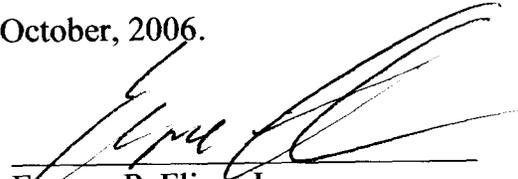


1 PASSED and ADOPTED this 4th day of October, 2006.

2
3 Attest:

4 
5 Meighan Pier
6 Village Clerk

7 
8 Eugene P. Flinn, Jr.
9 Mayor

10 APPROVED AS TO FORM:

11 
12 _____
13 Eve Boutsis,
14 Office of the Village Attorney

15
16
17
18 FINAL VOTE AT ADOPTION:

19
20 Council Member Ed Feller YES
21
22 Council Member Paul Neidhart YES
23
24 Council Member Shelley Stanczyk YES
25
26 Vice-Mayor Linda Robinson YES
27
28 Mayor Eugene P. Flinn, Jr. YES
29
30
31

**AGREEMENT FOR I.T. PROFESSIONAL SERVICES BETWEEN
THE Village OF PALMETTO BAY AND
ASSOCIATES IN TECHNOLOGY, INC., D/B/A ASTEC CONSULTING**

This agreement is entered into this 6 day of October, 2006, between the Village of Palmetto Bay ("village"), a municipal corporation of the State of Florida, located at 8950 SW 152nd Street, Palmetto Bay, Florida 33157 and Associates in Technology, Inc., d/b/a Astec Consulting ("consultant"), a Florida corporation, located at 7980 SW 166th Street, Palmetto Bay, Florida 33157.

WITNESSETH:

WHEREAS, the village desires to engage and retain the services of the consultant to perform the work described in this agreement and the consultant desires to accept the engagement; and,

WHEREAS, In a continued effort to remain committed to developing a maximally efficient government with a small, highly qualified core staff and the use of outsource contractors to the maximum extent possible, the Village of Palmetto Bay is seeking the assistance of a qualified individual(s) and/or firm to provide information technology professional services to the Palmetto Bay government; and,

WHEREAS, The Village of Palmetto Bay, a municipality of approximately 25,000 residents, located in Miami-Dade County, Florida, desires to hire a qualified firm to provide Information Technology (IT) Professional Services for the Village; and,

WHEREAS, the fundamental goal of the consultant shall be to provide the best value IT services to the village, by providing qualified technical labor and troubleshooting, knowledge of IT related projects, software development, and the successful implementation of business solutions in a government setting; and,

WHEREAS, the consultant must be readily available and accessible to the village; and,

WHEREAS, the consultant must be able to provide services in a flexible, responsive manner and have the ability to adjust to an ever-changing municipal environment.

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

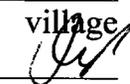
1. WHEREAS CLAUSES

1.1. The above whereas clauses are incorporated and made a part of this agreement.

2. SCOPE OF AGREEMENT

2.1 The consultant will provide IT services as may be requested and approved by the Village from time to time in scope and manner generally acceptable for similar municipalities in Miami-Dade County, Florida. The following IT services may be required and the consultant should be well-informed, qualified and able to provide any of the below-listed requirements as may be requested by the Village from time to time:



