

VILLAGE OF PALMETTO BAY

AGREEMENT BETWEEN THE VILLAGE OF PALMETTO BAY AND SACYR  
CONSTRUCTION USA LLC FOR THE ROADWAY AND COMPLETE  
INFRASTRUCTURE IMPROVEMENTS – FRANJO ROAD PROJECT

THIS AGREEMENT is made and entered into this 27<sup>th</sup> day of April, 2018, by and between the Village of Palmetto Bay, a Florida municipal corporation (hereinafter referred to as "Village"), and Sacyr Construction USA, LLC, a Delaware limited liability company existing and authorized to do business in the State of Florida, (hereinafter referred to as "Contractor"). The Village and Contractor will be jointly referred to as the "Parties."

**WITNESSETH:**

WHEREAS, the Village advertised a Request for Proposals ("RFP") Number 1617-11-003 for the Roadway and Complete Infrastructure Improvements (Franjo Road Project) (the "Project") on January 6, 2017; and

WHEREAS, Contractor submitted a Proposal dated February 8, 2017, in response to the Village's request; and

WHEREAS, at a meeting held on June 20, 2017, the Village Council initially awarded the Project to a construction company other than Contractor; and

WHEREAS, the Village and the construction company to whom the Project was awarded initially were unable to agree upon a contract for the Project; and

WHEREAS, during its regular meeting on April 2, 2018, the Village Council authorized the Village Manager to negotiate a contract with the Contractor as the 2<sup>nd</sup>-ranked proposer under RFP No. 1617-11-003; and

WHEREAS, Contractor has agreed to enter into an Agreement with the Village to perform the services described and supply materials in the RFP and Contractor's Proposal submitted in response to the RFP (the "Work") on the terms and conditions set forth herein.

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

**ARTICLE 1: INCORPORATION BY REFERENCE.**

A. The following documents are hereby incorporated by reference and made part of this Agreement.

- (i) Specifications and Scope Outlined on this Agreement (Exhibit 1).
- (ii) Specifications and Proposal Documents prepared by the Village for RFP Roadway and Complete Infrastructure Improvements – Franjo Road 1617-11-003 (Exhibit 2).
- (iii) Contractors Submittal to RFP# 1617-11-003 (Exhibit 3)
- (iv) Schedule of Values (Exhibit 4)

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B. All exhibits may also be collectively referred to as the "Documents". In the event of any conflict between the Documents or any ambiguity or missing specifications or instructions, the following priority is established:

- A. This Agreement
- B. Exhibit 1
- C. Exhibit 4
- D. Exhibit 2
- E. Exhibit 3

**ARTICLE 2: SCOPE OF WORK**

A. Contractor agrees to provide the Work as specifically described, and under the terms and conditions set forth in Exhibit 1, Exhibit 2, Exhibit 3, and Exhibit 4.

B. Contractor represents and warrants to the Village that: (i) it possesses all qualifications, licenses and expertise required for the performance of the Services; (ii) it is not delinquent in the payment of any sums due the Village; (iii) all personnel assigned to perform the Services are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; and (iv) the Services will be performed in the manner described in Exhibit 1.

C. Except as expressly provided for in the Documents to the contrary, Contractor at its sole cost, risk, and expense shall design, construct, equip, provide, purchase, pay for, and furnish all of the Work for the Project in accordance with the Documents, governmental codes and regulations as they apply to the performance of the Work.

D. It is not the intent of the drawings and specifications to set forth in detail or to otherwise direct every item properly necessary for the completion of the Work. It is Contractor's sole responsibility to be fully qualified to complete the Work, and it must, without direction, accomplish everything necessary to provide a workmanlike product within industry standards for good construction, complete in every detail and condition, so as to be ready for use without any additional work being required, other than that explicitly stated elsewhere in this Agreement.

E. Nonconforming Work: Contractor shall perform the Work in reasonably close conformity to the requirements set forth in the Documents. If the Village identifies Work that has not been performed in reasonably close conformity to the requirements set forth in the Documents ("Nonconforming Work"), the Village may (a) accept such Work and agree that it remain in place; (b) reject such Work and demand that Contractor remedy such Nonconforming Work at Contractor's sole expense; or (c) accept such Nonconforming Work, and to the extent such Nonconforming Work constitutes a reduction in value provided to the Village, agree upon a deductive Change Order to compensate the Village for such reduction in value. Any additional testing, sampling or inspecting needed to define non-conforming Work shall be at Contractor's expense.

F. Contractor shall: (i) use materials that are new, of good quality and of good appearance where exposed to view; (ii) follow supplier's instructions when they conflict with the

Village 

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Documents; and (iii) report discovered errors or inconsistencies to Village before commencing work, and (iv) confirm the placement of the road on the site with the Village after all lines are marked.

### ARTICLE 3: QUALIFICATIONS

A. Contractor and the individual executing this Agreement on behalf of the Contractor warrant to the Village that the Contractor is a Delaware limited liability company duly constituted and authorized to do business in the State of Florida, is in good standing and that Contractor possesses all of the required licenses and certificates of competency required by the State of Florida, Miami Dade County, and the Village to perform the work herein described. Contractor acknowledges that due to the nature of this contract, that Contractor must take all necessary precautions to avoid accidents and shall comply with all local, state and federal regulations that apply. Contractor shall be solely responsible for the payment of any fines or penalties incurred as a result of its actions.

B. Contractor agrees that it will cause to be completed a reasonable background check on any "Contractor's Employees" (which shall include employees of Contractor and employees of Contractor's subcontractors and consultants of whatever tier), who will have unescorted access to the Village's premises or to the construction site. The background check will be completed by Contractor prior to any services being performed by such Contractor's employees.

