

**RESOLUTION NO. 06 - 11**

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO CONTRACTS; APPROVING THE SELECTION OF TIP TOP ENTERPRISES, INC. TO PROVIDE TREE MAINTENANCE SERVICES AT VILLAGE PARKS AND ALL MAINTENANCE SERVICES FOR PUBLIC RIGHT-OF-WAYS; APPROVING THE SELECTION OF SALMAN MAINTENANCE SERVICES TO PROVIDE GROUNDS MAINTENANCE SERVICES FOR VILLAGE PARKS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE A CONTRACT WITH THE CONTRACTORS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village as a matter of policy prefers the use of outsourced contractors for the provision of parks and public right-of-ways maintenance services; and

WHEREAS, pursuant to a bid notice, the Village had previously competitively selected and entered into a contract with Tip Top Enterprises to provide park maintenance service; and,

WHEREAS, the contract has expired, and the Village issued an updated Invitation to Bid, receiving bids from three contractors; and,

WHEREAS, after careful review of the bids, the Village has determined it is more cost-efficient to divide the workload among the two lowest bidders; and,

WHEREAS, the Village thereby selects Tip Top Enterprises and Salman Maintenance Services to provide parks and right-of-ways maintenance services for the Village as further detailed in the contract.

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

Section 1. Tip Top Enterprises, Inc. is hereby selected to provide tree and palm maintenance services for all Village parks and all maintenance services for the public right-of-ways.

Section 2. Salman Maintenance Services is hereby selected to provide grounds maintenance services for all Village parks.

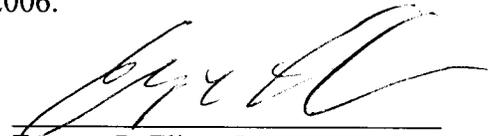
Section 3. The Village Manager is authorized to enter into a contract with each contractor in substantial form and content to the attached contracts.

Section 4. This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this 9th day of January, 2006.

Attest:

  
Meighan Pier  
Village Clerk

  
Eugene P. Flinn, Jr.  
Mayor

APPROVED AS TO FORM:

  
Eve A. Boutsis,  
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>YES</u>
Council Member Paul Neidhart	<u>YES</u>
Council Member John Breder	<u>YES</u>
Vice-Mayor Linda Robinson	<u>YES</u>
Mayor Eugene P. Flinn, Jr.	<u>YES</u>

Invitation to Bid  
 Bid. No. 2005-07  
**PARKS, MEDIANS, AND RIGHT-OF-WAYS MAINTENANCE SERVICES**

Tabulation

	Tip Top Enterprises	Salman Maintenance	Superior Landscaping
<b>Unit Fee Schedule for Parks Maintenance Services</b>			
Unit Fee for Mowing Services (per acre)	\$48.00	45.0000	62.0000
	\$58.00	45.0000	89.0000
Unit Fee for Fertilizing (per acre)-	\$225.00	150.0000	120.0000
	\$450.00	150.0000	132.0000
Unit Fee for Insect/Disease Spraying (per acre)	\$120.00	135.0000	97.0000
Unit Fee for Herbicide (per acre)	\$105.00	140.0000	90.0000
Unit Fee for Aeration (per acre)	\$50.00	65.0000	98.0000
Unit Fee for Mulching (per acre)	\$1,200.00	4,900.0000	40.0000
Unit Fee for Fertilizing Shrubs (per linear foot)	\$0.40	0.8500	0.2900
Unit Fee for Fertilizing Trees and Palms (per tree/palm)	\$2.80	1.9000	2.3800
Unit Fee for Insect/Disease Spraying Shrubs (per linear foot)	\$0.36	0.1400	0.4800
Unit Fee for Insect/Disease Spraying Trees and Palms (per tree/palm)	\$15.00	25.0000	28.0600
	\$30.00	25.0000	28.0600
Unit Fee for Clean-up of Palm Fronds (per palm)	\$12.00	15.0000	5.0000
Unit Fee for Tree Trimming & Pruning for Small Trees up to 8 ft. Tall (per tree)	\$10.00	20.0000	9.1500
Unit Fee for Tree Trimming & Pruning for Large Trees over 8 ft. Tall (per tree)	\$40.00	50.0000	225.0000
Unit Fee for Palm Trimming & Pruning (per palm)	\$15.00	25.0000	22.0000
Unit Fee for Shrubbery Trimming & Pruning (per linear foot)	\$0.75	0.9500	0.8500
<b>Unit Fee Schedule for Medians and Right-of-Ways Maintenance Services</b>			
Unit Fee for Mowing Services (per linear ft.)	\$0.024	0.2800	0.0280
Unit Fee for Fertilizing (per linear ft.)- If prices differ for the different types of	\$0.025	0.8500	0.2800
Unit Fee for Insect/Disease Spraying (per linear ft.)	\$0.36	0.8500	0.4900
Unit Fee for Aeration (per linear ft.)	\$0.20	1.0000	0.3500
Unit Fee for Mulching (per linear ft.)	\$0.32	0.6000	0.5500
Hourly Labor Rate I - Straight Time	\$24.00	22.0000	25.0000
Hourly Labor Rate II - Overtime	\$30.00	40.0000	48.0000
Response Time:	Immediate	30 minutes	3 hours

## **CONTRACT BETWEEN THE VILLAGE OF PALMETTO BAY AND SALMAN MAINTENANCE SERVICES**

This contract is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2005 between the **Village of Palmetto Bay**, a Florida municipal corporation, located at 8950 SW 152nd Street, Palmetto Bay, Florida 33157 ("Village") and **Salman Maintenance Services**, a corporation, located at 14085 SW 139 Court, Miami, Florida 33186 ("Contractor").

