

RESOLUTION 2004 - 44

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA APPROVING AN AGREEMENT BETWEEN BROWARD COUNTY AND THE TOWN OF SOUTHWEST RANCHES FOR A TREE PRESERVATION GRANT IN THE AMOUNT OF \$100,000; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO ENTER INTO THE GRANT CONTRACT AGREEMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Broward County Tree Preservation Trust Fund has awarded the Town of Southwest Ranches a tree preservation grant for \$100,000; and

WHEREAS, the grant will provide for trees to be planted on Volunteer and Hancock Roads within the Town; and

WHEREAS, the project will be implemented within 18 months of execution of the Agreement and funds will be reimbursed to the Town; and

WHEREAS, the trees must be of a grade specified by the County and installed per standards defined by County; and

WHEREAS, The Town has tried unsuccessfully to use trees that were donated to the Town for this grant, but the trees were not of the grade acceptable to the County and the cost to move the mature trees was too high to be utilized by the grant; and

WHEREAS, the contract for the implementation of the Agreement has already been approved by the Town Council and implementation will begin following execution of the Agreement by the County; and

WHEREAS, the Town has been awarded grant awards from the Broward County Tree Preservation Trust Fund; and

WHEREAS, the Agreement is to be approved by the Town Council in order to receive grant funding.

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 Town Council hereby approves the Agreement between Southwest Ranches and Broward County, as the Agreement necessary for the funding of the identified project.

Section 3. The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into the Agreement in substantially the same form as that attached hereto as Exhibit "A", and to make such modifications, additions and/or deletions which they deem necessary and proper to effectuate the intent of this Resolution.

Section 4. That this Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 11th day of March 2004.




Mecca Fink, Mayor

ATTEST:



Shari Canada, Town Clerk

Approved as to Form and Correctness:



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

A G R E E M E N T

Between

BROWARD COUNTY

and

TOWN OF SOUTHWEST RANCHES

IN THE AMOUNT OF UP TO \$100,000

**PROVIDING FOR DISBURSEMENT FROM THE
BROWARD COUNTY TREE PRESERVATION TRUST FUND**

A G R E E M E N T

Between

BROWARD COUNTY

and

TOWN OF SOUTHWEST RANCHES

**PROVIDING FOR DISBURSEMENT FROM THE -
BROWARD COUNTY TREE PRESERVATION TRUST FUND
IN THE AMOUNT OF UP TO \$100,000.00**

This is an Agreement, made and entered into by and between: **BROWARD COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY," through its Board of County Commissioners,

AND

TOWN OF SOUTHWEST RANCHES, a municipal corporation existing under the laws of the state of Florida, hereinafter referred to as "TOWN."

WHEREAS, TOWN has submitted a request for funding to the COUNTY for a project outlined and attached hereto as Exhibit "A" ("Project"), for disbursement of funds from the Broward County Tree Preservation Trust Fund to finance a proposed tree planting project on public land on the following sites: Hancock Road and Volunteer Road; and

WHEREAS, COUNTY through its Tree Trust Committee has reviewed the plans submitted by the Town for the Project and approved the request and recommends approval of the disbursal of funds from the Tree Preservation Trust Fund in the amount of up to One Hundred Thousand and 00/100 Dollars (\$100,000.00) for the Project; and

WHEREAS, the COUNTY and TOWN wish to enter into an Agreement to govern the disbursement of monies to finance the Project; NOW, THEREFORE,

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

ARTICLE 1 - PROJECT

1.1 TOWN agrees to provide and implement the Project more specifically described and set forth in Exhibit "A" attached hereto and by this reference made a part hereof. TOWN shall be solely responsible for the placement, management and maintenance of the Project.

1.2 TOWN agrees to implement Project no later than eighteen (18) months from the date of execution of this Agreement by COUNTY. It shall be TOWN's responsibility to notify COUNTY promptly in writing whenever a delay is anticipated or experienced, and to inform COUNTY of all facts and details related to the delay. Any time extension authorized by the COUNTY shall extend the dates in this section by an equal amount of time. Failure to complete the Project within the eighteen (18) months of approval of this Agreement by COUNTY or any extended time period as set forth herein may result in the forfeiture of funds.

1.3 TOWN shall meet or exceed the standards noted in the Project description attached and incorporated in this Agreement, and all applicable codes, ordinances, statutes and any other regulations imposed by any regulatory body or authority governing the design and construction.

ARTICLE 2 - FUNDING

2.1 COUNTY agrees to reimburse TOWN for implementation of the Project in the maximum amount One Hundred Thousand and 00/100 Dollars (\$100,000.00). TOWN agrees to expend the funds allocated to the Project no later than the termination date established by Article 6. All funds not expended within the term of this Agreement shall remain in the custody and control of COUNTY.

2.2 COUNTY agrees to reimburse TOWN for the Project expenses incurred hereto, provided TOWN complies with the procedures for invoices and payments as set forth in this Article.

2.3 TOWN shall invoice COUNTY on no more than a monthly basis for work performed pursuant to this Agreement. Request by TOWN for payment shall be accompanied by proper documentation and shall be submitted to the Department of Planning and Environmental Protection ("Department") for approval no later than thirty (30) days after completion of the project. For purposes of this section, copies of invoices, receipts, or other evidence of indebtedness shall be considered proper documentation. Invoices shall not be honored if received by COUNTY later than sixty (60) days after expiration or termination of this Agreement.

