

RESOLUTION NO. 2017-70

A RESOLUTION OF THE MAYOR AND VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, RATIFYING AN AGREEMENT BETWEEN THE VILLAGE OF BISCAYNE PARK AND H2O PARTNERS, INC. TO PROVIDE PUBLIC ASSISTANCE CONSULTANT SERVICES; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Village Commission authorized the Village Manager to enter into an agreement between the Village and H2O Partners, Inc.; and

WHEREAS, H2O Partners, Inc. has been providing public assistance consultant services as determined by the Village Manager; and

WHEREAS, the Village entered into an agreement with H2O Partners, Inc., to provide public assistance consultant services; and

WHEREAS, the Village Commission finds it to be in the best interests of the Village and its citizens to ratify the Agreement to Provide Public Assistance Consultant Services between the Village of Biscayne Park and H2O Partners, Inc., attached hereto and incorporated herein as Exhibit "1";

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND VILLAGE COMMISSION:

Section 1. The Agreement to Provide Public Assistance Consultant Services between the Village of Biscayne Park and H2O Partners, Inc., attached hereto and incorporated herein as Exhibit "1", is hereby ratified.

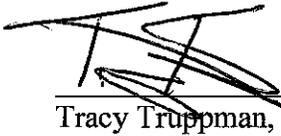
Section 2.

Effective Date.

This Resolution shall be effective upon adoption.

PASSED AND ADOPTED this 7th day of November, 2017.

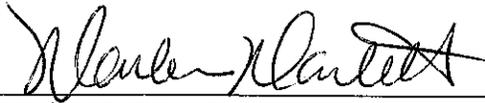
The foregoing resolution upon being put to a vote,
the vote was as follows:



Tracy Truppman, Mayor

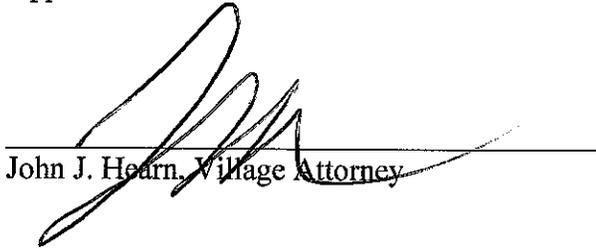
Mayor Truppman: Yes
Vice Mayor Ross: Yes
Commissioner Bilt: Yes
Commissioner Johnson-Sardella: Yes
Commissioner Tudor: Yes

Attest:



Marlen D. Martell, Village Clerk

Approved as to form:



John J. Hearn, Village Attorney

**AN AGREEMENT BETWEEN THE VILLAGE OF BISCAYNE PARK AND H2O
PARTNERS, INC. FOR PUBLIC ASSISTANCE CONSULTANT SERVICES**

THIS AGREEMENT entered into by and between the Village of Biscayne Park, Florida, a municipal corporation of the State of Florida (hereinafter referred to as “Village”) and H2O Partners, Inc., a foreign profit corporation (hereinafter referred to as “Company”).

WHEREAS, Company has proposed to provide public assistance consultant services (hereinafter referred to as “Services”) as determined by the Village Manager of the Village to the Village; and

WHEREAS, the Village wishes Company to provide the Services more fully described in its proposal (hereinafter referred to as the “Proposal”), attached hereto as Exhibit “A”;

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

**ARTICLE I
SCOPE OF SERVICES**

Company shall carry out or cause to be carried out the work described in Exhibit “A”, attached hereto and made a part hereof.

A. All work shall be completed in compliance with all applicable regulations, codes and ordinances and in a satisfactory and proper manner as determined by the Village. Such Services shall be performed, except as otherwise stated herein, by persons or instrumentalities solely under the domain and control of Company.

B. Company shall comply with such other terms and conditions including record keeping and reports for program monitoring and evaluation purposes as may be established by the Village for the purposes of carrying out the program in an effective and efficient manner.

**ARTICLE II
TIME FOR PERFORMANCE**

Subject to authorized adjustments, the time for performance shall not exceed a period of sixty (60) days from the Village’s issuance of a notice to proceed, unless terminated earlier by the Village. Company agrees that the performance of Services shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed time for performance. Failure to achieve timely final completion shall be regarded as a material breach of this Agreement and shall be subject to the appropriate remedies available at law. This Agreement shall remain in full force and effect until the completion of Services by the Company and the acceptance of Services by the Village.

