

RESOLUTION NO. 2024-

A RESOLUTION OF THE VILLAGE OF PINECREST, FLORIDA, AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO AN AGREEMENT WITH WATRWELL MIAMI, LLC. FOR CONCESSION SERVICES ON VILLAGE PROPERTY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village has an obligation to protect the public health, and the Village is experiencing record-high heat, and it is in residents' best interests to be hydrated, and the human body needs daily hydration, and electrolytes balance fluid retention, which prevent dehydration and water loss; and

WHEREAS, Watrwell Miami's unique services and products increase public access to high-quality water and encourage community wellness, public health, and safety by offering hydration in public spaces; and

WHEREAS, Watrwell Miami's products and services offer an enhanced, filtered, quality standard of daily drinking water, and will significantly increase residents' access to drinking water; and

WHEREAS, the Village's partnership with Watrwell Miami, LLC will affirm the Village as a global leader in public health and sustainability; and

WHEREAS, the Village's partnership with Watrwell Miami, LLC will further provide economic growth, goodwill, and inspiration to the community; and

WHEREAS, each Well is serviced by employees of Watrwell Miami, LLC, creating new jobs within the Village in the technology, engineering, and customer service sectors; and

WHEREAS, the Village Manager wishes to enter into an agreement with Watrwell Miami, LLC. for concession services on Village property; and

WHEREAS, the agreement's effectiveness is contingent upon adoption of a Resolution approving the Agreement by the Village Council;

BE IT RESOLVED BY THE VILLAGE COUNCIL OF PINECREST, FLORIDA, AS FOLLOWS:

Section 1. That the Village Council hereby authorizes the Village Manager to enter into the attached agreement with Watrwell Miami, LLC. for concession services on Village property.

Section 2. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 10th day of December, 2024.

Joseph M. Corradino, Mayor

Attest:

Priscilla Torres, MMC
Village Clerk

Approved as to Form and Legal Sufficiency:

Mitchell Bierman
Village Attorney

Consent Agenda

**PARTNERSHIP AGREEMENT BETWEEN THE VILLAGE OF PINECREST
AND WATRWELL MIAMI LLC
FOR CONCESSION SERVICES ON VILLAGE PROPERTY**

This Agreement between the VILLAGE OF PINECREST (“Village”) and WATRWELL MIAMI LLC (“Provider”) (collectively, the “Parties”) executed this ___ day of November, 2024, is premised on good and valuable consideration and voluntarily entered into by the Parties. The Parties do hereby agree as follows:

RECITALS

WHEREAS, the Village has an obligation to protect the public health, and the Village is experiencing record-high heat, and it is in residents’ best interests to be hydrated, and the human body needs daily hydration, and electrolytes balance fluid retention, which prevent dehydration and water loss; and

WHEREAS, Provider’s unique services and products increase public access to high-quality water and encourage community wellness, public health, and safety by offering hydration in public spaces; and

WHEREAS, the human body does not produce Vitamin C, and human beings depend on external consumption of Vitamin C, and to optimize the health of the human body, humans must consume Vitamin C daily; and

WHEREAS, Provider’s products and services offer an enhanced, filtered, quality standard of daily drinking water, and will significantly increase residents’ access to drinking water; and

WHEREAS, Provider’s products and services support community wellness by offering residents and visitors electrolyte-enhanced and vitamin-enhanced hydration, thereby supporting public health; and

WHEREAS, single-use vessels end up in landfills, waterways such as canals, and ultimately, Biscayne Bay and the Atlantic Ocean, and each Well dispenses to existing bottles of all sizes, and increased use of Wells and reusable vessels decreases the dependence on single-use vessels; and

WHEREAS, the technology in each Well captures data that reflects how many single-use vessels are replaced with each water dispensation (based on 20-ounce dispensing), providing the Village with hard numbers that tell a story of dramatic pollution reduction; and

WHEREAS, Provider is a unique software and hardware wellness solution that links the community to Wells that dispenses five times purified electrolyte enhanced, vitamin enhanced drinking water; and