2.4 TOWN's Procurement Code shall be utilized to subcontract any work pursuant to this Agreement. Any work or services subcontracted hereunder shall be, specifically authorized by written contract, written agreement, or purchase order and shall be subject to each provision of this Agreement. In addition, all subcontracts shall be subject to federal, state, and county law and regulations.

2.5 Upon receiving the invoices, reports and other materials as described in this Article, the Department shall audit such reports and invoices to determine whether the items invoiced have been completed and that the invoiced items are proper for payment.

2.6 Upon receipt of TOWN's invoice for reimbursement, the Department shall authorize payment to TOWN the amount it determines, pursuant to the audit, to be payable. In the event that subcontractors of the TOWN have not been paid for their work or products and/or waivers of lien have not been obtained from the subcontractors, COUNTY may, in its sole discretion, pay the subcontractors the amount due.

2.7 TOWN shall not use these funds for any purpose other than the purpose set forth in this Agreement.

ARTICLE 3- FINANCIAL RESPONSIBILITY

3.1 TOWN hereby gives COUNTY, through any authorized representative, access to and the right to examine all records, books, papers, or documents relating to the Project.

3.2 TOWN hereby agrees to maintain books and records in accordance with Generally Accepted Accounting Principles and properly reflect all expenditures of funds provided by COUNTY under this Agreement.

3.3 TOWN agrees and understands that all funding authorized from the Tree Preservation Trust Fund shall be used only for eligible activities specifically outlined in this Agreement. TOWN hereby agrees that if it has caused any funds to be expended in violation of this Agreement, it shall be responsible to refund such monies in full to COUNTY.

3.4 Within one hundred eighty (180) days after the close of the fiscal year of the governmental entity, TOWN shall file with COUNTY an audit prepared by its Chief Financial Officer or internal auditor which accounts for funds received under this Agreement. The schedule of revenues and expenditures shall include (a) all revenues relating to the Project classified by the source of the revenues; and (b) all expenditures relating to the Project classified by the type of expenditures. The audit shall cover the entire operations of the local government or, at the option of that government, may cover only the department or agency that received, expended, or otherwise administered the Tree Preservation Trust funds.

3.5 Late submission of financial statements or the accompanying notes to the financial statements shall result in suspension of payment under this Agreement until the required documentation is received and accepted by COUNTY. TOWN acknowledges that submission of financial statements to any other Broward County office, agency or division does not constitute compliance with requirements to submit said material to the Department. Failure of the TOWN to meet these financial reporting requirements shall

result in suspension of payment under this or any subsequent grant agreement in effect and disqualify the TOWN from obtaining future grant awards until such financial statements are received and accepted by COUNTY.

3.6 Any corrections to the financial statements requested by the COUNTY shall be made and submitted to the COUNTY within sixty (60) days after written request is received.

ARTICLE 4 - INDEMNIFICATION AND INSURANCE

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

4.2 TOWN shall furnish Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

4.3 TOWN shall ensure that all contracts entered into with subcontractors provide for the following:

- (a) Indemnify, hold harmless and, at County Attorney's option, defend or pay for an attorney selected by County Attorney to defend COUNTY, its officers agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by negligent act or omission of contractor or subcontractor, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Director of the Department of Planning and Environmental Protection and County Attorney, any sums due TOWN under this Agreement may be retained by COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by COUNTY.
- (b) In order to insure the indemnification obligation contained above, TOWN shall, ensure that any contracts with subcontractors as a minimum, provide,

pay for, and maintain in force at all times during the term of this Agreement the insurance coverages set forth below:

A Comprehensive General Liability Insurance Policy shall be provided which shall contain minimum limits of Three Hundred Thousand and 00/100 Dollars (\$300,000.00) per occurrence combined single limit for bodily injury liability and property damage liability. 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:

Premises and/or operations.

Independent contractors.

Broad Form Contractual Coverage applicable to this specific contract, including any hold harmless and/or indemnification agreement.

Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

Underground coverages.

Business Automobile Liability Insurance. Business Automobile Liability Insurance with minimum limits of Three Hundred Thousand Dollars (\$300,000.00) per occurrence, combined single limit for Bodily Injury Liability 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 vehicles.

Hired and non-owned vehicles.

Employers' non-ownership.

Workers' Compensation Insurance. Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:

Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) each accident.

- (c) CONTRACTOR shall furnish to the Department of Planning and Environmental Protection with Certificates of Insurance or endorsements evidencing the insurance coverages specified by this Article prior to beginning performance of work under this Agreement.

COUNTY and the Broward County Board of County Commissioners are to be named as additional insureds. Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of CONTRACTOR is completed. All policies must be endorsed to provide COUNTY with at least thirty (30) days' notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days' prior to the date of their expiration.

ARTICLE 5 - TERM OF AGREEMENT

This Agreement shall be deemed to commence on the date it is executed by COUNTY and shall end eighteen (18) months from the commencement date.

ARTICLE 6 - TERMINATION

6.1 This Agreement is subject to the availability of funds. Should funds no longer be available, this Agreement shall terminate upon no less than twenty-four (24) hours notice in writing to TOWN. Said notice shall be delivered by certified U. S. mail, return receipt requested, or in person, with proof of delivery. COUNTY shall be the final authority as to the availability of funds.

6.2 If, through any cause, TOWN fails to fulfill in timely and proper manner its obligation under this Agreement, or if TOWN shall violate any of the covenants, agreements, or stipulations of this Agreement, COUNTY, at the discretion of and through the County Administrator, shall thereupon have the right to terminate this Agreement or suspend payment in whole or part by giving written notice to TOWN of such termination or suspension of payment and specifying the effective date thereof, at least five (5) days before the effective date of termination or suspension. If payment is withheld, the Department shall specify in writing the actions that must be taken by TOWN as a condition precedent to resumption of payments and should specify a reasonable date for compliance.