village


consultant

- a. Data Administration – Consultant shall provide support to address the village’s need for data sharing, data access and system integration, including imaging systems and other long term/archival electronic storage medium.
- b. WiFi Systems – Consultant Shall monitor, maintain and support for the Village’s current WiFi systems at Coral Reef Park, 7895 SW 152 Street, and Perrine Park, 17535 SW 95 Avenue, and shall offer solutions to expand this service at other Village parks. Consultant shall develop a mechanism and plan for providing network survivability should a tower, or site, be lost due to a hurricane, strong weather event, or due to some other event. Consultant shall provide equipment that can be remotely updated, configured, and maintained with a minimum of service disruption.
- c. Custom Software Development and Information Technology Training – the Village may require that current Microsoft Office software or new software be designed and developed in order to facilitate appropriate municipal uses. Unless prevented by copyright or other proprietary rights, the consultant must be able to modify existing software in such a manner as may be required and may be possible or offer a solution to procure appropriate software to meet the defined goal. Additionally, reasonable technical training shall be required from the consultant to assist in the use of the customized and/or new software programs.
- d. Management, Planning Consulting and ability to Sub-Contract with Others – The consultant shall provide consulting services relating to management issues surrounding the planning, implementation and management of IT. Additionally, the consultant shall be expected to have the ability to subcontract with other consultants to provide a variety of high-level technology items, such as, GIS, E-commerce and web development.
- e. Web/Internet Applications Services – The Village’s presence on the Internet currently resides on its servers through a fractional T1. The Village currently utilizes Macromedia Dreamweaver as its tool to design, develop and maintain the website. The consultant shall have expertise with Dreamweaver and its further uses. Additionally, the Village anticipates expanding its website to become more user interactive, i.e., paying for permits on line; therefore, the consultant is required to be well-versed in website development, have a proven track record with regard to development of web-based applications and be able to suggest the most cost-efficient, appropriate way that the website may be expanded.
- f. The successful consultant shall make him/her self readily available to respond to the Village’s needs within a reasonable amount of time. The consultant shall also agree to attend meeting with the Village Manager, staff and Department heads as necessary to discuss current challenges, solutions and/or new technology that shall be introduced to the Village.
- g. Any additional requirements as provided for under Village Request for Qualifications # 2006-01, for “Information Technology Professional Services.” The RFQ and RFQ response of Consultant are incorporated by reference into this agreement. In the event of any conflict, the terms of this agreement will govern over the provisions of any incorporated documents.
- h. The parties acknowledge that information technology consulting involves a decision making process which is rapidly changing and that there may be more than one solution or approach to a specific task. The consultant will provide alternative solutions to the Village and the consultant and/or the Designated Representative of the Village will determine the best most reasonable solution. The village acknowledges that the consultant cannot warranty or guarantee that solutions will be the most efficient or effective solution available.


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i. The Village will designate a primary contact (the "Designated Representative") and a backup contact (the "Backup Representative") from time to time. In the event that consultant does not consider a request for service within the normal and customary planning, the consultant may request specific approval to perform such work from the "Designated Representative" or in his or her absence, the "Backup Representative" prior to commencing such work. Any project or services requested of the consultant which are less than the foregoing minimums may be ordered by any employee of the Village. The Designated Representative will be responsible for:

- (1) Requesting services from the consultant regarding miscellaneous IT support issues.
- (2) Approving and prioritizing requests for service from Village staff.
- (3) Coordinating and approving hardware and software purchases
- (4) Maintaining an inventory of IT assets, i.e. software, storage and backup media, and software licenses.
- (5) Assuring that the data protection and backup program established by the consultant and the Village is strictly adhered to.

In the event of an emergency or in the event that the Designated Representative and Backup Representative do not respond in a reasonable time regarding an issue, then the consultant is authorized to act in a reasonable manner to resolve a pending issue.

j. Normal and routine requests for IT service submitted to consultant will be scheduled during regularly scheduled onsite visits. Critical or unusual requests of IT service shall be made by the Designated Contact or Backup Contact and consultant shall schedule the work as soon as reasonably possible, considering the nature and critical nature of the problem. Such request by the Designated Contact or Backup Contact may be authorized by voice mail and/or email if personal contact cannot be made with the consultant.

k. After design and installation of backup hardware and software by the consultant, the responsibility for and creation and storage of archival backups shall be the sole responsibility of the Village. The consultant shall not be responsible for data loss or damages resulting therefrom as a result of the Village personnel to follow archival procedures or for improper backup activity.

l. The Village shall establish contingency emergency procedures for its information system due to failure caused by acts of God beyond the control of the consultant. The plan shall define when such emergency procedures shall go into effect and shall be determined by the Designated Contact.

m. The "Working Hours" required of the consultant shall be 9:00 am to 5:00 pm, Monday through Friday, except for national and Village holidays. Requests for routine or normal services outside of regular business hours will be responded to on the next business day. Emergency service shall be approved and directed by the Designated Contact, and consultant shall be paid on hourly fee equal to one and one-half times the normal hourly rate for work ordered and performed during other than normal working hours. In the event that consultant elects to perform non-emergency services after normal business hours, then the normal hourly fee will be in effect.

