

RESOLUTION NO. 02-08

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING THE CONTRACT FOR EMERGENCY REPLACEMENT OF THE FORKLIFT STOPS AND BULKHEAD REPAIRS FOR THE DRY STORAGE FACILITIES AT THE CITY MARINA AT 200 EAST 13<sup>TH</sup> STREET TO WEST CONSTRUCTION INC. OF LAKE WORTH IN THE AMOUNT OF \$39,650.00; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE SAID AGREEMENT; AUTHORIZING THE APPROPRIATION OF FUND BALANCE; AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE PAYMENTS FROM THE APPROPRIATE CAPITAL EXPENDITURE ACCOUNT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in the course of forklift operations over the years, the seawall cap has deteriorated by severe cracking and loss of portions of concrete, which has resulted in the loosening and failure of 4 of the forklift stops. The remaining 4 forklift stops are in marginal to very poor condition and in need of replacement; and

WHEREAS, the concrete apron immediately outside the storage facility is severely cracked and has numerous potholes which has created an unstable surface on which to transport boats; and

WHEREAS, these circumstances have resulted in an unsafe work environment requiring the limited use of the launch area, as well as creating an unnecessary risk to marina personnel and the public; and

WHEREAS, Section 3-106 of the City's Procurement Code authorizes the emergency procurement of services when there exists a threat to public health, welfare or safety; and

WHEREAS, the City's procurement code allows for the solicitation of quotes for emergency repairs; and

WHEREAS, the staff has solicited three quotes for the replacement of the forklift stops and obtained bids for repairs to the seawall cap and concrete apron adjacent to the dry storage facility of the Municipal Marina; and

WHEREAS, West Construction Inc. of Lake Worth FL. was the lowest responsible bidder for the seawall repair, and submitted the lowest quote for the forklift stop replacement.

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

**SECTION 1.** That the City Council of the City of Riviera Beach, Palm Beach County, Florida, accepts the proposal of the low responsive bidder, West Construction, Inc. of Lake Worth.

**SECTION 2.** The Mayor and City Clerk are authorized to execute the contract for same.

**SECTION 3.** The City Manager is authorized to approve change orders in an amount not to exceed ten percent (10%) of the contract

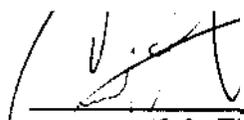
**SECTION 4.** The Finance Director is authorized to appropriate funds from the appropriate fund balance account to the appropriate Capital Expenditure account(s) and to make payments for same in the amount of \$39,650.00

**SECTION 5.** This Resolution shall become effective upon its passage by the City Council.

PASSED AND APPROVED this 16 day of July, 2008.

APPROVED:

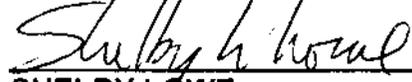
  
**THOMAS MASTERS**  
MAYOR

  
\_\_\_\_\_

ATTEST:

  
CARRIE E. WARD  
MASTER MUNICIPAL CLERK  
CITY CLERK

DAWN S. PARDO  
CHAIR PRO-TEM

  
SHELBY LOWE  
COUNCILPERSON

  
LYNNE L. HUBBARD  
COUNCILPERSON

  
JUDY L. DAVIS  
COUNCILPERSON

MOTIONED BY: L. Hubbard

SECONDED BY: J. Davis

C. THOMAS aye

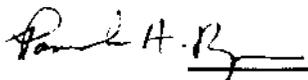
L. HUBBARD aye

~~C. THOMAS~~ aye S. LOWE

D. PARDO OUT

J. DAVIS aye

REVIEWED AS TO LEGAL SUFFICIENCY

  
PAMALA HANNA RYAN, CITY ATTORNEY

DATE 7/14/08

CITY OF RIVIERA BEACH  
CONTRACT FOR CONSTRUCTION

This Contract is made as of this July day of 10, 2008 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 West Construction Incorporated, 318 South Dixie Hwy. STE 4-5, Lake Worth, FL 33460 [ ] an individual, [ ] a partnership, **t**] a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal LD. number is 59-1809068.

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 construction services in the area of replacement of eight (8) forklift stops and repairs to the seawall cap and concrete apron adjacent to the dry storage facility of the Municipal Marina, as more specifically set forth in the Scope of Work detailed in Exhibit "A", attached hereto and made a part hereof.

The CITY'S representative/liaison during the performance of this Contract shall be Edwin C. Legue, telephone no. (561) 845-3408.

**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 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 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 CITY, not as a penalty, but as liquidated damages, a sum equal to one hundred dollars (\$100) 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 CITY agrees to compensate the CONTRACTOR in accordance with the fee proposal set forth in Exhibit "B". The total and cumulative amount of this Contract shall not exceed the amount of funds annually budgeted for these services. The CITY shall not reimburse the CONTRACTOR for any travel costs incurred as a direct result of the CONTRACTOR providing deliverables to the CITY in pursuance of the scope of work contained in Exhibit A, without specific, prior approval of the City
  
- B. Progress Invoices - No later than the 20<sup>th</sup> 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 - All requests for payment of expenses eligible for reimbursement under the terms of this Contract shall include copies of said receipts, invoices, or other documentation acceptable to the Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the scope of work described in this Contract. Long distance telephone calls shall identify the person(s) called, purpose of call, time and costs. Mileage charges shall identify the destination, number of miles, rate, and purpose of travel. Duplication charges shall describe the documents, purpose of duplicating, and rate charged. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Contract will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.
  
- 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 riA", 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/WOE. 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 subcontractors 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 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 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:

City of Riviera Beach Marina  
200 E. 13th Street  
Riviera Beach, FL 33404  
Attention: Edwin C. Leguc

and if sent to the CONTRACTOR shall be mailed to:

West Construction Incorporated  
318 South Dixie Hwy. STE 4-5  
Lake Worth, FL 33460

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- WARRANTYIGUARANTY

All materials and equipment to be furnished and/or installed by the CONTRACTOR under this Contract as it relates to the replacement of the eight (8) forklift stops and repairs to the seawall cap and concrete apron adjacent to the dry storage facility shall be guaranteed by the Manufacturer, if any, for a period of one (1) year from the date affinal acceptance thereof against defective materials, design and workmanship. 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 used to replace the eight (8) forklift stops and repair to the seawall cap and concrete apron.

#### 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 tenn 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, West Construction Incorporated hereby represents to the CITY 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 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 agreement and exhibits A and B. The CONTRACTOR agrees to be bound by all the terms and conditions set forth in this Contract and any requirements put in place. To the extent that there exists a conflict between 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 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.

**THE REMAINDER OF THIS 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.

CITY OF RIVIERA BEACH

CONTRACTOR

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

BY: Don West  
DONWEST  
VICE PRESIDENT

ATTEST:

BY: C. E. Ward **I** 7/16/08  
CARRIE E. WARD  
MASTER MUNICIPAL CLERK  
CITY CLERK

APPROVED AS TO TERMS AND  
CONDITIONS

BY: Edwin C. Legue  
EDWIN C. LEGUE  
MARINA DIRECTOR

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

BY: Pamela H. Ryan  
PAMALA H. RYAN,  
CITY ATTORNEY

Date: 7/16/08

EXHIBIT "A"

COST PROPOSAL SHEET

REPLACEMENT OF CONCRETE SLAB, REPAIRS TO THE SEAWALL CAP AND  
REPLACEMENT OF WHEELSTOPS IN FRONT OF DRY STORAGE  
BUILDING AT THE MUNICIPAL MARINA

Proposer is hereby invited to furnish all labor, management, supervision, materials, components equipment and services to replace a portion of the concrete slab (approximately 21'x40'), repairing 40' of seawall cap and replacing bulkhead curb/wheel stops located directly across from Municipal Marina dry storage facility.

The concrete slab shall be a minimum 10" thick concrete having a compressive strength of 4000 psi, reinforced with #5 grade 60 rebar at 12" on center, each way and on 6" compacted rock base. Provide necessary construction and expansion joints in the slab.

To repair the seawall cap, Contractor shall remove all loose and damaged concrete, drill into existing cap and set reinforcing bars in epoxy, apply a coat of bonding agent and use 6000psi or higher cement based concrete.

The bulkhead curb/wheel stop shall be fabricated of minimum 3/4" steel plates designed and anchored to the bulkhead and slab to safely carry the applied wheel load. (Submit shop drawings signed and sealed by a licensed engineer).

The concrete bulk head is to be repaired by replacing deteriorated portion of concrete with concrete and epoxy patch. Existing curb stops shall be removed and new stops shall be attached to concrete slab. A typical section shall be provided with a detail of the curb stop and their attachment to the slab and bulk head.

All work shall be completed in accordance with best practice trade standards and applicable code requirements.

All work shall be guaranteed for one (1) year from the date of acceptance by owner.

