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**RESOLUTION NO. 05-47**

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA; RELATING TO PARKS AND RECREATION; APPROVING A CONTRACT WITH WOLFBERG ALVAREZ AND PARTNERS TO PROVIDE ARCHITECTURAL SERVICES FOR THE BAYSIDE LIBRARY FACILITY ON VACANT LAND LOCATED AT 17641 OLD CUTLER ROAD IN AN AMOUNT NOT TO EXCEED \$105,000; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Parks Master Plan created a vision for the development of each park facility, including the Bayside Library Park located at 17641 Old Cutler Road; and

WHEREAS, according to the Parks Master Plan, the Bayside Library Park will include an environmentally-oriented library structure and support facilities; and

WHEREAS, the Village and Miami-Dade County have a mutual agreement for the financing, operation and maintenance of the library facility; and

WHEREAS, through a competitive selection process, the Village selected the firm of Wolfberg Alvarez and Partners to provide architectural services for the bayside library, and

WHEREAS, the Council through the adoption of Resolution No. 03-70, authorized Staff to begin negotiations with the architectural firm to provide professional services, and

WHEREAS, Wolfberg Alvarez & Partners have agreed to provide the required services for a total fee of \$105,000, and

WHEREAS, the Village desires to enter into a contractual agreement with Wolfberg Alvarez and Partners to provide architectural services for the Bayside Library park property.

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

Section 1. The contract between the Village of Palmetto Bay and Wolfberg Alvarez and Partners, included as Attachment 1, is approved.

Section 2. Wolfberg Alvarez and Partners is to provide architectural services for the bayside library building, and support facilities, to be built on vacant land located at 17641 Old Cutler Road, as further detailed and mandated on Attachment 1.

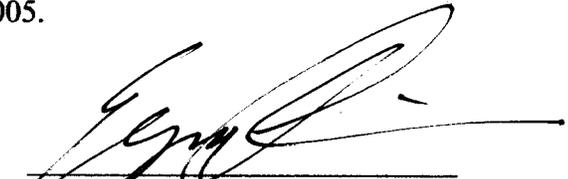
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Section 3. The contract amount shall not exceed \$105,000.

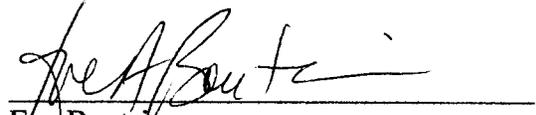
Section 4. This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this 22<sup>nd</sup> day of June, 2005.

Attest:   
Merghan Pier  
Village Clerk

  
Eugene P. Flinn, Jr.  
Mayor

APPROVED AS TO FORM:

  
Eve Boutsis,  
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>YES</u>
Council Member Paul Neidhart	<u>YES</u>
Council Member John Breder	<u>YES</u>
Vice Mayor Linda Robinson	<u>YES</u>
Mayor Eugene P. Flinn, Jr.	<u>YES</u>

**ARCHITECTURAL SERVICES AGREEMENT BETWEEN  
WOLFBERG ALVAREZ AND VILLAGE OF PALMETTO BAY**

**THIS AGREEMENT** is made between the Village of Palmetto Bay, Florida, a Florida municipal corporation, ("Village") and Wolfberg Alvarez & Partners, Inc., licensed and authorized to do business in the State of Florida, ("Consultant"), whose place of business is 1500 San Remo Avenue, Suite 300, Coral Gables, Florida 33146.

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

**WHEREAS**, the Consultant 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 Consultant'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).

1.1.3 Direct Personnel Expense. 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, for those services that exceed the scope of services depicted in schedule I and charged to the Village after receipt of prior written approval for the specified task.

The following Reimbursable Costs, shall be performed pursuant to the documented needs of the Consultant 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.

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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 Consultant shall recommend necessary tests to the Village.

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

1.1.4 Project. The project is identified in exhibit 1.

## SECTION 2. SCOPE OF SERVICES

1.2.1 The Consultant 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 Price" and tasks to be provided by the Consultant 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 Consultant shall hold at least two public workshops to receive public input. The first workshop shall be 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 Consultant as compensation for performance of all services described in this agreement, and the Consultant agrees to accept for Basic Services rendered pursuant to agreement a Lump Sum fee of \$105,000.00, attached as exhibit 2.

