

RESOLUTION NO. 64-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING THE PURCHASE OF EQUIPMENT FOR THE MOBILE COMMAND VEHICLE FOR THE CITY'S POLICE DEPARTMENT FROM FARBER OF COLUMBUS, OH, THROUGH A PIGGYBACK PURCHASE MADE BY THE NEW YORK STATE NASPO COOPERATIVE CONTRACT GROUP 38232 AWARD 19745, AUTHORIZING THE FINANCE DIRECTOR TO PAY \$41,661 TO FARBER FROM CAPITAL ACCOUNT NUMBER 310-0817-521-0-6351; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City purchased a Mobile Command Vehicle in November of 2008, from Farber Specialty Vehicles through the piggyback process where New York State was the lead agency under NASPO Cooperative Contract Group 38232, Award 19745; and

WHEREAS, City staff purchased additional equipment for the Mobile Command Vehicle in the amount of \$41,661; and

WHEREAS, these purchases were made due to exigent circumstances after a site inspection of the construction / production of the command vehicle; and

WHEREAS, this equipment was purchased using NASPO Cooperative Contract Group piggyback process; and

WHEREAS, this form of procurement was in compliance with the City of Riviera Beach Code of Ordinances and is authorized under Florida Statute Section 287.042.

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

SECTION 1: The City Council approves and ratifies the purchase of additional equipment for the Mobile Command Vehicle, from Farber of Columbus, OH, through the piggyback process using a purchase made by a State Cooperative Bid with New York State.

SECTION 2: The City Council authorizes the Finance Director to make payment in the amount of \$41,661 to Farber Specialty Vehicles, Columbus, OH from Capital Account No. 310-0817-521-0-6351.

Resolution No. 64-09
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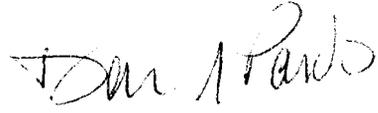
SECTION 3: This Resolution shall take effect upon its passage and approval by the City Council.

PASSED and APPROVED this 17th day of June, 2009.

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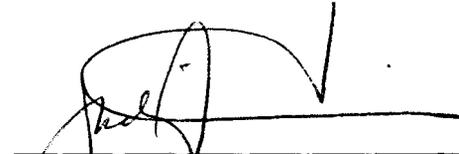
APPROVED:


THOMAS A. MASTERS
MAYOR


DAWN S. PARDO
CHAIRPERSON

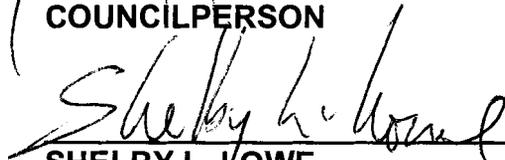
ATTEST:


CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK


JUDY L. DAVIS
CHAIR PRO TEM


BILLIE E. BROOKS
COUNCILPERSON


CEDRICK A. THOMAS
COUNCILPERSON


SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: B. Brooks

SECONDED BY: J. Davis

C. THOMAS aye

D. PARDO aye

J. DAVIS aye

B. BROOKS aye

S. LOWE aye

REVIEWED AS TO LEGAL SUFFICIENCY


PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 6/9/09

RESOLUTION NO. 65-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA APPROVING AN AMENDMENT TO THE BROOKS SUBDIVISION FUNDING AGREEMENT BETWEEN THE CITY OF RIVIERA BEACH AND NORTHWEST RIVIERA BEACH COMMUNITY REDEVELOPMENT CORPORATION FOR THE FUNDING OF INFRASTRUCTURE IMPROVEMENTS OF THE BROOKS SUBDIVISION AND AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE THE AGREEMENT; FOR OTHER PURPOSES AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council on April 2, 2008 approved a Funding Agreement with Northwest Riviera Beach Community Redevelopment Corporation (NWRBCRC) to fund a substantial portion of the infrastructure improvements for the Brooks Subdivision; and

WHEREAS, the Initial Agreement outlined certain terms and conditions that needed to be complied with prior to releasing any funds; and

WHEREAS, in August of 2008 the NWRBCRC in its efforts to expedite the development and construction of the Brooks Subdivision conveyed fee simple title to the property to the newly created Brooks LLC in which the NWRBCRC is the sole member and owner; and

WHEREAS, On February 3, 2009, the Brooks LLC entered into a contract with Rosso Paving and Drainage, Inc. for construction of roads, water and sewer improvements on the site; and

WHEREAS, the NWRBCRC has indentified all funding for the infrastructure improvements and funding for construction of the residential units and is requesting the City to waive certain conditions under the Initial Agreement in order to move the project forward and consent to an assignment of the Funding Agreement to Brooks LLC.

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

SECTION 1. The City Council approves the First Amendment to the Brooks Subdivision Funding Agreement and authorizes the Mayor and City Clerk to execute the same.

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SECTION 2. The City Council consents to the assignment of the Agreement from Northwest Riviera Beach Community Redevelopment Corporation to Brooks, LLC without releasing NWRBCRC from liability.

SECTION 3. The City agrees to fund the Rosso Paving and Drainage, Inc. Contract not to exceed \$500,000 to commence the Brooks Subdivision improvements, subject to compliance with the terms and conditions of the First Amendment.

SECTION 4. The City Council authorizes the Finance Director to expend funds for the infrastructure improvements.

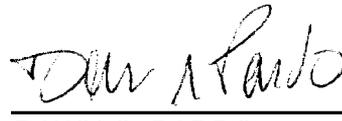
SECTION 5. This Resolution shall take effect upon its passage and approval by the City Council.

PASSED and APPROVED this 17th day of June, 2009.

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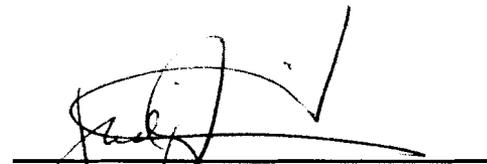
APPROVED:

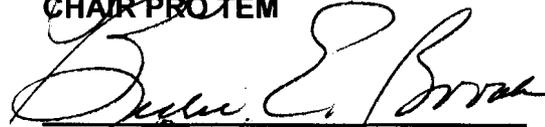

THOMAS A. MASTERS
MAYOR


DAWN S. PARDO
CHAIRPERSON

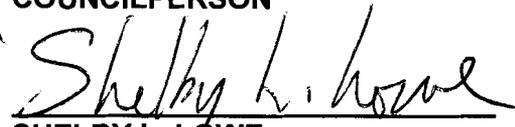
ATTEST:


CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK


JUDY L. DAVIS
CHAIR PRO TEM


BILLIE E. BROOKS
COUNCILPERSON


CEDRICK A. THOMAS
COUNCILPERSON


SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: B. Brooks

SECONDED BY: J. Davis

C. THOMAS aye

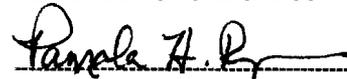
D. PARDO aye

J. DAVIS aye

B. BROOKS aye

S. LOWE aye

REVIEWED AS TO LEGAL SUFFICIENCY


PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 6/10/09

**FIRST AMENDMENT TO
BROOKS SUBDIVISION
FUNDING AGREEMENT**

THIS FIRST AMENDMENT TO BROOKS SUBDIVISION FUNDING AGREEMENT ("FIRST AMENDMENT"), entered into this 17 day June, 2009 by, between and among Northwest Rivera Beach Community Redevelopment Corporation, a Florida non-profit corporation, whose mailing address is 2001 Broadway, Suite 510, Riviera Beach, FL 33404 (herein referred to as "CRC"), Brook's Subdivision, LLC, a limited liability company, whose mailing address is 2001 Broadway, Suite 510, Riviera Beach, FL 33404 ("Brook's LLC") and the City of Riviera Beach, Florida, a Florida municipal corporation, whose mailing address is 600 West Blue Heron Blvd., Riviera Beach, FL. 33404 (herein referred to as "City") shall amend and modify that Brooks Subdivision Funding Agreement dated April 2, 2008.

RECITALS

- A. Whereas, CRC intends to develop twenty single family homes for Qualified Households (hereafter called "Brooks Subdivision");
- B. Whereas, the City and CRC entered into a Funding Agreement on April 2, 2008 (the "Initial Agreement"), under which the City agreed to fund a substantial portion of the infrastructure improvements budget for Brooks Subdivision;
- C. Whereas, CRC has conveyed fee simple title to the project to Brook's LLC, in which CRC is the sole member and owner;
- D. Whereas, Brook's LLC has entered into a Contract for Construction with Rosso Paving & Drainage, Inc. dated February 3, 2009 (a copy of which is attached hereto as Exhibit "A") for construction of roads and water and sewer improvements on the site;
- E. Whereas, the CRC has identified all funding for the Infrastructure Improvements and a portion of the funding for construction of the residential units and whereas CRC has asked the City to waive certain conditions under the Initial Agreement in order to move forward with the project and to consent to an assignment of the Funding Agreement to Brook's LLC; and
- F. Whereas, subject to the terms and conditions set forth in this First Amendment and the Initial Agreement, the City shall consent to these requests.

NOW, THEREFORE, in consideration of the grant and subsidy and the sum of Ten and No/100 Dollars (\$10.00) each to the other in hand paid, the receipt and sufficiency of which is hereby acknowledged, and the other terms and conditions set forth hereafter, CRC, Brook's LLC and the City agree as follows:

TERMS AND CONDITIONS

1. RECITALS. The Recitals are true and correct and are incorporated herein.
2. ASSIGNMENT AND ASSUMPTION. With the consent of the City, CRC hereby assigns all of its right, title and interest under the Brooks Subdivision Funding Agreement, as amended, to Brook's LLC. CRC acknowledges and agrees that said assignment shall not release it from liability under said Agreement. Brook's LLC accepts said Assignment and agrees to assume all responsibility and liability under the Initial Agreement, as amended.
3. OWNERSHIP OF BROOKS LLC. There shall be no change in ownership and control of Brook's LLC until after the Infrastructure Improvements have been completed and the residential units have been sold to Qualified Households. Unless defined herein, all capitalized terms shall have the meaning ascribed in the Initial Agreement.
4. ACCESS TO FUNDS. Paragraph 4 of Article I of the Initial Agreement is deleted and replaced with the following:

Brook's LLC shall have two years from the date of this First Amendment to access the grant funds and to complete the Infrastructure Improvements. Thereafter, the funds shall no longer be available unless the City agrees in writing to extend the time for funding.

5. INFRASTRUCTURE IMPROVEMENTS FUNDING.
 - 5.1 According to its Construction Budget for the entire project, CRC has allocated \$769, 500 for Infrastructure Improvements, \$500,000 of which the City is scheduled to fund. CRC plans to secure the remaining funds from Palm Beach County under a currently expired Community Housing Development Organization (CHDO) agreement with the County dated August 21, 2007 (a copy of which is attached hereto as Exhibit B). CRC is currently negotiating with the County to renew this Agreement and modify it to allow for the CHDO funds to be used for Infrastructure Improvements. Upon execution of this First Amendment, CRC shall

submit copies of written materials submitted to the County to support its application for funding.

The City agrees to fund the Russo Paving & Drainage, Inc., Contract up to and not to exceed \$500,000.00. However, CRC must provide satisfactory evidence to the City that it has secured funding from Palm Beach County to cover the balance of the Infrastructure Improvements Budget of not less than \$269,500.00 prior to the City making any disbursements. In complying with this requirement, CRC and Brook's LLC must address, to the satisfaction the City, the following matters:

1. An acknowledgement from the County that CHDO funds can be used by Brook's LLC;
2. An explanation of how CRC or Brook's LLC will pay the initial invoices or costs since the County only funds on a reimbursement basis;
3. Evidence that CRC is in compliance under the CHDO Agreement; and
4. Provide an executed copy of the revised CHDO agreement to the City.

Consequently, the City waives the requirement that CRC close on its financing for construction of the single family homes as stated in paragraph I (i) of Article II of the Initial Agreement.

5.2 Subsections (ii) and (iii) of Paragraph 1(1) of Article II of the Initial Agreement are deleted and replaced with the following:

- (ii) Until all conditions from all sources of funding for Infrastructure Improvements for Brooks Subdivision have been satisfied;
- (iii) Until the City has received satisfactory evidence that CRC has received a firm commitment from Palm Beach County State Housing Initiative Program and Palm Beach County Home Investment Program and any other subsidy or grant sources to provide Infrastructure Improvements for this project.

5.3 Subsection (x) of Paragraph 1(1) of Article II of the Initial Agreement is deleted and replace with the following:

- (x) The City acknowledges and agrees its interest is subordinate and inferior to the mortgage and restrictions in favor of Palm Beach County. CRC and Brook's LLC represents this mortgage secures funds provided by the County to acquire the land.

5.4 Subsection (xi) of Paragraph 1(1) of Article II of the Initial Agreement is deleted in its entirety.

6. OTHER CONDITIONS.

Unless modified herein, all other conditions of the Initial Agreement remain unchanged and in full effect.

SIGNATURES ON FOLLOWING PAGES

6. OTHER CONDITIONS.

Unless modified herein, all other conditions of the Initial Agreement remain unchanged and in full effect.

IN WITNESS WHEREOF, CRC, Brook's LLC and the City have hereunto caused these presents to be executed on the date first above written.

Signed, sealed and delivered
in the presence of:

**NORTHWEST RIVIERA BEACH
COMMUNITY REDEVELOPMENT
CORPORATION, a Florida non-profit
corporation**

William H. Burrs
Print Name, _____

By: William H. Burrs
William H. Burrs, President

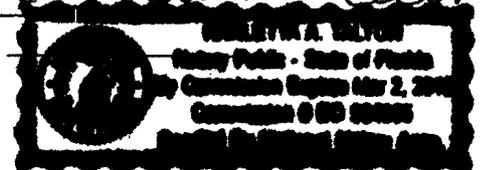
Print Name, _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

June The foregoing instrument was acknowledged before me this 18th day of June, 2009, by William H. Burrs, as President of Northwest Riviera Beach Community Redevelopment Corporation, who is personally known to me or produced Florida Driver's License as identification and who did not take an oath.

(Notary Seal)

Print Name: Karletta A. Taiton
NOTARY PUBLIC
Commission No: Karletta A. Taiton
Commission Expires: _____



**SIGNATURE PAGE FOR BROOKS SUBDIVISION
FIRST AMENDMENT TO FUNDING AGREEMENT**

BROOK'S SUBDIVISION, LLC

By: NORTHWEST RIVIERA BEACH
COMMUNITY REDEVELOPMENT
CORPORATION, a Florida non-profit
corporation, its sole member

William H. Burrs

Print Name. _____

Print Name. _____

By: William H. Burrs

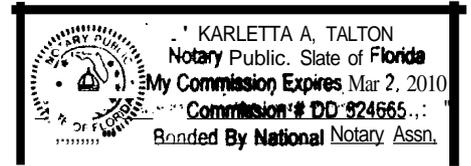
William H. Burrs, President

STATE OF FLORIDA
COUNTY OF PALM BEACH

June The foregoing instrument was acknowledged before me this 18th day of
_____ 2009, by William H. Burrs, as President of
Northwest Riviera Beach Community Redevelopment Corporation, as sole member of
Brooks Subdivision, LLC, a limited liability company, who is personally known to me
OR produced Florida Driver's License as identification and who did
not take an oath.