**ARTICLE III
CONSIDERATION AND PAYMENT**

For its performance under this Agreement, Company will invoice the Village within five (5) business days after the last day of each calendar month. Each invoice will be supported by copies of Company's certified payroll and timekeeping system timeshares. The total contracted amount is not to exceed one hundred fifty five thousand dollars (\$155,000.00). Payment shall be made thirty (30) days after submission of each invoice. Payment for Services shall be limited to the scope described in Exhibit "A".

**ARTICLE IV
CANCELLATION OF AGREEMENT**

Company must timely notify the Village in the event the Company is unable to perform the scheduled Services.

Except as otherwise provided herein, this Agreement may be cancelled by either party with thirty (30) days advance written notice to the other at its address as herein specified. In the event Company cancels the Agreement prior to completion of the scope of work, Company will reimburse the Village in proportion to time remaining on the project. In the event the Village terminates the Agreement, no reimbursement will be required by Company.

**ARTICLE V
DEFAULT AND TERMINATION FOR NON-PERFORMANCE**

A default shall consist of any use of funds for a purpose other than as authorized by this Agreement, noncompliance with any provision in Articles herein, or any material breach of the Agreement.

Upon the occurrence of any such default, the Village shall serve due notice to Company at which time Company shall have a reasonable opportunity to respond and cure. For purposes of this Agreement, a reasonable opportunity to respond and cure shall be ten (10) business days from receipt by Company of the Village's written notice of such default (hereinafter referred to as the "Cure Period"). If the default is not cured to the satisfaction of the Village, the Village shall have the right in its sole discretion to take the following actions:

- A. Upon a written request from Company setting forth a reasonable basis to support the need for an additional Cure Period the Village may grant an additional Cure Period by written acknowledgment thereof; or
- B. Terminate this Agreement by written notice thereof; or
- C. Take such other action, including but not limited to, temporarily withholding cash payments pending correction of the deficiency by Company, disallow all or part of the cost of the activity or action not in compliance, wholly or partly suspend or terminate the current award for

Company's program, withhold further awards for the program, or take other remedies that may be legally available.

**ARTICLE VI
ADDITIONAL RIGHTS AND REMEDIES**

Nothing contained herein shall be construed as a limitation on such other rights and remedies available to the parties under law or in equity which may now or in the future be applicable.

**ARTICLE VII
FISCAL NON-FUNDING CLAUSE**

This Agreement is subject to funding availability. In the event sufficient budget funds to fund this Agreement become reduced or unavailable, the Village shall notify Company of such occurrence and the Village may terminate this Agreement without penalty or expense to the Village upon no less than twenty four (24) hours written notice to the Company. The Village shall be the final authority as to the availability of funds and how available funds will be allotted. If this Agreement is funded in whole or in part by federal or state dollars which are reduced or become unavailable, the Village shall notify the Company of such occurrence and the Village may terminate this Agreement without penalty or expense to the Village upon no less than twenty four (24) hours written notice to Company.

**ARTICLE VIII
ASSIGNMENT**

Company shall not assign this Agreement or any part hereof without the prior written consent of the Village.

**ARTICLE IX
COMPLIANCE WITH APPLICABLE LAWS**

Company shall comply with all applicable laws, orders and codes of the federal, state and local governments as they pertain to this Agreement.

**ARTICLE X
NONDISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYMENT**

During the performance of this Agreement, the Company shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Company will take affirmative action to ensure that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action must include, but not be limited to, the following: employment, upgrading; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Company shall agree to

post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

ARTICLE XI PROJECT PUBLICITY

Company shall recognize the Village for its contribution in promotional material and at any events or workshops for which funds from this Agreement are allocated. Any news release or other type of publicity pertaining to the scope of work performed pursuant to this Agreement must recognize the Village as the sponsor.

ARTICLE XII POLITICAL ENDORSEMENT PROHIBITION

Company shall not engage in political activities that promote or oppose specific candidates.

ARTICLE XIII PUBLIC ENTITY CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid proposal or replay on a contract to provide any goods or services to a public entity may not submit a bid proposal or reply on a contract with a public entity the construction or repair of a public building or public work may not submit bids, proposals or replies on leases of real property to a public entity may not be awarded or perform work as a contractor, supplier, subcontractor or Company under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes for Category Two for a period of thirty six (36) months following the date of being placed on the convicted vendor list. Additionally, pursuant to Village's policy, a conviction of a public entity crime may cause the rejection of a bid offer or proposal. The failure of a bidder, offeror or proposer to promptly supply information in connection with an inquiry may be grounds for rejection of a bid offer, proposal or reply.

