

1 Section 2. Bermello-Ajamil & Partners, Inc. is to provide architectural services for
2 the Perrine Park Complex and Perrine Wayside Park as further detailed and mandated on the
3 attached contract.

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5 Section 3. The contract amount shall not exceed \$171,930.

6
7 Section 4. This resolution shall take effect immediately upon approval.

8
9 PASSED and ADOPTED this 11th day of July, 2005.

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11
12 Attest:


13 Meighan Pier
14 Village Clerk


15 Eugene P. Flinn, Jr.
16 Mayor

17 APPROVED AS TO FORM:


18
19
20 Eve Boutsis,
21 Village Attorney

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25
26 FINAL VOTE AT ADOPTION:

27
28 Council Member Ed Feller YES
29
30 Council Member Paul Neidhart YES
31
32 Council Member John Breder YES
33
34 Vice Mayor Linda Robinson YES
35
36 Mayor Eugene P. Flinn, Jr. YES
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39

**ARCHITECTURAL SERVICES AGREEMENT BETWEEN
BERMELLO-AJAMIL & PARTNERS, INC.
AND VILLAGE OF PALMETTO BAY**

THIS AGREEMENT is made between the Village of Palmetto Bay, Florida, a Florida municipal corporation, ("village") and Bermello-Ajamil & Partners, Inc., licensed and authorized to do business in the State of Florida, ("architect"), whose place of business is 2601 South Bayshore Drive, Suite 1000, Miami, Florida 33133.

WHEREAS, pursuant to section 287.055, Florida Statutes, the village requested qualifications from qualified architects and selected the architect to provide professional architectural services; and

WHEREAS, the architect is willing and able to perform such professional services for the village within the basic terms and conditions set forth in this agreement (hereinafter referred to as "agreement"); and

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

ARTICLE I: GENERAL TERMS AND CONDITIONS

SECTION 1. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this agreement and apply unless the context indicates a different meaning:

1.1.1 Compensation. The total amount paid by the village for the architect's professional services, exclusive of reimbursable expenses.

1.1.2 Reimbursable Expenses. The direct non-salary expenses directly attributable to the project. Reimbursable expenses include application and permit fees paid for securing approval of authorities having jurisdiction over the specific project; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents above the requirements established at section 2.1(A)(3).

The following Reimbursable Costs, shall be performed pursuant to the needs of the architect upon approval by the village manager:

1. Surveys of building sites, giving boundary dimensions, locations of existing structures and/or trees, the grades and lines of street, pavement, and adjoining properties; the rights, restrictions, easements, boundaries, and topographic data of a building site, and such information as it has relative to sewer, water, gas and electrical services.
2. Soil borings or test pits; chemical, mechanical, structural, or other tests when deemed necessary; also, if required, an appropriate professional interpretation thereof and recommendations. The architect shall recommend necessary tests to the village.
3. Field investigations as necessary to obtain sufficient information to perform architect's services. Investigative services in excess of the requirements in this agreement must be authorized in advance.

village

architect

All reimbursements shall be approved pursuant to receipts or proof of expenditures provided by the architect.

1.1.3 Project. The project is identified in exhibit 1.

SECTION 2. SCOPE OF SERVICES

1.2.1 The architect shall provide architectural services to the village for the project as described in the "Project Description" attached as exhibit 1; and pursuant to the standards more specifically delineated at Article II of this agreement.

1.2.2 The "Scope of Services and Project Schedule" and tasks to be provided by the architect for this project are those services and tasks as listed in exhibit 2.

1.2.3 The village may request changes that would increase, decrease, or otherwise modify the Scope of Services. The changes must be contained in a written change order executed by the parties in accordance with the provisions of the continuing services agreement, prior to any deviation from the terms of the project agreement, including the initiation of any extra work.

1.2.4 The architect shall hold at least two public workshops to receive public input. The first workshop shall be during the schematic design phase. The second workshop shall be during the design development phase. [Cross-reference with Article II, section 2.1.1(A)(7) and (B)(1)].

SECTION 3. AMOUNT, BASIS AND METHOD OF COMPENSATION

1.3.1 Lump Sum Compensation. Village agrees to pay architect as compensation for performance of all services described in this agreement, and the architect agrees to accept for Basic Services rendered pursuant to this agreement a Lump Sum fee of \$171,930, attached as exhibit 3.

1.3.2 Payments to the architect on account of the fee shall be made on a percentage of the Basic Services according to the Phase of the Work as indicated under subsection 1.4.4, and as identified at exhibit 3.

1.3.3 If the village authorizes an increase or decrease in the scope of the Project, the Basic Fee will be equitably adjusted.

1.3.4 Additional/Reimbursable Services Fee. The architect may be authorized to perform Additional/Reimbursable Services described under Article II. The fee for such services will be computed by either a mutually agreed fixed fee or on an hourly basis with a 'not-to-exceed' value. The Hourly Rate method, as described below:

1. The fees for the hourly rate shall be either a lump sum or as a multiple of direct salary. The compensation shall be determined by applying a multiple of 2.75, which covers all related overhead and expenses, to the direct salary amount. The maximum billing rate shall be \$135 per hour.

village

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2. The following Principals may be employed on the Project:

Eduardo Lamas, AIA

Wally Lucky, RLA

Joe Gomez, P.E.

3. Personnel directly engaged on the Project by the architect may include architects, engineers, designers, job captains, draftsmen, specifications writers, field administration personnel engaged in consultation, research and design, production of drawings, specifications and related documents, construction inspection, and other services pertinent to the Project during all phases thereof.

4. For all reimbursable services the architect will apply the multiplier of one (1.0) times the amount expended by the architect. Authorized reproductions in excess of sets required at each phase of the work will be a Reimbursable Service.

5. The village will reimburse the architect for authorized Reimbursable Services as verified by appropriate bills, invoices or statements, pursuant to section 1.3.4.

SECTION 4. BILLING AND PAYMENTS TO THE ARCHITECT

1.4.1 Invoices - Lump Sum Compensation and Reimbursable Expenses. Architect shall submit invoices which are identified by the specific project number on a monthly basis. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with subsection 1.1.4 and the Payment Schedule set forth in exhibit 3, to this project agreement. Invoices for each phase shall not exceed amounts allocated to each phase of the Project plus reimbursable expenses accrued during each phase. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the village. The village shall pay architect within 30 days of receipt of the original written invoice and sufficient backup documentation by the village manager and acceptance of the work by the village.