3. PERSONNEL REQUIREMENTS

3.1 Consultant and staff employed by consultant for this engagement shall be properly licensed I.T. professionals.


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4. LICENSING, REPORTING, RECORDS

4.1 Consultant shall, at its own expense, obtain all applicable local, county, state, and federal licenses, and pay all applicable fees and taxes necessary for the provision of I.T. services in Miami-Dade County, Florida, and as required to comply with all local ordinances, state and federal laws, rules, regulations and professional standards that would apply to this agreement.

4.2 Consultant shall meet and/or communicate minimally once per week with the Village Clerk, or her designee, to discuss IT issues.

4.3 Consultant shall maintain during the term of this agreement and for a period of three years from the date of termination certain records relating to this agreement and all records required pursuant to federal, state, county and local law.

4.4 The village manager shall, during the term of this agreement and for a period of three years from the date of termination, have access to and the right to examine and audit any records of the consultant pertaining to this agreement.

5. TERM AND TIME OF PERFORMANCE

5.1 The term of this agreement shall be for one year with with three-one year renewal options. The village may, but is under no obligation to extend or renew, this agreement after expiration of the initial one year term. The village shall provide 30 days prior notice of its intent not to renew for any additional year term.

6. TERMINATION

6.1 This agreement may be terminated by either party without cause upon 90 days advance written notice to the other party. Further, either party may immediately terminate this agreement upon the failure of the other party to cure a material breach following 15 days prior written notice of the breach and a demand that it be cured.

6.2 Compensation upon termination shall be limited to services performed and approved under the terms of this agreement up to the effective date of the termination. The consultant will be paid for the value of services performed pursuant to the schedule contained in the statement of work, up to and including the termination date. Consultant will be permitted to complete on-going investigations and shall be paid for all satisfactory work completed. The Village shall not be liable for future profits or losses. In the event that the Village improperly terminates the contract for default under section 6.3, the termination shall be deemed a termination for convenience under this section.

6.3 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 15 days from the date of receipt of written notice of breach from the party seeking termination. Termination shall be effective as of the end of the notice period in the case of any uncured material breach.

6.4 Consultant may terminate this contract prior to the expiration of the initial term or any subsequent renewal term upon not less than 60-days prior written notice to the Village in the event that consultant is unable to complete the services identified in section 2.1 due to causes beyond consultant's control.



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

6.6 The rights and remedies of the Village and consultant 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.

6.7 For any portion of the work that is funded by county, state or federal appropriations or grants, the liability of the Village to consultant shall be limited to payment for services when payment is received by the Village from the county, state or federal authority; Provided, however, that consultant shall be informed of any requested services that are to be funded by such appropriations and grants prior to commencing such work, and consultant shall have the option to decline to perform the requested work unless arrangements for full or partial compensation are agreed to. The Village shall submit all required documents requesting payment within a reasonable time. The Village shall not be liable to consultant for work performed in the event that payment is not received by the Village from a county, state or federal funding Village. This is a pay-when-paid clause.

7. INDEMNIFICATION

7.1 Consultant agrees to indemnify, reimburse, defend and hold harmless the village and, at the village's option, defend or pay for an attorney selected by the village to defend the village and the village's officers, agents and employees for, from and against all claims, actions or causes of actions, losses, damages, liabilities, costs and expenses, including reasonable costs, attorneys' and paralegals' fees, imposed on or incurred by the village in connection with any and all loss of life, bodily injury, personal injury and damage to property which arises or relates, directly or indirectly, to the consultant's use of any vehicle provided for in this agreement, if any. To the extent considered necessary by the village, any sums due to the consultant under this agreement may be retained by the village until all of the village's claims for indemnification, pursuant to this agreement, have been settled or otherwise resolved and any amount withheld shall not be subject to payment of interest by the village.