ARTICLE XIV MAINTENANCE OF RECORDS

Company shall maintain all records and accounts including property, personnel and financial records, contractual agreements, construction reports, Davis Bacon records, subcontracts, proof of required insurance and any other records related to or resulting from the activities performed under this Agreement to assure a proper accounting and monitoring of all funds. In the event the Village determines that such records are not being adequately maintained by Company, the Village may cancel this Agreement in accordance with Articles IV and V herein. This Article shall survive the expiration or earlier termination of this Agreement.

With respect to all matters covered by this Agreement, records will be made available for examination, audit, inspection, or copying purposes at any time during normal business hours

and as often as the Village may require. Company will permit same to be examined and excerpts or transcriptions made or duplicated from such records and audits made of all contracts, invoices, materials, records of personnel and of employment and other data relating to all matters covered by this Agreement.

The Village's rights of inspection and audit shall obtain likewise with reference to any audits made by any other agency whether local, state or federal. Company shall retain all records and supporting documentation applicable to this Agreement for six (6) years after receipt of final payment from the Village for inspection. If any litigation claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it or the end of the required period, whichever is later.

The retention period starts from the date of the execution of this Agreement.

ARTICLE XV EVALUATION

Company agrees that the Village shall be responsible for monitoring and evaluating all aspects of the Services provided under this Agreement. The Village shall have access to and be able to make copies and transcriptions of such records as may be necessary in the determination of the Village to accomplish this obligation, subject to state and federal confidentiality requirements.

In order to properly monitor and evaluate Company's performance under this Agreement, the Village shall make onsite inspections as often as it deems necessary. Further, Company shall submit an activity report with each reimbursement request which details the progress made to date toward the completion of the activities authorized under Exhibit "A".

ARTICLE XVI DRUG FREE WORKPLACE

Company shall assure the Village that it will administer in good faith a policy designed to ensure that Company is free from the illegal use, possession, or distribution of drugs or alcohol.

ARTICLE XVII NEGATION OF AGENT OR EMPLOYEE STATUS

Company shall perform this Agreement as an independent agent and nothing contained herein shall in any way be construed to constitute Company or any assistant, representative, agent, employee, independent contractor, partner, affiliate, holding company, subsidiary, or subagent of Company to be a representative, agent, subagent, or employee of the Village.

Company certifies its understanding that the Village is not required to withhold any federal income tax, social security tax, state and local tax to secure worker's compensation insurance or

employer's liability insurance of any kind or to take any other action with respect to this insurance or taxes of Company.

In no event shall any provision of this Agreement make the Village or any political subdivision of the State of Florida liable to any person or entity that contracts with or provides goods or services to Company in connection with the Services Company has agreed to perform hereunder or otherwise or for any debts or claims of any nature accruing to any person or entity against Company. There is no contractual relationship either express or implied between the Village or any political subdivision of the State of Florida and any person or entity supplying any work, labor, services, goods or materials to Company as a result of the provisions of the Services provided by Company hereunder or otherwise.

ARTICLE XVIII LIABILITY

Company shall comply with all applicable laws, orders and codes of the federal, state and local governments as they pertain to this Agreement. The parties agree that Company is liable for any violation of federal, state or local law by Company in relation to this Agreement. Company agrees that it shall be liable for any penalties imposed against Company or the Village by any federal, state or local agency for any actions or inactions by Company. Such penalties shall include, but not be limited to, repayment of any of the funding received pursuant to this Agreement. This obligation shall survive the termination or expiration of this Agreement for a period of not less than five (5) years or any applicable statute of limitation period of equitable limitation doctrine, whichever is longer.

Subject to the limitations of Florida Statute 768.28, Company agrees to indemnify and hold harmless the Village from and against any and all claims, suits, actions, damages, or causes of action arising out of the negligent acts of the Company arising out of or in connection with the provisions of this Agreement.