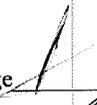
### ARTICLE 4: PAYMENT AND/OR FEES

A. A purchase order will be generated by the Village of Palmetto Bay in the amount not to exceed the \$ 10,856,000.00 (the "Guaranteed Maximum Price"). The price to be paid to Contractor for the entirety of Work is guaranteed by Contractor not to exceed the Guaranteed Maximum Price, subject to additions and deductions by written Change Order, as provided in the Documents. Any cost overruns above the Guaranteed Maximum Price shall be the sole responsibility of Contractor, except as otherwise provided in the Documents.

B. The Contractor will need to submit their invoices detailing the project completion and phase. The Village on-site field supervisor will need to sign off on the completed work before any monies can be drawn from the purchase order. Note that failure to provide the field supervisors agreement of work completed and detailed invoice could result in delay of payment.

Invoices, unless otherwise indicated, must show purchase order number and shall be submitted in DUPLICATE to the Village of Palmetto Bay, Public Services Department, 9705 East Hibiscus Street, Palmetto Bay, FL 33157.

C. Progress Payments: Based upon applications for payment in a form satisfactory to the Village and accompanied by all supporting documentation required by the Village on the application for payment, including all required mechanic's lien waivers and releases, using the forms required by Village, submitted to the Village by the Contractor, the Village shall make progress payments on account of the Guaranteed Maximum Price to the Contractor as provided below and elsewhere in the Documents. Village staff will review all applications for payment, and shall have free access to the construction site and all records of the Contractor to determine if the draw requested by Contractor is appropriate given progress of the Work.

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D. The period covered by each application for payment shall be one calendar month ending on the last day of the month. Provided that an application for payment in a form satisfactory to the Village and accompanied by all supporting documentation required by the Village on the application for payment, including all mechanic's lien waivers or releases, is received by the Village, the Village shall make payment of the certified amount (less retainage as provided below) within thirty (30) days of such receipt.

E. The application for payment shall be accompanied by the following, all in form and substance satisfactory to the Village and in compliance with Florida law:

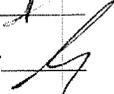
1. Duly executed waivers and releases of mechanic's (or material supplier's) liens from the Contractor and all subcontractors, material suppliers and, where appropriate, lower tier subcontractors, establishing receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities; and
2. Such other information, documentation, and materials as the Village may require.

F. An initial schedule of values, breaking down the Project by Work item and assigning a value to each, is attached hereto as Exhibit 4. The schedule of values may then be modified by mutual agreement of the Parties, or as otherwise provided herein. Each application for payment shall be based on the schedule of values incorporated herein as Exhibit 4, as such schedule of values, as modified in accordance with this Article. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Village may require. The schedule of values, unless objected to by the Village, shall be used as basis for the applications for payment.

G. Applications for payment shall show the percentage of completion for each portion of the Work, as of the end of the period covered by the application for payment.

H. In accordance with Section 218.735(8) of the Florida Statutes, the Village shall retain ten percent (10%) of each requested draw until fifty percent (50%) completion of the Work has been attained, at which time the amount of the retainage to be withheld shall be reduced to seven percent (7%) until seventy-five percent (75%) completion of the Work has been attained, at which time the amount of the retainage to be withheld shall be reduced to five percent (5%), all to be disbursed to Contractor upon satisfactory completion of the entire Project, including any punch list items. Upon substantial completion of the Work, the Village shall inspect the Work and prepare a punch list.

I. Final payment, constituting the entire unpaid balance of the Guaranteed Maximum Price, shall be made by the Village to the Contractor when (i) the Contractor has fully performed the Contract; (ii) the Contractor has submitted final application for payment; (iii) final lien waivers from Contractor and Subcontractors, material suppliers, and, where appropriate, lower tier subcontractors, and all other documents and items as required elsewhere in the Documents, have been received (such documents include, without limitation, warranties and guarantees, record drawings, operations and maintenance manuals, keys, and any other items specific to the Project) the Contractor has completed the "Construction Close-Out Checklist" and submitted it to the Village; and all close out requirements set forth in the Documents have been completed to Village's satisfaction.

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**ARTICLE 5: REPORTS**

A. Prior to commencement of operations under this Agreement, the Contractor shall secure in writing from the Village approval of all records to be used for the purpose of temporarily or permanently recording the operations of the Contractor under this Agreement.

B. For the purposes of the administration of this Agreement, the following shall apply: The Village Manager or his designee is hereby designated as the Contract Administrator for this Agreement. Reports and information as the Village may reasonably require regarding the administration of this Contract should be addressed to the Village Manager.

**ARTICLE 6: TERMINATION**

A. Termination/Cancellation of Contract Without Cause: Either Party may terminate this Contract without cause upon thirty (30) days prior written notice to the other party. Termination or cancellation of the contract will not relieve the Contractor of any deliverables and work product due prior to the termination of the Contract (this will include but not be limited to reports, statements of accounts, payments due the Village and any other records requested by the Village prior to the termination of the Contract, or after termination in the Village's discretion if needed for a post contract audit of money due on Contractor's performance). Termination or cancellation of the contract will not relieve the Contractor of any obligations or liabilities resulting from any acts committed by the Contractor prior to the termination of the contract. In the event of a termination for convenience pursuant to this Article, the Contractor shall:

1. immediately stop Work as specified in the notice;
2. terminate all subcontracts to the extent they relate to the Work terminated and except to the extent that continuation of the subcontract is necessary in order to mitigate damages;
3. assign to the Village in the manner, at the times, and to the extent directed by the Village, all of the right, title, and interest of Contractor under the subcontracts so terminated, in which case the Village will have the right, in its sole discretion, to accept performance, settle or pay any or all claims under or arising out of the termination of such subcontracts; and
4. take all reasonable action that may be necessary for the protection and preservation of the property related to the Contract Documents that is in the possession of Contractor.

