

**CITY OF RIVIERA BEACH CITY COUNCIL  
AGENDA ITEM SUMMARY**

MEETING DATE: DECEMBER 2, 2009

AGENDA ITEM SUMMARY NO. H09-121- 1

- |   |  |
|---|--|
| <input type="checkbox"/> AWARDS / PRESENTATIONS / PETITIONS | <input checked="" type="checkbox"/> REGULAR        |
| <input type="checkbox"/> CONSENT                            | <input checked="" type="checkbox"/> RESOLUTION     |
| <input type="checkbox"/> PUBLIC HEARING                     | <input type="checkbox"/> DISCUSSION & DELIBERATION |
| <input type="checkbox"/> ORDINANCE ON SECOND READING        | <input type="checkbox"/> BOARD APPOINTMENT         |
| <input type="checkbox"/> ORDINANCE ON FIRST HEARING         | <input type="checkbox"/> WORKSHOP                  |

**SUBJECT: AWARD CONTRACT FOR THE PLAY STRUCTURE FOR BICENTENNIAL PARK.**

**RECOMMENDATIONS/MOTION: STAFF RECOMMENDS THAT CITY COUNCIL AWARD THE CONTRACT FOR MATERIALS AND INSTALLATION OF A PLAYGROUND STRUCTURE LOCATED AT BICENTENNIAL PARK, TO "A+ PLAYGROUNDS" OF JACKSONVILLE, FLORIDA, BEING THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER OF BID NO. 242-09 IN THE AMOUNT OF \$43,689.50.00; FURTHER AUTHORIZING STAFF TO MODIFY THE APPROVED MASTER SITE PLAN (RESOLUTION.162-08) BY EXCHANGING ORIGINAL PLAYGROUND SITE WITH AMPHITHEATER LOCATION INSIDE OF PARK.**

**INTER-DEPARTMENTAL APPROVAL REVIEW & DATE**

◆City Manager <i>PKW 9/24/09</i>	Library
◆City Attorney <i>11/24/09</i>	Marina
◆City Clerk <i>11/24/09</i>	Police
Community Development	Public Works
◆ Finance <i>11-20-09</i>	◆Purchasing <i>11-24-09</i>
Fire	◆Parks & Recreation <i>11/24/09</i>
Human Resources	Utility District
Information Systems	Other

APPROVED BY CITY MANAGER: *PKW* DATE: *9/24/09*

Originator: Purchasing <i>Bar H</i>	Costs: <u>\$43,689.50</u>	City Council Actions: <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/conditions
User: Parks and Recreation	Current FY: <u>2010</u> Funding Source:	<input type="checkbox"/> Denied <input type="checkbox"/> Tabled to <input type="checkbox"/> Referred to Staff
Advertised: Date: October 18, 2009 Paper: PALM BEACH POST  Affected Parties <input checked="" type="checkbox"/> Notified <input type="checkbox"/> Not Required	<input checked="" type="checkbox"/> Capital Improvement <input type="checkbox"/> Operating <input type="checkbox"/> Other  Budget Account Number: 310-1234-572-6-6351	Attachments: 1. Resolution 2. Bid Tabulation 3. Materials & Installation 4. Resolution 162-08 (Site Plan Approval) 5. Bird's Eye: Approved Site Plan 6. Bird's Eye: Proposed Revised Site Plan

**Item No. 08**

**Invitations for bids were publicly solicited from qualified vendors to furnish all labor and materials to install one (1) environmentally friendly multi-feature play structure for Bicentennial Park. The City recognizes that waste material is a valuable resource and conducted this purchase in such a way as to maximize the 3R's (reduce, recycle and reuse) and contribute to minimizing the amount of waste sent to a permanent landfill for disposal.**

**In accordance with the City of Riviera Beach Procurement Code, an Invitation for Bids was advertised in the "Legal Notices" section of the Palm Beach Post on October 18, 2009. To provide additional exposure and to ensure maximum competition for the project it was also advertised on the City's Internet web-page on October 16, 2009.**

**Four (4) companies submitted bids. Bids proposals were publicly opened and announced on November 2, 2009 at 3:30 p.m. in the City Council Chambers. Offers ranged from \$43,689.00 to \$65,640.00 (Please refer to attached Bid tabulation).**