6.3 In the event of termination, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports prepared, capital equipment and

any other assets secured by TOWN with Tree Preservation Trust Funds under this contract shall be returned to COUNTY.

6.4 Notwithstanding the above, TOWN shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this Agreement by TOWN, and COUNTY may withhold any payments to TOWN, for the purposes of setoff until such time as the exact amount of damages is determined.

6.5 In the best interests of the program and in order to better serve the people in the target areas and fulfill the purposes of the Act, either party may terminate this Agreement upon giving thirty (30) days notice in writing of its intent to terminate, stating its reasons for doing so. In the event this Agreement is terminated, TOWN shall not incur any additional costs under this Agreement. COUNTY shall pay TOWN for documented committed eligible costs prior to termination. The County Administrator is authorized to terminate this Agreement on behalf of the COUNTY pursuant to this Section upon his or her determination that termination is in the best interests of the COUNTY.

6.6 All requests for an amendment to this Agreement must be submitted in writing to the Department no less than ninety (90) days prior to the termination date of the Agreement.

ARTICLE 7 - NOTICES

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

FOR COUNTY:
Director, Biological Resources Division
218 S.W. 1st Avenue
Fort Lauderdale, Florida 33301

FOR TOWN:

John Canada
Town Administrator
6589 S.W. 160 Avenue
Southwest Ranches, Florida 33331

ARTICLE 9 - MISCELLANEOUS

9.1 **NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT.** TOWN shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. TOWN shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, TOWN 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. TOWN's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16½), national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery. TOWN shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in performing any services pursuant to this Agreement.

9.2 **DRUG FREE WORKPLACE.** TOWN agrees to administer, in good faith, a policy designed to assure a workplace free from the illegal use, possession or distribution of drugs or alcohol by its beneficiaries.

9.3 **INDEPENDENT CONTRACTOR.** TOWN is an independent contractor under this Agreement. Services provided by TOWN shall be performed by employees of TOWN and subject to supervision by TOWN, and shall not be deemed officers, employees, or agents of COUNTY. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of TOWN, which policies of TOWN shall not conflict with COUNTY, or State of Florida policies, rules or regulations relating to the use of the funds provided for under this Agreement.

9.4 **PRIOR AGREEMENTS SUPERSEDED.** 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, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

9.5 **AMENDMENTS.** No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

9.6 ASSIGNMENT. TOWN shall not transfer or assign the performance of services called for in this Agreement. However, this Agreement shall run to COUNTY or its successors.

9.7 REPORTS, PLANS AND OTHER AGREEMENTS. All reports, plans, surveys, information, documents, maps and other data procedures developed, prepared, assembled or completed by TOWN for the purposes of this Agreement shall become the property of COUNTY without restriction, reservation or limitation of their use and shall be made available by TOWN at any time upon request by COUNTY or Department. Upon completion of all work contemplated under this Agreement, copies of all of the above data shall be delivered to the Department upon written request.

9.8 CONFLICTS. Neither TOWN nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with TOWN's loyal and conscientious exercise of judgment related to its performance under this Agreement. TOWN agrees that none of its employees shall, during the term of this Agreement, serve as an adverse or hostile 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 opinion, which is adverse or prejudicial to the interests of COUNTY in any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Agreement. TOWN agrees to prohibit its subcontractors, by written contract, from having any conflicts as within the meaning of this section.

9.9 EXECUTION. This document shall be executed in three (3) counterparts, each of which shall be deemed to be an original.

9.10 CHOICE OF LAW; WAIVER OF JURY TRIAL. Any controversies or legal problems arising out of this transaction and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereby waives any rights it may have to a trial by jury of any such litigation.

9.11 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 TOWN elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

9.12 **LEGAL PROVISIONS DEEMED INCLUDED.** Each and every provision of any law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though it were included herein and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon application of either party this Agreement shall forthwith be amended to make such insertion.

9.13 **KNOWLEDGE AND COMPLIANCE WITH APPLICABLE LAWS.** TOWN shall keep fully informed of all Federal and State laws, all local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which, in any manner, affect work authorized under the terms of this Agreement. The TOWN shall at all times observe and comply with all such laws, ordinances, regulations, orders and decrees.

9.14 **PUBLIC ENTITY CRIMES ACT.** TOWN represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to COUNTY, may not submit a bid on a contract with COUNTY for the construction or repair of a public building or public work, may not submit bids on leases of real property to COUNTY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with COUNTY, and may not transact any business with COUNTY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from COUNTY's competitive procurement activities. In addition to the foregoing, TOWN further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether TOWN has been placed on the convicted vendor list.

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

9.16 **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. No waiver shall be effective unless it is in writing and signed by the party against whom it is asserted. A waiver of any provision of this Agreement or failure

to perform any of the terms, covenants, and conditions of this Agreement shall not be deemed a waiver of any prior or subsequent failure to perform any term, covenant or condition of this Agreement and shall not be construed to be a modification of the terms of this Agreement. COUNTY and TOWN agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

9.17 JOINT PREPARATION. COUNTY and TOWN acknowledge that the preparation of this Agreement has been a joint effort of COUNTY and TOWN and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

9.18 PRIORITY OF PROVISIONS. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 of this Agreement shall prevail and be given effect. Where there is a conflict between any provision set forth within this Agreement and a more stringent State or Federal provision which is applicable to any services performed under this Agreement, the more stringent State or Federal provision shall prevail.