1.3.2 Payments to the Consultant 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.

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 Consultant 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:

a. The fees for the hourly rate shall be either a lump sum or as a multiple of Direct Personnel Expense (DPE). The compensation shall be determined by applying a multiple of 2.75, which covers all related overhead and expenses, to the DPE. The maximum billing rate shall be \$135 per hour.

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

David Wolfberg \_\_\_\_\_

Avis Garcia \_\_\_\_\_

c. Personnel directly engaged on the Project by the Consultant 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, and other services pertinent to the Project during all phases thereof. The hourly rates for each professional is listed as part of exhibit 2.

d. For all reimbursable services the Consultant will apply the multiplier of one and one tenth (1.1) times the amount expended by the Consultant. Authorized reproductions in excess of the three sets required at each phase of the work will be a Reimbursable Service.

e. Should overtime work be necessary and authorized in writing by the Consultant, the compensation for such work shall be approved by the Village Manager and stated in a Notice to Proceed.

f. The Village will reimburse the Consultant 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 CONSULTANT

1.4.1 Invoices - Lump Sum Compensation and Reimbursable Expenses. Consultant 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 approved 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 Consultant within 30 days of receipt of any invoices submitted by Consultant to 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 Consultant is disputed, or additional backup documentation is required, the Village shall notify the Consultant within 15 working days of receipt of the invoice of the objection, modification or additional documentation request. The Consultant 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 Consultant within five working days of the date of the Village's notice. The Village shall pay to the Consultant 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 Consultant, provided pursuant to subsection 1.1.1 or Article II, are wholly or partially inaccurate, or in the event that the Consultant is not in compliance with any term or condition of this project agreement, the Village may withhold payment of sums then or in the future otherwise due to the Consultant until the

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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:

1. 15% upon completion and approval of Phase I.
2. 55% upon completion and approval of Phase II.
3. 75% upon submittal of required renderings and 100% completion and approval of Phase III.
4. 80% upon 100% completion of Phase IV.
5. 100% upon completion of Phase V, and approval of all Work. Additionally, thereafter, the village may audit payments to Consultant by the Village Manager or his designee.

1.4.5 Partial payments. Not to exceed 90% in the aggregate, may be made during Phase V according to the amount paid on account of the Construction Contract. If the Construction Contract Time is extended through no fault of the Consultant, the Consultant shall be compensated for any required professional services and/or expenses not otherwise compensated for in connection with such time extensions, in accordance with the Additional Services clause of this agreement, and as authorized by a Notice to Proceed.

1.4.6 Final Payment. Submission of the Consultant's invoice for final payment and reimbursement shall constitute the Consultant's representation to the Village that, to the best of his/her knowledge and based on the scope defined in Phase V and data provided by the Construction Manager, the threshold inspector (if required), any special inspector required and upon receipt of the Village of the amount invoiced, all obligations of the Consultant to others, including its Consultants, incurred in connection with the project, shall be paid in full. The Consultant 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 Consultant.

## 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 Consultant'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 Consultant from the Village. The Consultant shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. Consultant must receive written notice from the Village manager or his designee prior to 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 Consultant. The Consultant 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,

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plus reasonable and documented costs incurred resulting from such termination. Consultant 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. Consultant 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 Consultant is unable to complete the services identified in section 2 due to causes beyond Consultant's control. The Village shall have no liability to the Consultant for future profits or losses in the event of termination for default. The rights and remedies of the Village 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. Should Consultant provide the Village with written notice of cancellation of agreement, Consultant will be required to refund a pro-rata share of the compensation identified in section 2.

1.5.5 Termination for Delay. If the project is suspended or the Consultant's services are delayed by the Village for more than 30 consecutive days, the Consultant may terminate this agreement by giving not less than 10 days written notice. The liability of the Village upon termination by the Consultant for suspension or delay of the project shall be for the value of services performed pursuant to the schedule contained in the statement of work rendered by Consultant to the time of termination by Consultant, plus reasonable and documented costs incurred resulting from such termination. The Village shall not be liable for future profits or losses.

1.5.6 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, Consultant 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 Consultant shall be limited to the obligation to budget and appropriate funds for work performed to the date of termination, plus reasonable and documented costs incurred resulting from such termination.