(Notary Seal)

Print Name: Karletta A. Talton
NOTARY PUBLIC
Commission No.: Karletta A. Talton
CommIssiOn Expires: _____



SIGNATURE PAGE FOR BROOKS SUBDIVISION
FIRST AMENDMENT TO FUNDING AGREEMENT

CITY OF RIVIERA BEACH, a Florida municipal corporation

Print Name-+-
Print Name
6/18/09

By: Thomas A. Masters
THOMAS A. MASTERS, MAYOR

ATTEST:

Carrie E. Ward
CARRIE E. WARD, CITY CLERK
6/18/09

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Pamala H. Ryan 6/10/09
PAMALA H. RYAN, CITY ATTORNEY

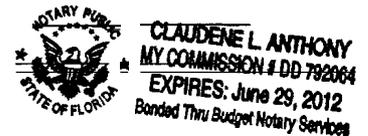
STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this day of June, 2009 by Thomas A. Masters, Mayor of the City of Riviera Beach, who is personally known to me ~~or produced~~ _____ as identification and who did not take an oath.

(Notary Seal)

Print Name: Claudene L. Anthony
NOTARY PUBLIC

Commission No:
Commission Expires:



SIGNATURE PAGE FOR BROOKS SUBDIVISION
FIRST AMENDMENT TO FUNDING AGREEMENT

EXHIBITS

Exhibit „A" Rosso Paving and Drainage, Inc., Contract

Exhibit "B" CHDO Agreement dated August 21, 2007

EXHIBIT A

CONTRACT FOR CONSTRUCTION
BETWEEN
BROOK'S SUBDIVISION, LLC
AND
ROSSO PAVING & DRAINAGE, INC.

This Contract is made as of this 3rd day of February, 2009 by and between the Brook's Subdivision, LLC, organized under the laws of the State of Florida, hereinafter referred to as the "OWNER" and Rosso Paving and Drainage, inc. a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal I.D. is

In consideration of the mutual promises contained herein, the OWNER and the CONTRACTOR agree as follows:

ARTICLE 1 - SERVICES

The CONTRACTOR'S responsibility under this Contract is to provide construction services in the area of site development for the common areas of the Brooks Subdivision, as more specifically set forth in the Invitation to Bid to wit, Bid No. 192-08, hereinafter the "Bid", the Addenda, Construction Specifications, Design Plans, General and Special Conditions all of which are incorporated herein by reference; and

The OWNER'S representative/liaison during the performance of this Contract shall be Mr. Dennis Martin, telephone no. 561 845-1147.

ARTICLE 2 - SCHEDULE

A. Time of Completion - Construction work must begin within ten (10) calendar days from the date of receipt of official notice to proceed; provided the OWNER has received proof of insurance as set forth in Article 11 and a Performance and Surety Bond as set forth in Article 31 in a form satisfactory to the OWNER. Construction work shall be carried on at a rate to insure its full completion within one hundred fifty (150) calendar days from the date of official notice to proceed, the rate of progress and time of completion being essential conditions of this Contract.

B. Deduction for not completing on time - If the contract work is not fully complete according to the terms of this Contract within the limits herein stipulated, the CONTRACTOR shall pay the OWNER, not as a penalty, but as liquidated damages, a sum equal to two hundred dollars (\$200) for each day elapsing between the 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 Article 17, herein.

C. Reports - Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A."

ARTICLE 3 - PAYMENTS TO CONTRACTOR

- * A. Generally - The OWNER agrees to compensate the CONTRACTOR \$647,516.40 in accordance with the Base Bid fee proposal (Exhibit "A") as set forth in the CONTRACTOR Id No. 192-08. The total and cumulative amount of this Contract shall not exceed the amount of funds annually budgeted for these services. The OWNER shall not reimburse the CONTRACTOR for any travel costs incurred as a direct result of the CONTRACTOR providing deliverables to the OWNER in pursuance of the scope of work contained in Exhibit A, without specific, prior approval of the OWNER.
- B. Progress Invoices - No later than the 20th day of every month, the CONTRACTOR shall prepare and submit, on a form approved by the OWNER'S representative, a detailed estimate and invoice which has been completed from the start of the job up to and including the last day of the preceding month, together with such supporting evidence of the expenditures as required by this Contract.
- C. Progress Payments - Invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the OWNER representative, indicating that services have been rendered in conformity with the Contract. The OWNER will pay to the CONTRACTOR ninety percent (90%) of the value based on the CONTRACTOR'S estimate and invoice, as approved by the OWNER representative. Invoices will normally be paid within thirty (30) days following the OWNER representative's approval.
- D. Final Invoice - In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "Final Invoice" on the CONTRACTOR'S final/last billing to the OWNER. This certifies that all services have been properly performed and all charges and costs have been invoiced to the OWNER. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONTRACTOR and the OWNER shall have no obligations for any other costs or expenses thereafter.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONTRACTOR shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged to the CONTRACTOR'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the OWNER determine that the rates and costs were increased due to inaccurate, incomplete or non current wage rates or due to inaccurate representations of fees paid to outside contractors. The OWNER shall exercise its rights under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

This Contract may be canceled by the CONTRACTOR upon thirty (30) days prior written notice to the OWNER'S representative in the event of substantial failure by the OWNER to perform in accordance with the terms of this Contract through no fault of the CONTRACTOR, provided the OWNER fails to cure same within that thirty (30) day period. It may also be terminated, in whole or in part, by the OWNER, with or without cause, immediately upon written notice to the CONTRACTOR. Unless the CONTRACTOR is in breach of this Contract, the CONTRACTOR shall be paid for services rendered to the OWNER'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the OWNER, the CONTRACTOR shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the OWNER.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 - PERSONNEL

The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the OWNER.

All of the services required hereunder shall be performed by the 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.

Any changes or substitutions in the CONTRACTOR'S key personnel, as may be listed in Exhibit "A", must be made known to the OWNER'S representative and written approval must be granted by the OWNER'S representative before said change or substitution can become effective.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in their respective field(s).

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

All of the CONTRACTOR'S personnel (and all Subcontractors) while on OWNER premises will comply with all OWNER requirements governing conduct, safety and security.

ARTICLE 7 - MIWBE PARTICIPATION

Minority/Women-Owned Business Enterprises ("M/WBE") shall have the opportunity to participate in this project. CONTRACTOR is hereby informed that the OWNER has established a goal of a minimum of 15% participation of M/WBE. A good faith effort will be made to hire M/WBE.

In keeping with the OWNER'S policy, the CONTRACTOR further agrees to hire minority sub-contractors to work on this project.

In accordance with the OWNER'S established M/WBE Policy, the CONTRACTOR agrees to the M/WBE participation for this Contract and agrees to abide by all provisions of the M/WBE Policy and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONTRACTOR agrees to maintain all relevant records and information necessary to document compliance with the M/WBE Policy, and will allow the OWNER to inspect such records.

ARTICLE 8 - FEDERAL AND STATE TAX

The OWNER is exempt from payment of Florida State Sales and Use Taxes. The OWNER will sign an exemption certificate submitted by the CONTRACTOR.

The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the OWNER, nor is the CONTRACTOR authorized to use the OWNER'S Tax Exemption Number in securing such materials.

The CONTRACTOR shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

ARTICLE 9 - INSURANCE

A. Prior to execution of this Contract by the OWNER, the 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 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 OWNER'S representative. Compliance with the foregoing requirements shall not relieve the CONTRACTOR of its liability and obligations under this Contract.

B. The CONTRACTOR shall maintain during the term of this Contract, standard Professional Liability Insurance in the minimum amount of \$1,000,000.00 per occurrence.

C. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability, insurance in the amount of \$500,000.00 per occurrence to protect the 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 Contract, whether such operations be by the CONTRACTOR or by anyone, directly or indirectly, employed by or contracting with the CONTRACTOR.

"D. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$500,000.00 combined single limit for bodily injury and property damages liability to protect the 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, but not limited to, leased and rented automobiles, whether such operations be by the CONTRACTOR or by anyone, directly or indirectly, employed by the CONTRACTOR.

E. The parties to this Contract shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes. In the event that a party does not carry Workers' Compensation Insurance and chooses not to obtain same, then such party shall, in accordance with Section 440.05, Florida Statutes, apply for and obtain an exemption authorized by the Department of Insurance and shall provide a copy of such exemption to the OWNER.

F. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the CONTRACTOR shall specifically include the OWNER as an "Additional Insured."

ARTICLE 10 - INDEMNIFICATION

To the extent allowed by law, the CONTRACTOR shall indemnify and hold harmless the OWNER, its agents, officers, and employees from and against any and all claims, liability, losses, and/or causes of action which may arise from any negligent act, recklessness, or intentional wrongful conduct or omission of the CONTRACTOR, its agents, officers, or employees in the performance of services under this Contract.

The CONTRACTOR further agrees to indemnify and hold harmless the OWNER, its agents, officers 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 CONTRACTOR not included in the paragraph above and for which the OWNER, its agents, officers, or employees are alleged to be liable.

CONTRACTOR shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, all costs, expert witness fees, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Contract or any renewal thereof.

ARTICLE 11 - SUCCESSORS AND ASSIGNS

The OWNER and the CONTRACTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Neither the OWNER nor the CONTRACTOR shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the OWNER which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the CONTRACTOR.

ARTICLE 13 - VENUE

This Contract and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided therein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Venue for any and all actions arising from and/or relating to the Contract will be held in Palm Beach County, Florida.

ARTICLE 14 - REMEDIES

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.

ARTICLE 15 - CONFLICT OF INTEREST

The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder. The CONTRACTOR further represents that no person having any such conflicting interest shall be employed for said performance.

The CONTRACTOR shall promptly notify the OWNER'S representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONTRACTOR'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the OWNER as to whether the association, interest or circumstance would, in the opinion of the OWNER, constitute a conflict of interest if entered into by the CONTRACTOR. The OWNER agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the CONTRACTOR. If, in the opinion of the OWNER, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the OWNER shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the OWNER by the CONTRACTOR under the terms of this Contract.

ARTICLE 16 - DELAYS AND EXTENSION OF TIME

The 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 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 CONTRACTOR'S request, the OWNER shall consider the facts and extent of any failure to perform the work and, if the CONTRACTOR'S failure to perform was without it or its subcontractors' fault or negligence, as determined by the OWNER, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the OWNER'S rights to change, terminate, or stop any or all of the work at any time.

If the CONTRACTOR is delayed at any time in the process of the work by any act or neglect of the OWNER or its employees, or by any other contractor employed by the OWNER, or by changes ordered by the OWNER or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the 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 OWNER may decide. No extension shall be made for a delay occurring more than seven (7) days before a claim therefore is made in writing to the Engineer. In the case of continuing cause of delay, only one (1) claim is necessary.

If no schedule or other agreement sets forth the dates by which the drawing(s) shall be furnished, then no claims for delay shall be allowed because of failure to furnish such drawing(s), until two (2) weeks after demand for the drawings and not then unless said claim is reasonable.

This Article does not exclude the recovery of damages for delay by either party under other provisions in the Contract.

ARTICLE 17 - INDEBTEDNESS

The CONTRACTOR shall not pledge the OWNER'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 18 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the OWNER'S representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the OWNER under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the OWNER or at its expense will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the OWNER'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the OWNER'S expense shall be and remain the OWNER'S property and may be reproduced and reused at the discretion of the OWNER.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of

documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 19 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work, services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the OWNER. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control.

The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the OWNER shall be that of an Independent Contractor and not as employees or agents of the OWNER.

The CONTRACTOR does not have the power or authority to bind the OWNER in any promise, agreement or representation other than as specifically provided for in this Contract.

ARTICLE 20 - CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract 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 the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 21 - ACCESS AND AUDITS

The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Contract. The OWNER shall have access to such books, records, and documents as required in this Article for the purpose of inspection or audit during normal business hours, at the CONTRACTOR'S place of business.

The CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, CONTRACTOR shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

ARTICLE 23 - ENFORCEMENT COSTS

If any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract, 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.

ARTICLE 24 - AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the OWNER'S representative upon request.

The CONTRACTOR shall be solely responsible for obtaining and complying with all necessary permits, licenses, approvals and authorizations required for any work done pursuant to this Contract from any federal, state, regional, county or OWNER agency.

ARTICLE 25 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 26 - MODIFICATIONS OF WORK

The OWNER reserves the right to make changes in the Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONTRACTOR of the OWNER'S notification of a contemplated change, the CONTRACTOR shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change; (2) notify the OWNER of any estimated change in the completion date; and (3) advise the OWNER if the contemplated change shall affect the CONTRACTOR'S ability to meet the completion dates or schedules of this Contract.

If the OWNER so instructs in writing, the CONTRACTOR shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the OWNER'S decision to proceed with the change.

If the OWNER elects to make the change, the OWNER shall initiate a Contract Amendment and, the CONTRACTOR shall not commence work on any such change until such written amendment is signed by the CONTRACTOR and approved and executed by the OWNER BOARD OF DIRECTORS or its designated representative.

ARTICLE 27 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the OWNER shall be mailed to:

Brook's Subdivision, LLC
Attention: Mr. Schiller Ambroise, Executive Director
2001 Broadway, Suite 510
Riviera Beach, Florida 33404

and if sent to the CONTRACTOR shall be mailed to:

Rosso Paving
Attention: Nancy G. Rosso, President
350 Martin Lane
West Palm Beach, FL 33413

ARTICLE 28 - ENTIRETY OF CONTRACTUAL AGREEMENT

The OWNER and the CONTRACTOR agree that this Contract and any attachments hereto or other documents as referenced in the Contract sets forth the entire agreement between the parties, that there are no promises or understandings other than those stated herein, and this Contract supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 28 - Modifications of Work.

ARTICLE 29 - SPECIAL CONDITIONS

All materials and supplies provided by CONTRACTOR shall be in accordance with the plans and specifications approved by the OWNER.

The CONTRACTOR shall furnish bonds and maintain said bonds throughout the duration of the project as provided for in Florida Statutes section 255.01 Et. Seq., covering the faithful performance of the Contract and payment of all obligations arising thereunder. The bonds shall be secured by the CONTRACTOR from a surety company licensed in the State of Florida with an "A-" rating or better in management and a "10" rating or better in strength as rated by Best's Key Rating Guide published by Alfred M. Best Company, Oldwick, New Jersey 08858.

The CONTRACTOR shall be required to provide Surety Bonds in the amount of one hundred percent (100%) of the Contract amount. The required premiums shall be paid for by the CONTRACTOR.

In addition to the above-minimum qualifications, the surety company must meet at least one of the following additional qualifications:

1. The surety company shall hold a current certificate of authority as an acceptable surety of federal bonds in accordance with the United States Department of Treasury Circular 570, Current Revision. The surety company shall provide the OWNER with satisfactory evidence that such excess risk has been protected in an acceptable manner.
2. The surety company shall have at least the following minimum ratings in the latest revision of Best's Key Rating Guide: Best's Policy Holders Ratings - A- (minimum); Best Financial Category - Class 1.
3. For projects that do not exceed \$500,000.00, the OWNER will accept bonds in accordance with Florida Statute section 287.0935.
4. If the surety is declared bankrupt, becomes insolvent, its right to do business in the State of Florida is terminated or it ceases to meet the requirements set forth above, the CONTRACTOR shall within ten (10) working days after notification by the OWNER substitute another bond and surety company, at no cost to the OWNER, meeting the above requirements.

ARTICLE 30 - INSPECTION OF WORK

The OWNER'S representative or the OWNER'S Engineer shall at all times have access to work wherever it is, in preparation or progress, and the CONTRACTOR shall provide proper facilities for such access and for inspection.

If the specifications, the Engineer's instructions, laws, ordinances or any public authority requires any work to be specially tested or approved, the CONTRACTOR shall give the Engineer timely notice of its readiness for inspection. Inspections by the Engineer shall be made promptly and where practicable, at the source of supply. If any work should be covered up without approval or consent of the Engineer, it must, if required by the Engineer, be uncovered for examination, at the CONTRACTOR'S expense.

