Regular Council Meeting
Tuesday, March 26, 2019
Agenda
7:00 PM

Statement of Decorum

Any person making a racial or slanderous remark or who becomes boisterous while addressing the Village Council, Staff, etc. shall be barred from the audience by the presiding officer. No profanity, shouting, heckling, verbal outbursts or disruptive behavior in support of or opposition to a speaker or his/her remarks is permitted. No signs or placards shall be allowed in the Village Hall. Person exiting the Village Hall shall do so quietly.

"Pursuant to Florida Statutes, Chapter 286.0105: If a person decided to appeal any decision made by the Board, Agency or Committee with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and that, for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based."

A. CALL TO ORDER.................................Mayor Claudia V. Cubillos, Presiding

B. SILENT MEDITATION & PLEDGE.............Salute American Flag in Unison

C. ROLL CALL...........................................Yenise Jacobi, Village Clerk

D. APPROVAL OF AGENDA

E. APPROVAL OF MINUTES FOR THE FOLLOWING MEETING (S):
   E1. Approval of the Minutes for February 26th, 2019 Regular Council Meeting

F. ACKNOWLEDGMENT OF VISITORS AND/OR SPECIAL PRESENTATIONS:
   F1. Swearing in of Officer Mark Tynes
   F2. Swearing in of Officer Alejandro Martinez

G. GOOD AND WELFARE
   (Note: This section of the agenda is reserved in the spirit of a representative democracy "of, by, and for the people" and is specifically provided as a mechanism for the input and solutions on matters of concern of Villagers. We request that comments be limited to 3 MINUTES PER PERSON, and that speakers and the audience maintain proper decorum at-large. The speaker should keep to only issues on the agenda.)

H. AGENDA ITEM:
   H1. CAP Government contract
   H2. Akerman Lobbyist contract
   H3. Complete Care IT contract
I. RESOLUTIONS / ORDINANCES:

II. ORDINANCE NO. 2019-01  
REPEAL SEARGENT CHARTER  
FIRST READING

AN ORDINANCE OF THE EL PORTAL VILLAGE COUNCIL  
REPEALING CHAPTER 18, ARTICLE II, SECTIONS 18-16(a), (b)  
and (c), ENTITLED PUBLIC SAFTEY DEPARTMENT, OF THE  
VILLAGE OF EL PORTAL, FLORIDA CODE OF ORDINANCES  
AND PROVIDING FOR AN EFFECTIVE DATE.

III. ORDINANCE NO. 2019-02  
FLOODPLAIN  
FIRST READING

I2. AN ORDINANCE BY THE VILLAGE COUNCIL AMENDING THE  
VILLAGE OF EL PORTAL CODE OF ORDINANCES TO REPEAL  
CHAPTER 7.5 FLOOD DAMAGE PREVENTION OF THE VILLAGE OF  
EL PORTAL CODE OF ORDINANCES; TO ADOPT A NEW CHAPTER 7.5  
FLOOD DAMAGE PREVENTION; TO ADOPT FLOOD HAZARD MAPS,  
TO DESIGNATE A FLOODPLAIN ADMINISTRATOR, TO ADOPT  
PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD  
HAZARD AREAS, AND FOR OTHER PURPOSES; PROVIDING FOR  
APPLICABILITY; REPEALER; SEVERABILITY; AND AN EFFECTIVE  
DATE.

J. MAYOR, MANAGER, COMMITTEE & ATTORNEY REPORTS:
J1. Village Mayor Report - Mayor Claudia V. Cubillos

J2. Village Manager Report – Christia Alou

J4. Village Attorney Reports – Interim Attorney Norman Powell

K. UNFINISHED BUSINESS AND GENERAL ORDERS:

L. NEW BUSINESS:

M. GOOD AND WELFARE
(Note: This section of the agenda is reserved in the spirit of a representative democracy  
“of, by, and for the people” and is specifically provided as a mechanism for the input and  
solutions on matters of concern of Villagers. We request that comments be limited to 3
MINUTES PER PERSON, and that speakers and the audience maintain proper decorum at-large. The speaker should keep to only issues on the agenda.)

N. ADJOURNMENT:
Mayor & Councilpersons

In accordance with the American With Disabilities Act of 1990, all persons with disabilities and who need special accommodations to participate in this meeting due to that disability should contact the Village Clerk’s Office at (305) 795-7880 no later than two (2) business days prior to such proceeding.
Village of El Portal

AGREEMENT FOR BUILDING INSPECTION
AND PLAN REVIEW PROFESSIONAL CONSULTANT SERVICES

THIS AGREEMENT is made and entered into this day _____ of ______, 2019, by and between the Village of El Portal, Florida, a municipal corporation, hereinafter referred to as "Village" and C. A. P. Government, Inc., a Florida Corporation, 343 Almeria Avenue, Coral Gables, Florida 33134, hereinafter referred to hereinafter as "Consultant."

IN CONSIDERATION of the mutual covenants set forth in this Agreement, the parties agree as follows:

1. SCOPE OF SERVICES

Consultant is authorized and designated to act on behalf of the Village as the Village's Building Official in accordance with the applicable building code and Chapter 468 of the Florida Statutes. As such,

A. The Consultant agrees to provide plans review of building, structural, fire sprinklers, electrical, mechanical and plumbing and inspections of building, accessibility, roofing, electrical, mechanical, gas and plumbing requirements as contained in the Florida Building Code, including any Miami-Dade County High -Velocity Zone and Village amendments thereto; and

B. Services shall be provided by Consultant personnel in accordance with the job classifications contained in Exhibit "A". All such personnel shall be employees of the Consultant and not the Village. The Village may Designate a qualified Building Official as required by Florida Statutes, §468.601 et. seq; and

C. Process all building permit applications for the Village and verify contractor's licenses; and

D. Review building plans for structural, fire sprinkler, plumbing, electrical; and

E. mechanical and other requirements as contained in the South Florida;

F. Building Code and/or the Florida Building Code, including the Miami-Dade

G. County and amendments thereto using qualified and appropriately trained Individuals; and

H. The first plan review for single family residences shall be completed by Consultant within ten (10) working days of receipt by the Village; and

I. The first plan review for commercial building, multi-dwelling units; and

similar types of construction projects will have plan review completed within fourteen (14) working days of receipt by the Village; and

J. Conduct building permit inspections for the Village within three (3) working days from the time a request is submitted to the Village to determine compliance with the South Florida Building Code and/or the Florida Building Code, including the Miami-Dade County and amendments thereto; and

K. Consult with architects, engineers and contractors to provide guidance on proposed large projects; and
L. Respond to consumer complaints within two (2) working days from the time a complaint is submitted to the Village. The Village Manager shall be advised of all complaints received by Consultant’s and Consultant’s response to same; and

M. Provide support services relating to the organization and coordination of the Village’s building department as requested and determined by the Village Manager; and

N. Provide all necessary vehicles, mobile phones or radios and equipment for Consultant’s employees to perform the services required by this Agreement. Consultant shall provide clearly marked Village identification on all vehicles used in conjunction with the performance of this Agreement; and

O. Provide 24-hour emergency damage assessment of structures; and

P. Provide other building department services mutually agreed to by Consultant and the Village Manager. (Please refer to Section 2)

Code Compliance Services

Q. Provide a trained Code Enforcement Officer and support services relating to the organization and coordination of the Village’s code enforcement department as requested and determined by the Village Manager.


S. Issue notices of violation stop work orders, citations and fines.

T. Prepare all paperwork and documentation for code-enforcement hearings and process all cases through the code compliance process.

U. Attend all code compliance hearings on behalf of the Village.

V. Provide all necessary vehicles, mobile phones or radios and equipment for Consultant’s employees to perform the code compliance services required by this Agreement.

W. Consultant shall provide monthly reports to the Village Manager of all known and reported violations of the Village Code and the Miami-Dade County Code. Provide other code compliance and enforcement services mutually agreed to by Consultant and the Village Manager. (Please refer to Section 2)

X. Additional Services

Consultant shall provide additional services to the Village as determined by the Village Manager. (Please refer to Section 2)

AA. VILLAGE RESPONSIBILITIES

The Village shall provide, if desired, badges and photo ID for Consultant’s employees.

The Village will provide workspace and telephones for all inspectors and plan examiners employed by Consultant to perform the services required by this Agreement.

The Village shall provide computers, software and office space to track and document all Building Department records.
BB. CONSULTANT RESPONSIBILITIES

The Consultant shall also provide additional support services as may be reasonably requested by the Village Manager relating to organization and coordination of the various activities with Village staff.

Both parties understand that the Village will employ its own Building Official as defined by the Florida Building Code and F. S. 553. Employees of the Consultant shall coordinate their work through the Village's Building Official.

2. FEES FOR SERVICES and COMPENSATION

A. The Consultant agrees to charge the Village and the Village agrees to pay the Consultant the following fees for the Consultant's services:

i. For services provided pursuant to Paragraph 1A, Consultant shall be compensated at a rate equal to Seventy Percent (70%) and the Village shall receive Thirty Percent (30%) of the gross building permit fee amounts collected by the Village.

ii. If the gross permit fees exceed Fifty Thousand dollars ($50,000) in any one or more month(s), Consultant's portion for that month, or any like month shall be reduced to Sixty Five Percent (65%) and calculated on a calendar month basis and the Village shall receive Thirty Five Percent (35%).

B. For all Building Department Services provided by Consultant as described in this Agreement, the Village shall pay Consultant 50% of the actual total Permit Fees collected, or an amount approximately equal to $27,000.00 per year, whichever is greatest, payable monthly.

For all Additional Services requested by the Village Manager, the Village shall pay Consultant a fee mutually agreed to by the Village Manager and Consultant.

However, notwithstanding the above, the Consultant shall receive only Thirty Five Percent (35%) of the gross building permit fees for all projects owned, paid for and to be operated by the Village.

C. For services provided pursuant to Paragraph 1C, additional support services, Village shall compensate Consultant at the rates shown in "Exhibit B" for the hours worked by the Consultant and approved by the Village.

D. Village shall pay Consultant within thirty (30) days of invoice by Consultant consistent with Florida's Prompt Payment Act.

3. TERM OF AGREEMENT

This Agreement shall become effective upon signature of both parties and shall continue in full force and effect for a period of three (3) years. The Village reserves the right to extend the Contract for One (1) additional three (3) year term providing: (a) both parties to the Contract agree to the extension; (b) all the terms, conditions, and specifications remain the same, subject to satisfactory performance by the Consultant as determined by the Village Manager.
4. GENERAL TERMS AND CONDITIONS

A. All original I.D cards, badges, sketches, tracings, drawings, computations, details, design, calculations, work papers and other documents and plans that result from the Consultant providing Consultant specified services shall be the property of the Village. Upon termination of this Agreement or upon request of the Village during the term of this Agreement, any and all such documents shall be delivered to the Village by the Consultant.

B. Consultant shall provide all necessary vehicles, mobile phones and/or radios and equipment for Consultant employees to perform the services required by this Agreement.

C. Village shall provide badges, photo I.D, workspace and telephones for all inspectors employed by Consultant to perform the services required by this Agreement.

5. AUTOMATION, SUPPORT AND SOFTWARE

Consultant agrees to work with Village in order to implement a program that will permit Consultant’s personnel to enter data into an internet-based software application that processes, tracks and monitors permit, plan review, and inspection activity; contains plan review comments and approvals; schedules pending and daily inspections and records the date of the issuance of the Certificate of Occupancy/Completion. Consultant shall provide the Village with unrestricted access to information in the elected software application. Consultant shall contribute up to $12,000 per year toward the purchase of the necessary software and equipment to implement this program. Both parties agree that the Consultant may utilize the software application with other municipal entities that may be clients of the Consultants.

6. SERVICE STANDARDS

Consultant agrees to provide the services as required by Paragraph 1 A based on the following standards for service:

A. Consultant shall seek to provide building inspection services within twenty-four (24) hours after the Village's Building Clerk receives a request for inspection during normal business days.

B. Plan reviews shall be completed within Ten (10) working days after the Building Clerk receives a request for plan review.

C. Consultant shall seek to maintain their personnel available for customer service assistance during normal hours and as a minimum between 8:30 A.M. and 10:00 A.M.

7. INSURANCE

The Consultant shall at all times carry professional liability insurance, worker’s compensation insurance, public liability and property damage insurance, and automotive public liability and property damage insurance within minimum policy limits in the amount of One Million and No/100 ($1,000,000.00) per occurrence, except that the dollar amount of Worker’s Compensation coverage shall be as provided by Chapter 440, Fla Stat. The Village shall be named as an additional insured on all of the above insurance
policies. Each insurance policy shall state that it is not cancelable without written notice to the Village thirty (30) days prior to the effective date of cancellation.

8. ASSIGNMENT

This Agreement shall not be assignable by Consultant.

9. INDEPENDENT CONTRACTOR

Consultant shall be, in the performance of all work, services and activities under this Agreement, an independent contractor and not an employee, agent or servant of the Village. Services provided by Consultant shall be by employees of Consultant and nothing in this Agreement shall create an employment relationship between the Village and Consultant employee. Consultant agrees that it is a separate and independent enterprise from the Village.