B. Termination of Contract for Convenience: In the event of a termination for convenience by the Village pursuant to this Article, the Contractor shall be entitled to:

1. payment for all Work performed as of the date of the termination, in accordance with the agreed upon Schedule of Values;
2. the cost of settling and paying claims arising out of the termination of Work under subcontracts as provided above, exclusive of the amounts paid or payable on account of equipment and/or materials delivered or services furnished by a subcontractor prior to the effective date of the notice of termination, which amounts shall be included in the cost of Work completed, as provided above;
3. the reasonable cost of the preservation and protection of property incurred as provided above, reasonable demobilization and wind-down expenses, and any other reasonable cost incidental to termination of Work under the Agreement including expenses incidental to the

Village

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determination of the amount due to Contractor as the result of the termination of Work under the Agreement.

C. Termination of Contract for Default: Without waiving the right to terminate without cause on thirty (30) days' notice (calendar days), a party may issue a written notice to the other claiming that the other party is in breach of contract and giving the other party thirty (30) calendar days-notice to cure the default. If the alleged breach of contract is not cured, then the party serving the notice may terminate the Agreement and be excused from further performance following termination. However, termination of the Agreement will not relieve the Contractor of any deliverables and work product due prior to the termination of the Agreement (this will include but not be limited to reports, statements of accounts, payments due the Village and any other records requested by the Village prior to the termination of the Agreement), nor will it relieve the Village of its obligation to make payment for Work performed prior to the date of termination in accordance with Article 4 hereof.

1. In the event of a termination for the Village's default, the Contractor shall be entitled to recover on the same basis as Contractor is entitled in the event the Village terminates the Agreement for convenience.
2. In the event of a termination for the Contractor's default, the Village shall have the right to procure the services of a third party contractor in order to finish the Work. Contractor specifically agrees that it will assign all subcontracts and design agreements to the Village, upon the Village's written demand that it do so. In the event of such termination, if the unpaid balance of the Guaranteed Maximum Price, as modified hereunder, exceeds the cost and expense incurred by the Village in completing the Work, such excess shall be paid by the Village to Contractor upon completion of the Project. If the Village's cost and expense of completing the Work exceeds the unpaid balance of the Guaranteed Maximum Price, as modified hereunder, then the Contractor shall be obligated to pay the difference to the Village.

#### **ARTICLE 7: LIMITATION UPON CERTAIN DAMAGES**

Except as specifically provided herein, neither Party shall be liable for any damages attributable to lost profits, special damages, consequential damages or business interruption.

#### **ARTICLE 8: TERM**

The term of this Agreement shall commence upon the date of execution hereof and shall remain in effect until final completion of the Project, unless terminated earlier as provided herein.

#### **ARTICLE 9: COMMENCEMENT AND PERFORMANCE DEADLINES**

A. A written Notice to Proceed shall be provided by the Village to the Contractor fixing the date on which the Contractor shall start to perform its obligations under this Agreement. The Notice to Proceed shall not be issued until the Contractor has obtained all required insurances and bonds as provided in this Agreement, under Article 15. Furthermore, unless otherwise instructed by the Village in writing, the Contractor shall not knowingly commence the Scope of Work before the effective date of insurance that is required to be provided by the Contractor.

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B. The Village shall issue the Notice to Proceed to the Contractor no later than ten (10) days upon receipt of all required insurances and bonds.

C. Within twenty one (21) days from the date of receipt of the Notice to Proceed, the Contractor shall provide to the Village a Critical Path Method Schedule (the "CPM Schedule") for its review and approval. Once approved, such CPM Schedule shall become the baseline schedule for the Project, subject to modification under the terms and conditions provided under this Agreement for any time extension.

D. Time is of the essence of this Agreement. As such, the Contractor is required to complete the Work as set forth in this agreement, to wit:

1. Request for 30% design approval to be filed with the Village within six (6) weeks of the Notice to Proceed, and 100% design shall be filed with the Village within eight (8) weeks from the date that the 30% design was filed with the Village
2. Substantial completion of the Work within forty-eight (48) weeks of 100% design approval by the Village.
3. Full completion of the Work within sixty (60) weeks of 100% design approval by the Village, unless extended as provided in this Agreement.

#### **ARTICLE 10: LIQUIDATED DAMAGES**

A. The parties acknowledge and agree to the following:

1. The Village shall be entitled to damages attributable to delays that are caused by any act or omission of Contractor or any entity under contract with Contractor (whether directly or indirectly) or for whom Contractor is otherwise responsible ("Delays").
2. At the time of execution of this Agreement, it is extremely difficult, if not impossible, to ascertain with precise accuracy the amount of actual damages that the Village would incur as a result of any Delays.
3. The Liquidated Damages sums specified below ("Stipulated Sum"), however, bear a substantial relationship to and approximate the actual damages the Village is expected to incur from Delays, represent reasonable compensation to the Village for damages anticipated from such Delays, and are not a penalty. The Stipulated Sum is based on a fair and methodically reasonable attempt to predict damages resulting from Delays. Accordingly, neither party may change the Stipulated Sum, or the basis therefor, in any future setting.
4. A material part of the consideration for which the Village has bargained is the Contractor's willingness to assume the risk of pre-determined damages for Delays.
5. Liquidated Damages shall constitute the Village's sole remedy for unexcused delay.

B. The Contractor hereby warrants and represents that it is familiar with liquidated damages provisions generally, and has received the advice of counsel with respect to this section.

C. In the event the Contractor does not achieve substantial completion within the Performance Deadlines set forth in the preceding section, including approved extensions, the Contractor shall pay the Village as liquidated damages, and not as penalty, a stipulated sum of five

Village \_\_\_\_\_

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hundred Dollars (\$500.00) per calendar day until such time as Contractor has achieved substantial completion of the Work. The liquidated damages shall begin to accrue on the first day after the Performance Deadline set forth in the preceding section.