1.4.2 Disputed Invoices. In the event that all or a portion of an invoice submitted to the village for payment to the architect is disputed, or additional backup documentation is required, the village shall notify the architect within 15 working days of receipt of the invoice of the objection, modification or additional documentation request. The architect shall provide the village with additional backup documentation, including, but not limited to, all invoices, time records, expense records, accounting records, and payment records of the architect within five working days of the date of the village's notice. The village, at its sole discretion, may pay to the architect the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

1.4.3 Suspension of Payment. In the event that the village becomes credibly informed that any representations of the architect, provided pursuant to subsection 1.1.1 or Article II, are wholly or partially inaccurate, or in the event that the architect is not in compliance with any term or condition of this project agreement, the village may withhold payment for material breach of contract, and only in an amount to address the breach of sums then or otherwise due to the architect until the inaccuracy, or other breach of project agreement, and the cause thereof, is corrected to the village's reasonable satisfaction.

1.4.4 Payment. Payments for Basic Services may be requested monthly in proportion to services performed during each Phase of the Work. Said payments shall, in the aggregate, not exceed the percentage of the estimated total indicated below for each Phase:

_____ village

_____ architect

1. 15% upon completion and approval of the programming & schematic design phase. (Phase 1)
2. 35% upon completion and approval of design development. (Phase 2)
3. 75% upon submittal and completion of construction documents. (Phase 3)
4. 80% upon bidding and award of agreement. (Phase 4)
5. 100% upon completion of construction phase, and approval of all Work and audit of payments to architect by the village manager or his designee. (Phase 5)

1.4.5 Final Payment. Submission of the architect's invoice for final payment and reimbursement shall constitute the architect's representation to the village that, upon receipt from the village of the amount invoiced, all obligations of the architect to others, including its architects, incurred in connection with the project, shall be paid in full. The architect shall deliver to the village all documents requested by the village evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the village by the architect.

SECTION 5. TERM/TERMINATION

1.5.1 Term of agreement. This agreement shall continue in full force and effect, unless and until terminated pursuant to Article 1, section 5; the time deadlines under exhibit 2 are not adhered to.

1.5.2 Commencement. The architect's services under this project agreement and the time frames applicable to this project agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the architect from the village. The architect shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. Architect must receive written notice from the village manager or his designee prior to the beginning the performance of services.

1.5.3 Termination For Convenience. The village may terminate this agreement for convenience at any time by giving 30 days notice in writing to the architect. The architect will be paid for the value of services performed pursuant to the schedule contained in the statement of work, up to and including the termination date. Architect will be permitted to complete on-going investigations and shall be paid for all satisfactory work completed. The village shall not be liable for future profits or losses. In the event that the village improperly terminates the agreement for default under paragraph 1.5.4, the termination shall be deemed a termination for convenience under this paragraph.

1.5.4 Termination For Default. Either party may terminate this agreement prior to the expiration of the initial term or any subsequent renewal term on account of a material breach of this agreement by the other party, which has not been cured within 10 days from the date of receipt of written notice of breach from the party seeking termination. Termination shall be effective as of the end of the notice period in the case of any uncured material breach. Architect may terminate this agreement prior to the expiration of the initial term or any subsequent renewal term upon not less than 10-days prior written notice to the village in the event that architect is unable to complete the services identified in section 2 due to causes beyond architect's control. The village shall have no liability to the architect for future profits or losses in the event of termination for default. The rights and remedies of the village

_____ village

_____ architect

provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

1.5.5 Termination for Lack of Funds. Notwithstanding any other provisions of the agreement, if the funds anticipated by the village for the for the payment of work under this agreement are at any time not forthcoming, through the failure of the village to appropriate funds, the failure of Miami-Dade County, the Florida Legislature, or the U.S. Congress to appropriate funds, or the refusal of the administrative branch of the federal or county government to release funds, or due to any other reason for the unavailability of funds in succeeding fiscal years, or the discontinuance or material alteration of the program under which funds are to be provided, the village shall have the right to terminate the agreement without penalty by giving not less than 10 days written notice of the lack of available funding.

In the event the village declines to appropriate funds for payment of the agreement for future fiscal years, architect shall be paid for work performed under the agreement with funds that are appropriated for the current fiscal year. The liability of the village to architect shall be limited to the obligation to budget and appropriate funds for work performed during the current fiscal year.

1.5.6 Assignment upon Termination. Upon termination of this project agreement, a copy of all of the architect's work product shall become the property of the village and the architect shall, within 10 working days of receipt of written direction from the village, transfer to either the village or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the architect pertaining to this project agreement. Further, upon the village's request, the architect shall assign its rights, title and interest under any subcontractor's agreements to the village. The village agrees, to the fullest extent permitted by law, to indemnify and hold harmless the architect, its officers, directors, employees and subconsultants (collectively, architect) from and against any damages, liabilities or costs, including reasonable attorneys' fees and defense cost, arising from or allegedly arising from or in any connected with the village's unauthorized reuse or modification of the Plans and/or Specifications without the written authorization of the architect. The village shall not defend or indemnify architect for third party unauthorized use or modification of the plan and/or specifications.

1.5.7 Suspension for Convenience. The village shall have the right at any time to direct the architect to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to 30 calendar days. If the suspension is directed by the village, the architect shall immediately comply with same. In the event the village directs a suspension of performance as provided for herein through no fault of the architect, the village shall pay to the architect its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for the suspension.

SECTION 6. INTEREST PAYMENTS

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

1.6.2 Architect shall not be entitled to any carrying charges or finance fees due to late payment by the village.

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SECTION 7. VILLAGE'S RESPONSIBILITIES

1.7.1 Assist architect by placing at its disposal all available information as may be requested in writing by the architect and allow reasonable access to all pertinent information relating to the services to be performed by architect.

1.7.2 Furnish to architect, at the architect's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by architect, in possession of the village.

1.7.3 Arrange for access to and make all provisions for architect to enter upon public property as required for architect to perform services.

SECTION 8. POLICY OF NON-DISCRIMINATION/WAGES

1.8.1 The architect shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in performing under this agreement.

1.8.2 The architect shall comply with the wage provisions of section 287.055, Florida Statutes. If the project is subject to federal or state grant funding that requires specific wage and non-discrimination provisions, the architect shall be required to comply with applicant grant requirements.

