

**RESOLUTION NO. 2002-15**

**A RESOLUTION OF THE TOWN OF SOUTHWEST RANCHES FLORIDA APPROVING AN AGREEMENT WITH BROWARD COUNTY TO PROVIDE A CHALLENGE GRANT IN THE AMOUNT OF \$500,000 FOR THE DEVELOPMENT OF THE SUNSHINE RANCHES EQUESTRIAN PARK PROJECT – NORTH; AND AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO EXECUTE SAID CONTRACT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to the passage by the Broward County electorate of the 2000 Broward County Safe Park and Land Preservation Bond Issue, \$20 million has been allocated for the Challenge Grant Program to benefit municipalities; and

**WHEREAS**, the Broward County Parks and Recreation Advisory Board recommends funding to assist municipalities with approved expenses; and

**WHEREAS**, the Town Council and the Board of County Commissioners has determined that these expenditures serve a County, Town and public purpose and are authorized by the 2000 Broward County Safe Parks and Land Preservation Bond Program; and

**WHEREAS**, on January 11, 2001, the Town Council authorized Richard Rubin to prepare the maximum number of Challenge Grants for the Town; and

**WHEREAS**, on February 8, 2001, the Town Council approved the application of three Challenge Grants; and

**WHEREAS**, the Board of County Commissioners approved the allocation of funding for the Challenge Grant Program on October 16, 2001.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Southwest Ranches, Florida:

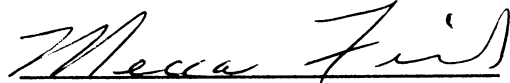
**Section 1:** The above referenced recitals are true and correct and are incorporated herein by reference.

**Section 2:** The Mayor, Town Administrator and Town Attorney are hereby authorized to enter into the agreement for Five Hundred Thousand Dollars (\$500,000) with the County Commission for a Challenge Grant allocation for the Sunshine Ranches Equestrian Park Project-North.

**Section 3:** The Town of Southwest Ranches acknowledges that the Challenge Grant allocation requires a match funding of 25% or One Hundred Twenty Five Thousand Dollars (\$125,000) prior to completion of the project.

**Section 4:** This Resolution shall become effective immediately upon its adoption.

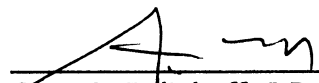
**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 13<sup>th</sup> day of December, 2001.

  
Mecca Fink, Mayor

Attest:

\_\_\_\_\_  
Arielle Haze Tyner, Town Clerk

Approved as to Form and Correctness:

  
\_\_\_\_\_  
Gary A. Poliakoff, J.D., Town Attorney

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**A G R E E M E N T**

**Between**

**BROWARD COUNTY**

**and**

**TOWN OF SOUTHWEST RANCHES**

**for**

**BROWARD COUNTY CHALLENGE GRANT PROGRAM**

**FY 2001**

**(GOVERNMENTAL ENTITY FORM)**

**PROJECT NO. \_\_\_\_\_**

**EQUESTRIAN PARK NORTH**

## INDEX

| <u>ARTICLE</u> |   | <u>PAGE</u> |
|----------------|---|-------------|
| 1              | DEFINITIONS AND IDENTIFICATIONS         | 2           |
| 2              | SCOPE OF SERVICES                       | 3           |
| 3              | TERM AND TIME OF PERFORMANCE            | 3           |
| 4              | COMPENSATION                            | 4           |
| 5              | LIABILITY                               | 6           |
| 6              | INSURANCE                               | 6           |
| 7              | TERMINATION                             | 6           |
| 8              | FINANCIAL STATEMENTS                    | 7           |
| 9              | MISCELLANEOUS                           | 9           |
|                | EXECUTION PAGES                         | 16          |
|                |   | 17          |
| EXHIBIT A      | PROJECT GUIDELINES                      | 18          |
| EXHIBIT B      | PROJECT DESCRIPTION                     | 21          |
| EXHIBIT C      | EVIDENCE OF TITLE OR LEASEHOLD INTEREST | 22          |
| EXHIBIT D      | SDBE PARTICIPATING VENDORS LISTING      | 23          |