9.19 INCORPORATION BY REFERENCE. The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits are incorporated into and made a part of this Agreement.

9.20 USE OF TERMS. All terms and words used in this Agreement, despite the number and gender in which used, shall be deemed to include any other gender or number as the context or the use thereof may require. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section of this Agreement, such reference is to the section as a whole, including all of the subsections and subparagraphs of such section unless the reference is made to a particular subsection or subparagraph of such section.

9.21 FURTHER ASSURANCE. TOWN and COUNTY agree to execute, acknowledge, deliver, and cause to be done, executed, acknowledged, and delivered all such further documents and perform such acts as shall reasonably be requested of it to carry out this Agreement and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

9.22 WAIVER OF CLAIMS. TOWN hereby waives any claim against COUNTY, and its agents, servants and employees for loss of anticipated profits caused by any suit or

proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment of award in any suit or proceeding declaring this Agreement null, void or voidable, delaying the same or any part thereof, from being carried out.

9.23 CUMULATIVE RIGHTS. All rights and remedies of COUNTY hereunder or at law or in equity are cumulative and shall be in addition to any other rights and remedies available. The exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other. Failure by COUNTY to promptly exercise any of its rights shall not operate to forfeit or be treated as a waiver of any such rights.

9.24 SPECIFIC PERFORMANCE. TOWN agrees that in addition to all other remedies, its obligations contained herein shall be subject to the remedy of specific performance by appropriate action commenced in a court of proper jurisdiction.


9.25 EXECUTION AUTHORITY. The individuals executing this Agreement on behalf of TOWN personally warrant that they have full authority to execute this Agreement on behalf of TOWN for whom they are acting herein.

INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its Board of County Commissioners, signing by and through its Mayor or Vice Mayor, authorized to execute same, and TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor, duly authorized to execute same.

COUNTY

ATTEST



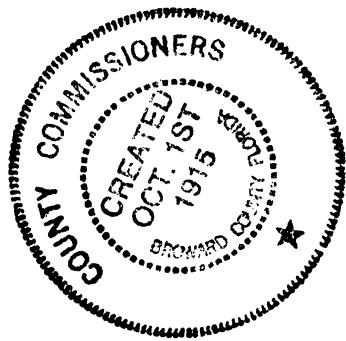
County Administrator and
Ex-Officio Clerk of the
Board of County Commissioners
of Broward County, Florida

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

By 

Mayor

29th day of June, 2004.



Approved as to form by
Office of County Attorney
Broward County, Florida
EDWARD A. DION, County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

Approved as to Insurance
Requirements:

By 

Assistant County Attorney

By: 

Risk Management Division

AGREEMENT BETWEEN BROWARD COUNTY AND TOWN OF SOUTHWEST RANCHES
PROVIDING FOR DISBURSEMENT FROM THE TREE PRESERVATION TRUST FUND IN
THE AMOUNT OF \$100,000.

Mecca Fink
Mecca Fink, Mayor

11 day of MARCH, 2004.

John Canada
John Canada, Town Administrator

12 day of MARCH, 2004.

ATTEST:

Shari Canada
Shari Canada, Town Clerk

Approved as to Form and Correctness:

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

EXHIBIT "A"
PROJECT DESCRIPTION

Project:

Town of Southwest Ranches

Broward County Tree Trust Fund Grant

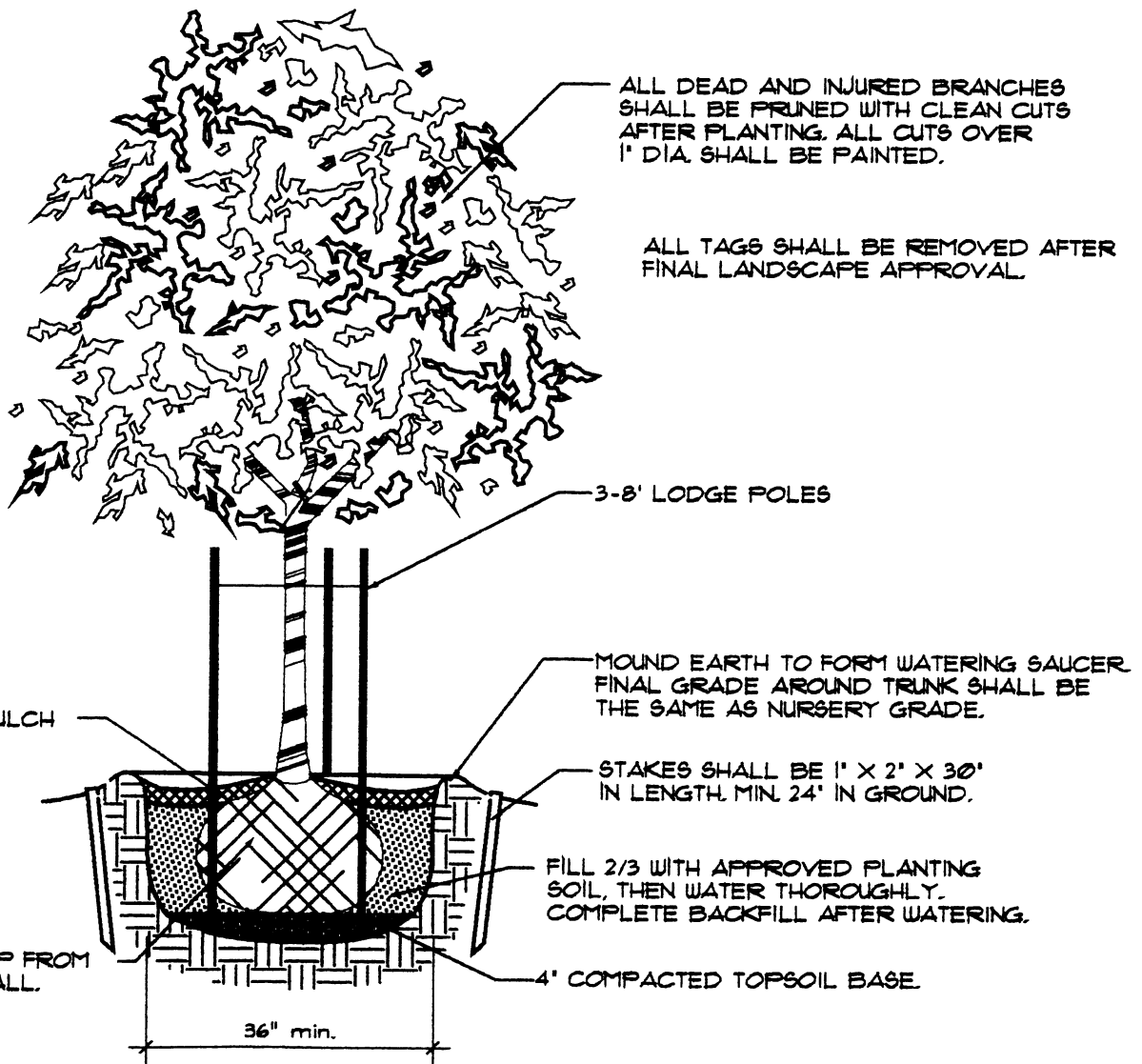
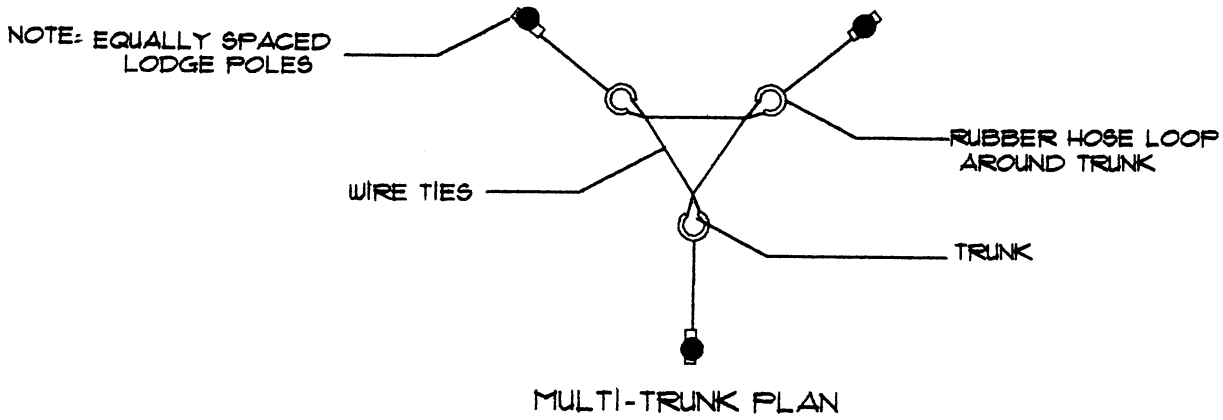
PROJECT LOCATION

VOLUNTEER ROAD, Approximately from Sheridan Street to Griffin Road. Only the East side of the road.

HANCOCK ROAD, Approximately from Sterling Road to Sheridan Street. Only the East side of the road.

TREE STAKING DETAIL N.T.S.

STAGING TO BE USED ONLY WHEN GUYING OR BRACING IS NOT POSSIBLE, AS FOR EXAMPLE WHEN PLANTING IS ADJACENT TO PAVEMENT



LANDSCAPE NOTES

- FURNISH AND INSTALL 150 QUERCUS VIRGINIANA @ 50 FEET ON CENTER 17 FEET OF THE EXISTING EDGE OF PAVEMENT. OAK TREES SHALL BE ROOT MANIPULATED CONTAINERS FOR AIR PRUNING.
- LAYOUT TREE LOCATIONS IN THE FIELD FOR LANDSCAPE ARCHITECT APPROVAL. CONSULT LANDSCAPE ARCHITECT/ PROJECT MANAGER PRIOR TO TREE LAYOUT.
- TREES SHALL BE BRACED WITH THREE LODGE POLES PER TREE, SEE DETAILS
- THE LANDSCAPE ARCHITECT / PROJECT MANAGER SHALL REVIEW THE OAK TREES PRIOR TO INSTALLATION FOR APPROVAL OR REJECTION.
- IF WATER RETENTION RINGS ARE INSTALLED ON A SLOPE, SAID RINGS SHALL BE TWICE THE HEIGHT AND WIDTH ON THE DOWN SLOPE SIDE OF THE RING.
- BID SHALL BE ON TREE UNIT BASIS. TREE UNIT BASIS SHALL CONSIST OF ALL LABOR, MATERIAL, SUPPLEMENTAL WATERING AND WARRANTY PERIOD.
- PRIOR TO TRANSPORTING, ROOTBALLS SHALL BE SOAKED WITH A WETTING AGENT. SUBMIT TYPE TO LANDSCAPE ARCHITECT FOR WRITTEN APPROVAL.
- PRIOR TO TRANSPORTING, FOLIAGE SHALL BE SPRAYED WITH AN ANTI-TRANSPARENT. SUBMIT TYPE TO LANDSCAPE ARCHITECT FOR WRITTEN APPROVAL.
- SUBMIT BID ON YOUR COMPANY LETTERHEAD WITH UNIT COST PER EACH SIZE OF TREE AND UNIT COSTR PER EACH SIZE OF TREE FOR SUPPLEMENTAL WATERING IF REQUIRED BY THE TOWN.
- LANDSCAPE CONTRACTOR SHALL HAVE A FLORIDA CERTIFIED CONTRACTOR ON SITE AT ALL TIMES.