SECTION 9. OWNERSHIP OF DOCUMENTS/DELIVERABLES

1.9.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the village or furnished by the architect pursuant to any project agreement, shall become the property of the village, whether the project for which they are made is completed or not, and shall be delivered by architect to the village within five calendar days after receipt of written notice requesting delivery of said documents and digital files. A "Digital File" shall mean a format acceptable to village, which shall include the file's original form, including, but not limited to its native form of CADD, Word, or Word Perfect.

1.9.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the architect for each specific project shall provide that all documents and rights obtained by virtue of the subcontracts shall become the property of the village.

1.9.3 All final plans and documents prepared by the architect shall bear the endorsement and seal of a person duly registered as a professional engineer, architect, landscape architect, professional geologist, or land surveyor, as appropriate, in the State of Florida and date approved and/or sealed. Architect shall within three business days of ascertaining or determining that the registered professional identified herein is no longer affiliated with architect or barred from practicing under his/her license, shall notify village of the event and obtain the services of another, duly qualified and registered professional.

SECTION 10. RECORDS/AUDITS

1.10.1 Architect shall maintain and require subconsultants to maintain, complete and correct records, books, documents, papers and accounts pertaining to the specific project. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the village manager or any authorized village representative with reasonable notice and shall be kept for a period of three years after the

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completion of each project agreement. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the village of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the village.

1.10.2 The architect shall comply with Chapter 119, Florida Statutes, as applicable.

1.10.3 Refusal of the architect to comply with these provisions shall be grounds for immediate termination for cause by the village of this agreement or any project agreement.

SECTION 11. NO CONTINGENT FEE

1.11.1 Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for architect, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for architect, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement. In the event the architect violates this provision, the village shall have the right to terminate this agreement or any project agreement, without liability, and at its sole discretion, to deduct from the agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 12. INDEPENDENT CONTRACTOR

1.12.1 The architect is an independent contractor under this agreement and any project agreements and nothing in this agreement shall create any association, partnership, or joint venture between the parties, or any employer – employee relationship. Personal services provided by the architect shall be by employees of the architect and subject to supervision by the architect, and not as officers, employees, or agents of the village, personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this agreement or any project agreements shall be those of the architect.

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

SECTION 13. ASSIGNMENT; AMENDMENTS

1.13.1 This agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by architect, without the prior written consent of the village.

1.13.2 No modification, amendment or alteration in the terms or conditions of this agreement shall be effective unless contained in a written document executed with the same formality as this agreement.

SECTION 14. INDEMNIFICATION/HOLD HARMLESS

1.14.1 Pursuant to section 725.08, Florida Statutes, the architect shall indemnify and hold harmless the village and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the architect or any persons employed or utilized by the architect

village

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in the performance of this project agreement. The architect shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all suits, in the name of the village when applicable, and shall pay all costs and judgments which may issue thereon. The architect's obligation under this paragraph shall not be limited in any way by the agreed upon agreement price, or the architect's limit of, or lack of, sufficient insurance protection.

1.14.2 To the extent this indemnification clause or any other indemnification clause in this agreement does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of the Contract Documents shall hereby be interpreted as the parties' intention for the indemnification clauses and Contract Documents to comply with Chapter 725, Florida Statutes, as may be amended.

SECTION 15. INSURANCE

1.15.1 The architect shall secure and maintain throughout the duration of this agreement and any project agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the village against hazards or risks of loss as specified below. The insurance coverages shall include a minimum of:

A. Professional Liability Insurance in the amount of \$1,000,000.00 with deductible per claim if any, not to exceed 5% of the limit of liability providing for all sums which the architect shall become legally obligated to pay as damages for claims arising out of the services performed by the architect or any person employed by him in connection with this agreement. This insurance shall be maintained for three years after completion of the construction and acceptance of any project covered by this agreement.

B. Comprehensive general liability insurance with broad form endorsement, including automobile liability, completed operations and products liability, contractual liability, severability of interest with cross liability provision, and personal injury and property damage liability with limits of \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement.

C. Workers' Compensation Insurance in compliance with Chapter 440, Florida Statutes, as presently written or hereafter amended, and applicable federal law. The policies must include Employer's Liability with minimum limits of \$500,000 per accident.

1.15.2 The policies shall contain waiver of subrogation against the village where applicable and shall expressly provide that the policy or policies are primary over any other insurance that the village may have. The village reserves the right to request a copy of the required policies for review. All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the village.

1.15.3 All of the insurance is to be placed with Best rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida and have agents upon whom service of process may be made in the State of Florida.

1.15.4 The architect shall furnish certificates of insurance to the village prior to the commencement of operations. The certificates shall clearly indicate that the architect has obtained insurance in the type, amount, and classification as required for strict compliance with this paragraph and that no reduction in limits by endorsement during the policy term, or cancellation of this insurance shall be effective without 30 days prior written notice to the village.

village

architect

1.15.5 The village is to be specifically included as an additional insured for the liability of the village resulting from operations performed by or on behalf of architect in performance of this or any project agreement.

1.15.6 All deductibles or self-insured retentions must be declared to and be approved by the village manager. The architect shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The village manager may require the architect, as a condition of execution of a particular project agreement, to provide a bond or other monetary consideration to cover the architect's deductible for professional liability insurance.

SECTION 16. REPRESENTATIVE OF VILLAGE AND ARCHITECT

1.16.1 Village Representative. It is recognized that questions in the day-to-day conduct of this agreement will arise. The village shall designate a Project Manager as the person to whom all communications pertaining to the day-to-day conduct of this agreement shall be addressed.

1.16.2 Architect Representative. Architect shall inform the village representative, in writing, of the representative of the architect to whom all communications pertaining to the day-to-day conduct of this agreement shall be addressed.

SECTION 17. ARCHITECT'S RESPONSIBILITIES

1.17.1 The architect and any and all drawings, plans, specifications, or other architectural, construction or contract documents prepared by the architect shall be accurate, coordinated and adequate for construction and shall comply with all applicable village codes, state and federal laws, rules and regulations.

1.17.2 The architect shall exercise the same degree of care, skill and diligence in the performance of the services for each project agreement as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper under similar circumstances. The architect's obligations under this section of this agreement shall survive termination of this agreement or any project agreement.

