



## North Bay Village

Administrative Offices

1700 Kennedy Causeway, Suite #132 North Bay Village, FL 33141

Tel: (305) 756-7171 Fax: (305) 756-7722 Website: www.nbvillage.com

### NORTH BAY VILLAGE RECOMMENDATION MEMORANDUM

**TO:** Mayor and Commissioners

**FROM:** Nina Boniske and Gary Brown, Village Attorneys  
Dennis Kelly, Village Manager

**SUBJECT:** Approval of Settlement and Project Completion Agreement for JFK 79<sup>th</sup>  
Street Causeway Redevelopment/ Dr. Paul Vogel Park Improvements  
("Project")

**DATE:** January 8, 2013

#### RECOMMENDATION:

It is recommended that the Village Commission approve the Resolution, attached as Exhibit "A," and authorize the appropriate Village officials to:

- 1) Execute the attached Settlement Agreement with ValleyCrest Landscape Development, Inc. ("ValleyCrest") and Southeast Underground Utilities Corp ("Southeast");
- 2) Execute the attached Project Completion Contract with ValleyCrest;
- 3) Budget and appropriate approximately \$192,394.00 from the Transportation Fund (CITT Fund); return \$27,782.00 to the GO Bonds Fund; and return \$82,223.00 to the General Fund Reserves to complete the Project;
- 4) Authorize immediate payment to ValleyCrest and Southeast under the Settlement Agreement in the amounts of \$137,323 and \$98,676, respectively, for work previously performed and accepted by the Village on the Project; and
- 5) Authorize payment to ValleyCrest in accordance with the Project Completion Contract, in an amount not to exceed \$174,001, to complete the Project.

**HCU**

Mayor  
Connie Leon-Kreps

Vice Mayor  
Eddie Lim

Commissioner  
Dr. Richard Chervony

Commissioner  
Wendy Duvall

Commissioner  
Jorge Gonzalez

As discussed in more detail below, approval of these agreements and expenditure of the specified funds is necessary to complete the Project.

**BACKGROUND:**

A complete background of this matter is set forth in the Recommendation Memorandum dated September 5, 2012, a copy of which is attached as Exhibit "B". To summarize, following the default and termination of M. Vila and Associates ("Vila") on the Project, the Village learned that Vila had not procured the proper payment and performance bonds for the Project, and had failed to pay several of its subcontractors and suppliers for work performed and materials furnished for the Project. In the absence of a proper payment bond, these subcontractors and suppliers ultimately looked to the Village for payment ("Claimants"). Initially, it was believed that the amount due the Claimants was approximately \$350,331.<sup>1</sup> Based upon information then available to the Village, the total cost of completion of the work using ValleyCrest and Southeast, payment to other unpaid Claimants, and termination-related expenses incurred and expected to be incurred by the Village, was believed to be approximately \$587,702. That amount exceeded the remaining balance under Vila's contract by approximately \$281,789.

As a result of the foregoing, and based upon further investigation into this matter by the Village Manager, Village Attorney and staff, the Commission authorized the Village Manager and Village Attorney to negotiate payment of amounts due the Claimants, including ValleyCrest and Southeast. With respect to ValleyCrest and Southeast, payment for past work performed was authorized in an amount not to exceed \$235,999, and for completion of the Project, in an amount not to exceed \$174,001 (for a total amount not to exceed \$410,000). With respect to the remaining Claimants, payment was authorized in an amount not to exceed \$85,000.00. The Commission also authorized the Village Manager and Village Attorney to negotiate a completion contract for the Project with ValleyCrest (using Southeast as a subcontractor to perform a significant part of the unfinished work). See Resolution No. 2012-44 adopted on September 11, 2012 attached as Exhibit "C."

In accordance with the authority granted by the Commission, the Village Attorney and staff met with representatives of ValleyCrest and Southeast, and, along with assistance from the Village's Engineer (Kimley Horn), and have determined the scope of work necessary to complete the Project pursuant to Vila's contract with the Village, including applicable architectural plans and specifications.

<sup>1</sup> Subsequently, it was determined that the total amount due unpaid Claimants was actually approximately \$408,631 (due to CT3S being owed approximately \$61,000 instead of \$2,700).

110(2)

The Village Attorney negotiated settlements with all unpaid Claimants in the total amount of \$314,599.<sup>2</sup> The original claims and negotiated amounts are set forth on the spreadsheet attached as Exhibit "D." In exchange for payment, the Village has obtained a full release from all Claimants. The release signed by each Claimant includes an assignment of claims against Vila should the Village wish to pursue Vila for its losses on the Project, including sums paid to Claimants. The release executed by C3TS also includes a hold harmless agreement (i.e., that C3TS will hold the City harmless from any claim for payment by AECOM on the Project) since AECOM was a subcontractor to C3TS. Therefore, payment to C3TS satisfied the amount due AECOM. The Village Attorney negotiated a Settlement Agreement with ValleyCrest and Southeast, which includes a Completion Contract for the Project. The Settlement Agreement was executed by both ValleyCrest and Southeast on November 27, 2012 with the intention of bringing the item forward for Commission approval in December of 2012.

The funds dedicated to complete the Project included \$118,000.00 of the remaining balance of a grant from the State of Florida, Department of Transportation (the "FDOT") pursuant to a Local Agency program Agreement entered into on November 4, 2009. Those funds were part of a Federal Highway Administration ("FHWA") program administered by the FDOT as part of the ARRA program. On November 20, 2012, the FDOT notified the Village that the grant funds had been withdrawn by the Federal government and were no longer available to the Village. Staff immediately began due diligence to determine the status of the grant and the Village Attorney obtained agreement from ValleyCrest to hold the negotiated settlement terms and prices pending approval of the Settlement Agreement at the January 8, 2013 Commission Meeting. On December 20, 2012, the Village Manager prepared correspondence to the FDOT requesting reconsideration and a meeting. On Monday, January 7, 2013, the Village Manager, Finance Director, Village Attorney and the Village's Lobbyist met with the Secretary of the FDOT, District 6 and his staff. The FDOT Secretary confirmed that the grant funds were no longer available, however, he did offer to request the FHWA to reallocate the funds back to the Village and/or if unsuccessful to seek the funds from the Miami-Dade County Metropolitan Planning Organization. Under either scenario, it will be a few months before the Village will know if grant funds are available to complete the Project. In order to move forward with Project completion and honor the offer from ValleyCrest, the Village would need to allocate an additional \$118,000.00 of funds to the Project.

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<sup>2</sup> The claims were settled below the amount authorized by the Village Commission in Resolution No. 2012-44.

11c(3)

Funds are available from the Transportation Fund (CITT Fund) that could be budgeted and allocated to the Project. The Finance Director has prepared a Spreadsheet showing the funds Budgeted for completion of the Project, attached as Exhibit "E."

Although Valleycrest has agreed to honor their November prices, the agreement is premised upon the Village issuing a Notice to Proceed with the work to Valleycrest within 30 days of execution of the Settlement Agreement by the Village. Should the Village authorize a Notice to Proceed after 30 days, ValleyCrest will still perform the completion work, but will require payment up to a 10 percent differential for any additional actual cost increases from third parties due to the time delay (evidenced by actual purchase orders/invoices). The final Settlement Agreement will be revised prior to execution by the Village to reflect this change, which was negotiated and agreed to, by both ValleyCrest representatives and Village Management on January 7, 2013.

Copies of the Settlement Agreement and Project Completion Contract, executed by ValleyCrest and Southeast, are attached as exhibits to the draft resolution. Upon approval of the Settlement Agreement and Project Completion Contract by the Commission, staff will issue payment to ValleyCrest and Southeast in the amounts of \$137,323 and \$98,676, respectively, for work previously performed and accepted by the Village on the Project. Staff will also issue a Notice to Proceed to ValleyCrest for completion of the Project for a lump sum price of \$174,001. Pursuant to the terms of the Settlement Agreement and Completion Contract, the total amount to be paid to ValleyCrest and Southeast for both previously performed work and work needed to complete the Project will not exceed the amount of \$410,000 previously approved by the Commission. Pursuant to the terms of the Completion Contract, ValleyCrest is required to be finished with all remaining work on the Project within 120 days from the Notice to Proceed (subject to any approved time extensions for excusable delays).