WHEREAS, Provider’s proprietary technology can track an individual’s personal consumption and help them understand when they reach their recommended daily hydration goal, and daily recommended vitamin intake, and Provider’s data is actively monitored within its digital infrastructure, allowing the measurement of water, vitamin, and mineral consumption levels, and Provider’s application also communicates information to users about new Wells, health tips, and experiences that can be co-created with the Village, as well as any local emergencies; and

WHEREAS, each Well is capable of dispensing cool water that has been five-times purified, electrolyte enhanced, and vitamin enhanced; and

WHEREAS, each Well is solar-powered, aside from the mini-cactus, and self-sufficient; and

WHEREAS, the Village's partnership with Provider will affirm the Village as a global leader in public health and sustainability; and

WHEREAS, the Village's partnership with Provider will further provide economic growth, goodwill, and inspiration to the community; and

WHEREAS, Provider's products and services enhance public safety, because each Well incorporates a camera that can record surrounding activity twenty-four (24) hours per day, and Provider has the ability to share recorded video content with the Village; and

WHEREAS, Provider's technology informs users how to locate the nearest Well by orienting and directing users to the nearest Well, and users can see how far any of the Wells are from their location at any given time through the "maps locator" feature in Provider's technology; and

WHEREAS, each Well is serviced by employees of Provider, creating new jobs within the Village in the technology, engineering, and customer service sectors; and

WHEREAS, Provider's technology is used to scan at each Well for dispensing, and drinking from a Well is contactless, efficient, and user-friendly, and all usage is monitored within Provider's digital infrastructure, allowing users to measure water consumption levels, vitamin consumption levels, and mineral consumption levels;

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

1. DEFINITIONS

- 1.1. "Well" means the Provider's patent-pending water dispensing installation (including internal plumbing and technology) and includes all three forms of the installation, including the "mini-Cactus," the "Cactus," and the "Willo."
- 1.2. "Willo" means the Provider's patent-pending water dispensing installation (including internal plumbing and technology) that is fabricated in the form of a tree, pursuant to the image and shape specifications of the Village and agreed to by the Provider.
- 1.3. "Cactus" means the Provider's patent-pending water dispensing installation (including internal plumbing and technology) that is fabricated in the form of a water droplet.
- 1.4. "Mini-Cactus" means the Provider's patent-pending water dispensing installation (including internal plumbing and technology) that is fabricated in the form of a water droplet and is wall-mounted.

2. EFFECTIVE DATE.

2.1 The Effective Date of this Agreement is the date the last party signs the Agreement.

3. TERM.

3.1 This Agreement provides for a five-year engagement between the Parties. Such five-year engagement commences on the Effective Date of this Agreement, contingent upon the Village Council's approval of a Resolution ratifying this Agreement.

3.2 This Agreement may be renewed by mutual agreement of the Parties for an additional five-year term. See Section 9 "Renewal" below.

4. WELL INSTALLATION

4.1 Provider agrees to install fourteen (14) Wells within nine (9) months and an additional two (2) Wells located at Veterans Wayside Park within fifteen (15) months of the Effective Date. Two (2) Wells installed at Coral Pine Park shall be installed pursuant to the construction schedule authorized and controlled by the Village. All Wells shall be installed in accordance with Table 6.1 of Section 6 below.

4.2 If any Well installation is delayed beyond the timeframe described in this Section, the Village shall provide written notice to Provider of the delay and allow for a thirty-day grace period for such installation.

5. WILLO DESIGN APPROVAL

5.1 The Village shall, upon visual inspection of a fully fabricated physical prototype of the Willo, approve the design of the Willo before the installation in the Village of any Willos. All Willos installed in the Village shall be constructed to appear as native shade trees, examples of which may include but are not limited to an oak or mahogany.

6. WELL INSTALLATION LOCATIONS

6.1 Well locations are determined by the mutual agreement of the Parties and are described in Table 6.1 below. Well locations are also illustrated on Exhibit A, which is made part of this Agreement.