1.17.3 Architect's services shall be accurate and free from any material errors or omissions. Architect's duties as set forth herein shall at no time be in any way diminish by reason of any approval or acceptance by the village, nor shall architect be released from any liability by reason of such approval by the village, it being understood that the village at all times is ultimately relying upon architect's skill and knowledge in performing architect's services. The village shall have the right to reject any portion of architect's Services on the Project (park) because of any fault or defect due to code noncompliance in the Project due to the plans, drawings and specifications, and other materials prepared by architect, and prompt notice of any such rejection shall be given by the village to architect. Architect shall immediately perform, without any additional cost or expense to the village, any and all such services as are required to correct or remedy any act, error, or omission directly attributable to the plans, drawings, and specifications and other materials of architect, or in connection with the architect's services, or the services of architect's subconsultants or other persons employed by architect, in the performance of any of the provisions of this agreement. Should the architect refuse or neglect to correct or remedy such defects within a reasonable time after receiving notice requesting such correction or remedy, then the village shall be entitled to effect such correction or remedy itself at the expense of architect, and architect shall reimburse the village upon demand for all expenses incurred by the village to effect such correction or remedy. This commitment by architect is in addition to, and not in substitution for, any other remedy for defective services which the village may have at law or in equity, or both.

village

architect

1.17.4 In the performance of architect's obligations hereunder, architect agrees to furnish efficient business administration and superintendence and to use architect's best efforts to design the Project in the best way and in the most expeditious and economical manner consistent with the interest of the village and architect's professional skill and care as defined herein.

SECTION 18. SUBCONSULTANTS

1.18.1 None of the work or services under this agreement shall be subcontracted unless architect obtains prior written consent from the village. Approved subcontractors shall be subject to each provision of this agreement and architect shall be responsible and indemnify the village for all subcontractors' acts, errors or omissions.

1.18.2 The architect shall not assign, transfer or pledge any interest in this agreement without the prior written consent of the village; provided, however, that claims for money by the architect from the village under this agreement 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 architect to the village.

1.18.3 In the event the architect requires the services of any subconsultants or other professional associates in connection with services covered by any project agreement, the architect must secure the prior written approval of the village manager. The architect shall utilize his/her best efforts to utilize subconsultants where principal place of business is located within the Village of Palmetto Bay, Florida.

1.18.4 Any subcontract with a subconsultant shall afford to the architect rights against the subconsultant which correspond to those rights afforded to the village against the architect herein, including but not limited to those rights of termination as set forth herein. Nothing contained in this agreement shall create any contractual relationship between the village and the subconsultants.

1.18.5 All services provided by the subconsultants shall be pursuant to appropriate agreements between the architect and the subconsultants which shall contain provisions that preserve and protect the rights of the village and the architect under this agreement. Each subconsultant agreement shall incorporate the terms of this agreement, and shall include termination provisions that state that the agreements may be terminated without any costs to the village.

1.18.6 The architect proposes to utilize the following subconsultants.

FIRM NAME	CONSULTING SERVICE
<u>Basic Services:</u>	
<u>HNGS</u>	<u>MEP Engineering</u>
<u>DDA</u>	<u>Structural Engineering</u>

1.18.7 The architect shall not change any subconsultant without prior written approval by the architect, in response to a written request from the architect stating the reasons for any proposed substitution.

village

architect

ARTICLE II: ARCHITECT SERVICES AND RESPONSIBILITIES

SECTION 1. BASIC SERVICES

2.1.1 The architect shall provide complete professional architectural and engineering services set forth in the five (5) phases enumerated hereinafter, including all civil, structural, mechanical, electrical engineering, and landscape design, architectural, plumbing, and fire protection systems, materials and any other engineering services necessary to produce a complete and accurate set of plans and specifications for the permitting and construction of the Project, hereinafter collectively called "Basic Services," as follows:

A. Phase I - Programming and Schematic Design: 15% of fee.

1. The architect shall confer with representatives of the village to establish the Project, consisting of a detailed listing of all functions and spaces together with the square footage of each assignable space, gross square footage, and a description of the relationships between and among the principal programmatic elements.

2. The architect shall prepare and present, for approval by the village, a Design Concept and Schematics Report, Schematic Design Documents comprised of the Schematic Design Studies, including an identification of any special requirement affecting the Project, a Project Development Schedule and Statement of Probable Construction Cost (a quantity based estimate of probable construction cost summarized by CSI 16 divisions). Not needed with construction manager at risk.

3. The architect shall submit two (2) copies of all documents required under this Phase, without additional charge, for review by the village; and the architect shall not proceed with the next Phase until the documents have been approved by the village and a Notice to Proceed with the next phase has been issued.

4. The architect shall determine if the proposed design requires variances, special exceptions and present the Schematic Design studies to the village council, for its respective approval. The architect shall hold a public workshop during this phase. [Cross-reference with section 1.2.4].

5. The architect shall present the Schematic Design studies to all appropriate utility companies to determine potential conflict with their utilities or to identify any other critical issues that may impact the design, budget and construction.

6. The architect shall participate in a final review of the Schematic Design Documents with the village and Construction Manager at the Project location or other location specified by the village. Prior to the village's approval of the Schematic Design Documents, the architect shall incorporate such changes as are necessary to satisfy the village's review comments, any of which may be appealed for good cause.

B. Phase II - Design Development: 35% of fee.

1. From the approved Schematic Design Documents, the architect shall prepare and present, for approval by village, Design Development Documents. From the Schematic Design, the architect shall prepare and provide a rendering to the village. Architect shall be required to make a presentation to the village of these documents. [Cross-reference with section 1.2.4]. Staff from each of the major technical disciplines shall attend this presentation to explain the design concept of their systems. Prior to the village's approval of the Design Development

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Documents, the architect shall incorporate such changes as are necessary to satisfy the village's review comments, as long as project scope is not revised.

2. At the presentation required in 2.01B(1) the architect shall also submit an updated Statement of Probable Construction Cost (a quantity based estimate of probable construction cost summarized by CSI 16 divisions). If the updated Statement of Probable Construction Cost exceeds the total budgeted amount for Phase I, appropriate cost or scope reduction recommendations must be included. The architect shall review its construction cost estimate in comparison with the construction cost estimate prepared by the Construction Manager, and shall reconcile any differences between the two construction cost estimates in coordination with the Construction Manager. If the architect is unable to reconcile all differences between the two construction cost estimates with the Construction Manager, then the architect shall provide a detailed explanation of the differences to the village.