**The low bid, \$43,689.00, was submitted by A+ Playground of Jacksonville, Florida. A+ Playground has been determined as a responsible bidder and has solid references and an (A) rating with the BBB (Better Business Bureau).**

**The purchase of an Earthscape play structure provides the City with a non-hazardous, environmentally friendly (Green), cost effective and durable playground system. Earthscapes play structures are one hundred percent (100%) recycled high-density polyethylene. There are no toxic chemicals in Earthscape's recycled plastic lumber giving children anti-toxic play system which is extremely beneficial to both kids and the City. Since the recommended play system is made of recycled plastic lumber, it can better withstand the corrosive saltwater environment that exists at Bicentennial Park.**

**In conjunction with the purchase of the new play system, staff is recommending a revision to the approved master site plan to exchange the original approved playground site with the amphitheater location.**

**The approved master site plan for Bicentennial Park has an architect's construction estimate of 1.3 million dollars. This cost estimate includes the following site elements:**

- |                     |            |             |                    |
|---------------------|------------|-------------|--------------------|
| ➤ Demolition        | Excavation | Drainage    | Grading            |
| ➤ Beach Restoration | Electrical | Lighting    | Plumbing           |
| ➤ Irrigation,       | Fencing    | Landscaping | Paver Walking Path |
| ➤ Amphitheater      | Restrooms  | Pavilions   | Volleyball Court   |
| ➤ Playground        | Benches    | Grills      | Trash Receptacles  |
| ➤ Monument Sign     |            |             |                    |

Based upon the limited budget available for the project, staff decided upon a phasing strategy with the goal of executing the most essential and transformative elements of the project in Phase 1. These elements would enhance the visual appeal of the park.

The original capital budget for improvements to Bicentennial Park was 150,000. This included a \$50,000 matching grant from the County for the purpose of removing exotic evasive plants (primarily Australian Pine trees) from the park. With the City's \$50,000 match the budget provided \$100,000 for removing the Australian Pines and only 50,000 for other park improvements.

In an effort to secure funding to implement additional improvements for the park, staff evaluated budgets for several approved capital projects which were still in the pre-construction stage. After a review of construction cost trends and an analysis of recent bid results, it was estimated the budget for Phase 2 improvements for Dan Calloway could be reduced by \$200,000 from the architect's original estimate and used to provide the needed funding to finance additional improvements for Bicentennial Park.

Staff recommended and City Council authorized the Finance Director to increase the budget for Phase I improvements for Bicentennial Park by \$200,000 by reducing the approved capital budget for Dan Calloway improvements correspondingly.

Subsequently, on December 3, 2008, City Council unanimously approved resolution 162-08 (see attachment) approving the Master Site Plan for Bicentennial Park and authorizing staff to solicit bids for Phase I Improvements which included the following elements:

The City Council approved Phase 1 improvements for Bicentennial Park consists of the following elements:

- ❖ Removal of 95 Australian Pines (to satisfy grant requirements)
- ❖ Grading
- ❖ Beach Restoration
- ❖ New Irrigation
- ❖ New Landscaping (trees, scrubs, and sod)
- ❖ Volleyball Court
- ❖ Lime base walking path

#### **PROJECT BUDGET AND IMPLEMENTATION:**

In order to maximize the approved budget, the Purchasing Department issued separate bids for tree removal, grading, irrigation, fencing, playground, landscaping and took up responsibility for project coordination and management. This allowed the City to save the profit and overhead cost which would have been paid to a general contractor had the project been awarded by a single contract.

Additionally, this allowed local small and minority businesses an opportunity to do business with the City because the smaller contracts required reduced and in most instances no bid or surety bond requirements which historically small and minority companies have had difficulty qualifying for and securing.

To reduce cost further, the grading plan for the site was designed to provide sufficient "on site" drainage through the use of site excavation, strategic elevations, swales and dry retention areas. This approach saved a significant portion of the project budget (at least 25% – 30%) which otherwise would have had to be spent on an underground drainage system.

Although these strategies have required more time to execute, they have resulted in significant savings to the City and provided additional opportunities for local small businesses to be awarded City contracts.