Consultant shall be solely responsible for all employee benefits, compensation, including, but not limited to, unpaid wages, overtime, and, or, any status or rights during the course of employment with Consultant. The Village shall not be called upon to assume or share any liability for, or direct payment of, any salaries, wages, contribution to pension funds, insurance premiums or payments, workers’ compensation benefits under Chapter 440, Florida Statutes, or any other benefits or employment to any Consultant personnel performing services, duties and responsibilities under this Agreement for the benefit of the Village, or any other liabilities whatsoever. This Agreement shall not create any joint employment relationship between Consultant and the Village.

10. PROHIBITION AGAINST CONTINGENT FEES

The Consultant warrants that is has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making this Agreement.

11. TERMINATION

This Agreement may be terminated by the Village upon Ten (10) days’ notice with or without cause and by the Consultant upon Ninety (90) day’s written notice with or without cause. Any scope of work performed by Consultant through the date of Notice of Termination shall be paid by the Village to the Consultant; however, it shall be within the Village’s sole discretion to permit the Consultant to complete plans examination and/or inspection on any one or more projects that the Village may advise and Village shall pay the Consultant its professional fees according to the terms of this Agreement.

12. NON-EXCLUSIVE AGREEMENT
The services to be provided by the Consultant pursuant to this Agreement shall be nonexclusive and nothing herein shall preclude the Village from engaging other firms to perform the same or similar services for the benefit of the Village within the Village’s sole and absolute discretion. The cost of those services will be deducted from the monthly amount due to the Consultant.

13. **ENTIRE AGREEMENT**

The parties agree that this is the entire agreement between the parties. This Agreement cannot be amended or modified without the express written consent of the parties. In the event a court must interpret any word or provision of the Agreement, the word or provision shall not be construed against either party by reason of drafting or negotiating this Agreement.

14. **WARRANTIES OF CONSULTANT**

The Consultant hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under federal, state and local laws necessary to perform the services under this Agreement. A copy of all such required licenses, certifications and permits shall be provided to the Village.

15. **ATTORNEY'S FEES**

In the event any party hereto, institutes litigation or arbitration to enforce its rights or remedies hereunder, the party prevailing in such litigation or arbitration shall be entitled to an award for costs and reasonable attorney fees incurred in connection with such litigation or arbitration.

16. **NOTICES**

All notices and communications to the parties shall be in writing and shall be deemed to have been properly given if transmitted by registered or certified mail, postage pre-paid, or hand delivery. All notices and communications shall be effective upon receipt. Notices shall be addressed as follows:

As to the Village Of El Portal:

Ms. Christia E. Alou  
Village Manager  
Village of El Portal  
500 NE 87th Street  
El Portal, Florida 33138

As to the Consultant:

Mr. Carlos A. Penin  
President  
C. A. P. Government, Inc.  
343 Almeria Avenue  
Coral Gables, Florida 33134
17. **GOVERNING LAW**

This Agreement shall be construed in accordance with the laws of the State of Florida.

18. **VENUE; WAIVER OF JURY TRIAL**

A. Venue for any arbitration or litigation hereunder shall be in Miami-Dade County, Florida.

B. In the event of any litigation between the party which in any way arise from or concerns this Agreement or the services provided hereunder, the parties hereby voluntarily waive any right to trial by jury.
IN WITNESS WHEREOF, the parties have accepted, made and executed this Agreement upon the terms and conditions above stated on the day and year above written.

CONSULTANT:
CAP Government, Inc.
343 Almeria Avenue
Coral Gables, FL 33134

By: ____________________________
Carlos A. Penin, President

Attest: _______________________

VILLAGE of EL PORTAL:
Village of El Portal
500 NE 87th Street
El Portal, FL 33138

By: ____________________________
Christia E. Alou, Village Manager

Attest: _______________________
Yenise Jacobi, Village Clerk

Approved: _______________________
Norman C. Powell, Interim Village Attorney
INTENTIONALLY LEFT BLANK
Exhibit "A"

JOB CLASSIFICATIONS

A. Building Official: Building Official is certified by the Miami-Dade County Board of Rules and Appeals. This position will supervise all activities for the Village Building Department and coordinate with the Village's Code Enforcement Unit/Officer. This person will monitor and coordinate the daily operations between the Village and the Consultant.

B. Structural Plan Reviewer: A consultant employee who is certified by the Miami Dade County Board of Rules and Appeals, who is a Florida registered Professional Engineer and who performs structural review of building permit plans as mandated by the Florida Building Code.

C. Chief Building Inspector: A consultant employee who is certified by the Miami Dade County Board of Rules and Appeals and who performs all plans review and field inspection of structural, building, ADA and roofing components, per requirements of the Florida Building Code. This person is responsible for supervising inspection activities of all trades, the Threshold Building and special inspectors.

D. Threshold Buildings Inspector, Mechanical, Plumbing and Electrical, Fire Sprinkler Officials are delegated power by the Building Official to enforce the South Florida Building Code and/or the Florida Building Code and to interpret the Code requirements of their respective trades. Plans Examiners shall review permit applications remaining with Miami-Dade County Fire Engineering.

E. Building Clerk/Receptionist: A Consultant employee reporting to the Village who is assigned to be in charge of the permit counter. This employee assists with the coordination of received inspections, distribution for the inspectors, plan reviews and filing systems, also performs record retention functions for the division and coordination with the scanning contracted company. This position may be a full-time employee of the Village of El Portal.
<table>
<thead>
<tr>
<th>Position</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Official</td>
<td>$185.00</td>
</tr>
<tr>
<td>Professional Structural Engineering / Plans Examiner</td>
<td>$125.00</td>
</tr>
<tr>
<td>Professional Civil, Electrical, Mechanical Engineer</td>
<td>$100.00</td>
</tr>
<tr>
<td>Project Manager</td>
<td>$100.00</td>
</tr>
<tr>
<td>Engineer/ Designer/ Plans Examiner (Other than Structural)</td>
<td>$85.00</td>
</tr>
<tr>
<td>CADD Technician</td>
<td>$85.00</td>
</tr>
<tr>
<td>Field Inspector</td>
<td>$75.00</td>
</tr>
<tr>
<td>Zoning Inspector</td>
<td>$55.00</td>
</tr>
<tr>
<td>Administrative Assistant</td>
<td>$45.00</td>
</tr>
<tr>
<td>Clerical</td>
<td>$30.00</td>
</tr>
<tr>
<td>Vehicle Travel (with proper documentation)</td>
<td>$0.55 / Mile</td>
</tr>
<tr>
<td>Out of Pocket (pass-thru)</td>
<td>Cost + 10%</td>
</tr>
</tbody>
</table>
February 1, 2019

SENT VIA E-MAIL: villagemanager@villageofelportal.org
Christia Alou, Village Manager
Village of El Portal
500 NE 87th Street
El Portal, Florida 33138

Re: State of Florida Representation on behalf of the Village of El Portal

Dear Christia:

Akerman LLP ("Akerman") agrees to provide consulting services to the Village of El Portal ("Client") beginning February 1, 2019, on the following terms and conditions:

1. **Scope of Engagement:** Client has retained Akerman to represent Client before the Florida State Legislature and Executive Branch of government: as directed by the Village Manager.

   Client has not retained Akerman to provide legal advice. Akerman assumes no responsibility or obligation to provide any such advice unless separately and specifically contracted for in writing.

2. **Scope of Work.** The terms of this agreement will constitute an understanding of the scope and status of the work to be performed by Akerman for the Village of El Portal that will include, but not limited to:

   - Help prepare legislative requests for the Village of El Portal.
   - Work to secure funding or approvals for the Village of El Portal infrastructure projects.
   - Identify and nurture new business opportunities for the Village of El Portal in the legislature and any state agencies.
   - On behalf of the Village of El Portal, coordinate and direct any and all government affairs subcontractors.
   - On behalf of the Village of El Portal, coordinate ongoing Village activities before any local governments or planning agencies.
   - Submit timely written reports to the Village Manager on issues of interest to the Village and community in general.
• Prepare written briefings to the Village Manager during Regular and Special Sessions of the Florida Legislature.
• Attend Village of El Portal Commission meetings, whenever possible.

3. **Staffing and Subcontractors:** Primary responsibility for this engagement will be assumed by Richard Pinsky. Akerman reserves the right to include other public policy professionals within the firm as well as the ability to retain any subcontractors as deemed necessary to successfully carry out the scope of work contained in this Agreement. However, the Village Manager must provide prior approval of any firm or individual retained as a subcontractor. As of the date of this Agreement, the Nortelus Roberts governmental relations firm has been approved and is currently representing the Village of El Portal as outlined in this Agreement.

4. **Fees:** the fees for public policy consulting service shall be $21,000.00 due and owing to Akerman in (6) equal monthly installments of $3,500.00 per month, beginning February 1, 2019, and concluding July 31, 2019. However, nothing in this Agreement prevents the extension of any of the terms of the Agreement from continuing on a month to month basis after July 31, 2019. This Agreement, or in the case of a month to month extension, may be terminated upon thirty (30) days' written notice by either party.

5. **Costs:** Expenses (such as travel, lodging, meals, telephone, tolls, photocopying, postage, computerized research, etc.) will be separately itemized on Akerman's statements. Any expenses exceeding $100.00 will require prior approval by the Village Manager.

6. **Conflicts of Interest:** Akerman must disclose any potential conflict of interest to the Village of El Portal in advance of any agreement or be subject to cancellation fees. Other than as is discussed and agreed to by both parties. Akerman will prioritize all Village of El Portal projects to ensure that there are no conflicts of interest that may arise during the course of business. This scope of work agreed to by this agreement for professional services will be subject to the direction of the Village of El Portal. Both parties must agree to any changes to this agreement.

Sincerely yours,

[Signature]

Richard Pinsky
Policy Group Manager
ACCEPTANCE

Richard Pinsky,
Policy Group Manager

Christia Alou, Manager
Village of El Portal
COMPLETE CARE IT LLC
MASTER SERVICES AGREEMENT

This Master Services Agreement (this “Agreement”) is between Complete Care IT LLC with offices at 4801 South University Drive, Suite 125, Davie, Florida 33328 (“us”, “our”, “we” or “CCIT”), and you, the entity whose name, authorized signatory and contact information appear in the signature block of this Agreement (“you”, “your” or “Client”). This Agreement will be effective as of the latest date of the signatures of the parties below (“Effective Date”).

1) SCOPE OF SERVICES; SOW. This Agreement governs all of the services that we perform for you (collectively, the “Services”). The Services will be described in one or more statements of work that we provide to you (each, a “SOW”), and once you and we mutually agree to a SOW (either by signing it or by electronic acceptance), the SOW will become a part of, and governed under, the terms of this Agreement. If there is a material difference between the language in a SOW and the language in this Agreement, then the language of the SOW will control, except in situations involving warranties, limitations of liability or termination of this Agreement. Under those limited circumstances, the terms of this Agreement will control unless the SOW expressly states that it is overriding the conflicting provisions of this Agreement.

2) GENERAL REQUIREMENTS.
   a) System Configuration. For the purposes of this Agreement, “System” means, collectively, any computer network, computer system, peripheral or device installed, maintained, monitored or operated by CCIT as described in any applicable SOW. Our fees are based upon the configuration of your System as of the effective date of the applicable SOW. If the System configuration changes for any reason, then we may adjust the scope of services and/or the fees charged to you under the applicable SOW to accommodate those changes.
   b) Requirements. At all times, all software on the System must be genuine and licensed, and you agree to provide us with proof of such licensing upon our request. If we require you to implement certain minimum hardware or software requirements in a SOW (“Minimum Requirements”), you agree to do so as an ongoing requirement of CCIT providing its Services to you.
   c) Maintenance; Updates. If patches and other software-related maintenance updates (“Updates”) are to be provided by CCIT under a SOW, CCIT will install the Updates only if CCIT has determined, in its reasonable discretion, that the Updates will be compatible with the particular configuration of the System and materially beneficial to the features or functionality of the applicable software or hardware. CCIT will not be responsible for any downtime or losses arising from or related to the installation or use of any Update, provided that the Update was installed in accordance with the manufacturer’s or applicable vendor’s instructions.
   d) Third Party Support. If, in CCIT’s discretion, a hardware or software issue requires vendor or OEM support, CCIT may contact the vendor or OEM (as applicable) on your behalf and pass through to you, without markup, all fees and costs incurred in that process. If such fees or costs are anticipated in advance or exceed $75, CCIT will obtain your permission before incurring such expenses on your behalf unless exigent circumstances require otherwise.
   e) Insurance. If you are supplied with CCIT Equipment, you agree to acquire and maintain, at your sole cost, insurance for the full replacement value of that equipment. CCIT shall be listed as an additional insured on any policy acquired and maintained by you hereunder, and the policy shall not be canceled or modified during the term of the applicable SOW without prior notification to CCIT. Upon CCIT’s request, you agree to provide proof of insurance to CCIT, including proof of payment of any applicable premiums or other amounts due thereunder.
   f) Advice; Instructions. From time to time, we may provide you with specific advice and directions related to our provision of the Services or the maintenance or administration of the System. (For illustrative purposes, such advice or directions may include installing cooling mechanisms or environmental controls in a server room, increasing the System’s server or hard drive capacity, replacing obsolete equipment, etc.). You agree to promptly follow and implement any directions we provide to you related to the Services which, depending on the situation, may require you to make additional purchases or investments in the System or the environment in which the System is maintained, at your sole cost. CCIT will not be responsible for any System downtime caused by your failure to promptly follow CCIT’s advice or directions. If your failure to follow or implement CCIT’s advice renders part or all of the Services economically or technically unreasonable in CCIT’s discretion, then CCIT may terminate the applicable SOW for cause by providing notice of termination to you. Any services required to correct or remediate issues caused by your failure to follow CCIT’s advice or directions, as well as any services required to bring the System up to the Minimum Requirements, will be billed to you at CCIT’s then-current hourly rates.
   g) Prioritization. Unless otherwise stated in a SOW, all Services will be performed on a schedule, and in a prioritized manner, as determined by CCIT.
   h) Authorized Contact(s). You understand and agree that CCIT will be entitled to rely on any directions or consent provided by your personnel or representatives who are authorized in a SOW to provide such directions or consent ("Authorized Contacts"). If no Authorized Contact is identified in an applicable SOW, then your Authorized Contact will be the person(s) (i) who signed this Agreement, and/or (ii) who signed the applicable SOW. If you desire to change your Authorized Contact(s), please notify CCIT of such changes in writing which, unless exigent circumstances are stated in the notice, will take effect three (3) business days thereafter.
3) FEES; PAYMENT. You agree to pay the fees described in each SOW. If the SOW does not include a fee schedule, then you agree to pay CCIT on an hourly basis pursuant to CCIT’s standard hourly rate schedule, which will be provided to you prior to the commencement of Services.

