

RESOLUTION NO. 2024-

A RESOLUTION OF THE VILLAGE OF PINECREST, FLORIDA, AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO AN AGREEMENT WITH FIU BY DESIGN FOR US1 CORRIDOR REDEVELOPMENT DESIGN PROJECT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Manager wishes to enter into an agreement with FIU by Design for *US1 Corridor Redevelopment Design project*;

BE IT RESOLVED BY THE VILLAGE COUNCIL OF PINECREST, FLORIDA, AS FOLLOWS:

Section 1. That the Village Council hereby authorizes the Village Manager to enter into the attached agreement with *FIU by Design* for US1 Corridor Redevelopment Design project, in amount not to exceed \$30,000.

Section 2. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 10th day of December, 2024.

Joseph M. Corradino, Mayor

Attest:

Priscilla Torres, MMC
Village Clerk

Approved as to Form and Legal Sufficiency:

Mitchell Bierman
Village Attorney

Consent Agenda

SERVICES AGREEMENT

BETWEEN

THE VILLAGE OF

PINECREST AND

FIU BY DESIGN

This Services Agreement (“Agreement”) is entered into as (insert date) (“Effective Date”) by FIU by Design, a Florida not-for-profit corporation (“University”), and the Village of Pinecrest, Florida, a Florida municipality corporation (“Client”). University and Client are each individually referred to herein as “Party,” and collectively as “Parties.”

Recitals

WHEREAS, Client desires for University to provide the services specified herein;

WHEREAS, University is ready, willing and able to perform such services;

NOW THEREFORE, the Parties mutually agree to the following terms and conditions.

Terms and Conditions

University and Client agree to the following terms and conditions:

1. SERVICES

University will furnish to Client the services (“Services”) described in Appendix A.

2. COMPENSATION

In consideration of the performance of the Services under this Agreement, Client agrees to pay University in accordance with the payment terms set forth in Appendix B. The Client shall pay the University in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Village Manager.

3. TERM AND TERMINATION

This Agreement shall commence on the Effective Date and terminate by April 31, 2025, unless earlier terminated by one of the Parties. This Agreement may be terminated by either Party, with or without cause, upon thirty (30) days' prior written notice to the other Party in accordance with the Notices section below. Client shall be responsible to pay all fees for services rendered prior to the date termination becomes effective. This Agreement may be extended based upon mutual agreement in writing by authorized representatives of both Parties.

4. NOTICES

All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be sent by (1) certified United States mail, return receipt requested, (2) expedited delivery by an internationally recognized express transportation company, such as UPS or FedEx, or (3) electronic mail (email). With regards to email notice, any notice of breach, compromise of confidential information, or an indemnifiable claim must also be served via one of the options in (1) or (2), and the elected additional medium shall control any cure/notice period. Notices shall be sent to the addresses set forth below:

If to University:

Attn: Mark A. Marine
Assistant Teaching Professor
Director, FIU By Design
College of Communication, Architecture + The Arts
Florida International University
PCA 362-A Tel: 305-348-7357 
mmarine@fiu.edu
<http://carta.fiu.edu/fiubydesign/>

If to Client:

Attn: Yocelyn Galiano
Village Manager
Village of Pinecrest
Pinecrest Municipal Center
12645 Pinecrest Parkway
Pinecrest, FL 33156
Email: manager@pinecrest-fl.gov

Electronic copies of communications shall not constitute effective notice under this Section.

5. CONFIDENTIAL INFORMATION

During the term of this Agreement, either Party (“Receiving Party”) may be exposed to information which is confidential and proprietary to the other Party (“Disclosing Party”). This information includes, but is not limited to, trade secrets, exposure to entities with which the Disclosing Party has a contractual relationship, the Disclosing Party’s price lists, and any other information that a reasonable person would understand to be of a confidential or proprietary nature (“Confidential Information”). Neither Party shall, either during the term of this Agreement or at any time thereafter, use for its own benefit, or for the benefit of any other person or entity, Confidential Information of or concerning the business or affairs of Disclosing Party which Receiving Party has acquired in the course carrying out this Agreement.

