

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

RESOLUTION NO. 07-15

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, APPROVING THE AGREEMENT WITH SKYLINE MANAGEMENT GROUP, INC, TO PROVIDE PROFESSIONAL SERVICES AS THE OWNER'S REPRESENTATIVE FOR THE LIBRARY/ COMMUNITY ROOM CONSTRUCTION PROJECT; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE SUCH AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Palmetto Bay recently acquired the property located at 17641 Old Cutler Road to develop the vacant land into a public park and library/ community room; and,

WHEREAS, the Village has partnered with the firm of Wolfberg-Alvarez & Partners for the design of the project and recently hired A2 Group, Inc. to provide Construction Manager at Risk services in order to ensure the project is built on time and within budget; and,

WHEREAS, the project is now into the Design Development phase, and absent a Village-employed civil engineer, the Village desires to hire Skyline Management Group, Inc. to act as the Village's representative to accurately assess the validity of cost estimates and alternative materials/methods that could reduce construction costs; and,

WHEREAS, Skyline Management Group, Inc. has successfully completed other private and public projects, including the Village of Key Biscayne Community Center; and,

WHEREAS, the Village wishes to piggyback off an agreement between Skyline Management Group, Inc. and the Village of Key Biscayne.

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

Section 1. The agreement with Skyline Management Group, Inc. included herein as Attachment 1 is approved in substantial form and content.

**VILLAGE OF PALMETTO BAY
AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into this _____ day of _____, 2007, by and between the Village Of Palmetto Bay (the "Village") and Skyline Management Group, Inc., a Florida corporation (the "Consultant").

RECITALS:

The Village wants to engage the Consultant to perform certain professional services as Owner's Representative for the Village's Library and Community Room Project (the "Project"), specifically described in the Scope of Services. The Consultant desires to provide such Specified Services.

In consideration of the mutual covenants set forth in this Agreement, the parties agree as follows:

1. SCOPE OF SERVICES Upon request of the village manager:
 - A. The Consultant agrees to provide the Specified Services which shall include:
 - i. utilizing best efforts towards achieving Project savings for the Village by accomplishing value engineering changes. Village shall give reasonable consideration to such value engineering changes;
 - ii. meeting with any concerned residents of the Village concerning construction activities at the Project site, and attending and participating at all meetings and workshops held by the Village concerning the Project, each as may be requested by the Village Manager;
 - iii. assisting the Village with negotiating an agreement with the A Squared for its services to complete the Project;
 - iv. overseeing and managing all work related to the Project;
 - v. serving as the Village's representative with regard to all matters pertaining to the Project, including communications with A Squared for the Project;
 - vi. attending Council meetings as requested;
 - B. The Village Manager may add or delete any items from the Specified Services which he finds are not necessary.
 - C. At least Fifty percent (50%) of the time expended by Consultant on the performance of the Specified Services shall be expended directly by the work of Paul Abbott or Daniel Koffsky on behalf of Consultant.
 - D. Consultant shall expend all necessary efforts to competently and professionally complete all tasks of the Owner's Representative so that the Project is successfully completed.
 - E. As principals of Consultant, either Daniel Koffsky or Paul Abbott will provide pre-construction administration services, primarily focused on the completeness and value of the construction documents as prepared by the design professionals, and subsequently priced by A Squared for the Project. The time required for this effort, including the issuance of building permits, to be six (6) months.

F. Once construction commences, a Consultant project manager will be assigned to the on site projection administration responsibilities, the Consultant principal in charge will continue to participate in executive level oversight and select project meetings, as appropriate. This phase is estimated to extend sixteen (16) months.

G. Project administration services will be provided by Consultant staff at their main office.

2. FEES FOR SERVICES, OFFICE SPACE

A. As full compensation for satisfactory performance of the Specified Services, the Consultant agrees to charge and shall be paid by Village in accordance with the following fee schedule:

The total amount of all fees payable to Consultant by Village for the performance of the Specified Service. Fees shall be paid in arrears pursuant to monthly invoice based upon an hourly rate of \$125.00 per principal/project executive; \$75.00 per hour for project manager; and \$29.00 per hour for administrative assistance needs, plus a 7.75 percent overhead/profit (7.75% of each hourly billing). The Consultant shall provide detailed billing. Consultant shall not charge the village for travel time, travel expenses, or ordinary and routine expense.