| Table 6.1: Well Locations | | | |
|----------------------------------|-----------------------------|---------------------|-------------|
| 1 | Coral Pine Location 1 | Tennis Courts | Willo |
| 2 | Coral Pine Location 2 | Playground | Willo |
| 3 | Flagler Grove Location 1 | Soccer Field | Willo |
| 4 | Flagler Grove Location 2 | Playground | Willo |
| 5 | Flagler Grove Location 3 | Restrooms | Mini-Cactus |
| 6 | Suniland Location 1 | Basketball/Baseball | Willo |
| 7 | Suniland Location 2 | Soccer/Football | Willo |
| 8 | Suniland Location 3 | Multi-Purpose Room | Mini-Cactus |
| 9 | Evelyn Greer Location 1 | Tot Lot | Willo |
| 10 | Evelyn Greer Location 2 | Batting Cages | Willo |
| 11 | Evelyn Greer Location 3 | Dugouts | Cactus |
| 12 | Evelyn Greer Location 4 | Leslie Bowe Hall | Mini-Cactus |
| 13 | Veterans Wayside Location 1 | Walking Path | Willo |
| 14 | Veterans Wayside Location 2 | Picnic Area | Willo |
| 15 | Pinecrest Community Center | West Entrance | Willo |
| 16 | Pinecrest Community Center | Gym | Mini-Cactus |
| 17 | Pinecrest Community Center | Main Hallway | Mini-Cactus |
| 18 | Pinecrest Community Center | Outdoor | Mini-Cactus |

6.2. The Village makes the Well locations available to the Provider in an "as is" condition. The Village makes no representations or warranties concerning the condition of the Well locations or its suitability for use by the Provider, its customers, or the public, and assumes no duty to warn either the Provider, its customers, or the public concerning conditions that exist now or may arise in the future.

7. WELL REMOVAL

7.1 In the event the Agreement is not renewed pursuant to Section 3.2, Provider shall, at its sole cost and expense, remove all Wells installed on Village property. Provider shall be solely responsible for the cost of removal of all Wells on Village property. In the event the Agreement is not renewed, Provider agrees to complete its removal of all Wells within sixty (60) days of Provider's receipt of notice that this Agreement shall not be renewed. Written notice of non-renewal or the cancellation of this Agreement

shall be provided by the Village Manager or her designee to Provider's agent at the address provided in Section 18 of this Agreement.

8. WELL PERMITTING AND INSTALLATION

8.1. The Village shall use best efforts to expedite Provider's permitting. The Village shall waive municipal permit fees for the permitting of all Wells.

8.2. All Wells shall be fully permitted and approved.

9. RENEWAL

9.1 This Agreement may be renewed by mutual agreement between the Parties for one initial renewal period of five years. The Village shall provide Provider with ninety (90) days' written notice of its intent to renew or not to renew the Agreement. Such notice shall be received at least ninety (90) days before the expiration of this Agreement.

9.2 Additional renewals of this Agreement are encouraged and shall be entered into upon mutual written agreement by the Parties.

10. PROPERTY

10.1 Subject to Chapter 119, Florida Statutes, Village and Provider agree as follows:

All of the Provider's intellectual property shall remain property of Provider, including any updates, improvements and/or modifications thereto, which Village acknowledges and agrees are and shall remain the exclusive property of Provider. Use and/or incorporation of any of Provider's current or future intellectual property into any product or Well provided and/or operated as part of the present Agreement will create no ownership interest thereto and/or create any exclusive arrangement relative thereto, on behalf of Village. Data that is collected at each Well shall remain property of Provider. Provider agrees to use best efforts to respond to Village requests for data in an expeditious manner, not related to user personal data. The Village shall be entitled to data strictly relating to public health and public safety: this sentence specifically includes camera footage obtained by Provider at any Well. All other user data shall be protected to preserve user privacy.

11. VILLAGE CONTRIBUTION

11.1. The Village shall have no financial obligation to Provider, except for the Village's waiver of municipal permitting fees for each Well.

11.2. The Village shall contribute to public engagement and marketing as more fully described in Section 14.

12. PROVIDER CONTRIBUTIONS

- 12.1. Provider shall pay for all water consumed at all Well locations in the Village.
- 12.2. Throughout the term of this Agreement, Provider shall remit payment to the Village within thirty (30) days of receipt of invoices from the Village for all Provider water usage. Village invoices for Provider water usage shall be based on water dispensation data collected at Wells and available on an ongoing basis to the Village and Provider.
- 12.3. The Village shall provide Provider with copies of the Village's invoices from the Miami-Dade County Water and Sewer Department, such invoices shall include water consumption data and costs at all Well locations in the Village.

