

EXHIBIT 1

12/10/02 #23

CAF#112
General Contract

INTERLOCAL AGREEMENT

Between

BROWARD COUNTY

and

CITY OF MIRAMAR

for

DEVELOPMENT, CONSTRUCTION, OPERATION AND MAINTENANCE
OF MIRAMAR REGIONAL PARK

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BROWARD COUNTY

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CITY OF MIRAMAR

for

**DEVELOPMENT, CONSTRUCTION, OPERATION AND MAINTENANCE
OF MIRAMAR REGIONAL PARK**

This is an Interlocal Agreement ("Agreement"), made and entered into by and between: BROWARD COUNTY, a political subdivision of the state of Florida, hereinafter referred to as "COUNTY,"

AND

CITY OF MIRAMAR, a Florida municipal corporation, hereinafter referred to as "CITY."

WHEREAS, COUNTY has acquired title to certain lands described in Exhibit "A" hereto (the "Miramar Regional Park Property" or "Property") for the purpose of developing a regional park; and

WHEREAS, COUNTY has appropriated Capital Funds, Bond Funds, and Impact Fees totaling Fifteen Million Nine Hundred Thousand Dollars (\$15,900,000.00) hereinafter described for the purpose of developing a regional park on the Miramar Regional Park Property; and

WHEREAS, CITY desires and COUNTY is willing, subject to the terms of this Agreement, to convey and transfer to CITY the Miramar Regional Park Property and the aforementioned funds for CITY to take over the development, construction, operation and maintenance of the Property as a regional park, excepting Eighty-eight Thousand Dollars (\$88,000.00) that COUNTY will be spending directly as part of its Public Art program for the Park, as further described herein; and

WHEREAS, upon completion of the Public Art designated for the Park as described in this Agreement, COUNTY shall appropriate to CITY an additional Thirty-two Thousand One Hundred Seventy-five Dollars (\$32,175.00) for conservation of the completed Public Art; and

WHEREAS, COUNTY has an existing agreement with Craven, Thompson & Associates, Inc., for the performance of Consultant Services for the Miramar Regional Park Property; and

WHEREAS, COUNTY has agreed to assign its rights and obligations under the agreement with Craven, Thompson & Associates, Inc., to CITY simultaneously with the approval of this Agreement by COUNTY; and CITY has agreed to accept such assignment of that agreement; said assignment pursuant to the simultaneous execution of an Assignment, Delegation and Release Agreement attached hereto as Exhibit "B"; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, COUNTY and CITY agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

- 1.1 **Agreement** - means this document, Articles 1 through 10, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **Board** - The Broward County Board of County Commissioners.
- 1.3 **Contract Administrators** - The Director of the Broward County Parks and Recreation Division, or the designee of such Director for COUNTY. The City Manager, the Director of the City's Parks and Recreation Department, or the designee of such City Manager or Director for CITY. The primary responsibilities of the Contract Administrators are to coordinate and communicate with each other and to manage and supervise execution and completion of the Project and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrators; provided, however, that such instructions and determinations do not increase the obligations of COUNTY or CITY hereunder. COUNTY's Contract Administrator may approve changes to the Project permitted by this Agreement.

- 1.4 **County Attorney** - The chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 4.03 of the Broward County Charter.
- 1.5 **Available Funds for Transfer** -The funds that COUNTY has appropriated for the Property, including land acquisition costs are as follows:
- A. \$12,900,000 Capital Funds via Impact Fees:
 - 1. \$8,500,000 available now
 - *2. \$4,400,000 available 10/1/03
 - B. \$3,000,000 Bonds Funds
 - C. \$32,175 approx. Conservation allocation, equaling 15% of the total public art budget as further described in Section 4.3 and 10.8 herein. This amount is in addition to the \$15.9 million.

* includes \$88,000 to be specifically applied to Public Art Program further described in Section 10.8 herein.

- 1.6 **Project** - The Project consists of the development, operation and maintenance of a regional park in CITY on the Miramar Regional Park Property as further described in Article 2.
- 1.7 **Small Disadvantaged Business Enterprise (SDBE)** - Whenever the phrases "Small Disadvantaged Business Enterprise," "Minority Business Enterprise", or "Women Business Enterprise" are used, their meanings shall be construed by reference to Broward County Ordinance No. 93-17 (which is codified in the Broward County Code at Sections 20-275, et seq.) as amended from time to time.

ARTICLE 2

PROJECT

- 2.1 CITY shall develop, construct, operate and maintain the Project consistent with the requirements specified herein and in accordance with the revised Master Plan attached hereto and incorporated herein as Exhibit "C." The Master Plan sets forth the phases and timing for the development of the Project. CITY must obtain written approval of COUNTY prior to making any major changes to the Master Plan. Major changes are defined as those that would eliminate parks amenities such as, but not limited to, athletics, aquatics, or picnic areas, without replacement thereof. Minor

changes may be made by CITY with the prior, written approval of COUNTY's Contract Administrator. Minor changes are defined as those changes that would relocate an approved amenity within the Master Plan to another location within the Property and include the substitution of similar recreational amenities that provide the same or greater level of service.

- 2.2 The parties agree that CITY's obligations and responsibilities are deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks reasonably required to perform CITY's obligations hereunder.
- 2.3 CITY acknowledges and agrees that COUNTY's Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the obligations of CITY under this Agreement.
- 2.4 CITY shall comply with all federal, state and local rules and regulations in developing this Project. CITY acknowledges that this requirement includes compliance with all federal, state and local health and safety rules and regulations. This provision shall be included in all subcontracts.
- 2.5 In the event CITY assesses fees for access to or use of the regional park, such fees shall be the same for all residents of Broward County. CITY further agrees that all residents of Broward County will have equal access to programming and use of the regional park.
- 2.6 CITY acknowledges and agrees that the Property will be operated by CITY in perpetuity for public park purposes, and ancillary/incidental uses thereto, such as but not limited to concession stand(s) restrooms, parking area(s), park office, park maintenance area, and similar park support infrastructure. In addition, CITY may place one (1) communication tower at the Park. CITY acknowledges that the Deed from COUNTY conveying the Property to CITY will contain a provision which provides, that, in the event CITY violates this Section 2.6, COUNTY will be granted the possibility of reverter so that fee title to the Property can revert back to COUNTY upon the occurrence of certain events as described in the Deed.
- 2.7 Simultaneous with and subject to the execution of this Agreement by both parties, COUNTY and CITY shall enter into an Assignment, Delegation and Release Agreement in the form attached hereto as Exhibit "B"; providing for COUNTY to assign its rights and delegate its obligations, duties and responsibilities to CITY pursuant to that certain agreement between COUNTY and Craven, Thompson & Associates, Inc., as assignee to The SWA Group for Consultant Services for Improvements to the Miramar Regional Park site. COUNTY further agrees that the Assignment, Delegation and Release Agreement will amend the Consultant

Services Agreement and release Consultant, Craven, Thompson & Associates, Inc., with respect to any obligations to COUNTY under the portion of the Agreement so assigned and delegated to CITY. CITY has agreed to assume all such rights and obligations of COUNTY as noted in the Amended Consultant Services Agreement so assigned and delegated to CITY. The effective date of the assignment shall be the same date this Agreement is approved by COUNTY.

ARTICLE 3

TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement shall begin on the date it is fully executed by both parties and shall end ten (10) years from that date or upon Project Completion, whichever comes first. Project Completion is defined as the total build out of the Project as described in the Master Plan in Exhibit "C." COUNTY agrees to grant CITY, if requested, up to a two (2) year extension on the term of this Agreement based on the unavailability of funding by CITY to complete the Master Plan.
- 3.2 Transfer Date. The real property and rights and duties described within this Agreement shall be transferred from COUNTY to CITY simultaneously with the approval by COUNTY of this Agreement. Said transfer shall be via Quit Claim Deed with COUNTY providing a No Lien Affidavit in substantially the forms attached hereto as Composite Exhibit "G."

ARTICLE 4

COUNTY CONTRIBUTION

- 4.1 COUNTY will provide CITY, within Sixty (60) days after the execution of this Agreement by COUNTY, such information, plans, surveys, and other information pertaining to the Project as it has in its possession. COUNTY agrees to contribute an amount not-to-exceed Fifteen Million Nine Hundred Dollars (\$15,900,00.00) towards CITY's construction and development of the Project, which amount shall be accepted by CITY as full payment of COUNTY's contribution to the Project. COUNTY's contribution shall be made to CITY on a reimbursement basis pursuant to Section 4.2 herein. CITY acknowledges that COUNTY contribution referenced above is in addition to the Six Million Dollars (\$6,000,000.00) COUNTY has already paid as development costs for the Project.
- 4.1.1 It is acknowledged and agreed by CITY that COUNTY's land acquisition costs, the transfer of title to the Property, and the amount payable in Section 4.1 above is the maximum payable and constitutes a limitation upon COUNTY's obligation for the Project. This maximum amount, however, does

not constitute a limitation, of any sort, upon CITY's obligation to perform all items of work required by or which can be reasonably inferred from the obligations of CITY hereunder. COUNTY shall in no event have any other financial obligation to CITY with respect to the Project.

- 4.1.2 In the event that CITY's actions in developing, constructing, operating or maintaining the Project violate the provisions of this Agreement, CITY shall promptly take action to cure such violations within thirty (30) days after written notice from COUNTY identifying the breach. In the event the violation(s) are not cured by CITY within the specified time frame, except if CITY demonstrates to COUNTY that it is proceeding with due diligence to cure said breach, COUNTY may terminate this Agreement as provided for in Article 8 herein and seek whatever action is necessary to have title to the Property revert back to COUNTY. If CITY has been determined to have misappropriated or misspent COUNTY funding, COUNTY shall be entitled to have all or part of COUNTY funding returned to COUNTY in 2002 dollars, pursuant to the National Consumer Price Index for all urban consumers; selected areas-Miami/Ft. Lauderdale, using the month and year of execution of this Agreement by COUNTY as the base year, depending on the particular CITY infraction(s).

