

RESOLUTION NO. 04- 239

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING THE SELECTION OF AARYA CONSTRUCTION AND DESIGN, INC. FOR THE CONSTRUCTION OF TWELVE BUS BENCHES WITHIN THE TOWN; APPROVING THE AGREEMENT BETWEEN AARYA CONSTRUCTION AND DESIGN, INC. AND THE TOWN; AUTHORIZING TOWN OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Miami Lakes (the “Town”) issued a Request for Proposals (“RFP”) for the construction of 12 bus benches throughout the Town on May 28, 2004; and

**WHEREAS**, on June 24, 2004, all bids were publicly opened and read; and

**WHEREAS**, after reviewing all bids submitted to the Town, the Town Manager recommends the selection of Aarya Construction and Design, Inc. (“Aarya”) as the lowest responsive and responsible bid; and

**WHEREAS**, in order to fund this project, the Town will be using monies from Miami-Dade County’s half-cent transportation sales tax; and

**WHEREAS**, the Town Council finds that approval of Aarya, along with the Agreement, is in the best interest of the Town.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The foregoing Recitals are true and correct and are incorporated herein by this reference.

**Section 2. Approval of Aarya.** Aarya Construction and Design, Inc. is selected and approved to construct 12 bus shelters throughout the Town.

**Section 3. Approval of Agreement.** The Agreement for the construction of bus shelters between the Town of Miami Lakes and Aarya Construction and Design, Inc. (the "Agreement"), a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is approved.

**Section 4. Authorization of Town Officials.** The Town Manager and Town Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

**Section 5. Authorization of Fund Expenditure.** The Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Agreement.

**Section 6. Execution of Agreement.** The Mayor is authorized to execute the Agreement on behalf of the Town.

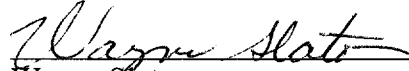
**Section 7. Effective Date.** This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 20<sup>th</sup> day of July, 2004.

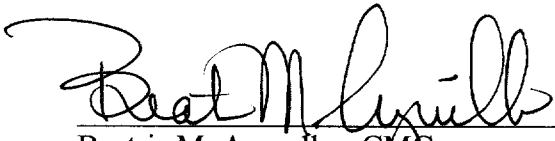
Motion to adopt by Thomson, second by Meador.

FINAL VOTE AT ADOPTION:


Mayor Wayne Slaton	<u>Yes</u>
Vice Mayor Roberto Alonso	<u>Absent</u>
Councilmember Mary Collins	<u>Absent</u>
Councilmember Robert Meador	<u>Yes</u>
Councilmember Michael Pizzi	<u>Absent</u>
Councilmember Nancy Simon	<u>Absent</u>
Councilmember Peter Thomson	<u>Yes</u>

  
Wayne Slaton  
MAYOR

ATTEST:

  
Beatris M. Arguelles, CMC  
TOWN CLERK

Approved as to form and legality for the use  
and benefit of the Town of Miami Lakes only:

  
Weiss, Serota, Helfman, Pastoriza, Guedes  
Cole & Boniske, P.A.  
TOWN ATTORNEY

702001/Resolutions/Approving bus shelter construction contract

Resolution No. 04239

# EXHIBIT "A"

## **AGREEMENT FOR BUS BENCH AND SHELTER UPGRADES AGREEMENT ("CONTRACT") BETWEEN OWNER AND CONTRACTOR**

THIS CONTRACT is dated as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2004 (which shall be the Effective Date of the Contract) by and between the Town of Miami Lakes (hereinafter called "OWNER" or "TOWN") and Aarya Construction and Design, Inc. (hereinafter called "CONTRACTOR").