   a) Schedule. Unless otherwise stated in a SOW, all undisputed fees will be due and payable in advance of the calendar month in which the Services are to be provided to you. If paying by credit card, your credit card will be charged for the Services on the first calendar day of the month in which the Services are to be provided to you; recognized bank holidays may result in a delay in . Payments made by ACH will be deducted from your designated bank account on the first business day of the month in which the Services are to be provided. For prepaid fees or fees paid pursuant to a service plan, payment must be made in advance of work performed, unless other arrangements are expressly stated in the SOW. Unless an activity or project is terminated for cause by you, all prepaid fees are nonrefundable once received by CCIT.

   b) Nonpayment. Fees that remain unpaid for more than fifteen (15) days after the due date on the invoice will be subject to interest on the unpaid amount(s) until and including the date payment is received, at the lower of either 1.5% per month or the maximum allowable rate of interest permitted by applicable law. CCIT reserves the right, but not the obligation, to suspend part or all of the Services without prior notice to you in the event that any portion of undisputed fees are not timely received by CCIT. Notice of disputes related to fees must be received by us within sixty (60) days after the applicable Service is rendered or the date on which you pay an invoice, whichever is later; otherwise, you waive your right to dispute the fee thereafter. A re-connection fee may be charged to you in the event that CCIT suspends the Services due to your nonpayment. Time is of the essence in the performance of all payment obligations by you.

4) ACCESS. You hereby grant to CCIT the right to monitor, manipulate, communicate with, and otherwise access the System, including any desktop or workstations attached to the System, for the purpose of enabling CCIT to provide the Services. It is your responsibility to secure, at your own cost and prior to the commencement of any Services, any necessary rights of entry, licenses, permits or other permissions necessary for CCIT to provide Services to the System and, if applicable, at your designated premises.

5) LIMITED WARRANTIES; LIMITATIONS OF LIABILITY.

   a) Hardware / Software Purchased Through CCIT. Unless otherwise stated in a SOW, all hardware, software, peripherals or accessories purchased through CCIT (“Third Party Products”) are nonrefundable once the applicable purchase order is placed in CCIT’s queue for delivery. We will use reasonable efforts to assign, transfer and facilitate all warranties (if any) and service level commitments (if any) for the Third Party Products to you, but will have no liability whatsoever for the quality, functionality or operability of any Third Party Products, and we will not be held liable as an insurer or guarantor of the performance, uptime or usefulness of any Third Party Products. Unless otherwise expressly stated in a SOW, all Third Party Products are provided “as is” and without any warranty whatsoever as between CCIT and you (including but not limited to implied warranties).

   b) Warranty Application. Notwithstanding any provision to the contrary in this Agreement, any warranty provided by CCIT shall be deemed null and void if the applicable hardware or product is (i) altered, modified or repaired by persons other than CCIT, including, without limitation, the installation of any attachments, features, or devices not supplied or approved by CCIT; (ii) misused, abused, or not operated in accordance with the specifications of CCIT or the applicable manufacturer or creator of the hardware or product, or, (iii) subjected to improper site preparation or maintenance by persons other than CCIT or persons approved or designated by CCIT.

   c) Liability Limitations. This paragraph limits the liabilities arising under this Agreement or any SOW, and is a bargain-for and material part of this Agreement. In no event shall either party be liable for any indirect, special, exemplary, consequential or punitive damages, or for lost revenue, loss of profits (except for fees due and owing to CCIT), savings, or other indirect or contingent event-based economic loss arising out of or in connection with this Agreement, any SOW, or the Services, or for any loss or interruption of data, technology or services, or for any breach hereof or for any damages caused by any delay in furnishing Services under this Agreement or any SOW, even if a party has been advised of the possibility of such damages. Except for your payment obligations and your indemnification obligations described in this Agreement, a responsible party’s (“Responsible Party’s”) aggregate liability to the other party (“Aggrieved Party”) for damages from any and all claims or causes whatsoever, and regardless of the form of any such action(s), that arise from or relate to this Agreement (collectively, “Claims”), whether in contract, tort, indemnification, or negligence, shall be limited solely to the amount of the Aggrieved Party’s actual and direct damages, not to exceed the amount of fees paid by you to CCIT for the specific Service upon which the applicable claim(s) is/are based during the six (6) month period immediately prior to the date on which the cause of action accrued. The foregoing limitation shall not apply to the extent that the Claims are caused by a Responsible Party’s willful or intentional misconduct, or gross negligence. Similarly, a Responsible Party’s liability obligation shall be reduced to the extent that a Claim is caused by, or the result of, the Aggrieved Party’s willful or intentional misconduct, or gross negligence.

6) INDEMNIFICATION. You agree to indemnify, defend and hold CCIT harmless from and against any and all losses, damages, costs, expenses or liabilities, including reasonable attorneys’ fees, (collectively, “Damages”) that arise from, or are related to, your breach of this Agreement, or which relate to any act or omission undertaken or caused by you. The foregoing indemnification obligation includes Damages arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other work in connection with the performance of the Services. CCIT will have the right, but not the obligation, to control the intake, defense and disposition of any claim or cause of action for which indemnity may
be sought under this section. No claim for which indemnity is sought by CCIT will be settled without CCIT's prior written consent, which shall not be unreasonably delayed or withheld.

7) TERM; TERMINATION. This Agreement will begin as of the latest date of the signatures of the parties below, and will continue until terminated as described in this Section (the "Term"). Additionally, each SOW will have its own term, and will be terminated only as provided herein, unless otherwise expressly stated in the applicable SOW. The termination of one SOW shall not, by itself, cause the termination of (or otherwise impact) the status or progress of any other SOW between the parties.

a) Termination Without Cause. Unless otherwise agreed by the parties in writing, no party will terminate a SOW without cause prior to the SOW's natural expiration date. If you terminate a SOW without cause, then you will be responsible for paying the early termination fee described in the applicable SOW. If no early termination fee is listed, then prior to the effective date of termination of the SOW or this Agreement (as applicable) without cause, you agree to pay CCIT an amount equal to (i) all expenses incurred by CCIT in its preparation and provision of the Services to you, e.g., licensing fees incurred by CCIT, non-mitigable hard costs, commission fees, etc. ("Hard Costs"), as well as (ii) all fees that would have been paid to CCIT had the term not been terminated prematurely.

b) Termination For Cause. In the event that one party (a "Defaulting Party") commits a material breach under a SOW or under this Agreement, the non-Defaulting Party will have the right, but not the obligation, to terminate immediately this Agreement or the relevant SOW (a "For Cause" termination) provided that (i) the non-Defaulting Party has notified the Defaulting Party of the specific details of the breach in writing, and (ii) the Defaulting Party has not cured the default within twenty (20) days (ten (10) days for non-payment by Client) following receipt of written notice of breach from the non-Defaulting Party. If CCIT terminates this Agreement or any SOW For Cause, then CCIT shall be entitled to receive, and you hereby agree to pay to CCIT, (i) all amounts that would have been paid to CCIT had this Agreement or SOW (as applicable) remained in effect, and (ii) all Hard Costs. If you terminate this Agreement or a SOW for cause, then you will be responsible for paying only for those services that were properly delivered and accepted by you up to the effective date of termination.

c) Client Activity As A Basis for Termination. In the event that any Client-supplied equipment, hardware or software, or any action undertaken by you, causes the System or any part of the System to malfunction or requires remediation by CCIT on three (3) occasions or more ("System Malfunction"), and you fail to remedy, repair or replace the System Malfunction as directed by CCIT (or you fail to cease the activity causing the System Malfunction, as applicable), then CCIT will have the right, upon ten (10) days prior written notice to you, to terminate this Agreement or the applicable SOW For Cause or, at CCIT's discretion, amend the applicable SOW to eliminate from coverage any System Malfunction or any equipment or software causing the System Malfunction.

d) Consent. You and we may mutually consent, in writing, to terminate a SOW or this Agreement at any time.

e) Equipment / Software Removal. Upon termination of this Agreement for any reason, you will provide CCIT with access, during normal business hours, to your premises or any other locations at which CCIT-owned equipment or software (collectively, "CCIT Equipment") is located to enable CCIT to remove all CCIT Equipment from the premises. If you fail or refuse to grant CCIT access as described herein, or if any of the CCIT Equipment is missing, broken or damaged (normal wear and tear excepted) or any of CCIT-supplied software is missing, CCIT will have the right to invoice you for, and you hereby agree to pay immediately, the full replacement value of any and all missing or damaged items.

f) Transition; Deletion of Data. In the event that you request CCIT's assistance to transition to a new service provider, CCIT will provide such assistance if (i) all fees due and owing to CCIT are paid to CCIT in full prior to CCIT providing its assistance to you, and (ii) you agree to pay CCIT its then-current hourly rate for such assistance, with up-front amounts to be paid to CCIT as may be required by CCIT. For the purposes of clarity, it is understood and agreed that the retrieval and provision of passwords, log files, administrative server information, or conversion of data are transition services, and are subject to the preceding requirements. Unless otherwise expressly stated in a SOW, CCIT will have no obligation to store or maintain any Client data in CCIT's possession or control beyond fifteen (15) calendar days following the termination of this Agreement. CCIT will be held harmless for, and indemnified by you against, any and all claims, costs, fees, or expenses incurred by either party that arise from, or are related to, CCIT's deletion of your data beyond the time frames described in this Section 7(f).

8) RESPONSE; REPORTING.

a) Response. CCIT warrants and represents that CCIT will provide the Services, and respond to any notification received by CCIT of any error, outage, alarm or alert pertaining to the System, in the manner and within the time period(s) designated in an applicable SOW ("Response Time"), except for (i) those periods of time covered under the Onboarding Exception (defined below), or (ii) periods of delay caused by Client-Side Downtime (defined below), or (iii) periods in which CCIT is required to suspend the Services to protect the security or integrity of your System or CCIT's equipment or network, or (iv) delays caused by a force majeure event.

i) Scheduled Downtime. For the purposes of this Agreement, Scheduled Downtime will mean those hours, as determined by CCIT but which will not occur between the hours of 9 AM and 5:30 PM EST (or EDT, as applicable), Monday through Friday without your authorization or unless exigent circumstances exist, during which time CCIT will perform scheduled maintenance or adjustments to its network. CCIT will use its best efforts to provide you with at least twenty-four (24) hours of notice prior to scheduling Scheduled Downtime.

ii) Client-Side Downtime. CCIT will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services to the extent that such delays or deficiencies are caused by your actions or omissions ("Client-Side Downtime").
iii) Remedies: Limitations. Except for the Onboarding Exception, if CCIT fails to meet its service level commitment in a given calendar month and if, under such circumstances, CCIT’s failure is not due to your activities, omissions, or inactivity, then upon receiving your written request for credit, CCIT will issue you a pro-rated credit in an amount equal to the period of time of the outage and/or service failure. All requests for credit must be made by you no later than forty-five (45) days after you either (i) report the outage or service failure to CCIT, or (ii) if applicable, receive a monthly report showing the outage and/or failure. The remedies contained in this paragraph are in lieu of (and are to the exclusion of) any and all other remedies that might otherwise be available to you for CCIT’s failure to meet any service level commitment during the term of this Agreement.

b) Onboarding Exception. You acknowledge and agree that for the first thirty (30) days following the commencement date of a SOW, the Response Time commitments described in this Agreement will not apply to CCIT, it being understood that there may be unanticipated downtime or delays due to CCIT’s initial startup activities with you (the “Onboarding Exception”).

9) CONFIDENTIALITY.

a) Defined. For the purposes of this Agreement, Confidential Information means any and all non-public information provided to CCIT by you, including but not limited to your customer data, customer lists, internal documents, and related information. Confidential Information will not include information that: (i) has become part of the public domain through no act or omission of CCIT, (ii) was developed independently by CCIT, or (iii) is or was lawfully and independently provided to CCIT prior to disclosure by you, from a third party who is not and was not subject to an obligation of confidentiality or otherwise prohibited from transmitting such information.

b) Use. CCIT will keep your Confidential Information confidential, and will not use or disclose such information to any third party for any purpose except (i) as expressly authorized by you in writing, or (ii) as needed to fulfill CCIT’s obligations under this Agreement. If CCIT is required to disclose the Confidential Information to any third party as described in part (ii) of the preceding sentence, then CCIT will ensure that such third party is required, by written agreement, to keep the information confidential under terms that are at least as restrictive as those stated in this Section 9.

c) Due Care. CCIT will exercise the same degree of care with respect to the Confidential Information it receives from you as CCIT normally takes to safeguard and preserve its own confidential and proprietary information, which in all cases will be at least a commercially reasonable level of care.

d) Compelled Disclosure. If CCIT is legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any of the Confidential Information, CCIT will immediately notify you in writing of such requirement so that you may seek a protective order or other appropriate remedy and/or waive CCIT’s compliance with the provisions of this Section 9. CCIT will use its best efforts, at your expense, to obtain or assist you in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, CCIT may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that CCIT has been advised by written opinion of counsel reasonably acceptable to CCIT that it is legally compelled to disclose.