Please see matrix of project/contract cost

**BICENTENNIAL PARK PROJECT BUDGET**

Project Element	Architect's Estimate	Contract Award	Savings
Professional Services ( Design & Surveys)	\$15,000	\$15,000	N/A
Tree Removal	\$100,000	\$65,000	\$ 35,000
Irrigation	\$ 23,000	\$15,000	\$ 8,000
Grading, Volleyball Court, Walking Path	\$ 60,000	\$45,000	\$ 15,000
Landscape	\$185,000	\$102,000	\$ 83,000
Beach Restoration	\$ 28,000	\$ 19,000	\$ 9,000
<b>Total</b>	<b>\$ 411,000</b>	<b>\$ 261,000</b>	<b>\$ 150,000</b>
Approved Budget		\$ 350,000	
Available Budget		\$ 89,000	

Since the approved project elements for Phase 1 have been completed below the architect's estimate, funding was available for additional park features including a new children's play system, monument sign, custom entry-way with ornamental pillars and other features.

#### **OPPORTUNITY FOR REVISIONS TO THE MASTER SITE PLAN**

With most of the Phase I improvements for Bicentennial Park nearly complete, staff has revisited the original approved site plan and feels an opportunity exist for meaningful revisions to the site layout which will provide improved functionality for the park; enhanced accommodations for future events; and better leverage the natural amenities afforded by the park's exceptional waterfront location.

The approved master plan currently has the amphitheater stage located at the northwest corner of the park adjacent to Avenue "C" and the Viking Boat facility. The children's playground is located near the front of the park adjacent to the marina parking lot.

Unlike other successful amphitheaters located at popular waterfront destinations such as Myer's amphitheater in West Palm Beach and the Bay Side amphitheater in Miami (see attached aerial photos), the approved site plan's proposed location for the amphitheater fails to capitalize on the beautiful water vistas available on the site. By exchanging the children's playground area with the amphitheater site, the following valuable enhancements can be achieved:

- ❖ Leverage the compelling water views of the park by using them as a natural backdrop for stage performances/concerts
- ❖ Provide increased open space area (24,000 s.f.) to facilitate other special events historically held at the park ( annual fishing tournament which could be staged at the park in the future)
- ❖ Provide improved lines of sight for performance events from a greater variety of locations throughout the park.
- ❖ Provide a more secure and controlled children's play area by locating activity further away from beach area which does not have lifeguard support.
- ❖ Utilize existing large Strangle Fig tree to provide natural shade for children's playground area. This would eliminate the cost to purchase shade structure (about \$34,000) as proposed in the approved site plan.
- ❖ Provides opportunity to preserve majestic Strangler Fig tree and make it a focal point of the park as opposed removing tree as provided for in the approved site plan.

Staff recommends that City Council award Bid No.242-09 of an Earthscape playground structure to "A+ Playgrounds" of Jacksonville, Florida; authorize Mayor and City Clerk to execute a materials and installation agreement with "A+ Playgrounds"; and authorize staff to modify the master site plan to exchange original playground area with the amphitheatre location.

EXHIBIT A-1

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	<u>\$43,689.50</u>	<u>\$ 0</u>	<u>\$0</u>	<u>\$ 0</u>	<u>\$0</u>
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>NA</u>	_____	_____	_____	_____
Program Income (City)	<u>NA</u>	_____	_____	_____	_____
In-Kind Match (City)	<u>NA</u>	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>\$43,689.50</u>	_____	_____	_____	_____
<b>NO. ADDITIONAL FTE POSITIONS (Cumulative)</b>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

Is Item Included In Current Budget? Yes XX No.   

Budget Account No.: Fund 310 Dept/Division 1234 Org. 5726 Object 6351  
 Reporting Category:

B. Recommended Sources of Funds/Summary of Fiscal Impact:

These funds are available from balance of original Capital Improvement Project. Bids were submitted less than Architects (Chris Wayne) estimate for Phase I Improvements. Therefore, funds are available from approved original budget for Phase I Improvements for this purchase.

