

RESOLUTION NO. 02-106

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA APPROVING AN AGREEMENT BETWEEN ROCK POWER CORP. AND THE TOWN OF MIAMI LAKES FOR RELOCATION OF FILL, DE-MUCKING AND EARTHWORK SERVICES REQUIRED FOR THE DEVELOPMENT OF ROYAL OAKS PARK; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Miami Lakes (the "Town") requires relocation of fill, de mucking and earthwork ("Bulldozing") services in order to proceed with planned development of Royal Oaks Park; and

WHEREAS, the Town Council finds that approval of an agreement between the Town and Rock Power Corp. to provide bulldozing services for this project 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:

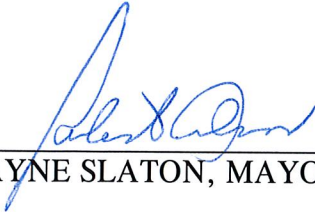
Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. The agreement between Rock Power Corp. and the Town of Miami Lakes for bulldozing services (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 3. The Town Manager is authorized to execute the Agreement on behalf of the Town.

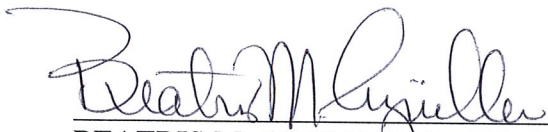
Section 4. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 12th day of November, 2002.



WAYNE SLATON, MAYOR

ATTEST:



BEATRIS M. ARGUELLES, CMC
TOWN CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



WEISS, SEROTA, HELFMAN, PASTORIZA & GUEDES, P.A.
TOWN ATTORNEY

Meador / Slaton

Council voted <u>7-0</u> as follows:	
Mayor Wayne Slaton	<u>Yes</u>
Vice Mayor Roberto Alonso	<u>Yes</u>
Councilmember Mary Collins	<u>Yes</u>
Councilmember Robert Meador	<u>Yes</u>
Councilmember Michael Pizzi	<u>Yes</u>
Councilmember Nancy Simon	<u>Yes</u>
Councilmember Peter Thomson	<u>Yes</u>

EXHIBIT "A"

Rock Power Corp

Proposal

General Engineering Contractors

Proposal No: 2466
Date: 9/19/02
Revised Date:

Page Number: 2 of 3

Price quoted as per plans by:

Any deviation or change will be considered an additional cost.

We hereby propose to furnish material and labor complete in, accordance with above specifications for the sum of:

Payment to be made as follows: PROGRESS PAYMENTS

Note: Cost of permits to be billed separately. Subgrade preparation if required with on site Material only. This proposal is subject to acceptance within 30 days and is void Thereafter at the option of ROCK POWER CORP.

ADDITIONAL TERMS AND CONDITIONS

1. ROCK POWER CORP shall guarantee all work and material. In accordance with the terms and conditions of this agreement and all work shall be completed in a workman-like manner and according to standard practice of the prevailing county.
2. Any change, alterations or deviation from the specifications as set forth in this agreement, which involve additional charge or cost, will be permitted only upon written change order and same will be an extra charge which shall be due and payable upon execution of the change Order.
3. ~~ROCK POWER CORP shall not be responsible for damages to sidewalk, fences, lawns, Under-ground installations, septic tanks, water and drain lines, water ponding etc.~~
4. ~~ROCK POWER CORP shall not be responsible for any damages caused by automobile power steering, tire marks, peeling of asphalt, heavy truck or equipment traffic, leakage of Gasoline or oil or detergent placed upon the asphalt.~~
5. ~~ROCK POWER CORP shall not be responsible for any loss, damage or injury to persons or property caused by acts of government civil or military authorities, theft, vandalism, labor disputes, explosion, power failure, water damage, storms, lightning, natural or public catastrophe, acts of God or by any other cause unavoidable or beyond our reasonable Control and, in any event, we shall not liable for incidental or consequential damages.~~
6. ~~In the event of your non-performance under the terms and conditions of this agreement or failure to pay the amount due within the time period as set forth within the agreement, you agree that if an attorney is engaged to enforce the terms of this agreement, or to collect payment due hereunder either with or without suit, you shall pay all cost incurred by ROCK POWER CORP, including reasonable attorneys fees in the trial court and the appellate level.~~
7. ~~It is agreed that you thereby waive trial by jury, and further agree and consent that we shall for any proceeding under this agreement be in the County of Dade and State of Florida.~~