1.5.7 Assignment upon Termination. Upon termination of this project agreement and settlement of all outstanding monies due, a copy of all of the Consultant's work product shall become the property of the Village and the Consultant 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 Consultant pertaining to this project agreement. Further, upon the Village's request, the Consultant 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 Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) from and against any damages, liabilities or costs, including reasonable attorneys' fees and

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defense cost, arising from or allegedly arising from or in any way connected with the Village's unauthorized reuse or modification of the Plans and/or Specifications without the written authorization of the Consultant. The Village shall not defend or indemnify Consultant for independent third party unauthorized use or modification of the plan and/or specifications.

1.5.8 Suspension for Convenience. The Village shall have the right at any time to direct the Consultant 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 Consultant shall immediately comply with same. In the event the Village directs a suspension of performance as provided for herein through no fault of the Consultant, the Village shall pay to the Consultant 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 Consultant within 30 days of receipt of the original written invoice and sufficient backup documentation and acceptance of the work by the Village.

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

#### **SECTION 7. VILLAGE'S RESPONSIBILITIES**

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

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

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

#### **SECTION 8. POLICY OF NON-DISCRIMINATION/WAGES**

1.8.1 The Consultant 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 Consultant 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 Consultant shall be required to comply with applicant grant requirements. As part of this requirement the Village will advise the Consultant of all such requirements.

#### **SECTION 9. OWNERSHIP OF DOCUMENTS/DELIVERABLES**

1.9.1 Copies of all finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, photographs, specifications, digital files, and all other data prepared for the Village or furnished by the Consultant 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 Consultant to the Village

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within thirty 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 Copies of all subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the Consultant 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 Consultant 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. Consultant shall within three business days of ascertaining or determining that the registered professional identified herein is no longer affiliated with Consultant 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 Consultant shall maintain and included in subconsultants contract requirements 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 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 Consultant shall comply with Chapter 119, Florida Statutes, as applicable.

1.10.3 Refusal of the Consultant 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 Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, 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 Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement. In the event the Consultant 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 Consultant 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 Consultant shall be by employees of the Consultant and subject to supervision by the Consultant, and not as officers, employees, or agents of the Village, personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and

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other similar administrative procedures applicable to services rendered under this agreement or any project agreements shall be those of the Consultant.

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 Consultant or its subcontractors, suppliers or laborers. In reviewing, approving or rejecting any submissions or acts of the Consultant, the Village in no way assumes responsibility or liability for the acts, errors or omissions of the Consultant or subcontractors.

**SECTION 13. ASSIGNMENT; AMENDMENTS**

1.13.1 This agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by Consultant, 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 Consultant 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 Consultant or any persons employed or utilized by the Consultant in the performance of this project agreement. The Consultant 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, as stated above, and shall pay all costs and judgments which may issue thereon. The Consultant's obligation under this paragraph shall not be limited in any way by the agreed upon agreement price, or the Consultant'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 Consultant shall secure and maintain throughout the duration of this agreement and any project agreement, insurance of such type and in such amounts stated 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% (unless unavailable) of the limit of liability providing for all sums which the Consultant shall become legally obligated to pay as damages for claims arising out of the services performed by the Consultant 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

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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 Consultant shall furnish certificates of insurance to the Village prior to the commencement of operations. The certificates shall clearly indicate that the Consultant 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.

1.15.5 Except for professional liability and Worker Compensation, 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 Consultant 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 Consultant shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

## **SECTION 16. REPRESENTATIVE OF VILLAGE AND CONSULTANT**

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 Consultant Representative. Consultant shall inform the Village representative, in writing, of the representative of the Consultant to whom all communications pertaining to the day-to-day conduct of this agreement shall be addressed.

## **SECTION 17. CONSULTANT'S RESPONSIBILITIES**

1.17.1 The Consultant and any and all drawings, plans, specifications, or other architectural, construction or contract documents prepared by the Consultant shall be accurate, coordinated and adequate for construction and shall comply with all applicable Village codes, state and federal laws, rules and regulations having jurisdiction and relating to the services defined in this agreement.

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1.17.2 The Consultant 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, under similar circumstances. The Consultant's obligations under this section of this agreement shall survive termination of this agreement or any project agreement.