C. Departmental Fiscal Review: \_\_\_\_\_

III. REVIEW COMMENTS

A. Finance Department and/or Purchasing/Intergovernmental Relations/Grants Comments:

  
 Finance Department 11-20-09 Purchasing and Grants

B. Other Department Review:

\_\_\_\_\_  
 Department Director

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING BID NO. 242-09 FOR THE PURCHASE AND INSTALLATION OF A PLAY STRUCTURE FOR BICENTENNIAL PARK TO "A+ PLAYGROUNDS" OF JACKSONVILLE, FLORIDA, THE LOW RESPONSIVE AND RESPONSIBLE BIDDER IN THE AMOUNT OF \$43,689.50; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE PROPOSED MATERIALS AND INSTALLATION AGREEMENT WITH "A+ PLAYGROUNDS"; AUTHORIZING THE FINANCE DIRECTOR TO MAKE PAYMENTS FROM ACCOUNT #310-1234-572-6-6351; AUTHORIZING THE CITY MANAGER TO APPROVE CHANGE ORDERS NOT TO EXCEED THE AMOUNT OF 10% OF THE TOTAL CONTRACT AMOUNT; FURTHER AUTHORIZING STAFF TO MODIFY THE APPROVED MASTER SITE PLAN BY EXCHANGING THE APPROVED PLAYGROUND SITE WITH AMPHITHEATER LOCATION TO PROVIDE NATURAL SHADE FOR THE CHILDREN'S PLAY AREA AND INCREASED SEATING CAPACITY AND A CENTRALIZED LOCATION FOR THE AMPHITHEATRE AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, in accordance with the provisions of the City's Procurement Ordinance (2412), an Invitation for bid was publicly solicited to provide a multi-feature play system for Bicentennial Park; and

**WHEREAS**, four companies responded to the Invitation for Bid No.242-09 and A+ Playgrounds of Jacksonville, Florida submitted the lowest responsive bid, in the amount of 43,689.50; and

**WHEREAS**, modifying the approved conceptual master site plan by exchanging the playground site with the amphitheater will improve the functionality of the park.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, FLORIDA THAT:**

**SECTION 1.** The City Council hereby accepts staff's recommendation to award the contract to furnish and install an Earthscape play structure for Bicentennial Park to "A+ Playgrounds" of Jacksonville, Florida, and authorizes the Mayor and City Clerk to execute same.

**SECTION 2.** The Finance Director is authorized to make payment for the purchase and installation of an Earthscape playground structure for Bicentennial Park in an amount not to exceed \$43,689.50 from account #310-1234-572-6-6351 and provide a project contingency of 10%.

**RESOLUTION NO. \_\_\_\_\_**

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**SECTION 3.** The City Manager is hereby authorized to approve change orders in an amount not to exceed 10% of the total contract amount.

**SECTION 4.** Staff is authorized to modify the master site plan by exchanging the original playground site with amphitheater location to provide natural shading for the children's play area and to provide an increased seating capacity and centralized location for the amphitheatre

**SECTION 5.** This Resolution shall take effect upon its passage and approval by the City Council.

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF DECEMBER, 2009.**

**APPROVED:**

\_\_\_\_\_  
**THOMAS A. MASTERS**  
**MAYOR**

\_\_\_\_\_  
**DAWN S. PARDO**  
**CHAIRPERSON**

**ATTEST:**

\_\_\_\_\_  
**CARRIE E. WARD**  
**MASTER MUNICIPAL CLERK**  
**CITY CLERK**

\_\_\_\_\_  
**JUDY L. DAVIS**  
**CHAIR PRO TEM**

\_\_\_\_\_  
**BILLIE E. BROOKS**  
**COUNCILPERSON**

\_\_\_\_\_  
**TONYA DAVIS JOHNSON**  
**COUNCILPERSON**

\_\_\_\_\_  
**SHELBY L. LOWE**  
**COUNCILPERSON**

**MOTIONED BY:** \_\_\_\_\_

**SECONDED BY:** \_\_\_\_\_

**D. PARDO** \_\_\_\_\_

**J. DAVIS** \_\_\_\_\_

**B. BROOKS** \_\_\_\_\_

**T.D. JOHNSON** \_\_\_\_\_

**S. LOWE** \_\_\_\_\_

**REVIEWED AS TO LEGAL SUFFICIENCY**

\_\_\_\_\_  
**PAMALA HANNA RYAN, CITY ATTORNEY**

**DATE:** \_\_\_\_\_

DESCRIPTION	PLAY IT SAFE, INC. 15896 MELLEN LANE JUPITER, FL 33478	ADVANCED RECREATIONAL CONCEPTS 3125 SKYWAY CIRCLE MELBOURNE, FL 32934	LEADIX CORPORATION 12391 SW 130 ST MIAMI, FL 33186	A+PLAYGROUNDS 13715 RICHMOND PARK DRIVE NORTH, SUITE 107 JACKSONVILLE, FL 32224
COST OF EQUIPMENT (PER BID SPECIFICATIONS) F.O.B CITY OF RIVIERA BEACH		\$42,696.40	\$49,000.00	\$33,691.00
COST OF INSTALLATION		\$7,228.00	\$16,640.00	\$9,98.50
TOTAL COST OF PROJECT	\$49,782.00	\$49,924.40	\$65,640.00	\$43,689.50
BID BOND	NOT REQUIRED	NOT REQUIRED	YES	NOT REQUIRED
REQUIRED FORMS	YES	YES	YES	YES
SCHEDULE 1 & 2	YES	YES	YES	YES
ADDENDUMS 1, 2 & 3	YES	YES	YES	YES
Comments	Bid Proposal Sheet Not Enclosed			