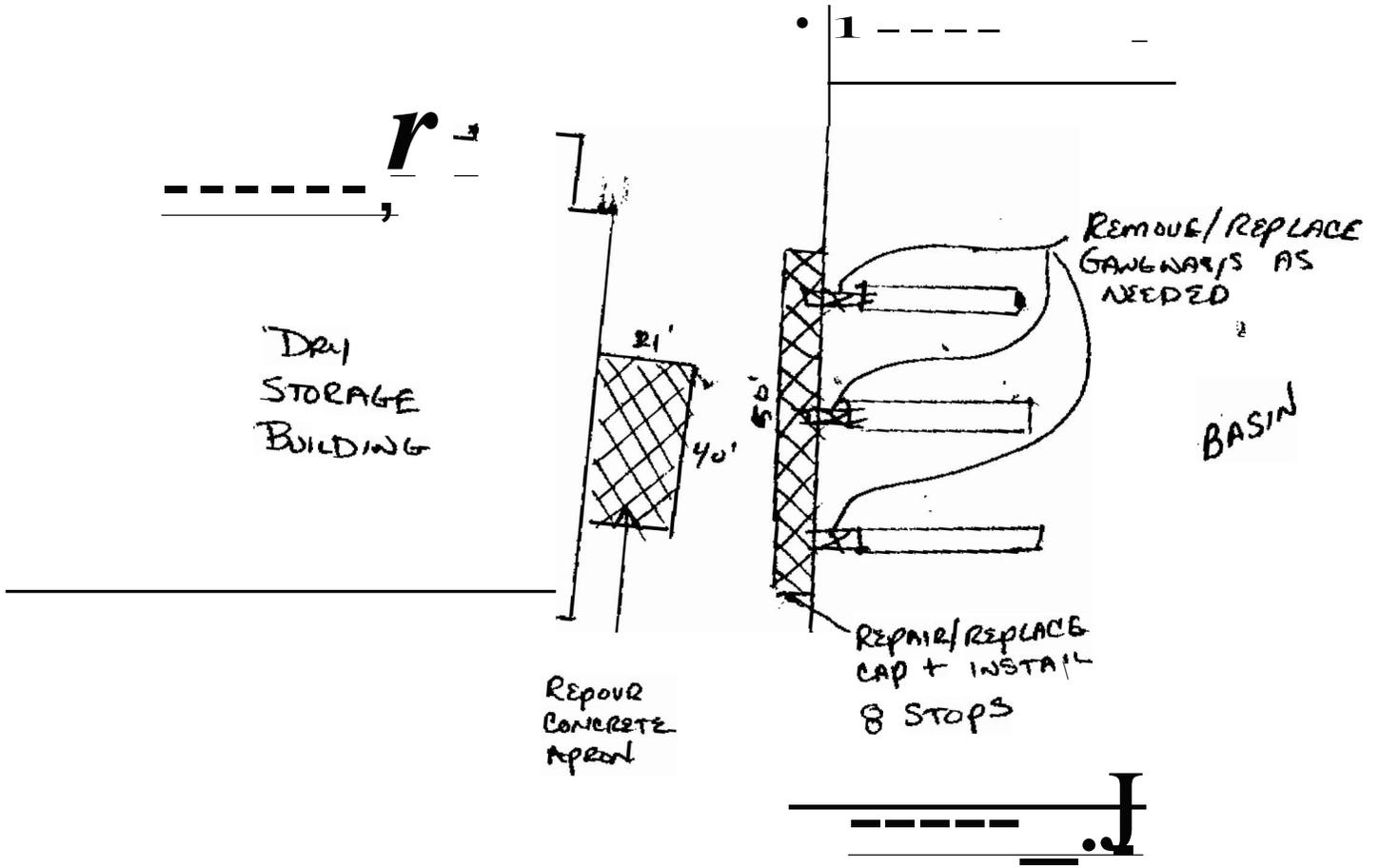
<u>DESCRIPTION OF WORK</u>	<u>Price</u>
Repair of damaged portion of bulk head:	<u>\$2,600</u>
Installation of <sup>4</sup> new bulk head curb/wheel stops:	<u>\$17,056</u>
Replace deteriorated concrete slab (approximately 21' X 40')	<u>\$19,994</u>
TOTAL BASE BID	<u>\$39,650.00 -</u>

NAME OF COMPANY: WEST CONSTRUCTION, INC.

AUTHORIZED SIGNATURE:  \_\_\_\_\_  
Individual authorized to enter contract on behalf of company

# FORKLIFT STOP REPLACEMENT / BULKHEAD REPAIRS

EXHIBIT "B"



1  
N

## **SCHEDULE OF PAYMENTS**

The Scope of Work to be completed by CONTRACTOR as defined in Exhibit "A" is based on 90% completion and compensation for the work tasks stated herein and shall be paid in accordance with Article 3 and the following Schedule of Values, which is attached herein and which forms a part of Exhibit B.

RESOLUTION NO. 83-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE LIBRARY TO PURCHASE A NEW CYBER-MOBILE WITH FIVE YEAR WARRANTY IN THE AMOUNT OF \$180,693 FROM ATLANTIC BUS SALES OF POMPANO BEACH, FLORIDA; AUTHORIZING THE FINANCE DIRECTOR TO MAKE PAYMENT FOR SAME FROM ACCOUNT NO. 303-1336-571-0-6451; AUTHORIZING THE APPROPRIATION OF AN ADDITIONAL \$58,000 TO PAY FOR COMPUTERS, PROPRIETARY SOFTWARE, COMPUTER HARDWARE, TELECOMMUNICATIONS EQUIPMENT, PROFESSIONAL SYSTEMS INTEGRATION SERVICES, RELATED EQUIPMENT AND A PROJECT CONTINGENCY; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Library in concert with the Riviera Beach Library Board and the "Friends of the Library" desires to expand its capacity to deliver a variety of important services and programs to residents at various locations throughout the City; and

**WHEREAS**, the City Council has previously approved funding for the purchase of a Mobile Gyber bus in the 2007/2008 Capital budget; and

**WHEREAS**, Atlantic Bus Sales of Pompano Beach, Florida has submitted the lowest and best offer meeting the specifications established for the City of Riviera Beach RFP No. 161-07

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

**SECTION 1.** Staff is authorized to purchase one (1) custom Cyber-mobile from Atlantic Bus Sales of Pompano Beach, Florida.

**SECTION 2.** The Finance Director is authorized make payment for same from account number 303-1336-571-0-6451 in the amount of \$180,693.

**SECTION 3.** The Finance Director is also authorized to appropriate an additional \$58,000 in the Capital Impact Fee Fund (Library) to pay for computers, proprietary software, computer hardware, telecommunication equipment, professional systems integration services, related equipment and a project contingency.

**SECTION 4.** The Mayor and City Clerk are authorized to execute the agreement.

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

PASSED AND APPROVED this f day of August, 2008

RESOLUTION NO. 83-08  
PAGE 2

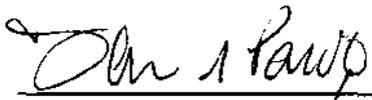
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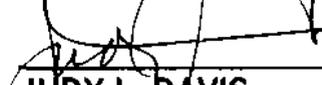
  
\_\_\_\_\_  
THOMAS A. MASTERS  
MAYOR

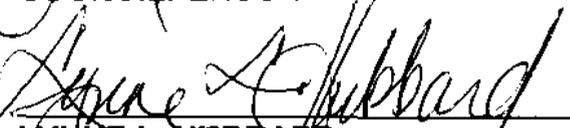
  
\_\_\_\_\_  
CEDRICK A. THOMAS  
CHAIRPERSON

ATTEST:

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

  
\_\_\_\_\_  
DAWN S. PARDO  
CHAIR PRO TEM

  
\_\_\_\_\_  
JUDY L. DAVIS  
COUNCILPERSON

  
\_\_\_\_\_  
LYNNE L. HUBBARD  
COUNCILPERSON

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

MOTIONED BY: J. Davis \_\_\_\_\_

SECONDED BY: III Hubbard \_\_\_\_\_

C. THOMAS aye

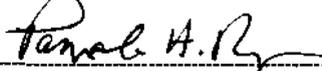
D. PARDO aye

J. DAVIS aye

L. HUBBARD aye

S. LOWE aye \_\_\_\_\_

REVIEWED AS TO LEGAL SUFFICIENCY

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

DATE: 7/30/08 \_\_\_\_\_

PURCHASE AGREEMENT FOR MOBILE LIBRARY CYBER BUS

THIS AGREEMENT made and entered into this 8<sup>th</sup> day of August, 2008 by and between ATLANTIC BUS SALES, INC., hereinafter referred to as "Independent Contractor," whose mailing address is 552 S. Dixie Highway, East, Pompano Beach, Florida, 33060 and the City OF RIVIERA BEACH, FLORIDA, a municipal corporation, hereinafter referred to as "City," whose address is 600 West Blue Heron Boulevard, Riviera Beach, Florida, 33404.

WHEREAS, the City posted a Request for Proposals, to wit, RFP No.: 161-07, hereinafter the "RFP" for One new custom "Mobile Library Cyber Bus", the specifications of which are incorporated herein by reference; and

WHEREAS, Independent Contractor successfully submitted the lowest priced and best offer meeting the specifications of the RFP (161-07); and

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

1. Independent Contractor agrees to be bound by all the terms, conditions, and specifications as set forth in the RFP.
2. To the extent that there exists a conflict between the RFP and this Agreement, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.
3. That the City does hereby retain the services of the Independent Contractor for the purpose of purchasing one (1) new Mobile Library Cyber Bus as set forth more fully in the Independent Contractor's proposal dated November 28<sup>th</sup>, 2007 which is incorporated herein by reference,
4. All merchandise to be purchased under the terms of this Agreement shall be delivered to the City no later than one-hundred and five (160) days after receipt of official notice to supply such merchandise, the timely delivery of said merchandise being essential conditions of this Agreement. If the merchandise is not delivered according to the terms of this Agreement within the limits herein stipulated, the Independent Contractor shall pay the City, not as a penalty, but as liquidated damages, a sum equal to one hundred dollars (\$100) for each day elapsing between expiration of such time limit and the date of delivery, providing, however, that the time limits herein stated are subject to extension without payment of damages, as provided in section 21, herein.
5. The City agrees to compensate the Independent Contractor \$ 180,693.00 in accordance with the fee proposal set forth in Exhibit "A". The total and cumulative amount of this contract shall not exceed the amount of funds annually budgeted for these services. The City shall not reimburse the Independent Contractor for any travel costs incurred as a direct result of the Independent Contractor providing deliverables to the City in pursuance of the scope of work contained in Exhibit "A".
6. Independent Contractor hereby represents that it has complied and shall continue to comply with all applicable Federal and State statutes and local ordinances. Further, Independent Contractor shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations, required for the work to be performed pursuant to the terms of this Agreement from any federal, state, regional, county, or city agency.
7. The Independent Contractor represents that it has, or will secure at its own expense, all necessary personnel, equipment and materials required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.
8. All of the services required hereunder shall be performed by the Independent Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

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

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

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

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

13. The Independent Contractor further agrees to indemnify, save harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the Independent Contractor not included in the paragraph above and for which the City, its agents, servants or employees are alleged to be liable. Nothing contained in this provision shall be construed or interpreted as consent by the City to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

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

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

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

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

18. The custom Mobile Library Cyber Bus to be furnished by the Independent Contractor under this Agreement shall be guaranteed by the Independent Contractor for a period of one (1) year from the date of final acceptance thereof by the City against defects in design, workmanship, or materials. Upon receipt of notice from the City of failure or defect of any part covered under such warranty/guaranty period, the affected part, parts, or materials shall be replaced promptly with new parts or materials by the Independent Contractor at no expense to the City. In the event the Independent Contractor fails to make the necessary repairs or replacements within 30 days after notification by the City, the City may accomplish the work at the expense of the Independent Contractor.

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

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

21. 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.