1.17.3 The Consultant shall endeavor to develop documents that are equal to industry standards, provided, however, the costs of any material professional errors, omissions or revisions required by Contractor to construct shall be borne by the Consultant. Consultant'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 Consultant 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 Consultant's skill and knowledge in performing Consultant's services. The Village shall have the right to reject any portion of Consultant's Services on the Project (library) because of any fault or defect in the Project due to the plans, drawings and specifications, and other materials prepared by Consultant, and prompt notice of any such rejection shall be given by the Village to Consultant. Consultant shall immediately perform, without any additional cost or expense to the Village, any and all such professional services as defined in this agreement as are required to correct or remedy any act, error, or omission directly attributable to the plans, drawings, and specifications and other materials of Consultant, or in connection with the Consultant's services, or the services of Consultant's subconsultants or other persons employed by Consultant, in the performance of any of the provisions of this agreement. Should the Consultant 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 Consultant, and Consultant shall reimburse the Village upon demand for all expenses incurred by the Village to effect such correction or remedy. This commitment by Consultant 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.

1.17.4 In the performance of Consultant's obligations hereunder, Consultant agrees to furnish efficient business administration and superintendence and to use Consultant'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 Consultant'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 Consultant obtains prior written consent from the Village. Approved subcontractors shall be subject to each provision of this agreement and Consultant shall be responsible and indemnify the Village for all subcontractors' acts, errors or omissions.

1.18.2 The Consultant 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 Consultant 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 Consultant to the Village.

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

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1.18.4 Any subcontract with a subconsultant shall afford to the Consultant rights against the subconsultant which correspond to those rights afforded to the Village against the Consultant 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 Consultant and the subconsultants which shall contain provisions that preserve and protect the rights of the Village and the Consultant 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. In all subcontracts, supplier and laborer (vendor) agreements, the Contractor shall notify the vendors that they shall be prohibited from placing a lien on the Village's property.

1.18.6 The Consultant proposes to utilize the following subconsultants.

FIRM NAME

CONSULTING SERVICE

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

## **ARTICLE II: ARCHITECT SERVICES AND RESPONSIBILITIES**

### **SECTION 1. BASIC SERVICES**

2.1.1 The Consultant shall provide complete professional architectural and engineering services set forth in the phases enumerated hereinafter (Consultant), including all architectural, civil, structural, mechanical, electrical engineering, and landscape design, architectural, plumbing, and fire protection systems, materials and any other architectural and 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:

1. The Consultant shall confer with representatives of the Village to establish the Project, scope requirements and relationships of functions 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. The Consultant acknowledges that a representative of Miami-Dade County shall participate in developing the Project and shall provide specifications for the interior design of the Project.

2. Consistent with the Village's and County's Interior Design Plan, the Consultant shall:

- a. Design full partition of the interior of the Project;
- b. Design all interior doors and interior finishes;
- c. Design all overhead lighting fixtures, which fixtures must use standard size light bulbs;

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- d. Design and installation of an independent fully functional HVAC air conditioning system for the Project;
- e. Design all safety devices required by the Florida Building Code or other applicable laws, rules, or regulations, including but not limited to: all fire alarms, sprinkler systems, fire extinguishers, and exit signs;
- f. Design wiring needed by the building for electric, data communication and connectivity to the Project's telephone, and cable service;
- g. Design a separate electric and water use meters for the Project;
- h. Design a burglar alarm system at the building; and
- i. Design the installation of an exterior freestanding book drop at a location that is mutually agreeable to the parties.

3. The Consultant shall submit construction documents for County review and approval at 25%, 50% and 100% completion for compliance with applicable codes and Library Maintenance Standards. County shall review and provide relevant comments on the plans within 10 business days of each submittal (25%, 50% and 100%). The Consultant shall undertake the interior improvements described in article II, section 2.1.1 (A)(2) only upon submission by the County, in writing, of its design plan for the interior space (the "Interior Design Plan"). Any and all interior construction shall be in strict compliance with the County's Interior Design Plan.

4. In order to minimize unnecessary costs of construction, the County agrees to submit the Interior Design Plan no later than 30 days upon receipt of 25% construction documents for the Library Building. Library Building Plan should have sufficient detail on the layout and location of the Library space to allow the County's architects to execute the Interior Design Plan. The Interior Design Plan shall include the following:

1. The location of furniture and fixtures, electrical, telephone, data cable drops, and outlets;
2. Specification of interior finishes (including wall treatments); and
3. Dimensioned floor patterns and tile patterns (including floor treatments), as required.