**A G R E E M E N T**

**Between**

**BROWARD COUNTY**

**and**

**TOWN OF SOUTHWEST RANCHES**

**for**

**BROWARD COUNTY CHALLENGE GRANT PROGRAM**

**FY 2001**

This Agreement, made and entered into by and between BROWARD COUNTY, a political subdivision of the state of Florida, hereinafter referred to as "COUNTY,"

**and**

**Town of Southwest Ranches**, a municipal corporation of the state of Florida, hereinafter referred to as "CONTRACTOR."

WHEREAS, pursuant to the passage by the Broward County electorate of the 2000 Broward County Safe Parks and Land Preservation Bond Issue, Twenty Million Dollars (\$20,000,000) has been allocated for the Challenge Grant Program to benefit municipal parks and recreation systems within the geographic boundaries of Broward County and eligible nonprofit organizations that operate recreation facilities within the geographic boundaries of Broward County; and

WHEREAS, the Broward County Parks and Recreation Advisory Board recommended funding to assist CONTRACTOR with approved expenses pursuant to the Board of County Commissioners' action on December 12, 2000 (Item #64), and the 2000 Broward County Safe Parks and Land Preservation Bond Program and its implementing regulations; and

WHEREAS, the Board of County Commissioners has determined that these expenditures serve a COUNTY and public purpose and are authorized by the 2000 Broward County Safe Parks and Land Preservation Bond Program; NOW, THEREFORE,

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

## ARTICLE 1

### DEFINITIONS AND IDENTIFICATIONS

- 1.1 Agreement - Agreement shall mean this document and other terms and conditions which 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 Administrator - The Director of the Broward County Parks & Recreation Division, or the designee of such Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with CONTRACTOR and to manage and supervise execution and completion of the Scope of Services 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 Administrator; provided, however, that such instructions and determinations do not change the Scope of Services of this Agreement.
- 1.4 County Attorney - The chief legal counsel for COUNTY, who directs and supervises the Office of County Attorney pursuant to Section 4.03 of the Broward County Charter.
- 1.5 Grant Program - The allocation of Twenty Million Dollars (\$20,000,000.00) under the 2000 Broward County Safe Parks and Land Preservation Bond Program to be utilized for Challenge Grant awards to eligible municipalities and eligible nonprofit organizations within the geographic boundaries of Broward County, Florida, under the Grant Program guidelines (Exhibit "A" attached hereto).
- 1.6 Match - For the purposes of this Agreement, "Match" is defined as the monetary contribution that CONTRACTOR is guaranteeing to spend on the Project. In the event CONTRACTOR anticipates its Match funding from an outside source, e.g. grant program, CONTRACTOR is responsible for Match funding even if the outside funding source contribution is not received by CONTRACTOR.
- 1.7 Project - The Project consists of the services described in Article 2.

## ARTICLE 2

### SCOPE OF SERVICES

- 2.1 CONTRACTOR shall perform all services identified in this Agreement, the Grant Program Guidelines attached hereto as Exhibit "A," the Grant Project Description, Grant Project Timetable /Schedule, and Grant Project Cost/Budget attached hereto as Exhibit "B," and evidence of Project site ownership or lease attached hereto as Exhibit "C." The parties agree that the Scope of Services is a description of CONTRACTOR's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipments, and tasks, which are such an inseparable part of the work described, that exclusion would render performance by CONTRACTOR impractical, illogical, or unconscionable.
- 2.2 The Contract Administrator may approve changes to the Scope of Services, Project description, unit of services, and changes within the categories of expenditures listed in Exhibit "A," provided that the total grant dollars awarded to CONTRACTOR remains unchanged, the revisions are consistent with the grant application and the Grant Program guidelines, and the revisions do not diminish the quantity or quality of services to be provided.
- 2.3 CONTRACTOR agrees that the Project, when completed, shall be dedicated for public recreational uses. The dedication shall extend for a minimum of Twenty-five (25) years and shall be recorded in the Official Records for Broward County, Florida, pursuant to Section 28.222, Florida Statutes. CONTRACTOR further agrees to return to COUNTY all funds tendered for the Project in the event the Project becomes utilized during this period for other than the purposes of the Project.