3. The architect shall submit two (2) sets of all documents required under this Phase, without additional charge, for review approval by the village, and the architect shall not proceed with the next phase until the documents have been approved by the village and a Notice to Proceed with the net phase has been issued.

C. Phase III - Construction Documents Development: 75% of fee.

From the approved Design Development Documents, the architect shall prepare for approval by village, and in accordance with village's format, Final Construction Documents setting forth in detail the requirements for the construction of the Project as required by the Project Manager. The architect shall be responsible for full compliance of the design and the Construction Documents with all applicable building codes and receipt of all necessary building permits. All Final Construction Documents shall be permittable.

1. 50% Construction Documents Submittal: The architect shall make a 50% Construction Documents submittal, for approval by the village, which shall include:

- a. Two (2) sets of prints of all drawings, and specifications; and
- b. A complete index of every drawing sheet, to become part of the Construction Documents, and the architect's evaluation of the individual percentage completion of each sheet; and
- c. The architect shall, in the preparation of the specifications, use CSI Standards (most current edition prior to October 1, 2004), including the 16-Division and 3-part Section format developed and recommended by the Construction Specifications Institute. The 50% construction documents submittal shall include all sections of Divisions "O" and "1" and at least 50% of the technical specifications sections, each of which shall be 100% complete; and
- d. An Updated Statement of Probable Construction Cost, (a quantity based estimate of probable construction cost summarized by CSI 16 divisions) and an updated Project Development Schedule; and
- e. The architect may also be required to include in the Construction Documents approved additive alternate bid items to permit the village to award a Construction Contract within the limit budgeted amount, if necessary.

2. The architect shall not proceed with further design work until approval of the 50% construction documents and the Statement of Probable Cost Estimate is received from the village. The architect shall make all

village

architect

changes to the documents and resolve all questions indicated on the documents. The 50% complete Check Set shall be returned to the village.

3. Upon the request of the village, and upon written authorization by the architect; at approximately 75% completion of the Construction Documents, the architect shall submit at least two (2) simple studies of proposed perspective drawings for the Project, indicating suggestions for angles of view and general composition of a rendering. Upon approval of a perspective format, the architect shall execute and submit, with the 100% Construction Documents, one (1) 20" x 30" framed and glassed perspective rendering in color of the Project and three (3) smaller 10" x 15" framed photographic copies, in color.

4. 100% Construction Documents Submittal:

a. Upon 100% completion of the Construction Documents, the architect shall submit to the village two (2) copies each of check sets of the drawings, specifications, reports, programs, together with a final, updated Statement of Probable Construction Cost. The 100% Construction Documents Progress, which shall be based upon the approved Design Development Documents, shall serve to monitor progress of the Work. All recommendations of the village from this review shall be incorporated into the Construction Documents prior to submission of the 100% Construction Documents. The Construction Documents 100% submittal milestone shall consist of six (6) full size sets of drawings; three (3) 11" x 17" size sets of drawings and five (5) sets of Project manuals for the village to review. This set with all resolution of comments from this review incorporated into the documents shall establish completion of the 100% Construction Documents 100%. The 100% Construction Documents with full resolution and all comments pending from any previous reviews shall establish completion of the 100% Construction Documents. Once approved by the village the 100% Construction Documents shall become the "approved 100% Construction Documents" and shall not be altered, modified, or revised without the village's prior written approval. Any material design modifications to the approved 100% Construction Documents requested by village shall be an additional cost to the village.

b. The architect shall make all required changes or additions and resolve all questions on the documents. The 100% complete Check Set shall be returned to the village. Upon final approval by the village, the architect shall furnish one copy of all Drawings and Specifications, along with a reproducible set and an electronic copy to the village without additional charge.

c. The architect shall be responsible for preparing and filing the required documents for approval by governmental authorities having jurisdiction over the Project to ensure that final approvals, permits and licenses for the performance of the Work will be obtainable prior to the construction phase. The architect shall make the original documents or reproducible copies thereof available to the village for reproduction of additional copies as may be required for bidding and/or construction purposes.

D. Phase IV - Bidding and Award of Agreement: 80% of fee

1. The village has budgeted \$2,865,500 for the construction of this Project (the "Maximum Cost Limit"). If the final statement of Probable Construction Cost exceeds the Maximum Cost Limit, the architect shall review the materials, equipment, component systems and types of construction included in the Contract

village

architect

Documents and may recommend changes in such items and/or reasonable adjustments in the scope of the Project (to be made at no additional cost to the village) that will result in bids within the available funds.

2. Bid Documents Approvals and Printing: Upon issuance of a Notice to Proceed and obtaining all necessary approvals of the Construction Documents, and approval by the village of the latest Statement of Probable Construction Cost, the architect shall work with the architect in obtaining bids and awarding contracts for construction.

3. Issuance of Bid Documents, Addenda and bid opening:

a. The architect shall prepare addenda, if any are required, for the village to issue to all prospective bidders. No addendum shall be issued without the approval of the village manager or the architect.

b. The architect shall be present at the bid opening, with the village's staff.

4. If the lowest responsive, responsible bid for the construction of the Project received exceeds the Maximum Cost Limit for the construction of the Project, the village may direct the architect to revise the Project scope or quality, or both, to meet the Maximum Cost Limit for the construction of the Project, and re-bid the Project. At the village's request, the architect shall revise and modify Construction Documents and assist in the re-bidding of the Work at no additional cost to the village if all responsive and responsible bids received exceed the Maximum Cost Limit.

5. Under Section 2.01(D)(4) above the architect shall, without additional compensation, modify the Construction Documents as necessary to bring the Probable Construction Cost within the Maximum Cost Limit, and participate in the bid process described in this Section 2.01D. The village may recognize exceptional construction market cost fluctuations with regard to construction materials and supplies before exercising the option in Section 2.01(D)(3).

6. Evaluations of the Project's Maximum Cost Limit, preliminary estimates of construction cost and detailed estimates of construction cost prepared by the architect represent the architect's best judgment as a design professional familiar with the construction industry. If the village has not advertised for bids within ninety (90) days from the date that the village approves the 100% Construction Documents, the Probable Construction Cost may be adjusted by the architect and resubmitted to the village.

E. Phase V - Administration of the Construction Contract: 100% of fee.

1. The Construction Phase shall begin with the award of the Construction Contract and shall end when the Contractor's final Payment Certificate is approved by the village. During this period, the architect shall provide administration of the Construction Contract as set forth in the General and Supplementary Conditions of the Construction Contract entered into by the village and the construction contractor.