### **WITNESSETH:**

WHEREAS, Village desires to engage and retain the services of the contractor to perform the work described in this contract and the Contractor desires to accept the engagement.

NOW THEREFORE, in consideration of the sum and mutual promises and covenants contained in this contract, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by both parties, the parties agree as follows.

1. **WHEREAS CLAUSES**

1.1. The above whereas clause is incorporated and made a part of this contract.

2. **STATEMENT OF WORK**

2.1 All services identified in this Statement of Work, including the additional services, shall be provided only when required and explicitly requested by the Village Manager or his designee through the issuance of a detailed work order. Such work order shall include a detailed scope of services, costs and work location. The Village shall provide individual work orders for each park facility. Unless specifically indicated on the work order, the contractor shall not assume the scope of services included in a work order shall apply to all Village-managed park facilities. The contractor shall not commence or undertake any work or service until a work order has been approved by the Village Manager or designee. Additionally, all work performed pursuant to an approved work order, shall be approved by the Park Manager prior to the remittance of an invoice. Approval from the Park Manager shall be a requisite for payment.

2.2 **Basic Services-** The work shall include, but may not be limited to the furnishing of all labor, materials, tools, equipment, machinery and services including, mowing, edging, sweeping of mowing debris, weeding, herbicide applications, insect control, aerating, and fertilizing for the proper maintenance of the park lawns and fields and the public right-of-ways lawn areas. The Contractor shall maintain the areas covered by this contract at the frequency rate prescribed by the Village Manager or designee. This contract does not cover tree trimming, tree plating, tree fertilizing or tree mulching unless specifically requested by the Village Manager or designee in accordance with the procedure stated in Section 2.1. In the event such services are requested, the Contractor must honor the prices specified on the bid form pursuant to Bid No. 2005-07.

2.3 **Additional Miscellaneous Services-** In addition to the services specified herein, the Village may from time to time require other services related to grounds maintenance and landscaping from the contractor. Such services include but are not limited to litter, trash and

debris removal (including, but not limited to, small items such as paper, cans, bottles, and dead animals), landscape lighting maintenance and irrigation system installation and/or repair, including, but not limited to, adjusting of timers and maintaining photo cell, street planting, and other miscellaneous ground services. In the event the Village shall require additional services not specifically included in this contract, the contractor shall provide a cost estimate in advance which the village will accept or deny at its sole discretion.

2.4 Emergency Services- In the event of a natural disaster or other emergency situation, the Village shall have the right to mobilize the Contractor and the Contractor shall provide the necessary services to the Village upon the Village's request. To that extent, the Contractor shall be responsible for providing to the Village Manager or designee on an annual basis and no later than June 1<sup>st</sup> a rate sheet detailing the Contractor's reasonable rates for hurricane-related work including but not limited to vehicle, machinery, supplies, equipment, materials, and labor costs. The Village shall accept or deny these rates at its sole discretion and seek the services from another qualified contractor if so desired.

2.5 Schedule of Costs- Costs for the maintenance services to be provided shall be billed in accordance with the following schedule:

<b>Unit Fee Schedule for Parks Maintenance Services</b>	
<b>Unit Fee for Mowing Services (per acre)</b> (Including labor, supplies, materials & equipment)	45.0000
<b>Unit Fee for Fertilizing (per acre)- If prices differ for the different types of fertilizer, please attach a sheet indicated the per acre feet for each type of fertilizer</b> (Including labor, supplies, materials & equipment)	150.0000
<b>Unit Fee for Insect/Disease Spraying (per acre)</b> (Including labor, supplies, materials & equipment)	135.0000
<b>Unit Fee for Herbicide (per acre)</b> (Including labor, supplies, materials & equipment)	140.0000
<b>Unit Fee for Aeration (per acre)</b> (Including labor, supplies, materials & equipment)	65.0000
<b>Unit Fee for Mulching (per acre)</b> (Including labor, supplies, materials & equipment)	4,900.0000
<b>Unit Fee for Fertilizing Shrubs (per linear foot)</b> (Including labor, supplies, materials & equipment)	0.8500
<b>Unit Fee for Fertilizing Trees and Palms (per tree/palm)</b> (Including labor, supplies, materials & equipment)	1.9000
<b>Unit Fee for Insect/Disease Spraying Shrubs (per linear foot)</b> (Including labor, supplies, materials & equipment)	0.1400
<b>Unit Fee for Insect/Disease Spraying Trees and Palms (per tree/palm)</b> (Including labor, supplies, materials & equipment)	25.0000
<b>Unit Fee for Clean-up of Palm Fronds (per palm)</b> (Including labor, supplies, materials & equipment)	15.0000
<b>Unit Fee for Tree Trimming &amp; Pruning for Small Trees up to 8 ft. Tall (per tree)</b> (Including labor, supplies, materials & equipment)	20.0000
<b>Unit Fee for Tree Trimming &amp; Pruning for Large Trees over 8 ft. Tall (per tree)</b> (Including labor, supplies, materials & equipment)	50.0000
<b>Unit Fee for Palm Trimming &amp; Pruning (per palm)</b> (Including labor, supplies, materials & equipment)	25.0000
<b>Unit Fee for Shrubbery Trimming &amp; Pruning (per linear foot)</b> (Including labor, supplies, materials & equipment)	0.9500