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

23. Time is of the essence in all respects under this Agreement.

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

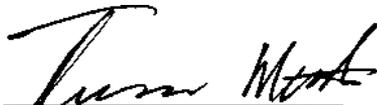
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**AGREEMENT WITH THE CITY OF RIVIERA BEACH**

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

CITY OF RIVIERA BEACH

ATLANTIC BUS SALES

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

BY:   
\_\_\_\_\_  
RICHARD YUSEM  
PRESIDENT

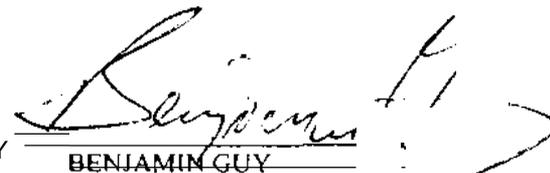
ATTEST:

(SEAL)  
  
\_\_\_\_\_  
CARRIE E. WARD,  
MASTER MUNICIPAL CLERK  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

BY:   
\_\_\_\_\_  
PAMALA H. RYAN  
CITY ATTORNEY

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

DATE: 8/4/08

RESOLUTION NO. 84-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA APPROVING THE INTERLOCAL AGREEMENT WITH THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY AND THE TREASURE COAST REGIONAL PLANNING COUNCIL TO MAKE CHANGES TO THE COMPREHENSIVE PLAN, INLET HARBOR REDEVELOPMENT PLAN AND LAND DEVELOPMENT REGULATIONS; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City and the Community Redevelopment Agency (CRA) have adopted a conceptual redevelopment plan known as the Citizens' Master Plan created by the Treasure Coast Regional Planning Council (TCRPC); and

WHEREAS, the City and the CRA desire to take the necessary legal actions to implement the intent of the Citizens' Master Plan; and

WHEREAS, the City and the CRA have requested that the TCRPC update the Comprehensive Plan, the Inlet Harbor Redevelopment Plan, and the Land Development Regulations; and

WHEREAS, the Interlocal Agreement provides for a fixed fee of \$650,000 to be paid to the TCRPC by the CRA.

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

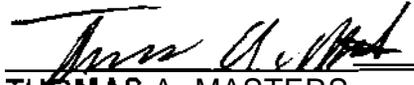
**SECTION 1.** That the City Council approves the attached Interlocal Agreement with the Community Redevelopment Agency and the Treasure Coast Regional Planning Council and authorizes the Mayor and City Clerk to execute the same.

**SECTION 2.** This Resolution shall become effective upon its passage.

PASSED and APPROVED this 8 day of August, 2008.

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APPROVED:

  
THOMAS A. MASTERS  
MAYOR

  
CEDRIC A. THOMAS  
CHAIRPERSON

ATTEST:  
  
CARRIE E. WARD  
MASTER MUNICIPAL CLERK  
CITY CLERK

DAWN S. PARDO  
CHAIR PRO TEM

JUDY L. DAVIS  
COUNCILPERSON

  
LYNNE L. HUBBARD  
COUNCILPERSON

  
SHELBY L. LOWE  
COUNCILPERSON

MOTIONED BY: J. Hubbard

SECONDED BY: J. Davis

C. THOMAS aye

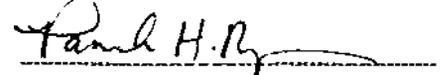
D. PARDO aye

J. DAVIS aye

L. HUBBARD aye

S. LOWE aye

REVIEWED AS TO LEGAL SUFFICIENCY

  
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 7/23/08

RESOLUTION NO. 85 08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE FIRST AMENDMENT TO THE GRANT AGREEMENT BETWEEN THE CITY OF RIVIERA BEACH AND THE PALM BEACH METROPOLITAN PLANNING ORGANIZATION (MPO) FOR FUNDS **IN** THE AMOUNT OF \$100,000.00 FROM THE COUNTYWIDE WATER TAXI GRANT PROGRAM WITH A REQUIRED MATCH OF \$9,515.00; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the MPO desires to encourage the creation of a Countywide **water taxi system linking cities along the Intracoastal Water; and**

WHEREAS, the MPO will make available Water Taxi Capital Facilities grant funds to be used by cities to design, permit, construct and install docking **facilities and other access facilities needed for the water taxi service; and**

WHEREAS, the City of Riviera Beach applied and was awarded funding to design, construct and install a water taxi docking facility at the west base of Jerry Thomas Bridge (Blue Heron Blvd.) that will be used to encourage and facilitate **water taxi transit service; and**

WHEREAS, the City has been unable to complete the construction of the **Facility by the original completion date; and**

WHEREAS, the City and MPO have agreed to extend the completion date for the Facility to April 1, 2009 and to modify certain other provisions of the Grant **Agreement so that they are consistent with the new completion date.**

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

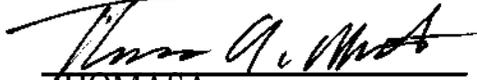
SECTION 1. That the Mayor and City Clerk are authorized to execute the First Amendment to the Grant Agreement with Palm Beach MPO on behalf of the City for funding in the amount of \$100,000.00 with a required match of \$9,515.00.

SECTION 2. This resolution shall take effect immediately upon its passage.

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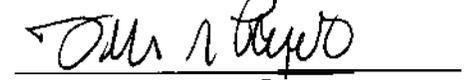
PASSED AND APPROVED THIS 8 DAY OF August, 2008.

APPROVED:

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

(MUNICIPAL SEAL)

  
\_\_\_\_\_  
**CEDRICK THOMAS**  
CHAIRPERSON

  
\_\_\_\_\_  
**DAWN S. PARDO**  
P EM

  
\_\_\_\_\_  
**JUDY L. DAVIS**  
COUNCILPERSON

  
\_\_\_\_\_  
**LYNNE L. HUBBARD**  
COUNCILPERSON

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

ATTEST

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

MOTIONED BY: J. Davis

SECONDED BY: D. Pardo

C. THOMAS: aye

D. PARDO: aye

J. DAVIS: aye

L. HUBBARD: aye

S. LOWE: aye  
07/28/08

REVIEWED AS TO LEGAL  
SUFFICIENCY

  
\_\_\_\_\_  
**CITY ATTORNEY**  
CITY OF RIVIERA BEACH  
Date 7/30/08

RESOLUTION NO. 86-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE FIRST AMENDMENT TO THE GRANT AGREEMENT BETWEEN THE CITY OF RIVIERA BEACH AND THE PALM BEACH METROPOLITAN PLANNING ORGANIZATION (MPO) FOR FUNDS **IN** THE AMOUNT OF \$96,910.00 FROM THE COUNTYWIDE WATER TAXI GRANT PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the MPO Countywide Water Taxi Grant Program and **desires to encourage the creation of a Countywide water taxi system linking cities along the Intracoastal Water; and**

WHEREAS, the City of Riviera Beach applied for funding to design, construct and install a water taxi docking facility at the Riviera Beach Marina, 14 Street Dock that will be used to encourage and facilitate water **taxi transit service; and**

WHEREAS, the City has been unable to complete the construction of the facility by the original completion date; and

WHEREAS, the City and MPO have agreed to extend the completion date for the facility to April 1, 2009 and to modify certain other provisions of the Grant Agreement so that they are consistent with the new completion date.

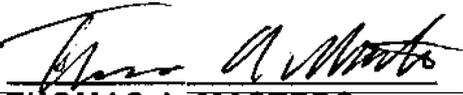
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA as follows:

SECTION 1. The Mayor and City Clerk are hereby authorized to execute the First Amendment to the Grant Agreement between the City and **the MPO for the aforementioned project.**

SECTION 2. This resolution shall take effect immediately upon its passage.

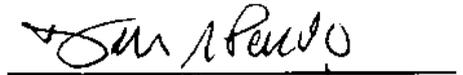
PASSED AND ADOPTED THIS 8 DAY OF \_\_\_\_\_, 2008.

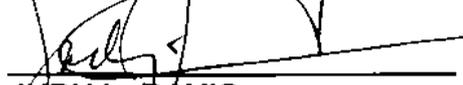
APPROVED:

  
THOMAS A. MASTERS  
MAYOR

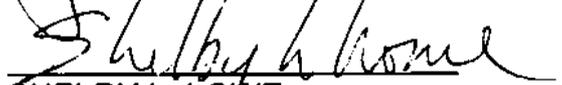
(MUNICIPAL SEAL)

  
CEDRICK THOMAS  
CHAIRPERSON

  
DAWN S. PARDO  
CHAIR PRO-TEM

  
JUDY L. DAVIS  
COUNCILPERSON

  
LYNNE L. HUBBARD  
COUNCILPERSON

  
SHELBY L. LOWE  
COUNCILPERSON

ATTEST



CARRIE E. WARD.  
MASTER MUNICIPAL CLERK  
CITY CLERK

MOTIONED BY: S. Lowe

SECONDED BY: J. Hubbard

C. THOMAS: aye

D. PARDO: aye

J. DAVIS: aye

L. HUBBARD: aye

S. LOWE: aye  
07/28/08

REVIEWED AS TO LEGAL  
SUFFICIENCY

\_\_\_\_\_  
CITY ATTORNEY  
CITY OF RIVIERA BEACH  
Date

RESOLUTION NO. 87-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA ABANDONING A PORTION OF NORTH OCEAN BOULEVARD AND BEACH ROAD; ACCEPTING A PUBLIC ACCESS EASEMENT DEDICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the site plan for the redevelopment of the Ocean Mall was approved on December 5, 2007 by Resolution No. 174-07; and

WHEREAS, the site plan requires a reconfiguration of the roadway to facilitate the redevelopment which was contemplated in the site plan approval; and

WHEREAS, the Code of Ordinances of the City of Riviera Beach prohibits building in public rights of way; and

WHEREAS, the existing right of way along the west side of the Ocean Mall includes the surface parking area; and

WHEREAS, the approved site plan reconfigures the parking and right of way; and

WHEREAS, the developer has provided a Public Access Easement Dedication to the City to ensure public access.

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 public right of way as shown in Exhibit "A" and described below is hereby abandoned.

