

RESOLUTION NO. 2014-60

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO REQUEST FOR PROPOSAL NO. 1314-11-009 DISASTER DEBRIS MONITORING SERVICES; APPROVING THE SELECTION OF WITT O'BRIEN'S, LLC TO PROVIDE DISASTER DEBRIS MONITORING SERVICES TO THE VILLAGE; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE A CONTRACT AGREEMENT WITH WITT O'BRIEN'S, LLC; AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, in the event of a major disaster, the Village will need a firm that is capable of managing and monitoring debris removal contractors during post-storm recovery clean-up; and

WHEREAS, Federal Emergency Management Agency (FEMA) requires municipalities to have a Disaster Debris Management Plan and an agreement in place to manage and monitor the contracting for debris removal services; and

WHEREAS, on June 30th, 2014, the Village issued a Request for Proposals (RFP) No. 1314-11-009 for Disaster Debris Monitoring Services for the period of three (3) years; and

WHEREAS, the RFP was advertised in the *Miami Daily Business Review* on June 30th, 2014; and

WHEREAS, responses were received from two (2) firms; True North Emergency Management, LLC (Fort Worth, TX) and Witt O'Brien's, LLC (FT. Lauderdale, FL), which were opened on July 30, 2014 at 3:00 PM; and

WHEREAS, A selection committee was established to evaluate and make recommendations regarding RFP No. 1314-11-009 proposal submittals; and

WHEREAS, after a thorough analysis of the responses, the selection committee recommends that it is in the best interest of the Village to select Witt O'Brien's, LLC, the highest ranking firm in accordance with the attached evaluation tabulation for the purpose of providing monitoring and management services for post-storm debris removal/cleanup; and

WHEREAS, Witt O'Brien's, LLC submitted the most responsive and responsible proposals that detailed a comprehensive plan with exceptional references, licenses, procure superior qualifications, knowledge, and experience in the area of debris monitoring and management; and

WHEREAS, the selection committee recommends award to Witt O'Brien's, LLC; and

WHEREAS, the Administration is requesting authorization from the Village Council for the Village Manager to enter into the agreement (attached hereto as Exhibit "A") with Witt O'Brien's, LLC, the highest ranking firm that submitted the most responsive and responsible proposal for purpose of providing monitoring and management services for post-storm debris removal/cleanup in accordance with RFP No. 1314-11-009; and

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


Section 1. The Village Council hereby approves the Disaster Debris Monitoring Service agreement with Witt O'Brien's, LLC; attached hereto as Exhibit A pursuant to the terms and conditions provided in contract 1314-11-009 hereby authorizing the Village Manager and Village Attorney to execute all necessary documents.

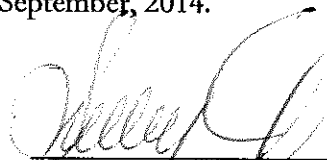
Section 2. The Village Manager is hereby authorized to execute the agreement on behalf of the Village, to execute any required documents in substantially the form attached hereto as Exhibit A, pursuant to the terms and conditions provided in the contract 1314-11-009 and to execute any extensions and/or amendments to the Agreement subject to the approval as to form and legality by the Village Attorney.

Section 3. This Resolution shall become effective immediately.

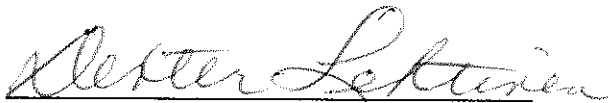
PASSED AND ADOPTED this 8th day of September, 2014.

Attest:


Meighan J. Alexander
Village Clerk


Shelley Stanczyk
Mayor

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


Dexter W. Lehtinen
Village Attorney

FINAL VOTE AT ADOPTION:

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

SECTION 9.0: Exhibits

Exhibit A

VILLAGE OF PALMETTO BAY

DISASTER DEBRIS MONITORING SERVICES AGREEMENT

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

WITNESSETH:

WHEREAS, the Village advertised a Request for Proposals ("RFP") on June 30th, 2014, and

WHEREAS, Vendor submitted a Proposal dated July 30th, 2014 in response to the Village's request, and

WHEREAS, at a meeting held on September 8th, 2014, the Village Council awarded the Vendor and agreed to enter into an Agreement with Vendor to perform the services described in the RFP and Vendor's Proposal submitted in response to the RFP ("Services"),

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

Article 1 Incorporation by Reference.