**BUDGETARY IMPACT:**

The Village Attorney's September 2012 memo and resolution proposed to fully fund the remaining cost of the Project with \$281,789.00 (Exhibit E) which included \$82,223.00 from the General Fund Reserves. The revised funding proposal as outlined in Exhibit E proposes to fully fund the Project costs from the Transportation Fund (CITT Fund) monies that the Village receives from Miami Dade County. This Fund has a sufficient fund balance to replace the \$118,000.00 loss of FDOT (ARRA) funding, as well as, eliminate any use of the General Fund Reserves (\$82,223) and reduce the GO Bonds funding by \$27,782.00.

It is recommended that the Commission approve the use of \$192,392.00 from the Transportation Fund (CITT Fund) to fully fund the completion of the JF Kennedy Causeway Project as negotiated by the Village Attorney's Office.

11C(4)

**PERSONNEL IMPACT:**

The Public Works Department has agreed to complete some of the minor items on the punch list that to reduce the cost of completion. No additional personnel are required, as ValleyCrest and Southeast will complete the Work. However, staff will have time and effort expended to coordinate with the Village's Consulting Engineers, Valleycrest and the Village Attorneys.

**ATTACHMENTS:**

Draft Resolution incorporating Settlement Agreement and Completion Contract  
Recommendation Memorandum dated September 5, 2012  
Resolution No. 2012-44 adopted September 11, 2012  
Spreadsheet of Settled Amounts with Claimants dated December 3, 2012  
Spreadsheet of Budgeted Funds dated January 8, 2013

**CONTACT:**

Dennis Kelly, City Manager  
Sam Zamacona, Public Works Director

11C(5)



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### MEMORANDUM

North Bay Village

**DATE:** January 8, 2013

**TO:** Yvonne P. Hamilton  
Village Clerk

**FROM:** Dennis Kelly  
Village Manager

Nina Boniske  
Village Attorney

**SUBJECT:** Introduction of Resolution

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Pursuant to Section 3.08 of the Village Charter, I hereby introduce the following Resolution:

**A RESOLUTION OF THE NORTH BAY VILLAGE COMMISSION, APPROVING A SETTLEMENT AND PROJECT COMPLETION AGREEMENT ("SETTLEMENT AGREEMENT") BETWEEN THE VILLAGE, VALLEYCREST LANDSCAPE DEVELOPMENT, INC. ("VALLEYCREST") AND SOUTHEAST UNDERGROUND UTILITIES CORP. ("SOUTHEAST") PERTAINING TO THE REDEVELOPMENT OF J. F. KENNEDY CAUSEWAY AND IMPROVEMENTS TO DR. PAUL VOGEL PARK ("PROJECT"); APPROVING A PROJECT COMPLETION CONTRACT BETWEEN THE VILLAGE AND VALLEYCREST TO COMPLETE THE PROJECT ("COMPLETION CONTRACT"); AUTHORIZING EXECUTION OF THE SETTLEMENT AGREEMENT AND PROJECT COMPLETION CONTRACT; AUTHORIZING THE APPROPRIATE OFFICIALS TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENTS; AUTHORIZING THE APPROPRIATION AND BUDGETING OF FUNDS TO COMPLETE THE PROJECT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.**

Accordingly, please place the item on the next available agenda.

DK:yph

**11c(6)**

Mayor  
Connie Leon-Kreps

Vice Mayor  
Eddie Lim

Commissioner  
Dr. Richard Chervony

Commissioner  
Wendy Duvall

Commissioner  
Jorge Gonzalez

RESOLUTION NO: \_\_\_\_\_

**A RESOLUTION OF THE NORTH BAY VILLAGE COMMISSION, APPROVING A SETTLEMENT AND PROJECT COMPLETION AGREEMENT ("SETTLEMENT AGREEMENT") BETWEEN THE VILLAGE, VALLEYCREST LANDSCAPE DEVELOPMENT, INC. ("VALLEYCREST") AND SOUTHEAST UNDERGROUND UTILITIES CORP. ("SOUTHEAST") PERTAINING TO THE REDEVELOPMENT OF J. F. KENNEDY CAUSEWAY AND IMPROVEMENTS TO DR. PAUL VOGEL PARK ("PROJECT"); APPROVING A PROJECT COMPLETION CONTRACT BETWEEN THE VILLAGE AND VALLEYCREST TO COMPLETE THE PROJECT ("COMPLETION CONTRACT"); AUTHORIZING EXECUTION OF THE SETTLEMENT AGREEMENT AND PROJECT COMPLETION CONTRACT; AUTHORIZING THE APPROPRIATE OFFICIALS TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENTS; AUTHORIZING THE APPROPRIATION AND BUDGETING OF FUNDS TO COMPLETE THE PROJECT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE. (INTRODUCED BY VILLAGE ATTORNEY, NINA BONISKE, AND VILLAGE MANAGER, DENNIS KELLY)**

WHEREAS, on September 11, 2012, the Village Commission adopted Resolution No. 2012-44 (the "Resolution"), a copy of which is attached to this resolution as Exhibit "1"; and

WHEREAS, pursuant to the Resolution, funds were budgeted to settle outstanding subcontractor claims as well as to complete the Project; the Village Attorney and Village Manager were authorized to negotiate and settle all outstanding claims for work performed by the various subcontractor's working on the Project (the "Claimants"); to negotiate a settlement of ValleyCrest and Southeast's claims for non-payment for their work performed on the Project; and to negotiate a completion contract with ValleyCrest to complete the Project for approval of the Village Commission; and

WHEREAS, the Claimants claims were settled for approximately \$78,600.00 and ValleyCrest and Southeast have executed a Settlement Agreement which incorporates a Project Completion Contract executed by ValleyCrest, which agrees to payment by the Village of \$235,999.00 for previously performed work and payment of \$174,001 to complete the Project; and

110(7)  
Exhibit "A"

WHEREAS, the Village Commission desires to approve the Settlement Agreement and Project Completion Contract to complete the Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COMMISSION OF NORTH BAY VILLAGE, FLORIDA:**

- Section 1.** **Recitals.** The above Recitals are true and correct and incorporated herein by this reference.
- Section 2.** **Approval of Settlement Agreement and Project Completion Agreement.** The Settlement and Project Completion Agreement between the Village, ValleyCrest and Southeast, incorporating the Project Completion Agreement between the Village and ValleyCrest, a copy of which is attached hereto and incorporated herein as Exhibit "2," together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney, is approved.
- Section 3.** **Execution of Agreements.** The Mayor is authorized to execute the Settlement Agreement and the Project Completion Contract.
- Section 4.** **Authorization of Village Officials.** The Village Manager and the Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the Settlement Agreement and the Project Completion Agreement.
- Section 5.** **Appropriation and Budgeting of Funds.** The Village Commission budgets and appropriates \$192,394.00 to complete the Project from the Transportation Fund (CITT Fund); returns \$27,782.00 to the GO Bonds Fund; and returns \$82,223 to the General Fund Reserves.
- Section 6.** **Authorization of Fund Expenditure.** The Village Manager is authorized to expend budgeted funds to implement the terms and conditions of the Settlement Agreement and the Project Completion Agreement.
- Section 7.** **Effective Date.** This Resolution shall take effect immediately upon adoption.