4.2 METHOD OF BILLING AND PAYMENT

- 4.2.1 CITY may submit invoices for reimbursement no more often than on a monthly basis, but only after the work for which the invoices are submitted has been completed. An original invoice plus one (1) copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the work performed, the expenses incurred and shall otherwise be in such form and substance as may be required by COUNTY. CITY and COUNTY's Contract Administrators agree to have site meetings, as necessary, to review and invoices prior to CITY's submittal of same to COUNTY. In the event CITY and COUNTY staff disagree about an item on the invoice, the parties agree that CITY shall submit only those portions of the invoice not in dispute and shall work with COUNTY to resolve the remaining items. To facilitate the review and approval of invoices by COUNTY, CITY agrees to provide COUNTY's Contract Administrator with copies of all construction contracts entered into by CITY for this Project.
- 4.2.2 Each invoice submitted for construction cost reimbursement shall be accompanied by a written statement signed by CITY's engineer or architect

of record certifying satisfactory completion of the required percentage of the construction in accordance with the prepared plans and specifications approved pursuant to this Agreement. For purposes of this Agreement, "CITY's engineer or architect" shall mean an architect or engineer who is duly registered to practice that profession in the State of Florida. Certification of completion of each percentage milestone of the construction must be received and approved by COUNTY's Contract Administrator prior to payment of any COUNTY funds. Each invoice shall be accompanied by a report indicating the amount paid to SDBE, and the cumulative amount of SDBE participation to date. The final Project invoice must be received no later than sixty (60) days after completion of construction. Invoices shall designate the nature of the services performed and/or the expenses incurred.

- 4.2.3 COUNTY shall pay CITY within thirty (30) calendar days of receipt of CITY's proper statement, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49, as may be amended from time to time), Ninety Percent (90%) of the amount of each proper, approved invoice. The balance of the amount to be reimbursed shall be paid to CITY upon evidence of satisfactory completion of the individual tasks (full completion of each construction contract) for this Project as described in the Master Plan and in accordance with the terms of this Agreement.
- 4.2.4 To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by COUNTY's Contract Administrator. All invoices must be approved in writing by the engineer of record and COUNTY's Contract Administrator to be deemed proper. Payment may be withheld for failure of CITY to comply with a term, condition, or requirement of this Agreement, including without limitation the requirement set forth in 4.1.2 hereof.
- 4.3 Following disbursement of the conservation allocation from COUNTY to CITY, CITY shall deposit the conservation allocation (Fifteen Percent (15%) of the total public art budget of Thirty-two Thousand One Hundred Seventy-five Dollars (\$32,175.00) in a trust account no later than thirty (30) days after the artwork has been finally accepted, such funds to be restricted to use for conservation expenses for the Public Art installed on the Property. This conservation disbursement shall be in addition to, and not subtracted from, either the Two Hundred Fourteen Thousand Five Hundred Dollar (\$214,500.00) Public Art project amount or the Fifteen Million Nine Hundred Thousand Dollar (\$15,900,000.00) Parks Improvements amount.

4.4 Notwithstanding any provision of this Agreement to the contrary, COUNTY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of violation of the terms of any of this Agreement or inadequate or defective work which has not been remedied or resolved in a manner satisfactory to COUNTY's Contract Administrator. The amount withheld shall not be subject to payment of interest by COUNTY.

4.5 Payment shall be made to CITY at:

Robert A. Payton, City Manager
City of Miramar
6700 Miramar Parkway
Miramar, Florida 33023-4897

ARTICLE 5

CHANGES IN CITY'S OBLIGATIONS

Any change to the obligations of either party hereunder must be accomplished by a written amendment, executed by the parties in accordance with the provisions of Section 10.17 below.

ARTICLE 6

GOVERNMENTAL IMMUNITY

CITY and COUNTY are state agencies or political subdivisions as defined in Chapter 768.28, Florida Statutes, and each party agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement or any other contract.

ARTICLE 7

INSURANCE

CITY is a state agency as defined by Section 768.28, Florida Statutes, and CITY shall furnish COUNTY's Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

ARTICLE 8

TERMINATION

- 8.1 This Agreement may be terminated for cause by action of the Board or by CITY if the party in breach has not corrected the breach within thirty (30) days after written notice from the aggrieved party identifying the breach, except if the party in breach demonstrates to the other party that it is proceeding with due diligence to cure said breach.
- 8.2 Termination of this Agreement for cause shall include, but not be limited to, failure of CITY to suitably perform the development of the Project, failure to continuously perform the development, operation and maintenance of the Project in a manner calculated to meet or accomplish the objectives of COUNTY as set forth in this Agreement, or multiple breach of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured. Termination of this Agreement for cause shall also include COUNTY's failure to pay CITY as provided for in this Agreement.
- 8.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by COUNTY's Contract Administrator which COUNTY's Contract Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 8.4 In the event this Agreement is terminated, any contribution payable by COUNTY may be withheld and COUNTY may take necessary legal action to have title to the Property revert back to COUNTY.

ARTICLE 9

EEO/SDBE COMPLIANCE

- 9.1 In designing and constructing the Miramar Regional Park, CITY shall require those providing services for same to comply with COUNTY's Small Disadvantaged Business Enterprise (SDBE) Affirmative Action Program, requiring goals in all procurement activity at One Hundred and Fifty-Thousand Dollars (\$150,000.00) or above for construction services; Seventy-Five Thousand Dollars (\$75,000.00) or above in total contract value for architectural/engineering and related services; and Fifty Thousand Dollars (\$50,000.00) or above in total contract value for all other goods and services. This project is for at least Fifteen Million Nine Hundred Thousand Dollars (\$15,900,000).

9.2 COUNTY and CITY agree that prime and subcontract awards to Small Disadvantaged Business Enterprises and Minority - Majority Ventures are crucial to the achievement of the Project's SDBE participation goals. In an effort to assist in achieving the established goals for this project, CITY agrees to require its architects(s), engineer(s), contractor (s), and others performing services for the Project to take affirmative action to meet the current SDBE participation goals established below.

9.3 This Project has the following SDBE numerical goals:

Small Disadvantaged Business Enterprise

* Minority Business Enterprise	22%
(Breakdown) African-American Firms	12%
Hispanic Firms	10%
* Women Business Enterprise	<u>8%</u>

The total assigned SDBE goals for this Project is: 30%

9.4 CITY shall require its architects(s), engineer(s), contractor(s), and others performing services for the Project to incorporate by Exhibit "F" the names, addresses, a description of work and dollar value of SDBE participation on the Schedule of SDBE Participation into their contracts with CITY. CITY understands that each that each minority and/or women-owned firm utilized on the project to meet Project goals must be certified by the Broward County Division of Equal Employment and Small Business Opportunity and CITY shall so inform its architects(s), engineer(s), contractor(s), and others performing services for this Project. CITY agrees to provide copies of its contracts with such persons to the Contract Administrator and the Broward County Division of Equal Employment and Small Business Opportunity.

9.5 CITY understands that it is the responsibility of the Contract Administrator and the Broward County Division of Equal Employment and Small Business Opportunity to monitor compliance with the SDBE requirements. In that regard, CITY agrees to require its architects(s), engineer(s), contractor(s), and others performing services for the Project to furnish quarterly reports to both parties on the progress of SDBE participation commencing with the end of the first quarter of their agreement with CITY. CITY shall provide the Broward County Division of Equal Employment and Small Business Opportunity with copies of the design and construction contracts.

9.6 CITY shall require its architects(s), engineer(s), contractor(s), and others performing services for the Project to pay its subcontractors and suppliers within thirty (30) days

following receipt of payment from COUNTY. CITY shall require such architects(s), engineer(s), contractor(s), and others to further agree that if they withhold an amount as retainage from their subcontractors, that they shall release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from CITY, or within thirty (30) days after the subcontractor has satisfactorily completed its work, whichever shall first occur.

CITY's agreement with its architects(s), engineer(s), contractor(s), and others performing services for this Project shall provide that a finding of nonpayment pursuant to this Section shall be a material breach of CITY's agreement and that CITY may, at its option, increase allowable retainage or withhold progress payments unless and until the architect, engineer, contractor or other demonstrates timely payments of sums due to subcontractors. CITY's agreement shall provide that the presence of a "pay when paid" provision in a subcontract shall not preclude CITY or COUNTY from inquiring into allegations of non-payment. Further, the remedies above shall not be employed when the architect, engineer, contractor and other performing services for this Project demonstrates that failure to pay results from a bonafide dispute with its subcontractor or supplier. CITY shall require its architects(s), engineer(s), contractor(s), and others performing services for this Project to incorporate this provision into all subcontracts related to this Project.

ARTICLE 10

MISCELLANEOUS

10.1 OWNERSHIP OF DOCUMENTS

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of CITY. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by CITY, whether finished or unfinished, shall become the property of COUNTY and shall be delivered by CITY to COUNTY's Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to CITY shall be withheld until all documents are received as provided herein.

10.2 AUDIT RIGHT AND RETENTION OF RECORDS

10.2.1 COUNTY and CITY shall have the right to audit the books, records, and accounts of each other that are related to this Project. CITY and COUNTY shall keep such books, records, and accounts as may be

necessary in order to record complete and correct entries related to the Project.