**Unit Fee Schedule for Medians and Right-of-Ways Maintenance Services**

<b>Unit Fee for Mowing Services (per linear ft.)</b> (Including labor, supplies, materials & equipment)	0.2800
<b>Unit Fee for Fertilizing (per linear ft.)- If prices differ for the different types of fertilizer, please attach a sheet indicated the per linear foot for each type of fertilizer</b> (Including labor, supplies, materials & equipment)	0.8500
<b>Unit Fee for Insect/Disease Spraying (per linear ft.)</b> (Including labor, supplies, materials & equipment)	0.8500
<b>Unit Fee for Aeration (per linear ft.)</b> (Including labor, supplies, materials & equipment)	1.0000
<b>Unit Fee for Mulching (per linear ft.)</b> (Including labor, supplies, materials & equipment)	0.6000
<b>Hourly Labor Rate I – Straight Time</b> (Monday through Friday, from 8:00 a.m. to 5:00 p.m. including labor and travel)	22.0000
<b>Hourly Labor Rate II – Overtime</b> (Monday through Friday, before 8:00 a.m. or after 5:00 p.m. on weekends or holidays, including labor and travel)	40.0000
<b>Response Time:</b>	30 minutes

**3. CONTRACTOR'S RESPONSIBILITIES**

3.1 The contractor will be expected to:

1 Maintain adequate manpower and supplies, and be prepared and available to respond to emergency situations at all times (24 hour, 7 days per week)

2 Clear roadways or access areas in the event of an Act of God, auto accident or other emergency event, as determined by the Village

3 Contractor must be on 24 hour call, at all times, for emergency purposes

4 Coordinate maintenance duties related to special events as required by Village staff, including shutting down of the irrigation pumps.

5 Ensure maintenance of traffic conforms to all local, state, and federal transportation regulations.

6 Adhere to local, state, and Federal Environmental Protection Agency requirements for proper waste disposal

7 Contractor's principal shall be available to attend meetings with Village officials within 24 hours of notification

8 All of the contractor's employees must wear a uniform that identifies the company name at all times

9 Submit a hurricane mobilization and preparedness plan at the beginning of the hurricane season specifically relating to manpower, equipment, and scheduling to the Village for approval.

10 Contractor shall be solely responsible for any damage inflicted upon the underground utilities and any other infrastructure while working. To that extent, the Contractor shall be responsible for the review and interpretation of survey documents prior to the beginning of any landscaping work that may result in the damage of underground utilities and other infrastructure.

4. COMMENCEMENT DATE AND TERM

4.1 The term shall commence upon the date of this contract and expire upon the earlier of \_\_\_\_\_ or the acceptance of full performance by the Village.

4.2 Work shall commence upon the issuance of a purchase order by the Village. Work shall proceed in substantial compliance with the schedule of services contained in the statement of work. Acceptance of work by the Village shall be evidenced by a notice of completion or by a notice of acceptance.

5. PAYMENT

5.1 The Village shall pay the contractor the contract amount(s) provided in Section 2.5. The amount shall be either a fixed price or shall be based on agreed charges for time and materials for an amount not to exceed the stated fixed amount. The amount to be paid shall be stated in the task order authorizing the work.

5.2 The Village shall not be liable to pay, and shall not pay, charges for extra work, delay charges, or additional work, unless the Village's contract officer specifically authorizes the extra or additional work, in a written task order before the commencement of the work.

6. TRANSFER AND ASSIGNMENT

6.1 None of the 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.

6.2 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.

7. MODIFICATIONS – CHANGE ORDERS

7.1 The Village may, at any time, by written change order make changes to the scope of work, and to the means and methods of performing the work. The Village may order temporary stoppage of the work or delay in performance that does not alter the scope of work. Changes, including any increase or decrease in the amount of the Contractor's compensation, shall be incorporated in written amendments to this contract.

7.2 If any change causes an increase or decrease in the price charged, the maximum amount of the contract, or the time required for performance of any part of the work under this contract, or otherwise affects the conditions of this contract, the Village shall make an equitable adjustment to the maximum amount, the price(s), the delivery schedule, or other affected terms, and shall modify the contract with a written change order.

## 8. TERMINATION FOR DEFAULT

8.1 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 10 days from the date of receipt of written notice of breach from the party seeking termination.