**FINAL VOTE AT ADOPTION:**

Mayor Connie Leon-Kreps \_\_\_\_\_  
Vice Mayor Eddie Lim \_\_\_\_\_  
Commissioner Richard Chervony \_\_\_\_\_  
Commissioner Wendy Duvall \_\_\_\_\_  
Commissioner Jorge Gonzalez \_\_\_\_\_

**PASSED AND ADOPTED** this 8<sup>th</sup> day of January, 2013.

\_\_\_\_\_  
Connie Leon-Kreps, Mayor

**ATTEST:**

\_\_\_\_\_  
Yvonne P. Hamilton, CMC  
City Clerk

**APPROVED AS TO FORM FOR THE USE  
OF THE CITY OF NORTH BAY VILLAGE:**

\_\_\_\_\_  
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.  
City Attorney

NBVResolutionValleycrest1/8/13

11c(9)

## SETTLEMENT AND PROJECT COMPLETION AGREEMENT

This Settlement and Project Completion Agreement ("Settlement Agreement"), made on the 27<sup>th</sup> day of November 2012, by and between the City of North Bay Village ("NBV") a municipality, on the one hand; and ValleyCrest Landscape Development, Inc. ("ValleyCrest"), a foreign corporation, and Southeast Underground Utilities Corp. ("Southeast"), a Florida corporation, on the other hand,

### WITNESSETH:

**WHEREAS**, the City Commission adopted Resolution No. 2009-74 on October 13, 2009, which approved the *Design-Build Construction Contract Between City of North Bay Village and M. Vila & Associates, Inc.* (the "Vila Agreement") for design and construction services for the redevelopment of the John F. Kennedy Causeway ("Project" and concurrently authorized Work Order #1 in the amount of \$577,814 providing for design, permitting, and pre-construction activities along Kennedy Causeway; and

**WHEREAS**, pursuant to the Agreement, M. Vila & Associates, Inc. ("Vila") furnished payment and performance bonds ("Bonds") issued by Suretec Insurance Company ("Surety"); and

**WHEREAS**, the City Commission approved Resolution No. 2010-32 on April 13, 2010, which authorized Work Order #2 in the amount of \$1,550,937 for construction of Phase 1 under the Vila Agreement including new decorative walls, expanded concrete sidewalks, concrete curbs, concrete decorative crosswalks, irrigation, landscaping, and lighting on North Bay Island and a portion of Treasure Island at Adventure Avenue; and

**WHEREAS**, the City Commission approved Resolution No. 2011-49 on October 11, 2011, which authorized the City Manager to take all steps necessary to complete the design and construction of improvements to Dr. Paul Vogel Park ("Vogel Park"); and

**WHEREAS**, the City Commission approved Resolution No. 2011-56 on November 8, 2011, which authorized Change Orders 1 through 9 to the Vila Agreement for a total increase of \$374,300.51, and to address, signage, street lighting repairs, irrigation, planting extensions and improvements to Vogel Park as part of the Project; and

**WHEREAS**, in furtherance of its obligations under the Vila Agreement, on or about May 24, 2010, Vila entered into a subcontract for portions of the work with ValleyCrest ("VC Subcontract"); and

**WHEREAS**, in furtherance of its obligations under the Agreement, on or about August 6, 2010, Vila entered into a subcontract for portions of the work with Southeast ("SE Subcontract"); and

**WHEREAS**, prior to completion of the work, Vila abandoned the Project and failed to pay all of its subcontractors, and, as a result, on or about May 31, 2012, the City terminated the Vila Agreement for cause; and

110(10)

**WHEREAS**, at the time of termination, Vila's work under the Vila Agreement, including work under the VC Subcontract and SE Subcontract ("Subcontracts") was incomplete; and

**WHEREAS**, at the time of termination, Vila owed ValleyCrest the sum of \$152,239 for work performed under the VC Subcontract, and owed Southeast the sum of \$109,640 for work performed under the SE Subcontract; and

**WHEREAS**, despite demand from the parties hereto, the Surety has declined to complete the remaining work or make payment for the sums due ValleyCrest and Southeast, asserting that the Bonds do not provide coverage for the claims; and

**WHEREAS**, as a result of the Surety's denial of their claims, ValleyCrest and Southeast have raised claims against the City for non-payment for their work on the Project asserting that the City failed to ensure that the Bonds were sufficient to cover the labor and materials furnished pursuant to the Subcontracts; and

**WHEREAS**, as a result of the default of Vila and the Surety's actions, the parties hereto have determined that the City's most viable option is to complete with Project utilizing the services of ValleyCrest and Southeast and to pay ValleyCrest and Southeast an agreed upon amount for work previously performed, without waiver of the City's rights against Vila and the Surety; and

**WHEREAS**, the parties hereto have determined through their own due diligence, including review of Project-related documentation and one or more visits to the Project site, that the scope of work remaining to be completed under the Vila Agreement, including work remaining under the Subcontracts, totals approximately \$229,002; and

**WHEREAS**, in order to expeditiously resolve the claims and disputes and avoid litigation, the parties hereto, without admitting any liability or wrongdoing, wish to enter into this Settlement Agreement to effectuate the City's prompt payment to ValleyCrest and Southeast for work previously performed on the Project, and to arrange for completion of the remaining work on the Project pursuant to the Project Completion Contract attached hereto as Exhibit "A", for a negotiated total sum of \$410,000.00.

**NOW THEREFORE**, based upon the mutual covenants and promises herein, and other valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as set forth below.

- 1. Recitals.** The foregoing recitals are true and correct and the parties hereby rely upon their accuracy in entering into this Settlement Agreement.
- 2. Payment for Completed Work.** Subject to formal approval of the City Commission, the City hereby agrees to pay the following sums to ValleyCrest and Southeast for work completed under their respective Subcontracts:

11/21/11

- a. The total sum of \$137,323.00 to ValleyCrest in full and final settlement of all claims which ValleyCrest has or may have against the City in connection with its work on the Project though the date of execution hereof.
- b. The total sum of \$98,676.00 to Southeast in full and final settlement of all claims which Southeast has or may have against the City in connection with its work on the Project though the date of execution hereof.

Payment will be made within seven (7) days of execution of this Agreement by the City following formal approval of this Settlement Agreement by the City Commission at a duly noticed Commission meeting.

3. **Releases.** Except as expressly reserved herein, in exchange for the consideration specified herein and subject to receipt of the respective settlement payments set forth in paragraph 2 above, the parties hereby release, remise, acquit, satisfy and forever discharge one another, including their respective current and former Commissioners, employees, agents, officers, directors, representatives, attorneys, legal representatives, subsidiaries, divisions, departments, affiliated entities, successors and assigns (both in their official and individual capacities), from any and all claims, demands, damages, costs, expenses, attorney's fees, loss of services, actions and causes of action of whatsoever kind and nature, whether known or unknown, matured or un-matured, at law or in equity, from the beginning of time until the date of execution hereof, arising out of or relating to: i) the Vila Agreement; ii) the Subcontracts; and iii) the Project. This release does not cover and specifically excepts any (a) claims by the City for defects in the labor, materials or services furnished by ValleyCrest or Southeast to the Project in accordance with the Vila Agreement and Subcontracts prior to execution hereof, (b) any claims arising out of work to be performed by ValleyCrest or Southeast pursuant to this Settlement Agreement and the attached Project Completion Contract, and (c) any payments to be made by the City to ValleyCrest under the terms of the Project Completion Contract.
4. **Assignment of Claims.** In consideration of the payments made hereunder, and other valuable consideration the sufficiency of which is hereby acknowledged, ValleyCrest and Southeast hereby assign all rights, manner and causes of action, whether at law or in equity, that each has or may have against Vila (including its principals and/or guarantors) arising out of or relating to work performed by ValleyCrest and Southeast on the Project. The claims hereby assigned include but are not limited to claims for non-payment for such work pursuant to the Subcontracts. ValleyCrest and Southeast represent that each has the right to assign such claims and that such claims have not been previously pledged, encumbered, assigned, waived, or otherwise compromised. ValleyCrest and Southeast acknowledge and agree that this assignment is a material inducement to the City's agreement to pay ValleyCrest and Southeast the amounts set forth in paragraph 2 above. ValleyCrest agrees that upon formal approval of this Settlement Agreement and payment of the sum set forth in paragraph 2a above, ValleyCrest will execute any further documents reasonably necessary to effectuate the purposes of this assignment, including the filing of any pleadings, motions or other papers in the litigation styled *ValleyCrest Landscape Development, Inv. v. M. Vila & Associates, Inc.*, Case No. 12-21085-CA-22.

11C(12)

ValleyCrest and Southeast further agree to provide the City any cooperation and assistance reasonably required for the City to prosecute the assigned claims, including but not limited to, attending settlement conferences and/or formal mediation, preparing for depositions and court testimony, and furnishing upon request documentation relating to or supporting the assigned claims.