BEGINNING AT THE NORTHEAST CORNER OF PARCEL "D", AS SHOWN ON SAID PLAT OF RIVIERA BEACH OCEAN TRACT; THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL "D" AND SOUTHERLY RIGHT-OF-WAY LINE OF SAID BEACH ROAD, NORTH 90°00'00" WEST, A DISTANCE OF 305.62 FEET TO THE NORTHWEST CORNER OF SAID TRACT "D"; THENCE ALONG THE WESTERLY LINE OF SAID TRACT "D" AND WESTERLY RIGHT-OF-WAY LINE OF SAID NORTH OCEAN BOULEVARD, SOUTH 02°36'30" WEST, A DISTANCE OF 33.12 FEET; THENCE SOUTH 89°58'48" WEST, A DISTANCE OF 24.17 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 32.00 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID

CURVE, THROUGH A CENTRAL ANGLE OF 86°58'59", A DISTANCE OF 48.58 FEET; THENCE NORTH 03°02'13" WEST, A DISTANCE OF 123.98 FEET; THENCE NORTH 02°27'48" EAST, A DISTANCE OF 87.80 FEET; THENCE NORTH 09°18'12" EAST, A DISTANCE OF 84.70 FEET; THENCE NORTH 02°36'30" EAST, A DISTANCE OF 411.09 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 70.00 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 51°49'40", A DISTANCE OF 63.32 FEET; THENCE NORTH 49°13'10" WEST, A DISTANCE OF 30.40 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD 703 (A-I-A);

SAID POINT ALSO BEING A POINT OF CUSP OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 623.69 FEET AND A CHORD BEARING OF NORTH 32°38'07" EAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID EASTERLY RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 09°15'23", A DISTANCE OF 100.76 FEET; THENCE SOUTH 89°58'36" EAST, A DISTANCE OF 60.34 FEET TO THE NORTHWEST CORNER OF PARCEL "C", AS SHOWN ON SAID PLAT OF RIVIERA BEACH OCEAN TRACT; THENCE ALONG THE WESTERLY LINE OF SAID PARCEL "c" AND THE EASTERLY RIGHT-OF-WAY LINE OF SAID NORTH OCEAN BOULEVARD, SOUTH 02°36'30" WEST, A DISTANCE OF 814.61 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL "C"; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL "C" AND THE SOUTHERLY LINE OF PARCEL "B", AS SHOWN ON SAID PLAT OF RIVIERA BEACH OCEAN TRACT, AND ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID BEACH ROAD, SOUTH 90°00'00" EAST, A DISTANCE OF 304.03 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL "B"; THENCE ALONG THE WESTERLY **RIGHT-OF-WAY** LINE OF SAID OCEAN AVENUE, SOUTH 00°46'50" WEST, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING.

CONTAINING IN ALL 73,758 SQUARE FEET OR 1.745 ACRES, MORE OR LESS.

SECTION 2. That the dedicated public access easement as shown in Exhibit "B" and described below is hereby accepted.

COMMENCING AT THE SOUTHEAST CORNER OF SAID PARCEL "D"; THENCE ALONG THE EAST LINE OF SAID PARCEL "D" AND WEST RIGHT-OF-WAY LINE OF OCEAN AVENUE, AS SHOWN ON SAID PLAT OF RIVIERA BEACH OCEAN TRACT, NORTH 00°46'50" EAST, A DISTANCE OF 12.00 FEET TO A POINT 12.00 FEET NORTH OF, AS MEASURED AT RIGHT ANGLES TO, THE SOUTH LINE OF SAID PARCEL "D", AND TO THE POINT OF BEGINNING; THENCE PARALLEL WITH SAID SOUTH LINE, SOUTH 90°00'00" WEST, A DISTANCE OF 307.95 FEET TO A POINT ON THE WEST LINE OF SAID TRACT "D" AND THE EAST RIGHT-OF-WAY LINE OF NORTH OCEAN BOULEVARD, AS SHOWN ON SAID PLAT OF

RESOLUTION NO. 87-08  
PAGE 3

RIVIERA BEACH OCEAN TRACT, AND ON THE PLAT OF PALM BEACH SHORES, AS RECORDED IN PLAT BOOK 23, . PAGES 29 THROUGH 32, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE ALONG SAID WEST LINE AND SAID EAST RIGHT-OF-WAY LINE, NORTH 02'36'30" EAST, A DISTANCE OF 40.04 FEET; THENCE NORTH 90'00'00" EAST, A DISTANCE OF 306.68 FEET TO A POINT ON SAID EAST LINE OF TRACT "0" AND SAID WEST RIGHT-OF-WAY LINE OF OCEAN AVENUE; THENCE ALONG SAID EAST LINE AND SAID WEST RIGHT-OF-WAY LINE, SOUTH 00'46'50" WEST, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.

CONTAINING IN ALL 12,293 SQUARE FEET OR 0.28 ACRES, MORE OR LESS.

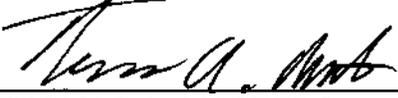
SECTION 3. That Staff is authorized to record the changes in the public records as necessary.

SECTION 4. This Resolution shall become effective upon its approval and passage.

PASSED and APPROVED this 8 day of August, 2008.

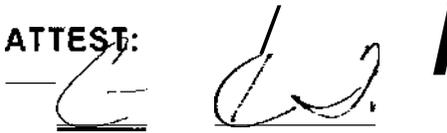
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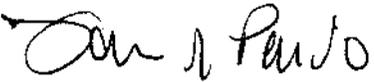
APPROVED:

  
THOMAS A. MASTERS  
MAYOR

  
CEDRIC A. THOMAS  
(CHAIRPERSON)

ATTEST:

  
CARRIE E. WARD  
MASTER MUNICIPAL CLERK  
CITY CLERK

  
DAWN S. PARDO  
CHAIR PRO M

  
JUDY L. DAVIS  
COUNCILPERSON

  
LYNNE L. HUBBARD  
COUNCILPERSON

  
SHELBY L. LOWE  
COUNCILPERSON

MOTIONED BY: J. Davis

SECONDED BY: D. Pardo

C. THOMAS            aye

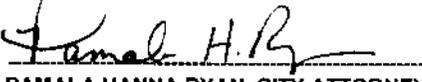
D. PARDO            aye

J. DAVIS             aye

L. HUBBARD         aye

S. LOWE              aye

REVIEWED AS TO LEGAL SUFFICIENCY

  
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 7/23/08

RESOLUTION NO. 88-09

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING A SITE PLAN APPLICATION FROM MOUNT OLIVE BAPTIST CHURCH FOR THE CONSTRUCTION OF A NEW SANCTUARY CONSISTING OF 20,244 SQUARE FEET AND THE ADDITION OF 67 PARKING SPACES AT 3700 AVENUE 0 IN THE MULTIFAMILY DWELLING DISTRICT (RM-15); PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 31-57 of the City of Riviera Beach Code of Ordinances establishes the requirements for Site Plan review by the City Council; and

**WHEREAS**, the Planning and Zoning Board met July 10, 2008 to review the Site Plan application and made a recommendation to the City Council for approval of the application; and

**WHEREAS**, Staff has reviewed the proposed application and recommends **approval with conditions**; and

**WHEREAS**, the City Council finds that the proposed site plan is consistent with the adopted City of Riviera Beach Comprehensive Plan and the City's Land Development Code.

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

**SECTION 1.** The Site Plan Application for the construction of a 20,244 square foot Church and the addition of 67 parking spaces on 2.75 acres located at 3700 Avenue 0 is approved with the following conditions:

1. A two-year landscaping bond for 110% of the value of landscaping and irrigation shall be required before certificate of occupancy is issued
2. All future advertising must state that the property is in the City of Riviera Beach. A fine of \$500 per day will be levied against the **property owner for violation of this condition.**
3. Construction must be initiated within 18 months of the effective date of this resolution in accordance with Section 31-60(a), of the City Code of **Ordinances.**

RESOLUTION NO. 88-08  
PAGE 2

**SECTION 2.** This Resolution shall act as the final order which is not required to be recorded in the public records of Palm Beach County.

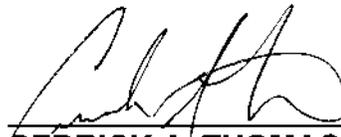
**SECTION 3.** This Resolution shall take effect immediately upon approval.

ASSESSED and APPROVED this 8 day of August 2008

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APPROVED:

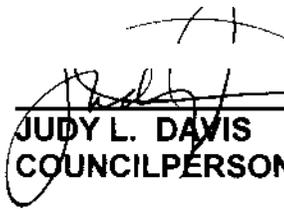
\_\_\_\_\_  
  
THOMAS A. MASTERS  
MAYOR

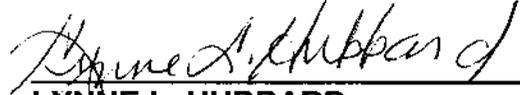
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CEDRICK A. THOMAS  
CHAIRPERSON

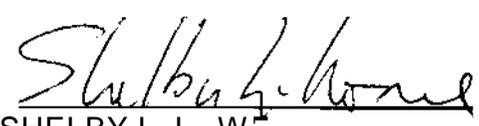
ATTEST:

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

\_\_\_\_\_  
  
DAWN S. PARDO  
CHAIR PRO TEM

\_\_\_\_\_  
  
JUDY L. DAVIS  
COUNCILPERSON

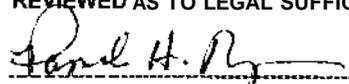
\_\_\_\_\_  
  
LYNNE L. HUBBARD  
COUNCILPERSON

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

MOTIONED BY: J. Davis

SECONDED BY: D. Pardo

- C. THOMAS aye
- D. PARDO aye
- J. DAVIS aye
- L. HUBBARD aye
- S. LOWE aye

REVIEWED AS TO LEGAL SUFFICIENCY  
\_\_\_\_\_  
  
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 7/24/08

RESOLUTION NO. 89-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AWARING BID NO. 195-08 FOR THE PARTIAL REPLACEMENT OF THE CONCRETE SLAB SOUTH OF THE MARINA DRY STORAGE BUILDING TO WEST CONSTRUCTION THE RESPONSIBLE LOW BIDDER, IN THE AMOUNT OF \$92,049.00; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE CONTRACT; AUTHORIZING THE FINANCE DIRECTOR TO APPROPRIATE FUNDS AND MAKE PAYMENTS FOR SAME; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the concrete slab on the south side of the dry storage building has deteriorated to the extent that it is no longer stable to operate forklifts. The slab is badly cracked and has numerous potholes throughout the path of operations. The deterioration is extensive enough to make replacement more cost effective, economical than any attempts to patch.