ARTICLE XIX INSURANCE

Company shall provide proof of insurance as required by the Village as stated herein. General liability insurance, with a minimum limit of one million dollars (\$1,000,000.00). Coverage shall include bodily injury, property damage, medical payments, personal and advertising injury and products completed operations. Business automobile liability, with a minimum limit of one million dollars (\$1,000,000.00), covering any auto including: hiring, leased, scheduled and non-owned. Employees of Company must be covered by worker's compensation insurance, Part A – statutory, and Part B – employer's liability, with a limit of one million dollars (\$1,000,000.00). The Village shall be included as an additional insured for general and automobile liability insurance. Coverage shall remain in full force for the duration of this Agreement. The Village shall receive full notice of any changes or cancellation of required coverage. Nothing contained herein shall be construed as a waiver of the immunities and rights afforded to the Village under Florida Statute 768.28.

**ARTICLE XX
ACCESS TO RECORDS**

If applicable, Company shall comply with the requirements of Chapter 119, Florida Statutes, with respect to any documents, papers and records made or received by Company in connection with this Agreement.

**ARTICLE XXI
SURVIVABILITY AND SEVERABILITY**

Any term, condition, covenant or obligation which requires performance by either party subsequent to termination of this Agreement, shall remain enforceable against such party subsequent to such termination. In the event any section, sentence, clause, or provision of this Agreement is held to be invalid, illegal or unenforceable by a court having jurisdiction over the matter, the remainder of this Agreement shall not be affected by such determination and shall remain in full force and effect.

**ARTICLE XXII
SUCCESSORS AND ASSIGNS**

Any term, condition, covenant or obligation which requires performance by either party subsequent to termination of this Agreement, shall remain enforceable against such party subsequent to such termination. In the event any section, sentence, clause, or provision of this Agreement is held to be invalid, illegal, or unenforceable by a court having jurisdiction over the matter, the remainder of the Agreement shall not be affected by such determination and shall remain in full force and effect.

**ARTICLE XXIII
GOVERNING LAWS**

This Agreement shall be construed under the laws, rules, and regulations of the State of Florida. Venue shall be in Miami-Dade County, Florida.

**ARTICLE XXIV
AUTHORIZATION**

Each party represents to the other such party has authority under all applicable laws to enter into an agreement containing such covenants and provisions. All of the procedural requirements imposed by law upon each party for the approval and authorization of this Agreement, have been properly completed and that the persons who have executed this Agreement are duly authorized and empowered to do so.

**ARTICLE XXV
NOTICE AND GENERAL CONDITIONS**

All notices which may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service or by certified mail, return receipt requested, addressed to the parties at their respective addresses indicated below or as the same may be changed in writing from time to time:

Notices to the Village shall be sent to:

Krishan Manners, Village Manager
Village of Biscayne Park
640 NE 114th Street
Biscayne Park, Florida 33161
Phone: (305) 899-8000
Email: villagemanager@biscayneparkfl.gov

With a copy to:

John J. Hearn, Village Attorney
1001 NW 119th Avenue
Coral Springs, Florida 33071
Phone: (305) 360-2546
Email: attyhearn@aol.com

Notices to Company shall be sent to:

Eric Howard, Executive Vice President
H2O Partners, Inc.
260 Addie Roy Road, Suite 150
Austin, Texas 78746
Phone: (512) 940-9300
Email: eric@h2opartnersusa.com

**ARTICLE XVI
TERMS**

Capitalized terms contained herein shall have the definition assigned. Capitalized terms contained herein that do not have the definition assigned shall have the meaning assigned in the applicable federal statute or regulation. All article and descriptive headings of paragraphs in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

**ARTICLE XVII
ESTOPPEL WAIVER**

**ARTICLE XVII
ESTOPPEL WAIVER**

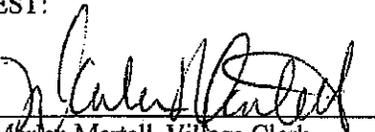
A waiver of any performance or default by either party shall not be construed to be a continuing waiver of other defaults or non-performance of the same provision or operate as a waiver of any subsequent default or non-performance of any of the terms, covenants and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed waiver of any right or acceptance of defective performance.

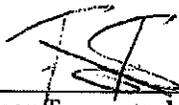
**ARTICLE XVIII
MERGER AND MODIFICATIONS**

This Agreement, together with any Task Orders, embodies the entire agreement and understanding between the parties hereto and there are no other agreements and/or understandings, oral or written, with respect to the subject matter hereof that are not merged herein and superseded hereby. This Agreement may only be amended or extended by a written instrument, executed by the Village and Company expressly for that purpose.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

ATTEST:

BY: 
Marlen Martell, Village Clerk

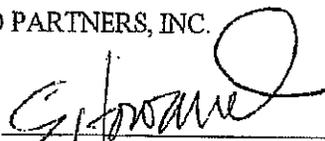
BY: 
Tracy Truppman, Mayor

Approved as to form:


John J. Hearn, Village Attorney

CONTRACTOR

H2O PARTNERS, INC.

