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2
3 **RESOLUTION NO. 06-59**

4 A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE
5 VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO
6 CONTRACTS; APPROVING THE CONTRACT WITH GURRI MATUTE,
7 P.A. FOR A CONCEPT DESIGN OF THE EXISTING STRUCTURES AT
8 THE PARK PROPERTY LOCATED AT 17301 OLD CUTLER ROAD (C-
9 100 PROPERTY) FOR THE AMOUNT OF \$71,150; AUTHORIZING THE
10 VILLAGE MANAGER TO EXECUTE SAID CONTRACT; AND
11 PROVIDING AN EFFECTIVE DATE.

12 WHEREAS, the Village of Palmetto Bay recently acquired the property located at
13 17301 Old Cutler Road to restore the historically-significant 1926 Mediterranean home and
14 redevelop the property into a public park; and,

15
16 WHEREAS, the Village Council desires to begin the process for the re-adaptive use of
17 the main residence and adjacent carriage house; and,

18
19 WHEREAS, pursuant to Council direction, Gurri-Matute, P.A. has submitted a
20 proposal for services as further detailed on Attachment 1; and,

21
22 WHEREAS, pursuant to negotiations between the parties, the Village desires to enter
23 into a contract with Gurri-Matute, P.A. to complete a concept design for the C-100 property,
24 located at 17301 Old Cutler Road, for the amount of \$71,150; and,

25
26 NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE
27 COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

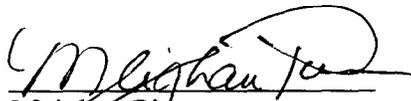
28
29 Section 1. The contract between the Village of Palmetto Bay and Gurri-Matute,
30 P.A. is hereby approved in substantial form and content to the attached, included as
31 Attachment 1.

32
33 Section 2. The Village Manager is authorized to execute said contract in the
34 amount of \$71,150.

35 Section 3. This resolution shall take effect immediately upon approval.

36 PASSED and ADOPTED this 5th day of June, 2006.

37
38 Attest:

39 
40 Meighan Pier
41 Village Clerk


Eugene P. Flinn, Jr.
Mayor

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Standard Form of Agreement Between Owner and Architect for Special Services

AGREEMENT made as of the _____ day of June in the year of 2006

BETWEEN the Owner:
(Name and address)

Village of Palmetto Bay
8950 SW 152nd Street
Palmetto Bay, Florida 33157

and the Architect:
(Name and address)

Gurri Matute, PA
2701 Ponce De Leon Blvd., Suite 203
Coral Gables, Florida 33134

For the following Project:
(Include detailed description of Project, location, address and scope.)

C-100 Park (Haas Property) - Concept Design for Existing Structures
17641 Old Cutler Road
Palmetto Bay, Florida 33157

The Owner and the Architect agree as set forth below.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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r Notes:

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ARTICLE 1 ARCHITECT'S SERVICES

(Here list those services to be provided by the Architect under the Terms and Conditions of this Agreement. Note under each service listed the method and means of compensation to be used, if applicable, as provided in Article 8.)

Service to be provided

Method and means of compensation

Concept Design for Existing Structures (refer to Section 9.1)

Lump Sum

ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1 The Owner shall provide full information regarding requirements for the Project. The Owner shall furnish required information as expeditiously as necessary for the orderly progress of the Work, and the Architect shall be entitled to rely on the accuracy and completeness thereof.

§ 2.2 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

ARTICLE 3 USE OF ARCHITECT'S DOCUMENTS

§ 3.1 The documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architect's documents for the Owner's information, reference and use in connection with the Project. The Architect's documents shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, unless the Architect is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Architect.

ARTICLE 4 ARBITRATION

§ 4.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.

§ 4.2 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

§ 4.3 The arbitration shall be required to apply the substantive law of Florida. In the event the parties are unable to agree on the designation of an arbitrator, either party may apply to the Circuit Court of the 11th Judicial Circuit, in and for Miami-Dade County for the court to appoint an arbitrator. The award of the arbitrator shall be final, binding and enforceable. The arbitrator award shall be issued with detailed findings of fact and conclusions of law. There shall be a right of appeal from any final arbitration award for erroneous findings of fact and/or erroneous conclusions of law, or for any other statutory basis that would permit appeal from an arbitration award in the jurisdiction in which the arbitration is conducted. The power conferred by this arbitral provision is without prejudice to the right of either party under applicable law to request interim relief directly from any court of competent jurisdiction, without prior authorization from the arbitrator. In connection with any such litigation, including appellate proceedings, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. In addition, the parties consent to the exclusive jurisdiction of a court of competent jurisdiction in the State of Florida pursuant to the applicable requirements of such court in any matter so submitted to it and THE PARTIES EACH EXPRESSLY WAIVE THE RIGHT TO A TRIAL BY JURY. Any judgment or award

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rendered by the arbitration as referenced above may be entered in any court in the state in which the parties are located having jurisdiction thereof or in any court having jurisdiction over the party against whom judgment is sought to be enforced. Neither party shall under any circumstances be responsible for prejudgment interest, indirect, consequential or punitive damages.