ARTICLE 31 - PROTECTION OF WORK AND PROPERTY

The CONTRACTOR shall continuously maintain adequate protection of all work from damage, and shall protect such work and the OWNER'S property from injury or loss arising during the term of the Contract. Except for any such damage, injury, or loss which may be directly due to errors caused by the OWNER or employees of the OWNER, the 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.

Until acceptance of the work by the OWNER, the OWNER'S property shall be under the charge and care of the CONTRACTOR and the CONTRACTOR shall take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, and the 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 OWNER.

ARTICLE 32 - WARRANTY/GUARANTY

All materials and equipment to be furnished and/or installed by the CONTRACTOR under this Contract as it relates

to the construction of the common areas for the Brooks Subdivision Site Development shall be guaranteed by the Manufacturer, if any, for a period of two (2) years from the date of final acceptance thereof against defective materials, design and workmanship. The CONTRACTOR shall guarantee all of its work, including but not limited to all common areas improvements for the Brooks Subdivision Site Development for a period of ___ years. Upon receipt of notice from the OWNER of failure 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 CONTRACTOR or Manufacturer at no expense to the OWNER. In the event the CONTRACTOR fails to make the necessary repairs or replacements within thirty (30) days after notification by the OWNER, the OWNER may accomplish the work at the expense of the CONTRACTOR.

The CONTRACTOR shall provide the OWNER with a written warranty of its work and with a copy of the manufacturer's warranty as it relates to the materials and parts used to construct the site development improvements.

ARTICLE 33 - TIME

Time is of the essence in all respects under this Contract.

ARTICLE 34 - TERMINOLOGY AND CAPTIONS

All pronouns, singular, plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. Wherever the context may require, the singular shall mean and include the plural and the plural shall mean and include the singular. The term "Contract" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter" and the like mean this Contract in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings are for reference and convenience only and do not enter into or become a part of the context of this Contract, nor shall such headings affect the meaning or interpretation of this Contract.

ARTICLE 35 - WAIVER

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

ARTICLE 36 - PREPARATION

This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

ARTICLE 37 - MATERIALITY

All provisions of the Contract shall be deemed material. In the event CONTRACTOR fails to comply with any of the provisions contained in this Contract or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Contract and OWNER may at its option and without notice terminate this Contract.

ARTICLE 38 - REPRESENTATIONS/BINDING AUTHORITY

CONTRACTOR has full power, authority and legal right to execute and deliver this Contract and perform all of its obligations under this Contract. By signing this Contract, Nancy G. Rosso hereby represents to the OWNER that he/she has the authority and full legal power to execute this Contract and any and all documents necessary to effectuate and implement the terms of this Contract on behalf of the party for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Contract.

ARTICLE 39 - EXHIBITS

Each exhibit referred to in this Contract forms an essential part of this Contract. The exhibits, if not physically attached, should be treated as part of this Contract and are incorporated herein by reference.

ARTICLE 40 - CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS

This Contract consists of this document, the Bid, the Bid Addenda, General and Special Conditions, Construction Specifications and Design Plans. The CONTRACTOR agrees to be bound by all the terms and conditions set forth in this Contract and the Bid, Construction Specifications and Design Plans. To the extent that there exists a conflict between this Contract and the Bid, the terms, conditions, covenants, and/or provisions of this Contract 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.

ARTICLE 41 - LEGAL EFFECT

This Contract shall not become binding and effective until the Agreement by and between the Owner and the City of Riviera Beach dated _____, 2008, becomes effective pursuant to its terms.

ARTICLE 42 - NOTICE OF COMPLAINTS OR SUITS

Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Contract. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

ARTICLE 43 - SURVIVABILITY

Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

ARTICLE 44 - DEFAULT

Notwithstanding anything contained in this Contract to the contrary, the parties agree that the occurrence of any of the following shall be deemed a material event of default and shall be grounds for termination:

- a. The filing of a lien by any subcontractor or third tier subcontractor including, but not limited to materialmen, suppliers, or laborers, upon any property, right of way, easement, other interest in land or right

to use such land within the territorial boundaries of the OWNER which lien is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR;

b. The filing of any judgment lien against the assets of CONTRACTOR related to the performance of this Contract which is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR; or

ARTICLE 45 - WAIVER OF SUBROGATION

CONTRACTOR hereby waives any and all rights to Subrogation against the OWNER, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then the CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should the CONTRACTOR enter into such an agreement on a pre-loss basis.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK:

IN WITNESS WHEREOF, the parties unto this Contract have set their hand and seal on the day and year above written.

CONTRACTOR

ROSSO PAVING AND DRAINAGE, INC. a Florida corporation

BY: [Signature]
NANCY G. ROSSO,
PRESIDENT

Date: 2/3/09

OWNER

BROOK'S SUBDIVISION, LLC

By: Northwest Riviera Beach Community Redevelopment Corporation, a Florida not for profit corporation, its sole member

By: [Signature]
William H. Burrs, President

Date: 2/3/09

EXHIBIT "A"

SCOPE OF WORK

[Reports if Applicable]

[Key Personnel if Applicable]

RESOLUTION NO. 66-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING SCHEDULE 2 OF BID NO. 223-09 AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE PROPOSED CONSTRUCTION SERVICES CONTRACT WITH A CUT ABOVE LANDSCAPE AND MAINTENANCE INC., OF LOXAHATCHEE, FLORIDA FOR THE INSTALLATION OF A NEW IRRIGATION SYSTEM FOR PHASE I IMPROVEMENTS OF BICENTENNIAL PARK IN THE AMOUNT OF \$14,875.50; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Riviera Beach, Palm Beach County, Florida, hereby accepts the Purchasing Department's recommendation and approves a Construction Contract for the installation of a new irrigation system for Phase 1 Improvements to Bicentennial Park to be completed by A Cut Above Landscape and Maintenance of Loxahatchee, Florida the second low responsible bidder for Schedule 2 of Bid No 223-09 in the amount of \$14,875.50; and

WHEREAS, by virtue of Resolution No. 162-08, the City Council approved the master site plan; authorized the appropriation of additional funding; and authorized staff to implement the Phase 1 Improvements for Bicentennial 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 the bid proposal and awards a Construction Services Contract to the second lowest responsive and responsible bidder for Schedule 2 of Bid No. 223-09 in the amount of \$14,857.50 for the installation of a new irrigation system for Bicentennial Park; and authorizes the Mayor and City Clerk to execute same.

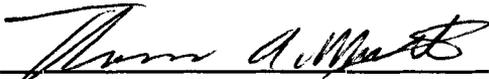
SECTION 2. The Mayor and Finance Director are authorized to make payment from the Parks and Recreation Capital Acquisition Account No. 310-1234-572-6-6351.

SECTION 3. The City Manager shall have authority to approve change orders in ,an amount not to exceed 10% of the contract award.

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

PASSED AND APPROVED this 17th day of June 2009

RESOLUTION NO. 66-09
PAGE 2
APPROVED:

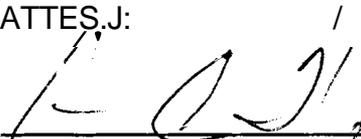


THOMAS A. MASTERS
MAYOR

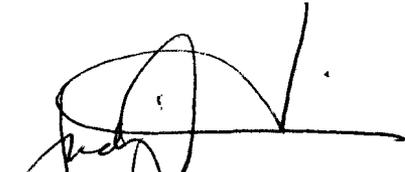


DAWN S. PARDO
CHAIRPERSON

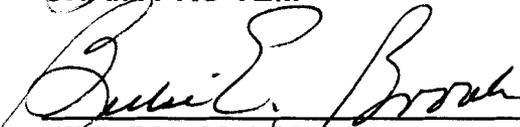
ATTES. J:



GARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK



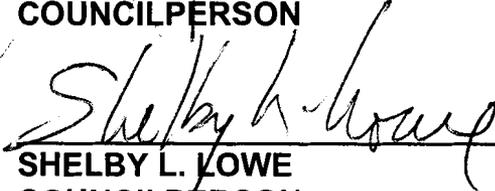
JUDY L. DAVIS
CHAIR PRO TEM



BILLIE E. BROOKS
COUNCILPERSON



CEDRICK A. THOMAS
COUNCILPERSON



SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: J. Davis

SECONDED BY: B. Brooks

D. PARDO nay

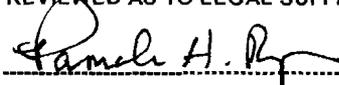
J. DAVIS aye

B. BROOKS aye

C. THOMAS nay

S. LOWE aye

REVIEWED AS TO LEGAL SUFFICIENCY



PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 6/9/09

CITY OF RIVIERA BEACH
CONTRACT FOR CONSTRUCTION SERVICES

This Contract is made as of this ^{17th} day of June, 2009 by and between the CITY OF RIVIERA BEACH, a Political Subdivision of the State of Florida, by and through its CITY COUNCIL, hereinafter referred to as the CITY, and A Cut Above Landscape & Maintenance, Inc., a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal J.D. number is 65-0884353.

In consideration of the mutual promises contained herein, the CITY and the CONTRACTOR agree as follows:

ARTICLE 1 - SERVICES

The CONTRACTOR'S responsibility under this Contract is to provide professional construction services to include all labor, materials, equipment and supervision for installation of a new irrigation system for the Phase I Improvements of Bicentennial Park, as more specifically set forth in the Invitation to Bid, to wit, Bid No. 223-09, hereinafter the "Bid", the Addenda, Specifications, Plans, General and Special Conditions and Exhibit "A" of the Contract all of which are incorporated herein by reference; and to the extent there exists a conflict between the bid and this Contract, the terms, conditions, covenants, and/or provisions of this Contract shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of various documents.

The CITY'S representative/liason during the performance of this Contract shall be the City of Riviera Beach Purchasing Director, Benjamin Guy, telephone no. 561-845-4180.

ARTICLE 2 - SCHEDULE

- A. Time of Completion - Construction work must begin within seven (7) calendar days from the date of issue of the Notice to Proceed; provided the CITY has received proof of insurance as set forth in Article 11. Construction work shall be carried at a rate to insure its substantial completion (to include site prep, installation of all irrigation lines and sprinkler devices) within thirty (30) calendar days from the date of the Notice to Proceed, the rate of progress and time of completion being essential conditions of this Contract.
- B. Deduction for not completing on time - If the contract work is not fully complete according to the terms of this Contract within the limits herein stipulated, the CONTRACTOR shall pay the CITY, not as a penalty, but as liquidated damages, a sum equal to one hundred and fifty dollars (\$150) for each day elapsing between the 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 Article 17, herein.
- C. Reports - Reports and other items shall be delivered or completed in accordance with the Invitation for Bids Specifications and Plans dated 4-20-09 for Bid No. 223-09 Bicentennial Park, Landscape Development Plans.

ARTICLE 3 - PAYMENTS TO CONTRACTOR

- A. Generally - The CITY agrees to compensate the CONTRACTOR \$14,857.50 in accordance with its Line Item Bid fee proposal as set forth in the CONTRACTOR'S response to Schedule 2 of Bid #223-09. Payments will be made based upon progress payment requests, submitted on a form approved by the CITY.
- B. Progress Invoices - No later than the 20th day of every month, the CONTRACTOR shall prepare and submit, on a form approved by the CITY'S representative, a detailed estimate and invoice which has been completed from the start of the job up to and including the last day of the preceding month, together with such supporting evidence of the expenditures as required by this Contract.
- C. Progress Payments - Invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the CITY representative, indicating that services have been rendered in conformity with the Contract and then will be sent to the Finance Department for payment. The CITY will pay to the CONTRACTOR ninety percent (90%) of the value based on the CONTRACTOR'S estimate and invoice, as approved by the CITY representative. Invoices will normally be paid within thirty (30) days following the CITY representative's approval.
- D. Payment of Expenses - There are no reimbursable expenses for this contract. The CONTRACTOR is responsible for any and all expenses related to the completion of this contract.
- E. Final Invoice - In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "Final Invoice" on the CONTRACTOR'S final/last billing to the CITY. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this [mal invoice are waived by the CONTRACTOR and the CITY shall have no obligations for any other costs or expenses thereafter.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONTRACTOR shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged to the CONTRACTOR'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or non current wage rates or due to inaccurate representations of fees paid to outside contractors. The CITY shall exercise its rights under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

This Contract may be canceled by the CONTRACTOR upon thirty (30) days prior written notice to the CITY'S representative in the event of substantial failure by the CITY to perform in accordance with the terms of this Contract through no fault of the CONTRACTOR; provided the CITY fails to cure same within that thirty (30) day period. It may also be terminated, in whole or in part, by the CITY, with or without cause, immediately upon written notice to the CONTRACTOR. Unless the CONTRACTOR is in breach of this Contract, the CONTRACTOR shall be paid for services rendered to the CITY'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the CITY, the CONTRACTOR shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the CITY.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 - PERSONNEL

The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the CITY.

All of the services required hereunder shall be performed by the 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.

Any changes or substitutions in the CONTRACTOR'S key personnel, as may be listed in Exhibit "A", must be made known to the CITY'S representative and written approval must be granted by the CITY'S representative before said change or substitution can become effective.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in their respective field(s).

The 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 CONTRACTOR. Nothing contained herein shall create any contractual relationship between any subcontractor and the CITY.

All of the CONTRACTOR'S personnel (and all Subcontractors) while on CITY premises will comply with all CITY requirements governing conduct, safety and security.

ARTICLE 7 - SUBCONTRACTING

The CITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities and approve all qualifications of any subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONTRACTOR is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the CITY.

If subcontractor(s) are used, the CONTRACTOR shall use only licensed and insured subcontractor(s), and shall require any subcontractor, as may be applicable, to provide a payment bond. All subcontractors shall be required to promptly make payments to any person who, directly or indirectly, provides services or supplies under this Contract.

The CONTRACTOR shall be responsible for the performance of all subcontractors.

ARTICLE 8 - MIWBE PARTICIPATION

Minority/Women-Owned Business Enterprises ("M/WBE") shall have the opportunity to participate in this project. CONTRACTOR is hereby informed that the CITY has established a goal of a minimum of 15% participation of M/WBE. A good faith effort will be made to hire M/WBE.

In keeping with the CITY'S policy, the CONTRACTOR further agrees to hire minority sub-contractors to work on this project.

In accordance with the CITY'S M/WBE Ordinance #2412, as amended, the CONTRACTOR agrees to the M/WBE participation for this Contract and agrees to abide by all provisions of the M/WBE Ordinance and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONTRACTOR agrees to maintain all relevant records and information necessary to document compliance with Ordinance #2412, as amended, and will allow the CITY to inspect such records.

ARTICLE 9 - FEDERAL AND STATE TAX

The CITY is exempt from payment of Florida State Sales and Use Taxes. The CITY will sign an exemption certificate submitted by the CONTRACTOR. The 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 CONTRACTOR authorized to use the CITY'S Tax Exemption Number in securing such materials.

The CONTRACTOR shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

ARTICLE 10 - AVAILABILITY OF FUNDS

The CITY'S performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the CITY OF RIVIERA BEACH CITY COUNCIL.