BY: 
Eric Howard, Vice President

STATE OF TEXAS)
)S.S.
COUNTY OF TRAVIS)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Eric Howard, Vice President of H2O Partners, Inc., and acknowledged he executed the foregoing Agreement as the proper official of Company, for the use and purposes mentioned in it and that the instrument is the act and deed of Company.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 6 day of December, 2017.

My Commission Expires: 4.14.19

Nancy L. Parnell
NOTARY PUBLIC



TASK ORDER – 1 – Public Assistance Services

This Task Order is made part of and governed by the terms and provisions of the Agreement for Public Assistance Services (“Agreement”), dated as of the 8th day of November, 2017, by and between H2O Partners, Inc. (“Company”) and the Village of Biscayne Park, Florida, (“Village”). All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Agreement.

Contract: An Agreement Between the Village of Biscayne Park and H2O Partners, Inc. for Public Assistance Services

Task No.: TO1

A. BACKGROUND OF SERVICES:

- Assist in prioritizing disaster recovery activities.
- Support the Village in providing routine reports and technical data using necessary expertise and technologies.
- Assist in the preparation and review of PA Project Worksheets (PWs).
- Conduct initial scoping and assessments
- Identify and facilitate resolution of special considerations (e.g., historic, environmental, insurance, etc.)
- Provide expertise on interpreting and implementing complex scopes of work.
- Provide procurement support for recovery project contractors/subcontractors.
- Attend Recovery Scoping Meetings (RSM) and site inspections.
- Provide guidance on FEMA PA policy, including Title 44 of the CFR, PA Guide, PA Policy Digest, 9500 Policy Series, Disaster Specific Guidance, and other pertinent regulations.
- Represent Village during meetings with FDEM and FEMA.
- Develop a collaborative working environment with FEMA, FDEM, and stakeholder organizations.

B. PRICING – TASK ORDER 1

Hourly rates include all applicable overhead and profit and included in the table below.

LABOR CATEGORY	HOURLY RATE
Project Manager	\$164.00
Public Assistance Specialist III	\$142.00
Public Assistance Specialist II	\$133.50
Public Assistance Specialist I	\$114.50
Insurance/Appeals Specialist	\$110.00

Expenses are not built in for the rates. Reimbursable expenses will be passed through to the Village for reimbursement where pre-approved in writing by the Village. These expenses include lodging, the lesser of POV mileage at the IRS rate or rental car, and Per Diem. All expenses will be billed according to the Government Services Administration (GSA rate) for Miami-Dade County.

Total compensation for Company under Task Order 1 shall not exceed \$155,000.00.

C. TERM

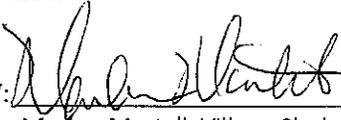
The term of Task Order 1 shall begin on the date signed and continue for sixty (60) days.

APPROVAL/ACCEPTANCE

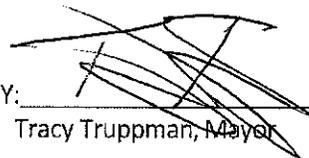
Acceptance of the terms of this Task Order is acknowledged by the following signatures of the authorized representatives of the parties to the Agreement. This Task Order consists of this document and any supplemental pages attached and referenced hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Task Order to be duly executed on the day and year first above written.

ATTEST:

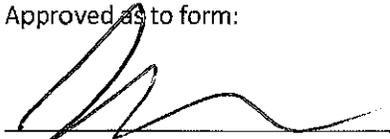
BY: 

Marien Martell, Village Clerk

BY: 

Tracy Truppmann, Mayor

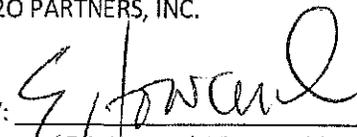
Approved as to form:



John J. Hearn, Village Attorney

CONTRACTOR

H2O PARTNERS, INC.

BY: 

Eric Howard, Vice President