## 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 three (3) years after this Agreement is fully executed. CONTRACTOR may request up to two (2) extensions of up to one (1) year each for its performance completion of the Project, subject to approval by COUNTY's County Administrator. Any extension request shall be in writing and delivered to the Contract Administrator at least sixty (60) days prior to the end of the term.
- 3.2 CONTRACTOR agrees that it will comply with the construction time table included in Exhibit "B," attached hereto, excepting bona fide force majeure delays.

## ARTICLE 4

### COMPENSATION

4.1 COUNTY agrees to pay CONTRACTOR, in the manner specified in Section 4.3, the total amount not to exceed **Five Hundred Thousand Dollars (\$500,000.00)** for CONTRACTOR's Project pursuant to this Agreement. It is acknowledged and agreed by CONTRACTOR that this amount is the maximum payable and constitutes a limitation upon COUNTY's obligation to compensate CONTRACTOR for services and expenses related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon CONTRACTOR's obligation to perform all items of work required by or which can be reasonably inferred for the Project from the Scope of Services. CONTRACTOR either [check one] X agrees to provide matching funds in the amount of **\$125,000.00** as specified in Exhibit "A," and pursuant to the Grant Program criteria, or ~~\_\_\_\_\_ will not be providing matching funds pursuant to the Grant Program criteria.~~

4.2 The Contract Administrator is responsible for ensuring performance of the terms and conditions of this Agreement and shall approve all requests from CONTRACTOR for payment prior to payment being made. CONTRACTOR shall furnish to the Contract Administrator a copy of the Project's construction contract(s) within fifteen (15) days of full execution of same.

### 4.3 METHOD OF BILLING AND PAYMENT

4.3.1 CONTRACTOR may submit an invoice(s) for payment on this Project after the Project has been completed in each of four (4) segments as follows:

Twenty-five Percent (25%) of the total COUNTY payment set forth in Section 4.1 above after completion of Twenty-five Percent (25%), Fifty Percent (50%), Seventy-five Percent (75%) and One Hundred Percent (100%) of the Project's development, minus the retainage amount described in Section 4.4 below. The amounts withheld, including retainage, shall not be subject to payment of interest by COUNTY.

The final invoice must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the expenses incurred. CONTRACTOR agrees that it shall allocate no more than Twelve Percent (12%) of the total COUNTY payment to the Project's architectural/engineering costs.

- 4.3.2 Documentation as required in Exhibit "A" must accompany any request for payment. Invoices shall be certified by CONTRACTOR's authorized official.
- 4.3.3 COUNTY shall pay CONTRACTOR within thirty (30) calendar days of receipt of CONTRACTOR's proper invoice, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49, as may be amended from time to time). 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. Payment may be withheld for failure of CONTRACTOR to comply with a term, condition, or requirement of this Agreement.
- 4.4 COUNTY shall retain Ten Percent (10%) of the total COUNTY portion of the Project amount until the Project is completed pursuant to this Agreement and the attached Exhibits. The retained amount shall be paid to CONTRACTOR in the same manner and under the same conditions and requirements as those for the final payment of COUNTY's portion of the Project amount. For example, if the amount of COUNTY's grant to CONTRACTOR for the project is Two Hundred and Fifty Thousand Dollars (\$250,000.00), Twenty-five Thousand Dollars (\$25,000.00) will be retained until Project completion. Should matching funds as described in Sections 1.6 and 4.1 above be part of the Project, the retained Ten Percent (10%) of COUNTY's portion shall not be paid until CONTRACTOR has obtained the matching funds amount and has applied same to the Project.
- 4.5 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 inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator. The amount withheld shall not be subject to payment of interest by COUNTY.
- 4.6 If it becomes necessary for COUNTY to demand a refund of any or all funds paid to CONTRACTOR pursuant to this Agreement, CONTRACTOR agrees to remit said funds to COUNTY within sixty (60) days after notification by COUNTY of the reason for the demand for repayment. If not returned within sixty (60) days, CONTRACTOR understands and agrees that any further CONTRACTOR requests for funding, as to this or any other program under COUNTY's administration, may be denied until the funds have been returned.
- 4.7 This Agreement strictly prohibits the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.