- 5. Completion of Construction.** As part of the consideration for this Settlement Agreement, including payment of the sums set forth in paragraph 2 above, ValleyCrest hereby agrees to execute and perform the Project Completion Contract attached hereto as Exhibit "A," whereby ValleyCrest will serve as the general contractor for the purposes of completing the Project and will retain the services of Southeast under the terms of a separate subcontract agreement to perform some of the work required under Exhibit "A."
- 6. Continued Validity.** If any provision of this Settlement Agreement is invalidated by a court of competent jurisdiction, then all of the remaining provisions of this Settlement Agreement shall remain in full force and effect. If any remedy provided for in this Settlement Agreement is deemed unenforceable, then the damaged party shall be entitled to any other remedy available under Florida law.
- 7. Joint Drafting.** This Settlement Agreement shall not be construed against one Party or another, solely because it may have been drafted initially by that party or otherwise. Both Parties shall have been deemed to have participated in the drafting of this Settlement Agreement.
- 8. Entire Agreement.** The Parties agree that this Settlement Agreement supersedes any prior agreements or representations between the Parties, whether written or oral, and this Settlement Agreement constitutes the entire agreement between the Parties, with respect to the subject matter hereof. Any agreement to amend or modify the terms and conditions of this Settlement Agreement must be in writing and executed by the Parties.
- 9. Jurisdiction and Venue.** The Parties hereby irrevocably consent to the jurisdiction and venue of any state or federal court sitting in Miami-Dade County, Florida in any action or proceeding in any way arising out of or relating to this Settlement Agreement, and hereby irrevocably agrees that all claims and disputes in respect of such action or proceeding will be heard and determined only in such state court or, to the extent permitted by law, in such federal court.
- 10. Waiver of Right to Jury Trial.** The Parties waive the right to a trial by jury, in any legal proceeding or lawsuit in any way related to this Settlement Agreement, including but not limited to its creation, validity, interpretation, or enforcement.
- 11. Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective personal representatives, heirs, successors and assigns.

11C(13)

**12. Attorney's Fees.** The prevailing party in any action or proceeding that involves the enforcement or interpretation of this Settlement Agreement or to recover damages for a breach thereof shall be entitled to recover attorney's fees, expert fees and costs at both the trial and appellate levels.

**13. Counterparts.** This Settlement Agreement may be signed via facsimile or color scan/email in counterparts, all of which shall constitute one original agreement.

In Witness Whereof, the parties have made and executed this agreement as authorized by the City of North Bay Village through Resolution NO. \_\_\_\_\_

**VALLEYCREST LANDSCAPE DEVELOPMENT, INC.,**  
a foreign corporation

By its: Brough H. Hager  
Signature: [Signature]  
Print name: Andy Hansen

**SOUTHEAST UNDERGROUND UTILITIES CORP.**  
a Florida corporation

By its: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print name: \_\_\_\_\_

**CITY OF NORTHBAY VILLAGE,**  
a municipality

By its: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print name: \_\_\_\_\_

Approved as to form by:  
Nina Boniske, Esq. or Gary L. Brown, Esq.  
City Attorney, City of North Bay Village

\_\_\_\_\_

11C(14)

breach thereof shall be entitled to recover attorney's fees, expert fees and costs at both the trial and appellate levels.

**13. Counterparts.** This Settlement Agreement may be signed via facsimile or color scan/email in counterparts, all of which shall constitute one original agreement.

In Witness Whereof, the parties have made and executed this agreement as authorized by the City of North Bay Village through Resolution NO. \_\_\_\_\_

**VALLEYCREST LANDSCAPE DEVELOPMENT, INC.,**  
a foreign corporation

By its: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

**SOUTHEAST UNDERGROUND UTILITIES CORP.**  
a Florida corporation

By its: PRESIDENT \_\_\_\_\_

Signature: [Handwritten Signature] \_\_\_\_\_

Print name: ANTHONY ALLEN \_\_\_\_\_

**CITY OF NORTHBAY VILLAGE,**  
a municipality

By its: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Approved as to form by:  
Nina Boniske, Esq. or Gary L. Brown, Esq.  
City Attorney, City of North Bay Village

**PROJECT COMPLETION CONTRACT**  
(Exhibit "A" to Settlement Agreement)

11CL15)

**PROJECT COMPLETION CONTRACT**  
**(Exhibit "A" to Settlement Agreement)**

1. **SCOPE OF WORK:** ValleyCrest Landscape Development, Inc. ("ValleyCrest") shall perform the following scope of work: furnish all of the labor, materials, equipment services and incidentals necessary to perform all of the work described and detailed in, or reasonably inferable, from the ValleyCrest proposal attached hereto as *Attachment 1* and incorporated herein by reference, and to the extent applicable to such work, the following documents which are also incorporated herein by reference to the extent such work still needs to be performed to complete the Project: 1) drawings and specifications for the project known as "J. F. Kennedy Causeway Improvements/Dr. Paul Vogel Park" ("Project") (which work is more particularly described in City Commission Resolution Nos. 2009-74, 2010-32, 2011-49, and 2011-56); 2) the *Design-Build Construction Contract Between City of North Bay Village and M. Vila & Associates, Inc.* but only to the extent of the unfinished work (the "Vila Agreement"); and 3) the remaining scopes of work set forth in the Subcontracts and the Valley Crest Proposal attached hereto as *Attachment 1*. To the extent there is any conflict between the Vila Agreement, the Subcontracts and this Contract, the terms of this Contract including *Attachment 1* shall govern. ValleyCrest shall not be liable for any designer, contractor, laborer, or material provider's work that has already been incorporated into the Project as of the date hereof. ValleyCrest assumes no liability or warranty for work completed to date other than the specific scope of landscape and irrigation work that was self-performed by ValleyCrest as a subcontractor under the ValleyCrest Subcontract. ValleyCrest shall not be responsible for any of the design portion of the work hereunder.

2. **TIME OF COMPLETION:** Substantial completion shall be defined as "performance by ValleyCrest which, while not full performance, is so nearly equivalent to what was bargained for by the parties to this Contract that it would be unreasonable to deny ValleyCrest the full contract price subject to the City's right to require various punch list items be completed." The substantial completion date for this Project shall be no later than 90 calendar days after the Notice to Proceed ("NTP") has been issued by the City. Final completion shall be defined as "completion of all remaining punch list items following substantial completion." Final completion and acceptance by the City shall occur within thirty (30) days after substantial completion or no later than 120 calendar days after the NTP. The NTP will be issued after ValleyCrest and Southeast have submitted to the City all required documents hereunder and after execution of this Contract by all parties. Subject to the provisions set forth below, no time extensions for permitting process delays caused by inaction or negligence of ValleyCrest shall be considered. Receipt of all required permits is a condition precedent to commencement of construction work. Time is of the essence.

3. **LIQUIDATED DAMAGES:** The parties recognize that time is of the essence with respect to this Contract and that City will suffer financial loss if the Project is not completed within the times specified in this Contract. The parties also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by City if the Project is not completed on time. Accordingly, instead of requiring such proof, the parties agree that as liquidated damages for delay, but not as a penalty, ValleyCrest shall pay the City the sum of \$500.00 for each calendar day after the time specified for substantial completion, and \$250.00 for each calendar day after substantial completion until final completion of the Project. In

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addition to liquidated damages, ValleyCrest is also responsible to reimburse the City for costs incurred by the City's consultant(s) in administering the construction of the Project beyond the completion dates or per an approved extension of time granted, whichever is later.

4. **MATERIALS:** ValleyCrest must produce samples of all materials to be used for the Project to the City and receive the City's written approval for use of the specific materials prior to utilization of any such materials in the Project. The City's manager or other designated agent of the City must provide responses to all of Valley Crest's written requests for approval that are submitted pursuant to this paragraph within seventy-two (72) hours from the City's receipt of such request.

5. **INTERRUPTION/SECURING JOB SITE:** ValleyCrest will take whatever steps necessary to adequately and safely secure the Project site. However, ValleyCrest understands that the Project is to be performed with minimal interruption to the existing residential neighborhood's daily activities and traffic. In the event of an interruption of neighborhood activities, such interruption shall not exceed eight (8) hours duration and the City shall receive no less than forty-eight (48) hours' notice prior to commencing any such interruptions.

6. **PERMITS:** ValleyCrest shall apply for and obtain such permits and regulatory approvals as may be required by the local municipal/county government/FDOT. Permit fees by the City shall be waived. All other fees shall be included as part of the Project price. It is anticipated the parties will obtain a change of permit transferring any existing permits for the Project to ValleyCrest accordingly.

