

RESOLUTION NO. 07-587

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA APPROVING THE SELECTION OF PIOS & SONS ENTERPRISES, INC. TO SUPPLY AND INSTALL FOUR (4) TOWN ENTRY FEATURES; APPROVING THE CONTRACT BETWEEN PIOS & SONS ENTERPRISES, INC. AND THE TOWN; AUTHORIZING THE TOWN OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE CONTRACT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Miami Lakes (the "Town") issued an Advertisement for Bids (the "Advertisement") for Four (4) Town Entry Features on October 17, 2007; and

**WHEREAS**, on October 31, 2007, all bids were publicly opened and read, and the Town received one (1) Responsive and Responsible Bids from firms which were reviewed by the Town Manager; and

**WHEREAS**, after reviewing all bids submitted to the Town, the Town Manager recommends the selection of Pios & Sons Enterprises, Inc.; and

**WHEREAS**, the Town Council finds that approval of Pios & Sons Enterprises, Inc, along with the Contract, 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. Approval of Pios & Sons Enterprises, Inc.** Pios & Sons Enterprises, Inc., is hereby selected to supply and install four (4) Town Entry features.

**Section 3. Approval of Contract.** The Contract for supply and installation of four (4) Town Entry Features between the Town and Pios & Sons Enterprises, Inc. (the "Contract"), 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 steps necessary to implement the terms and conditions of the Contract.

**Section 5. Authorization of Fund Expenditure.** Notwithstanding the limitations imposed upon the Town Manager pursuant to the Town's Purchasing Procedures Ordinance, the Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Contract.

**Section 6. Execution of Contract.** The Town Manager is authorized to execute the Contract on behalf of the Town, to execute any required agreements and/or documents to implement the terms and conditions of the Contract and to execute any extensions and/or amendments to the Contract, subject to the approval as to form and legality by the Town Attorney.

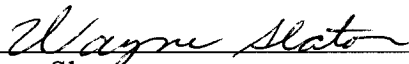
**Section 7. Effective Date.** This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 13 day of November, 2007.


Motion to adopt by Nancy Simon, second by Mary Collins.

FINAL VOTE AT ADOPTION


Mayor Wayne Slaton	<u>yes</u>
Vice Mayor Nancy Simon	<u>yes</u>
Councilmember Roberto Alonso	<u>yes</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember Robert Meador	<u>yes</u>
Councilmember Michael Pizzi	<u>yes</u>
Councilmember Richard Pulido	<u>yes</u>

  
\_\_\_\_\_  
Wayne Slaton  
MAYOR

ATTEST:

  
\_\_\_\_\_  
Debra Eastman, MMC  
TOWN CLERK

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

  
\_\_\_\_\_  
Weiss, Serota, Helfman, Pastoriza,  
Cole & Boniske, P.L.  
TOWN ATTORNEY

**TOWN OF MIAMI LAKES**

**SECTION 3**

**CONTRACT BETWEEN OWNER AND CONTRACTOR**

THIS CONTRACT is dated as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2007 (which shall be the Effective Date of the Contract) by and between the Town of Miami Lakes (hereinafter called "OWNER" or "TOWN") and Pios & Sons Enterprises, 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 construct four (4) Entry Features within the Town of Miami Lakes. Work shall include the construction of a decorative sign wall complete with detailed lettering and Town logo. The Work shall also include construction of a cascading water fountain with pump and electrical connections, landscaping, lighting and water distribution with back flow prevention. Utilization of these services will require close coordination with the Town and Engineer.

The four (4) Town Entry Features will be located on Ludlam Road just south of the Palmetto Expressway, on NW 87<sup>th</sup> Avenue and NW 138<sup>th</sup> Street, on NW 154<sup>th</sup> Street east of the Palmetto Expressway, and on NW 67<sup>th</sup> Avenue and NW 138<sup>th</sup> Street.

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

**TOWN OF MIAMI LAKES  
TOWN ENTRY FEATURES  
(THE "PROJECT")**

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

10  
044533105

**ENGINEER**

Kimley-Horn and Associates, Inc.  
5200 N.W. 33<sup>rd</sup> Avenue, Suite 109  
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.

**Article 3. CONTRACT TIME.**

- 3.1 This Contract shall be effective upon execution by both parties and shall continue for a term of 150 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 work shall be substantially complete within 120 calendar days after execution of this agreement, and completed and ready for final payment within 150 calendar days after execution of this document. Final completion includes all work and project documentation, including structural and fountain work, landscaping, and median restoration, as-built drawings, project warranties, etc. Failure to provide any of these items will be subject to liquidated damages.
- 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 Five

Hundred 00/100 dollars (\$500.00) 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                    \$ 257,820.00  
Contract Price (in words) Two hundred Fifty Seven Thousand Eight Hundred  
Twenty 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
- 8.2. Proposal



- 8.3. Bid Proposal and Form
- 8.4. Standard General Conditions
- 8.4A Supplementary Conditions
- 8.5. Detailed Specifications as included in this package and as referenced
- 8.6. Cone of Silence
- 8.7. Addendum Acknowledgement
- 8.8. Anti-Kickback Affidavit
- 8.9. Sworn Statement
- 8.10. Qualification Statement
- 8.11. Performance Bond
- 8.12. Payment Bond
- 8.13. Notice of Intent to Award
- 8.14. Notice to Proceed
- 8.15. Construction Plans titled – “Town Entry Features”
- 8.16. Any Modifications, including Work Authorizations, duly delivered after execution of the Contract.

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 extent 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

\_\_\_\_\_

ADDRESS

\_\_\_\_\_

\_\_\_\_\_

BY \_\_\_\_\_

Print Name

Title

WITNESS \_\_\_\_\_

(CORPORATE SEAL)

CONTRACTOR

PIOS & SONS ENTERPRISES, INC.

ADDRESS

320 ATLANTIC AVE.  
SUNNY ISLES, FL 33160

BY *Hector M. Ortiz*

HECTOR M. ORTIZ

Print Name

PRESIDENT

Title

WITNESS *[Signature]*

(CORPORATE SEAL)