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ROCK POWER CORP

Proposal

General Engineering Contractors

Proposal No: 2467
Date: 9/19/02
Revised Date:

Page Number 3 of 3

~~8. No agent or employee shall have the authority to waive or modify any of the terms and conditions of this agreement.~~

~~9. The final payment shall be made within 30 days after the completion of the work covered by this contract and acceptance thereof by contractor, the architect and/or engineer.~~

~~ACCEPTANCE OF PROPOSAL, the above specifications and conditions are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. Interest at 18% per annum plus costs to collect will be charged on all past due invoices.~~

Signature _____

Date Accepted _____

Authorized Signature _____
Rock Power Corp.

Date _____

J. L.

Rev. 02 106

ROCK POWER CORP

PROPOSAL

General Engineering Contractors
5600 SW 135Th Ave Suite #215
Miami, FL 33183
Tel: (305) 752-7742 Fax: (305) 752-7728

Submitted To:
Kimley-Horn
8603 S. Dixie Hwy, Ste 220
Miami, FL 33186

Proposal No: 2467
Date: 10/1/02
Revised: J.L.
Submitted By: ROBERTO DELGADO

Phone: (305)-862-8445

Fax: (305)-862-6492

Attn: Al Garcia

Page Number 1 of 3

Job Name: Park

Job Location:

Miami Lakes

Date of Plans:

We propose to furnish all labor, materials, equipment and insurance subject to all terms and conditions, as set forth in the following pages:

BID ITEM	UNIT	QUANTITY	Vr/TOTAL
Equipment Rental for Removal of trees and land clearing:			
D-6 Bulldozer Rental @ \$60/hour			
travel time 2 hrs @ \$60/hour			
If Demucking Required:			
Excavator Rental @ 80/hour			
travel time 2 hrs @ \$80/hr			

Re-Res. 023106

SENT BY: ROCK POWER CORP;

305 752 7728;

OCT-21-02 10:21AM;

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ROCK POWER CORP

PROPOSAL

General Engineering Contractors
5600 SW 135Th Ave Suite #215
Miami, FL 33183
Tel: (305) 752-7742 Fax: (305) 752-7728

Submitted To:
Kimley-Horn
8803 S. Dixie Hwy, Ste 220
Miami, FL 33143

Proposal No: 2469
Date: 10/21/02
Revised: J.L.
Submitted By: ROBERTO DELGADO

Phone: (305)-662-6445

Fax: (305)-662-6492

Attn: Al Garcia

Page Number 1 of 3

Job Name: Royal Oa

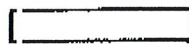
Job Location:

Miami Lakes

Date of Plans:

We propose to furnish all labor, materials, equipment and insurance subject to all terms and conditions, as set forth in the following pages:

BID ITEM	UNIT	QUANTITY	UNIT TOTAL
LANDSCAPE			
Loader Rental Komatsu 4yd bucket @ \$50/hour			
2 hour travel time @ \$50/hr			



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7/11

ADDENDUM TO PROPOSAL

THIS ADDENDUM TO PROPOSAL (the "Addendum") dated this 5th day of December, 2002, by and between the Town of Miami Lakes, a Florida municipal corporation (the "Town"), whose address is 6853 Main Street, Miami Lakes, Florida 33014, and ROCK POWER CORP, a Florida corporation (the "Contractor"), whose address is 5600 SW 135th Avenue, Suite 215, Miami, Florida 33183, supplements the Proposal dated 9/19/02, 2002. 10/11/02

Section 1. Paragraphs 3 through 7 of the Proposal are deleted in their entirety.

Section 2. Replacement Paragraphs 3 through 19 are added as follow:

3. **Work.** Contractor shall provide all labor, material, and equipment for the moving of fill, demucking and earthwork site services at Royal Oaks Park (the "Property") pursuant to the direction of the Town Engineer.