7. **INSURANCE:** To insure the indemnification obligation set forth herein, ValleyCrest shall at a minimum provide, pay for and maintain in force at all times during the term of this Contract insurance of the type and on the terms and conditions below. The cost of this insurance shall be included in the Contract Price.

Such policy or policies shall be without any deductible amount except as provided for herein or as approved by City and shall be issued by approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Miami-Dade County, Florida. ValleyCrest and Southeast shall specifically protect the City, City Commissioners, and the City's Consultant(s) by naming all of them as additional insureds.

Comprehensive General or Commercial General Liability Insurance: A Comprehensive General or Commercial General Liability Insurance Policy shall be provided which shall contain minimum limits of Two Million Dollars (\$2,000,000.00) 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 or Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

Premises and/or operations explosion, collapse hazard, underground hazard, and Products/completed operations hazard;

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Independent contractors or Contractor's Owners Protection Liability which includes Liability coverage for operations performed for the name of the insured by independent and/or subcontractor(s) that is(are) hired, and acts or omissions of the named insured in connection with his/her general supervision of such operations;

Broad Form Property Damage;

Products and/or Completed Operations for contracts over Fifty Thousand Dollars (\$50,000). Coverage must be maintained and certified for three (3) years after Final Completion;

Broad Form Contractual Coverage applicable to this specific Contract, including any hold harmless and/or indemnification provisions of the Contract, or both;

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;

City is to be expressly included as an additional insured in the name of the City of North Bay Village with respect to liability arising out of operations performed for the City or on behalf of ValleyCrest and Southeast or acts or omissions of the City in connection with general supervision of such operation.

Business Automobile Liability: Business Automobile Liability with minimum limits of Five Hundred Thousand Dollars (\$500,000) 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.  
Hired Vehicles, if applicable

Non-owned Vehicles, if applicable  
Any Auto, if applicable

If the initial insurance expires prior to the completion of the Work, renewal copies must be furnished thirty (30) days prior to the date of their expiration.

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 minimum limit of Three Hundred Thousand Dollars (\$300,000) each accident.

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If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

ValleyCrest shall furnish to the City Manager, Certificates of Insurance evidencing the insurance coverages specified by this Article. Required Certificates of Insurance shall name the types of policies certified.

Coverage shall not cease and is to remain in force (subject to cancellation notice) until all performance required of ValleyCrest for substantial and final completion is completed. All policies must be endorsed to provide the City 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 Project, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.

Right to revise or reject: The City reserves the right, but not the obligation, to review and revise any insurance requirements at the time of renewal and any amendments, not limited to deductibles, limits, coverages, and endorsements based on insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work/specifications affecting the applicability of coverage.

Insurance Requirements for Vendors, Suppliers, Material Providers, and Haulers. ValleyCrest shall insure that all vendors, suppliers, material providers and haulers (Vendors), prior to entering the Project site, have the following insurance coverages:

**Business Automobile Liability.** Business Automobile Liability with minimum limits of Five Hundred Thousand Dollars (\$500,000) 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 and Hired and Non-Owned Vehicles.

**Workers' Compensation.** Workers' compensation insurance for operations for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws.

**Commercial General Liability Insurance.** Commercial General Liability insurance for premises and operations including product liability for any product manufactured, assembled or otherwise worked upon away from the Project site, in a form providing coverage no more restrictive than the Standard Commercial General Liability insurance policy (Occurrence Form). Such policy shall be in the minimum amount of Five Hundred Thousand Dollars (\$500,000) per occurrence bodily injury and property damage liability.

**Property Insurance.** The City may provide property insurance covering the materials, equipment and supplies that are intended for specific installation in the Project while such materials, equipment and supplies are located at the Project site (this coverage will be specifically to cover property under construction or similar coverage), in transit, and while temporarily located away

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from the Project site for the purpose of repair, adjustment or storage at the risk of one of the insured parties. This coverage will not cover any of the contractors' or subcontractors' tools, equipment, machinery or provide any business interruption or time element coverage to the contractors or subcontractors.

If the City decides to purchase property insurance or provide for coverage under its existing insurance for this Project, then in that case the insurance required to be carried by ValleyCrest may be modified to account for the insurance being provided by the City. Such modification may also include execution of Waiver of Subrogation documentation.

ValleyCrest shall ensure that all subcontractors and lower-tiered subcontractors furnishing work on the Project through or under it procure and maintain in effect for the duration of the Project or such longer period required hereunder, all insurance coverages in the types and amounts required to be maintained hereunder, and shall furnish City with copies of Certificates of Insurance evidencing such coverages. All such insurances shall name the City and its Consultant(s) as additional insureds.

8. INDEMNIFICATION: ValleyCrest hereby agrees to indemnify, defend, and hold harmless the City and its respective agents and employees (including engineers and consultants and their employees) from any and all claims, demands, judgments, liabilities, damages, losses, costs, and expenses (including attorney's fees and costs at both the trial and appellate levels), arising out of or relating to the performance of the work or Contract, but only to the extent caused, in whole or in part, by the respective negligence, recklessness or intentional wrongful misconduct of ValleyCrest or any persons employed by or utilized by it, or for whose actions they may be liable, in the performance of the work or Contract, and regardless of the partial fault of any indemnified party hereunder. ValleyCrest acknowledges that the foregoing indemnification obligations comply with the requirements of Section 725.06, Florida Statutes, and that the specific consideration for the promises and obligations hereunder are:

- A. Ten dollars (\$10.00) in hand paid by or on behalf of the City, Engineer (including its employees), and Consultant (including its employees), to ValleyCrest and Southeast, receipt whereof is hereby acknowledged and the adequacy of which ValleyCrest accepts as completely fulfilling the obligations of City, Engineer, Consultant and their respective employees under the requirements of Section 725.06, Florida Statutes; and
- B. The entry of the City and ValleyCrest into this Contract because, but for the indemnification promises and obligations as contained herein, the City would not have entered into this Contract.

9. CHANGES TO SCOPE OF WORK: The City shall not accept any change orders from ValleyCrest for the Project unless approved in writing by the City. By executing this Contract, ValleyCrest specifically acknowledges that it has performed its due diligence and will perform the work for the price stated herein, that was accepted by the City Commission by resolution Number \_\_\_\_\_ on \_\_\_\_\_. However, in the event the City improperly fails and refuses to timely respond to all change order requests within seven (7) days from receipt thereof, ValleyCrest reserves the right to cease work relating to the change order

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request(s). Further, to the extent such change order work causes a delay in the substantial or final completion dates stated in paragraph 3 above, ValleyCrest shall also be entitled to an appropriate time extension(s) for such delay.

In furtherance of *Attachment 1* hereto, the parties acknowledge that the Florida Department of Transportation ("FDOT") has already installed the Westbound guardrail which was initially a part of ValleyCrest's proposed scope of work. Should the FDOT also install the Eastbound guardrail, the City shall be entitled to a complete deductive change order of this line item on *Attachment 1*. However, should ValleyCrest be required to install the Eastbound guardrail, the City recognizes and appreciates that it is a "custom" guardrail and the entire \$5,880 given for this line item may be needed to manufacture and install that guardrail. However, the parties shall nonetheless negotiate in good faith any change order reflecting the costs associated with any installation of the Eastbound guardrail and/or any credit due back to the City if such costs are less than \$5,880.

10. **CONTRACT PRICE:** The City agrees to pay ValleyCrest the total sum of \$174,001.00 for serving as the completion general contractor and performing the services set forth in paragraph 1 (Scope of Work) above. ValleyCrest shall be paid based upon Applications for Payment submitted to the City. ValleyCrest recognizes that the City through its Consultant(s) shall cause to be documented the progress and amounts owing to ValleyCrest based on measurement of progress, submittals, observations at the site and on evaluation of ValleyCrest invoices or Applications for Payments. The Consultant(s) shall certify such invoices or Applications for Payment in such amount to appropriately reflect the actual progress to the date of the invoice or Application for Payment submittal. The Consultant's certification shall represent that ValleyCrest's progress and work products are in substantial accordance with the requirement of this Contract and construction standards established by Consultant(s) and/or those construction standards generally accepted in the locale of the Project. Subject to the foregoing, the City shall make progress payments on account of the Contract Price as follows:

- A. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.
- B. Each Application for Payment shall be accompanied with a written statement signed by the Owner's Consultant certifying satisfactory completion of the required percentage of the Project.
- C. The City shall pay within ten (10) business days of receipt of a proper invoice any undisputed amounts.
- D. The City shall retain Ten Percent (10%) of the total Contract Price as retainage until the Project is completed pursuant to this Contract.
- E. ValleyCrest shall furnish City appropriate releases, affidavits or waivers of lien for all work performed or materials provided at the time the next periodic payment shall be due.
- F. Owner shall make final payment to ValleyCrest, including retained funds, after the Project has been completed to the satisfaction of the City and all appropriate releases and waivers of lien, and all other Project close-out documents have been provided to the City.
- G. Payment Bond(s) and Performance Bond(s) must be provided to the City within seven (7) days of execution of this Contract, and which must remain in full force

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and effect during the entire term of the Project, or such longer period required by the Contract Documents or law. No payment will be made unless and until the City has received a certified copy of the Bonds and same are recorded in the public records of Miami-Dade County.