## MATERIALS AND INSTALLATION AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of November, 2009 by and between A+ Playgrounds, hereinafter referred to as "**Independent Contractor**," whose mailing address is 13715 Richmond Park Drive North, Suite 107, Jacksonville, Florida 32224 and the **CITY OF RIVIERA BEACH, FLORIDA**, a municipal corporation, hereinafter referred to as "**City**," whose address is 600 West Blue Heron Boulevard, Riviera Beach, Florida, 33404.

In consideration of the mutual covenants and promises set forth herein, the parties to this agreement do hereby agree as follows:

1. The City agrees to purchase one (1) recycled plastic playground structure from the Independent Contractor to be installed by Independent Contractor at Bicentennial Park located at 2391 Avenue L, Riviera Beach, Florida. The specifications for the project are more specifically set out in the Bid documents attached hereto as Exhibit "A".

2. Independent Contractor agrees to be bound by all the terms and conditions as set forth in Invitation For Bid No.242-09.

3. To the extent that there exists a conflict between the Bid and this Agreement, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

4. Work must begin within ten calendar days from the date of receipt of official notice to proceed and shall be carried on at a rate to insure the project's full completion within 90 days from the date of official notice to proceed, the rate of progress and time of completion being essential conditions of this agreement.

5. If the contract work is not fully complete according to the terms of this Agreement within the limits herein stipulated, the Independent Contractor shall pay the City, not as a penalty, but as liquidated damages, a sum equal to one hundred dollars (\$100) for each day elapsing between expiration of such time limit and the date of full completion, providing, however, that the time limits herein stated are subject to extension without payment of damages, as provided in section 21, herein.

6. The City agrees to compensate the Independent Contractor thirty three thousand four hundred fifty one dollars (\$33,451.00) for the purchase of one (1) Recycled Plastic Play Structure; nine thousand nine hundred ninety eight dollars and fifty cents (\$9,998.50) for the installation of the Play Structure; for a total of Forty three thousand six hundred eighty nine dollars and fifty cents (\$43,689.50) as set forth in more detail in Exhibit "B". The total and cumulative amount of this agreement shall not exceed the amount of funds annually budgeted for these services. The City shall not reimburse the Independent Contractor for any travel costs incurred as a direct result of the Independent Contractor providing deliverables to the City in pursuance of the scope of work contained in herein or in an exhibit.

7. This Agreement may be terminated by either party with or without cause upon thirty (30) days prior written notice. In the event that the City terminates this Agreement, for any reason whatsoever, the Independent Contractor understands and agrees that it shall not receive any further compensation beyond the termination date. This shall be true even where there are remaining months under the terms of this Agreement.

8. Independent Contractor hereby represents that it has complied and shall continue to comply with all applicable Federal and State statutes and local ordinances. Further, Independent Contractor shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations, required for the work to be performed pursuant to the terms of this Agreement from any federal, state, regional, county, or city agency.

9. The Independent Contractor represents that it has, or will secure at its own expense, all necessary personnel, equipment and materials required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.

10. All of the services required hereunder shall be performed by the Independent Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

11. The Independent Contractor agrees that it is fully responsible to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Independent Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City.

12. All of the Independent Contractor's personnel (and all Subcontractors) while on City premises will comply with all City requirements governing conduct, safety and security.

13. The City is exempt from payment of Florida State Sales and Use Taxes. The City will sign an exemption certificate submitted by the Independent Contractor. The Independent Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City, nor is the Independent Contractor authorized to use the City's Tax Exemption Number in securing such materials.

14. Prior to execution of this Agreement by the City the Independent Contractor shall provide certificates evidencing insurance coverages as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the Independent Contractor has obtained insurance of the type, amount, and classification as required for strict compliance with this ARTICLE and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the City's representative. Compliance with the foregoing requirements shall not relieve the Independent Contractor of its liability and obligations under this Agreement.