- 10.2.2 CITY and COUNTY shall preserve and make available, at reasonable times for examination and audit by COUNTY and CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY or CITY to be applicable to COUNTY's or CITY's records, CITY or COUNTY shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CITY or COUNTY. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry, if the mistake has not been corrected or cured within thirty (30) days after written notice.

10.3 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

CITY shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. CITY shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CITY shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

CITY's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16½), national origin, marital status,

physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

CITY shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in performing any services pursuant to this Agreement.

10.4 INDEPENDENT CONTRACTOR

CITY is an independent contractor under this Agreement. The Project is being undertaken by CITY for its own account and shall be subject to the supervision of CITY. In providing such services, neither CITY nor its agents shall act as officers, employees, or agents of COUNTY. This Agreement shall not constitute or make the parties a partnership or joint venture.

10.5 THIRD PARTY BENEFICIARIES

Neither CITY nor COUNTY intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

10.6 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR COUNTY:

Robert Harbin, Director
Parks and Recreation Division
950 NW 38 Street
Oakland Park, Florida 33309

FOR CITY:

Vernon Hargray, Assistant City Manager
City of Miramar
6700 Miramar Parkway
Miramar, Florida 33023-4897

10.7 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party without the prior written consent of the other party.

10.8 PUBLIC ART AND DESIGN

Except as otherwise provided in this Agreement, the requirements of the Broward County Public Art & Design Ordinance (Section 1-88, Broward County Code of Ordinances) shall apply to this Agreement with respect to COUNTY's funded portion of the Project and shall not be applicable to CITY's funded portions. CITY shall require its architect(s), engineer(s), contractor(s), and others who it selects to perform the Scope of Services to comply with the ordinance, as modified by this Agreement, and to incorporate an art element in the design and construction of the Property as provided hereunder. COUNTY shall expend Two Hundred Fourteen Thousand Five Hundred Dollars (\$214,500.00) of the art allocation for the artistic services to design, fabricate and install public art on the Property in accordance with this Agreement and, to the extent not in conflict, the Ordinance. COUNTY shall have custody of these public art funds, with the exception of the remaining Thirty-two Thousand One Hundred Seventy-five Dollars (\$32,175.00) of the art allocation for this Project, to be conveyed to CITY upon completion of the public art. This latter amount shall be reserved by CITY for conservation in accordance with Section 4.3 above and, unless otherwise provided in this Agreement, the ordinance.

CITY acknowledges that COUNTY adopted Ordinance #95-20 establishing a Public Art and Design Program, codified as Section 1-88 of the County Code. The purpose of the Ordinance is to integrate art into capital projects and to integrate artist's design concepts into the overall project design. An artist has been selected by COUNTY through an independent process and the artist has been funded by the Public Art and Design Program administered by COUNTY's Cultural Affairs Division at the direction of the Broward Cultural Affairs Council through its Public Art and Design Committee. By entering into this Agreement, CITY has approved and accepted the artist's design.

CITY shall cooperate with the artist and COUNTY and include the artist and COUNTY in all phases of the project for the purpose of properly incorporating the artist's approved design into the design of the Project, and shall require its architect(s), engineer(s), contractor(s), and others performing services for the Project to so cooperate with and include the artist in all issues related to the artwork design and construction, and in other design issues including but not limited to selection of lighting, landscaping, irrigation and other elements within proximity of the artwork area as designated in Exhibit "H." CITY shall, and shall require its architect(s), engineer(s), contractor(s), and others performing services for the Project to notify the artist and COUNTY's Cultural Affairs Division, in writing, of all design meetings and shall provide the artist with a schedule of milestone dates. CITY shall submit draft of construction documents to Artist and COUNTY's Cultural Affairs Division for review and approval of all components related to artwork design. The artist's design as properly incorporated into the design of the Project shall be permitted as part of the master site or facility plan. CITY shall ensure that contractor(s) will be made aware of the construction oversight to be exercised by the artist or the artist's representative, as specified in construction documents. COUNTY will continue to administer the artist's agreement. CITY shall not use any artwork design proposal from the artist without consent from COUNTY's Contract Administrator and the artist.

CITY will acknowledge completion of the installation prior to COUNTY's final payment to the artist. CITY will be COUNTY's successor to COUNTY's agreement with the artist, and will take title to the artwork upon COUNTY's final payment to the artist. Thereafter, CITY will be solely responsible for maintenance, conservation and fulfillment of all COUNTY obligations under the terms of the artist's agreement which survive its expiration. Maintenance includes but is not limited to insuring the artwork under the CITY's self-insurance or commercial insurance or both. CITY agrees to execute an agreement among COUNTY, CITY and artist to further formalize these understandings with the artist. If, after the final completion of the artwork, COUNTY observes that CITY is not adequately maintaining the artwork, so as to retain the integrity of the artistic design and construction, COUNTY shall notify CITY of such deficiency. The notice will include a condition report and proposed treatment plan provided by COUNTY's contracted conservation professional. If CITY does not resolve the issue within sixty (60) days, COUNTY is authorized to hire appropriate contractor(s) to correct the issue. COUNTY will require such contractor(s) to carry insurance which will name CITY as an additional insured, and the contractor will be required to indemnify the CITY to the extent that it indemnifies COUNTY. Both the conservation professional and the repair contractor may be contractually subject to the Code of Ethics and Guidelines for Practice of the American Institute for Conservation of Historic and Artistic Works, as appropriate to the nature and extent of repairs. CITY will reimburse COUNTY for the costs of

such services within thirty (30) days of COUNTY's presenting a bill to CITY for same.

COUNTY's contribution shall not be affected by the obligation pursuant to this Agreement to comply with the requirements set forth in this section.

CITY shall provide all services and materials previously agreed to by the Broward County Parks and Recreation Division as enumerated in Exhibit "H", attached hereto, which Exhibit specifically further describes the public art component of the Park's planned development.

CITY acknowledges that the artwork is site specific, and must be preserved on the site for the life of the Park. In the event of damage or destruction of the artwork, CITY shall be obligated to rebuild or restore the affected features of the artwork to the condition they were in prior to such damage or destruction. Thereafter, if CITY chooses to dispose of the Artwork, COUNTY shall be offered first right of refusal to purchase the artwork for One Dollar (\$1.00). The parties acknowledge that the artist may attribute the artwork commission to COUNTY's Public Art and Design Program. CITY will provide COUNTY representatives access to the artwork periodically for appraisal and conservation review throughout the life of the artwork.

10.9 CONTINGENCY FEE

CITY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CITY, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CITY, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, COUNTY shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

10.10 MATERIALITY AND WAIVER OF BREACH

COUNTY and CITY agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

Failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a

provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

10.11 COMPLIANCE WITH LAWS

CITY and COUNTY shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its respective duties, responsibilities, and obligations pursuant to this Agreement.

10.12 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or CITY elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

10.13 JOINT PREPARATION

The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

10.14 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 10 of this Agreement shall prevail and be given effect.

10.15 APPLICABLE LAW AND VENUE

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. By

entering into this Agreement, CITY and COUNTY hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of the Project.

10.16 PRIOR AGREEMENTS

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 10.17 below. Transfer of the Property may also include additional documents such as, but not limited to, deeds, and resolution(s).

10.17 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and CITY.

10.18 TAX EXEMPT BOND PROVISIONS

CITY acknowledges that COUNTY may have tax exempt bond or note financing outstanding with regard to the acquisition and development of the real property being transferred and agrees to cooperate with COUNTY to take such actions, enter into such agreements and provide such information as may be requested by COUNTY from time to time to ensure the continued ability to maintain the tax exempt nature of interest on such obligations.

10.19 PREVAILING WAGE REQUIREMENT

COUNTY and CITY agree that Broward County Ordinance No. 83-72, "Prevailing Wage Ordinance," as may be amended from time to time, shall be deemed to apply to the construction work performed under this Agreement; and further CITY shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in Exhibits "D" and "E."

10.20 INCORPORATION BY REFERENCE

CAF#112
General Contract

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits A, B, C, D, E, F, G, and H are incorporated into and made a part of this Agreement.

10.21 MULTIPLE ORIGINALS

This Agreement may be fully executed in four (4) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

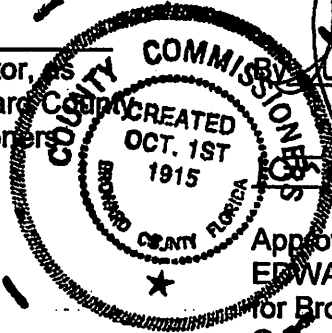
IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chair or Vice Chair, authorized to execute same by Board action on the 10th day of December, 2002, and CITY, signing by and through its City Manager, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

R. Ahl
Broward County Administrator,
Ex-officio Clerk of the Broward
Board of County Commissioners



Steve Lieberman
Chair
Day of December, 2002

Approved as to form by
EDWARD A. DION, County Attorney
for Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

Insurance requirements
approved by Broward County
Risk Management Division

By Mary M. Meuter
by D. S. George 12/5/02

By Patrice M. Eichen 12-5-02
Patrice M. Eichen
Assistant County Attorney

**INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF MIRAMAR
FOR MIRAMAR REGIONAL PARK**

CITY

ATTEST:

CITY OF MIRAMAR

By Yvette M. McLeary
City Clerk

(SEAL)

APPROVED AS TO FORM:

By Robert A. Payton
Robert A. Payton, City Manager

By Weiss Scrota Helfman Pastoriza
& Guedes, P.A., City Attorney

4 day of December, 2002.

ACKNOWLEDGMENT FOR CITY

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 4 day of December, 2002, by _____, Mayor-Commissioner, and Robert A. Payton, as City Manager, of the City of Miramar, Florida, who is personally known to me or has produced _____ as identification.