11. **ASSIGNMENT:** Neither party may assign this Contract, or payments due under the Contract, without the other party's written consent. Any such assignment without consent shall be void and of no effect.

12. **WARRANTIES:** ValleyCrest warrants to the City that all materials, supplies, and equipment under this Contract will be new unless otherwise specified and that all work will be of good quality, free from faults and defects and in conformance with the Contract requirements. ValleyCrest's warranties shall be for one (1) year commencing on the date of final completion of the work and acceptance by the City. Upon demand within such one year period (or such greater period for latent defects), ValleyCrest shall pay for and/or correct all such defects appearing in the work at no cost to the City.

13. **DELAY:** No claim for damages, or any claim other than for an extension of time, shall be made against the City by reason of any delays. Any claim for extension shall only be based on a delay(s) to the critical path and which causes an increase in the overall Project duration.

14. **PERFORMANCE BOND/PAYMENT BOND/SURETY:** Within seven (7) calendar days of the City Commission's formal approval of the Contract, Valley Crest will furnish Performance and Payment Bonds in the amount of 100% of the Contract Price, guaranteeing to the City the timely completion and payment of the work, and which shall continue in effect for one (1) year after final completion and acceptance of the work with liability equal to 100% of the Contract Price. The Performance Bond shall be conditioned that Valley Crest will correct any defective or faulty work or materials that appear within one (1) year after final completion of the work and acceptance by the City. The surety's obligations under the Performance Bond shall continue in effect for five (5) years after final completion and acceptance of the work for any latent defects. The bonds shall be recorded in the public records of Miami-Dade County and certified copies of the bonds shall be provided to the City prior to commencement of any work.

15. **CONTRACTOR'S RESPONSIBILITY:** ValleyCrest shall take reasonable steps to protect the work against all loss or damage until final acceptance by the City and shall promptly repair any damage done from any cause whatsoever. If such loss or damage is caused by ValleyCrest's failure to properly protect the work or is otherwise caused from ValleyCrest's intentional or negligent actions or omissions, such repairs shall be without cost or expense to the City. In the event that the loss or damage is caused solely by an employee or agent of the City or the general public and could not reasonably be avoided by ValleyCrest's reasonable efforts to protect the work, or if the damage was pre-existing or latent and could not reasonably be observed by ValleyCrest prior to its obligations commencing under this Contract, then the City shall assume the costs associated with repairing such loss or damage. In such event, the City and ValleyCrest shall negotiate a reasonable cost to repair the damage through the change order process.

16. **DEFECTIVE WORK:** Upon receipt of written demand from the City of defective work performed by ValleyCrest, ValleyCrest shall promptly correct or remove it and replace it with

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non-defective work. ValleyCrest shall pay all direct, indirect, and consequential costs of such removal or corrections including cost of testing laboratories and personnel. Such costs shall be included in the Contract Price.

17. PUBLIC ENTITY CRIMES ACT: ValleyCrest represent that this Contract does not violate the Public Entity Crimes Act, providing that a person or affiliate who is a contractor 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 the City; may not submit a bid for the construction or repair of a public building or public work; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with the City; and may not transact any business with the City for thirty-six (36) months from the date of being placed on the convicted vendor list.

18. TERMINATION FOR CAUSE:

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. ValleyCrest's persistent failure to perform the work in strict accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule);
  2. ValleyCrest's disregard of Laws or Regulations of any public body having jurisdiction;
  3. ValleyCrest's disregard of the authority of the City Manager or designee;
  4. ValleyCrest's violation in any substantial way of any provisions of this Contract; or.
  5. ValleyCrest's insolvency, bankruptcy, or assignment for the benefit of creditors.
- B. If one or more of the events identified in paragraph 18A occur, the City may, after giving ValleyCrest (and its surety) seven (7) days written notice, terminate this Contract and exclude ValleyCrest from the site, and take possession of the work and incorporate in the work all materials stored at the site or for which City has paid ValleyCrest or which are stored elsewhere, and finish the work as City may deem expedient. In such case, ValleyCrest shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) sustained by City arising out of or relating to completing the work, such excess will be paid to ValleyCrest. If such claims, costs, losses, and damages exceed such unpaid balance, ValleyCrest shall pay the difference to City promptly. When exercising any rights or remedies

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under this paragraph, City shall not be required to obtain the lowest price for the work performed to complete the Project.

- C. Where this Contract has been so terminated by City, the termination will not affect any rights or remedies of City against ValleyCrest then existing or which may thereafter accrue. Any retention or payment of moneys due ValleyCrest by the City will not release ValleyCrest from liability.
- D. If, after notice of termination, it is found that ValleyCrest were not in default or that sufficient grounds for termination for cause did not exist, the termination shall be deemed automatically converted to one for convenience, and the rights and obligations of the parties shall be the same as if the notice of termination were issued pursuant to paragraph 19 below.

#### 19. TERMINATION FOR CONVENIENCE:

- A. The Contract may be terminated for convenience in writing by the City, without cause and without prejudice to any other right or remedy of City, upon seven (7) days written notice to ValleyCrest of its intent to terminate and the date on which such termination becomes effective. In such case, ValleyCrest shall be paid (without duplication of any items) for:
  - 1. Completed and acceptable work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such work, provided however, that ValleyCrest must first provide City with sufficient back-up documentation for such work;
  - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents, plus fair and reasonable sums for overhead and profit on such expenses;
  - 3. Reasonable expenses directly attributable to termination.
- B. Under no circumstances shall payment include, or the City be liable for, lost or unearned overhead and profit for work or services not performed.

#### 20. INTERPRETATION:

- A. Entire Agreement. This Contract (together with the Settlement Agreement executed simultaneously by the parties) constitutes the entire agreement of the parties with respect to completion of construction on the Project. No other agreements, oral or written, pertaining to the work to be performed under this Contract exist between the parties. This Contract may be modified only by a written agreement signed by both parties.

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- B. **Governing Law.** This Contract shall be interpreted and governed in accordance with the laws of the State of Florida.
- C. **Venue.** Venue for any action or proceeding arising out or relating to this Contract shall lie exclusively in the state and federal courts in Miami-Dade County, Florida.

21. **ATTORNEYS' FEES AND COSTS:** If any party to this Contract brings a cause of action against the other party arising from or relating to this Contract, the prevailing party in such proceeding shall be entitled to recover reasonable attorney's fees, experts fees, and costs (at both the trial and appellate levels).

22. **PERFORMANCE:**

- A. ValleyCrest may, at its discretion, engage licensed subcontractors to perform work pursuant this Contract provided that ValleyCrest shall remain fully responsible for the proper completion of the Project. As the completion general contractor, ValleyCrest shall be responsible for paying any subcontractor or materials provider retained by, through or under ValleyCrest.
- B. All work shall be completed in a good and workman-like manner and in strict compliance with this Contract all building codes and applicable laws. To the extent required by law, all work shall be performed by individuals duly licensed and authorized by law to perform said work.
- C. ValleyCrest agrees to remove all debris and leave the premises in clean condition appropriate to the usage of said premises.
- D. The rate of wages for all laborers, mechanics, and apprentices employed by the ValleyCrest or any subcontractor on the work covered by this Contract shall not be less than the prevailing rates of wages for similar skills or classifications required by applicable law or local ordinance in Miami-Dade County.
- E. No additional work or extras shall be performed unless the same shall be duly authorized by appropriate action of the City and written change order.