13. REVENUE SHARE

- 13.1 Throughout the term of this Agreement, the Village shall be entitled to receive one percent of gross sales receipts generated from Provider's products and services within Miami-Dade County ("Revenue Share").
- 13.2 There shall be a grace period for the Revenue Share during the shortest of the two following time periods: (a) during the first eighteen (18) months following the Effective Date or (b) until Provider generates a total amount of revenue from sales of its products and services within Miami-Dade County that equals or exceeds Provider's costs required to perform under this Agreement.
- 13.3 For the purposes of this section, Provider's costs include the construction, manufacturing, permitting, installation, and maintenance of eighteen (18) Wells installed on Village property, as well as the total cost of invoices provided by the Village for reimbursement by Provider.

14. VILLAGE PUBLIC ENGAGEMENT AND MARKETING OBLIGATIONS

- 14.1 The Village agrees to actively promote Provider's products and services. Such promotion shall include, but not be limited to, a banner with a link to Provider's website and/or mobile application on the Village's website in an easily accessible web location; "easily accessible" shall mean within two "clicks" from the Village's homepage, as well as regular rotation of Provider's brand, offerings, Well locations, and other Provider content on the Village's social media platforms. The Village shall publish a map of Well locations on its website within its Parks and Recreation content and shall include branded Provider content on such locations map. This shall include utilizing its relationships with local media across all mediums.
- 14.2 The Village shall use best efforts to partner with Provider to enhance public events, activations, campaigns, outreach, and other activities conducted by the Village or Provider.

15. IMPROVEMENTS, MAINTENANCE, REPAIR, AND OPERATION

- 15.1 Provider shall be responsible for the design, permitting, construction, installation, and maintenance of all Wells. The Village shall make best efforts to assist Provider to expedite the permitting, installation, maintenance, and servicing of the Wells.
- 15.2 Provider shall designate a full-time employee to oversee day-to-day operations within the Village. Such employee shall be the Village's designated point of contact to Provider.
- 15.3 The Wells shall be in operation 365 days per year, twenty-four (24) hours per day, except for any time necessary to perform required maintenance or repairs to the Wells. Additionally, any Wells located within Village parks or facilities shall close during those days and times that the Village parks or facilities are closed. The Village agrees to provide access to the Wells for Provider employees and agents during times that Village parks and facilities are closed. Provider shall use best efforts to provide the Village with twenty-four (24) hours' notice that Provider requires access to the Wells under these circumstances.

16. INSURANCE

- 16.1. Provider shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Village, naming the Village as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Village, its officials, employees, agents, and volunteers naming the Village as additional insured. Any insurance maintained by the Village shall be in excess of the Provider's insurance and shall not contribute to the Provider's insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the Village as it deems necessary or prudent.
 - 16.1.1. Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Provider. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.
 - 16.1.2. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Provider shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.
 - 16.1.3. Business Automobile Liability with minimum limits of \$1,000,000 per occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be

afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

- 16.2. All insurance carriers providing insurance under the terms of this Agreement shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida.
- 16.3. Certificates of Insurance shall be provided to the Village upon execution of this Agreement and certified copies provided if requested. Each policy shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted, or in accordance with policy provisions. The Village further reserves the right to solicit additional coverage or require higher limits of liability as needed, depending on the nature of scope or level of exposure.
- 16.4. **Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Village is to be specifically included as an Additional Insured for the liability of the Village resulting from Services performed by or on behalf of the Provider in performance of this Agreement. The Provider's insurance, including that applicable to the Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to the Provider's insurance. The Provider's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.
- 16.5. **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Village. The Provider shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.
- 16.6. The provisions of this section shall survive termination of this Agreement.