5. The Consultant shall prepare and present, for approval by the Village, a Schematic Design Documents comprised of the Schematic Design Studies, including an identification of any special requirement affecting the Project, provided by the Construction Manager under the Construction Manager's contract with the Village and Statement of Probable Construction Cost (a quantity based estimate of probable construction cost summarized by CSI 16 divisions).

6. The Consultant shall submit two (2) copies of all documents required under this Phase, without additional charge, for review by the Village; and the Consultant 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. This "standup" review shall be completed in 15 working days from submittal.

7. The Consultant 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 Consultant shall hold a public hearing during this phase. [Cross-reference with section 1.2.4].

8. The Consultant shall confer with appropriate utility companies to determine location and level of service of their utilities or to identify any other critical issues that may impact the design, budget and construction. The Construction Manager will concurrently determine any impact that the utility information will have on the schedule and budget.

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9. The Consultant 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. The Consultant shall incorporate changes to the Schematic Design agreed to by the Village and as are necessary to satisfy the Village's review comments, any of which may be appealed for good cause. Such changes will be incorporated into the next Phase Design Development/50% Construction Documents.

B. Phase II - Design Development/50% Construction Documents:

1. From the approved Schematic Design Documents, the Consultant shall prepare and present, for approval by Village, Design Development Documents in the form of 50% Construction Documents. From the Schematic Design, the Consultant shall prepare and provide a rendering to the Village. Consultant 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 Documents, the Consultant shall incorporate such changes as are necessary to satisfy the Village's review comments which maintain the Design integrity, will be incorporated as part of the 100% Construction Documents Phase (Phase III).

2. At the presentation required in 2.01B(1) the Construction Manager 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 previous Schematic Estimate and Budgeted amount, appropriate cost or scope reduction recommendations to be included. The Consultant shall review the construction cost prepared by the Construction Manager, and shall review and make recommendations relating to the Construction Manager's Estimate. The Consultant shall provide a detailed explanation of the differences to the Village.

3. The Consultant shall submit two (2) sets of all documents required under this Phase, without additional charge, for review approval by the Village within 15 working days, and the Consultant 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 100%:

From the approved Design Development/ 50% Construction Documents, the Consultant 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 for use by the Construction Manager. The Consultant shall be responsible for full compliance of the design and the Construction Documents with all applicable building codes. All Final Construction Documents shall be permissible.

1. Design Development/50% Construction Documents Submittal: The Consultant 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 Consultant's evaluation of the individual percentage completion of each sheet; and
- c. The Consultant 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

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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. The Consultant will be able to rely on the Construction Manager to provide 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. In conjunction with the Construction Manager the Consultant may also be required to identify those items to be approved as additive alternate bid items to permit the Village to award a Construction Contract within the limit budgeted amount, if necessary.

2. The Consultant 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 Consultant shall make all 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 Consultant; at approximately 50% completion of the Construction Documents, the Consultant 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 Consultant 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 two (2) smaller 10" x 15" framed photographic copies, in color.

4. 100% Construction Documents Submittal:

a. Upon 100% completion of the Construction Documents, the Consultant 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 provided by the Construction Manager. The 100% Construction Documents Progress, which shall be based upon the approved Design Development/50% Construction Documents, and 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; two (2) 11" x 17" size sets of drawings and five (5) sets of Project manuals for the Village to review. 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. Any design modifications determined as are necessary to construct the structure shall be included as part of the basic services.

b. The Consultant 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

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approval by the Village, the Consultant 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 Consultant shall assist the Village through the Construction Manager in preparing and filing the required documents for approval by governmental authorities having jurisdiction over the Project to satisfy the requirements for obtaining final approvals, permits and licenses for the performance of the Work will be obtainable prior to the construction phase. The Consultant 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:

1. The Village has budgeted \$1,145,000.00 for the construction of this Project (the "Maximum Cost Limit") (\$105,000.00 has already been deducted from the budget). If the final statement of Probable Construction Cost as prepared by the Construction Manager exceeds the Maximum Cost Limit, the Consultant shall review the materials, equipment, component systems and types of construction included in the Contract 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. Actual changes in design parameters ordered by the Village shall be considered an additional service.