My Commission Expires: June 11, 2005

Denise Gibbs
Signature of Notary Public



Denise Gibbs
(Typed or printed name)

CAF#112
General Contract

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

Parcels A, B, and L of Miramar Regional Park Replat according to the plat thereof as recorded in Plat Book 169, Pg. 87 of the public records of Broward County, Florida.

Exhibit "B"

ASSIGNMENT, DELEGATION AND RELEASE AGREEMENT

AMONG

BROWARD COUNTY

AND

CRAVEN, THOMPSON & ASSOCIATES, INC.

AND

CITY OF MIRAMAR

FOR

CONSULTANT SERVICES
FOR IMPROVEMENTS TO MIRAMAR REGIONAL PARK

ASSIGNMENT, DELEGATION AND RELEASE AGREEMENT

AMONG

BROWARD COUNTY

AND

CRAVEN, THOMPSON & ASSOCIATES, INC.

AND

CITY OF MIRAMAR

FOR

**CONSULTANT SERVICES
FOR IMPROVEMENTS TO MIRAMAR REGIONAL PARK**

THIS ASSIGNMENT, DELEGATION AND RELEASE AGREEMENT ("Assignment") is made by and among BROWARD COUNTY, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "COUNTY," through its Board of County Commissioners; CRAVEN THOMPSON & ASSOCIATES, INC., a Florida corporation, its successors and assigns, hereinafter referred to as "CONSULTANT;" and the CITY OF MIRAMAR, a Florida municipal corporation organized and existing under the laws of the State of Florida, its successors and assigns, hereinafter referred to as "CITY."

WITNESSETH

WHEREAS, COUNTY, and The SWA Group ("SWA") entered into an Agreement dated October 18, 1989 (the "Original Agreement"), providing for SWA to perform design consulting services relating to improvements to what was to be the "Miramar Festival Isle Park" site; and

WHEREAS, SWA successfully completed the design of the original Master Plan for the park site; and

WHEREAS, COUNTY and SWA entered into a First Amendment to Agreement dated March 23, 1993, providing for SWA to perform a portion of the Improvements Design services relating to permitting and platting of the park site; and

WHEREAS, COUNTY and SWA entered into a Second Amendment to Agreement dated February 7, 1995, providing for SWA to perform additional services relating to the schematic design, construction documents and bidding services for improvements for the park site; and

WHEREAS, COUNTY and SWA entered into a Third Amendment to Agreement dated September 12, 1995, providing for SWA to perform a portion of Part B, Improvements Design

services relating to schematic design, design development, construction documents and bidding, and a portion of Part C, Construction Management services; and

WHEREAS, COUNTY and SWA entered into a Fourth Amendment to Agreement dated July 7, 1998, providing for SWA to assign its rights and responsibilities under the Original Agreement to CONSULTANT and providing SWA to be paid for its work performed for COUNTY under the Original Agreement; and

WHEREAS, COUNTY and CONSULTANT entered into a Fifth Amendment to Agreement dated September 16, 1998, providing for CONSULTANT to perform the Part B, Improvements Design services and services related to the redesign of the park site improvements to replat the site per Part B, get approval on the site plan, complete the construction documents and proceed with obtaining a revised bid from the Contractor; and

WHEREAS, COUNTY and CONSULTANT entered into a Sixth Amendment to Agreement dated April 16, 2002, providing for CONSULTANT to perform the Part B, Phase II Improvements Design services relating to final design and construction drawings and the first portion of Part C, Phase II, Construction Management services (the Original Agreement as amended by the First through Sixth Amendments to Agreement, inclusive, is hereinafter collectively referred to as the ("Agreement")); and

WHEREAS, COUNTY and CITY have entered into that certain Interlocal Agreement of even date herewith for the development, construction and maintenance of Miramar Regional Park (the "Interlocal Agreement"), providing for COUNTY to transfer the Miramar Regional Park property to CITY, and for CITY to perform the development, construction, and maintenance of Miramar Regional Park; and

WHEREAS, in connection with the Interlocal Agreement, the parties desire to enter into this Assignment providing for, among other things, the assignment of the Agreement from COUNTY to CITY; and

WHEREAS, the parties acknowledge that certain terms and conditions contained in the Agreement have been either restated herein for clarification purposes or revised herein to reflect the intention of the parties; NOW, THEREFORE;

IN CONSIDERATION of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, COUNTY, CONSULTANT and CITY agree as follows:

ARTICLE 1

DEFINED TERMS; RATIFICATION; CONFLICTS

- 1.1 DEFINED TERMS. All defined terms in this Assignment shall have the same meaning as in the Agreement except as otherwise noted.

- 1.2 **RATIFICATION.** Except as amended and modified by this Assignment, all of the terms, covenants, conditions, and agreements of the Agreement are hereby ratified and shall remain in full force and effect.
- 1.3 **CONFLICTS.** In the event of any conflict between the provisions of the Agreement and the provisions of this Assignment, the provisions of this Assignment shall control.

ARTICLE 2

EFFECTIVENESS

The effectiveness of this Assignment is expressly subject to and contingent upon the approval and execution of the Interlocal Agreement by the Board of County Commissioners and the Miramar City Commission.

ARTICLE 3

ESTOPPEL

The Agreement is the sole agreement pertaining to the provision of design consulting services by CONSULTANT in connection with the Miramar Regional Park, and the Original Agreement has not been modified in any manner, except for the First through Sixth Amendments to Agreement, inclusive. Neither COUNTY nor CONSULTANT has given a notice of default under the Agreement to the other party and neither COUNTY nor CONSULTANT is in default of its obligations under the Agreement, or do any circumstances exist which, with the giving of notice or passage of time, would ripen into a default under the Agreement. COUNTY and CONSULTANT acknowledge and agree that all obligations of the parties under the Original Agreement and First through Fifth Amendments to Agreement, inclusive, have been fully performed and paid for by the respective parties.

ARTICLE 4

ASSIGNMENT AND DELEGATION

- 4.1 COUNTY does hereby assign and delegate to CITY, all of COUNTY's right, title and interest in and to the Agreement including all right, title and interest in all documents, plans, specifications, reports, photographs, and surveys prepared and/or provided by CONSULTANT thereunder, as well as all permits, licenses, and approvals for the Miramar Regional Park obtained by COUNTY and/or CONSULTANT in connection with or related to the Agreement. COUNTY and CONSULTANT agree to deliver such items to CITY upon its request.
- 4.2 CITY hereby accepts the assignment and delegation of the Agreement and, except as expressly set forth in this Assignment, assumes all of COUNTY's obligations thereunder

and agrees to perform and keep all of the terms, conditions, covenants, agreements, liabilities and obligations to be performed thereunder from and after the date hereof.

- 4.3 Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as amended or superceded, CITY agrees to indemnify and hold harmless COUNTY from and against any and all claims, demands, causes of actions, judgments, and liabilities, including reasonable attorneys' fees and costs incident thereto, which may be asserted or recovered against COUNTY arising out of or relating or pertaining to the Agreement accruing subsequent to the date hereof.
- 4.4 Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as amended or superceded, COUNTY agrees to indemnify and hold harmless CITY from and against any and all claims, demands, causes of actions, judgments, and liabilities, including reasonable attorneys' fees and costs incident thereto, which may be asserted or recovered against CITY arising out of or relating or pertaining to the Agreement accruing prior to the date hereof.
- 4.5 CONSULTANT hereby acknowledges and consents to the assignment and delegation by COUNTY to CITY of the Agreement as set forth herein, and agrees to continue to perform its obligations thereunder and be bound to CITY pursuant to the terms of the Agreement as amended by this Assignment.

ARTICLE 5

PAYMENTS

Except as set forth below, COUNTY has paid CONSULTANT, and CONSULTANT has received, all sums due and owing under to CONSULTANT under the terms of the Original Agreement, the First through Fifth Amendments to Agreement, inclusive, and the amount set forth in Section 6 of the Sixth Amendment to Agreement. In addition to the foregoing, COUNTY and CONSULTANT acknowledge and agree that COUNTY has paid, and CONSULTANT has received, (a) \$222,988.50 of the \$861,000.00 set forth in Section 5.1.1 of the Sixth Amendment to Agreement, (b) \$1,242.51 of the \$40,000.00 set forth in Section 5.3.2 of the Sixth Amendment to Agreement, and (c) \$0.00 of the \$60,000.00 set forth in Section 5.4.2 of the Sixth Amendment to Agreement. Based upon the foregoing, the parties acknowledge and agree that CITY's payment obligations to CONSULTANT for its services pursuant to the terms of the Sixth Amendment to Agreement shall be the remaining balances of the amounts set forth in (x) Section 5.1.1 of the Sixth Amendment to Agreement in the amount of \$638,011.50, (y) Section 5.3.2 of the Sixth Amendment to Agreement in the amount of \$38,757.49, and (z) Section 5.4.2 of the Sixth Amendment to Agreement in the amount of \$60,000.00.

ARTICLE 6

RELEASE

- 6.1 Except for the obligations set forth in this Assignment, COUNTY and CONSULTANT hereby release and forever discharge each other, and their respective successors and assigns for all actions, causes of actions, suits, debts, damages, judgments, claims, demands, agreements, promises and obligations whatsoever, in law or in equity, which each party had, now has or which any successor or assign of each party can, shall or may have, against each other arising out of, related to, or in connection with the rights and obligations granted and accruing under the Agreement.
- 6.2 Except for the obligations set forth in the Sixth Amendment to Agreement and the provisions of this Assignment, CONSULTANT hereby releases and forever discharges CITY, and its successors and assigns for all actions, causes of actions, suits, debts, damages, judgments, claims, demands, agreements, promises and obligations whatsoever, in law or in equity, which CONSULTANT had, now has or which any successor or assign of CONSULTANT can, shall or may have, against CITY arising out of, related to, or in connection with the rights and obligations granted and accruing under the Original Agreement and the First through Fifth Amendments to Agreement, inclusive.