17. **AUDIT AND INSPECTION OF RECORDS**

- 17.1 Provider shall maintain records related to Wells that are subject to this Agreement as would be required by an independent Certified Public Accountant, pursuant to generally accepted accounting principles.
- 17.2 Provider shall provide the Village access to a dashboard for purposes of obtaining historical data from Wells on Village property, such as revenue metrics, water usage, number of single-use vessels saved, etc.)
- 17.3 Provider will also deliver the following reports to the Village:
 - i. Monthly report of revenues derived from Wells on Village property and Village-based subscriptions

- ii. Monthly water usage report
- iii. Monthly maintenance report

18. Notice

18.1 All written notices required under this Agreement to be provided to Provider shall be transmitted either electronically or via the mail carrier or delivery service to Provider's agent at the addresses below:

Rachel A. Streitfeld
Caldera Law
7293 NW 2nd Avenue
Miami, Florida 33150
rachel@caldera.law

19. Termination

- 19.1. The Village Manager may terminate this agreement immediately with cause or upon thirty (30) days written notice to the Provider without cause. Cause shall include but not be limited to a failure on the part of Provider to respond to reasonable requests from the Village; cure a breach of this Agreement within ten (10) days of receiving notice of breach, and/or failure to abide by local, state, and federal laws and regulations in performance of the duties provided herein.
- 19.2. Upon receipt of the Village's written notice of termination, Provider shall cease operations and remove all Wells pursuant to the terms of Section 4 of this Agreement.
- 19.3. Provider shall transfer all records, reports, and data pertaining to usage within the Village in an electronic format specified by the Village within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.
- 19.4. If Provider wishes to terminate this Agreement prior to the end of the initial term or during the renewal term, Provider must provide the Village with 120 days written notice. Failure to provide the Village with 120 days written notice may result in Provider being unable to do business with the Village in the future.
- 19.5. Upon termination or expiration of this Agreement, Provider will remove all Wells pursuant to Section 4 of this Agreement. The Village's property shall be left in a clean and as near to original condition as possible; this includes any repairs required to return the Well site to its original condition.

20. Well Repair and Replacement

20.1. It shall be the sole responsibility of Provider to repair or replace all nonfunctioning Wells.

20.2. Provider shall have up to sixty (60) days to repair or replace all nonfunctioning Wells. Notwithstanding the foregoing, if the Village Manager, in his or her reasonable discretion, determines that any well requiring repair poses a public safety or health issue, the Provider shall arrange for the repair, replacement, or removal of the nonfunctioning Well within twenty-four (24) hours' notice.

21. Nondiscrimination

21.1. During the term of this Agreement, Provider shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, gender identity or gender expression or national origin and agrees to abide by all federal and state laws regarding nondiscrimination.

22. Attorneys' Fees and Waiver of Jury Trial

22.1. In the event of any litigation arising out of this Agreement, each Party shall be responsible for their own attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks, and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels and in any mediations or arbitrations.

22.2. In the event of any litigation arising out of this Agreement, each Party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury.

23. Indemnification

23.1. Provider shall defend, indemnify, and hold harmless the Village, its officers, agents, and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Provider's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from Agreements between Provider and third parties made pursuant to this Agreement. Provider shall reimburse the Village for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Provider's performance or non-performance of this Agreement. This indemnification may not exceed the limits established in Section 768.25 of the Florida Statutes. This section shall be interpreted and construed in a manner to comply with any applicable Florida Statutes, including without limitations Sections 725.06 and 725.08, if applicable.

23.2. The provisions of this section shall survive termination of this Agreement.

23.3. Ten dollars (\$10) of the contributions made by the Village constitute separate, distinct, and independent consideration for the granting of this indemnification, the receipt and sufficiency of which is voluntary and knowingly acknowledged by the Provider.

24. Governing Law

24.1. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Miami-Dade County, Florida or the Southern District of Florida.

25. Entire Agreement/Modification/Amendment

25.1. This writing contains the entire Agreement of the Parties and supersedes any prior written or oral representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

25.2. No agent, employee, or other representative of either Party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

26. No Assignability

26.1. This Agreement shall not be assigned by Provider unless such assignment is first approved by the Village Manager. The Village is relying upon the apparent qualifications, assets, technology, and services uniquely provided by the Provider.

27. Severability

27.1. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

28. Independent Contractor

28.1. Provider and its employees, contractors, volunteers, and agents shall be and remain independent contractors and not agents or employees of the Village with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create an association or enterprise, joint undertaking, or venture between the Parties.