23. **DISPUTE RESOLUTION:** The parties hereby agree to engage in pre-suit mediation before an agreed upon neutral mediator as a condition precedent to litigation. Such mediation shall occur within 60 days of written demand by a party, or such later time as may be agreed to by the parties. No action may be instituted by any party hereto unless and until mediation has been concluded. Any action filed in violation of this paragraph shall be stayed upon motion of any party pending the conclusion of such pre-suit mediation.

24. **PROJECT RECORDS:** ValleyCrest and their subcontractors shall maintain all books and records and accounts, whether financial or otherwise, which relate to the Project and to any claim for additional compensation, including, without limitation, complete and correct records of payments to each of their subcontractors. For each subcontractor, the books and records and

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accounts shall reflect each payment to the subcontractor and the cumulative total of the payments made to the subcontractor. City shall have the right to inspect and copy, at City's expense, the books and records and accounts of ValleyCrest and its subcontractors which relate in any way to the Project, and to any claim for additional compensation and to conduct an audit of the financial and accounting records of ValleyCrest and its subcontractors which relate to the Project and to any claim for additional compensation. ValleyCrest and its subcontractors shall retain and make available to City all such books and records and accounts, whether financial or otherwise, which relate to the Project and to any claim for a period of three (3) years following final completion of the Project. During the Project and the three (3) year period following final completion of the Project, ValleyCrest shall provide City access to its books and records and accounts upon seventy-two (72) hours written notice.

## 25. LOCATION AND DAMAGE TO EXISTING FACILITIES, EQUIPMENT OR UTILITIES:

25.1. As far as possible, all existing utility lines in the Project area have been shown on the plans. However, City does not guarantee that all lines are shown, or that the ones indicated are in their true location. It shall be ValleyCrest's responsibility to identify and locate all underground and overhead utility lines or equipment affecting or affected by the Project. No additional payment will be made to ValleyCrest and Southeast because of discrepancies in actual and plan location of utilities, and additional costs suffered as a result thereof.

25.2. ValleyCrest shall notify each utility company involved at least three (3) days prior to the start of construction to arrange for positive underground location, relocation or support of its utility where that utility may be in conflict with or endangered by the proposed construction. Relocation of water mains or other utilities for the convenience of ValleyCrest shall be at no cost to the City. All charges by utility companies for temporary support of its utilities shall be paid for by ValleyCrest. All costs of permanent utility relocation to avoid conflict shall be the responsibility of the utility company involved. No additional payment will be made to ValleyCrest for utility relocations, whether or not said relocation is necessary to avoid conflict with other lines.

25.3. ValleyCrest shall schedule the Work in such a manner that the Work is not delayed by the utility providers relocating or supporting their utilities. ValleyCrest shall coordinate its activities with any and all public and private utility providers occupying the right-of-way. No compensation will be paid to ValleyCrest for any loss of time or delay, except in accordance with the terms of this Contract.

25.4. All overhead, surface or underground structures and utilities encountered are to be carefully protected from damage or displacement. All damage to such structures is to be completely repaired within a reasonable time; needless delay will not be tolerated. The City reserves the right to remedy such damage by ordering outside parties to make such repairs at the expense of ValleyCrest and Southeast. All such repairs made by ValleyCrest are to be made to the satisfaction of the utility owner. All damaged utilities must be replaced or fully repaired. All repairs are to be inspected by the utility owner prior to backfilling.

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26. NOTIFICATION OF CLAIM FOR CHANGE OF CONTRACT TIME OR CONTRACT PRICE:

The City shall permit extensions to the contract time in the event of any act of God, major weather or rain event, civil unrest, or any such other factor that constitutes impossibility or impracticability of performance under Florida law. Any claim for a change in the Contract time or Contract Price shall be made by written or electronic notice by ValleyCrest to the City and its Consultant within five (5) calendar days of the commencement of the event giving rise to the claim or knowledge by ValleyCrest of the claim and the notice shall state the general nature and cause of the claim. Thereafter, within ten (10) calendar days of the termination of the event giving rise to the claim or knowledge of the claim, written notice of the extent of the claim with supporting information and documentation shall be submitted to the City and Consultant (hereinafter "Claim Notice"). Upon receipt of ValleyCrest's Claim Notice, the City shall within seven (7) days respond in writing and/or email. ValleyCrest shall be entitled to any and all extensions of time requested in the Claim Notice should the City fail to timely respond to such Claim Notice. **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT TIME OR CONTRACT PRICE SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.**

For any notice that is sent under this Contract, it shall be deemed received if it is delivered via e-mail, certified mail or reputable overnight carrier, hand delivery, or facsimile to the following:

City of North Bay Village  
Dennis Kelly, City Manager  
1700 Kennedy Causeway, Suite 132  
North Bay Village, Florida 33141  
T: (305) 756-7171  
F: (305) 756-7722  
Email: [dkelly@nbvillage.com](mailto:dkelly@nbvillage.com)

City's Consultant  
Kimley-Horn and Associates, Inc.  
5200 NW 33rd Avenue, Suite 109  
Fort Lauderdale, FL 33309  
T: (954) 535-5100  
F: (954) 739-2247  
E-Mail: [gary.ratay@kimley-horn.com](mailto:gary.ratay@kimley-horn.com)

ValleyCrest Landscape Development, Inc.  
c/o Karl Kaliebe & Andy Johnson  
4155 East Mowry Drive  
Homestead, Florida 33033  
T: (305) 258 - 8011  
F: (305) 258 - 0809  
Email: [kkaliebe@valleycrest.com](mailto:kkaliebe@valleycrest.com)  
[ajohnson@valleycrest.com](mailto:ajohnson@valleycrest.com)

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**27. NO DAMAGE FOR DELAY:**

No claim for damages or any claim, other than for an extension of time, shall be made or asserted against City by reason of any delays except as provided herein. ValleyCrest shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by ValleyCrest for actual delays due solely to fraud, bad faith or active interference on the part of City or its Consultant. Otherwise, ValleyCrest shall be entitled only to extensions of the Contract time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above. Only delays to the Project's critical path will be considered for payment or time extension as provided herein.

**[Remainder of page intentionally left blank]**

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In Witness Whereof, the parties have made and executed this agreement as authorized by the City of North Bay Village through Resolution NO. \_\_\_\_\_

**VALLEYCREST LANDSCAPE DEVELOPMENT, INC.**  
a foreign corporation

By its: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

*Branch Manager*  
*Andy Johnson*

**CITY OF NORTH BAY VILLAGE,**  
a municipality

By its: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Approved as to form by:

Nina Boniske, Esq. or Gary L. Brown, Esq.  
City Attorney, City of North Bay Village

\_\_\_\_\_

11C(29)

JFK Causeway Cost to Complete



ATTACHMENT 'A'

Description	Original Proposal		August 30, 2012 Final Offer	
	Proposed	Changes & Discounts	Offer	
Completed work by SouthEast - Discounted 10%	\$ 109,640.00	\$ (10,964.00)	\$ 98,676.00	
Completed work by ValleyCrest - Discounted 10%	\$ 152,591.00	\$ (15,258.00)	\$ 137,333.00	
<b>Total Due to Begin Work</b>			\$ 236,009.00	
<b>BALANCE TO FINISH</b>				
Pressure Clean all ICC - By City	\$ 2,550.00	\$ (2,550.00)	\$ -	
Painting all existing D curbs - By City	\$ 15,788.54	\$ (15,788.54)	\$ 6,488.00	
Mill & Resurface asphalt North side @ blog entrance	\$ 6,488.00		\$ 993.60	
Adjust all ADA mats	\$ 993.60		\$ 918.00	
Repair ICC concrete @ bore location north side	\$ 918.00		\$ 1,518.75	
Dominican coral dead replace chipped	\$ 1,518.75		\$ 2,700.00	
Restriping of 150' east and west of traffic signal	\$ 2,700.00		\$ 5,880.00	
Install 2 sections of guardrail 37.5 LF each - MV - \$5880.00	\$ 5,880.00		\$ -	
Paint 3 door sills - By City	\$ 942.44	\$ (942.44)	\$ 2,500.00	
Correct drainage @ playground	\$ 2,500.00		\$ 135.00	
Remove old irrigation timer station	\$ 135.00		\$ 21,133.35	
<b>Sub-Total Civil</b>	\$ 155,484.00	\$ (37,454.49)	\$ 118,029.51	
Balance to finish for SouthEast	\$ 7,774.20	\$ (816.05)	\$ 6,958.14	
VCD Management 5%	\$ 163,258.20		\$ 124,987.65	
<b>Sub-Total Electrical</b>	\$ 27,880.00		\$ 27,880.00	
<b>General Conditions</b>			\$ 174,001.00	
<b>Total to Finish Uncompleted Items</b>			\$ 410,000.00	

As of November 5, 2012, the Florida Department of Transportation (FDOT) installed the West-bound guardrail. This should result in a partial credit of the \$5,880.00, however, the full value of the \$5,880.00 may be required for just the East-bound guardrail should FDOT not install it as well. The East-bound guardrail is now a "custom" guardrail due to the reconfiguring and the widening of the E-W sidewalk. Should the FDOT install the remaining EB guardrail, then this fine item will be deducted from ValleyCrest's scope of work in its entirety. Should this be the case, the city shall be entitled to a full credit of \$5,880.00 and ValleyCrest shall be relieved of all responsibility and liability for both guardrails, including a complete release of all warranty.