15. The Independent Contractor shall maintain, during the life of this Agreement, commercial general liability, including contractual liability insurance in the amount of \$500,000 per occurrence to protect the Independent Contractor from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the Independent Contractor or by anyone directly employed by or contracting with the Independent Contractor.

16. The Independent Contractor shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injury and property damages liability to protect the Independent Contractor from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Independent Contractor or by anyone directly or indirectly employed by the Independent Contractor.

17. The Independent Contractor shall maintain, during the life of this Agreement, adequate Workers' Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees per Florida Statute section 440.02.

18. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the Independent Contractor shall specifically include the City as an "Additional Insured."

19. The Independent Contractor shall indemnify and save harmless and defend the City, its agents, servants, and employees from and against any and all claims, liability, losses, and/or causes of action which may arise from any negligent act or omission of the Independent Contractor, its agents, servants, or employees in the performance of services under this Agreement.

20. The Independent Contractor further agrees to indemnify, save harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature

arising out of any conduct or misconduct of the Independent Contractor not included in the paragraph above and for which the City, its agents, servants or employees are alleged to be liable. Nothing contained in this provision shall be construed or interpreted as consent by the City to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

21. The Independent Contractor shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the Independent Contractor or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions. Upon the Independent Contractor's request, the City shall consider the facts and extent of any failure to perform the work and, if the Independent Contractor's failure to perform was without it or its subcontractors fault or negligence, as determined by the City, the Agreement Schedule and/or any other affected provision of this Agreement shall be revised accordingly; subject to the City's rights to change, terminate, or stop any or all of the work at any time. If the Independent Contractor is delayed at any time in the process of the work by any act or neglect of the City or its employees, or by any other contractor employed by the City, or by changes ordered by the City or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Independent Contractor's control, or by delay authorized by the Engineer pending negotiation or by any cause which the Engineer shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the City may decide. In the case of continuing cause of delay, only one (1) claim is necessary.

22. The Independent Contractor does not have the power or authority to bind the City in any promise, agreement or representation other than as specifically provided for in this Agreement.

23. The City reserves the right to make changes in the scope of work, including alterations, reductions therein or additions thereto. Upon receipt by the Independent Contractor of the City's notification of a contemplated change, the Independent Contractor shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the City of any estimated change in the completion date, and (3) advise the City if the contemplated change shall effect the Independent Contractor's ability to meet the completion dates or schedules of this Agreement. If the City so instructs in writing, the Independent Contractor shall suspend work on that portion of the work affected by a contemplated change, pending the City's decision to proceed with the change.

24. If the City elects to make the change, the City shall initiate an Agreement Amendment and the Independent Contractor shall not commence work on any such change until such written amendment is signed by the Independent Contractor and approved and executed by the City Manager for the City.

25. All materials and/or work to be furnished and/or installed by the Independent Contractor under this Agreement shall be guaranteed by the Independent Contractor for a period of one year from the date of final acceptance thereof by the City against defects in design, workmanship, or materials. Upon receipt of notice from the City of failure or defect of any part covered under such warranty/guaranty period, the affected part, parts, or materials shall be replaced promptly with new parts or materials by the Independent Contractor at no expense to the City. In the event the Independent Contractor fails to make the necessary repairs or replacements within 30 days after notification by the City, the City may accomplish the work at the expense of the Independent Contractor.

26. The Independent Contractor shall continuously maintain adequate protection of all work from damage, and shall protect such work and the City's property from injury or loss arising during the term of the Agreement. Except for any such damage, injury, or loss which may be directly due to errors caused by the City or employees of the City, the Independent Contractor shall adequately protect adjacent property, as provided by the law, and shall provide guard fences, lights, and any other necessary materials to carry out such protection.

27. Until acceptance of the work by the City, the City's property shall be under the charge and care of the Independent Contractor and the Independent Contractor shall take every necessary precaution against injury or damage to the work by the action of elements or from any other cause whatsoever, and the Independent Contractor shall repair, restore and make good, without additional charge any work occasioned by any of the above causes before its completion and acceptance by the City.