29. Representations and Warranties of Provider

29.1. Provider hereby warrants and represents, at all times during the term of this Agreement, inclusive of any renewals thereof, that:

- (a) Provider, its employees, contractors, and agents shall maintain in good standing all required licenses, certifications, and permits required under federal, state, and local laws necessary to perform under this Agreement;

- (b) Provider is a company duly organized, validly existing and in good standing under the laws of the State of Florida and duly registered, validly doing business and in good standing under the laws of the State of Florida;
- (c) The execution, delivery, and performance of this Agreement by Provider has been duly authorized and no consent of any other person or entity to such execution, delivery, and performance is required to render this Agreement a valid and binding instrument enforceable against Provider in accordance with its terms; and
- (d) Provider has the required knowledge, expertise, and experience to perform and carry out its obligations under this Agreement in a professional and first-class manner.

30. Compliance with Laws

- 30.1. Provider shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the scope of this Agreement.
- 30.2. Provider shall not commit nor permit any violations of applicable federal, state, county, and municipal laws, ordinances, resolutions, and governmental rules, regulations, and orders, as may be in effect now or at any time during the term of this Agreement, all as may be amended, which are applicable to the Village or to Provider. Provider, at its own expense, shall be responsible for obtaining all required licenses and permits relevant to its operations, products, and services.

31. Waiver

- 31.1. The failure of either Party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach, or wrongful conduct.

32. Survival of Provisions

- 32.1. Any terms or conditions of either this Agreement that require acts beyond the date of the term of this Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either Party.

33. Force Majeure

- 33.1. It is understood that performance of any act by the Village or Provider hereunder may be delayed or suspended at any time while, but only so long as, either Party is hindered or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts, or any cause beyond the reasonable control of such Party. If the condition of force majeure exceeds a period of fourteen (14) days, the Village may, at its option and discretion, renegotiate the Agreement.

34. Counterparts

34.1. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.

35. Interpretation

35.1. The language of this Agreement has been agreed to by both Parties to express their mutual intent and no rule of strict construction shall be applied against either Party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein,” “hereof,” “hereunder,” and “hereinafter” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or paragraph of this Agreement, such reference to the section or paragraph as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or paragraph.

35.2. Preparation of this Agreement has been a joint effort of the Village and Provider and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.

36. Discretion of the Village Manager

36.1. Any matter not expressly provided for herein dealing with the Village or decisions of the Village shall be within the exercise of the reasonable professional discretion of the Village Manager.

37. Third Party Beneficiary

37.1. Provider and the Village agree that it is not intended that any provision of this Agreement establishes a third-party beneficiary giving or allowing any claim or right of action whatsoever by any third party under this Agreement.

38. No Estoppel

38.1. Neither the Village’s review, approval, and/or acceptance of, or contributions performed under this Agreement shall be construed to operate as a waiver of any rights under this Agreement of any cause of action arising out of the performance of this Agreement, and Provider shall be and remain liable to the Village in accordance with applicable laws for all damages to the Village caused by Provider’s negligent performance of any of the services under this Agreement. The rights and remedies provided for under this Agreement are in addition to any other rights and remedies provided by law.

39. Ownership and Access to Records and Audits.

- 39.1. Provider acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the Village which are conceived, developed or made by Provider during the term of this Agreement (“Work Product”) belong to the Village. Provider shall promptly disclose such Work Product to the Village and perform all actions reasonably requested by the Village (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).
- 39.2. Provider agrees to keep and maintain public records in Provider’s possession or control in connection with Provider’s performance under this Agreement. The Village Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Provider involving transactions related to this Agreement. Provider additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Provider shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Village.
- 39.3. Upon request from the Village’s custodian of public records, Provider shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 39.4. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Village.
- 39.5. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Provider shall be delivered by the Provider to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by Provider shall be delivered to the Village in a format that is compatible with the Village’s information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Provider shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 39.6. Any compensation due to Provider shall be withheld until all records are received as provided herein.
- 39.7. Provider’s failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.