WHEREAS, this condition has made it necessary to cease all forklift operations and all active boats in the racks have been moved. The south rack system contains 60 high and low profile racks, which at capacity could generate approximately \$220,000.00 in annual revenue.

WHEREAS, the City of Riviera Beach publicly advertised an invitation for bids for the replacement of the concrete slab south of the dry storage building at the Municipal Marina.

WHEREAS, 10 contractors responded to the bid, and West Construction, Inc. of Lake Worth, FL is the responsible low bidder

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

SECTION 1 Bid No. **195-08** for the replacement of the concrete slab south of the Marina dry storage building is awarded to West Construction, Inc. of Lake Worth, FL in the amount of \$92, 049.

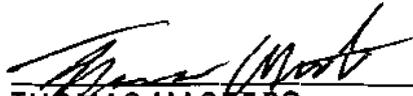
SECTION 2. The Mayor and City Clerk are authorized to execute the contract

SECTION 3. The Finance Director is authorized to appropriate \$92,049.00 in the appropriate Capital Expenditure accounts and make payments from same.

SECTION 4. This Resolution shall become effect upon its passage by the City Council

PASSED AND APPROVED this August day of 2008

APPROVED:

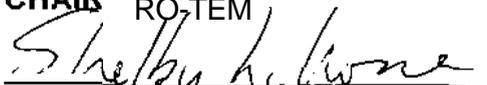
  
\_\_\_\_\_  
THOMAS MASTERS  
MAYOR

  
\_\_\_\_\_  
CEDR THOMAS  
CHAIRPERSON

ATTEST:

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

  
\_\_\_\_\_  
DAWN PARDO  
CHAIR RO-TEM

  
\_\_\_\_\_  
SHELBY LOWE  
COUNCILPERSON

  
\_\_\_\_\_  
LYN E. L. HUBBARD  
COUNCILPERSON

  
\_\_\_\_\_  
JUDY DAVIS  
COUNCILPERSON

MOTIONED BY: D. Pardo \_\_\_\_\_

SECONDED BY: L. Hubbard

S. LOWE \_\_\_\_\_ aye

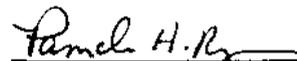
L. HUBBARD \_\_\_\_\_ aye

C. THOMAS \_\_\_\_\_ aye

D. PARDO \_\_\_\_\_ aye

J. DAVIS \_\_\_\_\_ aye

REVIEWED AS TO LEGAL SUFFICIENCY

  
\_\_\_\_\_  
PAMELA H. RYAN CITY ATTORNEY

DATE: 7/28/08

CITY OF RIVIERA BEACH  
CONTRACT FOR CONSTRUCTION

This Contract is made as of this 30th day of July, 2008 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 West Construction Incorporated, 318 South Dixie Hwy. STE 4-5, Lake Worth, FL 33460, a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal ID. or Social Security number is 59-1809068.

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 construction services in the area of replacing the concrete slab south of the dry storage facility of the Municipal Marina, as more specifically set forth in the Scope of Work detailed in Exhibit "A", attached hereto and made a part hereof

The CITY'S representative/liason during the performance of this Contract shall be the City Engineer, telephone no. (561) 845-4060.

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 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 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 CITY, not as a penalty, but as liquidated damages, a sum equal to one hundred dollars (\$100) 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.

### ARTICLE 3 - PAYMENTS TO CONTRACTOR

- A. Generally - The CITY agrees to compensate the CONTRACTOR in accordance with the fee proposal set forth in Exhibit "B". The total and cumulative amount of this Contract shall not exceed the amount of funds annually budgeted for these services. The CITY shall not reimburse the CONTRACTOR for any travel costs incurred as a direct result of the CONTRACTOR providing deliverables to the CITY in pursuance of the scope of work contained in Exhibit A, without specific, prior approval of the City
- B. Progress Invoices· No later than the 20<sup>th</sup> 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 conformance 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 - All requests for payment of expenses eligible for reimbursement under the terms of this Contract shall include copies of said receipts, invoices, or other documentation acceptable to the Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the scope of work described in this Contract. Long distance telephone calls shall identify the person(s) called, purpose of call, time and costs. Mileage charges shall identify the destination, number of miles, rate, and purpose of travel. Duplication charges shall describe the documents, purpose of duplicating, and rate charged. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Contract will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.
- 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 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 MIWBE. 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 MIWBE Ordinance #2412, as amended, the CONTRACTOR agrees to

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 afthis Contract and to the partners, successors, executors, administrators and assigns ofsuch other party, in respect to all covenants ofthis Contract. Neither the CITY nor the CONTRACTOR shall assign, sublet, conveyor transfer its interest in this Contract without the written consent ofthe other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent ofthe 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 tight, 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 peronnance 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 CrTY 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

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:

City of Riviera Beach Marina  
200 E. 13th Street  
Riviera Beach, FL 33404  
Attention: Edwin C. Legue

and if sent to the CONTRACTOR shall be mailed to:

West Construction Incorporated  
318 South Dixie Hwy. STE 4-5  
Lake Worth, FL 33460

**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 there under. 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 replacement of the concrete slab south of the dry storage facility of the Municipal Marina 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, including but not limited to the replacement of the concrete slab south of the dry storage facility of the Municipal Marina for a period of three (3) years. 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 used to construct and replacement of the concrete slab south of the dry storage facility of the Municipal Marina.

#### 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, West Construction Incorporated hereby represents to the CITY 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 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 agreement and exhibits A, B, C, D and E. The CONTRACTOR agrees to be bound by all the terms and conditions set forth in this Contract and any requirements put in place. To the extent that there exists a conflict between 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 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

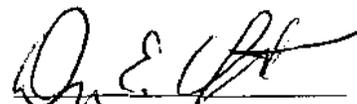
The CITY, by and through its Risk Management Department, in cooperation with the contractIngrnmonitoring department, reserves the right to review, reject or accept any required policies of insurance, including limits, coverages, or endorsements, therein from time to time throughout the tenn of this Contract. 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.

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

CITY OF RIVIERA BEACH

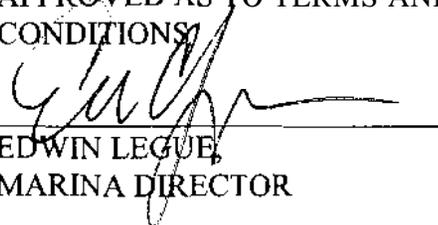
CONTRACTOR

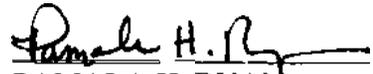
BY:   
THOMAS A. MASTERS,  
MAYOR

BY   
DON WEST,  
VICE PRESIDENT

ATTEST:

BY:   
CARRIE E. WARD,  
MASTER MUNICIPAL CLERK  
CITY CLERK

APPROVED AS TO TERMS AND  
CONDITIONS  
BY:   
EDWIN LEGUE,  
MARINA DIRECTOR

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

Date: 7/30/08

## **EXHIBIT "A" Scope of work**

The contractor shall furnish all labor, management, supervision, materials, components, equipment and services to replace a portion of the concrete slab located immediately south of the City Marina Dry Storage facility.

The Portion of existing slabs approximately 338 x 28 between exterior boat racks and south property line shall be removed and replaced with new concrete. Slab shall be a minimum of 10" thick concrete having a compressive strength of 4000 psi, reinforced with #5 grade 60 rebar at 12" on center, each way and on 6" compacted rock base. Contractor shall provide necessary construction and expansion joints in the slab.

All work shall be completed in accordance with best practice trade standards and applicable code requirements.

All work shall be guaranteed for one (1) year from the date of acceptance by owner.

RESOLUTION NO.: 90-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, ACCEPTING THE MASTER SITE PLAN IMPROVEMENTS FOR THE ENTRANCEWAY AND CHILDREN'S PLAY AREA AT THE WELLS RECREATION CENTER AS DESIGNED BY THE FIRM OF CHRIS WAYNE AND ASSOCIATES; AUTHORIZING THE FINANCE DIRECTOR TO APPROPRIATE \$300,000 IN THE CAPITAL ACQUISITION FUND (310) TO FINANCE THE SITE PLAN IMPROVEMENTS; AUTHORIZING THE PURCHASING DIRECTOR TO SOLICIT BIDS FOR SAME; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, The landscape architecture firm of Chris Wayne and Associates has developed a master site plan and 90% design plans for improvements to the entranceway and children's play area at the Wells Recreation Center; and

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

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

**SECTION 1.** That the City Council of the City of Riviera Beach, Palm Beach County, Florida, accepts the master site plan improvements for the entranceway and children's play area at the Wells Recreation Center and authorizes the firm of Chris Wayne and Associates to finalize the required design specifications and construction documents to bid the project.

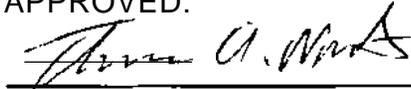
**SECTION 2.** The Finance Director is authorized to appropriate an additional \$200,000 from the Capital Acquisition Fund (310) to finance the proposed improvements.

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

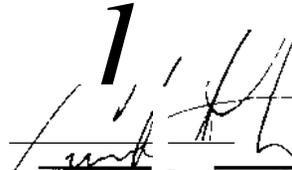
**SECTION 4.** This Resolution shall take effect upon its passage and approval by the City Council.