ARTICLE 7

AMENDMENT OF TERMS AND CONDITIONS OF ORIGINAL AGREEMENT

- 7.1 It is the intent of the parties to amend the provisions of the Sixth Amendment to Agreement to reflect CITY's proposed phasing of the development of the Miramar Regional Park. CONSULTANT acknowledges that (a) pursuant to the Interlocal Agreement, CITY has a period of ten (10) years with a possible two (2) year extension within which to complete the build out of Miramar Regional Park as depicted on the Master Plan attached to the Interlocal Agreement, and (b) CITY intends to perform such development in two (2) or more phases. Notwithstanding the provisions of Article 4 of the Sixth Amendment to Agreement and the fact that the COUNTY previously issued a Notice to Proceed to CONSULTANT, prior to the performance of any of the remaining services under the Sixth Amendment to Agreement, CONSULTANT must first receive a Notice to Proceed for each phase from CITY. The time for performance for each phase, as well as a portion of the remaining compensation under the Sixth Amendment to Agreement to be paid to CONSULTANT, shall be set forth in a Change Order executed by CITY and CONSULTANT. CONSULTANT acknowledges and agrees that the compensation for each phase shall be negotiated by CITY and CONSULTANT with such compensation based upon, but not necessarily equal to, the percentage of the overall work for that phase as applied to the overall remaining compensation due to CONSULTANT under the Sixth Amendment to Agreement. By way of example, if the work to be completed in the first phase represents fifty (50%) of the overall work, then CONSULTANT shall be paid approximately fifty (50%) of the overall remaining

compensation. Additionally, in situations where a standard building design will be applied to more than one unit, the design cost of all units utilizing the standard design will be included in the phase where such design work is performed, even though the additional units may be constructed in a subsequent phase.

- 7.2 References in the Sixth Amendment to "COUNTY" shall be amended to "CITY" as the context requires in order to effectuate the intent of the parties under this Assignment. The foregoing shall not be construed to inadvertently change the terms and conditions of the Sixth Amendment to Agreement in a manner inconsistent with the intent of the parties.
- 7.3 The "Contract Administrator" shall be amended to mean Vernon E. Hargray, Assistant City Manager.
- 7.4 Section 8 of the Sixth Amendment is hereby amended by deleting the address for COUNTY and inserting the following:

CITY:

Vernon E. Hargray
Assistant City Manager
City of Miramar
6700 Miramar Parkway
Miramar, Florida 33023

With an additional copy to:

City Attorney
Weiss Serota Helfman Pastoriza
& Guedes, P.A.
3107 Stirling Road, Suite 300
Fort Lauderdale, Florida 33301

ARTICLE 8

SEVERANCE

In the event a portion of this Assignment is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

ARTICLE 9

JOINT PREPARATION

The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights

and obligations herein and that the preparation of this Assignment has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

SECTION 10

APPLICABLE LAW AND VENUE

This Assignment shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Assignment and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. By entering into this Assignment, COUNTY, CONSULTANT, and CITY hereby expressly waive any rights any party may have to a trial by jury of any civil litigation related to, or arising out of this Agreement. Each party shall bear its own attorney fees in any litigation or proceeding arising under this Agreement.

ARTICLE 11

THIRD PARTY RIGHTS

Nothing in this Assignment shall be construed to give any rights or benefits to anyone other than COUNTY, CONSULTANT or CITY.

ARTICLE 12

SUCCESSORS AND ASSIGNS

This Assignment shall inure to and be binding upon the authorized successors and assigns of the parties.

ARTICLE 13

WHEREAS CLAUSES

The information contained in the Whereas Clauses set forth above is true and correct, and is hereby incorporated into the body of this Assignment.

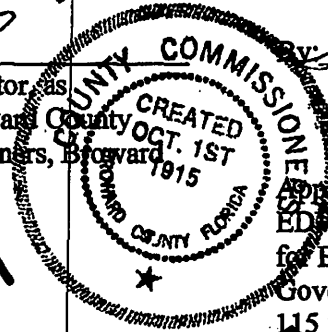
IN WITNESS WHEREOF, the parties hereto have made and executed this Assignment: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chair or Vice Chair, authorized to execute same by Board action on the ~~10th~~ day of December, 2002; CONSULTANT, signing by and through its Exec. V.P.; and CITY, signing by and through its City Manager, duly authorized to executed same.

COUNTY:

BROWARD COUNTY, by and through its Board of County Commissioners

ATTEST:

R. ad
Broward County Administrator, as
Ex-officio Clerk of the Broward
Board of County Commissioners, Broward
County, Florida



Diana Wasserman-Rubin
~~Diana Wasserman-Rubin, Chair~~
ILENE LIEBERMAN, Vice Chair

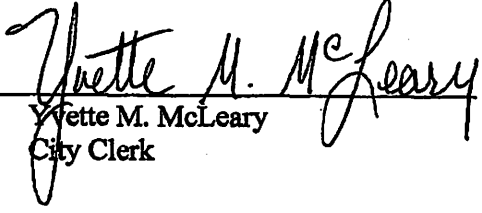
Approved as to form by
EDWARD A. DION, County Attorney
for Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

Insurance requirements approved by
by Broward County Risk Management
Division

By: Mary M. Meister
by [Signature] 12/5/02


By: Patrice M. Eichen
Patrice M. Eichen
Assistant County Attorney

ATTEST:

By: 
Yvette M. McLeary
City Clerk

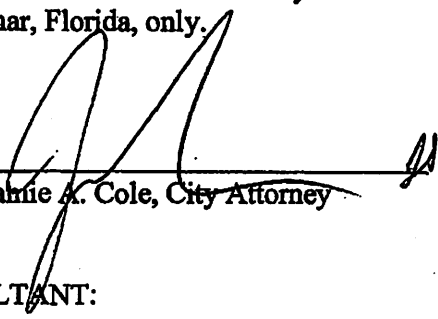
CITY:

CITY OF MIRAMAR, a municipal corporation of the State of Florida

By: 
Robert A. Payton
City Manager

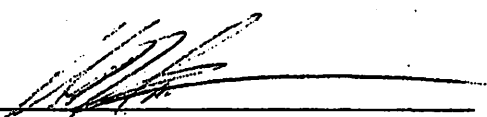
4 day of December, 2002

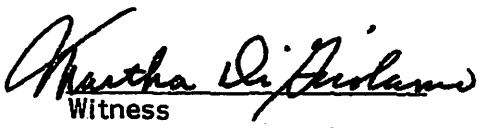

Approved as to Form and Legality for the use and reliance of the City of Miramar, Florida, only.

By: 
Jamie A. Cole, City Attorney

CONSULTANT:

CRAVEN, THOMPSON & ASSOCIATES, INC.