28. This Agreement and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County.

29. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

30. If any action, whether in law, equity or otherwise, is brought for any dispute, disagreement, or issue of construction, declaration or interpretation arising hereunder whether relating to the Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

31. Time is of the essence in all respects under this agreement.

32. Failure of the City to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of City's right to enforce or exercise said right(s) at any time thereafter.

**SIGNATURES ON FOLLOWING PAGE**

AGREEMENT WITH THE CITY OF RIVIERA BEACH

IN WITNESS WHEREOF, the Parties unto this Agreement have set their hands and seals on the day and date first written above.

CITY OF RIVIERA BEACH

A+ PLAYGROUNDS

BY: \_\_\_\_\_  
THOMAS A. MASTERS  
MAYOR

BY: \_\_\_\_\_  
RANDY MALTZ  
PRESIDENT

ATTEST:

(SEAL)

BY: \_\_\_\_\_  
CARRIE E. WARD, MMC  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

BY:   
PAMALA H. RYAN  
CITY ATTORNEY

BY: \_\_\_\_\_  
BENJAMIN GUY  
PURCHASING DIRECTOR

DATE: 11/10/09

RESOLUTION NO.: 162-08

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, ACCEPTING THE MASTER SITE PLAN IMPROVEMENTS FOR BI-CENTENNIAL PARK AS DESIGNED BY THE FIRM OF CHRIS WAYNE AND ASSOCIATES; AUTHORIZING THE FINANCE DIRECTOR TO APPROPRIATE AN ADDITIONAL \$200,000 IN THE CAPITAL ACQUISITION FUND (310) TO FINANCE PHASE I OF THE MASTER SITE PLAN IMPROVEMENTS; AUTHORIZING THE PURCHASING DIRECTOR TO SOLICIT BIDS FOR SAME; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** The landscape architecture firm of Chris Wayne and Associates has developed a master site plan and 90% design plans for improvements to Bi-centennial Park; and

**WHEREAS,** The proposed improvements to Bi-centennial Park represent a continuation of the Mayor and City Council's commitment to improve and enrich the quality of life for all city residents by investing in community assets and expanding the availability of leisure activities; and

***NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, AS FOLLOWS:***

**SECTION 1.** That the City Council of the City of Riviera Beach, Palm Beach County, Florida, accepts the master site plan improvements for Bi-centennial Park and authorizes staff to implement Phase I of the site plan improvements in accordance with the design specifications and construction documents as finalized by the firm of Chris Wayne and Associates.

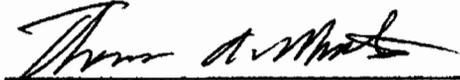
**SECTION 2.** The Finance Director is authorized to appropriate an additional \$200,000 from the Capital Acquisition Fund (310) to finance the proposed project improvements by reducing the project budget for the Phase II improvements to the Dan Calloway Complex from \$3.6 million to 3.4 million dollars.

**SECTION 3.** The Purchasing Director is authorized to solicit bids for the project.

**SECTION 4.** This Resolution shall take effect upon its passage and approval by the City Council.

**PASSED AND APPROVED this** 3rd **day of** December **2008**

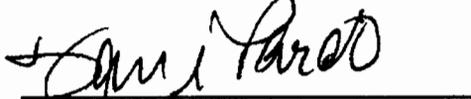
APPROVED:

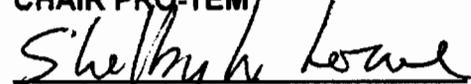
  
THOMAS A. MASTERS  
MAYOR

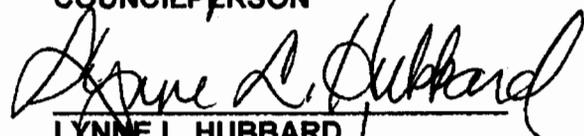
  
CEDRICK A. THOMAS  
CHAIRPERSON

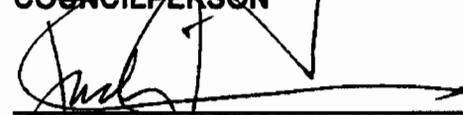
ATTEST:

  
CARRIE E. WARD  
MASTER MUNICIPAL CLERK  
CITY CLERK

  
DAWN S. PARDO  
CHAIR PRO-TEM

  
SHELBY L. LOWE  
COUNCILPERSON

  
LYNNE L. HUBBARD  
COUNCILPERSON

  
JUDY L. DAVIS  
COUNCILPERSON

MOTIONED BY: Lowe

SECONDED BY: Hubbard

S. LOWE Aye

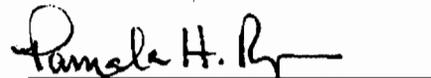
L. HUBBARD Aye

C. THOMAS Aye

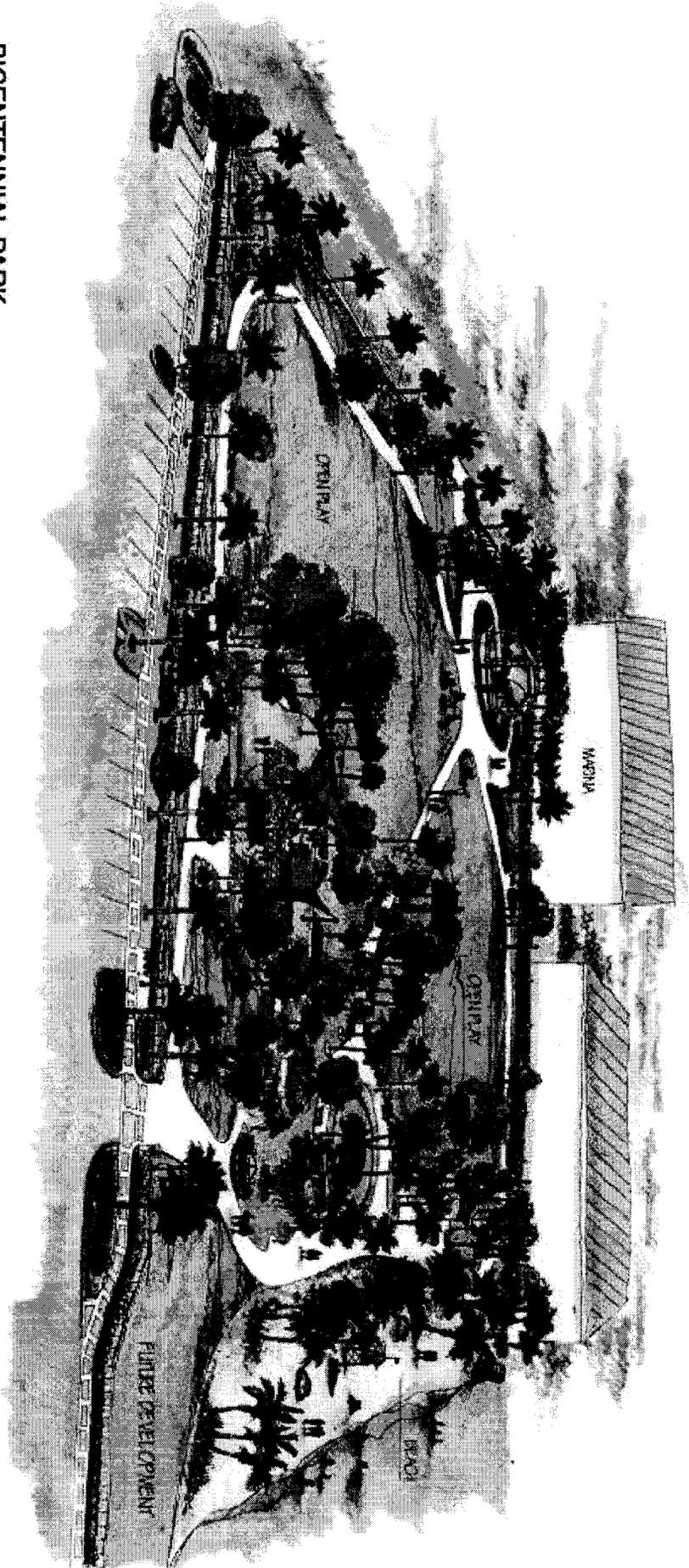
D. PARDO Aye

J. DAVIS Aye

REVIEWED AS TO LEGAL SUFFICIENCY

  
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 11/26/08



**BICENTENNIAL PARK  
BIRD'S EYE PERSPECTIVE**

**PROJECT: BICENTENNIAL PARK  
PRODUCED FOR: THE CITY OF RIVIERA BEACH, FLORIDA**



**PRODUCED BY:  
CHRIS WAYNE AND ASSOCIATES, INC.  
LANDSCAPE ARCHITECTS AND CONTRACTORS**

**NOVEMBER 2008**

AVENUE "C"