Notwithstanding the foregoing, Confidential Information shall exclude information:

- a. that is or becomes generally known to the public other than as a result of a breach of this Agreement;
- b. which has been independently developed by Receiving Party before or after the Effective Date without violation of any rights which Disclosing Party may have in such information;

- c. that is rightfully furnished or made known to Receiving Party by a third Party who has a lawful right to disclose such information;
- d. is disclosed with the prior written approval of the Receiving Party;
- e. is disclosed pursuant to the order or requirement of a court, administrative agency or other government or professional oversight body; provided however that, if permitted by law, the Receiving Party will promptly notify Disclosing Party of such request or requirement so that Disclosing Party may contest the order or requirement; or
- f. is disclosed pursuant to, but only to the extent required by applicable law.

6. PUBLICITY/USE OF NAME AND INTELLECTUAL PROPERTY RIGHTS

Neither Party shall use the name(s), logos or trademarks of the other Party or its employee(s) in any marketing, advertising or commercial activity without the prior written consent of an authorized representative of the other Party, which consent may be granted or withheld at such Party's sole discretion. All materials related to the Services which University provides to Client are proprietary to and the property of University. Neither Client nor any of its employees, nor anyone else who receives such University materials from Client shall copy, disclose or distribute any such materials to other parties without express written approval from University. University shall own the worldwide copyright rights and any other proprietary rights in and to all such materials. Notwithstanding the foregoing, the University shall grant to Client an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use, reproduce, make derivative works, display, and perform publicly any copyrights, copyrighted material (including any computer software and its documentation and/or database), or technical reports first developed or delivered under this Agreement, for academic, research, or other public purposes so long that such purposes are non-commercial in nature. The provisions of this Section shall survive the termination or expiration of this Agreement.

7. INDEPENDENT CONTRACTOR RELATIONSHIP

This Agreement is not intended to create, nor shall it be construed to create, any relationship between Parties other than that of independent entities contracting for the purpose of effecting provisions of this Agreement. It is further expressly agreed that no work, act, commission or omission of either Party, or of its agents or employees, pursuant to the terms and conditions of this Agreement, shall be construed to make or render such Party, or its agents or employees, an agent, servant, representative or employee of, or joint venturer with, the other Party. Neither Party shall have any right to bind or obligate the other Party in any way nor shall it represent that it has any right to do so.

8. NON-EXCLUSIVITY

The Parties hereby acknowledge that this Agreement is not exclusive, and that each Party may freely contract with any other person or entity concerning the subject matter of this Agreement.

9. ASSIGNMENT

Neither Party may assign its rights or obligations under this Agreement, whether by assignment or notation, without the prior written consent of the other Party.

10. INDEMNIFICATION

Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by law. Nothing herein shall be construed to be a waiver of sovereign immunity or to extend the Village's liability beyond that provided in Section 768.28, Florida Statutes.

11. LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING FROM OR IN RELATION TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BY STATUTE OR OTHERWISE). THIS LIMITATION SHALL APPLY EVEN IF SUCH PARTY HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. UNIVERSITY SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR ANY DAMAGES, REGARDLESS OF NATURE OF THE DAMAGES (WHETHER ARISING IN TORT, CONTRACT OR ANY OTHER TYPE OF CLAIM) IN EXCESS OF THREE HUNDRED THOUSAND DOLLARS (\$300,000). THIS CLAUSE SHALL SURVIVE TERMINATION OF THE AGREEMENT.

12. NO WAIVER

Failure by either Party to enforce any of the terms and conditions in this Agreement shall not constitute or be construed to constitute an amendment to or waiver of such terms and conditions and shall not affect the right of such Party to subsequently enforce such terms and conditions.

13. TAXES

University shall pay all contributions, taxes, and premiums payable under Federal, State, and Local Laws upon the payroll of employees engaged in the performance of work under this Agreement, and all sales, use, excise, transportation, privilege, occupational, and other taxes applicable to materials and supplies furnished or work performed hereunder.

[SPACE LEFT INTENTIONALLY BLANK]

14. REPRESENTATION BY COUNSEL

Each Party acknowledges that it has had the opportunity to be represented by counsel of its choice with respect to this Agreement. In view of the foregoing, and notwithstanding any otherwise applicable principles of construction or interpretation, this Agreement shall be deemed to have been jointly drafted by the Parties. No provision of this Agreement shall be construed for or against either Party.

15. GOVERNING LAW

This Agreement shall be construed and enforced pursuant to the laws of the State of Florida, United States of America, without regard to conflict of laws principles. Any disputes arising under this Agreement shall be subject to the jurisdiction and venue of the courts residing in Miami-Dade County, Florida. Any suit or proceeding pursuant to this Agreement shall be brought in the state or federal courts in Miami- Dade County, Florida. Each Party consents to the personal jurisdiction of such courts.