By: 
Name: Robert D. Cole III, P.E.
Title: Executive Vice President

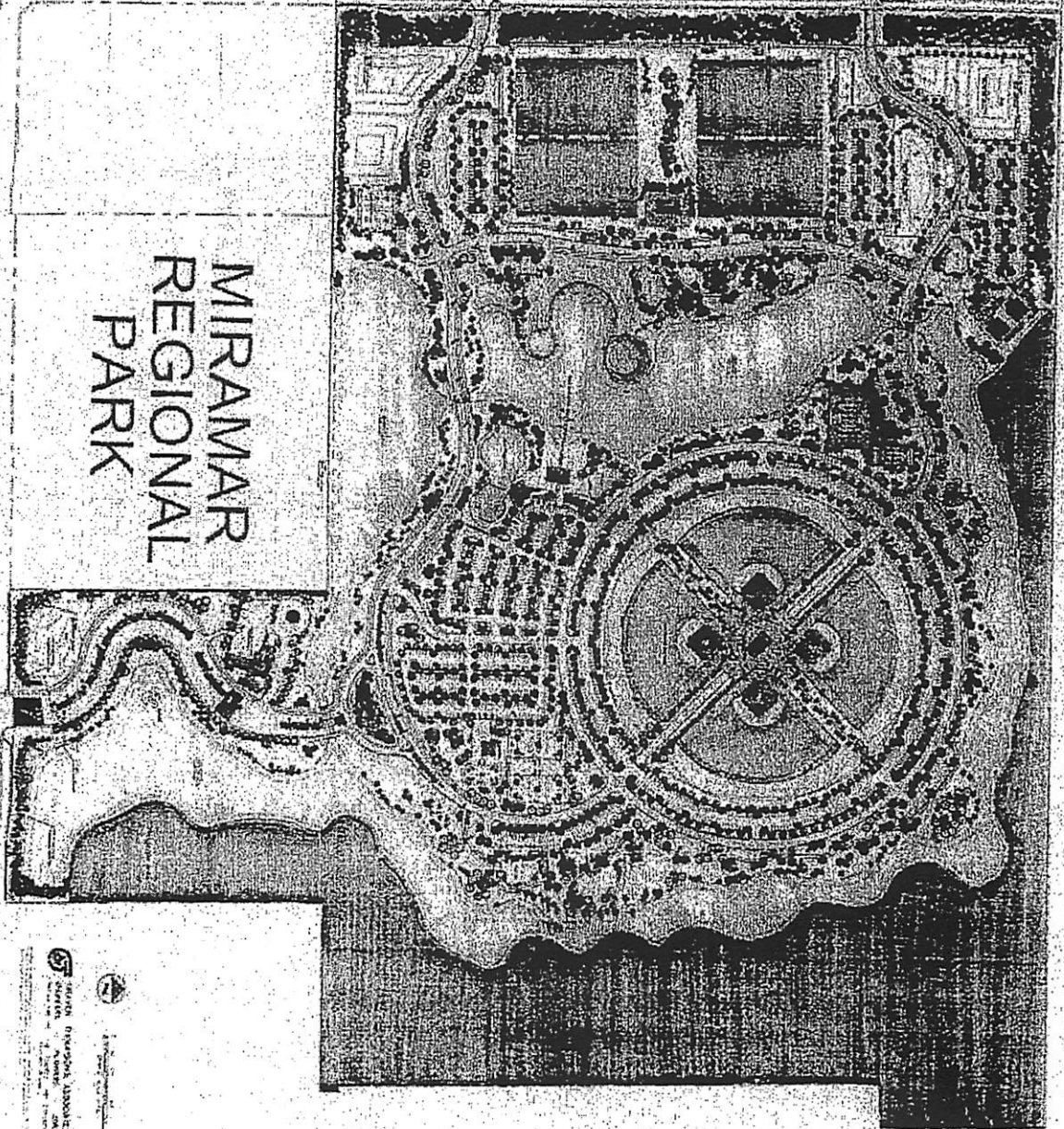

Witness

Witness

CAF#112
General Contract

EXHIBIT "C"
MASTER PLAN

EXHIBIT "C" (not to scale)

MIRAMAR
REGIONAL
PARK



 **CITY OF MIRAMAR**
PLANNING DEPARTMENT
11001 S. W. 11th Street
Miramar, Florida 33025
Phone: (305) 655-1100
Fax: (305) 655-1101

EXHIBIT "D"

PREVAILING WAGE REQUIREMENTS

Prevailing Wage Rates: On November 17, 1983, the Broward County Board of County Commissioners enacted Ordinance No. 83-72 providing that, in all non-federally funded construction procurement activity of \$250,000 or more, the rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in like industries as determined by the Secretary of Labor and as published in the Federal Register (latest revision).

1. **Prevailing Wage Rate Ordinance.** This Project is not federally funded. The construction cost is in excess of \$250,000, and the following sections shall apply:
 - 1.1 The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as published in the Federal Register (latest revision).
 - 1.2 All mechanics, laborers, and apprentices, employed or working directly upon the site of the work shall be paid in accordance with the above-referenced wage rates. CITY shall post notice of these provisions at the site of the work in a prominent place where it can be easily seen by the workers.
 - 1.3 If the parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices to be used, COUNTY's Contract Administrator shall submit the question, together with its recommendation, to the County Administrator for final determination.
 - 1.4 In the event it is found by COUNTY's Contract Administrator that any laborer or mechanic or apprentice employed by CITY, or any Subcontractor directly on the site of the work has been or is being paid at a rate of wages less than the rate of wages required by the ordinance, COUNTY's Contract Administrator may: (1) by written notice to CITY terminate its right to proceed with the work or such part of work for which there has been a failure to pay said required wages; and (2) prosecute the work or portion thereof to completion by contract or otherwise. Whereupon, CITY and its sureties shall be liable to COUNTY for any excess costs occasioned to COUNTY thereby.
2. Sections 1.1 through 1.4 above shall apply to this Agreement to the extent that it is: (1) a prime Contract subject to the ordinance; or (2) a subcontract also subject to the ordinance under such prime Contract.
3. LESSEE shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve such for a period of three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the work. Such records

**CAF#112
General Contract**

shall contain the name and address of each such employee; its current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.

4. CITY shall submit, with each requisition for payment, a signed and sworn "Statement of Compliance" attesting to compliance with Broward County Ordinance No. 83-72. The Statement shall be in the form attached as Exhibit "E."
5. COUNTY's Contract Administrator may withhold or cause to be withheld from CITY so much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, watchpersons, and guards employed by CITY or any subcontractor on the work, the full amount of wages required by this Agreement.
6. If CITY or any subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the work all or part of the wages required by this Agreement, COUNTY's Contract Administrator may, after written notice to CITY, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

EXHIBIT "E"
STATEMENT OF COMPLIANCE
(PREVAILING WAGE RATE ORDINANCE NO. 83-72)

No. _____

Contract No. _____ Project Title _____

The undersigned _____, on behalf of CITY, hereby swears under penalty of perjury that, during the period covered by the application for payment to which this statement is attached, all mechanics, laborers, and apprentices, employed or working on the site of the Project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by Broward County Ordinance No. 83-72 and the applicable conditions of this Agreement.

Dated _____, 20__

_____ CITY

By _____
(Signature)

By _____
(Name and Title)

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this _____ day of _____, 20__.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment)
typed, printed or stamped

(Title or rank)

(Serial number, if any)

My commission expires:

CAF#112
General Contract

EXHIBIT "F"

SCHEDULE OF SDBE PARTICIPATION

CITY agrees that the SDBEs listed below have agreed by written subcontract to perform the work for the dollar value set forth and that the following information regarding SDBE Subcontractors is true and correct to the best of his/her knowledge:

(NAME OF SDBE CONTRACTOR)	(NAME OF SDBE CONTRACTOR)
(ADDRESS)	(ADDRESS)
(SCOPE OF WORK TO BE PERFORMED)	(SCOPE OF WORK TO BE PERFORMED)
\$	\$
(TOTAL DOLLAR VALUE)	(TOTAL DOLLAR VALUE)
SDBE GROUP:	SDBE GROUP:
(NAME OF SDBE CONTRACTOR)	(NAME OF SDBE CONTRACTOR)
(ADDRESS)	(ADDRESS)
(SCOPE OF WORK TO BE PERFORMED)	(SCOPE OF WORK TO BE PERFORMED)
\$	\$
(TOTAL DOLLAR VALUE)	(TOTAL DOLLAR VALUE)
SDBE GROUP:	SDBE GROUP:
(NAME OF SDBE CONTRACTOR)	(NAME OF SDBE CONTRACTOR)
(ADDRESS)	(ADDRESS)
(SCOPE OF WORK TO BE PERFORMED)	(SCOPE OF WORK TO BE PERFORMED)
\$	\$
(TOTAL DOLLAR VALUE)	(TOTAL DOLLAR VALUE)
SDBE GROUP:	SDBE GROUP:
(NAME OF SDBE CONTRACTOR)	(NAME OF SDBE CONTRACTOR)
(ADDRESS)	(ADDRESS)
(SCOPE OF WORK TO BE PERFORMED)	(SCOPE OF WORK TO BE PERFORMED)
\$	\$
(TOTAL DOLLAR VALUE)	(TOTAL DOLLAR VALUE)
SDBE GROUP:	SDBE GROUP:

PLEASE ATTACH ADDITIONAL INFORMATION IF NECESSARY.

COMPOSITE EXHIBIT "G"
FORM OF QUIT CLAIM DEED

This instrument prepared by:
Daphne E. Jones, Assistant County Attorney
Broward County Attorney's Office
115 South Andrews Ave, Rm. 423
Fort Lauderdale, FL 33301
954-357-7600

QUIT CLAIM DEED
(Pursuant to F. S. 125.411)

THIS DEED, made this day of _____, _____, by BROWARD COUNTY, a political subdivision of the State of Florida (the "GRANTOR"), whose address is Governmental Center, Room 423, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301, and CITY OF MIRAMAR, a Florida municipal corporation (the "GRANTEE"), whose post office address is:

WITNESSETH:

That GRANTOR for and in consideration of the sum of TEN DOLLARS (\$10.00) to it in hand paid by GRANTEE, the receipt whereof is hereby acknowledged, has granted, bargained and sold to GRANTEE, its heirs, successors and assigns, forever, the following described lands, lying and being in Broward County, Florida, to wit:

Parcels A, B, and L of Miramar Regional Park Replat according to the plat thereof as recorded in Plat Book 169, Pg. 87 of the public records of Broward County, Florida.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said Grantor, either in law or equity, to the only proper use, benefit and behalf of the said Grantee forever: Provided, that if the CITY OF MIRAMAR shall fail to use and maintain the property for a public park purposes and ancillary/incidental uses thereto including, but not limited to, concession stand(s), restroom(s), parking area(s), park office, park maintenance area, and similar, park support infrastructure, plus placement of one communication tower, then the entire land shall revert to Broward County, its successors and assigns.

Subject to all existing public purpose utility and government easements and rights of way.

CAF#112
General Contract

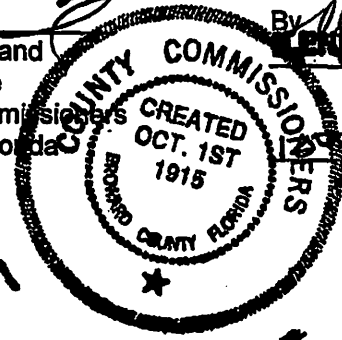
IN WITNESS WHEREOF, GRANTOR has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair or Vice-Chair of said Board, the day and year aforesaid.

(Official Seal)
ATTEST:

BROWARD COUNTY, FLORIDA
By Its Board of County Commissioners

R. A. [Signature]
County Administrator and
Ex-Officio Clerk of the
Board of County Commissioners
of Broward County, Florida

By *[Signature]*
LENE LIEBERMAN, Chair



day of December 2002.