10) THIRD PARTY SERVICES.

a) EULAs. Portions of the Services may require you to accept the terms of one or more third party end user license agreements (“EULAs”). EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. You agree to be bound by the terms of such EULAs, and will look only to the applicable third party provider for the enforcement of the terms of such EULAs. If, while providing the Services, CCIT is required to comply with a third party EULA and the third party EULA is modified or amended, CCIT reserves the right to modify or amend any applicable SOW with you to ensure CCIT’s continued compliance with the terms of the third party EULA.

b) Data Loss. Under no circumstances will CCIT be responsible for any data lost, corrupted or rendered unreadable due to (i) communication and/or transmissions errors or related failures, (ii) equipment failures (including but not limited to silent hardware corruption-related issues), or (iii) CCIT’s failure to backup or secure data from portions of the System that were not expressly designated in the applicable SOW as requiring backup or recovery services.

c) BYOD. You hereby represent and warrant that CCIT is authorized to provide the Services to all devices, peripherals and/or computer processing units, including mobile devices (such as notebook computers, smart phones and tablet computers) that (i) are connected to the System, and (ii) have been designated by you to receive the Services, regardless of whether such device(s) are owned, leased or otherwise controlled by you. Unless otherwise stated in a SOW, devices will not receive or benefit from the Services while the devices are detached from or unconnected to the System.

11) OWNERSHIP. Each party is, and will remain, the owner and/or licensor of all works of authorship, patents, trademarks, copyrights and other intellectual property owned or licensed by such party (“Intellectual Property”), and nothing in this Agreement or any SOW shall be deemed to convey or grant any ownership rights in one party’s Intellectual Property to the other party.

12) ARBITRATION. If the parties are unable to resolve a dispute informally, the dispute will be settled by final and binding arbitration. The arbitration will be initiated and conducted according to the JAMS Comprehensive Arbitration Rules and Procedures (except as modified herein) including the Optional Expedited Arbitration Procedures and Optional Appeal Procedure, in effect at the time the request for arbitration is made (the "Rules"). In the event of any inconsistency between the Rules and the procedures set forth below, the procedures set forth below will control. The arbitrator, and not any federal, state, or local court or agency, will have
exclusive authority to resolve any dispute relating to the interpretation, enforceability or formation of this Agreement including, but not limited to any claim that all or any part of the Agreement is void or voidable. The arbitration shall be heard by a single arbitrator, to be selected by the parties and experienced in contract, intellectual property and information technology transactions. If the parties cannot agree on an arbitrator within fifteen (15) days after a demand for arbitration is filed, JAMS shall select the arbitrator. The arbitration shall take place in the venue described in Section 13, below. The arbitrator shall determine the scope of discovery in the matter; however, it is the intent of the parties that any discovery proceedings be limited to the specific issues in the applicable matter, and that discovery be tailored to fulfill that intent. The cost of the arbitration shall be split evenly between the parties; however, the party prevailing in the arbitration shall be entitled to an award of its reasonable attorneys’ fees and costs.

13) MISCELLANEOUS.

a) Assignment. Neither this Agreement nor any SOW may be assigned or transferred by a party without the prior written consent of the other party. This Agreement will be binding upon and inure to the benefit of the parties hereto, their legal representatives, and permitted successors and assigns. Notwithstanding the foregoing, CCIT may assign its rights and obligations hereunder to a successor in ownership in connection with any merger, consolidation, or sale of substantially all of the assets of the business of CCIT, or any other transaction in which ownership of more than fifty percent (50%) of CCIT’s voting securities are transferred; provided, however, that such assignee expressly assumes CCIT’s obligations hereunder.

b) Amendment. No amendment or modification of this Agreement or any SOW will be valid or binding upon the parties unless such amendment or modification is originated in writing by CCIT, specifically refers to this Agreement, and is accepted in writing by one of your Authorized Contacts.

c) Time Limitations. The parties mutually agree that any action for any matter arising out of this Agreement or any SOW (except for issues of nonpayment by Client) must be commenced within six (6) months after the cause of action accrues or the action is forever barred.

d) Severability. If any provision hereof or any SOW is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegibility or unenforceability so that the remainder of that provision and all remaining provisions of this Agreement or any SOW will be valid and enforceable to the fullest extent permitted by applicable law.

e) Other Terms. CCIT will not be bound by any terms or conditions printed on any purchase order, invoice, memorandum, or other written communication between the parties unless such terms or conditions are incorporated into a duly executed SOW.

f) No Waiver. The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this Agreement, the temporary or recurring waiver of any term or condition of this Agreement, or the granting of an extension of the time for performance, will not constitute an Agreement to waive such terms with respect to any other occurrences.

g) Merger. This Agreement, together with any and all SOWs, sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings related to the Services, and no representation, promise, inducement or statement of intention has been made by either party which is not embodied herein. Any document that is not expressly and specifically incorporated into this Agreement or SOW will act only to provide illustrations or descriptions of Services to be provided, and will not act to modify this Agreement or provide binding contractual language between the parties. CCIT will not be bound by any agents’ or employees’ representations, promises or inducements not explicitly set forth herein.

h) Force Majeure. CCIT will not be liable to you for delays or failures to perform CCIT’s obligations under this Agreement or any SOW because of circumstances beyond CCIT’s reasonable control. Such circumstances include, but will not be limited to, any intentional or negligent act committed by you, or any acts or omissions of any governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, disputes or differences with workmen, power failure, communications delays/outrages, delays in transportation or deliveries of supplies or materials, cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, and acts of God.

i) Non-Solicitation. You acknowledge and agree that during the term of this Agreement and for a period of one (1) year following the termination of this Agreement, you will not, individually or in conjunction with others, directly or indirectly solicit, induce or influence any of CCIT’s employees or subcontractors to discontinue or reduce the scope of their business relationship with CCIT, or recruit, solicit or otherwise influence any employee or agent of CCIT to discontinue such employment or agency relationship with CCIT. In the event that you violate the terms of the restrictive covenants in this Section 13(i), you acknowledge and agree that the damages to CCIT would be difficult or impracticable to determine, and you agree that in such event, as CCIT’s sole and exclusive remedy therefore, you will pay CCIT as liquidated damages and not as a penalty an amount equal to fifty percent (50%) percent of that employee or subcontractor’s first year of base salary with you (including any signing bonus). In addition to and without limitation of the foregoing, any solicitation or attempted solicitation for employment directed to any of CCIT’s employees by you will be deemed to be a material breach of this Agreement, in which event CCIT shall have the right, but not the obligation, to terminate this Agreement or any then-current SOW immediately For Cause.

j) Survival. The provisions contained in this Agreement that by their context are intended to survive termination or expiration of this Agreement will survive.

c) Insurance. CCIT and you will each maintain, at each party’s own expense, all insurance reasonably required in connection with this Agreement or any SOW, including but not limited to, workers compensation and general liability. CCIT agrees to maintain a general liability policy with a limit not less than $1,000,000 per occurrence. All of the insurance policies described herein will not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to the other party by certified mail.
I) Governing Law; Venue. This Agreement and any SOW will be governed by, and construed according to, the laws of the state of Florida. You hereby irrevocably consent to the exclusive jurisdiction and venue of the state courts in Broward County, Florida, for any and all claims and causes of action arising from or related to this Agreement. YOU AND WE AGREE THAT EACH OF US WAIVES ANY RIGHT TO A TRIAL BY JURY FOR ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING FROM OR RELATED TO THIS AGREEMENT.

m) No Third Party Beneficiaries. The Parties have entered into this Agreement solely for their own benefit. They intend no third party to be able to rely upon or enforce this Agreement or any part of this Agreement.

n) Usage in Trade. It is understood and agreed that no usage of trade or other regular practice or method of dealing between the Parties to this Agreement will be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

o) Business Day. If any time period set forth in this Agreement expires on a day other than a business day in Broward County, Florida, such period will be extended to and through the next succeeding business day in Broward County, Florida.

p) Notices; Writing Requirement. Where notice is required to be provided to a party under this Agreement, such notice may be sent by U.S. mail, overnight courier, fax or email as follows: notice will be deemed delivered three (3) business days after being deposited in the United States Mail, first class mail, certified or return receipt requested, postage prepaid, or one (1) day following delivery when sent by FedEx or other overnight courier, or one (1) day after notice is delivered by fax or email. Notice sent by email will be sufficient only if (i) the sender emails the notice to the last known email address of the recipient, and (ii) the sender includes itself in the “cc” portion of the email and preserves the email until such time that it is acknowledged by the recipient. Notwithstanding the foregoing, any notice from you to CCIT regarding (a) any alleged breach of this Agreement by CCIT, or (b) any request for indemnification, or (c) any notice of termination of this Agreement or any SOW, must be delivered to CCIT either by U.S. mail or fax, unless such requirement is expressly and specifically waived by CCIT. All electronic documents and communications between the parties will satisfy any “writing” requirement under this Agreement.

q) Independent Contractor. Each party is an independent contractor of the other, and neither is an employee, partner or joint venturer of the other.

r) Subcontractors. Generally, CCIT does not utilize subcontractors; however, should CCIT elect to subcontract a portion of the Services, CCIT shall guarantee all work performed by any CCIT-designated subcontractor as if CCIT performed the subcontracted work itself.

s) Data Access/Storage. Depending on the Service provided, a portion of your data may occasionally be accessed or stored on secure servers located outside of the United States. You agree to notify us in the event that your company requires us to modify our standard access or storage procedures.

f) Attorneys’ Fees. If CCIT is required to bring an action to enforce the terms of this Agreement, CCIT shall be entitled to an award of the reasonable attorneys’ fees and costs that it incurred at all stages of the action, including without limitation, at trial and appeal.

u) Counterparts. The parties may sign and deliver this Agreement and any SOW in any number of counterparts, each of which will be deemed an original and all of which, when taken together, will be deemed to be one agreement. Each party may sign and deliver this Agreement (or any SOW) electronically (e.g., by digital signature and/or electronic reproduction of a handwritten signature), and the receiving party will be entitled to rely upon the apparent integrity and authenticity of the other party’s signature for all purposes.

AGREED AND ACCEPTED:

Date: 3/4/2019

COMPLETE CARE IT, LLC

By: Ryan Lowell

Print Name / Position:
Ryan Lowell
Vice President

Date: ______________________
Client: ______________________

By: ______________________
Print Name / Position: Christian Alou

Contact Information:
STATEMENT OF WORK

This Statement of Work ("SOW") is governed under the Master Service Agreement (the "Agreement") between Complete Care IT LLC ("CCIT"), and the client whose name and authorized signatory appear in the signature block of this SOW ("Client"), below. Capitalized terms in this SOW will have the same meaning as those in the Agreement, unless otherwise indicated below.

Scope of Services

The following services (collectively, "Services") will be provided to Client:

The Complete Care Plan

The Complete Care Plan is a package of support, monitoring, maintenance, and security services for small and medium businesses. The plan provides multiple services, as follows:

Help Desk

Help desk support is provided between the hours of 8:30 AM and 5:30 PM EST, Monday through Friday, and are unavailable (except for emergency services, as described below) on weekends, non-business hours and CCIT-recognized holidays. Help desk support is provided via email or telephone.

Help desk support is provided on a first-come, first-serve basis with prioritized accommodations for urgent or critical-type issues as determined by CCIT.

Help desk support provided within CCIT’s normal support hours is billed as a flat monthly fee, see Fees section for details.

Help desk support provided outside of CCIT’s normal support hours will be billed to Client hourly, see Fees section for details.

Onsite Support

Onsite support is provided between the hours of 8:30 AM and 5:30 PM EST, Monday through Friday, and are unavailable (except for emergency services, as described below) on weekends, non-business hours and CCIT-recognized holidays. Onsite support is provided via CCIT technical staff and independent contractors.
All reasonable attempts to resolve issues remotely will be made prior to scheduling an onsite resource.

All onsite support is billed to Client hourly, with a 2-hour minimum. See Fees section for details.

Maintenance Services

CCIT provides maintenance services to supported systems, such as security and critical update deployment, disk cleanup, system optimization, and other maintenance-related tasks. Unless otherwise provided in this SOW, maintenance services will be applied in accordance with the recommended practices of the managed services industry. Client understands and agrees that maintenance services are not intended to be, and will not be, a warranty or guaranty of the functionality of any particular device, or a service plan for the repair or remediation of any particular managed hardware or software. Repair and/or device remediation services are not covered under CCIT’s maintenance service plan, and shall be provided on an hourly basis to Client.