#### ARTICLE 11: CHANGES

A. Change Orders: A Change Order is a written instrument signed by the Village and Contractor in respect of a change in the Work, stating their agreement upon all of the following:

1. The scope of the change in the Work;
2. The amount of the adjustment to the Guaranteed Maximum Price; and
3. The extent of the adjustment to the schedule and performance deadlines.

All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Documents. The Village and Contractor shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

If the Village requests a proposal for a change in the Work from Contractor and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Contractor for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Documents.

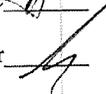
B. Village Change Directive: A Village Change Directive is a written order prepared and signed by the Village directing a change in the Work prior to agreement on an adjustment in the Guaranteed Maximum Price and/or the schedule.

The Village and Contractor shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Village Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

C. Relief and Compensation Events: The occurrence of any of the following events shall entitle the Contractor to an increase in the Guaranteed Maximum Price and/or an extension of the project schedule, as applicable, to the extent they result in (1) a delay or interruption in performance of any obligation under the Agreement or (2) an additional cost to Contractor, and provided such events are beyond Contractor's control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or violation of a law by the Contractor:

1. latent defects in existing Project assets;
2. discovery of pre-existing, unknown hazardous materials;
3. the Village's lack of good and sufficient title to any portion of the Project right of way;
4. performance of work by a third party contractor or utility at the Project site that is not part of Contractor's scope hereunder;
5. subsurface or latent physical conditions encountered at the site differing materially from those indicated in the Documents, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Documents are encountered at the site;
6. discovery of a threatened or endangered species at the site;
7. a change in law;
8. a delay caused by an act of omission of the Village;

Village 

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9. any administrative or judicial action which results in delay or suspension of the Work (other than to the extent such administrative or judicial action results from an act or omission of the Contractor);
10. a force majeure event, which shall mean the occurrence of any of the following events that materially and adversely affects performance of Contractor's obligations, provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Contractor: (a) war; (b) any act of terrorism or sabotage that causes direct physical damage to the Project; (c) nuclear explosion or contamination; (d) riot and civil commotion on or in the immediate vicinity of the Project; (e) fire, explosion, flood, earthquake, hurricane, or tornado, in each case that causes direct physical damage to the Project; or (f) national or State-wide (i.e. State of Florida) strike not specific to Contractor that has a direct adverse impact on Contractor's ability to obtain materials, equipment or labor for the Project.

#### **ARTICLE 12: AUDIT AND INSPECTION RIGHTS**

A. The Village may, at reasonable times, and for a period of up to three (3) years following the date of final performance of Services by the Contractor under this Agreement, audit, or cause to be audited, those books and records of Contractor which are related to Contractor's performance under this Agreement. Contractor agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement. The Village may, at reasonable times during the term hereof, inspect Contractor's facilities and perform such inspections, as the Village deems reasonably necessary, to determine whether the services required to be provided by Contractor under this Agreement conform to the terms hereof and/or the terms of the Solicitation Documents, if applicable. Contractor shall make available to the Village all reasonable facilities and assistance to facilitate the performance of inspections by the Village's representatives. All inspections shall be subject to, and made in accordance with, the provisions of the Village Code as same may be amended or supplemented, from time to time.

#### **ARTICLE 13: FEDERAL AND STATE TAX**

A. The Village is exempt from payment of Florida State Sales and Use Taxes. The Village will sign an exemption certificate submitted by the Contractor. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the Village, nor is the Contractor authorized to use the Village's Tax Exemption Number in securing such materials.

B. The Contractor shall be responsible for payment of its own and its share of its employee taxes and Social Security benefits.

#### **ARTICLE 14: INDEMNIFICATION**

A. Contractor shall indemnify and hold harmless the Village and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Village or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature caused by an act or omission of the Contractor or its employees, agents, servants, partners, principals or sub-Contractors in the performance of this Agreement. Contractor shall pay all claims

Village 

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and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Village, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Village or its officers, employees, agents and instrumentalities as herein provided. 1% of the contract amount shall represent the consideration to be provided for this indemnification. Nothing contained herein shall be deemed a waiver of sovereign immunity.

#### ARTICLE 15: INSURANCE

A. Award of this Contract is contingent upon the receipt of the insurance documents, as required, within thirty (30) calendar days after execution of this Agreement. Subsequent requests for insurance documentation shall all be provided within ten (10) calendar days of Village notification to Contractor. Certificates of Insurance must be submitted to the Procurement Division, Certificates of Insurance that indicate that insurance coverage has been obtained which meets the requirements as outlined below:

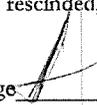
1. Comprehensive General Liability - \$3,000,000 combined single limit for each occurrence and in the aggregate for bodily injury and property damage – designating the Village as Additional Insured
2. Workers Compensation - Statutory Limits
3. Automobile Liability - \$1,000,000 per occurrence for all claims arising out of bodily injuries or death and property damages.
4. errors and omissions or Contractor liability insurance - \$1,000,000

B. All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida. The companies must be rated no less than "B+" as to management by the latest edition of Best's Insurance guide, published by A.M. Best Company, Olwick, New Jersey, or its equivalent, or the companies must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to do Business in Florida," issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

C. Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the Village.

D. Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in the Agreement.

E. If the insurance certificate is received within the specified time frame but not in the manner prescribed in the Agreement, the Contractor shall be notified in writing of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the Village. If the Contractor fails to submit the required insurance documents in the manner prescribed in the Agreement within fifteen (15) calendar days after Village notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the Village.

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F. The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the Village. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the Village at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the Village shall suspend the Contract until such time as the new or renewed certificates are received by the Village in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the Village may, at its sole discretion, terminate this contract.