4.8 Payment shall be made to CONTRACTOR at:

**John Canada  
Town Administrator  
Town of Southwest Ranches  
6589 Southwest 160<sup>th</sup> Avenue  
Southwest Ranches, Florida 33331**

#### ARTICLE 5

##### LIABILITY

CONTRACTOR is a state agency or subdivision as defined in Chapter 768.28, Florida Statutes, and agrees to be fully responsible for acts and omissions of its agents, contractors, 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 6

##### INSURANCE

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

#### ARTICLE 7

##### TERMINATION

- 7.1 This Agreement may be terminated for cause by action of the Board or by CONTRACTOR upon thirty (30) days written notice by the party that elected to terminate, or for convenience by action of the Board upon, not less than, ten (10) days written notice by the Contract Administrator. This Agreement may also be terminated by the Contract Administrator upon such notice as the Contract Administrator deems appropriate under the circumstances, in the event the Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.
- 7.2 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement, except that notice of termination by the Contract Administrator which the 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.

- 7.3 In the event this Agreement is terminated for convenience, CONTRACTOR shall be paid for any services performed to the date this Agreement is terminated; however, upon being notified of COUNTY's election to terminate, CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. CONTRACTOR acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by COUNTY, the adequacy of which is hereby acknowledged by CONTRACTOR, is given as specific consideration for COUNTY's right to terminate this Agreement for convenience.
- 7.4 COUNTY shall have the right to terminate this Agreement and demand refund of grant funds provided to CONTRACTOR for noncompliance with the terms and conditions of the Grant Program guidelines. Failure to comply with these terms and conditions shall result in COUNTY declaring CONTRACTOR ineligible for further participation in the Grant Program until such time as CONTRACTOR complies therewith.
- 7.5 In the event this Agreement is terminated, any compensation payable by COUNTY shall be withheld until all documents are provided to COUNTY pursuant to Section 9.1 of Article 9.

## ARTICLE 8

### FINANCIAL STATEMENTS

- 8.1 Within one hundred twenty (120) days after the expiration of this Agreement, CONTRACTOR shall provide to COUNTY two (2) copies of a schedule of revenues and expenditures and special report on specific accounts to account for services and/or projects during CONTRACTOR's fiscal years for which funds were provided. The report shall be prepared by an independent certified public accountant or CONTRACTOR's internal auditor in a form acceptable to COUNTY's Commission Auditor. The schedule of revenues and expenditures shall include:
- a. All revenues relating to the services and/or Project classified by the source of the revenues.
  - b. All expenditures relating to the services and/or Project classified by the type of expenditures, to include the criteria set forth in Exhibits "A" and "B" of this Agreement.