2. The architect, as the representatives of the village during the Construction Phase, shall advise and consult with the village and shall have authority to act on behalf of the village to the extent provided in the General Conditions and the Supplementary Conditions of the Construction Contract.

village

architect

3. The architect shall review the Construction Manager's initial administrative submittals for Project Schedule, Schedule of Values, Submittal Schedule, and Equipment Matrix to establish appropriate basis for construction monitoring, payment processing, and system commissioning. The architect shall provide detailed written comments to the Construction Manager at Risk for necessary revisions and recommend acceptance of these documents to the village when appropriate. The architect shall review periodic updates of all schedules with the village and Construction Manager to evaluate appropriateness.

4. Architect shall prepare appropriate materials for and conduct a Pre-Construction Conference at the site prior to commencement of construction by the Construction Manager.

5. The architect shall be a representative of the village during the Construction Phase, and shall advise and consult with the village. Instructions to the Construction Manager shall be forwarded through the architect and all communication by and with the architect's consultants shall be through the architect, except that the village reserves the right to communicate directly with the Construction Manager and consultants as it deems necessary or appropriate at any time. The architect shall have authority to act on behalf of the village to the extent provided in the Contract Documents unless otherwise modified by written instrument. Duties, responsibilities and limitations of authority of the architect shall not be restricted, modified or extended without written acceptance of the village.

6. The architect shall visit the site twice a month, and the architect's respective Subconsultants shall visit the site whenever their firm is performing work under the Agreement and whenever required to be present by the architect, village manager or his designee, to ascertain the progress of the Project and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of on-site observations, the architect shall guard the village against defects and deficiencies in the Work. The architect will not be required to make extensive inspections or provide continuous daily on-site inspections to check the quality or quantity of the Work unless otherwise set forth in this agreement. The architect will not be held responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor will the architect be held responsible for the Contractor's or Subcontractors', or any of their agents' or employees', failure to perform the Work in accordance with the Contract Documents. The architect shall notify the village and the Construction Manager in writing of any portions of the work which architect has observed as not being in conformity with the Construction Documents and make recommendations as to correction of such deficiencies or defects. As part of such on-site observation, architect shall make its site representative available and shall consult with the village and the Construction Manager on the occasion of all circumstances arising during the course of construction which would make such consultation in the village's interests.

7. The architect shall furnish the village with a written report of all observations of the Work made by the architect and the subconsultants during each visit to the Project. The architect shall also note the general status and progress of the Work, on forms furnished by the village, and submit same weekly or as required by the Project Manager. The architect and the subconsultants shall ascertain that the Contractor is making timely, accurate, and complete notations on the "as-built" drawings. The architect shall administer all meetings scheduled by the village or architect and shall promptly provide summary notes to all parties. The architect shall attend Construction Manager's regularly scheduled planning meetings when requested but will not be responsible for administering such.

8. Based on observations at the site and consultation with the architect, the architect shall determine the amount due the Contractor on account and shall recommend approval of such amount. This recommendation shall constitute a representation by the architect to the village that, to the best of the architect's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents subject to:

_____ village

_____ architect

- a. an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; and
- b. the results of any subsequent tests required by the Contract Documents; and
- c. minor deviations from the Contract Documents correctable prior to completion; and
- d. any specific qualifications stated in the Payment Certificate; and further that the Contractor is entitled to payment in the amount agreed upon at the requisition site meeting; and

By recommending approval of a Payment Certificate, the architect shall not be deemed to represent that the architect has made any examination to ascertain how and for what purpose the Contractor has used the money paid on account of the Construction Contract Sum.

9. The architect shall be the interpreter of the technical requirements of the Contract Documents and shall make recommendations to the village manager regarding performance thereunder. The architect shall render interpretations necessary for the proper execution or progress of the Work within 14 days on written request of either the village or the Contractor. The architect shall respond to all Request for Information or Requests for Clarification within 14 days. The architect shall provide recommendations to the village manager, within 14 days, on all claims, disputes and other matters in question between the village and the Contractor relating to the execution or progress of the work or the interpretation of the Contract Documents. The village manager shall make final decisions regarding disputes concerning the Contract Documents.

10. Interpretations and recommendations of the architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in written or graphic form. In the capacity of interpreter, the architect shall endeavor to secure faithful performance by both the village and the Contractor, and shall not show partiality to either.

11. The architect shall have authority to recommend rejection of Work which does not conform to the Contract Documents. Whenever, in the architect's reasonable opinion, it is necessary or advisable to insure compliance with the Contract Documents, the architect will have authority to recommend special inspection or testing of any Work deemed to be not in accordance with the Agreement, whether or not such Work has been fabricated and delivered to the Project, or installed and completed. The architect shall provide such normal mechanical, electrical, structural, landscape or other related inspection expertise as necessary to determine compliance with the Construction Contract.

12. The architect shall promptly review and approve shop drawings, samples, and other submissions of the Contractor for conformance with the design concept of the Project and for compliance with the Contract Documents. The architect shall prepare color boards to review the color selections for all finish materials with the Contractor and furnish the approved colors to the Contractor within 14 days, so as not to delay the construction progress. Changes or substitutions to the Contract Documents shall not be authorized without prior written concurrence of the village manager or his designee.

13. The architect shall initiate Change orders for the village's approval as required by the architect's observations, or requested by the village; and review and recommend action on proposed Change Orders within the scope of the Project initiated by others.

village

architect

14. The architect shall examine the Work upon receipt of the Contractor's request of Substantial Completion inspection of the Project and shall, prior to occupancy by the village, recommend execution of a certificate of acceptance for Substantial Completion after first ascertaining that the Project is substantially completed in accordance with the agreement requirements. A punch list of any defects and discrepancies in the Work required to be corrected by the Contractor shall be prepared by the architect in conjunction with representatives of the village, and satisfactory performance obtained thereon before the architect recommends execution of a Certificate of Final Acceptance and final payment to the Contractor. The architect shall obtain from the Contractor all guarantees, operating and maintenance manuals for equipment, releases of claims and such other documents and certificates as may be required by applicable codes, laws, and the specifications, and deliver them to the village.

15. The architect shall provide assistance in obtaining the Contractor's compliance with the Contract Documents relative to 1) initial instruction of village's personnel in the operation and maintenance of any equipment or system, 2) initial start-up and testing, adjusting and balancing of equipment and systems and 3) final clean-up of the Project.