Monitoring Services; Alert Services

CCIT monitors supported Client systems for various criteria, including known issues, system outages, hardware failures, and other performance metrics. Unless otherwise indicated in this SOW, all monitoring and alert-type services are limited to detection and notification functionalities only. These functionalities are guided by Client-designated policies, which may be modified by Client as necessary or desired from time to time. Initially, the policies will be set to a baseline standard as determined by CCIT; however, Client is advised to establish and/or modify the policies that correspond to Client’s specific monitoring and notification needs.

Anti-Virus; Anti-Malware

CCIT’s anti-virus / anti-malware solution will generally protect the Client’s system from becoming infected with new viruses and malware (“Viruses”); however, Viruses that exist on the Client’s system at the time that the security solution is implemented may not be capable of being removed without additional services, for which a charge may be incurred.

Any security solution may be circumvented and/or rendered ineffective if a user purposely or intentionally downloads or installs malware (such as a rootkit) onto the user’s system. Client is strongly advised to refrain from downloading files that are sent by unknown users, and/or users or files whose origination cannot be verified. CCIT does not warrant or guarantee that all Viruses and malware will be capable of being removed, or that all forms of Viruses and malware will be timely detected or removed.
In order to improve security awareness, you agree that CCIT or its designated third party affiliate may transfer information about the results of processed files, information used for URL reputation determination, security risk tracking, and statistics for protection against spam and malware. Any information obtained in this manner does not and will not contain any personal or confidential information.

**Quarterly Business Review; IT Strategic Planning**

CCIT will conduct meetings with the Client, either virtually or in person, to review the Client’s current IT infrastructure and make suggestions for ongoing improvement. This meeting may occur quarterly, biannually, or annually subject to Client’s schedule preference. Suggestions and advice rendered to Client are provided in accordance with relevant industry practices, based on Client’s specific needs. By suggesting a particular service or solution, CCIT is not endorsing any particular manufacturer or service provider. CCIT is not a warranty service or repair center, and does not warrant or guarantee the performance of any third party service or solution.

**Unsupported Configuration Elements Or Services**

If Client requests a configuration element (hardware or software) or hosting service in a manner that is not customary at CCIT, or that is in “end of life” or “end of support” status, CCIT may designate the element or service as “unsupported,” “non-standard,” “best efforts,” “reasonable endeavor,” “one-off,” “EOL,” “end of support,” or with like term in the service description (an “Unsupported Service”). CCIT makes no representation or warranty whatsoever regarding any Unsupported Service, and Client agrees that CCIT will not be liable to Client for any loss or damage arising from the provision of an Unsupported Service. Deployment and service level guaranties shall not apply to any Unsupported Service.

**Term; Termination**

The Services will commence, and billing will begin, on the date on which the Services are implemented and operational, which will be **March 1, 2019** ("Commencement Date").

The Services will continue for a term of **one year** from the Commencement Date. After the expiration of the initial term, this SOW will automatically renew for contiguous one (1) year terms unless either party notifies the other of its intention to not renew this SOW no less than thirty (30) days before the end of the then-current term.
Assumptions / Minimum Requirements / Exclusions

The scheduling, fees and provision of the Services are based upon the following assumptions and minimum requirements:

- All hardware, software, and operating systems must be currently supported or warranted by the hardware or software manufacturer. Unsupported hardware, software, or operating systems may be declared outside the scope of support by CCIT and subject to additional hourly charges.
- All 3rd-party Line of Business applications must have active support agreements with the software provider. CCIT will provide best-effort support for these applications, but the software provider hold final responsibility for the proper operation and configuration of the software.

Exclusions. The following services are expressly excluded under this SOW:

- Projects and implementation work outside the scope of normal support.
- Any work not meant to support existing systems or persons.
- Customization of third party applications, or programming of any kind.
- Data/voice wiring or cabling services of any kind.
- Battery backup replacement.
- Equipment relocation.
- The cost to bring the System up to the Minimum Requirements (unless otherwise noted in “Scope of Services” above).
- The cost of repairs to hardware or any supported equipment or software, or the costs to acquire parts or equipment, or shipping charges of any kind.

Authorized Contact(s)

In addition to the signatories to this SOW, the following person(s) shall be an Authorized Contact for Client:

- Name: ___________________________
  Contact Information: ___________________________
  
  - Name: ___________________________
    Contact Information: ___________________________
**Fees**

The fees for the Services will be invoiced to Client as follows:

- **Business Hours Physical Server Support** $200 per server, billed monthly
- **Business Hours Virtual Server Support** $150 per server, billed monthly
- **Business Hours Network Support** $0 per site, billed monthly
- **Business Hours Desktop Support** $50 per desktop, billed monthly
- **Remote Mobile Device Support** n/a per device, billed monthly
- **Business Hours Onsite Support** $150 per hour, billed on demand
- **After Hours Remote Support** $175 per hour, billed on demand
- **After Hours Onsite Support** Quoted on demand

Additional subscription services, such as 3rd-party email hosting, cloud services, backup services, or other similar services may appear on CCIT's monthly invoices. These services are quoted separately and subject to their own agreements and terms.

**Additional Terms**

Additional terms, if any, are attached as Schedule A to this SOW.

<table>
<thead>
<tr>
<th>COMPLETE CARE IT, LLC</th>
<th>Client: ____________________________</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date: 3/4/2019</td>
<td>Date:</td>
</tr>
<tr>
<td>Signature: Ryan Lowell</td>
<td>Signature:</td>
</tr>
<tr>
<td>Print Name/Position:</td>
<td>Print Name/Position: Christia Alou</td>
</tr>
<tr>
<td>Ryan Lowell Vice President</td>
<td></td>
</tr>
</tbody>
</table>
SCHEDULE A

Additional Provisions

Patch Management

CCIT shall keep all managed equipment and software current with critical patches and updates ("Patches") as such Patches are released generally by the manufacturers of the applicable hardware or software. Patches and updates are developed by third party vendors and, on rare occasions, may make the System, or portions of the System, unstable, or cause the managed equipment or software to fail to operate properly even when the Patches are installed correctly. CCIT shall not be responsible for any downtime or losses arising from or related to the installation or use of any Patch, provided that the Patch was installed in accordance with manufacturer's instructions. CCIT reserves the right, but not the obligation, to refrain from installing a Patch if CCIT is aware of technical problems caused by a Patch, or believes that a Patch may the System, or any portion of the System, unstable.

Backup (BDR) Services

CCIT’s backup and disaster recovery ("BDR") solution uses industry-recognized products and software to help ensure the security and integrity of Client’s data. However, Client understands and agrees that all data transmitted over the Internet may be subject to malware and computer contaminants such as viruses, worms and trojan horses, as well as attempts by unauthorized users, such as hackers, to access or damage Client’s data. Neither CCIT nor its designated affiliates will be responsible for the outcome or results of such activities. Data recovery time will depend on the speed and reliability of Client’s Internet connection.

BDR services require a reliable, always-connected Internet solution. Internet and telecommunications outages will prevent the BDR services from operating correctly. In addition, all computer hardware is prone to failure due to equipment malfunction, telecommunication-related issues, etc., for which CCIT shall be held harmless. Client is strongly advised to use data verification functionality (if available) to ensure the integrity of Client’s stored data. Client is further advised to take all verification errors seriously, and agrees to contact CCIT immediately if verification errors are repetitive and/or cannot be remedied.

Due to technology limitations, all computer hardware, including communications equipment, network servers and related equipment, has an error transaction rate that can be minimized, but not eliminated. As such, Client understands and agrees that any data sent to or stored by CCIT may become corrupted or lost due to communication or hardware-related failures. CCIT cannot and does not warrant that such data corruption or loss will be avoided, and Client agrees that CCIT shall be held harmless if such data corruption or loss occurs. Client is strongly advised to keep a backup of all of stored data to mitigate against the unintentional loss of data.

Unless otherwise expressly stated in this SOW, BDR services do not permit archiving or retrieval of prior document or file versions; only the latest version of a stored document or file is recoverable.
**Procurement**

Equipment and software procured by CCIT on Client’s behalf ("Procured Equipment") may be covered by one or more manufacturer warranties, which will be passed through to Client to the greatest extent possible. By procuring equipment or software for Client, CCIT does not make any warranties or representations regarding the quality, integrity or usefulness of the Procured Equipment. Certain equipment or software, once purchased, may be not be returnable or, in certain cases, may be subject to third party return policies and/or re-stocking fees, all of which shall be Client’s responsibility in the event that a return of the Procured Equipment is requested.

CCIT is not a warranty service or repair center. CCIT will facilitate the return or warranty repair of Procured Equipment; however, Client understands and agrees that the return or warranty repair of Procured Equipment is governed by the terms of the warranties (if any) governing the applicable Procured Equipment, for which CCIT shall be held harmless.

**Diagnostic / Auditing Services**

Any diagnostic or auditing services performed by CCIT may require CCIT to install a small amount of code ("Diagnostic Code") on one or more of the devices attached to the System. The Diagnostic Code is deleted in its entirety after the testing process concludes. No personal information or personal data reviewed or copied by CCIT at any time during the testing process. No files will be erased, modified, opened, reviewed or copied at any time during the testing process. The Diagnostic Code will not install or create any disabling device, or any backdoor or hidden entryway into the System. The results of the diagnostic testing will be kept confidential by CCIT.

You grant CCIT permission to access the System for the purpose of conducting the diagnostic testing, and agree to hold CCIT harmless from and against any and all incidents or damages that may occur during or as a result of the testing process, regardless of the cause of such damages including but not limited to data loss due to events beyond CCIT’s reasonable control, network or communication outages, and deficiencies or errors in any of hardware or equipment that may interrupt or terminate the diagnostic testing process.

The testing process is for diagnostic purposes only. The process is not intended, and will not be used, to correct any problem or error in the System. CCIT does not warrant or represent that the testing process will result in any particular outcome, or that any particular issue, hardware or software configuration will be correctly detected or identified.
VILLAGE OF EL PORTAL

PROPOSED SCOPE OF SERVICES AND PROPOSED FEE

FOR

PROFESSIONAL ENGINEERING SERVICES

FOR

INSPECTION OF DRAINAGE STRUCTURES, OUTFALLS, AND SWALES

&

SUBMITTAL OF PAST DUE NDPES ANNUAL REPORTS

Dated: November 9, 2017

Revised: May 1, 2018

Amended: December 17, 2018

CRAIG A. SMITH & ASSOCIATES
Consulting Engineers • Surveyors • Utility Locators
7777 Glades Road,
Boca Raton, FL 33434
Palm Beach (561) 314-4445, Dade (305) 940-4661, Broward (954) 782-8222
FAX (561) 314-4457
PROPOSED SCOPE OF SERVICES AND PROPOSED FEE

FOR

PROFESSIONAL ENGINEERING SERVICES

FOR

Inspection of drainage structures, outfalls, and swales & submittal of past due NPDES annual reports

PROJECT NAME: VILLAGE OF EL PORTAL

PROJECT DESCRIPTION: This is an amendment to the previously approved proposal which includes the preparation of future National Pollution Discharge Elimination System (NPDES) reporting requirements via CAS sub-consultant Rising Waters Consulting and increasing the scope fee by $4,000. This was a task that was previously mentioned in the scope with dollar amount left to be determined. Previously approved services amounted to $17,120 under different tasks which have been completed to date. This amendment increases the scope of service fees to $21,120.00.

This proposal includes providing professional engineering and inspection services of past stormwater improvements to assist the Village with the reporting requirements of the NPDES permit as it pertains to Part III.A.1 "Structural Controls and Stormwater Collection System Operation" of the permit. These services will be billed at the attached hourly rates for a not to exceed amount. CAS field representative will perform an observation of each drainage structure and report its findings. Maintenance on structures and on engineered swales may be required and CAS will make its recommendations known to the Village.

OWNER: Village of El Portal

Attention: Christia Alou, Manager
villag.manager@villageofelportal.org

Address: 500 NE 87th Street
Village of El Portal, FL 33138-3517

Phone: (305) 795 - 7880
FAX: (305) 795 - 7884

BACKGROUND: The NPDES Stormwater Program regulates point source discharges from three potential sources: Municipal Separate Storm Sewer Systems (MS4s), construction activities and industrial activities. The NPDES Stormwater Program in Tallahassee is responsible for the development, administration and compliance of rules and policy to minimize and prevent pollutants in stormwater discharges. Operators of these sources may be required to obtain an NPDES permit before they can discharge stormwater.
Stormwater runoff is generated from rain events that flow over land or impervious surfaces, such as paved streets, parking lots and building rooftops, and does not soak into the ground. The runoff picks up pollutants like trash, chemicals, oils, and dirt/sediment that can harm our rivers, streams and lakes. To protect these resources, municipalities, construction and industrial activities, and others use stormwater controls, known as Best Management Practices (BMPs), to manage runoff. The implementation of these practices, which include BMP design, performance and adaptive management requirements, prevent or minimize pollution by controlling it at its source.

The Village, like other participating municipalities, is a co-permittee with Miami-Dade County's NPDES permit. Each municipality is responsible for administering their respective NPDES program including the submittal of the annual report as required by FDEP.

**CAS proposes to accomplish the professional services as follows:**

**ITEM No.**

**E57A DRAINAGE STRUCTURE OBSERVATIONS (PREVIOUSLY APPROVED - COMPLETED)**

A CAS field representative will perform an observation of each drainage structure and report its findings. Maintenance on structures and on engineered swales may be required and CAS will make its recommendations known to Village. There are at least 83 structures to be inspected and these consist of accessible catch basins, control structures, manholes, water quality (hydrodynamic separators) structures and two major stormwater outfalls to the C-7 Canal. Drainage facilities that have not been replaced since the adoption of the 2002 Stormwater Master will be assessed in the field as well. CAS will gather available drainage structure as-built drawings and surveys to assist with field assessments and observations. Services will be billed at the approved hourly rates for a not to exceed agreed upon amount shown below (Max. hours: 64).