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

8.3 Contractor may terminate this contract prior to the expiration of the initial term or any subsequent renewal term upon not less than 10-days prior written notice to the Village in the event that Contractor is unable to complete the services identified in paragraph 2.1 due to causes beyond Contractor's control.

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

8.5 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.

8.6 Should Contractor provide the Village with written notice of cancellation of contract, Contractor will be required to refund a pro-rata share of the compensation identified in paragraph 5.

## 9. TERMINATION FOR DELAY.

9.1 If the project is suspended or the Contractor's services are delayed by the Village for more than 30 consecutive days, the Contractor may terminate this contract by giving not less than 10 days written notice.

9.2 The liability of the Village upon termination by the Contractor for suspension or delay of the project shall be for the value of services performed pursuant to the schedule contained in the statement of work rendered by Contractor to the time of termination by Contractor. The Village shall not be liable for future profits or losses.

## 10. TERMINATION FOR CONVENIENCE

10.1 The Village may terminate this contract for convenience at any time by giving 10 days notice in writing to the Contractor. The Contractor will be paid for the value of services performed pursuant to the schedule contained in the statement of work, up to and including the termination date. Contractor will be permitted to complete on-going investigations and shall be paid for all satisfactory work completed. The Village shall not be liable for future profits or losses.

10.2 In the event that the Village improperly terminates the contract for default under paragraph 7, the termination shall be deemed a termination for convenience under this paragraph.

## 11. TERMINATION FOR LACK OF FUNDS

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

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

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

## 12. NO DAMAGES FOR DELAY CLAUSE

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

## 13. LIQUIDATED DAMAGES

It is mutually agreed that time is of the essence in the performance of this contract. Should the Contractor fail to complete the work within the specified time, or any authorized extension thereof, there shall be deducted from the compensation otherwise to be paid to the Contractor, and the Village will retain the amount of, \$100.00 per calendar day as fixed, agreed, and liquidated damages for each calendar day elapsing beyond the specified time for completion or any authorized extension of time. The sum shall represent the actual damages which the Village will have sustained by failure of the Contractor to complete the work within the specified time; it being further agreed that the sum is not a penalty, but is the stipulated amount of damage sustained by the Village in the event of a default by the Contractor.

14. RIGHT TO WITHHOLD

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 the Contractor, of any sums as the Village may deem sufficient to protect it against loss, or to ensure payment of claims, and, at its option, the Village may apply the sums in the manner as the Village may deem proper to secure itself or to satisfy the claims. The Village will provide Contractor with 10 days prior written notice in the event that it elects to exercise its right to withhold under this paragraph.

15. INTEREST PAYMENTS DUE TO LATE PAYMENT

15.1 The Village shall make payment to Contractor within 30 days of receipt of the original written invoice and sufficient backup documentation and acceptance of the work by the Village. Interest shall accrue on unpaid invoices as provided by Florida Statutes Section 218.74.

15.2 Contractor shall not be entitled to any carrying charges or finance fees due to late payment by the Village.

16. LIENS

The Contractor, Subcontractors, suppliers and laborers are prohibited from placing a lien on Village's property.

17. INDEPENDENT CONTRACTOR

The Contractor is furnishing its services as an independent Contractor and nothing in this contract shall create any association, partnership or joint venture between the parties, or any employer-employee relationships.

18. INSURANCE AND INDEMNIFICATION

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

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

18.3 The Contractor shall maintain during the term of this contract the following insurance:

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

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

B. Comprehensive general liability insurance with broad form endorsement, including automobile liability, completed operations and products liability, contractual liability, severability of interest with cross liability provision, and personal injury and property damage liability with limits of \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The policy or policies shall name Village as additional insured and shall reflect the hold harmless provision contained herein.

C. Workers' Compensation Insurance in compliance with Chapter 440, Florida Statutes, as presently written or hereafter amended.

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

E. All of the insurance is to be placed with Best rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida.

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

18.5 Compliance with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this contract.

## 19. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the Contractor agrees as follows:

A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation or national origin.

B. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation or national origin. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

C. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the contracting officer that explain this clause.

D. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin.

E. The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining contract or other contract or understanding, the notice to be provided by the contracting officer advising the labor union or workers' representatives of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

F. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

G. The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with the rules, regulations, and orders.

H. In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Governmental contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

I. The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each Subcontractor or vendor. The Contractor shall take the action with respect to any subcontract or purchase orders as the Department of Labor may direct as a means of enforcing the provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of the direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

## 20. MEDIATION

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

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

20.3 Contracts reached in mediation shall be enforceable as settlement contracts in the circuit court for the 11<sup>th</sup> judicial circuit for the State of Florida.