4. **Protection of Property and the Public.** Nothing in this Agreement will be construed to affect in any way the Town's rights, privileges, and immunities, including the monetary limitations of liability set forth in Section 768.28 of the Florida Statutes. The provisions of this Section will survive the termination or expiration of this Agreement. Notwithstanding the foregoing, Contractor shall:

a. Take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.

b. Repair and/or replace landscaping, vegetation, walks, drives, or structures of the Town and of any land adjoining any work sites, which are damaged by Contractor, its agents, employees, guests and invitees.

c. Protect all buildings, sidewalks, fences, shade trees, lawns and all other improvements from damage by Contractor. Property obstructions, including, but not limited to sewers, drains, water or gas lines, conduits, manholes, valve boxes, meter boxes, and street monuments shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items which include, but are not limited to manholes, valve boxes, meter boxes and street monuments prior to adjusting them to grade and shall be held strictly liable to the affected utility if any such appliances are disturbed, damaged or covered up during the course of the Work. Contractor shall be notified of the location of any utilities that may be on the Property.

5. **Indemnification.** The Contractor agrees to indemnify, protect, defend, and hold harmless the Town its elected officials, officers, employees, consultants, and agents from liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the Agreement.

REC'D DEC 09 2002

a. The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor and/or any subcontractor under worker's compensation acts, disability benefit acts, or other employee benefit acts.

b. In the event that any claims are brought or actions are filed against the Town with respect to the indemnity contained herein, the Contractor agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. The Contractor agrees that the Town may select the attorneys to appear and defend such claims or actions on behalf of the Town. The Contractor further agrees to pay at the Contractor's expense the attorneys' fees and costs incurred by those attorneys selected by the Town to appear and defend such claims or actions on behalf of the Town. The Town, at its sole option, shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against the Town.

6. **Compliance with Governmental Laws.** Contractor shall comply with all applicable federal, state, county, and municipal laws (including Town laws), ordinances, resolutions and governmental rules, regulations and orders as may be in effect now or at any time which are applicable to Contractor, the Property or the operations conducted at the Property or the Premises.

7. **Contractor's Employees.** Contractor shall at all times be responsible for the conduct and performance of Contractor's employees.

8. **Vehicles and Equipment.** At all times throughout the Term of this Agreement, Contractor shall be responsible to provide any and all vehicles, machinery, tools, accessories, and other items necessary to perform the Work. All vehicles used by Contractor to provide services under this Agreement shall be licensed to operate in the State of Florida.

9. **Insurance.** Contractor shall provide and maintain in force, until all the Work to be performed under this Agreement has been completed and accepted by the Town, with copies to each additional insured identified herein, Certificates of Insurance (and other evidence of insurance requested by Town or any other additional insured) which Contractor is required to purchase and maintain, and shall require all subcontractors to carry:

a. Workers Compensation insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers' Liability Act and the Jones Act. Employer's Liability Insurance shall be provided with a minimum of One Hundred Thousand and 00/100 Dollars (\$100,000.00) per accident. Contractor agrees to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

b. Comprehensive General Liability insurance to protect against bodily injury liability and property damage in an aggregate amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit. Coverage must be afforded on a form no

more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include: Property and/or Operations; Independent Contractors; Products and/or Completed Operations Hazard; Explosion, Collapse and Underground Hazard Coverage; Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to that required for Bodily Injury Liability and Property Damage Liability; and Broad Form Contractual Coverage covering all liability arising out of the terms of this Agreement.

c. Participant Accident Coverage, per injury with the following limits: (a) Accidental Death and Dismemberment Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) per injury; (b) Excess Medical Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) per injury; and (c) Umbrella Coverage of One Million and 00/100 Dollars (\$1,000,000.00).

d. Business Automobile Liability insurance in an amount not less than Three Hundred Thousand Dollars (\$300,000.00) per occurrence combined single limit, for bodily injury and property damage liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: Owned, Non-owned and Hired vehicles.

e. The Contractor shall either require each of its subcontractors to produce and to maintain subcontractor's public liability and property damage insurance and vehicle liability insurance of the type and in the same amounts specified above or insure the activities of its subcontractors in the Contractor's own policies.