PASSED AND APPROVED this 8 day of August 2008

APPROVED:



**THOMAS A. MASTERS**  
MAYOR

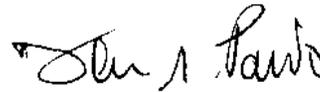
**1**  


**CEDRICK THOMAS**  
CHAIRPERSON

ATTEST:



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



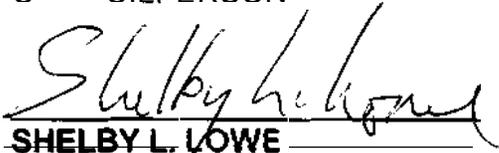
**DAWN S. PARDO**  
CHAIR PRO M



**JUDY L. DAVIS**  
COUNCILPERSON



**L.N. HUBBARD**  
COUNCILPERSON



**SHELBY L. LOWE**  
COUNCILPERSON

MOTIONED BY: J. Davis \_\_\_\_\_

SECONDED BY: L. Hubbard \_\_\_\_\_

C. THOMAS aye \_\_\_\_\_

D. PARDO aye \_\_\_\_\_

J. DAVIS aye \_\_\_\_\_

L. HUBBARD aye \_\_\_\_\_

S. LOWE aye \_\_\_\_\_

REVIEWED AS TO LEGAL SUFFICIENCY

  
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 8/1/08

RESOLUTION NO. 91-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING FIRE RESCUE TO PURCHASE TWO (2) TAYLOR MADE AMBULANCES IN THE AMOUNT OF \$405,516.62 FROM TAYLOR MADE AMBULANCE OF NEWPORT, ARKANSAS; AND AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO MAKE PAYMENT FROM ACCOUNT NUMBER 310-0920-5220-6451 FOR SAME; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Fire Rescue provides emergency medical and ambulance transport services; and

WHEREAS, the City Council approved funding for the purchase of two (2) new rescue ambulances in the 2007/08 fiscal budget to assist with providing emergency medical and transport services; and

WHEREAS, the City can purchase two (2) ambulances from Taylor Made Ambulance of Newport. AR; and

WHEREAS, the City Council authorizes the Mayor and Finance Director to pay \$405,516.62 from account number 310-0920-5220-6451 for the purchase of two ambulances.

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

Section 1: The purchase of two (2) Taylor Made Ambulances from Taylor Made Ambulances is hereby approved.

Section 2: The City Council of the City of Riviera Beach authorizes the Mayor and Finance Director to make payment to Taylor Made Ambulance in the amount of \$405,516.62 from account number 303-0920-5220-6451 for same.

Section 3: This resolution shall take effect upon its passage and approval by the City Council.

PASSED and APPROVED this 8 day of August, 2008



RESOLUTION NO. 92-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, ACCEPTING WEST CONSTRUCTION INC.'S CHANGE PROPOSAL FOR THE COST INCREASE TO THE OLD DIXIE HIGHWAY STREETScape IMPROVEMENTS PROJECT IN THE AMOUNT OF \$158,824.79; AUTHORIZING THE FINANCE DIRECTOR TO APPROPRIATE THE FUNDS FROM THE IMPACT FEE FUND FOR ROADS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, West Construction Inc. of Lake Worth was awarded the contract for the Old Dixie Highway Streetscape Improvement Project on November 7, 2007, and

WHEREAS, the start of construction for the project was delayed by 5 months due to the time utilized by the County to process and issue the permits for the project; and

WHEREAS, due to the length of time from execution of the contract to the issuance of the permit by the County the cost of materials increased and the **subcontractors commitments expired and new subcontractors had to be obtained** by the contractor.

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

SECTION 1. The West Construction Change Proposal for the Old Dixie Highway enhancements in the amount of \$158,824.79 is approved.

SECTION 2. The Finance Director is authorized to appropriate funds for same from the Road Impact Fee account number 303-00-271014.

APPROVED:

Thomas A. Masters  
THOMAS A. MASTERS  
MAYOR

[Signature]

ATTEST: 291 8/8/08  
CA E. WARD  
MASTER MUNICIPAL CLERK  
CITY CLERK

Dawn S. Pardo  
DAWN S. PARDO  
CHAIR **PRO TEM**

Judy L. Davis  
JUDY L. DAVIS  
COUNCILPERSON

Lynne L. Hubbard  
LYNNE L. HUBBARD  
COUNCILPERSON

Shelby L. Lowe  
SHELBY L. LOWE  
COUNCILPERSON

MOTIONED BY: Davis

SECONDED BY: S. Lowe

C. THOMAS aye

D. PARDO aye

J. DAVIS aye

L. HUBBARD aye

S. LOWE aye

REVIEWED AS TO LEGAL SUFFICIENCY

Pamela H. Ryan  
PAMALA HANNA RYAN/CITY ATTORNEY

DATE: 7/30/08

RESOLUTION NO. 93-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A LETTER OF AGREEMENT BETWEEN THE CITY OF RIVIERA BEACH AND KABOOM!, A NON-PROFIT LOCATED IN WASHINGTON DC FOR A COMMUNITY-BUILD PLAYGROUND PROJECT AT WELLS RECREATION CENTER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, KaBOOMI is a non-profit organization chartered in the District of Columbia and organized as a 501(c) 3 by determination of the Internal Revenue Service; and

WHEREAS, KaBOOMI is an organization that develops, manages and coordinates a community-building playground for its Community and Funding Partners, culminating in a one-day installation event known as a "Build Day"; and

**WHEREAS**, The City of Riviera Beach desires to enter into a written agreement with KaBOOM! for services to plan, design and construct a Community-build playground ("Project") at Wells Recreation Center; and

WHEREAS, The City of Riviera Beach is required to contribute \$10,000 towards the purchase of the playground equipment for Community-build playground project at Wells Recreation Center; and

WHEREAS, The \$10,000 will be provided by the Funding Partners.

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

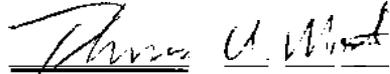
SECTION 1. That the Mayor and City Clerk are authorized to execute the Letter of Agreement with KaBOOM! on behalf of the City of Riviera Beach.

SECTION 2. This Resolution shall take effect immediately upon its approval.

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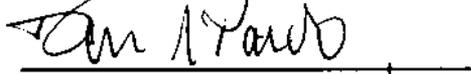
PASSED AND ADOPTED THIS 6 DAY OF August, 2008.

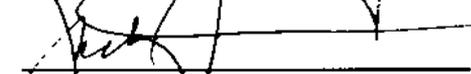
APPROVED:

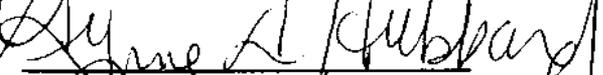
  
**THOMAS A. MASTERS**  
MAYOR

(MUNICIPAL SEAL)

  
**CEDRICK A. THOMAS**  
CHAIRPERSON

  
**DAWN S. PARDO**  
CHAIR PRO-TEM

  
**JUDY L. DAVIS**  
COUNCILPERSON

  
**LYNNE L. HUBBARD**  
COUNCILPERSON

  
**SHELBY L. LOWE**  
COUNCILPERSON

ATTEST

  
CARRIE E. WARD,  
MASTER MUNICIPAL CLERK  
CITY CLERK

MOTIONED BY: J. Davis

SECONDED BY: s. Lowe

C. THOMAS: aye

D. PARDO: aye

J. DAVIS: aye

L. HUBBARD: aye

S. LOWE: aye

REVIEWED AS TO LEGAL  
SUFFICIENCY

  
CITY ATTORNEY  
CITY OF RIVIERA BEACH  
Date 7/30/08

THIS KaBOOM! COMMUNITY PARTNER AGREEMENT IS made this 23<sup>rd</sup> day of July, 2008 by and between KaBOOM! and City of Riviera Beach,

#### RECITALS

WHEREAS KaBOOM! is a non-profit organization chartered in the District of Columbia and organized as a 501 (c) 3 by determination of the Internal Revenue Service:

WHEREAS KaBOOM! is an organization that develops, manages and coordinates a community-building playground for its Community and Funding Partners, culminating in a one-day installation event known as a "Build Day";

WHEREAS City of Riviera Beach is entering into a written agreement with KaBOOM! for services to plan, design and construct a community-build playground ("Program");

WHEREAS KaBOOM! has received charitable support from Chrysler Motors LLC, The Chrysler Foundation, DaimlerChrysler Financial Services Americas LLC, individuals and entities engaged in the sale of Chrysler, Dodge, and Jeep vehicles and their related entities ("Funding Partners") for this Program and has entered into a separate agreement with Chrysler Motors LLC and The Chrysler Foundation, the result of which are financial and human resources for this Program.

NOW THEREFORE, In consideration of the mutual covenants and conditions hereinafter expressed, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

#### AGREEMENTS

1. OBLIGATIONS OF City of Riviera Beach
  - 1.1. City of Riviera Beach agrees to be the Community Partner organization ("Community Partner") for the The Chrysler Foundation and Chrysler Motors LLC playground project at Wells Recreation Park- 2409 Avenue H West, Riviera Beach. FL 33404
  - 1.2. City of Riviera Beach agrees to be responsive to the discreet timeline developed for the Program, inclusive of providing approval of, action toward or direction to, specific responsibilities and initiatives of KaBOOM! on behalf of this Program
  - 1.3. As a Community Partner for a KaBOOM! community-build playground project. City of Riviera Beach will work with KaBOOM!, The Chrysler Foundation and Chrysler Motors LLC, and community residents to design, plan and build a community playground. All parties will work closely together to ensure a successful, productive, and fun event.
    - 1.3.1. The Community Partner agrees to host a KaBOOM!-facilitated Design Day With at least 20-30 adults and 20-30 children, The adults will remain engaged in planning activities throughout the Design Day to Build Day planning process.
    - 1.3.2. The Community Partner agrees to recruit and secure at least 12-15 adult volunteers for preparation activities two to three days prior to Build Day playground installation
    - 1.3.3 The Community Partner agrees to recruit and secure at least 75 adult volunteers for the Build Day playground installation.
    - 1.3.4. The Community Partner agrees to be responsible for preparing the site for the installation of the new playground, atleast two weeks before Build Day, which includes but is not limited to



It starts with a  
playground.

removing existing playground equipment footers and safety surfacing, grading the land.  
removing fencing and performing soil tests.