B. Additionally, Consultant shall not be reimbursed by Village for reasonable and necessary costs, including: travel unless required by the Village to travel outside of Dade, Broward and Palm Beach Counties. Consultant shall be reimbursed for photocopying, plan reproduction requested by Village, long distance telephone, federal express, and postage, as approved by the Village Manager.

C. The Village shall provide, at no cost to the Consultant, office space and supplies, office furniture, telephone, office equipment excluding computers and accessories. All of the foregoing shall be used exclusively for the provision of services required by this Agreement.

3. TERM

The duration of the term of this Agreement shall commence upon execution hereof and is for a term of 22 months, unless extended by the Village Manager or earlier terminated pursuant to paragraph 8 or by early completion of the construction of the Project.

4. RECORDS

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

Consultant shall comply with chapter 119, Florida Statutes, public record retention requirements and shall maintain a copy of all documents reflecting services rendered to Village for three years after the termination of this Agreement, and final payment has been made and all other pending matters are closed. Further, Consultant shall be provided access to Village, to any government authority, or any other person pursuant to a public records request, to any books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

5. INSURANCE

A. The Consultant shall at all times carry professional liability insurance, workers' compensation insurance (if applicable), comprehensive general liability insurance, and automotive liability insurance, with minimum policy limits for each coverage in the amount of at least Five Hundred Thousand (\$500,000.00) Dollars per occurrence, combined single limit, for property damage and bodily injury, including death, except that the dollar amount of workers compensation coverage (if applicable) shall be as provided by Chapter 440, Fla. Stat. The Village shall be named as an additional insured on all of the above insurance policies, to the extent permitted by law. Each insurance policy shall state that it is not subject to cancellation or reduction in coverage without written notice to the Village 30 days prior to the effective date of cancellation or reduction of coverage.

B. Consultant shall indemnify and hold harmless the Village, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of the Consultant and persons employed or utilized by the Consultant in the performance of the Agreement.

6. ASSIGNMENT

Neither this agreement nor any interest in it shall be assigned, transferred or encumbered by either party. None of the work or services under this contract shall be subcontracted unless Consultant obtains prior written consent from the Village, and the subcontractor shall contract directly with the Village.. Those approved "subcontractors" shall be responsible and indemnify the Village for their acts, errors or omissions. The Consultant shall not assign, transfer or pledge any interest in this contract without the prior written consent of the Village; provided, however, that claims for money by the Consultant from the Village under this contract may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 10 days by the Consultant to the Village.

7. PROHIBITION AGAINST CONTINGENT FEES

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant any fee,

commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. Consultant warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and Consultant has not, and will not; pay a fee the amount of which is contingent upon the Village awarding this contract to Consultant.

Consultant warrants that neither it, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this contract in violation of any of the provisions of the Miami-Dade County or the Housing Authority for the City of Miami Beach conflict of interest and code of ethics ordinances.

A violation of this section will result in the termination of the contract and forfeiture of funds paid, or to be paid, to the Consultant.

Consultant maintains a drug free work place.

8. TERMINATION

This Agreement may be terminated by the Village upon forty-five (45) days written notice with or without cause and by the Consultant upon forty-five (45) days written notice with or without cause. If this Agreement is terminated, the Consultant shall be paid in accordance with the provisions of paragraph 2 for all acceptable work performed up to the date of termination.

9. NONEXCLUSIVE AGREEMENT

The services to be provided by the Consultant pursuant to this Agreement shall be nonexclusive and nothing herein shall preclude the Village from engaging other firms to perform the same or similar services for the benefit of the Village within the Village's sole and absolute discretion.

10. WARRANTIES OF CONSULTANT

The Consultant hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws necessary to perform the Specified Services.

Consultant warrants that it: (a) has not provided a commission, bonus or other benefit or payment to any person to procure this contract other than paying the salaries of employees in the ordinary course of business; (b) has not committed a violation of a public entity crime statute and is not otherwise disqualified by the State of Florida from entering into this Agreement; (c) no member of the Village Council shall be admitted to any share or part of this contract or to any benefit to arise there from; (d) no member, officer, or employee of the Village shall or for one year after current tenure, have any interest, direct or indirect, in this contract; and (e) proceeds shall not be used to influence federal legislation as defined in 31 USC 9101(1). Consultant shall provide a Public Entity Crime Affidavit to the Village Manager upon executing this contract.