f. Contractor shall furnish to Town certificates of insurance evidencing the insurance coverages specified by this section prior to the Effective Date. The required certificates of insurance shall name the type of policy provided, refer specifically to this Agreement, and state that such insurance is as required by this Agreement.

g. The required insurance coverage is not to cease and is to remain in full force throughout the Term of this Agreement. All policies must be endorsed to provide Town with at least thirty (30) calendar days' notice of cancellation and/or restriction. If any of the insurance coverage will expire prior to the termination of this Agreement, copies of renewal policies shall be furnished at least sixty (60) calendar days' prior to the date of their expiration.

h. All deductibles must be declared by Contractor and must be approved by the Town. At the Town's sole and absolute discretion, Contractor shall (1) eliminate or reduce such deductible with respect to the Town, or (2) procure a bond in a form satisfactory to the Town.

i. Town shall not be responsible for purchasing and maintaining any insurance to protect the interests of Contractor, subcontractors or others on the Work. Town specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Florida Statute 768.28 and Florida Statute 95.11.

10. **Assignment.** This Agreement shall not be assigned in whole or in part by either party.

11. **Governing law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In case of any dispute or litigation involving this Agreement, the parties hereof expressly agree that venue for any such proceeding will be exclusively in Miami-Dade County, Florida and no action or proceeding shall be brought in any other County.

12. **Third Parties.** Neither the Contractor nor Town 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.

13. **Attorney's fees.** In the event either party to this Agreement is required to retain legal counsel to enforce any of its rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party together with court costs incurred in any litigation at any trial and appellate proceedings.

14. **Access to Public Records.** The Contractor shall comply with the applicable provisions of Chapter 119, Florida Statutes. Contractor shall retain all records associated with this Agreement for a period of three (3) years from the termination of this Agreement.

15. **Inspection and Audit.** During the Term of this Agreement, Contractor shall allow Town representatives access during reasonable business hours to Contractor's records related to this Agreement for the purposes of inspection or audit of such records. If upon audit of such records, the Town determines the Contractor was paid for services not performed, upon receipt of written demand by the Town, the Contractor shall immediately remit such payments to the Town.

16. **Severability.** If a term, provision, covenant, contract or condition of this Agreement is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this Agreement and the remainder shall be effective as though every term, provision, covenant, contract or condition had not been contained herein.

17. **WAIVER OF JURY TRIAL.** THE PARTIES IRREVOCABLY, KNOWINGLY AGREE TO WAIVE THEIR RIGHTS TO A TRIAL BY JURY IN ANY ACTION TO ENFORCE THE TERMS OR CONDITIONS OF THIS AGREEMENT.

18. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

19. **Notices.** Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

FOR CONTRACTOR:

ROCK POWER CORP.
5600 SW 135th Avenue, Suite 215
Miami, FL 33183
Telephone: (305) 752-7742
Facsimile: (305) 752-7728

FOR TOWN:

Alex Rey, Town Manager
Town of Miami Lakes
6853 Main Street
Miami Lakes, FL 33014
Telephone: (305) 558-8244
Facsimile: (305) 558-8511

WITH COPY TO:

Weiss Serota Helfman Pastoriza & Guedes, P.A.
2665 South Bayshore Drive, Suite 420
Miami, Florida 33133
ATTN: Town Attorney

[Acknowledgments on following page]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: TOWN OF MIAMI LAKES, FLORIDA, signing by and through its Mayor or Vice Mayor, authorized to execute same by Council action on the 12th day of November, 2002, and _____, signing by and through _____, duly authorized to execute same.

TOWN

TOWN OF MIAMI LAKES, FLORIDA

By: Wayne Stator
Mayor

12th day of December, 2002.

ATTEST:
[Signature]
Town Clerk

APPROVED AS TO FORM AND SUFFICIENCY:

By: [Signature]
Town Attorney

CONTRACTOR

ROCK POWER CORP.

WITNESS

[Signature]
Print Name: LUCRECCIA VALDEZ-GARCIA

(Corporate Seal)
N/A

By: [Signature]
Print Name: Maria Mirabet
Print Title: President

5th day of December, 2002.