16. DISCLAIMER OF WARRANTIES

University shall perform any services to be provided herein in good faith and with due professional care. EXCEPT AS EXPRESSLY STATED HEREIN, ALL SERVICES AND/OR DELIVERABLES PROVIDED HEREUNDER ARE PROVIDED AS-IS. UNIVERSITY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR PRODUCTS PROVIDED HEREUNDER. WITHOUT LIMITING THE FOREGOING, UNIVERSITY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

17. INSURANCE

a. Client Coverage: Client and its employees shall at all times be covered by general liability insurance, with limits of coverage no less than \$2,000,000 per occurrence and \$2,000,000 annual aggregate and professional liability with limits of coverage no less than \$1,000,000 per occurrence and \$3,000,000 in the annual aggregate. Certificates evidencing such coverages shall be furnished to University upon request.

b. University Coverage: University and its employees shall at all times be covered by general liability insurance, with limits of coverage no less than \$2,000,000 per occurrence and \$2,000,000 annual aggregate and professional liability insurance with limits of coverage no less than \$1,000,000 per occurrence and \$3,000,000 in the annual aggregate. Certificates evidencing such coverages shall be furnished to Village upon written request.

18. FORCE MAJEURE

Except with respect to Client's payment obligations, neither Party will be liable or deemed to be in default of this Agreement for any delay or failure in performance or other interruptions of service resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, accidents, fires, explosions, earthquakes, epidemics, pandemics, hurricanes, floods, failure of transportation, strikes or other work interruptions caused by either Party's employees, or any similar cause beyond the reasonable control of such Party.

19. WARRANTY BY CLIENT

Client expressly warrants and represents that it has obtained all necessary authorizations, consents, licenses, and permissions for University to provide the Services contemplated under this Agreement from all relevant parties.

20. ENTIRE AGREEMENT

This Agreement (i) represents the entire agreement between the Parties with respect to the subject matter of this Agreement, (ii) supersedes all prior and contemporaneous agreements, understandings, representations and warranties relating to the subject matter of this Agreement, and (iii) may only be amended, canceled or rescinded by a writing signed by both Parties.

21. COMPLIANCE WITH LAWS

The Parties shall comply with all applicable federal and state laws, rules, and regulations in performing their respective obligations under this Agreement, including, but not limited to, all applicable United States laws, regulations, or orders, to the extent applicable, regarding the privacy of personally identifiable student education records (“Education Records”), as such term is defined under the Family Educational Rights and Privacy Act and regulations promulgated under the Act (“FERPA”).

Any provisions required to be included in a contract of this type by any applicable and valid Federal, State or local law, ordinance, rule, or regulation shall be deemed to be incorporated herein.

22. COUNTERPARTS

This Agreement may be executed in two or more counterparts and may be executed by electronic signature. Each counterpart shall be deemed an original, all of which taken together shall constitute a single instrument.

23. AUTHORIZATION

Each Party represents and warrants that it is fully authorized to enter into this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year as first stated above.

FIU BY DESIGN:

VILLAGE OF PINECREST

Signature:

Name: _____

Title:

Date:

By:

Village Manager

APPENDIX A
SERVICES & DELIVERABLES

The Services to be provided under this Agreement are as follows:

Starting on a mutually agreed upon date (preferably in January 2025), University, in consultation with Client, will offer a studio, taught by University's Professor Mark Marine ("Assistant Teaching Professor"), that focuses on designing Client's US1 Corridor Commercial Properties proposed for redevelopment, called, Village of Pinecrest Studio ("Studio").

The Studio will be held both on University premises and at Client's location at Pinecrest Municipal Center.

Under Studio Professor's instruction, University students will design graphic models for three sites on US1 and, narrowing down the sites from three to two, built models for two sites.

Tentatively, the Parties plan to have the following Studio workshops/sessions at the Pinecrest Municipal Center:

- Introductory Meeting with Staff and Council (January 2025 date TBD)
- Kickoff Meeting/Site Visit with Staff to determine three study sites along US1 on (January 2025 date TBD)
- Presentation of three graphic, conceptual models to Staff and Council on (date TBD)
- Presentation of built models to Staff and Council on (date TBD)

To accomplish this, the Studio will participate in the aforementioned tentative series of public workshops with Client and will provide proposed designs for potential new US1 Corridor Commercial Properties.

At University's authorized representative's discretion, the graphic models will be made available online via a webpage created by Client on Village website.