- 1.3.5 The Community Partner agrees to provide certain provisions for use by volunteers working on the construction project, including but not limited to food (breakfast snacks, lunch and mid-day snacks), water and restroom facilities,
- 1.4. In support of this project City of Riviera Beach is responsible for contributing \$10,000 to the playground project.
  - 1.4.1. All funds will be applied directly toward purchasing playground equipment.
  - 1.4.2. Upon receipt of this signed agreement, KaBOOM! will invoice City of Riviera Beach for the full amount of this contribution, and it will be due at least 30 days before the Build Day on November 8<sup>th</sup>, 2008,
  - 1.4.3. If City of Riviera Beach does not make payment as outlined in Section 1.4.2, KaBOOM! reserves the right, without waiving any other rights and remedies, to cancel the build.
    - 1.4.3.1. In the event of the Build Day's cancellation due to non-payment by the Community Partner as outlined in Section 1.4.2, at KaBOOM!'s written request without waiving any other rights and remedies, City of Riviera Beach shall be deemed liable for damages to KaBOOM! and Funding Partner for any un-cancelable contractual commitments entered into prior to cancellation, any equipment costs, labor and materials, and any additional expenses related to the Program, such as airfare and general supplies,
  - 1.4.4. The Community Partner has the right to back-up documentation detailing the use of its contribution to the project. Upon request, KaBOOM! will provide back-up documentation for City of Riviera Beach within 120 days after the Build Day,
- 1.5. The Build Day must occur in calendar year 2008 on Saturday, November 8<sup>th</sup>.
  - 1.5.1. The Build Day shall not be postponed (defined as delayed, held over or rescheduled) under any circumstances other than for conditions that jeopardize the safety of the volunteers, or for unsafe weather conditions that threaten the structural integrity of the playground.
    - 1.5.1.1. The decision to postpone a Build Day shall be reached through discussion, collaboration and majority agreement by KaBOOM!, the Community Partner and the Funding Partner, each represented by a person authorized by each party,
    - 1.5.1.2. The sole exception to mutual decision-making and majority agreement shall be when the decision must be made immediately and solely by KaBOOM! on the construction site in absence of authorized representatives of the Community Partner and the Funding Partner being available. KaBOOM! shall make a reasonable attempt to contact the City prior to making any such decisions
    - 1.5.1.3. The authorized representatives are defined as those individuals who have signed this Agreement, and the Agreement between KaBOOM! and the Funding Partner, or their designates
  - 1.5.2. In the event that the Build Date is cancelled or changed solely by City of Riviera Beach, City of Riviera Beach shall be deemed liable for damages to KaBOOM! and Funding Partner for any equipment costs, labor and materials and any additional expenses related to the Program, such as airfare and general supplies.
  - 1.5.3. In the event of a Build Day postponement, KaBOOM! shall collaborate with the Community Partner and the Funding Partner to issue a Memo of Understanding (MDU) that outlines a plan for rescheduling the Build Day.
    - 1.5.3.1. The MOU shall outline any additional expenses related to the rescheduled Build Day, and the party or parties responsible for covering the additional expenses.



These expenses *may* include, but are not limited to, equipment storage, security, equipment shipment, and KaBOOM! travel and hotel expenses.

- 1.5.3.2. The MOU shall identify the next-earliest possible date for the Build Day, based on the availability of open dates on the KaBOOM! program calendar, the availability of the Community Partner to participate in the project, and the availability of the Funding Partner to participate in the project
- 1.6. City of Riviera Beach shall attach documentation to this Agreement showing proof of land ownership evidenced by a deed granting title of the property to City of Riviera Beach to the property, or a letter from the property owner showing approval for the installation of the playground. Working with the support of the property owner (if owner is a separate party), City of Riviera Beach will maintain the property before and after the build to ensure a safe and attractive play area.
- 1.7. City of Riviera Beach shall collaborate with KaBOOM! during the planning of this Project to develop a maintenance program for the playground that will be implemented by City of Riviera Beach upon completion of the playground installation.
- 1.8. City of Riviera Beach is self-insured and City of Riviera Beach is responsible for providing coverage for its own employees and for any accidents arising out of the equipment.
- 1.9. City of Riviera Beach will obtain all necessary and appropriate permits and licenses regarding the installation and possession and use of a playground prior to Build Day in compliance with local and state laws, regulations and guidelines.
- 1.10. City of Riviera Beach will work with local authorities and/or private firms as appropriate to ensure the safety and security of human and equipment resources (playground equipment, playground volunteers) from the point of material delivery, during the period(s) when site preparation occurs on the playground site, and until the conclusion of the Build Day.
- 1.11. City of Riviera Beach is responsible for ensuring the playground site is safe for volunteers and children
  - 1.11.1. City of Riviera Beach is responsible for conducting up to two utility site checks as reasonably requested by KaBOOM! with the appropriate utility companies with the first test being completed within two weeks of Design Day. Documentation of the utility checks must be provided to the KaBOOM! Project Manager upon completion.
  - 1.11.2. City of Riviera Beach is responsible for conducting up to two soil site tests as reasonably requested by KaBOOM! with the first test being completed within two weeks of Design Day. Documentation of the soil checks must be provided to the KaBOOM! Project Manager upon completion. City of Riviera Beach is responsible for undertaking any necessary risk mitigation should the soil be deemed unsafe for children or volunteers.
- 1.12. City of Riviera Beach will agree to accept and maintain engineered wood fiber as playground safety surfacing, meeting standards established by CPSC guidelines, for the lifetime of the playground.
- 1.13. City of Riviera Beach is solely responsible for any additional costs beyond the proposed playground project budget. KaBOOM! is not responsible for paying any vendors for any prior site preparation, upgrades or improvements not agreed upon with KaBOOM!. If Community Partner decides to purchase additional equipment or materials to supplement materials secured by KaBOOM!, then the Community Partner is solely responsible for paying for the materials and all



other liabilities related to such materials. Neither KaBOOM! nor its Funding Partner(s) shall be liable for payment. Community Partner will hold KaBOOM! and the Funding Partner harmless of any payments or liability with respect to the additional items ordered.

- 1.14. City of Riviera Beach will seek prior approval from KaBOOM! and/or The Chrysler Foundation and Chrysler Motors ILC for any written and/or printed materials that reference the Program and/or contain the logos of KaBOOM! or The Chrysler Foundation and Chrysler Motors LLC, including but not limited to press releases, fliers and promotional materials. City of Riviera Beach will work in collaboration with KaBOOM! and/or The Chrysler Foundation and Chrysler Motors LLC to secure media coverage. KaBOOM! will provide mutual opportunity for the Community Partner to review and approve materials prepared by KaBOOM! related to this Project (such approval not to be unreasonably withheld).
  - 1.15. City of Riviera Beach will allow the names and logos of The Chrysler Foundation and Chrysler Motors ILC and KaBOOM! on permanent playground signage. Playground signage is 12 inches wide and 30 inches tall and mounted on poles. The sign will be erected in a mutually agreed upon location and in accordance with the Community Partner's guidelines regarding corporate signage. If the Community Partner has specific guidelines regarding corporate signage on its property, please attach those guidelines to this Agreement.
  - 1.16. City of Riviera Beach understands that the playground will be added to the roster of KaBOOM! Build Guild and, as such, will receive subsequent information from KaBOOM! on playground maintenance, programming and enhancements.
2. OBLIGATIONS OF KaBOOM!
- 2.1. KaBOOM! will provide the Community Partner with technical and organizational leadership and guidance for the playground project.
    - 2.1.1. Facilitate playground design and work with vendors to procure equipment and materials in a timely fashion, the possible exception being the installation of safety surfacing other than engineered wood fiber.
    - 2.1.2. Manage construction logistics for the project, coordinate playground site preparation activities with the Community Partner, inventory equipment and materials, and assure that the necessary tools and materials are available to construct the playground.
    - 2.1.3. Facilitate regular planning meetings with the Community Partner and the playground planning committee.
    - 2.1.4. Lead the Build Day activities, including the coordination of Build Day captains and volunteers.
    - 2.1.5. Provide educational and promotional materials to support the playground project, including the KaBOOM! Tool Kit of publications (4-book set), KaBOOM! online Playground Planner, nametags and other general supplies.
    - 2.1.6. Provide for and coordinate the participation of the Funding Partner, The Chrysler Foundation and Chrysler Motors LLC, which has committed to provide KaBOOM! with financial, human and/or in-kind resources to bring to fruition the playground project with City of Riviera Beach.
22. KaBOOM! (in collaboration with City of Riviera Beach), will provide or secure a Certified Playground Safety Inspector (CPSI) to review the playground structure to ensure that it is safe and built to all appropriate standards and guidelines. City of Riviera Beach acknowledges that neither KaBOOM! or Funding Partner nor their respective officers, directors, employees, or agents have made or are in any way responsible or liable for action, inaction or negligence of the CPSI



it starts with a  
playground

and City of Riviera Beach agrees to look solely to the CPSI for any such liability, costs or expenses which arise out of the CPSI's action, inaction or negligence.

2.2.1. The CPSI review will occur at the conclusion of the Build Day or, if KaBOOM! assumes responsibility for the playground construction going beyond one day, at the conclusion of the installation.

2.2.2. In accordance with Section 4, City of Riviera Beach shall be solely responsible for any injury, property damage, or death which occurs in connection with the playground after review of the playground is completed.

2.2.3. In accordance with Section 4, in the event that the Build Day is delayed or not completed on the scheduled day due to failure of City of Riviera Beach to meet the terms of this Agreement, then City of Riviera Beach will be responsible for securing a CPSI to review the playground.

### 3. FUNDING PARTNER RELATIONS

3.1. KaBOOM! has a separate agreement with a KaBOOM! Funding Partner, The Chrysler Foundation and Chrysler Motors IIC, whose contributions to KaBOOM! are helping to make this Project possible.

3.2. The Community Partner shall not solicit sponsors or donors whose products or services directly compete with the products or services of the Funding Partner.

3.2.1. For the purposes of this Agreement, sponsors are defined as individuals, businesses or philanthropic organizations that contribute funding or in-kind gifts to this Project in exchange for certain rights to promote their affiliation with this Project to the general public, including but not limited to public name recognition via this playground project's signs, T-shirts, media materials and public-address systems. Conversely, donors are individuals or groups whose gifts to this Project require personal, acknowledgement only, such as thank-you letters.

3.3. In the event the Community Partner solicits other sponsors or donors, then those sponsors and donors shall not compete with the Funding Partner for signage and sponsorship recognition. The Funding Partner shall receive first placement on any recognition materials developed for the Project, including playground signage, banners, T-shirts, press releases, web-site and newsletter stories, and flyers.

3.4. In the event of a conflict between the Funding Partner and other sponsors and donors, the Funding Partner, Community Partner and KaBOOM! shall consider recognition on a case-by-case basis.

### 4. OWNERSHIP AND LIABILITY

4.1. The Community Partner is the owner of the playground in its entirety, for the lifetime of the playground, including the equipment and/or safety surfacing purchased by KaBOOM! and/or its Funding Partner(s).

4.2. It is agreed that the City of Riviera Beach will indemnify and hold harmless KaBOOM! and/or the Funding Partner and their respective officers, directors, employees, or agents from any and all claims, costs, expenses (including attorney's fees and disbursements) or actions associated with this playground project from any claim or action, including but not limited to claims and actions for personal injury, death, or property damages resulting from the use of any playground property and equipment, except to the extent resulting from any negligence or willful misconduct of KaBOOM! and/or the KaBOOM! Funding Partner in the performance of this Agreement. Except as set forth in Section 768.28, Florida Statutes, nothing contained in this provision shall be construed or



it starts with a  
playground.