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

- (i) Specifications and Proposal Documents, Addenda's prepared by the Village for Disaster Debris Monitoring Services RFP No. 1314-11-009 (Exhibit 1).
- (ii) Proposal for the Village of Palmetto Bay prepared by Vendor dated July 30th, 2014 (Exhibit 2).

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

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

Article 2 Scope of Work

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

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

Article 3 Qualifications

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

Article 4 Payment and/or Fees

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

Invoices shall be submitted to the Village's authorized representative on a biweekly basis unless otherwise directed by the Village. All invoices must be submitted in the form of a hard copy. The invoice detail must consist of a tabular report listing all ticket information required by the Village. Invoice detail submittals will be checked against Village records. Village records are the basis of all payment approvals. Only one hundred percent (100%) accurate and complete invoices shall be forwarded by the Village authorized representative to the Village for payment.

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

Invoices, unless otherwise indicated, must show purchase order numbers and shall be submitted in DUPLICATE to the Village of Palmetto Bay, Public Works Department, 9495 S. W. 180 Street, Palmetto Bay, FL 33157. The Village has up to thirty (30) days to review, approve and pay all invoices after receipt.

Article 5 Reports

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

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

Article 6 Termination

A. Termination/Cancellation of Contract Without Cause

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

B. Termination Because of Default

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

Article 7 Hold Harmless and Indemnification of the Village

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

Article 8 Contract Term

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

Article 9 Audit and Inspection Rights

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

Article 10 Federal and State Tax

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

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

Article 11 Indemnification

Vendor shall indemnify and hold harmless the Village and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Village or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Vendor or its employees, agents, servants, partners, principals or sub-Vendors. Vendor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Village, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Vendor expressly understands and agrees that any insurance protection required by this Agreement or otherwise

provided by Vendor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Village or its officers, employees, agents and instrumentalities as herein provided. 1% of the contract amount shall represent the consideration to be provided for this indemnification. Nothing contained herein shall be deemed a waiver of sovereign immunity.

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

Article 12 Insurance

Contractor shall furnish to the Procurement Division, Certificates of Insurance that indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- Liability Insurance - One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury liability and property damage liability and shall contain minimum limits of Two Million Dollars (\$2,000,000.00) per aggregate - designating the Village as Additional Insured
- Workers Compensation - Statutory Limits
- Automobile Liability - One Million Dollars (\$1,000,000.00) per occurrence for all claims arising out of bodily injuries or death and property damages.
- Errors and Omissions or Vendor liability insurance - One Million Dollars (\$1,000,000.00)

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

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

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

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

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

Article 13 Modification/Amendment

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

Article 14 Severability

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

Article 15 Governing Law

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

Article 16 Waiver

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

Article 17 Notices/Authorized Representatives

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

Village:

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

Vendor:

Donald Costanzo, Senior Vice President
Witt O'Briens
2200 Eller Drive
Ft. Lauderdale, FL 33316

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

Article 18 Independent Vendor

Vendor is and shall remain an independent Vendor and is not an employee or agent of the Village. Services provided by Vendor shall be by employees of Vendor and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the Village. Vendor shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with Vendor. The rights granted to Vendor hereunder are nonexclusive, and the Village reserves the right to enter into agreements with other persons or Vendors to perform services including those hereunder.

Article 19 Assignment

The Vendor shall not assign, transfer, convey, sublet or otherwise dispose of this Contract, including any or all of its right, title or interest therein, or his or its power to execute such Contract to any person, company or corporation without prior written consent of the Village. The Vendor shall not assign, transfer or pledge any interest in this contract without the prior written consent of the Village; provided, however, that claims for money by the Vendor from the Village under this Contract may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 10 days by the Vendor to the Village. None of the work or services under this Contract shall be subcontracted unless the Vendor obtains prior written consent from the Village. Approved sub Vendors shall be subject to each provision of this Contract and the Vendor shall be responsible and indemnify the Village for all sub Vendors' acts, errors or omissions.

