  
Joseph A Porter, President  
Tip Top Enterprises Inc

[END OF DOCUMENT]

**Appendix A: Village Ordinance 08-10  
Shannon Melendi Act**

**RFP 2013 PR 002 Submittal from Tip Top Enterprises, Inc.**

**Attachment C**

**Village of Palmetto Bay Resolution \_\_\_\_\_**