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 Consultant shall assist the Construction Manager in obtaining bids and awarding contracts for construction.

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

a. The Consultant 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 Consultant.

b. The Consultant 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, and based on the reliance of the Construction Manager to accurately estimate the cost the Village may direct the Consultant as additional service 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 Consultant 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 by more than 15%.

5. Under Section 2.01(D)(4) above the Consultant shall modify the Construction Documents as an additional service and as necessary to bring the Construction Manager's 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).

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6. Evaluations of the Project's Maximum Cost Limit, preliminary estimates of construction cost and detailed estimates of construction cost prepared by the Construction Manager represent the Construction Manager's best judgment as a Construction Manager 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 Consultant and resubmitted to the Village.

E. Phase V - Administration of the Construction Contract:

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. Any extended time in Construction beyond 30 days following the contracted completion date will be considered additional services provided, however, that the Architect is not directly or indirectly causing the delay. During this period, the Consultant 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 Manager.

2. The Consultant, 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.

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

4. The Consultant shall visit the site twice a month, and at construction events requiring the Consultant's presence. The Consultant's respective Subconsultants shall visit the site when required to be present for review and resolution of problems. On the basis of periodic on-site observations, the Consultant shall endeavor to guard the Village against defects and deficiencies in the Work. The Consultant 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 Consultant 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 Consultant 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 Consultant shall notify the Village and the Construction Manager in writing of any portions of the work which Consultant has observed as not being in conformity with the Construction Documents and make recommendations as to correction of such deficiencies or defects.

5. The Consultant shall furnish the Village with copies of field reports of observations of the Work made by the Consultant and the subconsultants during each visit to the Project. The Consultant shall also note the general status and progress of the Work, on forms furnished by the Village, and submit same monthly. The Consultant and the subconsultants shall ascertain that the Contractor is making timely, accurate, and complete notations on the "as built" "record drawings." The Construction Manager shall administer all meetings scheduled by the Village or Consultant and shall provide summary notes to all parties. The Consultant shall attend monthly Construction Manager's regularly scheduled planning meetings when requested but will not be responsible for administering such.

6. Based on observations at the site and consultation with the Construction Manager, the Consultant shall review pay requests by the Construction Manager for the amount due the Contractor on account and shall make recommendations for approval or denial of such amount. This recommendation shall constitute a representation by the Consultant to the Village that, to the best of the Consultant's knowledge, information and belief, the Work has progressed to the point indicated and the Work is in general conformance with the Contract Documents.

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By recommending approval of a Payment Certificate, the Consultant shall not be deemed to represent that the Consultant 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.

7. The Consultant shall be the interpreter of the technical requirements of the Contract Documents and shall make recommendations to the Village Manager regarding performance thereunder. The Consultant 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 Consultant shall respond to all Request for Information or Requests for Clarification within 14 days. The Consultant shall provide recommendations to the Village Manager, within 14 days, on all claims, disputes and other matters in question between the Village and the Construction Manager 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.

8. Interpretations and recommendations of the Consultant 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 Consultant shall endeavor to secure faithful performance by both the Village and the Construction Manager, and shall not show partiality to either.

9. The Consultant shall have authority to recommend rejection of Work which does not generally conform to the Contract Documents. Whenever, in the Consultant's reasonable opinion, it is necessary or advisable to insure compliance with the Contract Documents, the Consultant 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 Consultant shall provide such normal mechanical, electrical, structural, landscape or other related inspection expertise as necessary to determine compliance with the Construction Contract.

10. The Consultant 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 Consultant shall prepare color boards to review the color selections for all finish materials with the Consultant and furnish the approved colors to the Construction Manager as part of the Design Development 50% Construction Document Phase. Changes or substitutions to the Contract Documents shall not be authorized without prior written concurrence of the Village Manager or his designee.

11. The Consultant shall review Change orders requests for the Village's approval as required by the Consultant's observations, or requested by the Village; and review and recommend action on proposed Change Orders within the scope of the Project.

