

RESOLUTION NO. 2004 - 59

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA AUTHORIZING PAYMENT TO ALYN D. KAY, INC., FOR THE PERFORMANCE OF LANDSCAPE ARCHITECTURAL SERVICES IN CONNECTION WITH THE TOWN'S EQUESTRIAN PARK; AUTHORIZING ALYN D. KAY, INC. TO FINALIZE ITS SERVICES PERTAINING TO THE TOWN'S EQUESTRIAN PARK; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO EXECUTE ANY AND ALL DOCUMENTATION TO EFFECTUATE THE INTENT OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on or about December 2001, Alyn D. Kay, Inc. ("Alyn Kay") began to actively work on the landscape plans and all of the landscape issues pertaining to the Town's Equestrian Park; and

WHEREAS, due to an apparent miscommunication, the Town did not have a formal agreement with Alyn Kay concerning its services; and

WHEREAS, on or about February 2004, Alyn Kay presented the Town with an invoice for its services; and

WHEREAS, after numerous discussion with Alyn Kay regarding the apparent miscommunication this matter was brought up at the April 8, 2004 Town Council Meeting; and

WHEREAS, at the April 8, 2004 Town Council Meeting the Town Council requested an independent investigation of this matter; and

WHEREAS, the engineering firm of Craven Thompson gratuitously reviewed this matter and its findings were presented to the Town Council at the May 6, 2004 workshop; and

WHEREAS, the Deputy Town Attorney further supplemented the Craven Thompson memorandum with its own findings; and

WHEREAS, the Town Council requested that this matter be brought back for consideration at the May 13, 2004 Town Council Meeting; and

WHEREAS, the Town has determined that the services provided by Alyn Kay were necessary for the development and the completion of the Equestrian

Park, and had these services not been performed by Alyn Kay these service would have had to be performed by another landscape architect; and

WHEREAS, it has been determined that the quality of the services provided by Alyn Kay has been exceptional and that these services have substantially benefited the Town; and

WHEREAS, it has been acknowledged that the cost of Alyn Kay's services has increased due to the lack of cooperation, length of time, and the quality of workmanship by the landscape contractor and irrigation vendor; and

WHEREAS, the Town believes that it is in the best interest of the Town to compensate Alyn D. Kay, Inc., for the services provided.

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 of the Town of Southwest Ranches hereby authorizes the payment of Eighty Four Thousand Seven Hundred Twenty Dollars (\$84,720) to Alyn D. Kay, Inc. as compensation for its professional services rendered in connection with the development of the Town's Equestrian Park. The Town Council further authorizes an additional payment not to exceed \$20,830.47 for the invoices Alyn D. Kay, Inc. submitted from January 15, 2004 through March 26, 2004, subject to verification and/or compensation adjustment by the Town's independent consultant.

Section 3: The Town Council, in furtherance of the April 13, 2004 letter agreement, further authorizes Alyn D. Kay, Inc. to perform the additional hours of work necessary, as approved by the Town Administrator, to complete all of its services pertaining to the Town's Equestrian Park.

Section 4: The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to sign all documentation, which they deem necessary and proper to effectuate the intent of this Resolution.

Section 5: 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 13th day of May 2004, on a motion by Council Member Nelson and seconded by Vice Mayor Knight.

Fink Y
Knight Y
Blanton Y
Maines Y
Nelson Y

Ayes 5
Nays
Absent or
Abstaining

Mecca Fink
Mecca Fink, Mayor

ATTEST:

Shari Canada
Shari Canada, Town Clerk

Approved as to Form and Correctness:

Gary A. Poliakoff
Gary A. Poliakoff, J.D., Town Attorney
848293_1.DOC

RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That ALYN D. KAY, an individual, and his heirs, successors and assigns and ALYN D. KAY, INC., its officers, agents, servants, successors, heirs, administrators, executors, successors, and assigns (hereinafter ALYN D. KAY, an individual, and ALYN D. KAY, INC., shall be collectively referred to as "Alyn Kay"), for and in consideration of the sum of One Hundred One Thousand Seven Hundred and Twenty and no/100 (\$101,720.00) Dollars and other good and valuable consideration received from the Town of Southwest Ranches and any of its employees, agents, officers, directors, servants, executors, heirs, administrators, successors, assigns, councilmen, and elected officials (hereinafter collectively referred to as the "Town"), receipt of which is hereby acknowledged by Alyn Kay, hereby remises, releases, acquits, satisfies and forever discharges the Town of and from any and all manner of action and actions, claims, liabilities, losses, cause and causes of action, suits, debts, dues, sums of money, contract retainage, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, warranties (including express, implied, contractual and statutory), claims and demands whatsoever, in law or in equity, which Alyn Kay can, shall, or may have in the future or did have against the Town relating to the sufficiency of payment made by Town and received by Alyn Kay regarding Alyn Kay's involvement in and providing of any and all services at the Sunshine Ranches 20-Acre Equestrian Park Landscaping and Irrigation Project through the date of execution of this Release.

It is further stated that the undersigned has read the foregoing Release and knows the content and signs it as a free act.

IN WITNESS WHEREOF, _____ have hereunto set _____ hand(s) and seal(s) this

30 day of June, 2004.

Signed, seals and delivered
in the presence of:

ALYN D. KAY, individually

[Signature]
Signature of Witness

By [Signature]
ALYN D. KAY, individually

LEE J RICKLES
Printed Name of Witness

[Signature]
Signature of Witness

PATRICIA CANADA
Printed Name of Witness

STATE OF FLORIDA :
COUNTY OF _____ :

The foregoing instrument was acknowledged before me this 30 day of June, 2004, by ALYN D. KAY, individually. He took an oath, and is personally known to me or has produced _____ as identification and acknowledged before me that Alyn D Kay executed the same freely and voluntarily for the purposes therein expressed.