39.8. Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**

Custodian of Records: Priscilla Torres
Mailing address: 12645 Pinecrest Parkway
Pinecrest, Florida 33156
Telephone number: 305-234-2121
Email: clerk@pinecrest-fl.gov

40. **State Required Affidavits.** By entering into this Agreement, the Provider agrees to review and comply with the following state affidavit requirements:

40.1. **Public Entity Crimes Affidavit.** Provider shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

40.2. **Scrutinized Companies.** Provider certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, Florida Statutes, the Village may immediately terminate this Agreement at its sole option if the Provider is found to have submitted a false certification; or if the Provider is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement. If this Agreement is for more than one million dollars, the Provider certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the Village may immediately terminate this Agreement at its sole option if the Provider is found to have submitted a false certification; or if the Provider is placed on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, Scrutinized Companies with Activities in Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

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- 40.3. **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the Village requires all contractors doing business with the Village to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Village will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the Provider acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.
- 40.4. **Noncoercive Conduct Affidavit.** Pursuant to Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes. By entering into this Agreement, the Provider acknowledges that it has read Section 787.06, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.
- 40.5. **Prohibition on Contracting with Entities of Foreign Concern.** Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern. By entering into this Agreement, the Provider acknowledges that it has read Section 287.138, Florida Statutes, and complies with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

[THIS SPACE INTENTIONALLY LEFT BLANK.
SIGNATURES TO FOLLOW.]

IN WITNESS WHEREOF, the Parties execute this Agreement on the respective dates under each signature:

Attest:

VILLAGE OF PINECREST

Priscilla Torres, Village Clerk

By: _____
Yocelyn Galiano, Village Manager

Date: _____

Approved As To Form and Legal Sufficiency for the Use
And Reliance of the Village of Pinecrest Only:

Village Attorney

WATRWELL MIAMI LLC

By: _____

Its: _____

Date: _____

E-VERIFY AFFIDAVIT

In accordance with Section 448.095, Florida Statutes, the Village requires all contractors doing business with the Village to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Village will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity’s participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name: _____

Print Name: _____

Title: _____

Witness #2 Print Name: _____

Entity Name: _____

ACKNOWLEDGMENT

State of Florida

County of _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 20____, by _____ (name of person) as _____ (type of authority) for _____ (name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as
Commissioned)

- _____ Personally known to me; or
- _____ Produced identification (Type of Identification: _____)
- _____ Did take an oath; or
- _____ Did not take an oath

**AFFIDAVIT ATTESTING TO
NONCOERCIVE CONDUCT FOR LABOR OR SERVICES**

Effective July 1, 2024, Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes.

By signing below, **I hereby affirm under penalty of perjury that:**

1. I have read Section 787.06, Florida Statutes, and understand that this affidavit is provided in compliance with the requirement that, upon execution, renewal, or extension of a contract between a nongovernmental entity and a governmental entity, the nongovernmental entity must attest to the absence of coercion in labor or services.
2. I am an officer or representative of _____, a nongovernmental entity.
3. _____ does not use coercion for labor or services as defined in the relevant section of the law.

In the presence of:

**Under penalties of perjury, I declare that I
have read the foregoing and the facts stated
in it are true:**

Witness #1 Print Name: _____

Print Name: _____

Title: _____

Witness #2 Print Name: _____

Entity Name: _____

OATH OR AFFIRMATION

State of Florida
County of _____

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this _____ day of _____, 20____, by _____
(name of person) as _____ (type of authority) for _____
_____ (name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as
Commissioned)

- _____ Personally known to me; or
- _____ Produced identification (Type of Identification: _____)
- _____ Did take an oath; or
- _____ Did not take an oath

AFFIDAVIT REGARDING PROHIBITION ON CONTRACTING WITH ENTITIES OF FOREIGN COUNTRIES OF CONCERN

Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

This affidavit must be completed by an officer or representative of an entity submitting a bid, proposal, or reply to, or entering into, renewing, or extending, a contract with a governmental entity which would grant the entity access to an individual's personal identifying information.

1. _____ ("entity") does not meet any of the criteria in paragraphs (2)(a)-(c) of Section 287.138, F.S.

In the presence of:

Under penalties of perjury, I declare that I have read the foregoing and the facts stated in it are true:

Witness #1 Print Name: _____

Print Name: _____

Title: _____

Witness #2 Print Name: _____

Entity Name: _____

OATH OR AFFIRMATION

State of Florida
County of _____

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this _____ day of _____, 20____, by _____ (name of person) as _____ (type of authority) for _____ (name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as Commissioned)

Personally known to me; or
Produced identification (Type of Identification: _____)

Did take an oath; or

Did not take an oath