#### ARTICLE 16: WARRANTIES

A. The Contractor represents and warrants the following to the Village (in addition to any other representations and warranties contained in the documents), as an inducement to the Village to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, and any termination of this Agreement, and the final completion of the Work, until the expiration of the applicable statute of limitations for breach of a written contract:

1. That it and its subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder.
2. That it is able to furnish the tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder.
3. That it is authorized to do business in Florida, and is properly licensed by all necessary governmental and quasi-public authorities having jurisdiction over it and over the Work and the Project.
4. That its execution of this Agreement and its performance thereof are within its duly authorized powers.
5. That its duly authorized representative has visited the site of the project, familiarized himself or herself with the local special conditions under which the Work is to be performed, and correlated his or her observations with the requirements of the Documents.
6. That it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, locale and nature of this particular Project, and it will perform the Work with care, skill, and diligence of such a contractor.

B. The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations and performance hereunder. The Contractor acknowledges that the Village is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

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**ARTICLE 17: MODIFICATION/AMENDMENT**

A. This writing and exhibits contains the entire Agreement of the parties. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify and amend the terms of this Agreement, unless executed in writing with the same formality as this Document. No waiver of any provision of this Agreement shall be valid or enforceable unless such waiver is in writing and signed by the party granting such waiver.

**ARTICLE 18: SEVERABILITY**

If any term or provision of this Agreement shall to any extent be held invalid or illegal by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

**ARTICLE 19: GOVERNING LAW**

This Agreement shall be construed in accordance with and governing by the laws of the State of Florida. Exclusive venue for any litigation shall be in Miami-Dade County, Florida.

**ARTICLE 20: WAIVER**

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. No waiver by the Village of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by Contractor of the same, or any other provision or the enforcement thereof. The Village's consent to or approval of any act by Contractor requiring the Village's consent or approval shall not be deemed to render unnecessary the obtaining of the Village's consent to or approval of any subsequent consent or approval of Contractor, whether or not similar to the act so consented to or approved.

**ARTICLE 21: NOTICES/AUTHORIZED REPRESENTATIVES**

A. Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered mail with postage prepaid return receipt delivery, by registered or certified mail with postage prepaid return receipt requested, or by Federal Express addressed to the parties at the following address:

*Village:*

Edward Silva, Village Manager  
Village of Palmetto Bay  
9705 E. Hibiscus Street  
Palmetto Bay, FL 33157

*Contractor:*

Eduardo De Lara Garay, Head of Bus. Dev.  
Sacyr Construction USA LLC.  
5201 Blue Lagoon Drive, 8<sup>th</sup> Floor  
Miami, Florida 33126

B. Either party shall have the right to change its address for notice purposes by sending written notice of such change of address to the other party in accordance with the provisions herein.

Village 

Contractor 

**ARTICLE 22: INDEPENDENT CONTRACTOR**

Contractor is and shall remain an independent Contractor and is not an employee or agent of the Village. Services provided by Contractor shall be by employees of Contractor and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the Village. Contractor shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with Contractor. The rights granted to Contractor hereunder are nonexclusive, and the Village reserves the right to enter into agreements with other persons or Contractors to perform services including those hereunder.

**ARTICLE 23: ASSIGNMENT**

The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Contract, including any or all of its right, title or interest therein, or his or its power to execute such Contract to any person, company or corporation without prior written consent of the Village. The Contractor shall not assign, transfer or pledge any interest in this contract without the prior written consent of the Village; provided, however, that claims for money by the Contractor from the Village under this Contract may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 10 days by the Contractor to the Village. None of the work or services under this Contract shall be subcontracted unless the Contractor obtains prior written consent from the Village, which consent shall not be unreasonably withheld. Approved Sub-Contractor shall be subject to each provision of this Contract.

**ARTICLE 24: PROHIBITION AGAINST CONTINGENT FEES**

Contractor warrants that it has no employees or retained any Contractor or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), Contractor, corporation, individual or Contractor, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

**ARTICLE 25: CONFLICT OF INTEREST**

Contractor agrees to adhere to and be governed by the Village's Conflict of Interest Ordinance 2-121, et seq, which is incorporated by reference herein as if fully set forth herein, in connection with the Agreement conditions hereunder.

**ARTICLE 26: BINDING EFFECT**

All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

**ARTICLE 27: ENTIRE AGREEMENT**

No statements, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this Agreement, shall have any legal validity between the parties

Village 

Contractor 

or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Agreement is executed.

**ARTICLE 28: CAPTIONS AND PARAGRAPH HEADINGS**

Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Agreement, nor the intent of any provisions hereof.

**ARTICLE 29: JOINT PREPARATION**

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. It is the parties' further intention that this Agreement be construed liberally to achieve its intent.

**ARTICLE 30: COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

**ARTICLE 31: EXHIBITS ARE INCLUSIONARY**

All exhibits attached hereto or mentioned herein which contain additional terms shall be deemed incorporated herein by reference. Typewritten or handwritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

**ARTICLE 32: DISPUTE RESOLUTION, JURISDICTION, AND VENUE**

For the purposes of this contract, Florida law shall govern the terms of this contract. Venue and exclusive jurisdiction shall be in Miami-Dade County, Florida.

**ARTICLE 33: SOVEREIGN IMMUNITY AND ATTORNEY'S FEES.**

The Village does not waive sovereign immunity under 768.28, Florida Statutes, for any actions in tort; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs in any state or federal administrative, circuit court and appellate court proceedings. In the event of any litigation arising out of this agreement or project agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury.

**ARTICLE 34: PERMITS, LICENSES AND FILING FEES**

The Contractor shall procure all permits and licenses, pay all charges and fees, and file all notices as they pertain to the completion of the Contractor's work.

Village   
Contractor 

**ARTICLE 35: SAFETY PROVISIONS**

The Contractor shall conform to the rules and regulations pertaining to safety established by OSHA and the Florida Division of Industrial Safety.