Hourly Not to Exceed Fee: $7,040.00

**E53A REPORTING AND MAINTENANCE RECOMMENDATIONS (PREVIOUSLY APPROVED - REPORTING COMPLETED)**

Maintenance of drainage systems may be recommended and maintenance is not part of this proposal. CAS can assist the Village with the solicitation for these services from qualified vendors upon request. Field findings will be reviewed by in house Engineering staff and findings will be reported to the Village in tabular format to assist the Manager with NPDES reporting requirements with supporting as-built plans.

The revised proposal includes the preparation and submittal of the NDPES Annual Reports (3) which are past due and include Cycle 3 - Year 5 Annual Report (6/2015 – 6/2016), Year 6 (6/2016 - 6/2017), Year 7 (6/2017 – 12/2017). CAS will provide assistance to the Village with the development an Illicit Discharge Inspection Standard Operating Procedure (SOP) and Construction site inspection SOP. CAS will make all reasonable efforts to bring the Village into compliance with its NDPES reporting requirements. CAS Services will be billed at the approved hourly rates for a not to exceed agreed upon amount shown below (Max. hours: 60).

Hourly Not to Exceed Fee: $10,080.00

**E53B FUTURE ANNUAL REPORTING**
Prepare and submit for future Cycle 4 Permit requirements as follows:

- Part V.B. Assessment Plan 12/29/2018 (due 12 months after permit issuance 12/29/2017)
- Year 1 annual report 6/30/2019 (reporting period 1/1/2018-12/31/2018)

Services will be provided by CAS via subconsultant Rising Water Consulting (see attached proposal)

Hourly Not to Exceed Fee: $4,000.00

SUMMARY OF COSTS

CAS proposes to accomplish the professional engineering services listed at the hourly rates for the not to exceed amounts shown below.

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>DRAINAGE STRUCTURE OBSERVATIONS (Hourly) previously approved</td>
<td>$7,040.00</td>
</tr>
<tr>
<td>REPORTING AND RECOMMENDATIONS (Hourly) previously approved</td>
<td>$10,080.00</td>
</tr>
<tr>
<td>FUTURE REPORTING – REQUIRES VEP COUNCIL APPROVAL</td>
<td>$4,000.00</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$21,120.00</strong></td>
</tr>
</tbody>
</table>

Thank you for your time and effort in supporting this project and we look forward to working together with the Village on reaching compliance with the NPDES Permit. Any service not specifically included in the final Agreement will be considered as an Additional Service. CAS will accomplish Additional Services upon proper written authorization of the CLIENT. The fees for Additional Services are at the attached hourly rates or at a mutually agreed upon Lump Sum Fee. If this proposal is acceptable, please execute as indicated and return one executed copy to our office for our files.

Yours Sincerely,

CRAIG A. SMITH & ASSOCIATES

Orlando A. Rubio, PE
Sr. Supervising Engineer

ACCEPTED BY:

VILLAGE OF EL PORTAL

Signature

Date

Name of Authorized Representative

Title of Authorized Representative
<table>
<thead>
<tr>
<th>Position</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principals</td>
<td>$210.00</td>
</tr>
<tr>
<td>Court Testimony</td>
<td>$200.00</td>
</tr>
<tr>
<td>Vice President</td>
<td>$175.00</td>
</tr>
<tr>
<td>Senior Supervising Engineer</td>
<td>$168.00</td>
</tr>
<tr>
<td>Supervising Engineer</td>
<td>$151.00</td>
</tr>
<tr>
<td>Project Manager</td>
<td>$130.00</td>
</tr>
<tr>
<td>Project Engineer</td>
<td>$105.00</td>
</tr>
<tr>
<td>Senior Engineering Technician</td>
<td>$112.00</td>
</tr>
<tr>
<td>Engineering Technician</td>
<td>$86.00</td>
</tr>
<tr>
<td>CADD Technician</td>
<td>$81.00</td>
</tr>
<tr>
<td>Senior Field Representative</td>
<td>$112.00</td>
</tr>
<tr>
<td>Field Representative</td>
<td>$90.00</td>
</tr>
<tr>
<td>Senior Professional Surveyor &amp; Mapper</td>
<td>$124.00</td>
</tr>
<tr>
<td>Professional Surveyor and Mapper</td>
<td>$108.00</td>
</tr>
<tr>
<td>Survey Coordination Manager</td>
<td>$90.00</td>
</tr>
<tr>
<td>Survey Technician</td>
<td>$86.00</td>
</tr>
<tr>
<td>Clerical</td>
<td>$55.00</td>
</tr>
<tr>
<td>Survey Crew (2-man), Vehicle, Standard Equip</td>
<td>$145.00</td>
</tr>
<tr>
<td>Survey Crew, Vehicle, GPS</td>
<td>$180.00</td>
</tr>
<tr>
<td>Survey Crew - overtime</td>
<td>$160.00</td>
</tr>
<tr>
<td>Survey Crew (3-man), Vehicle, Standard Equip</td>
<td>$185.00</td>
</tr>
<tr>
<td>Survey Crew - pile staking</td>
<td>$180.00</td>
</tr>
</tbody>
</table>

*These rates are in effect for services rendered commencing March 1, 2016 and are subject to change.*
CRAIG A. SMITH & ASSOCIATES, INC.

2016
REIMBURSABLE EXPENSES

• 3D Scanner Usage $3,000.00/day
• Computer Usage (CADD) $2.50/hour
• Reproductions
  Engineering (24 x 36) $2.50/sht
  Engineering Color $3.50/sht
  Standard Copies $0.30/sht
  Standard Color $0.40/sht
  Ledger (11 x 17) $0.40/sht
  Ledger Color $0.55/sht
• Recording & Permit Fees Cost + 10%
• Services of Outside Consultants Cost + 10%
• Federal Express or Courier Services Cost + 10%
• Commercial Air Travel Cost + 10%
• Long Distance Phone Cost + 10%
• Auto Travel Expense $0.56 / mile
• Meals – Per Diem $35.00
• Lodging Cost + 10%

These rates are in effect for services rendered commencing March 1, 2016 and are subject to change.
Rising Waters Consulting  
1312 E Hawthorne Circle  
Hollywood, Fl. 33012-4719  
Telephone 954.240.4117  
Email: risingwatersconsulting@gmail.com  
December 3, 2018

Craig A Smith and Associates  
Attn.: Orlando Rubio  
277 Goolsby Blvd., Unit 4 C  
Deerfield Beach, Fl. 33442

RE: Request for Scope of Services Proposal for Village of El Portal, Miami-Dade County, Florida

The Village of El Portal has requested a proposal for professional services in their desire to continue to be in compliance with the National Pollutant Discharge Elimination System (NPDES) Permit. The Village has recently submitted all back Annual Reports that were due to remain in compliance with the Permit.

Services Proposal

Rising Waters Consulting (RWEC) proposes to offer the following services with the intent of keeping the Village in compliance with their NPDES Permit:

- Facilitate the annual reporting required under the Permit
- Drafting or modifying any Standard Operating Procedures required by the Permit
- Submitting future Total Maximum Daily Load (TMDL) reports as required
- Review of documents as needed to be submitted to DEP as part of the present and past Permit requirements

Fees for Proposed Services
The fee for the above described services is not to exceed: $4,000.00.  
Fees will be disbursed at the rate of $150.00 per hour until the above total charge is reached.  
Fees will be paid as invoiced on a regular basis by RWC.

Any further work beyond the scope described above will be negotiated at that time, or will continue at the rate of $150.00 per hour.

RWEC hereby states that it acts strictly as a consultant to the Village, and as sub-contractor to Craig A Smith, and accepts no liability for any actions or decisions made by
the Village or work contemplated by the Village that violates NPDES permit conditions or violates any other relevant local laws or statutes related to the work considered.

RWC is an active Corporation under the Division of Corporations in the State of Florida.

Thank you for the opportunity to assist the Village in its efforts to manage its stormwater systems, activities and efforts under the NPDES Permit.

Sincerely,

MG for

M. Gambino, President
Rising Waters Consulting

MG: mg
EC: Christia E. Alou, Esq., Village Manager, Village of El Portal
ORDINANCE NO.: 2019-01

AN ORDINANCE OF THE EL PORTAL VILLAGE COUNCIL REPEALING CHAPTER 18, ARTICLE II, SECTIONS 18-16(a), (b) and (c), ENTITLED PUBLIC SAFETY DEPARTMENT, OF THE VILLAGE OF EL PORTAL, FLORIDA CODE OF ORDINANCES AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of El Portal, Florida has entered into a Collective Bargaining Agreement with the Dade County Police Benevolent Association, Inc. ("Agreement").

WHEREAS, the Agreement provides for, among other things, that the Village Chief of Police shall appoint the Police Department’s Police Corporal, Police Sergeant, and Police Lieutenant, which is inconsistent with Chapter 18, Article II, Sections 18-16(a), (b) and (c), entitled Public Safety Department, of the Village of El Portal, Florida Code of Ordinances and the Village’s existing law enforcement organization; and

WHEREAS, the Village Council finds that it is the best interests of the Village to repeal Chapter 18, Article II, Sections 18-16(a), (b) and (c), entitled Public Safety Department, of the Code of Ordinances so that the terms of the Agreement will be consistent with the Village Code of Ordinances and the Village’s existing law enforcement organization;

NOW, THEREFORE, BE IT ORDAINED BY THE EL PORTAL VILLAGE COUNCIL;

Section 1. Recitals. The foregoing recitals are true and correct and are hereby incorporated herein.

Section 2. Repeal. Chapter 18-16, Article II, Sections 18(a), (b) and (c), entitled Public Safety Department, of the Village Code of Ordinances are hereby repealed and terminated.
Section 3. Effective Date. This Ordinance shall become effective immediately upon passage and publication as required by law.


Claudia Cubillos, Mayor

ATTEST: 
Yenise Jacobi, Village Clerk

Approved as to form and legal sufficiency:
Interim Village Attorney

Law Office of Norman C. Powell

By: 
Norman C. Powell, Esq.

Vote:
Councilperson Mathis: (Yes) (No)
Councilperson Roman: (Yes) (No)
Vice Mayor Nickerson: (Yes) (No)
Mayor Cubillos: (Yes) (No)

I, Yenise Jacobi, Village Clerk of the Village of El Portal, Miami-Dade County, Florida, do hereby certify that this is a true and correct copy of Resolution No.: 2019-__ adopted on April __, 2018, as shown in the Official Records of the Village of El Portal, Miami-Dade County, Florida. Given under my hand and seal, this ______ day of March, 2019.

Yenise Jacobi, Village Clerk
ORDINANCE NO. 2019-02

AN ORDINANCE BY THE VILLAGE COUNCIL AMENDING THE VILLAGE OF EL PORTAL CODE OF ORDINANCES TO REPEAL CHAPTER 7.5 FLOOD DAMAGE PREVENTION OF THE VILLAGE OF EL PORTAL CODE OF ORDINANCES; TO ADOPT A NEW CHAPTER 7.5 FLOOD DAMAGE PREVENTION; TO ADOPT FLOOD HAZARD MAPS, TO DESIGNATE A FLOODPLAIN ADMINISTRATOR, TO ADOPT PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; PROVIDING FOR APPLICABILITY; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida has, in Chapter 166, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the Village of El Portal and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the Village of El Portal was accepted for participation in the National Flood Insurance Program on September 29, 1972 and the Village Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

WHEREAS, Chapter 553, Florida Statutes, was adopted by the Florida Legislature to provide a mechanism for the uniform adoption, updating, amendment, interpretation and enforcement of a state building code, called the Florida Building Code; and

WHEREAS, the Village Council previously adopted requirements to (1) require accumulation of cost of improvements and repairs of buildings in flood hazard areas, based on issued building permits, over a one-year period; (2) limit partitioning of enclosed areas below elevated buildings and to limit access to enclosed areas for buildings and structures in flood hazard areas; and (3) require elevation of critical facilities higher than required by the Florida Building Code, prior to July 1, 2010; and, pursuant to Chapter 8 Article III of the Miami-Dade County Code and section 553.73(5), F. S., is formatting that requirement to coordinate with the Florida Building Code;

WHEREAS, the Village Council has determined that it is in the public interest to adopt the proposed floodplain management regulations that are coordinated with the Florida Building Code.

NOW, THEREFORE, BE IT ORDAINED by the Village Council of the Village of El Portal that the following floodplain management regulations are hereby adopted.

SECTION 1. RECITALS.

The foregoing whereas clauses are incorporated herein by reference and made a part hereof.
SECTION 2. This ordinance specifically repeals and replaces the following ordinance(s) and regulation(s): Chapter 7.5 Flood Damage Prevention.

ARTICLE I. ADMINISTRATION

SECTION 7.5-1 GENERAL

(a) Title. These regulations shall be known as the Floodplain Management Ordinance of the Village of El Portal, hereinafter referred to as “this ordinance.”

(b) Scope. The provisions of this ordinance shall apply to all development that is wholly within or partially within any flood hazard area, including but not limited to the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the Florida Building Code; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development.