Exhibit A

TREE LAYOUT CHART

LOCATION	TREE SPECIFICATION	CLEAR TRUNK	ROOT MANIPULATED SIZE	CALIPER IN TRUNK	QUANTITY
VOLUNTEER RD.	14' ht. x 5'-6" spr.	5'	65 GAL.	3 1/2"	100
HANCOCK RD.	15'-16' ht. x 5'-6" spr.	6'	100 GAL.	4"	50

* Tree quantities are estimates only. The Town of Southwest Ranches reserves the right to adjust quantities and location by 25%.

I. GENERAL NOTES

LANDSCAPE CONTRACTOR SHALL REVIEW PLANS AT BIDDING TIME. CONSIDERATIONS AS TO SOILS, DRAINAGE, ETC. SHALL BE REVIEWED AGAINST PREPARED PLAN. NOTIFY LANDSCAPE ARCHITECT OF ANY POTENTIAL PROBLEMS.

ANY UNIQUE SOIL CONDITIONS REQUIRING SPECIAL MATERIALS, OR EQUIPMENTS SHALL BE REFLECTED IN THE LANDSCAPE CONTRACTOR'S BID. ALL LANDSCAPE AREAS SHALL HAVE ALL LIMEROCK AND/OR OTHER COMPACTED SUBGRADE EXCAVATED TO A DEPTH OF TWO AND ONE HALF (2 1/2') FEET AND BACKFILLED WITH THE SPECIFIED PLANTING MIX.

IF BIDDING IS TAKING PLACE PRIOR TO SITE IMPROVEMENTS (I.E. CLEARING, FILLING ETC.) EACH CONTRACTOR SHALL, PRIOR TO BEGINNING THEIR WORK, VERIFY THAT THE SITE CONDITIONS ARE APPROPRIATE FOR COMPLETION THERE OF.

LANDSCAPE CONTRACTOR SHALL VERIFY EASEMENTS AND UTILITIES PRIOR TO DIGGING, COORDINATING SUCH EFFORTS WITH OWNER, THE GENERAL CONTRACTOR AND/OR UTILITY COMPANY.

THE LANDSCAPE CONTRACTOR SHALL MEET AND COMPLY WITH ALL APPLICABLE CODES/ORDINANCES AND SHALL COORDINATE ALL WORK WITH THE GENERAL CONTRACTOR AND OTHER ON-SITE TRADES. THE LANDSCAPE CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS PRIOR TO BEGINNING WORK AS REQUIRED BY GOVERNING AGENCIES, UNLESS OTHERWISE NOTED.

THE LANDSCAPE CONTRACTOR SHALL BE THOROUGHLY KNOWLEDGEABLE IN ALL ASPECTS OF LANDSCAPE CONSTRUCTION. THE LANDSCAPE CONTRACTOR SHALL PROVIDE THE OWNER WITH PROOF OF THEIR COMPETENCY LEVEL BY PROVIDING EITHER OF THE FOLLOWING INCORPORATED IN THEIR PROPOSAL. A COPY OF THEIR CERTIFICATE FROM EITHER THE FLORIDA NURSERYMAN AND GROWERS ASSOCIATION, THE FLORIDA CERTIFIED LANDSCAPE CONTRACTORS, OR THE AMERICAN LANDSCAPE CONTRACTORS ASSOCIATION. THE EMPLOYEE BEARING SAID CERTIFICATION SHALL BE ON THE PROJECT SITE AT ALL TIMES DURING CONSTRUCTION.

II. PLANT MATERIAL

ALL PLANT MATERIAL SHALL BE FLORIDA NO. 1 OR BETTER AS PER FLORIDA STATE AGRICULTURE BOARD AND GRADES AND STANDARDS FOR NURSERY PLANTS 2nd EDITION, FEB. 1998; PT #97T-05. THE LANDSCAPE CONTRACTOR IS RESPONSIBLE FOR VERIFYING QUALITY OF ALL MATERIAL BY SECURING THE OPINION OF THE LANDSCAPE ARCHITECT, AT THE CONTRACTORS EXPENSE.

PLANT LIST AND QUANTITIES ARE A COURTESY ITEM. THE LANDSCAPE CONTRACTOR IS BIDDING TO VERIFY SIZE, LIST AND QUALITIES FOR HIS BID. NOTIFY LANDSCAPE ARCHITECT IN WRITING OF DIFFERENCES, UN-NAMED, UNKEYED, OR ILLEGIBLE ITEMS.

ALL SIZES SHOWN FOR PLANT MATERIAL ON THE PLAN ARE TO BE CONSIDERED AS MINIMUMS. ALL PLANT MATERIAL MUST MEET OR EXCEED THESE MINIMUM REQUIREMENTS FOR HEIGHT, SPREAD, TRUNK CALIPER AND CLEAR TRUNK. ANY OTHER REQUIREMENTS FOR SPECIFIC SHAPE OF EFFECT AS NOTED ON THE PLAN WILL ALSO BE REQUIRED.