**ARTICLE 36: PUBLIC AND EMPLOYEE SAFETY**

Whenever the Contractor's operations create a condition hazardous to the public or Village employees, it shall, at its expense and without cost to the Village, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.

**ARTICLE 37: PRESERVATION OF VILLAGE PROPERTY**

The Contractor shall provide and install suitable safeguards, approved by the Village, to protect Village property from injury or damage. If Village property is injured or damaged resulting from the Contractor's operations, it shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor began work.

**ARTICLE 38: IMMIGRATION ACT OF 1986**

The Contractor warrants on behalf of itself and all sub-Contractors engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

**ARTICLE 39: CONTRACTOR NON-DISCRIMINATION**

In the award of subcontracts or in performance of this work, the Contractor agrees that it will not engage in, nor permit such sub-contractors as it may employ, to engage in discrimination in employment of persons on any basis prohibited by State or Federal law.

**ARTICLE 40: ACCURACY OF SPECIFICATIONS**

A. The specifications for this project are believed by the Village to be accurate and to contain no affirmative misrepresentation or any concealment of fact. Contractors are cautioned to undertake an independent analysis of any test results in the specifications, as Village does not guaranty the accuracy of its interpretation of test results contained in the specifications package. In preparing its proposal, the Contractor and all sub-contractors named in its proposal shall bear sole responsibility for proposal preparation errors resulting from any misstatements or omissions in the specifications that could easily have been ascertained by examining either the project site or accurate test data in the Village's possession. Although the effect of ambiguities or defects in the specifications will be as determined by law, any patent ambiguity or defect shall give rise to a duty of Contractor to inquire prior to proposal submittal. Failure to so inquire shall cause any such ambiguity or defect to be construed against the Contractor. An ambiguity or defect shall be considered patent if it is of such a nature that the Contractor, assuming reasonable skill, ability and diligence on its part, knew or should have known of the existence of the ambiguity or defect.

Village 

Contractor 

Furthermore, failure of the Contractor or sub-contractors to notify Village in writing of specification defects or ambiguities prior to proposal submittal shall waive any right to assert said defects or ambiguities subsequent to submittal of the proposal.

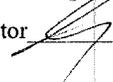
B. To the extent that these specifications constitute performance specifications, the Village shall not be liable for costs incurred by the successful Contractor to achieve the project's objective or standard beyond the amounts provided therefore in the proposal.

C. In the event that, after awarding the contract, any dispute arises as a result of any actual or alleged ambiguity or defect in the specifications, or any other matter whatsoever, Contractor shall immediately notify the Village in writing, and the Contractor and all sub-Contractors shall continue to perform, irrespective of whether or not the ambiguity or defect is major, material, minor or trivial, and irrespective of whether or not a change order, time extension, or additional compensation has been granted by Village. Failure to provide the hereinbefore described written notice within one (1) working day of Contractor's becoming aware of the facts giving rise to the dispute shall constitute a waiver of the right to assert the causative role of the defect or ambiguity in the plans or specifications concerning the dispute.

**ARTICLE 41: MISCELLANEOUS PROVISION**

In the event a court must interpret any word or provision of this agreement, the word or provision shall not be construed against either party by reason of drafting or negotiating this agreement.

[SECTION INTENTIONALLY LEFT BLANK]

Village   
Contractor 

IN WITNESS WHEREOF the undersigned parties have executed this Agreement on the date indicated above.

VILLAGE

Village of Palmetto Bay

ADDRESS

9705 E. Hibiscus Street  
Palmetto Bay, FL 33157

BY 

Edward Silva  
Print Name

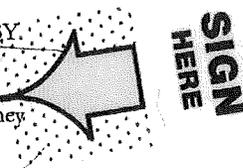
Village Manager  
Title

ATTEST

BY   
Missel Arocha Village Clerk  
Village of Palmetto Bay

APPROVED AS TO FORM BY:

  
Dexter Lehtinen, Village Attorney  
Village of Palmetto Bay

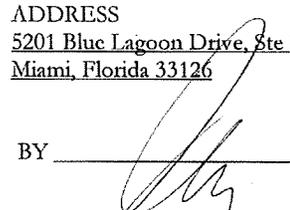


CONTRACTOR

Sacyr Construction USA, LLC.

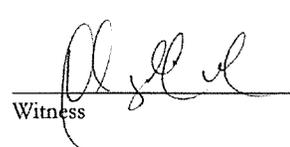
ADDRESS

5201 Blue Lagoon Drive, Ste 833  
Miami, Florida 33126

BY 

Eduardo de Lara Garay  
Print Name

Head of Business Development  
Title

  
Witness

Village   
Contractor 

AGREEMENT BETWEEN THE VILLAGE OF PALMETTO BAY AND SACYR  
CONSTRUCTION USA LLC FOR THE ROADWAY AND COMPLETE  
INFRASTRUCTURE IMPROVEMENTS – FRANJO ROAD PROJECT

EXHIBIT 1  
SCOPE OF SERVICES

SCOPE DETAIL BY AREA:

**A. FRANJO ROAD (Looking North) – SW 184 Street (Eureka Drive) to US1  
Northbound**

- 70' ROW
- 6' 6" Sidewalk
- 2' Type F Curb &Gutter
- 6' 6" Parking/Landscape
- 5' Bike Lane
- 10' Road
- 10' Median
- 10' Road
- 5' Bike lane
- 6' 6" Parking/Landscape
- 2' Type F Curb &Gutter
- 6' 6" Sidewalk
- Roundabout at intersection of Franjo Road and 181 Terrace with landscape area and water feature