(c) Intent. The purposes of this ordinance and the flood load and flood resistant construction requirements of the Florida Building Code are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:

1. Minimize unnecessary disruption of commerce, access and public service during times of flooding;
2. Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
3. Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;
4. Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
5. Minimize damage to public and private facilities and utilities;
6. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;
7. Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and
8. Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.

(d) Coordination with the Florida Building Code. This ordinance is intended to be administered and enforced in conjunction with the Florida Building Code. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the Florida Building Code.

(e) Warning. The degree of flood protection required by this ordinance and the Florida Building Code, as amended by this community, is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside of mapped special flood hazard
areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring this community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this ordinance.

(f) **Disclaimer of Liability.** This ordinance shall not create liability on the part of the Village Council of the Village of El Portal or by any officer or employee thereof for any flood damage that results from reliance on this ordinance or any administrative decision lawfully made thereunder.

**SECTION 7.5-2 APPLICABILITY**

(a) **General.** Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

(b) **Areas to which this ordinance applies.** This ordinance shall apply to all flood hazard areas within the Village of El Portal, as established in Section 7.5-2(c) of this ordinance.

(c) **Basis for establishing flood hazard areas.** The Flood Insurance Study for Miami-Dade County, Florida and Incorporated Areas dated September 11, 2009, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the Village Hall, 500 NE 87th Street.

(d) **Submission of additional data to establish flood hazard areas.** To establish flood hazard areas and base flood elevations, pursuant to Section 7.5-5 of this ordinance the Floodplain Administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the community indicates that ground elevations:

1. Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the requirements of this ordinance and, as applicable, the requirements of the *Florida Building Code*.
2. Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.

(e) **Other laws.** The provisions of this ordinance shall not be deemed to nullify any provisions of local, state or federal law.

(f) **Abrogation and greater restrictions.** This ordinance supersedes any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances including but not limited to land development regulations, zoning ordinances, stormwater management regulations, or the *Florida Building Code*. In the event of a conflict between this ordinance and any other ordinance, the more restrictive shall govern. This ordinance shall not impair any deed restriction, covenant or easement, but any land that is subject to such interests shall also be governed by this ordinance.

(g) **Interpretation.** In the interpretation and application of this ordinance, all provisions shall be:

1. Considered as minimum requirements;
(2) Liberally construed in favor of the governing body; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

SECTION 7.5-3 DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

(a) Designation. The Building Official is designated as the Floodplain Administrator. The Floodplain Administrator may delegate performance of certain duties to other employees.

(b) General. The Floodplain Administrator is authorized and directed to administer and enforce the provisions of this ordinance. The Floodplain Administrator shall have the authority to render interpretations of this ordinance consistent with the intent and purpose of this ordinance and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in this ordinance without the granting of a variance pursuant to Section 7.5-7 of this ordinance.

(c) Applications and permits. The Floodplain Administrator, in coordination with other pertinent offices of the community, shall:

(1) Review applications and plans to determine whether proposed new development will be located in flood hazard areas;

(2) Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this ordinance;

(3) Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation;

(4) Provide available flood elevation and flood hazard information;

(5) Determine whether additional flood hazard data shall be obtained from other sources or shall be developed by an applicant;

(6) Review applications to determine whether proposed development will be reasonably safe from flooding;

(7) Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code, when compliance with this ordinance is demonstrated, or disapprove the same in the event of noncompliance; and

(8) Coordinate with and provide comments to the Building Official to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this ordinance.

(d) Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

(1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
(2) Compare the cost to perform the improvement, the cost to repair a damaged building to its predamaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

(3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of "substantial improvement"; and

(4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the Florida Building Code and this ordinance is required.

(e) Modifications of the strict application of the requirements of the Florida Building Code. The Floodplain Administrator shall review requests submitted to the Building Official that seek approval to modify the strict application of the flood load and flood resistant construction requirements of the Florida Building Code to determine whether such requests require the granting of a variance pursuant to Section 7.5-7 of this ordinance.

(f) Notices and orders. The Floodplain Administrator shall coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this ordinance.

(g) Inspections. The Floodplain Administrator shall make the required inspections as specified in Section 7.5-6 of this ordinance for development that is not subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. The Floodplain Administrator shall inspect flood hazard areas to determine if development is undertaken without issuance of a permit.

(h) Other duties of the Floodplain Administrator. The Floodplain Administrator shall have other duties, including but not limited to:

(1) Establish, in coordination with the Building Official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section 7.5-3(d) of this ordinance;

(2) Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);

(3) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, or flood hazard area boundaries; such submissions shall be made within 6 months of such data becoming available;

(4) Review required design certifications and documentation of elevations specified by this ordinance and the Florida Building Code to determine that such certifications and documentations are complete; and

(5) Notify the Federal Emergency Management Agency when the corporate boundaries of the Village are modified.

(i) Floodplain management records. Regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this ordinance and the flood resistant construction requirements of the Florida Building Code, including Flood Insurance Rate Maps; Letters of Map Change; records of issuance of permits and denial of permits; determinations of whether
proposed work constitutes substantial improvement or repair of substantial damage; required design
certifications and documentation of elevations specified by the Florida Building Code and this ordinance;
notifications to adjacent communities, FEMA, and the state related to alterations of watercourses;
assurances that the flood carrying capacity of altered watercourses will be maintained; documentation
related to appeals and variances, including justification for issuance or denial; and records of enforcement
actions taken pursuant to this ordinance and the flood resistant construction requirements of the Florida
Building Code. These records shall be available for public inspection at the Village Hall, 500 NE 87th
Street.

SECTION 7.5-4 PERMITS

(a) Permits required. Any owner or owner’s authorized agent (hereinafter “applicant”) who intends to
undertake any development activity within the scope of this ordinance, including buildings, structures and
facilities exempt from the Florida Building Code, which is wholly within or partially within any flood hazard
area shall first make application to the Floodplain Administrator, and the Building Official if applicable,
and shall obtain the required permit(s) and approval(s). No such permit or approval shall be issued until
compliance with the requirements of this ordinance and all other applicable codes and regulations has been
satisfied.

(b) Floodplain development permits or approvals. Floodplain development permits or approvals shall be
issued pursuant to this ordinance for any development activities not subject to the requirements of the Florida
Building Code, including buildings, structures and facilities exempt from the Florida Building Code.
Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain
Administrator may determine that a floodplain development permit or approval is required in addition to a
building permit.

(c) Buildings, structures and facilities exempt from the Florida Building Code. Pursuant to the
requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R.
Sections 59 and 60), floodplain development permits or approvals shall be required for the following
buildings, structures and facilities that are exempt from the Florida Building Code and any further
exemptions provided by law, which are subject to the requirements of this ordinance:

1. Railroads and ancillary facilities associated with the railroad.
2. Nonresidential farm buildings on farms, as provided in section 604.50, F.S.
3. Temporary buildings or sheds used exclusively for construction purposes.
4. Mobile or modular structures used as temporary offices.
5. Those structures or facilities of electric utilities, as defined in section 366.02, F.S., which are
directly involved in the generation, transmission, or distribution of electricity.
6. Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of
Florida. As used in this paragraph, the term “chickee” means an open-sided wooden hut that has a
thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any
electrical, plumbing, or other non-wood features.
7. Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled
on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of
granite, marble, or reinforced concrete.
8. Temporary housing provided by the Department of Corrections to any prisoner in the state
correctional system.
(9) Structures identified in section 553.73(10)(k), F.S., are not exempt from the *Florida Building Code* if such structures are located in flood hazard areas established on Flood Insurance Rate Maps.

(d) **Application for a permit or approval.** To obtain a floodplain development permit or approval the applicant shall first file an application in writing on a form furnished by the community. The information provided shall:

1. Identify and describe the development to be covered by the permit or approval.
2. Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
3. Indicate the use and occupancy for which the proposed development is intended.
4. Be accompanied by a site plan or construction documents as specified in Section 7.5-5 of this ordinance.
5. State the valuation of the proposed work.
6. Be signed by the applicant or the applicant's authorized agent.
7. Give such other data and information as required by the Floodplain Administrator.

(e) **Validity of permit or approval.** The issuance of a floodplain development permit or approval pursuant to this ordinance shall not be construed to be a permit for, or approval of, any violation of this ordinance, the *Florida Building Codes*, or any other ordinance of this community. The issuance of permits based on submitted applications, construction documents, and information shall not prevent the Floodplain Administrator from requiring the correction of errors and omissions.

(f) **Expiration.** A floodplain development permit or approval shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each shall be requested in writing and justifiable cause shall be demonstrated.

(g) **Suspension or revocation.** The Floodplain Administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this ordinance or any other ordinance, regulation or requirement of this community.

(h) **Other permits required.** Floodplain development permits and building permits shall include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:

1. The South Florida Water Management District; section 373.036, F.S.
2. Florida Department of Health for onsite sewage treatment and disposal systems; section 381.0065, F.S. and Chapter 64E-6, F.A.C.
3. Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; section 161.055, F.S.
4. Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
5. Federal permits and approvals.
SECTION 7.5-5 SITE PLANS AND CONSTRUCTION DOCUMENTS

(a) Information for development in flood hazard areas. The site plan or construction documents for any development subject to the requirements of this ordinance shall be drawn to scale and shall include, as applicable to the proposed development:

1. Delineation of flood hazard areas and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.
2. Where base flood elevations are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with Section 7.5-5(b)(2) or (3) of this ordinance.
3. Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 5 acres and the base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with Section 7.5-5(b)(1) of this ordinance.
4. Location of the proposed activity and proposed structures, and locations of existing buildings and structures.
5. Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
6. Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
7. Existing and proposed alignment of any proposed alteration of a watercourse.

The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by this ordinance but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this ordinance.

(b) Information in flood hazard areas without base flood elevations (approximate Zone A). Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the Floodplain Administrator shall:

1. Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices.
2. Obtain, review, and provide to applicants base flood elevation data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation data available from a federal or state agency or other source.
3. Where base flood elevation data are not available from another source, where the available data are deemed by the Floodplain Administrator to not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:
   a. Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices; or
   b. Specify that the base flood elevation is two (2) feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than two (2) feet.
4. Where the base flood elevation data are to be used to support a Letter of Map Change from FEMA, advise the applicant that the analyses shall be prepared by a Florida licensed engineer in a format
required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.

(c) Additional analyses and certifications. As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

(1) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as specified in Section 7.5-5(d) of this ordinance.

(d) Submission of additional data. When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

SECTION 7.5-6 INSPECTIONS

(a) General. Development for which a floodplain development permit or approval is required shall be subject to inspection.

(b) Development other than buildings and structures. The Floodplain Administrator shall inspect all development to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.

(c) Buildings, structures and facilities exempt from the Florida Building Code. The Floodplain Administrator shall inspect buildings, structures and facilities exempt from the Florida Building Code to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.

(d) Buildings, structures and facilities exempt from the Florida Building Code, lowest floor inspection.

Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure or facility exempt from the Florida Building Code, or the owner's authorized agent, shall submit to the Floodplain Administrator:

(1) If a design flood elevation was used to determine the required elevation of the lowest floor, the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor; or

(2) If the elevation used to determine the required elevation of the lowest floor was determined in accordance with Section 7.5-5(b)(3)(b) of this ordinance, the documentation of height of the lowest floor above highest adjacent grade, prepared by the owner or the owner's authorized agent.

(e) Buildings, structures and facilities exempt from the Florida Building Code, final inspection. As part of the final inspection, the owner or owner's authorized agent shall submit to the Floodplain Administrator a final certification of elevation of the lowest floor or final documentation of the height of the lowest floor above the highest adjacent grade; such certifications and documentations shall be prepared
as specified in Section 7.5-6(d) of this ordinance.

(f) ** Manufactured homes.** The Floodplain Administrator shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this ordinance and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted to the Floodplain Administrator.

**SECTION 7.5-7 VARIANCES AND APPEALS**

(a) **General.** The Board of Adjustment shall hear and decide on requests for appeals and requests for variances from the strict application of this ordinance. Pursuant to section 553.73(5), F.S., the Board of Adjustment shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the *Florida Building Code*.

(b) **Appeals.** The Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the administration and enforcement of this ordinance. Any person aggrieved by the decision may appeal such decision to the Circuit Court, as provided by Florida Statutes.

(c) **Limitations on authority to grant variances.** The Board of Adjustment shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in Section 7.5-(f) of this ordinance, the conditions of issuance set forth in Section 7.5-7(g) of this ordinance, and the comments and recommendations of the Floodplain Administrator and the Building Official. The Board of Adjustment has the right to attach such conditions as it deems necessary to further the purposes and objectives of this ordinance.

(d) **Historic buildings.** A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the *Florida Building Code, Existing Building*, Chapter 12 Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building’s continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building’s continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the *Florida Building Code*.