ARTICLE 11 - INSURANCE

- A. Prior to execution of this Contract by the CITY, the 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 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 CONTRACTOR of its liability and obligations under this Contract.
- B. The CONTRACTOR shall maintain during the term of this Contract, standard Professional Liability Insurance in the minimum amount of \$1,000,000.00 per occurrence.
- C. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability, insurance in the amount of \$500,000.00 per occurrence to protect the 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 Contract, whether such operations be by the CONTRACTOR or by anyone, directly or indirectly, employed by or contracting with the CONTRACTOR.
- D. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$500,000.00 combined single limit for bodily injury and property damages liability to protect the 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, but not limited to, leased and rented automobiles, whether such operations be by the CONTRACTOR or by anyone, directly or indirectly, employed by the CONTRACTOR.
- E. The parties to this Contract shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes. In the event that a party does not carry Workers' Compensation Insurance and chooses not to obtain same, then such party shall, in accordance with Section 440.05, Florida Statutes, apply for and obtain an exemption authorized by the Department of Insurance and shall provide a copy of such exemption to the CITY.
- F. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the CONTRACTOR shall specifically include the CITY as an "Additional Insured."

ARTICLE 12 - INDEMNIFICATION

To the extent allowed by law, the CONTRACTOR shall indemnify and hold harmless the CITY, its agents, officers, and employees from and against any and all claims, liability, losses, and/or causes of action which may arise from any negligent act, recklessness, or intentional wrongful conduct or omission of the CONTRACTOR, its agents, officers, or employees in the performance of services under this Contract.

The CONTRACTOR further agrees to indemnify and hold harmless the CITY, its agents, officers 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 CONTRACTOR not included in the paragraph above and for which the CITY, its agents, officers, or employees are alleged to be liable.

CONTRACTOR shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, all costs, expert witness fees, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Contract or any renewal thereof.

Nothing contained in this Article 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.

ARTICLE 13 - SUCCESSORS AND ASSIGNS

The CITY and the CONTRACTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Neither the CITY nor the CONTRACTOR shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the CITY which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the CITY and the CONTRACTOR.

ARTICLE 14 - VENUE

This Contract and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided therein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Venue for any and all actions arising from and/or relating to the Contract will be held in Palm Beach County, Florida.

ARTICLE IS-REMEDIES

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.

ARTICLE 16 - CONFLICT OF INTEREST

The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Florida Statutes, Section 112.311. The CONTRACTOR further represents that no person having any such conflicting interest shall be employed for said performance.

The CONTRACTOR shall promptly notify the CITY'S representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONTRACTOR'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the CITY as to whether the association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by the CONTRACTOR.

The CITY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the CONTRACTOR. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the CITY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the CITY by the CONTRACTOR under the terms of this Contract.

ARTICLE 17 - DELAYS AND EXTENSION OF TIME

The 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 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 CONTRACTOR'S request, the CITY shall consider the facts and extent of any failure to perform the work and, if the CONTRACTOR'S failure to perform was without it or its subcontractors' fault or negligence, as determined by the CITY, the Contract Schedule and/or any other affected provision of this Contract 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 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 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. No extension shall be made for a delay occurring more than seven (7) days before a claim therefore is made in writing to the Engineer. In the case of continuing cause of delay, only one (1) claim is necessary.

If no schedule or other agreement sets forth the dates by which the drawing(s) shall be furnished, then no claims for delay shall be allowed because of failure to furnish such drawing(s), until two (2) weeks after demand for the drawings and not then unless said claim is reasonable.

This Article does not exclude the recovery of damages for delay by either party under other provisions in the Contract.

ARTICLE 18 - INDEBTEDNESS

The CONTRACTOR shall not pledge the CITY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 19 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the CITY'S representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the CITY under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the CITY or at its expense will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the CITY'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the CITY'S expense shall be and remain the CITY'S property and may be reproduced and reused at the discretion of the CITY.

The CITY and the CONTRACTOR shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 20 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work, services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

The 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 Contract.

ARTICLE 21 - CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract 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 the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 22 - ACCESS AND AUDITS

The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Contract. The CITY shall have access to such books, records, and documents as required in this Article for the purpose of inspection or audit during normal business hours, at the CONTRACTOR'S place of business.

ARTICLE 23 - NONDISCRIMINATION

The CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, CONTRACTOR shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

ARTICLE 24 - ENFORCEMENT COSTS

If any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract, 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.

ARTICLE 25 - AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the CITY'S representative upon request.

The CONTRACTOR shall be solely responsible for obtaining and complying with all necessary permits, licenses, approvals and authorizations required for any work done pursuant to this Contract from any federal, state, regional, county or city agency.

ARTICLE 26 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 27 - PUBLIC ENTITY CRIMES

As provided in Sections 287.132-133, Florida Statutes, by entering into this Contract or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 28 - MODIFICATIONS OF WORK

The CITY reserves the right to make changes in the Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONTRACTOR of the CITY'S notification of a contemplated change, the 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 affect the CONTRACTOR'S ability to meet the completion dates or schedules of this Contract.

If the CITY so instructs in writing, the CONTRACTOR shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the CITY'S decision to proceed with the change.

If the CITY elects to make the change, the CITY shall initiate a Contract Amendment and the CONTRACTOR shall not commence work on any such change until such written amendment is signed by the CONTRACTOR and

approved and executed by the CITY COUNCIL FOR THE CITY OF RIVIERA BEACH or its designated representative.

ARTICLE 29 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

Mr. Benjamin Guy
Purchasing Director
City of Riviera Beach
2391 Avenue "L"
Riviera Beach, FL 33404

and if sent to the CONTRACTOR shall be mailed to:

Damon Rockett, President
A Cut Above Landscape and Maintenance, Inc.
14095 43rd Road North
Loxahatchee, FL 33470

ARTICLE 30 - ENTIRETY OF CONTRACTUAL AGREEMENT

The CITY and the CONTRACTOR agree that this Contract and any attachments hereto or other documents as referenced in the Contract sets forth the entire agreement between the parties, that there are no promises or understandings other than those stated herein, and this Contract supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 28 - Modifications of Work.

ARTICLE 31 - (INTENTIONALLY DELETED)

ARTICLE 32 - INSPECTION OF WORK

The CITY'S representative or the CITY'S Engineer shall at all times have access to work wherever it is, in preparation or progress, and the CONTRACTOR shall provide proper facilities for such access and for inspection.

If the specifications, the Engineer's instructions, laws, ordinances or any public authority requires any work to be specially tested or approved, the CONTRACTOR shall give the Engineer timely notice of its readiness for inspection. Inspections by the Engineer shall be made promptly and where practicable, at the source of supply. If any work should be covered up without approval or consent of the Engineer, it must, if required by the Engineer, be

ARTICLE 33- WARRANTY/GUARANTY

All materials and equipment to be furnished and/or installed by the CONTRACTOR under this Contract as it relates to the installation of the new irrigation system for Bicentennial Park, Bid No. 223-09, shall be guaranteed by the Manufacturer, if any, for a period of one (1) year from the date of final acceptance thereof against defective materials, design and workmanship. The CONTRACTOR shall guarantee all of its work, for a period of one year. Upon receipt of notice from the CITY of failure 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 CONTRACTOR or Manufacturer at no expense to the CITY. In the event the CONTRACTOR fails to make the necessary repairs or replacements within thirty (30) days after notification by the CITY, the CITY may accomplish the work at the expense of the CONTRACTOR.

The CONTRACTOR shall provide the CITY with a written warranty of its work and with a copy of the manufacturer's warranty as it relates to the materials and parts provided under this Contract.

ARTICLE 34 - PROTECTION OF WORK AND PROPERTY

The 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 Contract. 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 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.

Until acceptance of the work by the CITY, the CITY'S property shall be under the charge and care of the CONTRACTOR and the CONTRACTOR shall take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, and the 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.

ARTICLE 35 - TIME

Time is of the essence in all respects under this Contract.

ARTICLE 36 - TERMINOLOGY AND CAPTIONS

All pronouns, singular, plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. Wherever the context may require, the singular shall mean and include the plural and the plural shall mean and include the singular. The term "Contract" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter" and the like mean this Contract in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings are for reference and convenience only and do not enter into or become a part of the context of this Contract, nor shall such headings affect the meaning or interpretation of this Contract.

ARTICLE 37 - WAIVER

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

ARTICLE 38 - PREPARATION

This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

ARTICLE 39 - MATERIALITY

All provisions of the Contract shall be deemed material. In the event CONTRACTOR fails to comply with any of the provisions contained in this Contract or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Contract and CITY may at its option and without notice terminate this Contract.

ARTICLE 40 - REPRESENTATIONS/BINDING AUTHORITY

CONTRACTOR has full power, authority and legal right to execute and deliver this Contract and perform all of its obligations under this Contract. By signing this Contract, Damon Rockett hereby represents to the CITY that he has the authority and full legal power to execute this Contract and any and all documents necessary to effectuate and implement the terms of this Contract on behalf of the party for whom he is signing and to bind and obligate such party with respect to all provisions contained in this Contract.

ARTICLE 41 - EXHIBITS

Each exhibit referred to in this Contract forms an essential part of this Contract. The exhibits, if not physically attached, should be treated as part of this Contract and are incorporated herein by reference.

ARTICLE 42 - CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS

This Contract consists of Instruction to Bidders, General Conditions, Special Conditions, Plans and specifications. The CONTRACTOR agrees to be bound by all the terms and conditions set forth in this Contract and Bid 214-09. To the extent that there exists a conflict between this Contract and the Bid, the terms, conditions, covenants, and/or provisions of this Contract 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.

ARTICLE 43 - LEGAL EFFECT

This Contract shall not become binding and effective until approved by the CITY COUNCIL OF THE CITY OF RIVIERA BEACH or its designated representative.

ARTICLE 44 - NOTICE OF COMPLAINTS OR SUITS

Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Contract. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

ARTICLE 45 - SURVIVABILITY

Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

ARTICLE 46-DEFAULT

Notwithstanding anything contained in this Contract to the contrary, the parties agree that the occurrence of any of the following shall be deemed a material event of default and shall be grounds for termination:

- a. The filing of a lien by any subcontractor or third tier subcontractor including, but not limited to materialmen, suppliers, or laborers, upon any property, right of way, easement, other interest in land or right to use such land within the territorial boundaries of the CITY which lien is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR;
- b. The filing of any judgment lien against the assets of CONTRACTOR related to the performance of this Contract which is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR; or
- c. The filing of a petition by or against the CONTRACTOR for relief under the Bankruptcy Code, or for its reorganization or for the appointment of a receiver or trustee of the CONTRACTOR or the CONTRACTOR'S property; or an assignment by CONTRACTOR for the benefit of creditors; or the taking possession of the property of the CONTRACTOR by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of the CONTRACTOR; or if a temporary or permanent receiver or trustee shall be appointed for the CONTRACTOR or for the CONTRACTOR'S property and such temporary or permanent receiver or Trustee shall not be discharged within thirty (30) days from the date of appointment.

The CONTRACTOR shall provide written notice to the CITY of the occurrence of any event of default within ten (10) days of CONTRACTOR'S receipt of notice of any such default.

ARTICLE 47 - WAIVER OF SUBROGATION

CONTRACTOR hereby waives any and all rights to Subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not pennit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then the CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against others, or its equivalent.

This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should the CONTRACTOR enter into such an agreement on a pre-loss basis.

ARTICLE 48 - RIGHT TO REVIEW

The CITY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, reject or accept any required policies of insurance, including limits, coverages, or endorsements, therein from time to time throughout the term of this Contract. The CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

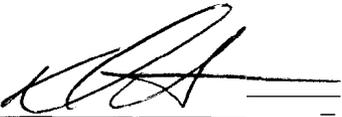
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IN WITNESS WHEREOF, the PARTIES OF THE CITY OF RIVIERA BEACH, FLORIDA have set their hand and seal on the day and year above written.

CITY OF RIVIERA BEACH

A CUT ABOVE LANDSCAPE & MAINTENANCE, INC.

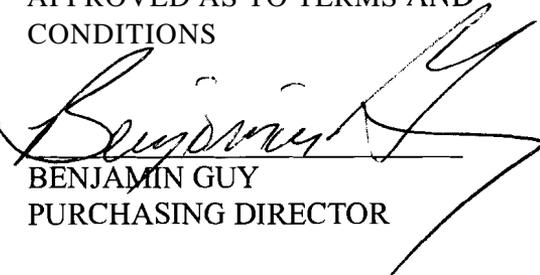
BY: 
THOMAS A. MASTERS,
MAYOR

BY: 
DAMON ROCKETT, PRESIDENT
A CUT ABOVE LANDSCAPE &
MAINTENANCE

ATTEST:

BY:  6/18/09
CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

APPROVED AS TO TERMS AND
CONDITIONS

BY: 
BENJAMIN GUY
PURCHASING DIRECTOR

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: 
PAMALA H. RYAN, — —
CITY ATTORNEY

Date: 6/19/09

BID COST PROPOSAL SHEET

(To Be Completed By the Bidder)

IRRIGATION SYSTEM INSTALLATION FOR BICENTENNIAL PARK
Schedule Two (2)

1) COST OF LABOR	\$ -----
2) COST OF ALL IRRIGATION MATERIAL AND SUPPLIES	\$ -----
3) TOTAL COST OF PROJECT	\$ <u>14,857.50</u>

Bid shall be awarded to the low responsive and responsible bidder for this individual schedule.

Contractor shall complete all work for this project within forty-five (45) calendar days after the bid closing date of May 8, 2009 but in any event no later than June 25, 2009.

Notes:

Water pressure from 2" municipal service line is assumed to be sufficient to satisfy continuous pressure requirements of irrigation plan.

Electricity for irrigation timer/clock to be provided from existing electrical source on site.

Appropriate backflow prevention devices shall be installed according to applicable code requirements.

Company: A Cut Above Landscape & Maint., Inc.

Address: , 4095 43rd Rd N, Lovelock, FL 33470

Contact: Neil Pope

Signature of Authorized Officer:  _____

RESOLUTION NO. 67-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING SCHEDULE 3 OF BID NO. 223-09 AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE PROPOSED CONSTRUCTION SERVICES CONTRACT WITH THE ARAZOZA BROS., CORP. OF HOMESTEAD, FLORIDA, THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER, FOR SITE GRADING AND RELATED SERVICES FOR PHASE I IMPROVEMENTS OF BICENTENNIAL PARK IN THE AMOUNT OF \$44,128.00; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Riviera Beach, Palm Beach County, Florida, hereby accepts the Purchasing Department's recommendation and approves a Construction Contract for site grading and related services for Phase 1 Improvements to Bicentennial Park to be completed by the Arazoza Brothers Corporation of Homestead, Florida the lowest responsible bidder for Schedule 3 of Bid No. 223-09 in the amount of \$44,128.00; and

WHEREAS, by virtue of Resolution No. 162-08, the City Council approved the master site plan; authorized the appropriation of additional funding; and authorized staff to implement Phase 1 Improvements for Bicentennial 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 the bid proposal and awards a Construction Services Contract to the lowest responsive and responsible bidder for Schedule 3 of Bid No. 223-09 in the amount of \$44,128.00 for site grading and related services for Bicentennial Park; and authorizes the Mayor and City Clerk to execute same.

SECTION 2. The Mayor and Finance Director are authorized to make payment from the Parks and Recreation Capital Acquisition Account No. 310-1234-572-6-6351.

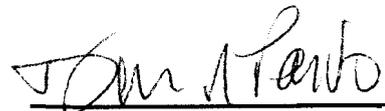
SECTION 3. The City Manager shall have authority to approve change orders in an amount not to exceed 10% of the contract award.