- 8.2 If the special report is prepared by an independent certified public accountant, it shall be in accordance with Section 623 of the Codification of Statements on Auditing Standards as promulgated by the American Institute of Certified Public Accountants. If the special report is prepared by CONTRACTOR's internal auditor, it shall be as nearly in accordance with those sections as the status of the internal auditor permits, realizing that the internal auditor may not issue the opinions required therein. A transmittal letter signed by CONTRACTOR's internal auditor must accompany the special report. The special report shall include:
- a. The statement, "No funds, including interest earned on such funds, are due back to the County" or, it shall include a listing of funds, including interest earned on such funds, which are due back to COUNTY.
  - b. An opinion (finding, in the case of an internal auditor) as to whether the funds received under the applicable grant agreement with COUNTY have been expended in accordance with this Agreement.
- 8.3 The special report shall include all requirements of Section 8.2 above for the entire scope of the services or Project covered by this Agreement, even if a part of the services or Project were performed during the previous fiscal year(s) or continue past the end of CONTRACTOR's current fiscal year.
- 8.4 Any corrections to the special report requested by COUNTY shall be made and submitted to COUNTY, in writing, within sixty (60) days after written request is received.
- 8.5 Failure of CONTRACTOR to meet these financial reporting requirements shall result in suspension of payment under this Agreement or any subsequent grant agreement in effect and disqualify CONTRACTOR from obtaining future grant awards until such financial statements are received and accepted by COUNTY.
- 8.6 CONTRACTOR acknowledges submission of financial statements to any other Broward County office, agency, or division does not constitute compliance with requirements to submit that material to the Contract Administrator for this Agreement.
- 8.7 CONTRACTOR agrees to reimburse COUNTY any and all funds not used in strict compliance with this Agreement.

## ARTICLE 9

### MISCELLANEOUS

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

#### 9.2 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to inspect the Project, as well as the right to audit the books, records, and accounts of CONTRACTOR that are related to this Project. CONTRACTOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Project.

CONTRACTOR shall preserve and make available, at reasonable times for examination and audit by COUNTY, 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 to be applicable to CONTRACTOR's records, CONTRACTOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR. 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.

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

CONTRACTOR shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

CONTRACTOR'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 or appropriately used as a basis for service delivery.

CONTRACTOR shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, CONTRACTOR 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.

CONTRACTOR shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16½), national origin, marital status, political affiliation, or physical or mental disability during employment. 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.

CONTRACTOR 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 the Scope of Services or any part of the Scope of Services of this Agreement.

**SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

- 9.3.1 CONTRACTOR, and any construction contract it enters into for the Project, shall comply with COUNTY's Small Disadvantaged Business Enterprise (SDBE) Affirmative Action Program, set forth in Article XIV, Section 20-275, Broward County Code of Ordinances, requiring goals in all procurement activity at One Hundred and Fifty-Thousand Dollars (\$150,000) or above for construction services; Seventy-Five Thousand Dollars (\$75,000) or above in total contract value for architectural/engineering and related services; and Fifty Thousand Dollars (\$50,000) or above in total contract value for all other goods and services. This Project is for **\$500,000.00** for **construction of recreational facility services**.
- 9.3.2 COUNTY and CONTRACTOR agree that prime and subcontract awards to Small Disadvantaged Business Enterprises and Minority - Majority Joint 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, CONTRACTOR agrees to take affirmative actions to meet the current SDBE participation goals established below.
- 9.3.3 This Agreement has the following SDBE numerical goals:

| <u>Minority Business Enterprise</u> |     |
|-------------------------------------|-----|
| ▶ Construction Services             | 15% |
| ▶ A/E-Professional Services         | 10% |
| ▶ Commodities/Other Goods/Services  | 5%  |

(Participating Categories include African American, Asian/Native American, Hispanic, Women)

The total assigned SDBE goals for this Agreement is: \_\_\_\_%.

- 9.3.4 CONTRACTOR incorporates by Exhibit "D" the names, addresses, scope of work, and dollar value of SDBE participation on the Schedule of SDBE Participation. CONTRACTOR understands that each minority and women-owned firm utilized on the Project to meet Project goals must be certified by the Broward County Division of Equal Employment & Small Business Opportunity.
- 9.3.5 CONTRACTOR understands that it is the responsibility of the Contract Administrator and the Broward County Division of Equal Employment & Small Business Opportunity to monitor compliance with the SDBE requirements. In that regard, CONTRACTOR agrees to furnish quarterly

reports to both parties on the progress of SDBE participation commencing with the end of the first quarter of this Agreement.