Article 20 Prohibition Against Contingent Fees

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

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

Article 21 Attorneys Fees

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

Article 22 Conflict of Interest

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

Article 23 Binding Effect

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

Article 24 Entire Agreement

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

Article 25 Captions and Paragraph Headings

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

Article 26 Joint Preparation

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. It is the parties' further intention that this Agreement be construed liberally to achieve its intent.

Article 27 Counterparts

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

Article 28 Exhibits are Inclusionary

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

Article 29 Jurisdiction And Venue

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

Article 30 Sovereign Immunity And Attorney's Fees.

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

Article 31 Permits, Licenses and Filing Fees

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

Article 32 Safety Provisions

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

Article 33 Public and Employee Safety

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

Article 34 Preservation of Village Property

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

Article 35 Immigration Act of 1986

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

Article 36 Vendor Non-Discrimination

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

Article 37 Accuracy of Specifications

The specifications for this project are believed by the Village to be accurate and to contain no affirmative misrepresentation or any concealment of fact. Vendors are cautioned to undertake an independent analysis of any test results in the specifications, as Village does not guaranty the accuracy of its interpretation of test results contained in the specifications package. In preparing its proposal, the Vendor and all sub-Vendors named in its proposal shall bear sole responsibility for proposal preparation errors resulting from any misstatements or omissions in the specifications that could easily have been ascertained by examining either the project site or accurate test data in the Village's possession. Although the effect of ambiguities or defects in the specifications will be as determined by law, any patent ambiguity or defect shall give rise to a duty of Vendor to inquire prior to proposal submittal. Failure to so inquire shall cause any such ambiguity or defect to be construed against the Vendor. An ambiguity or defect shall be considered patent if it is of such a nature that the Vendor, assuming reasonable skill, ability and diligence on its part, knew or should have known of the existence of the ambiguity or defect. Furthermore, failure of the Vendor or sub-Vendors to notify Village in writing of specification defects or ambiguities prior to proposal submittal shall waive any right to assert said defects or ambiguities subsequent to submittal of the proposal.

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

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

Article 38 Warranty Of Authority

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

Article 39 Miscellaneous Provision embarrassing

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

Article 40 Liquidated Damages

Should the Vendor fail to complete requirements set forth in this scope of work, the Village will suffer damage. Because damages will be difficult to ascertain, liquidated damages of \$ 1,500.00 per day will be deducted from the Contract sum for each regular work day the Contractor does not perform significant services. The Contractor will make every attempt to supply the awarded services within the time frame(s) requested. Liquidated damages are hereby fixed and agreed upon by the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by Village as a consequence of such delay, and both parties desiring to obviate any question or dispute concerning the amount of said damages and the cost and effect of the failure of Contractor to complete the services within the applicable Time for Performance.

Article 41 Waiver of Liens

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

Article 42 Independent Contractor

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Vendor is an independent contractor under this Agreement and not the Village's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Vendor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Vendor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Vendor, which policies of Vendor shall not conflict with Village, State, or United States policies, rules or regulations relating to the use of Vendor's funds provided for herein. The Vendor agrees that it is a separate and independent enterprise from the Village, that

it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Vendor and the Village and the Village will not be liable for any obligation incurred by Vendor, including but not limited to unpaid minimum wages and/or overtime premiums.

Continued on next page.

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

OWNER

Village of Palmetto Bay

ADDRESS

9705 E. Hibiscus Street
Palmetto Bay, FL 33157

BY _____

Ron E. Williams
Print Name

Village Manager
Title

ATTEST

Meighan J. Alexander
Village Clerk

APPROVED AS TO FORM BY

Dexter W. Lehtinen
Village Attorney

VENDOR

Witt O'Briens

ADDRESS

2200 Eller Drive
Ft. Lauderdale, FL 33316

BY _____

Donald Costanzo
Print Name

Senior Vice President
Title

Witness

Print Name