**B. SW 180<sup>th</sup> Street (Looking East)- SW 97 Avenue (Franjo Road) to Park Drive**

- 60' ROW
- 10' Sidewalk
- 2' Type F Curb & Gutter
- 6' 6" Parking/Landscape
- 11' Road
- 11' Road
- 5' Bike lane
- 6' 6" Parking/Landscape
- 2' Type F Curb & Gutter
- 6' Sidewalk

Village 

Contractor 

EXHIBIT 1- SCOPE OF SERVICES (CONTINUED)

**C. SW 179<sup>th</sup> Street (Looking East)- SW 97 Avenue (Franjo Road) to Park Drive**

- 60' ROW
- 5' Sidewalk
- 5'6" Landscape
- 6'6" Parking/ Landscape
- 2' Gutter
- 22' Street
- 2' Gutter
- 6'6" Parking/ Landscape
- 5'6" Landscape
- 5' Sidewalk

**D. SW 178<sup>th</sup> Street (Looking East)- SW 97 Avenue (Franjo Road) to Park Drive**

- 80' ROW
- 6' Sidewalk
- 2' Type F Curb &Gutter
- 6'6" Parking/Landscape
- 5' Bike lane
- 11' Road
- 24' Median
- 11' Road
- 6'6" Parking/Landscape
- 2' Type F Curb &Gutter
- 6' Sidewalk

**E. Park Drive (SW 95<sup>th</sup> Ave) (Looking North)- SW 180 Street to SW 175 Terrace**

- 50' ROW
- 5' Sidewalk
- 6" Type D Curb
- 6' 6" Parking/Landscape
- 20' Street
- 5' Bike Lane
- 7' 6" Parking/Landscape
- 6" Type D Curb
- 5' Sidewalk
- Water Feature between SW 179 Street and SW 178 Street at curved section of future Park Drive
- Pavers at curved section of future Park Drive

Village

Contractor

EXHIBIT 1- SCOPE OF SERVICES (CONTINUED)

F. **Design Feature Details** (See *Franjo-Streetscape Design-Exhibit 2*)

- “Franjo Triangle” Sign (1)
- Clock Towers (2)
- Digital Information Kiosk (4)
- “Urban Trees” (metal frame) (19)
- “Pedestrian Circle” in brick pavers with integrated seating and water feature (1)
- Ribbon Bench (4)
- Tuli-seats (56)
- Tuli-bins (18)
- Vendor Kiosks (8)
- “Franjo Road” Entry Sign (1)

**ADDITIONAL CONSIDERATIONS**

- **Crosswalks:**
  - Crosswalks are to be built to the North and South of the intersecting roads, at the beginning/ending of the applicable roads.
  - Crosswalks must be provided at the traffic circle on Franjo Road and at three additional locations to be determined by the Village. Such crosswalks must include LED-embedded lights at no less than 2’ on center for the entire length of the crosswalk, on both sides of the crosswalk with corresponding digital crosswalk signs.
  - Crosswalk at the intersection of Franjo Road and Hibiscus Street must include the Palmetto Bay logo embedded in the pavers (or made out of colored pavers) on both sides of Franjo Road, within the center of the driving lane. Each logo to be a minimum of 25 SF in size.
  - Crosswalks to be in standard pavers.
    - Franjo Road: 14 crosswalks
    - Park Drive: 8 crosswalks
    - SW 180 Street: 2 crosswalks
    - SW 179 Street: 2 crosswalks
    - SW 178 Street: 2 crosswalks
    - Minimum of 28 crosswalks

Village \_\_\_\_\_

Contractor \_\_\_\_\_

EXHIBIT 1- SCOPE OF SERVICES (CONTINUED)

- Tree guards are required for all trees along sidewalk/ pedestrian areas.
- Irrigation required in all landscape areas.
- Electric outlets required at all landscape area locations for sufficient landscape/ tree lighting using the same electrical circuit system as street light poles. Conventional pole cable distribution system to be used.
- Shade trees required throughout all landscape areas and landscape medians. Distribution along the project to be addressed in the final design. Tree species and landscape design to be pre-approved by Village.
- Plants/ flowers required throughout all landscape areas and landscape medians. Distribution along the project to be addressed in the final design. Plant/ flower species and landscape design to be approved by Village.
- On-street parking areas shall require a landscape divider after no more than 4 consecutive parking spaces.
- Standard brick pavers shall be provided for sidewalks on Franjo Road specifically from Wayne Avenue to US 1 northbound, on street parking areas, roundabouts, and the pedestrian circle (90 degree herringbone pattern.)
- All water features shall be a minimum of 10' tall and 10' wide. Contractor to present no less than 3 design options to Village for prior approval. Final dimensions to be adjusted in final design.
- Bollards are required at all areas with high pedestrian activity.
- Intelli-street lights with all optional features are to be placed at strategic locations (minimum of 35 locations to be determined by Village and Contractor)
- Secondary Intelli-street lights with standard options throughout the project. Distribution throughout the project shall be in accordance with final design by electrical engineer.
- Contractors shall provide four (4) new transit stops along Franjo Road and Park Drive. Locations to be determined by Village and Contractor. Village to approve final design.
- All utilities are to be placed underground (Contractor will not be responsible for any delay arising out of, or related to, owners' delays in approval of design.)
- Coordination required between the Village, the Contractor, all subcontractors and all utility companies and developers.
- Vendor Kiosks shall be a minimum of 8'X 20'. Kiosks must be built to meet Florida building code requirements. Contractor to present no less than 3 design options to Village for prior approval. Final dimensions to be adjusted in final design.
- Water distribution shall be reviewed/ designed/ constructed to adequately meet the demands of the area based on zoning requirements. Water distribution plans shall be reviewed by Palmetto Bay's Public Services Dept. and approved by Miami-Dade WASD and shall be in accordance with the 2015 Land Use Analysis (PDF) prepared by Kimley Horn.