9.4 INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor under this Agreement. Services provided by CONTRACTOR pursuant to this Agreement shall be subject to the supervision of CONTRACTOR. In providing such services, neither CONTRACTOR 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.

9.5 THIRD PARTY BENEFICIARIES

Neither CONTRACTOR nor COUNTY intends 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.

9.6 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:

Director  
Broward County Parks & Recreation Division  
950 Northwest 38th Street  
Oakland Park, Florida 33309

FOR CONTRACTOR:

John Canada  
Town Administrator  
Town of Southwest Ranches  
6589 Southwest 160<sup>th</sup> Avenue  
Southwest Ranches, Florida 33331

#### 9.7 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, CONTRACTOR shall not subcontract any portion of the work required by this Agreement except as authorized by Exhibit "A."

CONTRACTOR represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to COUNTY's satisfaction for the agreed compensation.

CONTRACTOR shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONTRACTOR's performance and all interim and final product(s), provided to or on behalf of CONTRACTOR, shall be comparable to the best local and national standards.

#### 9.8 CONFLICTS

Neither CONTRACTOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONTRACTOR's loyal and conscientious exercise of judgment related to its performance under this Agreement.

CONTRACTOR agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of COUNTY or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude CONTRACTOR or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CONTRACTOR is permitted to utilize subcontractors to perform any services required by this Agreement, CONTRACTOR agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

#### 9.9 AMENDMENTS

Except for the provisions set forth in Article 2, 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 CONTRACTOR.

9.10 WAIVER OF BREACH AND MATERIALITY

Failure by COUNTY 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.

9.11 COMPLIANCE WITH LAWS

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

9.12 SEVERANCE

In the event this Agreement, or 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 CONTRACTOR elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

9.13 JOINT PREPARATION

The parties hereto 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 a joint effort of the parties, the language has been agreed to by parties to express 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.

9.14 PRIORITY OF PROVISIONS

In the event of 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 the Florida Statutes, Florida Administrative Code, and Broward County Code of Ordinances, shall prevail and be given effect.

9.15 APPLICABLE LAW AND VENUE

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Venue for litigation concerning this Agreement shall be in Broward County, Florida.

9.16 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 contained in a written document in accordance with Section 9.9 above.

9.17 INCORPORATION BY REFERENCE

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

9.18 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be fully executed by all parties, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through the County Administrator, authorized to execute same by Resolution approved by the BOARD, and **Town of Southwest Ranches**, signing by and through its officer, duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, by and through its  
County Administrator

\_\_\_\_\_

By \_\_\_\_\_  
County Administrator

\_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Approved as to form by  
Office of the County Attorney  
EDWARD A. DION, COUNTY ATTORNEY  
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 \_\_\_\_\_

By \_\_\_\_\_  
Patrice M. Eichen  
Assistant County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND TOWN OF SOUTHWEST RANCHES FOR BROWARD COUNTY CHALLENGE GRANTS PROGRAM

CONTRACTOR

WITNESSES:

\_\_\_\_\_ OF \_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

City Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_

Attorney

(CORPORATE SEAL)

cgg  
8/02/01

EXHIBIT "A"