11. NOTICES

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

Village: Charles Scurr
Village Manager
Village OF PALMETTO BAY
8950 SW 152nd Street
Palmetto Bay, FL 33157

With a copy to: Village Attorney
c/o Nagin Gallop Figueredo
18001 Old Cutler Road
Suite 526
Miami, Florida 33157

Consultant: Skyline Management Group, Inc.
4040 N.E. 2nd Avenue, Suite 305
Miami, Florida 33137
Attention: Paul T. Abbott

12. GOVERNING LAW; LITIGATION

A. This Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any litigation hereunder shall be in Miami-Dade County, Florida. The parties voluntarily waive the right to any trial by jury in any litigation hereunder.

B. In the event that as a result of Consultant's status as Owner's Representative for the Village, Consultant is named as a party defendant in any action filed by any third party in which the Project or this Agreement is attempted to be invalidated or enjoined the Village shall defend and save harmless Consultant in any such litigation.

13. LIENS.

The Consultant, subcontractors, suppliers and laborers ("subcontractors") are prohibited from placing a lien on Village's property. Consultant shall execute a similar contract with subcontractors confirming that subcontractors are not prohibited from placing liens on Village's property. Further, both Consultant and subcontractor warrant not to file or record liens or notices of liens against Village property.

14. INDEPENDENT CONTRACTOR

The Consultant is furnishing its services as an independent Consultant and nothing in this contract shall create any association, partnership or joint venture between the parties, or any employer-employee relationships.

15. ENTIRE AGREEMENT

This Agreement constitutes the sole agreement between the parties and no amendment, modification or waiver of any of the terms and conditions shall be valid unless in writing. Any prior oral or written agreements shall not be considered a part of this agreement.

16. DISPUTES AND MEDIATION.

- A. All disputes arising under or relating to this contract, except for disputes arising under the Fair Labor Standards laws, including any claims for damages for the alleged breach thereof which are not disposed of by agreement shall be resolved as provided herein.
- B. All claims by the Consultant shall be made in writing and submitted to the Village. A claim by the Village against the Consultant shall be subject to a written decision by the Village.
- C. The Village shall, with reasonable promptness, but in no event, in no more than 60 days, render a decision concerning any claim hereunder. Unless the Consultant, within 30 days after receipt of the Village's decision, shall notify the Village in writing that it takes exception to such decision, the decision shall be final and conclusive.
- D. Provided the Consultant has (1) given notice within the time provided under paragraph 8, (2) excepted its claim relating to such decision from the final release, and (3) brought suit against the Village not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Consultant has had a reasonable time to respond to a written request by the Village that it submit a final voucher and release, whichever, is conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- E. The Consultant shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Village.
- F. A breach of the Contract may be grounds for termination of the Contract and for debarment or denial in participation in Village programs as a Consultant and a subcontractor.
- G. Prior to final payment under this contract, or prior to settlement upon termination of this contract and as a condition precedent thereto, the Consultant shall execute and deliver to the Village a certificate and release, in a form acceptable to the Village, of all claims against the Village by the Consultant under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Consultant and in stated amounts set forth therein.

H. Any claim, dispute or other matter in question 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.

I. 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.

J. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

17. MAXIMUM LIABILITY AND ATTORNEY'S FEES

In any proceeding against Village its maximum liability to Consultant shall not exceed the value of the services provided to the date on which the liability arose. Village shall not be liable to Consultant for damages, penalties or expenses other than described in this paragraph. Village does not waive sovereign immunity under 768.28, Florida statutes-The prevailing party shall be entitled to its attorney's fees and costs. Neither party shall be liable for prejudgment interest.

18. SIGNATORY AUTHORITY

The officials executing this Agreement warrant and represent that they are authorized by their respective agency to enter into a binding agreement.

19. SEVERABILITY

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, such a determination shall not render void, invalid or unenforceable any other section or part of any section of this Agreement.

20. ENTIRE AGREEMENT

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 as provided above. This Agreement and the attachments incorporated herein constitute the entire understanding between the parties and integrates by its terms all previous agreements 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 documents referenced hereto.

21. MISCELLANEOUS PROVISION

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

agreement.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms and conditions above stated on the day and year first above written.

Consultant:

SKYLINE MANAGEMENT GROUP, INC.
4040 N.E. 2nd Avenue, Suite 305
Miami, Florida 33137

Village:

Village OF PALMETTO BAY
8950 SW 152nd Street
Palmetto Bay, FL 33157

By: _____

Paul T. Abbott

Title: _____

By: _____

Charles Scurr

Village Manager

Attest: _____

Meighan J. Rader

Village Clerk

Approved as to Legal Form and Sufficiency:

Eve A. Boutsis

Village Attorney