## 21. SOVEREIGN IMMUNITY AND ATTORNEY'S FEES

The Village does not waive sovereign immunity for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

22. NOTICES

22.1 All notices given or required under this contract shall be deemed sufficient if sent by certified mail, return receipt requested, to the addresses of the Contractor and to the Village specified in this contract, unless either party shall specify to the other party a different address for the giving of the notices. For the purposes of this contract, notice shall be provided to the as follows:

To the Village: Village of Palmetto Bay  
Village Manager  
8950 SW 152 Street  
Palmetto Bay, FL 33157  
Telephone: 305-259-1234

To Contractor: Edward Mesis  
Salman Maintenance Services  
14085 SW 139 Court  
Miami, FL 33186  
Telephone: (305) 255-2400

23. EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS

23.1 The Village, or any of their duly authorized representatives, shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's books, ledgers, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

23.2 The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as subparagraph 24.1 above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

23.3 The right to access and examination of records in subparagraph 24.1 shall continue until disposition of any mediation, claims, litigation or appeals.

24. OWNERSHIP OF DOCUMENTS

All documents, reports, plans, specifications or other records, including electronic records, resulting from the professional services rendered by the Contractor under this contract shall be deemed the property of the Village and the Village shall have all rights incident to this ownership. The Contractor acknowledges that all documents prepared under this contract shall be public records, and shall be subject to public inspection and copying, as provided by Florida Statutes chapter 119. Upon conclusion of this contract and any extensions, all documents shall be delivered by the Contractor to the Village. The Contractor shall have the right to retain copies of the documents at the Contractor's expense.

25. SEVERABILITY

Should any paragraph or any part of any paragraph of this contract be rendered void, invalid or unenforceable by any court of law, for any reason, the determination shall not render void, invalid or unenforceable any other section or part of any section of this contract.

26. ENTIRE CONTRACT

The contract, when signed by all of the parties, constitutes the full and complete understanding and contract of all parties and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This contract and the incorporated attachments constitute the entire understanding between the parties and integrates by its terms all previous contracts or understandings, oral or written, between the parties. In the event of any conflict, the terms of this contract will govern over the provisions of any incorporated documents.

27. CONTINGENCY FEE AND CODE OF ETHICS WARRANTY

27.1 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.

27.2 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.

27.3 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.

28. 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 contract.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized officers, have executed this contract as of the date first above written.

The Village of Palmetto Bay

Contractor

By: \_\_\_\_\_  
Charles D. Scurr,  
Village Manager

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

VILLAGE CLERK

By: \_\_\_\_\_  
Meighan J. Pier

Approved as to form:

By: \_\_\_\_\_  
Eve Boutsis, Village Attorney  
The Village of Palmetto Bay

**CONTRACT BETWEEN THE VILLAGE OF PALMETTO BAY AND TIP TOP ENTERPRISES, INC.**

This contract is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2003 between the **Village of Palmetto Bay**, a Florida municipal corporation, located at 8950 SW 152nd Street, Palmetto Bay, Florida 33157 ("Village") and **Tip Top Enterprises, Inc.**, a corporation, located at 18101 SW 98 Court, Palmetto Bay, FL 33157 ("Contractor").

W I T N E S S E T H :

WHEREAS, Village desires to engage and retain the services of the contractor to perform the work described in this contract and the Contractor desires to accept the engagement.

NOW THEREFORE, in consideration of the sum and mutual promises and covenants contained in this contract, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by both parties, the parties agree as follows.

1. WHEREAS CLAUSES

1.1. The above whereas clause is incorporated and made a part of this contract.

2. STATEMENT OF WORK

2.1 All services identified in this Statement of Work, including the additional services, shall be provided only when required and explicitly requested by the Village Manager or his designee through the issuance of a detailed work order. Such work order shall include a detailed scope of services, costs and work location. The Village shall provide individual work orders for each park facility. Unless specifically indicated on the work order, the contractor shall not assume the scope of services included in a work order shall apply to all Village-managed park facilities. The contractor shall not commence or undertake any work or service until a work order has been approved by the Village Manager or designee. Additionally, all work performed pursuant to an approved work order, shall be approved by the Park Manager prior to the remittance of an invoice. Approval from the Park Manager shall be a requisite for payment.

2.2 Basic Services- The work shall include, but may not be limited to the furnishing of all labor, materials, tools, equipment, machinery and services including, fertilizing, sweeping, weeding, insect spraying, pruning, and mulching for the proper maintenance of the trees and palms on Village parks and public right-of-ways. Additionally, the Contractor shall provide mowing, edging, sweeping, weeding, herbicide applications, insect control, aerating, and fertilizing for the proper maintenance of the public right-of-ways. The Contractor shall maintain the areas covered by this contract at the frequency rate prescribed by the Village Manager or designee. This contract does not cover grounds maintenance services unless specifically requested by the Village Manager or designee in accordance with the procedure stated in Section 2.1. In the event such services are requested, the Contractor must honor the prices specified on the bid form pursuant to Bid No. 2005-07.

2.3 Additional Miscellaneous Services- In addition to the services specified herein, the Village may from time to time require other services related to grounds maintenance and landscaping from the contractor. Such services include but are not limited to litter, trash and debris removal (including, but not limited to, small items such as paper, cans, bottles, and dead animals), landscape lighting maintenance and irrigation system installation and/or repair, including, but not limited to, adjusting of timers and maintaining photo cell, street planting, and other miscellaneous ground services. In the event the Village shall require additional services not specifically included in this contract, the contractor shall provide a cost estimate in advance which the village will accept or deny at its sole discretion.