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. WORK.** CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**Provide Labor and equipment required to perform the construction of bus shelters within the Town of Miami Lakes. Work shall include the installation of bus shelters, bases, anchors, and other miscellaneous items to provide a complete project. Utilization of these services will require close coordination with the Town and Engineer.**

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

- A. TOWN OF MIAMI LAKES
- B. BUS BENCH AND SHELTER UPGRADES
- C. (THE "PROJECT")

**Article 2. ENGINEER.** The Project has been designed by the following:

ENGINEER

Kimley-Horn and Associates, Inc.  
5100 N.W. 33<sup>rd</sup> Avenue, Suite 157  
Fort Lauderdale, FL 33309

who is hereinafter called "ENGINEER" and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

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### **Article 3. CONTRACT TIME.**

- 3.1 This Contract shall be effective upon execution by both parties and shall continue for a term of 180 days. At its sole discretion, the OWNER shall have an option to renew this Contract upon the same terms and conditions (the "Option"). This Option may be exercised at the sole discretion of the Town Manager. Such extension shall be effective upon receipt of a written notice from the Town Manager to the CONTRACTOR received no later than 30 days prior to the date of termination.
- 3.2 The CONTRACTOR shall initiate work on the Project upon execution of this Agreement. The Contractor shall complete all Work within 120 days.
- 3.3. Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Contract and that OWNER will suffer financial loss and other damages if the Work is not substantially or finally complete within the time specified in paragraph 3.2 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not substantially or finally complete on time. CONTRACTOR acknowledges and agrees that the actual delay damages which OWNER will suffer in the event of delay in achieving Substantial Completion or Final Completion of the Work are difficult, if not impossible, to determine and that the liquidated damages described herein are a fair and reasonable estimate of the delay damages which the OWNER is expected to suffer in the event of such delay. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree, that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER Two Hundred and 00/100 dollars (\$200.00) for each day that expires after the time specified in Paragraph 3.2 for completion. Liquidated damages shall be deducted from the CONTRACTOR's Final Application for Payment. However, if at the time of the CONTRACTOR's Final Application for Payment, CONTRACTOR is owed insufficient amounts to fully cover the deduction for liquidated damages, then CONTRACTOR shall pay any amount due within 10 days of written demand by OWNER.

### **Article 4. CONTRACT PRICE.**

- 4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents and the Schedule of Values. For all Unit Price Work, an amount equal to the sum of the established Unit Price for

each separately identified item in the Bid Form, times the actual accepted quantity of that item will be paid for each separate work authorization. The maximum contract amount of the contract is as follows:

Contract Price                     \$169,000.00                    

Contract Price (in words)           One Hundred Sixty Nine Thousand Dollars          

**Article 5. PAYMENT PROCEDURES.**

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1. Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or before the 28th day of each month during construction as provided below. The Application for Payment shall be in AIA format. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values provided in paragraph 14.01 of the General Conditions and the requirements of the Contract Documents.

5.1.1 Prior to Substantial Completion, progress payments will be in an amount equal to: 90% of the Work completed and 90% of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions.

5.2. Final Payment. Upon Final Completion and acceptance of the Work in accordance with paragraph 14.07.B.1 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.B.1.

**Article 6. INTEREST.** Not Applicable

**Article 7. CONTRACTOR'S REPRESENTATIONS.**

In order to induce OWNER to enter into the Contract, CONTRACTOR makes the following representations:

- 7.1. CONTRACTOR has thoroughly and to its full satisfaction familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work. CONTRACTOR has: (a) examined the Contract Documents, Project Specifications and Drawings thoroughly to its full satisfaction and has undertaken the responsibility to determine, within the scope of CONTRACTOR's competence as a licensed General Contractor, that the Project Specifications and Drawings are fit and proper for the performance of the Work and to the best of CONTRACTOR's knowledge are: (i) free from material errors, omissions, and/or inconsistencies; and (ii) are in compliance with applicable laws, statutes, building codes, ordinances, rules and regulations, recognizing however, that CONTRACTOR is not responsible for the design of the Project; (b) visited the site to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work; (c) examined the Project Site to its full satisfaction, including any existing work or improvements in place, and has determined that the same are fit and proper to receive the Work in their present condition and CONTRACTOR waives all claims that same are not in accordance with all data and information with respect to the Project as specified in the Drawings and Project Specifications and/or as provided by OWNER and Engineer; (d) familiarized himself with federal, state and local laws, ordinances, rules, policies, and regulations that may in any manner affect cost, progress or performance of the Work; (e) studied and carefully correlated CONTRACTOR's observations with the Contract Documents; and (f) at CONTRACTOR's own expense, made or obtained any additional examinations, investigations, explorations, tests and studies, and obtained any additional information and data which pertain to the physical conditions (surface, sub-surface and underground facilities) at or contiguous to the Project or otherwise which may affect cost, progress, performance or furnishing of the Work and which CONTRACTOR deems necessary to determine its Contract Price for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.
- 7.2. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time