12. The Consultant shall review 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 initiated by the Construction Manager and required to be corrected by the Construction Manager shall be reviewed by the Consultant in conjunction with representatives of the Village, and satisfactory performance obtained thereon before the Consultant recommends execution of a Certificate of Final Acceptance and final payment to the Construction Manager. The Construction Manager shall obtain all guarantees, operating and maintenance manuals for

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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.

13. Provided that the Consultant has been paid in full for services rendered and approved hereunder, the Consultant shall furnish to the Village, the original drawings (CADD files), revised as per to "as-built" (record drawings) conditions of the drawings based on information furnished by the Contractor. Such drawings shall become the property of the Village. In the event that Consultant and Village are in a dispute, Consultant shall provide drawings to the Village pending the resolution of dispute.

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

15. The Consultant and its subconsultants shall assist the Village during the course of the Work in association with certifying progress payments Contract requirements.

16. The Consultant shall receive as a submittal Construction Manager's submission of operating and maintenance instructions, and all manuals, brochures, drawings, and other close-out documentation furnished by the Construction Manager, and shall forward same to the Village. The Consultant shall certify final payment to the Construction Manager when the requirements of the Contract between the Village and Construction Manager have been met.

17. The Consultant shall be available after final payment to advise the Village regarding Warranty items and to inspect Warranty work during the Warranty period. Consultant 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 on a negotiated lump sum or at Consultant's hourly rate as provided under subsection 1.3.4.

1. Special analyses of the Village's needs, and special detailed programming requirements for the Project.
2. Financial feasibility, life cycle costing, or other special studies.
3. Planning surveys, site evaluations, or comparative studies of prospective sites.
4. Design services relative to future facilities, systems and equipment which are not intended to be constructed as part of a specific project.
5. Interior design services required for or in connection with the selection of furniture or furnishings, except equipment included in the Construction Contract.
6. Investigation and making detailed appraisals and valuations of existing facilities, and surveys or inventories in connection with construction performed by the Village.

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7. Any additional special professional services (other than the normal civil, structural, mechanical and electrical engineering and landscape design services) as may be required for a project, such as: acoustical, food service, theatrical, electronic, artists, sculptors.
8. The services of one or more full-time Project Field Representatives during construction.
9. Extended assistance beyond that provided under Basic Services for the initial start-up, testing, adjusting and balancing of any equipment or system; extended training of Village's personnel in operation and maintenance of equipment and systems, and consultation during such training; and preparation of operating and maintenance manuals, other than those provided by the Contractor, subcontractor, or equipment manufacturer.
10. Consultation concerning replacement of any Work damaged or built inconsistent with the Agreement Drawings, providing the cause is found by the Village to be beyond the control of the Consultant.
11. Making material revisions as to the scope of the Project to drawings and specifications after approval, when such revisions are inconsistent with written approvals or instructions previously given by the Village and are due to causes beyond the control of the Consultant.
12. Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.
13. Preparing supporting data, Drawings, and Specifications as may be required for Change Orders affecting the scope of the Project.
14. Preparation of deductive change orders, and preparation of additive change orders that are not incorporated in the Work.
15. Preparing an energy efficiency study and a life-cycle cost analysis.
16. Providing services after issuance to the Village of the Final Certificate for payment, and said payment has been made to the Contractor.
17. Any other services not otherwise included in this agreement or not customarily furnished in accordance with generally accepted architectural/engineering practice related directly to architecture, engineering, design and construction.
18. Extended construction administration, should the time required of Consultant exceed the Construction Time for the Work by more than 15%, as long as the delay is beyond the control of the Consultant.

### SECTION 3. PERFORMANCE

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2.3.1 Performance and Delegation: The services to be performed hereunder shall be performed by the Consultant'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 Consultant 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 Consultant agrees to use its skill and judgment in furthering the Village's interests hereunder and Consultant shall perform its services in accordance with the practice of the pertinent industry and as expeditiously as is consistent with reasonable skill and care.

#### **SECTION 4. DIRECTION OF ARCHITECT**

2.4.1 Consultant's direction for this Project shall be derived solely from the Village Manager, the Deputy Village Manager and the Consultant. Work performed without the approval of these parties, if not satisfactory to the Village Manager, shall require the Consultant to perform corrective work at no additional cost to the Village.