NO SUBSTITUTIONS WILL BE ACCEPTED UNLESS SO NOTED IN WRITING AND APPROVED BY LANDSCAPE ARCHITECT DURING BIDDING OR CONSTRUCTION PROCESS. PLANT MATERIAL SUPPLY IS THE RESPONSIBILITY OF THE LANDSCAPE CONTRACTOR, AND HE SHALL TAKE STEPS TO INSURE AVAILABILITY AT INSTALLATION TIME.

ALL PLANT MATERIAL AND SOD SHALL BE DISEASE AND PEST FREE, DEVOID OF MECHANICAL DAMAGE OR STRIPPING/HANDLING STRESS.

ALL TREES SHALL BE SINGLE TRUNKED WITH CLEAR TRUNKS.

TREES HAVING MECHANICAL DAMAGE FROM LOADING AND/OR HANDLING SHALL NOT BE ACCEPTED AND SHALL BE REMOVED FROM THE SITE WITHIN 24 HOURS, REPLACEMENT SHALL OCCUR WITHIN 72 HOURS.

III. INSTALLATION

ALL BROKEN BRANCHES AND CLEAR TRUNKS BRANCHES SHALL BE PRUNED BACK, FLUSH WITH MAIN TRUNK.

PRUNING OF ALL PLANT MATERIAL SHALL MEET STANDARDS SET FORTH BY THE INTERNATIONAL SOCIETY OF ARBORICULTURE (I.S.A.).

TREES SHALL HAVE ROOT BARRIERS PLACED AGAINST THE EDGE OF PAVEMENT, CURBING AND/OR WALKWAY. ROOT BARRIERS SHALL BE APPROVED BY LANDSCAPE ARCHITECT AND EXTEND TEN FEET IN BOTH DIRECTIONS FROM CENTERLINE OF TREE WHEN PLANTING AREAS ARE SIX (6) FEET OR LESS. SUBMIT ROOT BARRIER TYPE FOR LANDSCAPE ARCHITECTS WRITTEN APPROVAL.

CONTACT LANDSCAPE ARCHITECT / PROJECT MANAGER FOR STAKING PLANT MATERIAL LOCATIONS OR LANDSCAPE BEDS, PRIOR TO PLANTING.

PLANTING SOIL FOR ALL LANDSCAPE BEDS SHALL CONSIST OF 50% FLORIDA PEAT, 40% COARSE SILICA SAND, AND 10% HUMUS UNLESS OTHERWISE NOTED. ALL OTHER IMPERVIOUS AREAS SHALL BE MIXED WITH EXISTING SOIL AT A RATIO OF 4:1. THE BACKFILL SHALL BE FREE OF DEBRIS, ROOTS, CLAY, STONES AND OTHER FOREIGN MATERIALS. COMPARABLE PRE-MIXED SOILS ARE ACCEPTABLE ONLY AFTER APPROVAL BY LANDSCAPE ARCHITECT.

WHEN PLANTING IN SANDY OR ROCKY SOILS, OR LIMEROCK FILL, AMEND PLANTING MIX WITH WATER RETAINING ADDITIVE, "TERRASORB" OR APPROVED EQUAL. ALL TREES AND PALMS SHALL BE PLANTED IN A MINIMUM OF 2 CUBIC FEET PREPARED PLANTING SOIL WITH A DEPTH OF AT LEAST FIVE FEET AND A WIDTH OF THREE TIMES THE SIZE OF THE ROOTBALL.

ALL PLANTINGS TO BE THOROUGHLY HAND WATERED AND BACK-WASHED DURING AND AFTER PLANTING TO REMOVE ALL AIR VOIDS IN PLANTING AREA. VERIFY WATER SOURCE DURING BIDDING. THIS PROCEDURE SHALL OCCUR WITHIN TWO (2) HOURS OF INSTALLATION.

DO NOT PLANT ANY MATERIAL DEEPER THAN IT WAS PREVIOUSLY GROWN IN NURSERY OR CONTAINER.

* ALL TREES SHALL BE STAKED OR GUYED AS PER PLANTING DETAILS WITHIN SIX HOURS (6) HOURS AFTER PLANTING.

NO NAILS SHALL BE DRIVEN INTO PLANT TISSUE FOR STAKING AND GUYING. USE STRAPPING WITH BURLAP TO PROTECT ALL TISSUE FROM WOOD BLOCKING.

FERTILIZER SHALL BE AN ORGANIC FERTILIZER CONTAINING NITROGEN, PHOSPHORIC ACID AND POTASH IN EQUAL PERCENTAGES OF PLANT FOOD BY WEIGHT, IN FOLLOWING FORMS OF NUTRICOTE, INSTALLED PRIOR TO BACKFILLING HOLE.

MULCH MATERIAL SHALL BE SHREDDED EUCALYPTUS MULCH MOISTENED AT TIME OF APPLICATIONS. ALL TREES SHALL RECEIVE 3" MINIMUM OF COMPACTED MULCH, IMMEDIATELY AFTER PLANTING.

INSTALLED MULCH SHALL NOT BE IN DIRECT CONTACT OF PLANT MATERIAL. MULCH BEDS SHALL BE A MINIMUM OF 24" WIDER THAN PLANTS, (MEASURED FROM THE OUTSIDE EDGE OF FOLIAGE). MULCH SHALL NOT PHYSICALLY TOUCH THE PLANT MATERIAL.