COMPOSITE EXHIBIT "G"

FORM OF NO LIEN AFFIDAVIT

STATE OF FLORIDA)
) SS.
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, personally appeared _____, who, being by me first duly sworn on oath, depose(s) and say(s), collectively as the "Affiant":

1. That Affiant is the owner of and has fee simple title to the following described property (the "Property") situate, lying and being in the County of Broward, State of Florida, to-wit:

SEE ATTACHED EXHIBIT "A"

2. That the Affiant has not sold, transferred, assigned or conveyed title to the Property prior to the transfer to THE CITY OF MIRAMAR, a Florida municipal corporation.

3. That the Property and all improvements thereon are free and clear of all mortgages, liens, taxes, waste, water and sewer charges, encumbrances, judgments and claims of every nature whatsoever.

4. That no legal actions, Internal Revenue Service claims or State tax claims are pending or threatened that could ripen into a lien or encumbrance on the Property or the improvements thereon.

5. CITY OF MIRAMAR, a Florida municipal corporation, is materially relying on the veracity of the contents hereof. The title insurance company selected by the CITY OF MIRAMAR, a Florida municipal corporation, is relying upon the representations herein made in issuing title insurance. In this regard, the Affiant represents and warrants that the statements contained herein are true and correct in all respects.

6. That for at least ninety (90) days prior to the date hereof, no material, labor or services have been furnished, performed or supplied in connection with the Property, including the improvements located thereon, for which payment has not been made in full; no material, labor or services have been contracted to be furnished, performed or supplied at a future date in connection with the Property, including the improvements located thereon, for which payment has not been made in full; and there are no unpaid mechanic's, materialperson's or other liens affecting the Property or actual or potential claims on account of any such material, labor or services.

7. That to the best of Affiant's knowledge, no violations of municipal ordinances or other laws, statutes, rules or regulations pertaining to the Property exist, and no orders or notices concerning any violations have been given to the Affiant or made against the Property.

8. That Affiant alone and no other person(s), firm(s), corporation(s) or individual(s) are in control and possession of the Property.

9. Affiant represents and warrants that Affiant has not and will not execute any instruments or take any actions that could adversely affect the title or interest to be acquired by the CITY OF MIRAMAR, a Florida municipal corporation, and insured by the Title Company. Affiant further represents and warrants that Affiant is not aware of any matter that could adversely affect the title or interest to be acquired by the CITY OF MIRAMAR, a Florida municipal corporation, and insured by the Title Company.

10. Affiant represents and warrants the truth and accuracy of all matters herein above set forth.

FURTHER AFFIANT SAYETH NAUGHT.

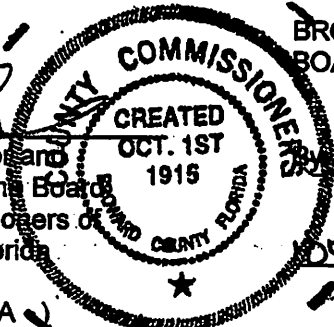
Signed, sealed and delivered
in the presence of:

ATTEST:

R. Naught
County Administrator and
Ex-Officio Clerk of the Board
of County Commissioners of
Broward County, Florida

Steve Gelberman
V-Chair

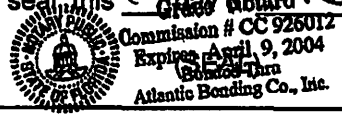
on day of December, 2002.



STATE OF FLORIDA)
) SS.
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 10th day of December, 2002, by Steve Gelberman who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this 10th day of December, 2002.



Grace Notaro
(Signature of person taking acknowledgment)
GRACE NOTARO
(Name of officer taking acknowledgment)

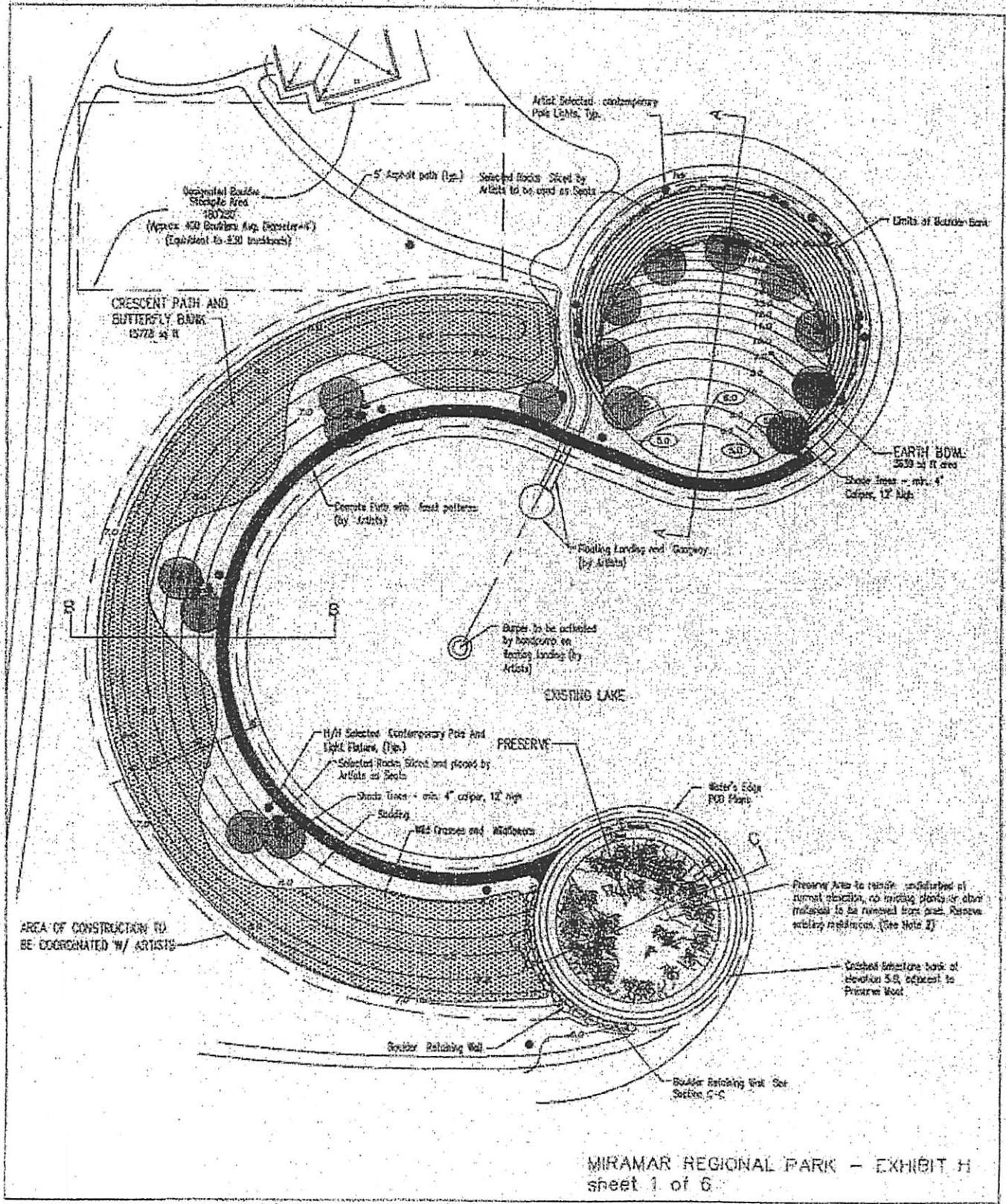
NOTARY PUBLIC
(Title or rank)
CC 926012
(Serial number, if any)