#### **SECTION 5. TIME**

2.5.1 Consultant shall perform all of Consultant'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. Consultant shall at all times provide sufficient personnel to accomplish Consultant's services within the time limits set forth in the schedules described herein. The Consultant 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 Consultant's services. Changes in this schedule may be made only with the written approval of the Village. Consultant shall perform all of its services in accordance with the then-current schedule approved by the Village. This schedule may not be exceeded by Consultant.

### **ARTICLE III:**

#### **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.

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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 11<sup>th</sup> 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 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 CONSULTANT:

David A. Wolfberg, AIA  
Wolfberg Alvarez & Partners, Inc.  
1500 San Remo Avenue, Suite 300  
Coral Gables, Florida 33146  
Telephone: (305) 666-5474  
Facsimile: (305) 665-4293

FOR VILLAGE:

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

WITH COPIES TO:

Eve A. Boutsis, Office of Village Attorney  
Village of Palmetto Bay  
Nagin Gallop Figueredo, P.A.  
3225 Aviation Avenue, Suite 301  
Miami, Florida 33133  
Telephone: (305) 854-5353  
Facsimile: (305) 854-5351

### SECTION 5. TRUTH-IN-NEGOTIATION CERTIFICATE

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3.5.1 Signature of this agreement by Consultant 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.

**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**

\_\_\_\_\_  
Village

\_\_\_\_\_  
Consultant

3.13.1 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 agreement to Consultant.

3.13.2 Consultant 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 Consultant.

**SECTION 14. INFORMATION FURNISHED:**

3.14.1 The Village, at its expense and insofar as performance under this agreement may require, shall furnish the Consultant 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.

**SECTION 15. ENTIRE AGREEMENT**

3.15.1 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 16. MISCELLANEOUS PROVISION**

3.16.1 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.

[SIGNATURE PAGES TO FOLLOW]

\_\_\_\_\_  
Village

\_\_\_\_\_  
Consultant

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 Consultant 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:

WOLFBERG ALVAREZ & PARTNERS, INC.

\_\_\_\_\_  
Village Clerk

By: \_\_\_\_\_  
David A. Wolfberg, AIA

Date: \_\_\_\_\_

\_\_\_\_\_  
Village

\_\_\_\_\_  
Consultant

Architectural Services Agreement Between Wolfberg Alvarez and Village of Palmetto Bay

Exhibit 1- Project Description

The project involves the construction of a one-story Library Building of 5,000 contiguous square feet, utilities and required support structures to include a parking area. The Library Building shall be elevated one-story above ground level and shall include structural features that allow for viewing of Biscayne Bay, as mutually agreed by the Village and Miami-Dade County.

The Library Building shall be located on vacant land owned by the Village of Palmetto Bay and adjacent to the Village-owned park located at 17641 Old Cutler Road. The parking area may be constructed on vacant land owned by the 17777 Old Cutler Road LLC (Palmetto Bay Village Center), located on the northwestern portion of the site bearing the address 17777 Old Cutler Road, and which has been committed to the Village and Miami-Dade County with a conditional access and parking easement.

## WOLFBERG/ALVAREZ AND PARTNERS

### HOURLY RATE SCHEDULE

The following personnel hourly rates are in effect until January 1, 2006 and subject to adjustment thereafter.

<u>JOB TITLE</u>	<u>HOURLY RATE</u>
<u>ARCHITECTURE</u>	
1. Principal	\$ 135.00
2. Director of Architecture	\$ 135.00
3. Project Manager	\$ 128.50
4. Project Coordinator	\$ 110.00
5. Project Architect	\$ 103.50
6. Architectural Designer	\$ 103.50
7. Interior Design	\$ 90.00
8. Architectural Junior Designer/Architect	\$ 60.00
9. Senior Cadd Operator	\$ 71.00
10. Cadd Operator	\$ 55.00
11. Cadd Manager	\$ 71.00
12. Field Representative	\$ 82.00
13. Specification Writer	\$ 77.00
14. Clerical	\$ 46.50
<u>ENGINEERING</u>	
1. Director of Engineering	\$ 135.00
2. Project Manager	\$ 128.50
3. Senior Engineer	\$ 103.50
4. Engineer	\$ 82.00
5. Designer/Technician	\$ 68.00
6. Cadd Operator/Draftsperson	\$ 55.00
7. Clerical	\$ 46.50