(e) **Functionally dependent uses.** A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this ordinance, provided the variance is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

(f) **Considerations for issuance of variances.** In reviewing requests for variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all other applicable provisions of the *Florida Building Code*, this ordinance, and the following:

1. The danger that materials and debris may be swept onto other lands resulting in further injury or damage;

2. The danger to life and property due to flooding or erosion damage;

3. The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
(4) The importance of the services provided by the proposed development to the community;

(5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;

(6) The compatibility of the proposed development with existing and anticipated development;

(7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;

(8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;

(9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

(10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

(g) **Conditions for issuance of variances.** Variances shall be issued only upon:

(1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this ordinance or the required elevation standards;

(2) Determination by the Board of Adjustment that:

   (a) Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;

   (b) The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and

   (c) The variance is the minimum necessary, considering the flood hazard, to afford relief;

(3) Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the Office of the Clerk of the Court in such a manner that it appears in the chain of title of the affected parcel of land; and

(4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the Floodplain Administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as $25 for $100 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

**SECTION 7.5-8 VIOLATIONS**

(a) **Violations.** Any development that is not within the scope of the *Florida Building Code* but that is regulated by this ordinance that is performed without an issued permit, that is in conflict with an issued permit, or that does not fully comply with this ordinance, shall be deemed a violation of this ordinance. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by this ordinance or the *Florida Building Code* is presumed to be a violation until such time as that documentation is provided.
(b) Authority. For development that is not within the scope of the Florida Building Code but that is regulated by this ordinance and that is determined to be a violation, the Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner’s agent, or to the person or persons performing the work.

(c) Unlawful continuance. Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law.

ARTICLE II DEFINITIONS

SECTION 7.5-9 GENERAL

(a) Scope. Unless otherwise expressly stated, the following words and terms shall, for the purposes of this ordinance, have the meanings shown in this section.

(b) Terms defined in the Florida Building Code. Where terms are not defined in this ordinance and are defined in the Florida Building Code, such terms shall have the meanings ascribed to them in that code.

(c) Terms not defined. Where terms are not defined in this ordinance or the Florida Building Code, such terms shall have ordinarily accepted meanings such as the context implies.

SECTION 7.10-10 DEFINITIONS

Alteration of a watercourse. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal. A request for a review of the Floodplain Administrator’s interpretation of any provision of this ordinance.

ASCE 24. A standard titled Flood Resistant Design and Construction that is referenced by the Florida Building Code. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

Base flood. A flood having a 1-percent chance of being equaled or exceeded in any given year. [Also defined in FBC, B, Section 202.] The base flood is commonly referred to as the "100-year flood" or the "1-percent-annual chance flood."

Base flood elevation. The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in FBC, B, Section 202.]

Basement. The portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in FBC, B, Section 202; see “Basement (for flood loads)”.]

Critical facility. A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.
**Design flood.** The flood associated with the greater of the following two areas: [Also defined in FBC, B, Section 202.]

1. Area with a floodplain subject to a 1-percent or greater chance of flooding in any year; or
2. Area designated as a flood hazard area on the community’s flood hazard map, or otherwise legally designated.

**Design flood elevation.** The elevation of the “design flood,” including wave height, relative to the datum specified on the community’s legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building’s perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where the depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet. [Also defined in FBC, B, Section 202.]

**Development.** Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling operations or any other land disturbing activities.

**Encroachment.** The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

**Existing building and existing structure.** Any buildings and structures for which the “start of construction” commenced before September 29, 1972. [Also defined in FBC, B, Section 202.]

**Existing manufactured home park or subdivision.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before September 29, 1972.

**Expansion to an existing manufactured home park or subdivision.** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**Federal Emergency Management Agency (FEMA).** The federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program.

**Flood or flooding.** A general and temporary condition of partial or complete inundation of normally dry land from: [Also defined in FBC, B, Section 202.]

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

**Flood damage-resistant materials.** Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in FBC, B, Section 202.]

**Flood hazard area.** The greater of the following two areas: [Also defined in FBC, B, Section 202.]
(1) The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.

(2) The area designated as a flood hazard area on the community’s flood hazard map, or otherwise legally designated.

**Flood Insurance Rate Map (FIRM).** The official map of the community on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the community. [Also defined in FBC, B, Section 202.]

**Flood Insurance Study (FIS).** The official report provided by the Federal Emergency Management Agency that contains the Flood Insurance Rate Map, the Flood Boundary and Floodway Map (if applicable), the water surface elevations of the base flood, and supporting technical data. [Also defined in FBC, B, Section 202.]

**Floodplain Administrator.** The office or position designated and charged with the administration and enforcement of this ordinance (may be referred to as the Floodplain Manager).

**Floodplain development permit or approval.** An official document or certificate issued by the community, or other evidence of approval or concurrence, which authorizes performance of specific development activities that are located in flood hazard areas and that are determined to be compliant with this ordinance.

**Florida Building Code.** The family of codes adopted by the Florida Building Commission, including: Florida Building Code, Building; Florida Building Code, Residential; Florida Building Code, Existing Building; Florida Building Code, Mechanical; Florida Building Code, Plumbing; Florida Building Code, Fuel Gas.

**Functionally dependent use.** A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

**Highest adjacent grade.** The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

**Historic structure.** Any structure that is determined eligible for the exception to the flood hazard area requirements of the Florida Building Code, Existing Building, Chapter 12 Historic Buildings.

**Letter of Map Change (LOMC).** An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

- **Letter of Map Amendment (LOMA):** An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

- **Letter of Map Revision (LOMR):** A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

- **Letter of Map Revision Based on Fill (LOMR-F):** A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community’s floodplain management
regulations.
Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

**Light-duty truck.** As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:
  1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
  2. Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
  3. Available with special features enabling off-street or off-highway operation and use.

**Lowest floor.** The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the Florida Building Code or ASCE 24. [Also defined in FBC, B, Section 202.]

** Manufactured home. ** A structure, transportable in one or more sections, which is eight (8) feet or more in width and greater than four hundred (400) square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" or "park trailer." [Also defined in 15C-1.0101, F.A.C.]

** Manufactured home park or subdivision. ** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Market value.** The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this ordinance, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, Actual Cash Value (replacement cost depreciated for age and quality of construction), or tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser.

**New construction.** For the purposes of administration of this ordinance and the flood resistant construction requirements of the Florida Building Code, structures for which the "start of construction" commenced on or after September 29, 1972 and includes any subsequent improvements to such structures.

**New manufactured home park or subdivision.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after September 29, 1972.

**Park trailer.** A transportable unit which has a body width not exceeding fourteen (14) feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. [Defined in section 320.01, F.S.]
Recreational vehicle. A vehicle, including a park trailer, which is: [see in section 320.01, F.S.)

(1) Built on a single chassis;
(2) Four hundred (400) square feet or less when measured at the largest horizontal projection;
(3) Designed to be self-propelled or permanently towable by a light-duty truck; and
(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Special flood hazard area. An area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 202.]

Start of construction. The date of issuance of permits for new construction and substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns. Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual “start of construction” means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in FBC, B Section 202.]

Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. [Also defined in FBC, B Section 202.]

Substantial improvement. Any repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in FBC, B, Section 202.]

(1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.

(2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure. [See Instructions and Notes]

Variance. A grant of relief from the requirements of this ordinance, or the flood resistant construction requirements of the Florida Building Code, which permits construction in a manner that would not otherwise be permitted by this ordinance or the Florida Building Code.

Watercourse. A river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.
ARTICLE III FLOOD RESISTANT DEVELOPMENT

SECTION 7.5-11 BUILDINGS AND STRUCTURES

(a) Design and construction of buildings, structures and facilities exempt from the Florida Building Code. Pursuant to Section 7.5-4(c) of this ordinance, buildings, structures, and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, shall be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings shall comply with the requirements of Section 7.5-17 of this ordinance.

(b) Specific methods of construction and requirements. Pursuant to Chapter 8 Article III of the Miami-Dade County Code, the following specific methods of construction and requirements apply:

(1) Critical facilities. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the special flood hazard area. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet or more above the level of the base flood elevation at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced or released into floodwaters. Access routes elevated to or above the level of the base flood shall be provided to all critical facilities to the extent possible.

(2) Cumulative Substantial Improvement. In the Florida Building Code, Building and Florida Building Code, Existing Building, definitions for the term “Substantial Improvement” shall be as follows:

SUBSTANTIAL IMPROVEMENT. For the purpose of determining compliance with the flood provisions of this code, any combination of repair, reconstruction, rehabilitation, alteration, addition or improvement of a building or structure taking place during a one-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. The period of accumulation begins when the first improvement or repair of each building or structure is permitted subsequent to {see Note}. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: 1) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that is the minimum necessary to assure safe living conditions. 2) Any alteration of a historic structure provided that the alteration will not preclude the structure’s continued designation as a historic structure.

(3) Limitations on Enclosures Under Elevated Buildings and Dwellings. Enclosed areas shall: a) have the minimum necessary access to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the elevated building (stairway or elevator); and, b) not have the interior portion partitioned or finished into separate rooms.

SECTION 7.5-12 SUBDIVISIONS

(a) Minimum requirements. Subdivision proposals, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:
(1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;

(2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and

(3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

(b) Subdivision plats. Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

(1) Delineation of flood hazard areas and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats;

(2) Where the subdivision has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with Section 7.5-5(b)(1) of this ordinance; and

(3) Compliance with the site improvement and utilities requirements of Section 7.5-13 of this ordinance.

SECTION 7.5-13 SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS

(a) Minimum requirements. All proposed new development shall be reviewed to determine that:

(1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;

(2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and

(3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

(b) Sanitary sewage facilities. All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems shall be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

(c) Water supply facilities. All new and replacement water supply facilities shall be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.

(d) Limitations on placement of fill. Subject to the limitations of this ordinance, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the Florida Building Code.

SECTION 7.5-14 MANUFACTURED HOMES

(a) General. All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to section 320.8249, F.S., and shall comply with the requirements of Chapter 15C-1,
F.A.C. and the requirements of this ordinance.

(b) Foundations. All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that are designed in accordance with the foundation requirements of the Florida Building Code Residential Section R322.2 and this ordinance. Foundations for manufactured homes subject to Section 7.5-14(f) of this ordinance are permitted to be reinforced piers or other foundation elements of at least equivalent strength.

(c) Anchoring. All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

(d) Elevation. Manufactured homes that are placed, replaced, or substantially improved shall comply with Section 7.5-14(e) or 7.5-14(f) of this ordinance, as applicable.

(e) General elevation requirement. Unless subject to the requirements of Section 7.5-14(f) of this ordinance, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A).

(f) Elevation requirement for certain existing manufactured home parks and subdivisions. Manufactured homes that are not subject to Section 7.5-14(e) of this ordinance, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:

1. Bottom of the frame of the manufactured home is at or above the elevation required in the Florida Building Code, Residential Section R322.2 (Zone A); or
2. Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.

(g) Enclosures. Enclosed areas below elevated manufactured homes shall comply with the requirements of the Florida Building Code, Residential Section R322.2 for such enclosed areas.

(h) Utility equipment. Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, shall comply with the requirements of the Florida Building Code, Residential Section R322.

SECTION 7.5-15 RECREATIONAL VEHICLES AND PARK TRAILERS

(a) Temporary placement. Recreational vehicles and park trailers placed temporarily in flood hazard areas shall:

1. Be on the site for fewer than 180 consecutive days; or
2. Be fully licensed and ready for highway use, which means the recreational vehicle or park model
is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.

(b) Permanent placement. Recreational vehicles and park trailers that do not meet the limitations in Section 7.5-15(a) of this ordinance for temporary placement shall meet the requirements of Section 7.5-14 of this ordinance for manufactured homes.

SECTION 7.5-16 TANKS

(a) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.

(b) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section 7.5-16(c) of this ordinance shall be permitted in flood hazard areas provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.

(c) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be attached to an elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.

(d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

1. At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

2. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

SECTION 7.5-17 OTHER DEVELOPMENT

(a) General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this ordinance or the Florida Building Code, shall:

1. Be located and constructed to minimize flood damage;

2. Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;

3. Be constructed of flood damage-resistant materials; and

4. Have mechanical, plumbing, and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

SECTION 3. FISCAL IMPACT STATEMENT.

In terms of design, plan application review, construction and inspection of buildings and structures, the cost
impact as an overall average is negligible in regard to the local technical amendments because all development has been subject to the requirements of the local floodplain management ordinance adopted for participation in the National Flood Insurance Program. In terms of lower potential for flood damage, there will be continued savings and benefits to consumers.

SECTION 4. APPLICABILITY.

For the purposes of jurisdictional applicability, this ordinance shall apply in the Village of El Portal. This ordinance shall apply to all applications for development, including building permit applications and subdivision proposals, submitted on or after the effective date of this ordinance.

SECTION 5. INCLUSION INTO THE CODE OF ORDINANCES.

It is the intent of the Village Council that the provisions of this ordinance shall become and be made a part of the Village of El Portal Code of Ordinances, and that the sections of this ordinance may be renumbered or re-lettered and the word “ordinance” may be changed to “section,” “article,” “regulation,” or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 6. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall become effective immediately upon passage and publication as required by law.

______________________________
Claudia Cubillos, Mayor

ATTEST: _________________________
Yenise Jacobi, Village Clerk

Approved as to form and legal sufficiency:
Interim Village Attorney

Law Office of Norman C. Powell

By: ______________________________
Norman C. Powell, Esq.

Vote:
Councilperson Mathis: ______(Yes) ______(No)
Councilperson Roman: ______(Yes) ______(No)
Vice Mayor Nickerson: ______(Yes) ______(No)
Mayor Cubillos: ______(Yes) ______(No)

I, Yenise Jacobi, Village Clerk of the Village of El Portal, Miami-Dade County, Florida, do hereby certify that this is a true and correct copy of Resolution No.: 2019-01 adopted on March __, 2019, as shown in the Official Records of the Village of El Portal, Miami-Dade County, Florida. Given under my hand and seal, this ___ day of ___________ 2019.

______________________________
Yenise Jacobi
Village Clerk