and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.

- 7.4. CONTRACTOR has correlated and considered the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents and in reaching the Contract Price and Contract Time.
- 7.5. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR. CONTRACTOR shall not rely on any conflicts, errors or discrepancies that CONTRACTOR knew or should have known exist in the Contract Documents as a basis for a claim for an extra to the Contract Price or Contract Time.

#### **Article 8. CONTRACT DOCUMENTS.**

The Contract Documents that comprise the entire Contract between OWNER and CONTRACTOR are attached to this Contract, made a part hereof and consist of the items listed in the general conditions and the following:

- 8.1. This Contract (pages 1 to 7, inclusive)
- 8.2. Exhibits to this Contract
- 8.3. Performance and Payment Bonds
- 8.4. Notice of Intent to Award
- 8.5. General Conditions – EJCDC No. 1910-8 (1996 Edition) (pages 1 to 42, inclusive)
- 8.6. Supplementary Conditions (pages 1 to 17, inclusive, and all Exhibits to the Supplementary Conditions)
- 8.7. Specifications as included in this package and as referenced
- 8.8. Drawings bearing the following general title:  
BUS BENCH AND SHELTER UPGRADES
- 8.9. Addenda
- 8.10. CONTRACTOR'S Bid



- 8.11 Documentation submitted by CONTRACTOR prior to Notice of Intent to Award
- 8.12 Any Modifications, including Change Orders, duly delivered after execution of the Contract.
- 8.13 Advertisement for Bids.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

#### **Article 9. MISCELLANEOUS**

- 9.1. Terms used in this Contract which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3. OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4. This Contract may be executed in counterparts.
- 9.5. Should there be any action brought to enforce the terms of this Contract, the prevailing party shall be entitled to recovery of attorney's fees (including paralegal fees) incurred through mediation, arbitration, or the appellate processes.
- 9.6. The OWNER shall retain the ownership of all shop drawings and design drawings once payment therefore is made.
- 9.7. OWNER and CONTRACTOR hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect

to any action or proceeding based upon the Contract Documents or arising out of, under, or in connection with the Work or the Project.

- 9.8 This Contract shall be governed by the laws of the State of Florida. Venue for any legal proceedings filed under this contract shall be in Miami-Dade County.
- 9.9 If any provision of this Contract or any Authorization under this Contract or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of the is Contract, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extend permitted by law.
- 9.10 Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified.
- 9.11 Contractor shall abide by the applicable provisions of Chapter 119, Florida Statutes (Public Records).

IN WITNESS WHEREOF, the parties hereto have signed 6 copies of this Contract. At least one counterpart each has been delivered to OWNER, CONTRACTOR, and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on OWNER'S behalf.

OWNER  
Town of Miami Lakes

CONTRACTOR  
Aarya Construction and Design, Inc.

ADDRESS  
6853 Main Street  
Miami Lakes, FL 33014

ADDRESS  
\_\_\_\_\_  
\_\_\_\_\_

BY \_\_\_\_\_

BY \_\_\_\_\_

\_\_\_\_\_  
Print Name  
\_\_\_\_\_

\_\_\_\_\_  
Print Name  
\_\_\_\_\_

Title

WITNESS \_\_\_\_\_

(CORPORATE SEAL)

Title

WITNESS \_\_\_\_\_

(CORPORATE SEAL)