2.4 Emergency Services- In the event of a natural disaster or other emergency situation, the Village shall have the right to mobilize the Contractor and the Contractor shall provide the necessary services to the Village upon the Village's request. To that extent, the Contractor shall be responsible for providing to the Village Manager or designee on an annual basis and no later than June 1<sup>st</sup> a rate sheet detailing the Contractor's reasonable rates for hurricane-related work including but not limited to vehicle, machinery, supplies, equipment, materials, and labor costs. The Village shall accept or deny these rates at its sole discretion and seek the services from another qualified contractor if so desired.

2.5 Schedule of Costs- Costs for the maintenance services to be provided shall be billed in accordance with the following schedule:

<b>Unit Fee Schedule for Parks Maintenance Services</b>	
<b>Unit Fee for Mowing Services (per acre)</b> (Including labor, supplies, materials & equipment)	\$48.00- rotary \$58- reel
<b>Unit Fee for Fertilizing (per acre)- If prices differ for the different types of fertilizer, please attach a sheet indicated the per acre feet for each type of fertilizer</b> (Including labor, supplies, materials & equipment)	\$225.00- based \$450.00- premium
<b>Unit Fee for Insect/Disease Spraying (per acre)</b> (Including labor, supplies, materials & equipment)	\$120.00
<b>Unit Fee for Herbicide (per acre)</b> (Including labor, supplies, materials & equipment)	\$105.00
<b>Unit Fee for Aeration (per acre)</b> (Including labor, supplies, materials & equipment)	\$50.00
<b>Unit Fee for Mulching (per acre)</b> (Including labor, supplies, materials & equipment)	\$1,200.00
<b>Unit Fee for Fertilizing Shrubs (per linear foot)</b> (Including labor, supplies, materials & equipment)	\$0.40
<b>Unit Fee for Fertilizing Trees and Palms (per tree/palm)</b> (Including labor, supplies, materials & equipment)	\$2.80
<b>Unit Fee for Insect/Disease Spraying Shrubs (per linear foot)</b> (Including labor, supplies, materials & equipment)	\$0.36
<b>Unit Fee for Insect/Disease Spraying Trees and Palms (per tree/palm)</b> (Including labor, supplies, materials & equipment)	\$15.00- palms \$30.00- trees
<b>Unit Fee for Clean-up of Palm Fronds (per palm)</b> (Including labor, supplies, materials & equipment)	\$12.00
<b>Unit Fee for Tree Trimming &amp; Pruning for Small Trees up to 8 ft. Tall (per tree)</b> (Including labor, supplies, materials & equipment)	\$10.00
<b>Unit Fee for Tree Trimming &amp; Pruning for Large Trees over 8 ft. Tall (per tree)</b> (Including labor, supplies, materials & equipment)	\$40.00

<b>Unit Fee for Palm Trimming &amp; Pruning (per palm)</b> (Including labor, supplies, materials & equipment)	<b>\$15.00</b>
<b>Unit Fee for Shrubbery Trimming &amp; Pruning (per linear foot)</b> (Including labor, supplies, materials & equipment)	<b>\$0.75</b>

**Unit Fee Schedule for Medians and Right-of-Ways Maintenance Services**

<b>Unit Fee for Mowing Services (per linear ft.)</b> (Including labor, supplies, materials & equipment)	<b>\$0.02</b>
<b>Unit Fee for Fertilizing (per linear ft.)- If prices differ for the different types of fertilizer, please attach a sheet indicated the per linear foot for each type of fertilizer)</b> (Including labor, supplies, materials & equipment)	<b>\$0.25</b>
<b>Unit Fee for Insect/Disease Spraying (per linear ft.)</b> (Including labor, supplies, materials & equipment)	<b>\$0.36</b>
<b>Unit Fee for Aeration (per linear ft.)</b> (Including labor, supplies, materials & equipment)	<b>\$0.20</b>
<b>Unit Fee for Mulching (per linear ft.)</b> (Including labor, supplies, materials & equipment)	<b>\$0.32</b>
<b>Hourly Labor Rate I – Straight Time</b> (Monday through Friday, from 8:00 a.m. to 5:00 p.m. including labor and travel)	<b>\$24.00</b>
<b>Hourly Labor Rate II – Overtime</b> (Monday through Friday, before 8:00 a.m. or after 5:00 p.m. on weekends or holidays, including labor and travel)	<b>\$30.00</b>
<b>Response Time:</b>	immediate

**3. CONTRACTOR'S RESPONSIBILITIES**

**3.1 The contractor will be expected to:**

1. Maintain adequate manpower and supplies, and be prepared and available to respond to emergency situations at all times (24 hour, 7 days per week)
2. Clear roadways or access areas in the event of an Act of God, auto accident or other emergency event, as determined by the Village
3. Contractor must be on 24 hour call, at all times, for emergency purposes
4. Coordinate maintenance duties related to special events as required by Village staff, including shutting down of the irrigation pumps.
5. Ensure maintenance of traffic conforms to all local, state, and federal transportation regulations.
6. Adhere to local, state, and Federal Environmental Protection Agency requirements for proper waste disposal
7. Contractor's principal shall be available to attend meetings with Village officials within 24 hours of notification
8. All of the contractor's employees must wear a uniform that identifies the company name at all times
9. Submit a hurricane mobilization and preparedness plan at the beginning of the hurricane season specifically relating to manpower, equipment, and scheduling to the Village for approval.