THE LANDSCAPE CONTRACTOR IS RESPONSIBLE FOR THE INSTALLATION AS DESCRIBED IN THE PLANTING PLAN ANY CHANGE MUST BE APPROVED PRIOR TO CONSTRUCTION, IN WRITING BY LANDSCAPE ARCHITECT.

IN THE EVENT OF A DISCREPANCY BETWEEN THE PLANT SCHEDULE AND THE PLAN, THE PLANTING PLAN TAKES PRECEDENCE.

CONTACT LANDSCAPE ARCHITECT AT TIME OF STAKING PLANT MATERIAL LOCATIONS PRIOR TO PLANTING.

CONTACT LANDSCAPE ARCHITECT FOR APPROVAL PRIOR TO MAKING ASSUMPTIONS FOR PLANT MATERIAL, SOIL OR STAKING SUBSTITUTIONS.

IV. COMPLETION

FINAL ACCEPTANCE AND PAYMENT SHALL ONLY OCCUR WHEN APPROVED BY LANDSCAPE ARCHITECT / PROJECT MANAGER IN WRITING.

WATERING, WEEDING, PRUNING, FERTILIZATION, SPRAYING FOR WEEDS SHALL EXTENDS FOR 60 DAYS AFTER FINAL ACCEPTANCE. THE LANDSCAPE CONTRACTOR SHALL FOLLOW THE FOLLOWING WATERING SCHEDULE AS PART OF HIS CONTRACT:

WEEK 1 - 8, EVERY FRIDAY

SAID WATERING SHALL BEGIN IN THE ABOVE MENTIONED DAYS AT 8:00 A.M. PRIOR TO INSTALLATION. CONTRACTOR WILL PROVIDE A WRITTEN WATERING SCHEDULE TO LANDSCAPE ARCHITECT / PROJECT MANAGER.

THE LANDSCAPE CONTRACTOR SHALL LEAVE A CLEAN SITE DAILY, FREE FROM ALL DEBRIS. NO HOLES OR TRENCHES SHALL BE LEFT OPEN AT THE END OF EACH WORKDAY.

THE LANDSCAPE CONTRACTOR SHALL NOTIFY THE LANDSCAPE ARCHITECT / PROJECT MANAGER IF HE DETERMINES THAT HIS WORK IS BEING DAMAGED OR STOLEN BY OTHERS.

TRAFFIC CONTROL SHALL BE REQUIRED ON THIS PROJECT. CONTACT LANDSCAPE ARCHITECT FOR SPECIFIC DETAILS PRIOR TO BID.

TREE/PALM STAKING SHALL BE MAINTAINED AND/OR ADJUSTED BY THE LANDSCAPE CONTRACTOR DURING THE WARRANTY PERIOD. AT THE COMPLETION OF THE WARRANTY PERIOD THE LANDSCAPE CONTRACTORS SHALL, AT THE DISCRETION OF THE LANDSCAPE ARCHITECT, REMOVE AND LEGALLY DISPOSE OF SAID STAKING. IF THE STAKING REQUIRED IS NOT REMOVED AT THE END OF THE SIX MONTH WARRANTEE PERIOD, REMOVAL OF SAID STAKING SHALL BELONG TO THE OWNER.

THE LANDSCAPE CONTRACTOR SHALL GUARANTEE ALL PLANTING WORK FOR A PERIOD OF 6 MONTHS AFTER THE DATE OF PROVISIONAL ACCEPTANCE. DURING THE GUARANTEE PERIOD, THE LANDSCAPE CONTRACTOR SHALL REPLACE AT NO COST TO THE OWNER, ANY PLANT REQUIRED UNDER THE CONTRACT THAT IS NOT FL. # 1 OR BETTER AS DEFINED BY THE FL. GRADES AND STANDARDS; 2nd EDITION; FEB. 1998; PI # 97T-05. ANY PLANTS MISSING OR DEFECTIVE SHALL BE FURNISHED AND/OR REPLACED IN A MANNER SATISFACTORY TO THE LANDSCAPE ARCHITECT IN CASE OF ANY DOUBT AS TO THE CONDITION AND SATISFACTORY ESTABLISHMENT OF PLANT. THE LANDSCAPE ARCHITECT MAY ALLOW SUCH A PLANT TO REMAIN THROUGH ANOTHER 60 DAY PERIOD AT WHICH TIME THE PLANT IN QUESTION, IF FOUND TO BE DEAD, IN AN UNHEALTHY OR BADLY IMPAIRED CONDITION, SHALL BE REPLACED BY THE LANDSCAPE CONTRACTOR AT NO COST TO THE OWNER.

WORK HOURS MAY BE RESTRICTED ON THIS SITE DURING CERTAIN DAYS. CONTACT LANDSCAPE ARCHITECT PRIOR TO BIDDING FOR DETAILS. COORDINATE ANY STREET BLOCKAGE WITH THE LOCAL GOVERNMENT AUTHORITY.

ANY SPECIFICATION NOT FOLLOWED BY THE LANDSCAPE CONTRACTOR WITHIN THE SPECIFIED TIME FRAME, MAY BE COMPLETED BY THE TOWN OF SOUTHWEST RANCHES WITHOUT NOTIFICATION. THE LANDSCAPE CONTRACTOR SHALL BE HELD LIABLE FOR ALL COSTS ASSOCIATED WITH SAID WORK. A ITEMIZED INVOICE STATING ALL LABOR AND MATERIAL COSTS SHALL BE PRESENTED TO THE LANDSCAPE CONTRACTOR AND SHALL BE DEDUCTED FROM THE CONTRACT PRICE.