GRANT PROGRAM GUIDELINES

- I. Project Title: **EQUESTRIAN PARK NORTH**  
(5840 SW 148<sup>th</sup> Avenue)
- II Scope of Project: **Construction of an equestrian trail, storm water storage, drainage purification system, picnic and playground facilities, overflow parking, and a tiki hut shelter. Removal of exotic vegetation.**
  - A. CONTRACTOR agrees to construct the Project known as **Equestrian Park North** in accordance with the plans and specification prepared by, or under the supervision and review of, a registered professional architect, engineer, or other appropriate professional. These elements are identified in the Project description which is attached to this Agreement as Exhibit "B."
  - B. CONTRACTOR is responsible for obtaining all state, federal, and local permits, licenses, agreements, leases, easements, etc., required for the Project, and for following applicable state, federal, and local statutory guidelines regarding the procurement of professional services.
  - C. CONTRACTOR shall erect a permanent sign acceptable to the Contract Administrator identifying the 2000 Broward County Safe Parks and Land Preservation Bond Program and COUNTY as a funding source of Project construction. (Please see attached sample sign and sample sign specifications.)
- III. Required Documentation for Services Rendered:
  - A. The Contract Administrator is responsible for ensuring performance of the terms and conditions and shall approve all payment requests prior to payment. CONTRACTOR shall submit to the Contract Administrator signed quarterly Project status reports on a calendar basis summarizing work accomplished, problems encountered, percentage of completion, and other appropriate information. Photographs shall be submitted when appropriate to reflect work accomplished. CONTRACTOR shall furnish to the Contract Administrator a copy of the Project's construction contract(s) within fifteen (15) days of full execution of same.
  - B. Upon Project completion, the engineer, architect, or other appropriate professional shall sign a statement certifying satisfactory completion of the Project in accordance with the prepared plans and specifications.

- C. Upon Project completion, CONTRACTOR shall also submit a site plan (as-built), list of construction facilities and improvements, and color photographs reflecting the work accomplished.

IV. Matching Funds (if applicable):

Pursuant to Section 4.1 of the Agreement (if applicable), CONTRACTOR agrees to provide matching funds in the amount of **\$125,000.00**.

V. Bond Program Guidelines

- A. Grants for up to Two Hundred Thousand Dollars (\$200,000.00) require no cash match.
- B. Grants from Two Hundred Thousand and One Dollar (\$200,001.00) to Five Hundred Thousand Dollars (\$500,000.00) require a minimum Twenty-five Percent (25%) cash match from CONTRACTOR.
- C. Applicants cannot have more than a maximum of three (3) grants of up to Five Hundred Thousand Dollars (\$500,000.00) each.
- D. Grant monies must be spent within a five (5) year time limit from the date of the County Administrator's approval of the Agreement.
- E. All grant funds are to be paid on a reimbursement basis pursuant to the completion points, percentages formulas and retainage language set forth in Article 4 of the Agreement.
- F. Access to the Project by municipal residents and nonresidents alike will be nonexclusionary.
- G. All Project sites are to be owned by CONTRACTOR or have a lease of a minimum of Twenty-five (25) years. CONTRACTOR shall be required by the Contract Administrator to show proof of ownership or leasehold status.
- H. All Projects will remain in public parks and recreation use for a minimum of Twenty-five (25) years.
- I. Funds can be used for outdoor and indoor recreation facilities.
- J. All applicants will provide a resolution from their governing board in support of the proposed Project.

- K. Non-profit organizations applying for grants must obtain a resolution of approval from the municipality in which the Project is located.
- L. Projects will be consistent with recognized parks/recreational standards for similar facilities.
- M. Applicants must be sufficiently capable and qualified to complete the proposed Project, and thereafter, operate and maintain the Project's facility.
- N. No Grant Program funds are to be used for recreation programming and operational costs.
- O. All applicants will be required to submit an application to the Contract Administrator.

**EXHIBIT "B"**

**GRANT PROJECT DESCRIPTION**

**(to include sections for project timetable/schedule and project cost/budget, plus  
invoice form)**

**EXHIBIT "C"**

**(Real Property Document(s) re property title or leasehold interest)  
(Per Exhibit "A")**

**EXHIBIT "D"**

**List of CONTRACTOR's SDBE Participating Vendors**

**(List to be provided to DEESBO by CONTRACTOR and subject to DEESBO review  
and approval prior to commencement of work)**

**EXHIBIT "D"**

**List of CONTRACTOR's SDBE Participating Vendors**