10. Contractor shall be solely responsible for any damage inflicted upon the underground utilities and any other infrastructure while working. To that extent, the Contractor shall be responsible for the review and interpretation of survey documents prior to the beginning of any landscaping work that may result in the damage of underground utilities and other infrastructure.

#### 4. COMMENCEMENT DATE AND TERM

4.1 The term shall commence upon the date of this contract and expire upon the earlier of \_\_\_\_\_ or the acceptance of full performance by the Village.

4.2 Work shall commence upon the issuance of a purchase order by the Village. Work shall proceed in substantial compliance with the schedule of services contained in the statement of work. Acceptance of work by the Village shall be evidenced by a notice of completion or by a notice of acceptance.

#### 5. PAYMENT

5.1 The Village shall pay the contractor the contract amount(s) provided in Section 2.5. The amount shall be either a fixed price or shall be based on agreed charges for time and materials for an amount not to exceed the stated fixed amount. The amount to be paid shall be stated in the task order authorizing the work.

5.2 The Village shall not be liable to pay, and shall not pay, charges for extra work, delay charges, or additional work, unless the Village's contract officer specifically authorizes the extra or additional work, in a written task order before the commencement of the work.

#### 6. TRANSFER AND ASSIGNMENT

6.1 None of the 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.

6.2 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.

#### 7. MODIFICATIONS – CHANGE ORDERS

7.1 The Village may, at any time, by written change order make changes to the scope of work, and to the means and methods of performing the work. The Village may order temporary stoppage of the work or delay in performance that does not alter the scope of work. Changes, including any increase or decrease in the amount of the Contractor's compensation, shall be incorporated in written amendments to this contract.

7.2 If any change causes an increase or decrease in the price charged, the maximum amount of the contract, or the time required for performance of any part of the work under this contract, or otherwise affects the conditions of this contract, the Village shall make an equitable adjustment to the maximum amount, the price(s), the delivery schedule, or other affected terms, and shall modify the contract with a written change order.

## 8. TERMINATION FOR DEFAULT

8.1 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 10 days from the date of receipt of written notice of breach from the party seeking termination.

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

7.2 Contractor may terminate this contract prior to the expiration of the initial term or any subsequent renewal term upon not less than 10-days prior written notice to the Village in the event that Contractor is unable to complete the services identified in paragraph 2.1 due to causes beyond Contractor's control.

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

7.4 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.

7.5 Should Contractor provide the Village with written notice of cancellation of contract, Contractor will be required to refund a pro-rata share of the compensation identified in paragraph 5.

## 9. TERMINATION FOR DELAY.

9.1 If the project is suspended or the Contractor's services are delayed by the Village for more than 30 consecutive days, the Contractor may terminate this contract by giving not less than 10 days written notice.

9.2 The liability of the Village upon termination by the Contractor for suspension or delay of the project shall be for the value of services performed pursuant to the schedule contained in the statement of work rendered by Contractor to the time of termination by Contractor. The Village shall not be liable for future profits or losses.

## 10. TERMINATION FOR CONVENIENCE

10.1 The Village may terminate this contract for convenience at any time by giving 10 days notice in writing to the Contractor. The Contractor will be paid for the value of services performed pursuant to the schedule contained in the statement of work, up to and including the termination date. Contractor will be permitted to complete on-going investigations and shall be paid for all satisfactory work completed. The Village shall not be liable for future profits or losses.

10.2 In the event that the Village improperly terminates the contract for default under paragraph 7, the termination shall be deemed a termination for convenience under this paragraph.

#### 11. TERMINATION FOR LACK OF FUNDS

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

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

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

#### 12. NO DAMAGES FOR DELAY CLAUSE

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

#### 13. LIQUIDATED DAMAGES

It is mutually agreed that time is of the essence in the performance of this contract. Should the Contractor fail to complete the work within the specified time, or any authorized extension thereof, there shall be deducted from the compensation otherwise to be paid to the Contractor, and the Village will retain the amount of, \$100.00 per calendar day as fixed, agreed, and liquidated damages for each calendar day elapsing beyond the specified time for completion or any authorized extension of time. The sum shall represent the actual damages which the Village will have sustained by failure of the Contractor to complete the work within the specified

time; it being further agreed that the sum is not a penalty, but is the stipulated amount of damage sustained by the Village in the event of a default by the Contractor.

14. RIGHT TO WITHHOLD

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 the Contractor, of any sums as the Village may deem sufficient to protect it against loss, or to ensure payment of claims, and, at its option, the Village may apply the sums in the manner as the Village may deem proper to secure itself or to satisfy the claims. The Village will provide Contractor with 10 days prior written notice in the event that it elects to exercise its right to withhold under this paragraph.