16. Provided that the architect has been paid in full for services rendered and approved hereunder, the architect shall furnish to the village, the original drawings (CADD files), revised to "as-built" conditions based on information furnished by the Contractor. Such drawings shall become the property of the village.

17. The architect shall notify village in writing of all conflicts between the plans and specifications and/or contract documents and any laws, ordinances, rules, regulations and restrictions that come to the attention of the architect or should have come to the architect's attention with the exercise of due care. If the architect allows any Work to be performed knowing, it to be contrary to any such laws, ordinances, rules, regulations or restrictions and fails to give village written notice thereof prior to performance thereof, the architect shall bear all costs, liabilities, and expenses arising therefrom, which costs, liabilities and expenses shall not be considered a part of the architect's fees or any other amounts due hereunder.

18. The architect shall prepare and submit to village monthly reports throughout all phases of the Project. The reports shall provide the current status of activities of architect, consultants, subconsultants, contractors, subcontractors, and others whose activities affect the Project. The reports shall also provide updated information regarding the Project budget, costs, schedules and other information necessary to keep village informed of all activity relevant to the Project; provided, however, the parties acknowledge and agree that the architect shall prepare and revise, as necessary, the Project budget to be used by architect throughout the Project.

19. The architect shall review, for conformance with the Contract Documents, Construction Manager's submission of guarantees and warranties.

20. The architect and its subconsultants shall assist the village in checking construction progress during the course of the Work in association with certifying progress payments and shall review final as-built documents for completeness and compliance with Contract requirements.

21. The architect shall receive and review Construction Manager's submission of operating and maintenance instructions, and all manuals, brochures, drawings, and other close-out documentation furnished by the Construction Manager, shall require necessary revisions to same, and when acceptable under the terms of the Contract between the village and Construction Manager, shall forward same to the village. The architect shall

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architect

certify final payment to the Construction Manager when the requirements of the Contract between the village and Construction Manager have been met.

22. The architect shall provide assistance to the village for the purpose of advising and counseling the village's personnel in the usage, operation and maintenance of the building mechanical, electrical, and plumbing systems.

23. The architect shall be available after final payment to advise the village regarding Warranty items and to inspect Warranty work during the Warranty period. Architect shall participate in the Project's one-year warranty review.

SECTION 2. ADDITIONAL SERVICES

2.2.1A Additional Services as listed below are considered to be beyond the scope of the Basic Services as defined in this agreement, and if authorized by the written authorization of the village manager, shall be compensated at architect's hourly rate as provided under subsection 1.3.4. Prior to commencing any Additional Service, the architect shall prepare for acceptance by the village an Additional Services Proposal, which shall describe in detail the nature or scope of the Additional Services, the basis upon which the architect has determined that such services are Additional Services, and which shall set forth the maximum amount of fees and reimbursable expenses for which the architect is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Service. The architect shall proceed only after written acceptance by the village of the Additional Services Proposal.

2.2.1B Upon acceptance by the village, each Additional Services Proposal and the services performed by the architect pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a Basic Service at the original execution of this Agreement.

2.2.1C Providing services to make detailed investigations of existing conditions or facilities or to make measured drawings thereof is an Additional Service except to verify the accuracy and completeness of drawings or other information furnished by the village to the extent necessary for the architect to complete its responsibilities hereunder free of material errors and omissions. The architect shall not be required to perform any destructive testing or to hire the services of a surveyor unless agreed to as an Additional Service.

SECTION 3. PERFORMANCE

2.3.1 Performance and Delegation: The services to be performed hereunder shall be performed by the architect's own staff, unless otherwise approved in writing by the village. Said approval shall not be construed as constituting an agreement between the village and said other person or firm.

2.3.2 The architect represents that it possesses the requisite skills and shall follow the professional standards of the American Institute of architects in performing all services under this agreement. The architect agrees to use its skill and judgment in furthering the village's interests hereunder and architect shall perform its services in accordance with the practice of the pertinent industry and as expeditiously as is consistent with reasonable skill and care.

village

architect

SECTION 4. DIRECTION OF ARCHITECT

2.4.1 Architect's direction for this Project shall be derived solely from the village manager, or his designee (as documented in writing by the village manager) and the architect. Work performed without the approval of these parties, if not satisfactory to the village manager, shall require the architect to perform corrective work at no additional cost to the village.

SECTION 5. TIME

2.5.1 Architect shall perform all of architect's services described herein as expeditiously as is consistent with (1) the degree of professional skill and care defined herein, (2) the orderly progress of such services, and (3) conformance with the schedules described herein so that the desired development and construction schedule for the Project shall be maintained. Architect shall at all times provide sufficient personnel to accomplish architect's services within the time limits set forth in the schedules described herein. The architect shall coordinate with the Construction Manager in the preparation and maintenance of the schedule for performance of the professional services for the Project, including the architect's services. Changes in this schedule may be made only with the written approval of the village. Architect shall perform all of its services in accordance with the then-current schedule approved by the village. This schedule may not be exceeded by architect.

ARTICLE III: MISCELLANEOUS

SECTION 1. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

3.1.1 The village does not waive sovereign immunity for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this agreement, 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.

3.1.2 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.

SECTION 2. MEDIATION

3.2.1 Any claim or dispute arising out of or related to this agreement shall be subject to informal mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Both parties waive any right to arbitration.

3.2.2 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Miami-Dade County, Florida, unless another location is mutually agreed upon.

3.2.3 Agreements reached in mediation shall be enforceable as settlement agreements in the circuit court for the 11th judicial circuit for the State of Florida.

SECTION 3. ALL PRIOR AGREEMENTS SUPERSEDED

3.3.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this agreement and the parties agree that there

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architect

are no commitments, agreements or understandings concerning the subject matter of this agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms of the agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 4. NOTICE

3.4.1 Whenever either party desires to give notice to the other, it must be given by hand delivery, facsimile, or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice and identified the following persons as the contracting officers:

FOR ARCHITECT: Eduardo N. Lamas, AIA, Partner
Bermello-Ajamil & Partners, Inc.
2601 South Bayshore Drive, Suite 1000
Miami, Florida 33133
Telephone: (305) 859-2050
Facsimile: (305) 859-9638

FOR VILLAGE: Charles D. Scurr, Village Manager
Village of Palmetto Bay
8950 S. W. 152nd Street
Palmetto Bay, Florida 33157
Telephone: (305) 259-1234
Facsimile: (305) 259-1290

SECTION 5. TRUTH-IN-NEGOTIATION CERTIFICATE

3.5.1 Signature of this agreement by architect shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this agreement or any project agreement are accurate, complete, and current at the time of contracting.