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

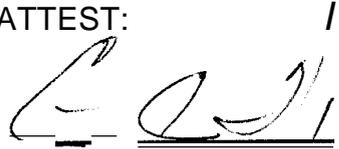
PASSED AND APPROVED this 17th day of June 2009

APPROVED:

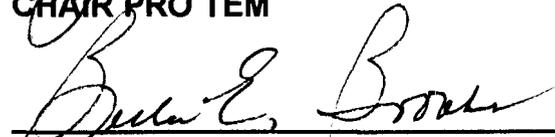

THOMAS A. MASTERS
MAYOR



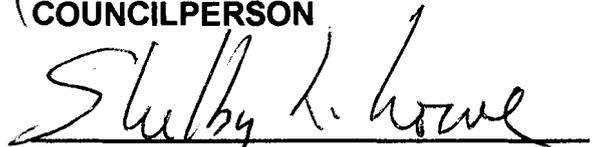
ATTEST:


CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK


JUDY L. DAVIS
CHAIR PRO TEM


BILLIE E. BROOKS
COUNCILPERSON


CEDRICK A. THOMAS
COUNCILPERSON


SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: S. Lowe

SECONDED BY: J. Davis

C. THOMAS nay

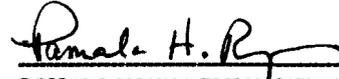
D. PARDO nay

J. DAVIS aye

B. BROOKS aye

S. LOWE aye

REVIEWED AS TO LEGAL SUFFICIENCY


PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 6/19/09

CITY OF RIVIERA BEACH
CONTRACT FOR CONSTRUCTION SERVICES

This Contract is made as of this 11 day of June, 2009 by and between the CITY OF RIVIERA BEACH, a Political Subdivision of the State of Florida, by and through its CITY COUNCIL, hereinafter referred to as the CITY, and Arazoza Brothers Corporation, Inc., a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal J.D. number is 65-0031332.

In consideration of the mutual promises contained herein, the CITY and the CONTRACTOR agree as follows:

ARTICLE 1 - SERVICES

The CONTRACTOR'S responsibility under this Contract is to provide professional construction services to include all labor, materials, equipment and supervision for grading and installation of materials for walkways and plaza area for the Phase I Improvements of Bicentennial Park, as more specifically set forth in the Invitation to Bid, to wit, Bid No. 223-09, hereinafter the "Bid", the Addenda, Specifications, Plans, General and Special Conditions and Exhibit "A" of the Contract all of which are incorporated herein by reference; and to the extent there exists a conflict between the bid and this Contract, the terms, conditions, covenants, and/or provisions of this Contract shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of various documents.

The CITY'S representative/liaison during the performance of this Contract shall be the City of Riviera Beach Purchasing Director, Benjamin Guy, telephone no. 561-845-4180.

ARTICLE 2 - SCHEDULE

- A. Time of Completion - Construction work must begin within seven (7) calendar days from the date of this contract; provided the CITY has received proof of insurance as set forth in Article 11. Construction work shall be carried at a rate to insure its substantial completion of all grading and installation of all walkways and plaza area within twenty (20) calendar days from the date the contract, the rate of progress and time of completion being essential conditions of this Contract.
- B. Deduction for not completing on time - If the contract work is not fully complete according to the terms of this Contract within the limits herein stipulated, the CONTRACTOR shall pay the CITY, not as a penalty, but as liquidated damages, a sum equal to two-hundred and fifty dollars (\$250) for each day elapsing between the 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 Article 17, herein.
- C. Reports - Reports and other items shall be delivered or completed in accordance with the Invitation for Bids Specifications and Plans dated 4-20-09 for Bid No. 223-09 Bicentennial Park, Landscape Development Plans.

ARTICLE 3 - PAYMENTS TO CONTRACTOR

- A. Generally - The CITY agrees to compensate the CONTRACTOR \$44,128.00 in accordance with its Line Item **Bid** fee proposal as set forth in the CONTRACTOR'S response to Schedule 3 of **Bid** #223-09, hereinafter referred to as Exhibit "A". Payments will be made based upon progress payment requests, submitted on a form approved by the CITY.
- B. Progress Invoices - No later than the 20th day of every month, the CONTRACTOR shall prepare and submit, on a form approved by the CITY'S representative, a detailed estimate and invoice which has been completed from the start of the job up to and including the last day of the preceding month, together with such supporting evidence of the expenditures as required by this Contract.
- C. Progress Payments - Invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the CITY representative, indicating that services have been rendered in conformity with the Contract and then will be sent to the Finance Department for payment. The CITY will pay to the CONTRACTOR ninety percent (90%) of the value based on the CONTRACTOR'S estimate and invoice, as approved by the CITY representative. Invoices will normally be paid within thirty (30) days following the CITY representative's approval.
- D. Payment of Expenses - There are no reimbursable expenses for this contract. The CONTRACTOR is responsible for any and all expenses related to the completion of this contract.
- E. Final Invoice - In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "Final Invoice" on the CONTRACTOR'S final billing to the CITY. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONTRACTOR and the CITY shall have no obligations for any other costs or expenses thereafter.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONTRACTOR shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged to the CONTRACTOR'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or non current wage rates or due to inaccurate representations of fees paid to outside contractors. The CITY shall exercise its rights under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

This Contract may be canceled by the CONTRACTOR upon thirty (30) days prior written notice to the CITY'S representative in the event of substantial failure by the CITY to perform in accordance with the terms of this Contract through no fault of the CONTRACTOR; provided the CITY fails to cure same within that thirty (30) day period. It may also be terminated, in whole or in part, by the CITY, with or without cause, immediately upon written notice to the CONTRACTOR. Unless the CONTRACTOR is in breach of this Contract, the CONTRACTOR shall be paid for services rendered to the CITY'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the CITY, the CONTRACTOR shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the CITY.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 - PERSONNEL

The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the CITY.

All of the services required hereunder shall be performed by the 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.

Any changes or substitutions in the CONTRACTOR'S key personnel, as may be listed in Exhibit "A", must be made known to the CITY'S representative and written approval must be granted by the CITY'S representative before said change or substitution can become effective.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in their respective field(s).

The 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 CONTRACTOR. Nothing contained herein shall create any contractual relationship between any subcontractor and the CITY.

All of the CONTRACTOR'S personnel (and all Subcontractors) while on CITY premises will comply with all CITY requirements governing conduct, safety and security.

ARTICLE 7 - SUBCONTRACTING

The CITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities and approve all qualifications of any subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONTRACTOR is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the CITY.

If subcontractor(s) are used, the CONTRACTOR shall use only licensed and insured subcontractor(s), and shall require any subcontractor, as may be applicable, to provide a payment bond. All subcontractors shall be required to promptly make payments to any person who, directly or indirectly, provides services or supplies under this Contract.

The CONTRACTOR shall be responsible for the performance of all subcontractors.

ARTICLE 8 - MIWBE PARTICIPATION

Minority/Women-Owned Business Enterprises ("MIWBE") shall have the opportunity to participate in this project. CONTRACTOR is hereby informed that the CITY has established a goal of a minimum of 15% participation of *M/WBE*. A good faith effort will be made to hire MIWBE.

In keeping with the CITY'S policy, the CONTRACTOR further agrees to hire minority sub-contractors to work on this project.

In accordance with the CITY'S *M/WBE* Ordinance #2412, as amended, the CONTRACTOR agrees to the MIWBE participation for this Contract and agrees to abide by all provisions of the MIWBE Ordinance and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONTRACTOR agrees to maintain all relevant records and information necessary to document compliance with Ordinance #2412, as amended, and will allow the CITY to inspect such records.

ARTICLE 9 - FEDERAL AND STATE TAX

The CITY is exempt from payment of Florida State Sales and Use Taxes. The CITY will sign an exemption certificate submitted by the CONTRACTOR. The 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 CONTRACTOR authorized to use the CITY'S Tax Exemption Number in securing such materials.

The CONTRACTOR shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

ARTICLE 10 - AVAILABILITY OF FUNDS

The CITY'S performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the CITY OF RIVIERA BEACH CITY COUNCIL.

ARTICLE 11 - INSURANCE

A. Prior to execution of this Contract by the CITY, the 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 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 CONTRACTOR of its liability and obligations under this Contract.

B. The CONTRACTOR shall maintain during the term of this Contract, standard Professional Liability Insurance in the minimum amount of \$1,000,000.00 per occurrence.

C. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability, insurance in the amount of \$500,000.00 per occurrence to protect the 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 Contract, whether such operations be by the CONTRACTOR or by anyone, directly or indirectly, employed by or contracting with the CONTRACTOR.

D. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$500,000.00 combined single limit for bodily injury and property damages liability to protect the 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, but not limited to, leased and rented automobiles, whether such operations be by the CONTRACTOR or by anyone, directly or indirectly, employed by the CONTRACTOR.

E. The parties to this Contract shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes. In the event that a party does not carry Workers' Compensation Insurance and chooses not to obtain same, then such party shall, in accordance with Section 440.05, Florida Statutes, apply for and obtain an exemption authorized by the Department of Insurance and shall provide a copy of such exemption to the CITY.

F. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the CONTRACTOR shall specifically include the CITY as an "Additional Insured."

ARTICLE 12 - INDEMNIFICATION

To the extent allowed by law, the CONTRACTOR shall indemnify and hold harmless the CITY, its agents, officers, and employees from and against any and all claims, liability, losses, and/or causes of action which may arise from any negligent act, recklessness, or intentional wrongful conduct or omission of the CONTRACTOR, its agents, officers, or employees in the performance of services under this Contract.

The CONTRACTOR further agrees to indemnify and hold harmless the CITY, its agents, officers 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 CONTRACTOR not included in the paragraph above and for which the CITY, its agents, officers, or employees are alleged to be liable.

CONTRACTOR shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, all costs, expert witness fees, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Contract or any renewal thereof.

Nothing contained in this Article 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.

ARTICLE 13 - SUCCESSORS AND ASSIGNS

The CITY and the CONTRACTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Neither the CITY nor the CONTRACTOR shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the CITY which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the CITY and the CONTRACTOR.

ARTICLE 14 - VENUE

This Contract and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided therein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Venue for any and all actions arising from and/or relating to the Contract will be held in Palm Beach County, Florida.

ARTICLE 15 - REMEDIES

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.

ARTICLE 16 - CONFLICT OF INTEREST

The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Florida Statutes, Section 112.311. The CONTRACTOR further represents that no person having any such conflicting interest shall be employed for said performance.

The CONTRACTOR shall promptly notify the CITY'S representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONTRACTOR'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the CITY as to whether the association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by the CONTRACTOR.

The CITY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the CONTRACTOR. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the CITY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the CITY by the CONTRACTOR under the terms of this Contract.

ARTICLE 17 – DELAYS AND EXTENSION OF TIME

The 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 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 CONTRACTOR'S request, the CITY shall consider the facts and extent of any failure to perform the work and, if the CONTRACTOR'S failure to perform was without it or its subcontractors' fault or negligence, as determined by the CITY, the Contract Schedule and/or any other affected provision of this Contract 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 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 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. No extension shall be made for a delay occurring more than seven (7) days before a claim therefore is made in writing to the Engineer. In the case of continuing cause of delay, only one (1) claim is necessary.

If no schedule or other agreement sets forth the dates by which the drawing(s) shall be furnished, then no claims for

delay shall be allowed because of failure to furnish such drawing(s), until two (2) weeks after demand for the drawings and not then unless said claim is reasonable.

This Article does not exclude the recovery of damages for delay by either party under other provisions in the Contract.

ARTICLE 18 - INDEBTEDNESS

The CONTRACTOR shall not pledge the CITY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 19 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the CITY'S representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the CITY under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the CITY or at its expense will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the CITY'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the CITY'S expense shall be and remain the CITY'S property and may be reproduced and reused at the discretion of the CITY.

The CITY and the CONTRACTOR shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 20 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work, services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

The 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 Contract.

ARTICLE 21 - CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract 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 the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 22 - ACCESS AND AUDITS

The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Contract. The CITY shall have access to such books, records, and documents as required in this Article for the purpose of inspection or audit during normal business hours, at the CONTRACTOR'S place of business.

ARTICLE 23 - NONDISCRIMINATION

The CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, CONTRACTOR shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

ARTICLE 24 - ENFORCEMENT COSTS

If any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract, 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.

ARTICLE 25 - AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the CITY'S representative upon request.

The CONTRACTOR shall be solely responsible for obtaining and complying with all necessary pennits, licenses, approvals and authorizations required for any work done pursuant to this Contract from any federal, state, regional, county or city agency.

ARTICLE 26 - SEVERABILITY

If any tenn or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such tenns or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other tenn and provision ofthis Contract shall be deemed valid and enforceable to the extent pennitted by law.

ARTICLE 27 - PUBLIC ENTITY CRIMES

As provided in Sections 287.132-133, Florida Statutes, by entering into this Contract or perfonning any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and contractors who will perfonn hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 28 - MODIFICATIONS OF WORK

The CITY reserves the right to make changes in the Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONTRACTOR of the CITY'S notification of a contemplated change, the 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 affect the CONTRACTOR'S ability to meet the completion dates or schedules of this Contract.

If the CITY so instructs in writing, the CONTRACTOR shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the CITY'S decision to proceed with the change.

If the CITY elects to make the change, the CITY shall initiate a Contract Amendment and the CONTRACTOR shall not commence work on any such change until such written amendment is signed by the CONTRACTOR and approved and executed by the CITY COUNCIL FOR THE CITY OF RIVIERA BEACH or its designated representative.

ARTICLE 29 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

Mr. Benjamin Guy
Purchasing Director
City of Riviera Beach
2391 Avenue "L"
Riviera Beach, FL 33404

and if sent to the CONTRACTOR shall be mailed to:

Alberto Arazoza, President
Arazoza Brother Corporation
P.O. Box 924890
Homestead, FL 33092

ARTICLE 30 - ENTIRETY OF CONTRACTUAL AGREEMENT

The CITY and the CONTRACTOR agree that this Contract and any attachments hereto or other documents as referenced in the Contract sets forth the entire agreement between the parties, that there are no promises or understandings other than those stated herein, and this Contract supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 28 - Modifications of Work.

ARTICLE 31 - INTENTIONALLY DELETED

ARTICLE 32 - INSPECTION OF WORK

The CITY'S representative or the CITY'S Engineer shall at all times have access to work wherever it is, in preparation or progress, and the CONTRACTOR shall provide proper facilities for such access and for inspection.

If the specifications, the Engineer's instructions, laws, ordinances or any public authority requires any work to be specially tested or approved, the CONTRACTOR shall give the Engineer timely notice of its readiness for inspection. Inspections by the Engineer shall be made promptly and where practicable, at the source of supply. If any work should be covered up without approval or consent of the Engineer, it must, if required by the Engineer, be uncovered for examination, at the CONTRACTOR'S expense.

ARTICLE 33- WARRANTY/GUARANTY

All materials and equipment to be furnished and/or installed by the CONTRACTOR under this Contract as it relates to site grading and related services for the Phase I Improvements of Bicentennial Park, Bid No. 223-09, shall be guaranteed by the Manufacturer, if any, for a period of one (1) year from the date of final acceptance thereof against defective materials, design and workmanship. The CONTRACTOR shall guarantee all of its work, for a period of one year. Upon receipt of notice from the CITY of failure 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 CONTRACTOR or Manufacturer at no expense to the CITY. In the event the CONTRACTOR fails to make the necessary repairs or replacements within thirty (30) days after notification by the CITY, the CITY may accomplish the work at the expense of the CONTRACTOR.

The CONTRACTOR shall provide the CITY with a written warranty of its work and with a copy of the manufacture's warranty as it relates to the materials and parts provided under this Contract.

ARTICLE 34 - PROTECTION OF WORK AND PROPERTY

The 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 Contract. 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 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.

Until acceptance of the work by the CITY, the CITY'S property shall be under the charge and care of the CONTRACTOR and the CONTRACTOR shall take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, and the 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.