15. INTEREST PAYMENTS DUE TO LATE PAYMENT

15.1 The Village shall make payment to Contractor within 30 days of receipt of the original written invoice and sufficient backup documentation and acceptance of the work by the Village. Interest shall accrue on unpaid invoices as provided by Florida Statutes Section 218.74.

15.2 Contractor shall not be entitled to any carrying charges or finance fees due to late payment by the Village.

16. LIENS

The Contractor, Subcontractors, suppliers and laborers are prohibited from placing a lien on Village's property.

17. INDEPENDENT CONTRACTOR

The Contractor is furnishing its services as an independent Contractor and nothing in this contract shall create any association, partnership or joint venture between the parties, or any employer-employee relationships.

18. INSURANCE AND INDEMNIFICATION

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

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

18.3 The Contractor shall maintain during the term of this contract the following insurance:

A. Professional Liability Insurance in the amount of \$1,000,000.00 with deductible per claim if any, not to exceed 5% of the limit of liability providing for all sums which the Contractor shall become legally obligated to pay as damages for claims arising out of the services performed by the Contractor or any person employed by him in connection with this contract. This insurance shall be maintained for three years after completion of the construction and acceptance of any project covered by this contract. However, the Contractor may purchase Specific Project Professional Liability Insurance which is also acceptable.]

B. Comprehensive general liability insurance with broad form endorsement, including automobile liability, completed operations and products liability, contractual liability, severability of interest with cross liability provision, and personal injury and property damage liability with limits of \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The policy or policies shall name Village as additional insured and shall reflect the hold harmless provision contained herein.

C. Workers' Compensation Insurance in compliance with Chapter 440, Florida Statutes, as presently written or hereafter amended.

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

E. All of the insurance is to be placed with Best rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida.

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

18.5 Compliance with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this contract.

## 19. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the Contractor agrees as follows:

A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation or national origin.

B. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation or national origin. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment

advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

C. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the contracting officer that explain this clause.

D. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin.

E. The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining contract or other contract or understanding, the notice to be provided by the contracting officer advising the labor union or workers' representatives of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

F. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

G. The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with the rules, regulations, and orders.

H. In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Governmental contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

I. The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each Subcontractor or vendor. The Contractor shall take the action with respect to any subcontract or purchase orders as the Department of Labor may direct as a means of enforcing the provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of the direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

## 20. MEDIATION

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

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

20.3 Contracts reached in mediation shall be enforceable as settlement contracts in the circuit court for the 11<sup>th</sup> judicial circuit for the State of Florida.

21. SOVEREIGN IMMUNITY AND ATTORNEY'S FEES

The Village does not waive sovereign immunity for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

22. NOTICES

22.1 All notices given or required under this contract shall be deemed sufficient if sent by certified mail, return receipt requested, to the addresses of the Contractor and to the Village specified in this contract, unless either party shall specify to the other party a different address for the giving of the notices. For the purposes of this contract, notice shall be provided to the as follows:

To the Village: Village of Palmetto Bay  
Village Manager  
8950 SW 152 Street  
Palmetto Bay, FL 33157  
Telephone: 305-259-1234

To Contractor: Tip Top Enterprises, Inc.  
President  
18101 SW 98 Court  
Palmetto Bay, FL 33157  
Telephone: 305-255-8198

23. EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS

23.1 The Village, or any of their duly authorized representatives, shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's books, ledgers, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

23.2 The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as subparagraph 24.1 above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

23.3 The right to access and examination of records in subparagraph 24.1 shall continue until disposition of any mediation, claims, litigation or appeals.

24. OWNERSHIP OF DOCUMENTS

All documents, reports, plans, specifications or other records, including electronic records, resulting from the professional services rendered by the Contractor under this contract shall be deemed the property of the Village and the Village shall have all rights incident to this ownership. The Contractor acknowledges that all documents prepared under this contract shall be public records, and shall be subject to public inspection and copying, as provided by Florida Statutes chapter 119. Upon conclusion of this contract and any extensions, all documents shall be delivered by the Contractor to the Village. The Contractor shall have the right to retain copies of the documents at the Contractor's expense.

25. SEVERABILITY

Should any paragraph or any part of any paragraph of this contract be rendered void, invalid or unenforceable by any court of law, for any reason, the determination shall not render void, invalid or unenforceable any other section or part of any section of this contract.

26. ENTIRE CONTRACT

The contract, when signed by all of the parties, constitutes the full and complete understanding and contract of all parties and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This contract and the incorporated attachments constitute the entire understanding between the parties and integrates by its terms all previous contracts or understandings, oral or written, between the parties. In the event of any conflict, the terms of this contract will govern over the provisions of any incorporated documents.

27. CONTINGENCY FEE AND CODE OF ETHICS WARRANTY

27.1 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.

27.2 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.

27.3 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.

28. 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 contract.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized officers, have executed this contract as of the date first above written.

The Village of Palmetto Bay

Contractor

By: \_\_\_\_\_  
Charles D. Scurr,  
Village Manager

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

VILLAGE CLERK

By: \_\_\_\_\_  
Meighan J. Pier

Approved as to form:

By: \_\_\_\_\_  
Eve Boutsis, Village Attorney  
The Village of Palmetto Bay