7.2 Nothing in this agreement is intended to serve as a waiver of sovereign immunity by the village. Nothing in this agreement shall be construed as consent by the village to be sued by third parties in any matter arising out of this agreement or any other contract entered into by the consultant.

7.3 The provisions of this section shall survive termination or expiration of this agreement.

8. PAYMENT

8.1 In return for satisfactory performance of I.T services provided by consultant as specified in this agreement, the village agrees to pay consultant an hourly billing rate of \$90.00 per hour, plus equipment, software and other materials installed and paid for by the consultant.

8.2 Should Consultant require specialized subcontractor services, which services is not part of the core Astec Consulting team, the Consultant shall charge the village the higher rate of the specialized subconsultant services as shall first be approved by the Village. Astec Consulting, in such a scenario, shall act as a general contractor managing the project. Consultant shall advise the village prior to utilizing specialized subcontractor services, and explain to the village the necessity for using such services, anticipated cost involved, advise whether the cost associated with the sub-consultant is reasonable in the marketplace, and shall guarantee the services of the sub-consultant.



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8.3 Compensation for I.T. services shall be payable by the village in arrears, each month, pursuant to the approval of the monthly invoice of consultant. The invoice shall indicate the number of hours of I.T. services and materials, if any, provided in the prior month and any backup documentation required by the village manager or his designee.

8.4 If a dispute should occur regarding an invoice, the village manager may withhold payment of the disputed amount and may pay to the consultant the undisputed parts of the invoice.

9. INTEREST PAYMENTS DUE TO LATE PAYMENT

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

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

10. LIENS

10.1 The consultant, subcontractors, suppliers and laborers ("subcontractors") are prohibited from placing a lien on Village's property. Consultant shall execute a similar contract with subcontractors confirming that subcontractors are not prohibited from placing liens on Village's property. Further, both consultant and subcontractor warrant not to file or record liens or notices of liens against Village property.

11. INDEPENDENT CONSULTANT

11.1 The consultant and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the village with respect to all of the acts and services performed by and under the terms of this agreement. This agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties, or any employer-employee relationships.

12. INSURANCE AND INDEMNIFICATION

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

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

12.3 If required by the Village, the consultant shall maintain during the term of this contract the following insurance:



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A. 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 the village as additional insured and shall reflect the hold harmless provision contained herein.

B. Applicable professional liability insurance with broad form endorsement, severability of interest with cross liability provision, with limits of \$1,000,000 combined single limit per occurrence coverage. The policy shall name the village as an additional insured. 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, or other insurance companies qualified to do business under the laws of the State of Florida as may be approved by the Village.

12.4 The consultant shall furnish certificates of insurance to the Village prior to the commencement of operations. The certificates shall clearly indicate that the consultant has obtained insurance in the type, amount, and classification as required for strict compliance with this section 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.

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

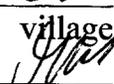
13. EQUAL EMPLOYMENT OPPORTUNITY

13.1 Consultant's decisions regarding the delivery of services under this contract shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery. In addition, consultant shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

14. SOVEREIGN IMMUNITY AND ATTORNEY'S FEES

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



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consultant

15. NOTICES

15.1 Whenever either party desire to give notice to the other, such notice must be in writing, sent by certified United States mail, postage prepaid, return receipt requested, private postal service, or by hand delivery with a request for a written receipt of acknowledgement of delivery, addressed to the party for whom it is intended at the place last specified. Notice shall be deemed given on the day on which personally served, or if by mail, on the date of actual receipt. The place for giving notice shall remain the same as set forth in this agreement until changed in writing in the manner provided in this section. For the present, the parties designate the following:

For the village: Charles D. Scurr, Village Manager
Village of Palmetto Bay
8950 SW 152nd Street
Palmetto Bay, Florida 33157
(305) 259-1234

With a copy to: Eve A. Boutsis, Office of Village Attorney
Nagin Gallop Figueredo, P.A.
18001 Old Cutler Road, Suite 556
Palmetto Bay, Florida 33157
(305) 854-5353

For the consultant: Associates in Technology, Inc., d/b/a Astec Consulting
Doug Phillips, President
7980 SW 166th Street
Palmetto Bay, Florida 33157
(305) 234-3882

16. MISCELLANEOUS

16.1 Assignment and Performance: Neither this agreement nor any interest in it shall be assigned, transferred or encumbered by either party.