Village

Contractor

EXHIBIT 1- SCOPE OF SERVICES (CONTINUED)

- Sewer lines shall be reviewed/ designed/ constructed to adequately meet the demands of the area based on zoning requirements. Water distribution plans shall be reviewed by Palmetto Bay's Public Services Dept. and approved by Miami-Dade WASD and shall be in accordance with the 2015 Land Use Analysis (PDF) prepared by Kimley Horn.
- Storm sewer lines shall be reviewed/ designed/ constructed to adequately meet the demands of the area based on zoning requirements. Water distribution plans shall be reviewed by Palmetto Bay's Public Services Dept. and approved by Miami-Dade County, RER and shall be in accordance with the 2015 Land Use Analysis (PDF) prepared by Kimley Horn.
- Street names to be spelled out and embedded on the sidewalk at all intersections to be in similar size and style to Image A below (final materials and design to be proposed by the Contractor and approved by the Village.)

Image A



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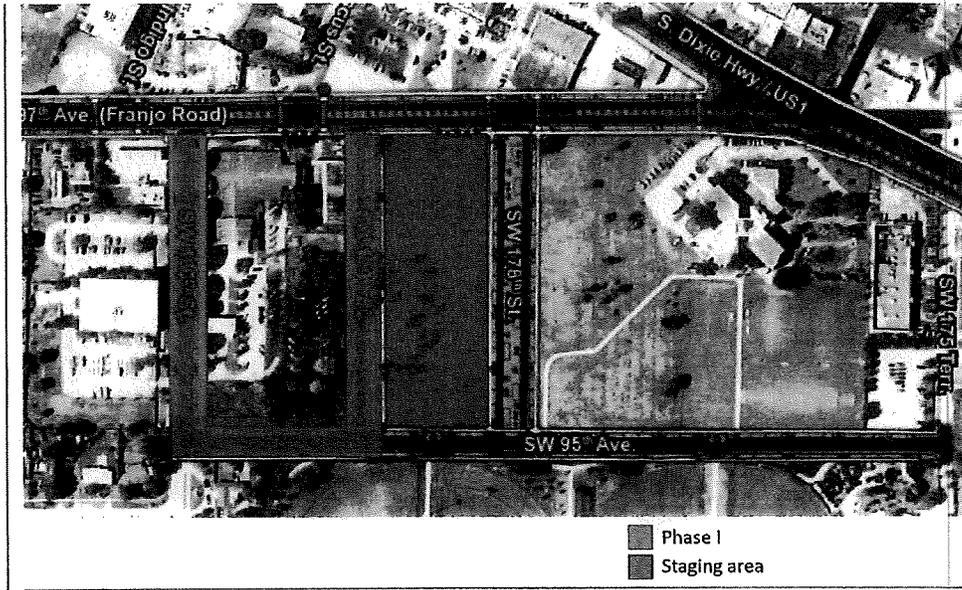
Village

Contractor

EXHIBIT 1- SCOPE OF SERVICES (CONTINUED)

**Priority – Phase 1 (To Commence)**

Contractor shall begin the improvements within the area shown in blue below, to be known as Phase 1, prior to the commencement of work in other areas of the project. Such prioritization of the work does not constitute a change order and shall not impact the overall project schedule provided by the Contractor.



[END OF EXHIBIT 1 SECTION]

Village

Contractor

Handwritten signatures for the Village and Contractor, written in black ink over the printed names.

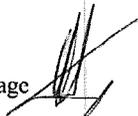
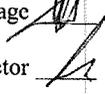
**AGREEMENT BETWEEN THE VILLAGE OF PALMETTO BAY AND SACYR  
CONSTRUCTION USA LLC FOR THE ROADWAY AND COMPLETE  
INFRASTRUCTURE IMPROVEMENTS – FRANJO ROAD PROJECT**

**EXHIBIT 2  
SPECIFICATIONS AND PROPOSAL DOCUMENTS  
RFP# 1617-11-003**

Village   
Contractor 

**AGREEMENT BETWEEN THE VILLAGE OF PALMETTO BAY AND SACYR  
CONSTRUCTION USA LLC FOR THE ROADWAY AND COMPLETE  
INFRASTRUCTURE IMPROVEMENTS - FRANJO ROAD PROJECT**

**EXHIBIT 3  
CONTRACTOR'S SUBMITTAL**

Village   
Contractor 

AGREEMENT BETWEEN THE VILLAGE OF PALMETTO BAY AND SACYR  
CONSTRUCTION USA LLC FOR THE ROADWAY AND COMPLETE  
INFRASTRUCTURE IMPROVEMENTS - FRANJO ROAD PROJECT

EXHIBIT 4  
SCHEDULE OF VALUES

**SCHEDULE OF VALUES. FRANJO ROAD PROJECT**

DESCRIPTION	SUBTOTAL
DESIGN	1.200.000,00
MOBILIZATION	1.085.564,44
SURVEY	151.500,00
MOT	179.866,00
EMBAKMENT	151.278,00
CLEARING AND GRUBBING AND REGULAR EXCAVATION	271.175,17
TYPE-B STABILIZED SUBGRADE	301.443,00
LIMEROCK BASE - 8"	703.118,59
SIDEWALK & CURB & PAVER PREPARATION	181.112,00
ASPHALT	480.825,00
DRAINAGE SYSTEM	1.291.990,00
WATERLINE SYSTEM	468.900,00
SEWER SYSTEM	204.336,00
FPL LINE RELOCATION	400.000,00
CONCRETE WORK (CURB & GUTTER & SIDEWALK)	625.607,80
HARDSCAPE	801.447,00
ELECTRICAL AND LIGHTING	1.211.556,00
PAVEMENT MARKINGS AND SIGNING	151.994,00
POLLUTION PREVENTION CONTROL	61.623,00
QA/QC	149.332,00
LANDSCAPING	783.332,00
SUBTOTAL	10.856.000,00

Village

Contractor