My Commission Expires: 4/09/04

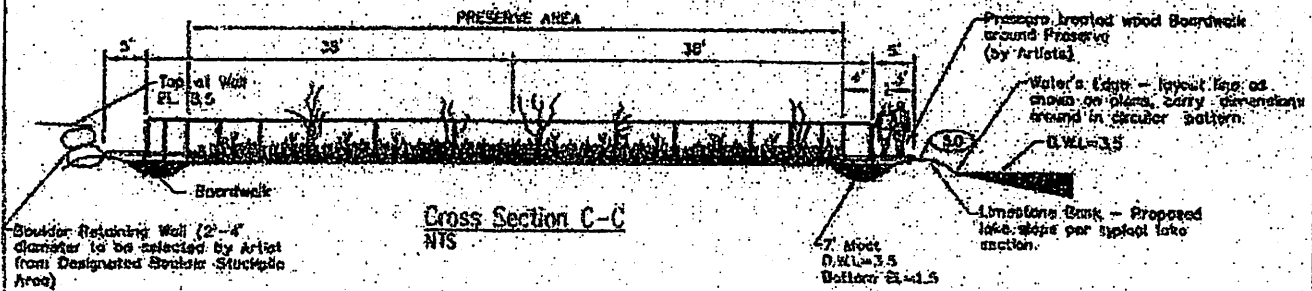
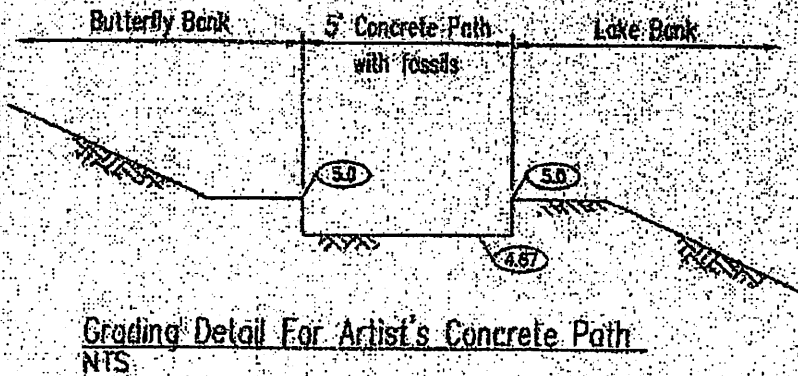
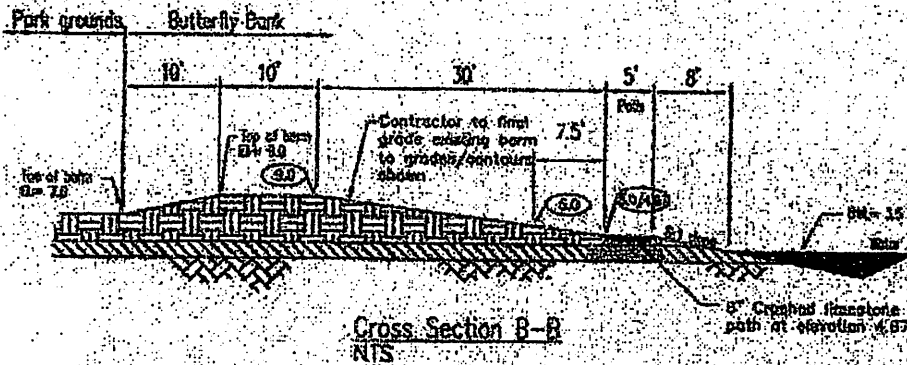
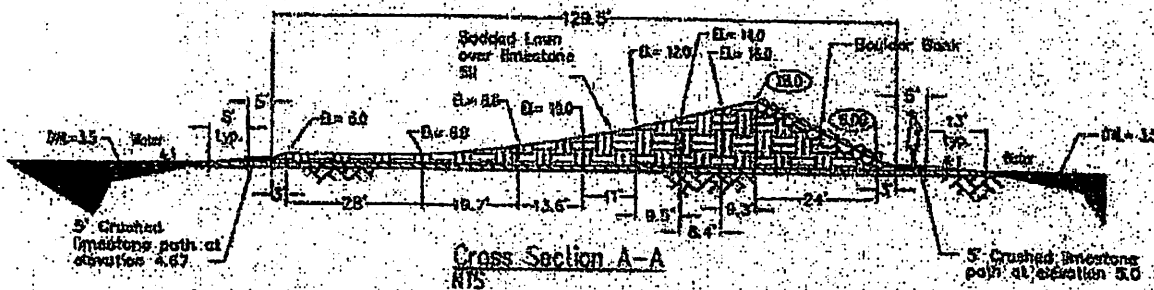
CAF#112
General Contract

EXHIBIT "H"

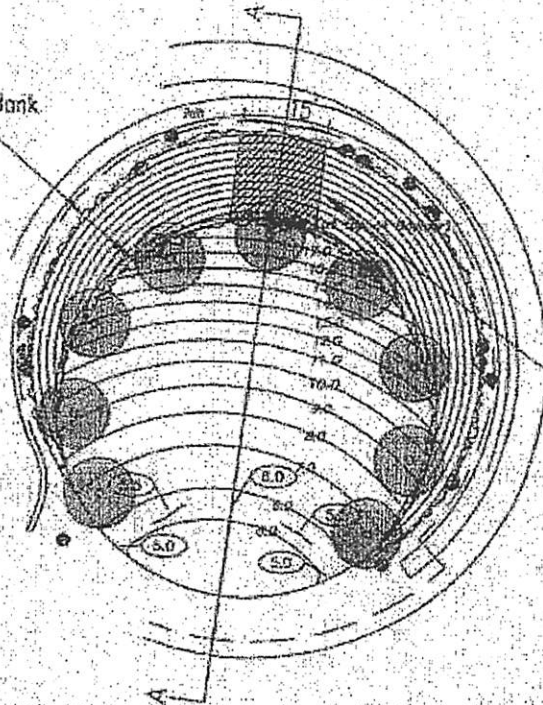
PUBLIC ART EXHIBIT



MIRAMAR REGIONAL PARK - EXHIBIT H
 sheet 1 of 6



Limits of Boulder Bank
on sloped area



Sample/Test Area (for approval prior to
continuing and completing final boulder
placement; see items of work note 3)

LOCATION OF SAMPLE/TEST AREA
NTS

BUTTERFLY BANK REQUIREMENTS:

Scope Of Work:

Complete land form graded contours as shown on plan and irrigation and plantings of landscape materials.

Materials:

Crushed limestone fill shaped at site for Butterfly Bank berm land form. Landscape materials including sod, wild grasses, wild flowers and tree planting, varieties to be determined by artist in collaboration with city's designated landscape architect. Wild grasses and wild flowers of sufficient quantity to provide uniform coverage of designated area.

Items of Work:

Complete land shaping of crushed limestone fill to conform to contours indicated on plan and sections. The contractor is required to document the grading by providing an as-built survey of the Butterfly Bank and submit to Engineer and Artists and obtain their approval.

PRESERVE AREA REQUIREMENTS:

Scope Of Work:

Shaping of outer edge of Moat, low limestone boulder retaining edge and banks according to plan and protection of vegetated areas of Preserve from construction impacts.

Related Work By Others:

Boardwalk, rails and interpretive signage will be fabricated and installed by Artist.

Materials:

1. Limestone fill already on site.

2. Limestone Boulders, 2'-4' dimension, selected by Artist from Designated Boulder Stockpile on site.

1. Locate by survey and mark at the site any adjustments to existing Moat or Banks required to conform to Plan requirements. Request inspection by Engineer and Artist's representative to approve or adjust this layout in the field and in writing before proceeding with construction.

2. Protect existing vegetation of Preserve by physically isolating it from construction equipment and activity and by maintaining the water system of the Moat at its existing level and separated from the lake water body. All melaleucas trees located in the preserve area are to be cut with chainsaw to stump. Stump only is to be treated chemically using Broward County approved chemical agent. Contractor to take extreme care during melaleuca removal to avoid damaging any of the other existing vegetation in the Preserve. If conditions are favorable for stump removal without impacting surrounding vegetation the contractor may remove the melaleucas stumps but only after receiving written approval from Broward County.

3. Place and stabilize with fill the boulders selected by the Artist's representative in area shown on plan to retain the end of the low bank at the eastern end of the Butterfly Bank at the edge of the path. (See Section C-C)

4. Shape and compact path area at the outer edge of the Moat to conform with the plan. See Section C-C for dimensions.

EARTH BOWL SHAPING AND BOULDER PLACEMENT:

Scope Of Work:

Complete land form graded contours as shown on plan and place boulders as shown on plan in cooperation with Artist.

Related Work By Others:

Selected boulders (to be sliced by others for use as seats) will be transported by Artist, shaped and returned to the site for placement by Contractor prior to commencement of Boulder placement.

Materials:

1. 3'-6" limestone boulders, as available from the designated boulder stockpile area of the site. Approximately 400 cubic yards of boulders will be selected for placement and used for the Earth Bowl Bank and the Boulder Retaining Wall at the edge of Preserve.
2. Crushed limestone fill shaped at site for Earth Bowl berm land form.
3. Specially Cut Boulders, as shown on site plan, supplied and delivered to site by Artist.

Items Of Work:

1. Complete land shaping of crushed limestone fill to conform to contours indicated on plan and sections. The contractor is required to document the grading by providing an as-built survey of the Earth Bowl and submit to Engineer and Artist and obtain approval in writing prior to commencing boulder placement. If contractor chooses, he/she may grade fill to lower elevation anticipating boulder placement process and then document the method that the boulder placement and back-fill will bring the grades to the prescribed final elevations.

2. Place Boulders on banks as shown on plan and section. Boulder selection from stockpile and placement is to be directed by Artist or Artist's Representative in the field. Place 3'-6" limestone boulders, as available from the Designated Boulder Stockpile Area, set and stabilized into the crushed lime rock fill bank in such a way as to have half of each boulder below the stipulated final grading line and contained in compacted fill (see Section A-A). Unless alternative placement technique is approved in writing by Engineer and Artists, Contractor to place boulders in horizontal layers and compact fill around them to stabilize boulders against erosion and movement. Large boulders are to be placed directly next to each other and smaller stones and crushed limestone fill will be used to fill gaps between them in order to avoid the potential safety hazard of deep crevices. Artist's Representative will work with Contractor to identify boulders to be used, will direct placement of Special Cut Boulders into stone bank and will approve the boulder placement as it occurs. The largest size boulders available with the greatest amount of visible fossils will be placed at the bottom, along the proposed path.

3. Sample/Test Area: Prior to commencing boulder placement throughout the Earth Bowl Bank, after approval of grading as-built, Contractor, with Artist or Artists' representative at the site, will place the boulders at a Sample/Test Area along the north side of the Earth Bowl, the full height of the Boulder Bank from the bottom elevation of 6 feet to the top elevation of 18 feet, approximately 15' wide, as designated on Plan. Once this Sample/Test Area is constructed according to the Contractor's preferred technique of placement and once it is approved in writing by the Artist and the Engineer, it will be considered the standard acceptable pattern for completing the remainder of the boulder placement.

4. Contractor to notify Artist a minimum 3 weeks prior beginning construction of Sample/Test Area at Earth Bowl to allow time for the out-of-town Artist to make air travel plans and arrange to be present on the site to direct, observe and approve the Boulder Placement for the Sample/Test Area.

5. Make any repairs or adjustment to grading of Earth Bowl surfaces as may be required after Boulder Placement to leave Earth Bowl in conformance with plan requirements, ready to receive sodding.

GENERAL NOTES

1. Work within area of construction designated by broken lines (- - - -) to be coordinated with artist.

2. Unless specifically identified to be done "by artist," all work and materials to be by contractor.

3. In the event that project delays beyond artist control result in cost escalation beyond artist contingency budget, artist reserves right to adjust scope of work accordingly.