16.2 The consultant represents that all persons delivering the services required by this agreement have the reasonable knowledge and skills, either by training, experience, education or a combination of the foregoing, to adequately and competently perform the duties, obligations and services set forth in this agreement and to provide and perform such services to the village's satisfaction.

16.3 The consultant shall perform its duties, obligations and services under this agreement in a skillful and respectable manner consistent with similar contracts in Miami-Dade County, Florida. The quality of the consultant's performance shall be comparable to the best local and national applicable standards of care.

16.4 Waiver of Breach and Materiality: Failure by the village or consultant to enforce any provision of this agreement shall not be deemed a waiver of such provision or modification of this agreement. A waiver of any breach of a provision of this agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this agreement.

16.5 The village and consultant agree that each requirement, duty and obligation set forth in this agreement is substantial and important to the formation of this agreement and, therefore, is a material term of this agreement.



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16.6 Severance: In the event this agreement or any portion of this agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless the village or the consultant elects to terminate this agreement. The election to terminate this agreement based upon this provision shall be made within seven days after the finding by the court becomes final.

16.7 Applicable Law, Venue, Waiver of Jury Trial: This agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this agreement shall be in Miami-Dade County, Florida. THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION BETWEEN THE PARTIES HEREUNDER.

16.8 Amendments: No modification, amendment or alteration of the terms or conditions contained in this agreement shall be effective unless contained in a written document prepared with the same or similar formality as this agreement and executed by both the village and the consultant.

16.9 Prior Agreements: This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms of this agreement shall be predicated upon any prior representations or agreements, whether oral or written.

16.10 Interpretation: 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.

16.11 Facsimile and Counterparts: This agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties hereby acknowledge and agree that facsimile signature of this agreement shall have the same force and effect as original signatures.

16.12 Survival of Provisions: Any terms or conditions of this agreement that requires acts beyond the date of the term of the agreement shall survive termination of the agreement and shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

16.13 Days: Reference in this agreement to days shall mean calendar days.

17. EXAMINATION AND RETENTION OF CONSULTANT'S RECORDS

17.1 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 consultant's books, ledgers, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

17.2 The consultant agrees to include in first-tier subcontracts under this contract a clause substantially the same as subsection 17.1 above.



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17.3 The right to access and examination of records in subsection 17.1 shall continue until disposition of any mediation, claims, litigation or appeals.

18. OWNERSHIP OF DOCUMENTS

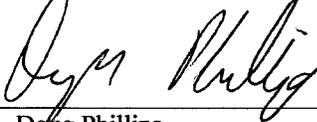
18.1 All documents, reports, plans, specifications or other records, including electronic records, resulting from the professional services rendered by the consultant under this contract shall be deemed the property of the Village and the Village shall have all rights incident to this ownership. The consultant 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 consultant to the Village. The consultant shall have the right to retain copies of the documents at the consultant's expense.

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

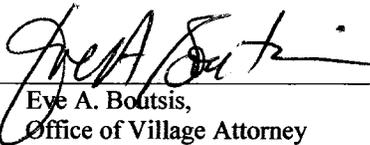
**Village of Palmetto Bay,
a Florida municipal corporation**

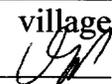
**Associates In Technology, Inc., d/b/a Astec Consulting
a Florida subchapter S corporation**

By: 
Charles D. Scurr,
Village Manager

By: 
Doug Phillips,
President

Approved as to form:

By: 
Eye A. Boutsis,
Office of Village Attorney
Nagin Gallop & Figueredo, P.A.


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