SECTION 6. CONSENT TO JURISDICTION

3.6.1 The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this agreement or any project agreement. Venue of any action to enforce this agreement or any project agreement shall be in Miami-Dade County, Florida.

SECTION 7. GOVERNING LAW

3.7.1 This agreement and any project agreement shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 8. HEADINGS

3.8.1 Headings are for convenience of reference only and shall not be considered in any interpretation of this agreement.

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SECTION 9. EXHIBITS

3.9.1 Each exhibit referred to in this agreement forms an essential part of this agreement. The exhibits if not physically attached, should be treated as part of this agreement, and are incorporated by reference.

SECTION 10. SEVERABILITY

3.10.1 If any provision of this agreement or any project agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 11. COUNTERPARTS

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

SECTION 12. WARRANTY OF AUTHORITY

3.12.1 The signatories to this agreement warrant that they are duly authorized by action of their respective village commission, board of directors or other authority to execute this agreement and to bind the parties to the promises, terms, conditions and warranties contained in this agreement.

SECTION 13. CONTINGENCY FEE AND CODE OF ETHICS WARRANTY

3.13.1 Architect warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and architect has not, and will not, pay a fee the amount of which is contingent upon the village awarding this agreement to architect.

3.13.2 Architect warrants that neither it, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this agreement in violation of any of the provisions of the Miami-Dade County or the Village of Palmetto Bay conflict of interest and code of ethics ordinances.

3.13.3 A violation of this paragraph will result in the termination of the agreement and forfeiture of funds paid, or to be paid, to the architect.

SECTION 14. COUNTERPARTS

3.14.1 This agreement may be signed in two or more counterparts, each of which constitutes the agreement of the parties and each of which will be treated as an original.

SECTION 15. INFORMATION FURNISHED:

3.15.1 The village, at its expense and insofar as performance under this agreement may require, shall furnish the architect with the any information already in its possession and information regarding Project Budget, village regulations, guidelines, forms, formats, and assistance required for programming as per Section 2.01A.

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SECTION 16. ENTIRE AGREEMENT

3.16.1 The agreement, when signed by all of the parties, constitutes the full and complete understanding and agreement of all parties and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This agreement and the incorporated attachments constitute the entire understanding between the parties and integrates by its terms all previous contracts or understandings, oral or written, between the parties. In the event of any conflict, the terms of this contract will govern over the provisions of any incorporated documents.

SECTION 17. MISCELLANEOUS PROVISION

3.17.1 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.

IN WITNESS WHEREOF, the parties execute this agreement on the respective dates under each signature: The village, signing by and through its village manager, attested to by its village clerk, duly authorized to execute same and by architect by and through its assistant secretary, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

ATTEST:

VILLAGE OF PALMETTO BAY

Village Clerk

By: _____
Charles D. Scurr, Village Manager

Date: _____

APPROVED AS TO FORM:

Nagin Gallop Figueredo, P.A.
Village Attorney

ATTEST:

BERMELLO-AJAMIL & PARTNERS, INC.

Village Clerk

By: _____
Eduardo N. Lamas, AIA,
Partner

Date: _____

village

architect

**ARCHITECTURAL SERVICES AGREEMENT BETWEEN
BERMELLO-AJAMIL & PARTNERS, INC.
AND VILLAGE OF PALMETTO BAY**

**EXHIBIT 1
Project Description**

Perrine Park Complex

The project shall consist of the design of specific elements, as further detailed below, for the Perrine Park Complex, located at 17535 SW 95th Avenue and vacant land adjacent thereto bearing the following folio numbers:

33 5033 000 0660
33 5033 000 0850
33 5033 000 0852

Detailed scope for the Perrine Park Complex

- Required underground drainage to sustain the proposed transitional design as well as the future park improvements in accordance with the elements and components included in the approved Parks Master Plan (included as Exhibit 4)
- Utility connections to sustain the proposed transitional design as well as the future park improvements in accordance with the elements and components included in the approved Parks Master Plan
- New and extended asphalt parking and parking lighting as required by applicable codes to support the new activities proposed for the park, including but not limited to the Boundless Playgrounds, additional fields and skate park
- Construction of two new fields on the west side of the park
- Landscaping & irrigation throughout the park, as required by current applicable building codes
- Construction of the walking paths around the perimeter of the additional 19 acres and a connecting walkway from the Boundless Playground to the new restrooms east of the additional new fields
- Construction of new restrooms/snack building as proposed in the approved Parks Master Plan (included as Exhibit 4)
- Updating existing restrooms to bring to ADA compliance

Perrine Wayside Park

The project shall consist of the design of specific elements, as further detailed below, for the Perrine Wayside Park, located on South Dixie Highway and SW 164th Street, bearing the following folio number:

33 5028 000 0410

- Civil engineering as required by applicable codes and regulations
- Removal of existing parking lot
- Addition of a new parking lot as proposed in the Parks Master Plan (included as Exhibit 5)
- Perimeter fence



EXHIBIT 2

BERMELLO-AJAMIL
& PARTNERS-INC

ARCHITECTURE • ENGINEERING • PLANNING • INTERIOR DESIGN • LANDSCAPE ARCHITECTURE

July 7, 2005

Project Timeline for Perrine Park & Perrine Wayside

Task 1. Schematic	1 month
Village Review / Progress Meetings	.5 months
Task 2. Design Development	2 months
Village Review / Progress Meetings	1 month
Task 3. Construction Documents	3 months
Village Review / Progress Meetings	<u>1 month</u>
Subtotal	8.5 months
Permitting	4.5 months (varies)
Bid Award	1.5 months
Construction	<u>10 months (varies)</u>
Total	24.5 months

**ARCHITECTURAL SERVICES AGREEMENT BETWEEN
BERMELLO-AJAMIL & PARTNERS, INC.
AND VILLAGE OF PALMETTO BAY**

**EXHIBIT 3
Compensation**

Compensation shall be provided based on a lump sum fee of \$171,930, for performance of all services described in the agreement for the Perrine Park Complex and Perrine Wayside Park, as further explained and detailed in the agreement.