§ 4.4 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 5.2 If the Owner fails to make payment when due the Architect for services and expenses, the Architect may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

§ 5.3 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 5.4.

§ 5.4 Termination Expenses shall be computed as a percentage of the compensation earned to the time of termination, as follows:

- .1 For services provided on the basis of a multiple of Direct Personnel Expense, 20 percent of the total Direct Personnel Expense incurred to the time of termination; and
- .2 For services provided on the basis of a stipulated sum, 10 percent of the stipulated sum earned to the time of termination.

ARTICLE 6 MISCELLANEOUS PROVISIONS

§ 6.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Architect.

§ 6.2 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date payment is due the Architect pursuant to Section 8.4.

§ 6.3 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign this Agreement without the written consent of the other.

§ 6.4 This Agreement represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 6.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

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§ 6.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

ARTICLE 7 PAYMENTS TO THE ARCHITECT

§ 7.1 DIRECT PERSONNEL EXPENSE

§ 7.1.1 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.

§ 7.2 REIMBURSABLE EXPENSES

§ 7.2.1 Reimbursable Expenses are in addition to the Architect's compensation and include expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project for:

- .1 expense of transportation and living expenses in connection with out-of-town travel authorized by the Owner;
- .2 long-distance communications;
- .3 fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 reproductions;
- .5 postage and handling of documents;
- .6 expense of overtime work requiring higher than regular rates, if authorized by the Owner;
- .7 renderings and models requested by the Owner;
- .8 expense of additional coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants; and
- .9 Expense of computer-aided design and drafting equipment time when used in connection with the Project.

§ 7.3 PAYMENTS ON ACCOUNT OF THE ARCHITECT'S SERVICES

§ 7.3.1 Payments on account of the Architect's services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or as otherwise provided in this Agreement.

§ 7.3.2 An initial payment as set forth in Section 8.1 is the minimum payment under this Agreement.

§ 7.4 ARCHITECT'S ACCOUNTING RECORDS

§ 7.4.1 Records of Reimbursable Expenses and expenses pertaining to services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 8 BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

§ 8.1 AN INITIAL PAYMENT OF (\$ 0.00) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

§ 8.2 COMPENSATION FOR THE ARCHITECT'S SERVICES, as described in Article 1, Architect's Services, shall be computed as follows:

(Insert basis of compensation, including stipulated sums multiples or percentages, and identify the services to which particular methods of compensation apply, if necessary.)

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Lump Sum Fee: \$71,150.00

§ 8.3 Payments are due and payable Fifteen (15) business days from the date of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of interest agreed upon.)

1.00% monthly

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding other requirements such as written disclosures or waivers.)

§ 8.4 IF THE SCOPE of the Project or of the Architect's services is changed materially, the amounts of compensation shall be equitably adjusted.

ARTICLE 9 OTHER CONDITIONS

9.1 The scope of services and all other terms and conditions contained in the proposal letter to Olga Cadaval, Chief of Staff, Village of Palmetto Bay dated April 19, 2006 – and *REVISED MAY 30, 2006* shall apply. Said proposal letter is attached hereto and made a part hereof.

ARTICLE 10 JURISDICTION AND VENUE

§10.1 For the purposes of this Agreement, Florida law shall govern the terms of this Agreement. Venue shall be in Miami-Dade County, Florida.

ARTICLE 11 SOVEREIGN IMMUNITY AND ATTORNEY'S FEES

§11.1 The Owner 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.

ARTICLE 12 SEVERABILITY

§12.1 Should any section or any part of any section of this Agreement be rendered void, invalid or unenforceable by any court of law, for any reason, the determination shall not render void, invalid or unenforceable any other section or part of any section of this Agreement.

ARTICLE 13 NOTICES

§13.1 All notices given or required under this Agreement shall be deemed sufficient if sent by certified mail, return receipt requested, to the addresses of the Architect and to the Owner specified in this Agreement, unless either party shall specify to the other party a different address for the giving of the notices.

ARTICLE 14 EXAMINATION AND RETENTION OF ARCHITECT'S RECORDS

§14.1 The Owner, or any of their duly authorized representatives, shall, until 3 years after final payment under this Agreement, have access to and the right to examine any of the Architect's books, ledgers, documents, papers, or other records involving transactions related to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

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§14.2 The Architect agrees to include in first-tier subcontracts under this Agreement a clause substantially the same as subsection 14.1 above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

§14.3 The right to access and examination of records in subsection 14.1 shall continue until disposition of any mediation, claims, litigation or appeals.