ARTICLE 35 - TIME

Time is of the essence in all respects under this Contract.

ARTICLE 36 - TERMINOLOGY AND CAPTIONS

All pronouns, singular, plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. Wherever the context may require, the singular shall mean and include the plural and the plural shall mean and include the singular. The term "Contract" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter" and the like mean this Contract in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings are for reference and convenience only and do not enter into or become a part of the context of this Contract, nor shall such headings affect the meaning or interpretation of this Contract.

ARTICLE 37 - WAIVER

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

ARTICLE 38 - PREPARATION

This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

ARTICLE 39 - MATERIALITY

All provisions of the Contract shall be deemed material. In the event CONTRACTOR fails to comply with any of the provisions contained in this Contract or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Contract and CITY may at its option and without notice terminate this Contract.

ARTICLE 40 - REPRESENTATIONS/BINDING AUTHORITY

CONTRACTOR has full power, authority and legal right to execute and deliver this Contract and perform all of its obligations under this Contract. By signing this Contract, Alberto Arazoza hereby represents to the CITY that he has the authority and full legal power to execute this Contract and any and all documents necessary to effectuate and implement the terms of this Contract on behalf of the party for whom he is signing and to bind and obligate such party with respect to all provisions contained in this Contract.

ARTICLE 41- EXHIBITS

Each exhibit referred to in this Contract forms an essential part of this Contract. The exhibits, if not physically attached, should be treated as part of this Contract and are incorporated herein by reference.

ARTICLE 42 - CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS

This Contract consists of Instruction to Bidders, General Conditions, Special Conditions, Plans and specifications. The CONTRACTOR agrees to be bound by all the terms and conditions set forth in this Contract and Bid 214-09. To the extent that there exists a conflict between this Contract and the Bid, the terms, conditions, covenants, and/or provisions of this Contract 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.

ARTICLE 43 - LEGAL EFFECT

This Contract shall not become binding and effective until approved by the CITY COUNCIL OF THE CITY OF RIVIERA BEACH or its designated representative.

ARTICLE 44 - NOTICE OF COMPLAINTS OR SUITS

Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Contract. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

ARTICLE 45 - SURVIVABILITY

Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

ARTICLE 46-DEFAULT

Notwithstanding anything contained in this Contract to the contrary, the parties agree that the occurrence of any of the following shall be deemed a material event of default and shall be grounds for termination:

- a. The filing of a lien by any subcontractor or third tier subcontractor including, but not limited to materialmen, suppliers, or laborers, upon any property, right of way, easement, other interest in land or right to use such land within the territorial boundaries of the CITY which lien is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR;
- b. The filing of any judgment lien against the assets of CONTRACTOR related to the performance of this Contract which is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR; or
- c. The filing of a petition by or against the CONTRACTOR for relief under the Bankruptcy Code, or for its reorganization or for the appointment of a receiver or trustee of the CONTRACTOR or the CONTRACTOR'S property; or an assignment by CONTRACTOR for the benefit of creditors; or the taking possession of the property of the CONTRACTOR by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of the CONTRACTOR; or if a temporary or permanent receiver or trustee shall be appointed for the CONTRACTOR or for the CONTRACTOR'S property and such temporary or permanent receiver or Trustee shall not be discharged within thirty (30) days from the date of appointment.

The CONTRACTOR shall provide written notice to the CITY of the occurrence of any event of default within ten (10) days of CONTRACTOR'S receipt of notice of any such default.

ARTICLE 47 - WAIVER OF SUBROGATION

CONTRACTOR hereby waives any and all rights to Subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then the CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should the CONTRACTOR enter into such an agreement on a pre-loss basis.

ARTICLE 48 - RIGHT TO REVIEW

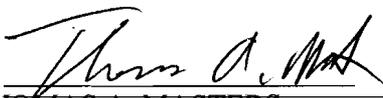
The CITY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, reject or accept any required policies of insurance, including limits, coverages, or endorsements, therein from time to time throughout the term of this Contract. The CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

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IN WITNESS WHEREOF, the PARTIES OF THE CITY OF RIVIERA BEACH, FLORIDA have set their hand and seal on the day and year above written.

CITY OF RIVIERA BEACH

ARAZOZA BROTHER CORPORATION.

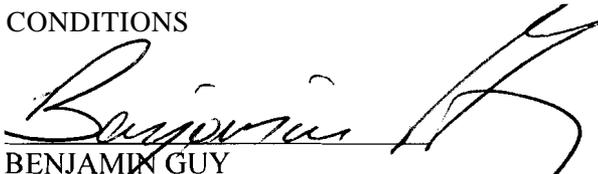
BY: 
THOMAS A. MASTERS,
MAYOR

BY: 
ALBERTO ARAZOZA,
PRESIDENT OF
ARAZOZA BROTHER CORPORATION

ATTEST:

BY:  6/18/09
CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

APPROVED AS TO TERMS AND
CONDITIONS

BY: 
BENJAMIN GUY
PURCHASING DIRECTOR

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: 
PAMALA H. RYAN
CITY ATTORNEY

Date: 6/19/09

RESOLUTION NO. 68-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING SCHEDULE 1 OF BID NO. 223-09 AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE PROPOSED CONSTRUCTION SERVICES CONTRACT WITH SUNSHINE LAND DESIGN, INC. OF STUART, FLORIDA, THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER, FOR THE PURCHASE AND INSTALLATION OF NEW TREES, PALMS, SHRUBS, SOD, AND MULCH FOR PHASE I IMPROVEMENTS OF BICENTENNIAL PARK IN THE AMOUNT OF \$101,487.22; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Riviera Beach, Palm Beach County, Florida, hereby accepts the Purchasing Department's recommendation and approves the Landscape Improvement Contract for the purchase and installation of new trees, palms, shrubs, sod, and mulch for Phase 1 Improvements to Bicentennial Park to be completed by Sunshine Land Design, Inc. the low responsive and responsible bidder for Schedule 1 of Bid No. 223-09 in the amount of \$101,487.22; and

WHEREAS, by virtue of Resolution No. 162-08, the City Council approved the master site plan; authorized the appropriation of additional funding; and authorized staff to implement Phase 1 Improvements for Bicentennial 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 the bid proposal and awards a Construction Services Contract to the lowest responsive and responsible bidder for Schedule 1 of Bid No. 223-09 in the amount of \$101,487.22 for the purchase and installation of new landscaping for Bicentennial Park; and authorizes the Mayor and City Clerk to execute same.

SECTION 2. The Mayor and Finance Director are authorized to make payment from the Parks and Recreation Capital Acquisition Account No. 310-1234-572-6-6351.

SECTION 3. The City Manager shall have authority to approve change orders in an amount not to exceed 14% of the contract award.

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

PASSED AND APPROVED this 17th day of June 2009

APPROVED:



THOMAS A. MASTERS
MAYOR

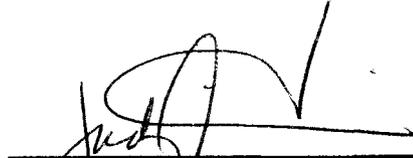


DAWN S. PARDO
CHAIRPERSON

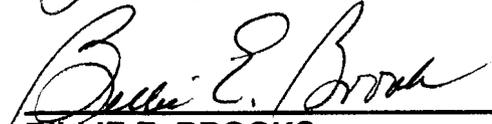
ATTEST:



CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK



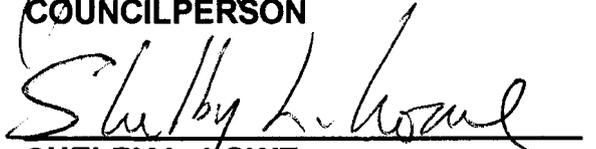
JUDY L. DAVIS
CHAIR PRO TEM



BILLIE E. BROOKS
COUNCILPERSON



CEDRICK A. THOMAS
COUNCILPERSON



SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: S. Lowe

SECONDED BY: B. Brooks

C. THOMAS nay

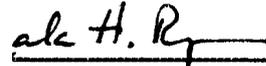
D. PARDO nay

J. DAVIS aye

B. BROOKS aye

S. LOWE aye

REVIEWED AS TO LEGAL SUFFICIENCY



PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 6/9/09

CITY OF RIVIERA BEACH
CONTRACT FOR LANDSCAPE IMPROVEMENTS

This Contract is made as of this 17th day of June, 2009 by and between the CITY OF RIVIERA BEACH, a Political Subdivision of the State of Florida, by and through its CITY COUNCIL, hereinafter referred to as the CITY, and Sunshine Land Design, Inc., a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal LD. number is 59-2712892.

In consideration of the mutual promises contained herein, the CITY and the CONTRACTOR agree as follows:

ARTICLE 1- SERVICES

The CONTRACTOR'S responsibility under this Contract is to provide landscape improvement services to include the purchase and installation of new trees, palms, shrubs, sod and mulch for the Phase I Improvements of Bicentennial Park, as more specifically set forth in the Invitation to Bid, to wit, Bid No. 223-09, hereinafter the "Bid", the Addenda, Specifications, Plans, General and Special Conditions and Exhibit "A" of the Contract all of which are incorporated herein by reference; and to the extent there exists a conflict between the bid and this Contract, the terms, conditions, covenants, and/or provisions of this Contract shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of various documents.

The CITY'S representative/liaison during the performance of this Contract shall be the City of Riviera Beach Purchasing Director, Benjamin Guy, telephone no. 561-845-4180.

ARTICLE 2 - SCHEDULE

- A. Time of Completion - Construction work must begin within seven (7) calendar days from the date of issue of the Notice to Proceed; provided the CITY has received proof of insurance as set forth in Article 11 and a Performance and Surety Bond as set forth in Article 31 in a form satisfactory to the CITY. Construction work shall be carried on at a rate to insure its substantial completion (to include site prep, installation of all plant materials within thirty (30) calendar days from the date of issue of the Notice to Proceed, the rate of progress and time of completion being essential conditions of this Contract.
- B. Deduction for not completing on time - If the contract work is not fully complete according to the terms of this Contract within the limits herein stipulated, the CONTRACTOR shall pay the CITY, not as a penalty, but as liquidated damages, a sum equal to two hundred dollars (\$200) for each day elapsing between the 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 Article 17, herein.

- C. Reports - Reports and other items shall be delivered or completed in accordance with the Invitation for Bids Specifications and Plans dated 4-20-09 for Bid No. 223-09: Bicentennial Park, Landscape Development Plans.

ARTICLE 3 - PAYMENTS TO CONTRACTOR

- A. Generally - The CITY agrees to compensate the CONTRACTOR \$101,487.22 in accordance with its Line Item Bid fee proposal as set forth in the CONTRACTOR'S response to Schedule 1 of Bid #223-09. Payments will be made based upon progress payment requests, submitted on a form approved by the CITY.
- B. Progress Invoices - No later than the 20th day of every month, the CONTRACTOR shall prepare and submit, on a form approved by the CITY'S representative, a detailed estimate and invoice which has been completed from the start of the job up to and including the last day of the preceding month, together with such supporting evidence of the expenditures as required by this Contract.
- C. Progress Payments - Invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the CITY representative, indicating that services have been rendered in conformity with the Contract and then will be sent to the Finance Department for payment. The CITY will pay to the CONTRACTOR ninety percent (90%) of the value based on the CONTRACTOR'S estimate and invoice, as approved by the CITY representative. Invoices will normally be paid within thirty (30) days following the CITY representative's approval.
- D. Payment of Expenses - There are no reimbursable expenses for this contract. The CONTRACTOR is responsible for any and all expenses related to the completion of this contract.
- E. Final Invoice - In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "Final Invoice" on the CONTRACTOR'S final/last billing to the CITY. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONTRACTOR and the CITY shall have no obligations for any other costs or expenses thereafter.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONTRACTOR shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged to the CONTRACTOR'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or non current wage rates or due to inaccurate representations of fees paid to outside contractors. The CITY shall exercise its rights under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

This Contract may be canceled by the CONTRACTOR upon thirty (30) days prior written notice to the CITY'S representative in the event of substantial failure by the CITY to perform in accordance with the terms of this Contract through no fault of the CONTRACTOR; provided the CITY fails to cure same within that thirty (30) day period. It may also be terminated, in whole or in part, by the CITY, with or without cause, immediately upon written notice to the CONTRACTOR. Unless the CONTRACTOR is in breach of this Contract, the CONTRACTOR shall be paid for services rendered to the CITY'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the CITY, the CONTRACTOR shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the CITY.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 - PERSONNEL

The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the CITY.

All of the services required hereunder shall be performed by the 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.

Any changes or substitutions in the CONTRACTOR'S key personnel, as may be listed in Exhibit "A", must be made known to the CITY'S representative and written approval must be granted by the CITY'S representative before said change or substitution can become effective.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in their respective field(s).

The 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 CONTRACTOR. Nothing contained herein shall create any contractual relationship between any subcontractor and the CITY.

All of the CONTRACTOR'S personnel (and all Subcontractors) while on CITY premises will comply with all CITY requirements governing conduct, safety and security.

ARTICLE 7 - SUBCONTRACTING

The CITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities and approve all qualifications of any subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONTRACTOR is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the CITY.

If subcontractor(s) are used, the CONTRACTOR shall use only licensed and insured subcontractor(s), and shall require any subcontractor, as may be applicable, to provide a payment bond. All subcontractors shall be required to promptly make payments to any person who, directly or indirectly, provides services or supplies under this Contract.

The CONTRACTOR shall be responsible for the performance of all subcontractors.

ARTICLE 8 - M/WBE PARTICIPATION

Minority/Women-Owned Business Enterprises ("M/WBE") shall have the opportunity to participate in this project. CONTRACTOR is hereby informed that the CITY has established a goal of a minimum of 15% participation of M/WBE. A good faith effort will be made to hire M/WBE.

In keeping with the CITY'S policy, the CONTRACTOR further agrees to hire minority sub-contractors to work on this project.

In accordance with the CITY'S M/WBE Ordinance #2412, as amended, the CONTRACTOR agrees to the M/WBE participation for this Contract and agrees to abide by all provisions of the M/WBE Ordinance and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONTRACTOR agrees to maintain all relevant records and information necessary to document compliance with Ordinance #2412, as amended, and will allow the CITY to inspect such records.

ARTICLE 9 - FEDERAL AND STATE TAX

The CITY is exempt from payment of Florida State Sales and Use Taxes. The CITY will sign an exemption certificate submitted by the CONTRACTOR. The 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 CONTRACTOR authorized to use the CITY'S Tax Exemption Number in securing such materials.

The CONTRACTOR shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

ARTICLE 10 - AVAILABILITY OF FUNDS

The CITY'S performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the CITY OF RIVIERA BEACH CITY COUNCIL.

ARTICLE II - INSURANCE

A. Prior to execution of this Contract by the CITY, the 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 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 CONTRACTOR of its liability and obligations under this Contract.

B. The CONTRACTOR shall maintain during the term of this Contract, standard Professional Liability Insurance in the minimum amount of \$1,000,000.00 per occurrence.

C. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability, insurance in the amount of \$500,000.00 per occurrence to protect the 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 Contract, whether such operations be by the CONTRACTOR or by anyone, directly or indirectly, employed by or contracting with the CONTRACTOR.

D. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$500,000.00 combined single limit for bodily injury and property damages liability to protect the 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, but not limited to, leased and rented automobiles, whether such operations be by the CONTRACTOR or by anyone, directly or indirectly, employed by the CONTRACTOR.

E. The parties to this Contract shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes. In the event that a party does not carry Workers' Compensation Insurance and chooses not to obtain same, then such party shall, in accordance with Section 440.05, Florida Statutes, apply for and obtain an exemption authorized by the Department of Insurance and shall provide a copy of such exemption to the CITY.

F. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the CONTRACTOR shall specifically include the CITY as an "Additional Insured."

ARTICLE 12 - INDEMNIFICATION

To the extent allowed by law, the CONTRACTOR shall indemnify and hold harmless the CITY, its agents, officers, and employees from and against any and all claims, liability, losses, and/or causes of action which may arise from any negligent act, recklessness, or intentional wrongful conduct or omission of the CONTRACTOR, its agents, officers, or employees in the performance of services under this Contract.

The CONTRACTOR further agrees to indemnify and hold harmless the CITY, its agents, officers 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 CONTRACTOR not included in the paragraph above and for which the CITY, its agents, officers, or employees are alleged to be liable.

CONTRACTOR shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, all costs, expert witness fees, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Contract or any renewal thereof.

Nothing contained in this Article 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.

ARTICLE 13 - SUCCESSORS AND ASSIGNS

The CITY and the CONTRACTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Neither the CITY nor the CONTRACTOR shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the CITY which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the CITY and the CONTRACTOR.

ARTICLE 14 - VENUE

This Contract and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided therein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Venue for any and all actions arising from and/or relating to the Contract will be held in Palm Beach County, Florida.

ARTICLE IS-REMEDIES

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.

ARTICLE 16 - CONFLICT OF INTEREST

The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Florida Statutes, Section 112.311. The CONTRACTOR further represents that no person having any such conflicting interest shall be employed for said performance.

The CONTRACTOR shall promptly notify the CITY'S representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONTRACTOR'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the CITY as to whether the association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by the CONTRACTOR.

The CITY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the CONTRACTOR. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the CITY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the CITY by the CONTRACTOR under the terms of this Contract.

ARTICLE 17 - DELAYS AND EXTENSION OF TIME

The 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 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 CONTRACTOR'S request, the CITY shall consider the facts and extent of any failure to perform the work and, if the CONTRACTOR'S failure to perform was without it or its subcontractors' fault or negligence, as determined by the CITY, the Contract Schedule and/or any other affected provision of this Contract 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 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 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. No extension shall be made for a delay occurring more than seven (7) days before a claim therefore is made in writing to the Engineer. In the case of continuing cause of delay, only one (1) claim is necessary.

If no schedule or other agreement sets forth the dates by which the drawing(s) shall be furnished, then no claims for delay shall be allowed because of failure to furnish such drawing(s), until two (2) weeks after demand for the drawings and not then unless said claim is reasonable.

This Article does not exclude the recovery of damages for delay by either party under other provisions in the Contract.

ARTICLE 18 - INDEBTEDNESS

The CONTRACTOR shall not pledge the CITY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 19 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the CITY'S representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the CITY under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the CITY or at its expense will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the CITY'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the CITY'S expense shall be and remain the CITY'S property and may be reproduced and reused at the discretion of the CITY.

The CITY and the CONTRACTOR shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 20 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work, services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

The 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 Contract.

ARTICLE 21 - CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract 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 the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 22 - ACCESS AND AUDITS

The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Contract. The CITY shall have access to such books, records, and documents as required in this Article for the purpose of inspection or audit during normal business hours, at the CONTRACTOR'S place of business.

ARTICLE 23 - NONDISCRIMINATION

The CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, CONTRACTOR shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

ARTICLE 24 - ENFORCEMENT COSTS

If any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract, 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.

ARTICLE 25 - AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the CITY'S representative upon request.

The CONTRACTOR shall be solely responsible for obtaining and complying with all necessary permits, licenses, approvals and authorizations required for any work done pursuant to this Contract from any federal, state, regional, county or city agency.

ARTICLE 26 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 27 - PUBLIC ENTITY CRIMES

As provided in Sections 287.132-133, Florida Statutes, by entering into this Contract or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 28 - MODIFICATIONS OF WORK

The CITY reserves the right to make changes in the Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONTRACTOR of the CITY'S notification of a contemplated change, the 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 affect the CONTRACTOR'S ability to meet the completion dates or schedules of this Contract.

If the CITY so instructs in writing, the CONTRACTOR shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the CITY'S decision to proceed with the change.

If the CITY elects to make the change, the CITY shall initiate a Contract Amendment and the CONTRACTOR shall not commence work on any such change until such written amendment is signed by the CONTRACTOR and

approved and executed by the CITY COUNCIL FOR THE CITY OF RIVIERA BEACH or its designated representative.

ARTICLE 29 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

Mr. Benjamin Guy
Purchasing Director
City of Riviera Beach
2391 Avenue "L"
Riviera Beach, FL 33404

and if sent to the CONTRACTOR shall be mailed to:

Timothy R. Taylor, President
Sunshine Land Design, Inc.
3291 S.E. Lionel Terrace
Stuart, FL 34997

ARTICLE 30 - ENTIRETY OF CONTRACTUAL AGREEMENT

The CITY and the CONTRACTOR agree that this Contract and any attachments hereto or other documents as referenced in the Contract sets forth the entire agreement between the parties, that there are no promises or understandings other than those stated herein, and this Contract supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 28 - Modifications of Work.

ARTICLE 31 - SPECIAL CONDITIONS

All materials and supplies provided by CONTRACTOR shall be in accordance with the plans and specifications approved by the CITY.

The CONTRACTOR shall furnish bonds and maintain said bonds throughout the duration of the project as provided for in Florida Statutes section 255.01 Et. Seq. covering the faithful performance of the Contract and payment of all obligations arising thereunder. The bonds shall be secured by the CONTRACTOR from a surety company licensed in the State of Florida with an "A-" rating or better in management and a "10" rating or better in strength as rated by Best's Key Rating Guide published by Alfred M. Best Company, Oldwick, New Jersey 08858.

The CONTRACTOR shall be required to provide Surety Bonds in the amount of one hundred percent (100%) of the Contract amount. The required premiums shall be paid for by the CONTRACTOR.

In addition to the above-minimum qualifications, the surety company must meet at least one of the following additional qualifications:

1. The surety company shall hold a current certificate or authority as an acceptable surety of federal bonds in accordance with the United States Department of Treasury Circular 570, Current Revision. The surety company shall provide the CITY with satisfactory evidence that such excess risk has been protected in an acceptable manner.
2. The surety company shall have at least the following minimum ratings in the latest revision of Best's Key Rating Guide: Best's Policy Holders Ratings -A- (minimum); Best Financial Category - Class 1.
3. For projects that do not exceed \$500,000.00, the CITY will accept bonds in accordance with Florida Statute section 287.0935.
4. If the surety is declared bankrupt, becomes insolvent, its right to do business in the State of Florida is terminated or it ceases to meet the requirements set forth above, the CONTRACTOR shall within ten (10) working days after notification by the CITY substitute another bond and surety company, at no cost to the CITY, meeting the above requirements.

ARTICLE 32 - INSPECTION OF WORK

The CITY'S representative or the CITY'S Engineer shall at all times have access to work wherever it is, in preparation or progress, and the CONTRACTOR shall provide proper facilities for such access and for inspection.

If the specifications, the Engineer's instructions, laws, ordinances or any public authority requires any work to be specially tested or approved, the CONTRACTOR shall give the Engineer timely notice of its readiness for inspection. Inspections by the Engineer shall be made promptly and where practicable, at the source of supply. If any work should be covered up without approval or consent of the Engineer, it must, if required by the Engineer, be uncovered for examination, at the CONTRACTOR'S expense.

ARTICLE 33- WARRANTY/GUARANTY

All materials and equipment to be furnished and/or installed by the CONTRACTOR under this Contract as it relates to the landscape improvements for the Phase 1 of Bicentennial Park Revitalization, **Bid No. 223-09**, shall be guaranteed by the Manufacturer, if any, for a period of one (1) year from the date of final acceptance thereof against defective materials, design and workmanship. The CONTRACTOR shall guarantee all of its work, for a period of one year. Upon receipt of notice from the CITY of failure 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 CONTRACTOR or Manufacturer at no expense to the CITY. In the event the CONTRACTOR fails to make the necessary repairs or replacements within thirty (30) days after notification by the CITY, the CITY may accomplish the work at the expense of the CONTRACTOR.

The CONTRACTOR shall provide the CITY with a written warranty of its work and with a copy of the manufacture's warranty as it relates to the materials and parts provided under this Contract.

ARTICLE 34 - PROTECTION OF WORK AND PROPERTY

The 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 Contract. 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 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.

Until acceptance of the work by the CITY, the CITY'S property shall be under the charge and care of the CONTRACTOR and the CONTRACTOR shall take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, and the 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.

ARTICLE 35 - TIME

Time is of the essence in all respects under this Contract.

ARTICLE 36 - TERMINOLOGY AND CAPTIONS

All pronouns, singular, plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. Wherever the context may require, the singular shall mean and include the plural and the plural shall mean and include the singular. The term "Contract" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter" and the like mean this Contract in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings are for reference and convenience only and do not enter into or become a part of the context of this Contract, nor shall such headings affect the meaning or interpretation of this Contract.

ARTICLE 37 - WAIVER

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

ARTICLE 38 - PREPARATION

This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

ARTICLE 39 - MATERIALITY

All provisions of the Contract shall be deemed material. In the event CONTRACTOR fails to comply with any of the provisions contained in this Contract or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Contract and CITY may at its option and without notice terminate this Contract.

ARTICLE 40 - REPRESENTATIONS BINDING AUTHORITY

CONTRACTOR has full power, authority and legal right to execute and deliver this Contract and perform all of its obligations under this Contract. By signing this Contract, **Timothy Taylor** hereby represents to the CITY that he has the authority and full legal power to execute this Contract and any and all documents necessary to effectuate and implement the terms of this Contract on behalf of the party for whom he is signing and to bind and obligate such party with respect to all provisions contained in this Contract.

ARTICLE 41- EXHIBITS

Each exhibit referred to in this Contract forms an essential part of this Contract. The exhibits, if not physically attached, should be treated as part of this Contract and are incorporated herein by reference.

ARTICLE 42 - CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS

This Contract consists of Instruction to Bidders, General Conditions, Special Conditions, Plans and specifications. The CONTRACTOR agrees to be bound by all the terms and conditions set forth in this Contract and Bid 214-09. To the extent that there exists a conflict between this Contract and the Bid, the terms, conditions, covenants, and/or provisions of this Contract 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.

ARTICLE 43 - LEGAL EFFECT

This Contract shall not become binding and effective until approved by the CITY COUNCIL OF THE CITY OF RIVIERA BEACH or its designated representative.

ARTICLE 44 - NOTICE OF COMPLAINTS OR SUITS

Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Contract. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

ARTICLE 45 - SURVIVABILITY

Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

ARTICLE 46-DEFAULT

Notwithstanding anything contained in this Contract to the contrary, the parties agree that the occurrence of any of the following shall be deemed a material event of default and shall be grounds for termination:

- a. The filing of a lien by any subcontractor or third tier subcontractor including, but not limited to materialmen, suppliers, or laborers, upon any property, right of way, easement, other interest in land or right to use such land within the territorial boundaries of the CITY which lien is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR;
- b. The filing of any judgment lien against the assets of CONTRACTOR related to the performance of this Contract which is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR; or
- c. The filing of a petition by or against the CONTRACTOR for relief under the Bankruptcy Code, or for its reorganization or for the appointment of a receiver or trustee of the CONTRACTOR or the CONTRACTOR'S property; or an assignment by CONTRACTOR for the benefit of creditors; or the taking possession of the property of the CONTRACTOR by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of the CONTRACTOR; or if a temporary or permanent receiver or trustee shall be appointed for the CONTRACTOR or for the CONTRACTOR'S property and such temporary or permanent receiver or Trustee shall not be discharged within thirty (30) days from the date of appointment.

The CONTRACTOR shall provide written notice to the CITY of the occurrence of any event of default within ten (10) days of CONTRACTOR'S receipt of notice of any such default.

ARTICLE 47 - WAIVER OF SUBROGATION

CONTRACTOR hereby waives any and all rights to Subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then the CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should the CONTRACTOR enter into such an agreement on a pre-loss basis.

ARTICLE 48 - RIGHT TO REVIEW

The CITY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, reject or accept any required policies of insurance, including limits, coverages, or endorsements, therein from time to time throughout the term of this Contract. The CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition

WITNESS WHEREOF, the PARTIES OF THE CITY OF RIVIERA BEACH, FLORIDA have set their hand and seal on the day and year above written.

CITY OF RIVIERA BEACH

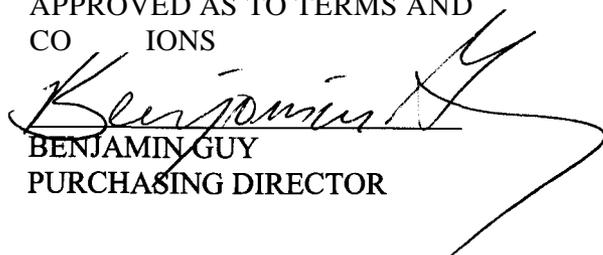
SUNSHINE LAND DESIGN, INC.

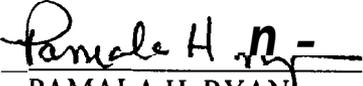
BY: 
THOMAS A. MASTERS,
MAYOR

BY: 
TIMOTHY R. TAYLOR,
PRESIDENT OF
SUNSHINE LAND DESIGN, INC.

ATTEST:

BY:  6/8/09
CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

APPROVED AS TO TERMS AND
CO IONS
BY: 
BENJAMIN GUY
PURCHASING DIRECTOR

APPROVED AS TO FORM A D
LEGAL SUFFICIENCY
BY: 
PAMALA H. RYAN,
CITY ATTORNEY

Date: 6/9/09

EXHIBIT A

Bid Proposal Sheet
PURCHASE AND INSTALLATION OF PLANTS AND MATERIALS FOR BICENTENNIAL PARK
Schedule One (1)

*The unit price shall include all costs of the plants, installation, materials and the warranty as detailed in the specifications.