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

SHARI LYNN CANADA
Printed Name of Notary Public

My Commission Expires: SHARI LYNN CANADA
Notary Public, State of Florida
My comm. exp. Sept. 21, 2007
Comm. No. DD 252220

Signed, seals and delivered
in the presence of:

ALYN D. KAY, INC.

Lee J Rickles
Signature of Witness

By Alyn D Kay
ALYN D. KAY, President

LEE J RICKLES
Printed Name of Witness

Patricia Canada
Signature of Witness

PATRICIA CANADA
Printed Name of Witness

STATE OF FLORIDA :
COUNTY OF _____ :

The foregoing instrument was acknowledged before me this 30 day of June,
2004, by ALYN D. KAY, President of ALYN D. KAY, INC., a _____ corporation, on behalf of
the corporation. He took an oath, and is personally known to me or has produced
_____ as identification and acknowledged before me that
Alyn D. Kay executed the same freely and voluntarily for the purposes
therein expressed.

Shari Lynn Canada
NOTARY PUBLIC, STATE OF FLORIDA

SHARI LYNN CANADA
Printed Name of Notary Public

My Commission Expires:

SHARI LYNN CANADA
Notary Public, State of Florida
My comm. exp. Sept. 21, 2007
Comm. No. DD 252220

WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

The undersigned lienor, in consideration of final payment in the amount of \$101,720, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to the Town of Southwest Ranches to the following described property:

Sunshine Ranches 20-Acre Equestrian Park Landscaping and Irrigation Project

Dated June 30, 2004.

ALYN D. KAY, INC., a Florida corporation

Witnesses:

Shari Canada
Print Name: SHARI CANADA

Emily McCard
Print Name: Emily McCard

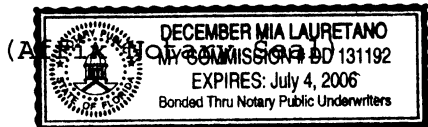
Emily McCard
Print Name: Emily McCard
Shari Canada
Print Name: SHARI CANADA

By: Alyn D. Kay
Alyn D. Kay, President

Alyn D. Kay
Alyn D. Kay, Individually

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 30 day of June, 2004, by Alyn D. Kay, as president of Alyn D. Kay, Inc., a Florida corporation, and individually. He is personally known to me or has produced a Florida driver's license as identification.



December Mia Lauretano
Print Name: December Lauretano
Commission Number: DD 131192

MODIFICATION TO PROFESSIONAL SERVICES AGREEMENT

THIS MODIFICATION TO PROFESSIONAL SERVICES AGREEMENT, made and entered into this ___ day of May, 2004, by and between **Alyn D. Kay, Inc.**, a Florida limited liability company ("AKI") and the **Town of Southwest Ranches**, a Florida municipal corporation ("SWR").

WITNESSETH:

WHEREAS, the parties heretofore have made and have executed that certain Professional Services Agreement dated April 13, 2004 ("Agreement"), whereby SWR retained AKI's services to oversee the completion of the Town's equestrian park; and

WHEREAS, in furtherance of Resolution No. 2004-59, adopted on May 13, 2004, the parties are mutually desirous of amending the Agreement by this Modification, which together shall, upon execution hereof, be collectively referred to as the "Agreement".

NOW, THEREFORE for and in consideration of the premises and for TEN (\$10.00) DOLLARS and other good and valuable considerations to each in hand paid, the receipt and sufficiency of which is hereby acknowledged each to the other, the parties agree as follows:

1. The foregoing recitals are true and correct.
2. Section V shall be amended to read as follows:

V) PROFESSIONAL FEES

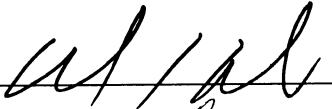
Professional Fees for this project to include the scope of services as outlined in (I) "Scope of Services" items 1, 2, and 3, ~~shall be~~ It is estimated that it may take an additional estimated at approximately forty (40) hours, for a professional service fee of (\$3200.00) three thousand two hundred dollars, to finalize this project. Should there be a need to continue this service beyond (40) forty hours, AKI shall not proceed with any additional work or additional professional services fees, without first obtaining the written approval of the Town Administrator, which shall specifically delineate the scope of the work, an estimated time frame for completion of the work, and the costs associated with any further extension. ~~SWR. Do not be surprised if this process takes longer than (40) forty hours and additional professional services, at your discretion, are required.~~

3. All other provisions of the Agreement shall remain in full force and effect.

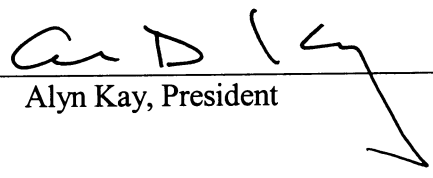
IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and on the day and year first above written.

Witnesses:

ALYN D. KAY, INC.:

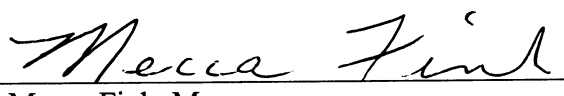


Patricia Canada

By: 

Alyn Kay, President

TOWN OF SOUTHWEST RANCHES

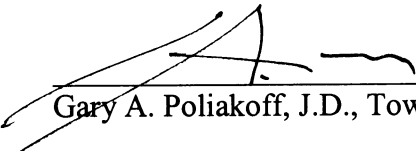
By: 

Mecca Fink, Mayor

By: 

John Canada, Town Administrator

Approved as to Form and Correctness:



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