ARTICLE 15 OWNERSHIP OF DOCUMENTS

§15.1 All documents, reports, plans, specifications or other records, including electronic records, resulting from the professional services rendered by the Architect under this Agreement shall be deemed the property of the Owner and the Owner shall have all rights incident to this ownership. The Architect acknowledges that all documents prepared under this Agreement shall be public records, and shall be subject to public inspection and copying, as provided by Florida Statutes chapter 119. Upon conclusion of this Agreement and any extensions, all documents shall be delivered by the Architect to the Owner. The Architect shall have the right to retain copies of the documents at the Architect's expense.

ARTICLE 16 ENTIRE AGREEMENT

§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 Agreement will govern over the provisions of any incorporated documents.

ARTICLE 17 CONTINGENCY FEE AND CODE OF ETHICS WARRANTY

§17.1 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 Owner awarding this Agreement to Architect.

§17.2 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.

§17.3 A violation of this section will result in the termination of the Agreement and forfeiture of funds paid, or to be paid, to the Architect.

§17.4 Architect maintains a drug free work place.

ARTICLE 18 WARRANTY OF AUTHORITY

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

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

(Signature)

Charles. D. Scurr, Village Manager

Daphne I. Gurri, AIA, Principal

(Printed name and title)

(Printed name and title)

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GURRI MATUTE PA
ARCHITECTURE-ENGINEERING

AA 0003454
IB 0001241

2701 Ponce de Leon Blvd., #203, Coral Gables, Florida 33134
Telephone 305 445 5811 Facsimile 305 445 0656

April 19, 2006 – **REVISED MAY 30, 2006 (Additional Explanations provided)**

Ms. Olga Cadaval
Chief of Staff
Village of Palmetto Bay
8950 SW 152 Street
Palmetto Bay, Florida 33157

RE: PARK BY THE BAY - PROPOSAL FOR CONCEPT DESIGN FOR EXISTING STRUCTURES

Dear Ms. Cadaval:

Gurri Matute PA (GMPA) is pleased to submit this proposal for professional design services for an evaluation, concept design and preliminary renovation budget analysis for the existing structures (Main and Carriage Houses) and associated parking area at the Village of Palmetto Bay's "Park by the Bay" located east of Old Cutler Road and south of the C-100 Canal, as further described below. Please note the following:

Additional Explanation: *This proposal is NOT for a Master Plan; the Scope of Work described herein entails the Architectural and Engineering Investigation and Evaluation of existing structures on site for compliance with code requirements and with historical renovation requirements for adaptive re-use as a public park facility; services include Civil, Structural, Mechanical, Electrical, and Plumbing engineering/evaluation and Historical Preservation consulting services, as well as Architectural design/evaluation. This Scope of Work is qualitatively and quantitatively different from a Master Plan, which might typically entail only the Architect's and/or Landscape Architect's participation.*

Scope of Work:

General: The structures referenced above are the Main House – an existing residential structure considered historically significant; and the adjacent Carriage House – an existing garage/apartment structure, also to be considered as historically significant.

Additional Explanation: *The Village of Palmetto Bay's acquisition of this property and conversion to a public park will require the designated use of the property to be changed from Residential to a Public Park; there are many issues and ramifications entailed with this change in use, including compliance with Accessibility requirements (American with Disabilities Act – ADA), Florida Building Code and applicable zoning requirements, as well as applicable historic designation requirements.*

Task One: Prepare measured drawings (floor plans and exterior elevations) of the Main and Carriage House; includes photographic survey of existing conditions.

Additional Explanation: Production of measured drawings entails visiting the site at least twice with a team of approximately three architectural staff members to physically measure the existing structures, including interior and exterior measurements, location of openings, heights, etc. plus site photography as necessary to accurately document the existing conditions; once site dimensions and photography are obtained, new CADD drawings are produced at the Architect's office to create the base drawings for the project; a follow-up visit to the site is usually required to confirm dimensions with the finished drawings. This is typically a time consuming/ labor-intensive effort. The list below reflects the approximate number of drawings that must be produced.

Proposed Drawing List:

- Site Area Plan
- Main House – Ground Floor
- Main House – Second Floor
- Main House – Tower
- Main House – Roof Plan
- Main House – Exterior Elevations
- Carriage House – Ground Floor
- Carriage House – Second Floor
- Carriage House – Third Floor
- Carriage House – Roof Plan
- Carriage House – Exterior Elevations

Task Two: Provide a Concept Design for the adaptive re-use/renovation of the Main House, including the east patio area, improvements to the Carriage house (to provide support functions) and a parking area to support the initial opening/operation of the Park.