Interpreted as consent by the City of Riviera Beach to be sued, nor as a waiver of sovereign immunity.

- 4.3. A Certified Playground Safety Inspector will review the playground structure upon completion at the end of the scheduled Build Day. The manufacturer's representative/installer will certify that the playground was installed to manufacturer's specifications at the end of the Build Day.
  - 4.3.1 Notwithstanding the foregoing, City of Riviera Beach shall be solely responsible for the playground and its equipment upon certification of the playground.
  - 4.3.2. City of Riviera Beach shall be responsible for securing safety measures of the playground to prevent injury, death, or property damages in the unlikely event that the playground is not completely constructed, and all equipment fully installed, at the conclusion of the Build Day and once KaBOOM! and/or the CPSI leave the playground site.
  - 4.3.3, In the unlikely event or planned circumstances that the playground is not completely constructed and all equipment fully installed at the conclusion of the Build Day, City of Riviera Beach shall be responsible for completing the installation of the playground in accordance with the specified guidelines with the assistance of the CPSI and/or the manufacturer's representatives, facilitated by KaBOOM!. City of Riviera Beach agrees to indemnify, hold harmless and defend KaBOOM! and/or the KaBOOM! Funding Partner as set forth in section 4.2 above.
- 4.4 Maintenance of the playground facility and supervision of its use is the sole responsibility of City of Riviera Beach. Upon request, the playground-equipment and safety-surfacing manufacturers will provide guidance and materials, toward a maintenance plan for the playground
  - 4.4.1, The Community Partner will receive from Playworld Systems Inc., the provider of its playground equipment, or via its KaBOOM! project manager, a play equipment maintenance kit from Playworld Systems Inc.

5. WARRANTY

- 5.1. The playground equipment is covered under warranty by the selected playground equipment company in accordance with its warranty policy. Upon request, a copy of the warranty for the playground-equipment and the safety-surfacing will be provided by the manufacturer(s) to the Community Partner. While playground equipment and/or material manufacturers may provide a warranty with respect to their product, City of Riviera Beach acknowledges that neither KaBOOM! or Funding Partner nor their respective officers, directors, employees or agents, have made nor are in any manner responsible or liable for any warranty, representation, or guarantee, express or implied, in fact or in law, relative to any equipment or material, including but not limited to its quality, mechanical condition or fitness for a particular purpose. Any warranties and/or guarantees on any equipment or material are subject to the respective manufacturer's terms therefore, and City of Riviera Beach agrees to look solely to such manufacturers for any such warranty and/or guarantee

6. GENERAL

- 6.1, Notices. Any notices required or permitted to be given hereunder shall be sent by certified or registered United States mail, postage properly prepaid, or by personal delivery addressed as follows:

To: Helen Zimmerman, Manager Contracts & Risk Management  
KaBOOM!  
4455 Connecticut Ave., NW, Suite B100  
Washington, DC 20008 USA  
202-464-6075



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Copy To: Nicole M. Lazo, Client Services Coordinator  
(use same KaBOOM! address above)  
202-464-6181

To Corporation: John L. Williams  
City of Riviera Beach  
600 W, Blue Heron Boulevard  
Riviera Beach, FL 33404  
561-845-34

- 6.2. Counterparts. This Agreement may be executed by the parties in one or more counterparts which shall, in the aggregate, be signed by all parties and each counterpart shall be deemed an original instrument as against any party who has signed it.
- 6.3. Governing Law. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement Will be held in Palm Beach County. 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.
- 6.4. Binding Effect This Agreement shall be binding upon and inure to the benefit of the respective affiliates, successor, and personal representatives of the parties to this Agreement, except to the extent of any contrary provision in this Agreement.
- 6.5. Severability, This Agreement shall be construed to be in accordance with federal and state statutes. If any provision of this Agreement; or any portion thereof, is found to be invalid, illegal, or unenforceable, under any applicable statute or rule of law, then such provision or portion thereof shall be deemed omitted, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby,
- 6.6. Complete Agreement. This Agreement, when executed by the duly authorized representatives of each party shall be the entire agreement between the parties as to the subject matter stated herein and supersedes and replaces any and all previous agreements and all amendments thereto.
- 6.7. Assignment. This Agreement may not be assigned, delegated or transferred by either party without the prior written consent of the other party hereto.
- 6.8. Force Majeure. If either of the parties hereto is delayed or prevented from fulfilling any of its obligations under this Agreement by force Majeure, said party shall not be liable under this Agreement for said delay or failure. "Force Majeure" means any cause beyond the reasonable control of a party, including, but not limited to acts of God, acts of omission of civil or military authorities of a state or nation, fire, strike, flood, not, act of terrorism, war, delay of transportation, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities, Either party, however, may terminate this Agreement if the other is unable to perform any obligation under the Agreement for a period longer than ten (10) calendar days due to such a force majeure event. in the event of any such termination, KaBOOM! shall refund to the Community Partner any monies paid to KaBOOMI, less expenses already committed to and/or incurred prior to the date of termination. If, upon termination as provided herein, the sum due



KaBOOM! by Community Partner, exceeds the sum paid to KaBOOM! hereunder, Community Partner agrees to pay KaBOOM! for any such additional sum due upon presentation of appropriate documentation within 30 days of invoice.

6.9. Waiver. A waiver by either party of a breach or failure to perform shall not constitute a waiver of any subsequent breach or failure.



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IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the day and year first above written.

By signing this Agreement, City of Riviera Beach fully acknowledges its consent and understanding of and commitment to the terms and guidelines set forth above. Please sign both original versions of this letter and return them to KaBOOM! We will then sign the originals, and mail one original and one copy back to you for your files.

KaBOOM! and The Chrysler Foundation and Chrysler Motors LLC look forward to working with City of Riviera Beach to make this playground a reality.

Date Terms agreed to:

Date Terms agreed to:

August 16, 2008

8.1.2.108

By:

*Thomas Masters*

By:

*Gerry Megas*

**Thomas Masters**

Gerry Megas  
Chief Financial Officer

Mayor

Phone number: 202- 464- 6075

Authorized Signature for City of Riviera Beach

Fax number: 202- 659- 0210

Phone Number 561-845-4145

Email address: [hzimmerman@kaboomorg](mailto:hzimmerman@kaboomorg)

Fax Number: 561-840-3353

Email Address: [tmasters@rivierabch.com](mailto:tmasters@rivierabch.com)

City of Riviera Beach

KaBOOM!

600 W. Blue Heron Boulevard

4455 Connecticut Ave, NW Suite B100

Riviera Beach, FL33404

Washington, DC 20008

Contact information for the person who should receive KaBOOM! invoices:

Name: David Wright, Jr.

Telephone Number: 561-845-4097

Mailing Address:

Fax Number 561-840-3353

600 W. Blue Heron Boulevard

Riviera Beach, FL 33404

Email Address: [dwright@rivierabch.com](mailto:dwright@rivierabch.com)

*Carrie E. ward*

Carrie E. ward  
Master Municipal Clerk  
City Clerk

Attachments'

Welcome Packet

Playworld Systems Inc. Playground Equipment Warranty (sample)

Copy

KaBOOM! Project Archives



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playground.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING AN INCREASE IN FUNDS IN THE AMOUNT OF \$61,000 FOR THE RENOVATIONS OF THE YOUTH EMPOWERMENT CENTER FROM \$214,311.99 TO \$275,311.99 AND AWARDING THE BID IN THE AMOUNT OF \$272,630.94 TO ALL-SITE CONSTRUCTION, INC., OF RIVIERA BEACH, FLORIDA, AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CONTRACT; FURTHER AUTHORIZING THE FINANCE DIRECTOR TO APPROPRIATE THE GENERAL FUND FUND BALANCE IN THE AMOUNT OF \$61,000 TO COVER THE INCREASE IN COST FOR THE RENOVATIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council in September of 2007, approved the acquisition and renovations of 1562 W. 28<sup>th</sup> Street to be utilized as the Youth Empowerment Center; and

WHEREAS, bids for the renovations were advertised on June 2, 2008, with bid openings conducted on June 26, 2008, ranging from \$272,602.94 to \$582,851.56; and

WHEREAS, the lowest bid submitted was in the amount of \$272,630.94 by All-Site Construction, Inc. of Riviera Beach, Florida; and

WHEREAS, available funds for the renovations of the Youth Empowerment Center is approximately \$214,311.99, resulting in a shortage of approximately \$61,000, which is required to enter into a contract; and

WHEREAS, the City is desirous of proceeding with the renovations and it is necessary to increase the funding and award a contract to All-Site Construction, Inc., of Riviera Beach, Florida.

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

**SECTION 1:** That City Council approves an increase in funding for the renovations of the Youth Empowerment Center from \$214,311.99 to \$275,311.99.

**SECTION 2:** Award the bid for renovations to All-Site Construction, Inc. of Riviera Beach, Florida, in the amount of \$272,630.94.

**SECTION 3:** Authorize the Mayor and City Clerk to execute the contract between the City and All-Site Construction, Inc. of Riviera Beach, Florida.

**SECTION 4:** Authorize the Finance Director to appropriate funds from the General Fund Fund Balance account No. 001-00-399999 to cover the increase in cost and expend funds for the renovations.

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

PASSED and APPROVED this 8 day of August  
2008.

APPROVED:

[Signature]

[Signature]  
**CEDRICK A. THOMAS**  
CHAIRPERSON

ATTEST:

[Signature]  
**CARRIE E. WARD**  
MASTER MUNICIPAL CLERK  
CITY CLERK

[Signature]  
**DAWN S. PARDO**  
CHAIR PRO-TEM

[Signature]  
**LYNNE L. HUBBARD**  
COUNCILPERSON

[Signature]  
**SHEL E**  
COUNCILPERSON

[Signature]  
**JUDY L. DAVIS**  
COUNCILPERSON

MOTIONED BY: J. Davis

SECONDED BY: L. Hubbard

- C. THOMAS aye
- D. PARDO aye
- L. HUBBARD aye
- S. LOWE aye
- J. DAVIS aye

REVIEWED AS TO LEGAL SUFFICIENCY

[Signature]  
PAMALA HANNA RYAN, CITY ATTORNEY  
DATE 8/11/08