PAGE 1 OF 2

SYMBOL	QTY.	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS	UNIT PRICE	TOTAL PRICE
			TREES			
QV	21	QUERCUS VIRGINIANA	LIVE OAK	16' HT X 10' SPR, 4" DBH	344.98	7/244.58
SBW	14	CONOCARPUS RECTUS SERICEUS	SILVER BUTTWOOD	10' HT X 8' SPR. 3" DBH	149.19	2/088.66
BYN	15	FICUS AUREA	FLORIDA STRANGLER FIG	14' HT X 10' SPR. 4" DBH CLUSTER IN GROUPS OF 3	261.07	3/916.05
GBI	12	BURSERIA SIMARUBA	GUMBO LIMBO	16' HT X 12' SPR. 6" DBH	298.37	3/580.44
PIG	4	COCCOLOBA DIVERS/FOLIA	PIGEON PLUM	12' HT X 8' SPR. 2.5" DBH	268.53	1/074.12
SGR	22	COCCOLOBA UVIFERA	SEA GRAPE	8' HT X 8' SPR. MTL STEM	139.85	3,076.70
SGR1	12	COCCOLOBA UVIFERA	SEA GRAPE	14' HT X 10' SPR. MTL STEM	261.07	3,132.84
OTT	38	NERIUM OLEANDER "TREE TYPE"	OLEANDER DOUBLE PARK	6' HT X 6' SPR. MTL. STEM	139.85	5,314.30
			PALMS			
RMP	20	ROYSTONEA ELATA	FLORIDA ROYAL PALM	4' GW, 12CT. 18' OA	186.48	3,729.60
SAB	77	SABAL PALMETIO	SABAL PALM (Booted)	CLEAR TRK. HT SHOWN ON PLANS	121.20	9,332.40
CTC	4	COCOS NUCIFERA, GREEN MALAYAN CURVED TRUNK	MALAYAN COCONUT PALM	2' GW. 8' CT	350.20	1,400.80
CTC	4	COCOS NUCIFERA 'GREEN MALAYAN'	MALAYAN CONCUT PALM	3' GW. 10' CT	446.51	1,786.04
CTC	4	COCOS NUCIFERA, GREEN MALAYAN CURVED TRUNK	MALAYAN CONCUT PALM	4' GW. 12' CT	455.26	1,821.04
FTP	8 ¹²	THRINAX RADIATA	FLORIDA THATCH PALM	8' CT. 16' OA. DOUBLE TRK. Single	234.97	2,819.64
FTP1	8 ¹⁸	THRINAX RADIATA	FLORIDA THATCH PALM	8' CT. 16' OA. TRIPLE Single Single	234.97	4/229.46
SIS	16	BISMARKIA NOBILIS "SILVER"	BISMARK PALM	8' HT X 8' SPR. MATCHED, 25 GAL.	273.85	4,461.60
			SHRUBS			
HIB	30	HIBICUS SP.	HIBICUS, VARY COLOR	7G, 40" X 30"	27.96	838.80
BOG	37	BOUGAINVILLEA SPP.	BOUGAINVILLEA "PINK"	7G, 40" X 30", 2-3 RUNNERS	37.30	1,380.10
CRG	21	SPARTINA BAKERII	SAND CHORDGRASS	3G, 24" HT'	5.11	107.31
COO	184	ZAMIA FLORIDANA	COONTIE	3G, 18" X 18", 36" OC	21.43	3,943.12
CBP	129	ZAMIA FURFUREA	CARDBOARD PLANT	7G, 18" SPR, 18HT	27.96	3,606.84
SCP	173	SCAEVOIA PLUMIERI	INKBERRY	3G, 24" X 24", SPACE AS SHOWN	11.64	2/013.72
WCF	30	PSYCHOTRIA NERVOSA	WILD COFFEE	3G, 18" X 18", 40" OC	5.60	138.00
SEO	167	UNIOLA PANICULATA	SEA OATS	3G, FULL, SPACE AS SHOWN	6.06	1,012.02

EXHIBIT A

Bid Proposal Sheet

PURCHASE AND INSTALLATION OF PLANTS AND MATERIALS FOR BICENTENNIAL PARK
Schedule One (1)

*The unit price shall include all costs of the plants, installation, materials and the warranty as detailed in the specifications.

PAGE 2 OF 2

SYMBOL	QTY.	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS	UNIT PRICE	TOTAL PRICE
RRV	70		RAILROAD VINE	1G, 18" GA. 30" OC	2.78	194.60
BSF	290	HELIANTHUS DEBILIS	BEACH SUNFLOWER	1G, 18" OA. 30" OC	3.08	893.20
LAN1	279	LANTANA CAMARA, "NEW GOLD"	LANTANA	1G, 18" OA. 30" OC	2.50	697.50
LAN	381	LANTANA CAMARA "PINK CAPRICE"	LANTANA	1G, 18" OA. 30" OC	2.50	952.50
CCP	12		COCO PLUM	3G, OA 30", 40" OC	5.52	66.24
SOD						
SOD	75,000	STENOTAPHRUM	ST. AUGUSTINE SOD	NEAT, LEVEL, SOLID SOD, TIGHT JOINTS	0.25	18,750.00
MULCH						
MULCH	250 PER PLANS		MELALEUCA MULCH		31.42 per CY	7,855.00
TOTAL BID						101,457.22 \$ 487.2
**item missing from above bid schedule but on plans.						
VAG	193	ALPINIA ZERUMBET.	VARIEGATED GINGER	3G, 18"HT X 18" SPR. FULL	6.53	1,260.29

BID ALTERNATE:

SYMBOL	QTY.	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS	UNIT PRICE	TOTAL PRICE
SAB	77	SABAL PALMETTO	SABAL PALM (Slick)	CLEAR TRK. HT SHOWN ON PLANS	106.94	8,234.38

Description	Quantity	Unit Price	Total Price
Match Existing Aluminum Fence @ 7ft. Height	880 Linear Feet	85.69	\$75,407.20

Bid shall be awarded to the low responsive and responsible bidder for this individual schedule.

Contractor shall complete all work for this project within forty-five (45) calendar days after the bid closing date of May 8, 2009 but in any event no later than June 25, 2009.

Quantities on plant list (sheet LA2) are a courtesy only. Landscape Contractor is responsible for all plants shown on planting plans. When discrepancies occur between plant list, bid proposal sheet and planting plans, the planting plans are to override the plant list and bid proposal sheet and in all cases bid shall reflect cost for quantities reflected in planting plans along with any additions or deletions made by addenda.

Contractor is responsible for confirming sod quantities and certifying such to the owner or his representative.

JUNE 17, 2009 REGULAR CITY COUNCIL MEETING

RESOLUTION NO. 69-09 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AWARDED RFP NO. 197-08 TO US SECURITY ASSOCIATES OF MIAMI, FLORIDA TO PROVIDE ARMED AND UNARMED SECURITY GUARD SERVICES FOR THE MUNICIPAL COMPLEX AND THE CITY MARINA AT AN ANNUAL BASE COST OF \$149,732; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A ONE YEAR CONTRACT WITH A RENEWAL OPTION FOR THREE (3) ADDITIONAL TWELVE (12) MONTH PERIODS, COMMENCING JUNE 17, 2009; AUTHORIZING THE FINANCE DIRECTOR TO MAKE PAYMENTS FROM THE APPROPRIATE OPERATING ACCOUNTS; AND PROVIDING AN EFFECTIVE DATE.

A motion was made by Councilperson Thomas and seconded by Councilperson Brooks to postpone approval of Resolution No. 69-09.

MOTION

Upon a roll call vote by City Clerk Ward, the vote was unanimous.

MOTION APPROVED

RESOLUTION NO. 70-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE RENEWAL OF THE EMPLOYMENT AGREEMENT WITH PAMALA H. RYAN AS CITY ATTORNEY FOR THE PERIOD OF JUNE 17, 2009 THROUGH JUNE 16, 2011; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Pamala H. Ryan has been employed as the City Attorney since May 2000; and

WHEREAS, the City Council wishes to enter into a new employment agreement with Ms. Ryan which establishes the terms and conditions of her continued employment with the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

SECTION 1. That the employment agreement with Pamala H. Ryan is hereby approved, a copy of which is attached hereto and made a part of this resolution.

SECTION 2. That the Mayor and City Clerk are authorized to execute the employment agreement on behalf of the City.

SECTION 3. That this resolution shall take effect immediately upon its passage and approval by City Council.

PASSED and APPROVED this 17th day of June 2009.

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RESOLUTION NO. 70-09

PAGE 2

APPROVED:



THOMAS F



DAWN S. PARDO
CHAIRPERSON

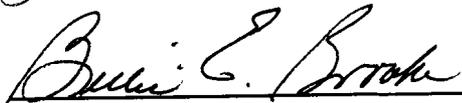
ATTEST:



CARRIE E. WARD'
MASTER MUNICIPAL CLERK
CITY CLERK



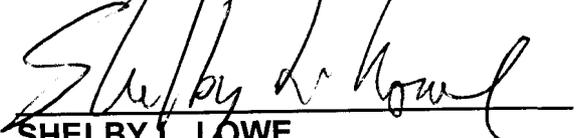
JUDY L. DAVIS
CHAIR PRO TEM



BILLIE E. BROOKS
COUNCILPERSON



CEDRICK A. THOMAS
COUNCILPERSON



SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: J. Davis

SECONDED BY: S. Lowe

D. PARDO aye

J. DAVIS aye

B. BROOKS aye

C. THOMAS aye

S. LOWE aye

REVIEWED AS TO LEGAL SUFFICIENCY



RACHAEL D. JOHNSON, ASST. CITY ATTORNEY

DATE: 6/17/09

EMPLOYMENT AGREEMENT
CITY ATTORNEY

THIS EMPLOYMENT AGREEMENT ("agreement") is made and entered into this 17th day of June 2009, by and between the CITY OF RIVIERA BEACH, a municipal corporation validly existing under the laws of the State of Florida (hereinafter referred to as "City"), and PAMALA H. RYAN (hereinafter referred to as "Ms. Ryan" or "Employee").

WITNESSETH:

WHEREAS, Ms. Ryan has been employed by written agreement as City Attorney of the City of Riviera Beach since May 2000; and

WHEREAS, the City Council wishes to enter into a new employment agreement with Ms. Ryan which establishes the terms and conditions of her continued employment with the City.

NOW THEREFORE, in consideration of the mutual promises hereinafter set forth, the City and Employee do mutually agree as follows:

Section 1. Duties.

- A. The City agrees to employ Employee as City Attorney on a full time basis as the Chief Legal Officer of the City and head of the City's Legal Department.
- B. Employee agrees to perform the duties and functions of the City Attorney as specified in the City Charter and Code of Ordinances of the City of Riviera Beach, Florida, and agrees to perform such other legally permissible and proper duties and functions as the City Council shall from time to time require.

Section 2. Salary and Term of Agreement.

- A. In consideration of the services to be performed by Employee, the City will continue to pay Employee her current annual base salary of \$127,508.16, payable in installments at the same time as other management employees are paid. Although Employee is not requesting, nor is she receiving a merit increase, Employee shall receive and be entitled to all longevity, cost of living/wage adjustment increases and other increases which the City grants to other management employees. In addition, the City Council may at any

time, grant Employee a merit increase.

- B. The term of this agreement shall be for two (2) years. This agreement shall be renewed automatically for an additional two (2) years unless either party notifies the other at least ninety (90) days prior to the expiration of the term that it does not wish to renew the agreement and so long as a performance evaluation satisfactory to the parties has taken place. However, as set out in Article II, section 16 of the City's Charter, it shall be the responsibility of Employee to notify the City Council of the agreement's expiration three months in advance or Employee may forfeit the agreement.
- C. Subject to the provisions set forth in Section 3 below, Employee serves at the pleasure of the City Council and nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate the employment of Employee.
- D. Subject to the provisions set forth in Section 3 below, nothing in this agreement shall prevent, limit, or otherwise interfere with the right of Employee to resign the position of the City Attorney.

Section 3. Termination and Severance Pay.

- A. The City Council may at any time, terminate the employment of Employee under this agreement at the City's pleasure and without cause. If termination of employment occurs prior to the expiration of this agreement, Employee shall be entitled to three months salary and all other accumulated employment benefits per this agreement and pursuant to City policy as Employee's severance pay. In consideration of payment of severance, Employee shall execute a general release in favor of the City, its successors and assigns.
- B. In the event the Employee voluntarily resigns the position of City Attorney prior to the expiration of this agreement, Employee shall provide the City with thirty (30) days written notice of said resignation. Upon receipt of such notice, the City at its option, may require Employee to terminate her employment at an earlier date than set forth in the notice of resignation, provided that the City may not require Employee to terminate her employment less than ten (10) days after receipt of said notice. In such event, the City's obligation shall be to pay Employee for all time actually worked, as well as all remaining accrued employment benefits per this agreement and pursuant to city policy; said sums to be paid prior to the conclusion of Employee's employment.

Section 4. Benefits.

The City shall provide Employee with all of the benefits accruing to City employees in management positions, except to the extent modified by this agreement.

Section 5. Retirement.

Employee will continue to participate as a member of the City Managed Retirement System.

Section 6. Deferred Compensation.

The City will pay Employee annual deferred compensation in an amount equal to the maximum permitted by law. Said deferred compensation shall be paid to the Public Employees Benefit Services Corporation (PEBSCO). Such payments shall be made on a bi-weekly basis or at such other pay periods as may be established by the City until the maximum annual contribution has been made. Upon expiration of this agreement, or upon either termination or resignation of the Employee, the City agrees to transfer ownership of said plan at Employee's direction.

Section 7. Insurance.

The City will provide Employee with individual and dependent medical and dental insurance coverage, paid in full, equivalent to such insurance generally provided to City employees in management positions. Further, the City shall pay for a Long Term Disability policy which will pay Employee sixty percent (60%) of her compensation. The City will provide Employee with Term Life Insurance, fully paid by the City, with a face value of \$160,000. Employee acknowledges that the Long Term Disability and the Term Life Insurance policies referenced above will be selected solely by Employee, and the City is not responsible for the quality, quantity or adequacy of said policies.

Section 8. Vacation.

Employee shall be entitled to twenty-five (25) days paid vacation annually. Any unused vacation days shall accrue to Employee in accordance with City policy. Payment for accrued but unused vacation days shall be made to the Employee upon termination of employment regardless

of the manner of termination.

Section 9. Sick Days.

Employee shall be entitled to twelve (12) sick days per year. Any unused sick days shall accrue to Employee in accordance with City policy. Payment for accrued but unused sick days shall be made to the Employee upon termination of employment regardless of the manner of termination.

Section 10. Transportation Allowance.

The City shall pay Employee the sum of \$350.00 per month for a transportation allowance. Employee shall not seek, and is not entitled to, reimbursement for vehicular travel within 150 miles of the City.

Section 11. Dues and Subscriptions.

The City will provide the Employee with a budget of no less than \$1000.00 annually for membership fees and dues in professional organizations, including the Florida Bar, the American Bar Association, and the National Bar Association, and for subscriptions relevant to fulfilling the duties as City Attorney.

Section 12. Professional Development.

The City will provide the Employee with a budget of no less than \$1000.00 annually for personal training relative to professional development and growth, including mandatory continuing legal education required by the Florida Bar.

Section 13. Evaluation.

The City Council may initiate an evaluation of Employee's performance at any time during the agreement. However, in accordance with the City Charter, a performance evaluation will be conducted at least annually. The evaluation may set forth findings of fact and future goals requested of Employee. The procedure may be established by the City Council. The results of the evaluation shall be given to Employee and she shall be provided adequate opportunity to discuss the evaluation with the City Council as a whole or on an individual basis.

Section 14. Indemnification of Employees.

The City agrees, pursuant to Section 111.07, Florida Statutes, to provide reasonable attorney's fees and other expenses of litigation to defend any civil action arising from a complaint for damages or injuries suffered as a result of any act or omission of Employee while serving as the City Attorney arising out and in the scope of her employment or function as City Attorney, as well as costs, disbursements, claims, payments, judgments, or settlements resulting from any lawsuit or claim, unless in the case of a tort action Employee has been determined in final judgment to have caused the harm intentionally, in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard to human rights, safety, or property. **In** addition, the City agrees to provide reasonable attorney's fees and costs to defend criminal investigation or prosecution of Employee while serving as the City Attorney arising out of in the scope of her employment. A reasonable fee should not exceed the amount the City pays for its attorneys, but in any case should not exceed \$350 per hour without prior approval of the Council. Said indemnification provision to continue in effect after termination of employment.

Section 15. Residency.

Employee is a resident of the City. Unless otherwise agreed to by City Council Employee shall remain a resident of the City for the duration of this agreement.

Section 16. Effective Date.

This agreement shall become effective on the date first written above.

Section 17. General Provision.

The text of this document constitutes the entire agreement between the parties and may be modified only in writing by the parties.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be made and entered into the day and year first written above.

THE CITY OF RIVIERA BEACH
By: Thomas A. Masters
Thomas A. Masters
Mayor

EMPLOYEE
By: Pamala H. Ryan
Pamala H. Ryan

ATTEST:
Carrie E. Ward
Carrie E. Ward, MMC
City Clerk

Date: 6/17/2009