NOTE: The Concept Design will propose an adaptive re-use of the residential structure as a flexible interior space to support public activities such as exhibit/interpretation, small meetings and possibly administrative support/conference space at the Second Floor. The lawn area immediately east of the house is considered a location for outdoor events which may be held under a temporary banquet-type tent. The Carriage House will incorporate public restrooms, storage and a banquet preparation area to support catered events in the lawn area. The vehicular entry area west of the house will be reconfigured to provide parking, while maintaining trees and green areas. The overall use of the park is envisioned as a passive-use park; an open lawn setting with vistas to Biscayne Bay.

Additional Explanation: The Concept Design Drawings will serve as the basis for the engineers to produce their reports reflecting a proposed use for the buildings and what must be done to bring the buildings into compliance with current codes.

Task Three: Prepare a preliminary construction budget for the renovations proposed in the Concept Design; provide a comparative budget for the historical vs. non-historical renovation of the Main House.

Additional Explanation: Whereas the Village has requested a cost comparison of historical vs. non-historical renovation, preliminary indications are that the existing structures will qualify for historical designation, and that it would be advantageous to the Village (in terms of potential funding sources and ultimate value to the project) to pursue a historically-compliant renovation. Thus, obtaining a cost estimate for a non-historical renovation may be an OPTIONAL exercise; the Village may want to consider eliminating this item from the Scope of Work, thus realizing a reduction in fee. Note that the historical renovation cost estimate is still required.

Task Four: Provide a report on the existing conditions of MEP systems and structure of the Main and Carriage House, and requirements for replacing/upgrading MEP and structures to meet current code. Provide a Due Diligence report of Civil aspects of the proposed renovation, including utilities, sewer, drainage, regulatory requirements and coastal flood criteria.

GMPA will also provide a Historical Evaluation Report; this report will include:

- Review of historic documentation and maintenance records (as available).
- Historic Character Assessment of significant site and exterior/interior features of Main and Carriage Houses.
- Identification of significant features that contribute to the historic character of the property.
- Identification of non-contributing alterations/additions that detract from the historic character of the property, and which should be designated for removal.
- Historic Preservation Regulatory Assessment; identify Historic Preservation regulations which may impact the project's funding, design and development.
- Review Code/Zoning/ADA impact with regards to Certified Historic Structures.
- Interface with local code agency to discuss historic/architectural code provisions.
- Undertake visual (non-destructive) survey of existing exterior and interior conditions; assess potential for repair/modification/replacement (with deference to the Structural Consultant's assessment of structural conditions).
- Undertake site assessment and identify issues that relate to the historical integrity of the property, particularly in areas immediately surrounding the Main and Carriage House, and possible impact to the Concept Design for adaptive re-use and park activities.
- Provide evaluation of property's eligibility for historic designation.

Additional Explanation: *This Task includes the bulk of the Engineering services to be provided under this Scope of Work, including investigation/ evaluation of Structural, Mechanical, Electrical, Plumbing and Civil components of the project. Additionally, a Historical Evaluation report as outlines above is to be provided.*

Task Five: Provide list of potential funding sources for the proposed historical renovations.

GMPA and our historical renovations consultant will identify funding sources already identified by the Village, identify new possible funding sources and identify prioritized needs; this information will be presented as a Funding Resource Package to the Village of Palmetto Bay, and will include options for Full or Limited Service Grant Writing.

Task Six: Attend two public meetings to present the Concept Design: one meeting at Committee of the Whole; a second meeting at the regular Council Meeting.

Exclusions:

- Exhaustive or destructive investigation of existing structure, building systems, site infrastructure or site.
- Specialty testing, including X-ray, concrete/cement chemical analysis, soils testing, etc.
- Identification of hazardous materials.
- Architectural or Engineering design beyond Concept Design referenced above.
- Community meetings or charrettes; meetings with governmental agencies other than Village of Palmetto Bay meetings stipulated above.
- Architectural renderings, models, or animations.

- Landscape design.
- Master Plan of Park; identification of overall park occupancy/use and related requirements.
- Design resolution or identification of possible coastal flood criteria requirements beyond Civil Due Diligence referenced above.
- Any work not specifically identified in Scope of Work above.

NOTE: Any work related to exclusions will be addressed as Additional Services.

Compensation for Basic Services:

Lump Sum Fee: \$71,150.00

TERMS AND CONDITIONS – Refer to Village of Palmetto Bay/GMPA base contract.

Please advise if you have any questions or comments regarding this proposal. We look forward to serving your needs for this project, and thank you for giving us the opportunity to submit this proposal.

Sincerely,



Daphne I. Gurri, AIA
Principal

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