11C(30)

**City of North Bay Village**

Administrative Offices

1700 Kennedy Causeway, Suite #192 North Bay Village, FL 33141  
Tel: (305) 756-7171 Fax: (305) 756-3722 Website: www.nbvillage.com

**CITY OF NORTH BAY VILLAGE  
RECOMMENDATION MEMORANDUM**

**DATE:** September 5, 2012

**TO:** Mayor Connie Leon-Kreps  
Vice Mayor Eddie Lim  
Commissioner Stuart Blumberg  
Commissioner Richard Chervony

**FROM:** Dennis Kelly, City Manager   
Nina Boniske and Gary Brown, City Attorneys

**SUBJECT:** Completion of and Payment for JFK 79<sup>th</sup> Street Causeway  
Redevelopment/ Dr. Paul Vogel Park Improvements ("Project")

**RECOMMENDATION:**

It is recommended that the City Commission approve the attached Resolution and authorize the appropriate City officials to:

- 1) Negotiate and make payment to various subcontractors and suppliers of M. Vila & Associates, Inc. ("Vila") for the above Project for a cost not to exceed \$114,332.00;
- 2) Waive the competitive bidding process pursuant to Section 36.25 of the City Code to approve negotiation of a Completion Contract with Valley Crest Landscape Development, Inc. ("Valley Crest"), a general contractor (who was also a main subcontractor under the original agreement with Vila) to complete the Project utilizing the services of the existing electrical subcontractor, Southeast Underground Utilities Corp ("Southeast");

Mayor  
Connie Leon-Kreps

Vice-Mayor  
Eddie Lim

Commissioner  
Stuart Blumberg

Commissioner  
Dr. Richard Chervony

114(1)

11c(31)

Exhibit "B"

3) Authorize payment to Valley Crest and Southeast in an amount not to exceed \$410,000.00 (\$235,999.00 for previously performed work on the Project under Vila and \$174,001.00) to complete the Project);

4) Authorize Kimley-Horn to proceed with construction phase services under Work authorization No. 06-12 for a cost not to exceed \$23,000.00; and

5) Bring the negotiated Completion Contract back to the City Commission for approval.

As discussed in more detail below, payment of the forgoing amounts, as well as costs incurred and to be incurred by the City in connection with the termination of Vila and hiring of a Completion Contractor, will require appropriation by the City Commission of approximately \$281,789.00 (recommended from the CITT Fund, GO Bonds for Vogel Park, and the General Fund Reserve).

#### **BACKGROUND:**

After competitive procurement, the City awarded a design-build contract to Vila for certain roadway and landscaping improvements to JFK 79<sup>th</sup> Street Causeway ("Agreement"). In connection with the Agreement, Vila was required to procure payment and performance bonds to secure payment/performance of the Project by Vila (the "Bonds"). Work under the Agreement was released in phases pursuant to certain work orders (Work Orders 1 and 2). Pursuant to a Change Order to the Agreement, the work was expanded to include certain improvements to Dr. Paul Vogel Park and was included in an additional work order (Work Order 3). The total cost of the Project, as set forth in the Work Orders, and including Change Orders to the Agreement, was \$2,464,283.89 (See Resolution No.'s 2009-74, 2010-32, 2011-49, and 2011-56).

Vila abandoned the Project prior to completion, and the City terminated Vila for cause on or about May 31, 2012. At the time of termination, the contract balance, including retainage, remaining in the City's budget for this Project was \$305,913.75. At that time staff sought and obtained direction from the City Commission to work towards completion of the Project. During our due diligence to determine default and effectuate termination, we discovered that Vila had not provided all of the required Bonds. Vila had initially procured a payment and performance bond from Suretec Insurance Company ("Surety") totaling \$60,000.00. Formal demand was made on the Surety to complete the Project under the performance bond; however, the Surety denied coverage and has taken the position that this small bond was only for a portion of the initial work under the Agreement and was essentially released when this initial work was completed. Subcontractors on the Project also made claims for payment under the payment bond, which were also denied by the Surety on the same basis.

11C(2)

11C(32)

Although the City has the option to file suit against Vila for breach of contract for failure to obtain the required bonds, for practical purposes it appears that Vila is no longer a viable business and is likely judgment proof. Certainly, the City could further explore filing litigation against Vila, however, at the present time the recommendation is to obtain completion of the Project and address litigation at a later date. As this time the City does have the Project balance available to use towards completion of the Project.

To compound Vila's default, the City subsequently received written notices of non-payment from Vila's subcontractors and suppliers for completed work on the Project totalling approximately \$373,510.66. ("Claimants") (this amount is currently being verified by City staff and the City Attorney) Further, two of the Claimants have filed litigation for unpaid work and/or materials; Valley Crest, whose claim at this time is against Vila and Suretec (but they have advised the City they intend to add it to the litigation if their claim is not resolved); and Central Concrete Supermix, Inc. Another Claimant, Cemex Construction Materials Florida LLC, has retained counsel and threatened to file suit against the City if payment is not made within the next several weeks (counsel's last correspondence provided a deadline of August 16, 2012 but counsel has since provided an extension of this date). The City Attorney has been in contact with all Claimants and/or their attorneys to attempt to work towards a resolution of their claims without the City having to be involved in the expense of protracted litigation. As part of the resolution of these Claimant's claims, the City Attorney will ensure that each Claimant releases the City from any further liability and any litigation is dismissed and, to the extent possible, obtain an assignment of rights by Claimants against Vila.

Without the security of the Bonds, the City's only real viable option is to negotiate payment to each of the Claimants and to hire a contractor to complete the balance of the Project. The City has been working with Valley Crest to obtain a workable proposal to serve as the City's Completion Contractor (staff did obtain proposals to complete the work from other contractors; however, their prices exceeded Valley Crest's and this contractor is already familiar with this Project). The Project completion would be supervised by Kimley Horn, the City's Consulting Engineers (pursuant to Kimley-Horn's construction phase services work authorization No. 06-12). The City would also negotiate and arrange for payment of verified amounts to unpaid Claimants. Based on discussions with staff and the City Attorney, Valley Crest and Southeast have offered to accept a negotiated and discounted lump sum total amount of \$410,000.00 as payment for their unpaid work performed for Vila and to also complete all remaining work on the Project. It is estimated that payment to other unpaid Claimants will amount to approximately \$114,332.00.

11L(3)

11C(33)

Consulting Engineering and Legal expenses are anticipated to be approximately \$57,870.00 (already incurred and estimated to complete, noting that these are estimates and total expenses will depend upon the cooperation of the Claimants, Illegants and Valleycrest in negotiating a Completion Contract). Miscellaneous expenses to be incurred by City staff in connection with self-performance of minor remaining work items amount to approximately \$5,500.00.

Based upon information presently available to the City, the total cost of completion of the work using Valley Crest and Southeast, payment to other unpaid Claimants, and termination-related expenses incurred and to be incurred by the City, is approximately \$587,702.00. This amount exceeds the remaining balance under Vila's contract by approximately \$281,789.00, and is currently unfunded in the City's budget. For ease of reference, the below table reflects an accounting of the above figures:

**M. Vila Contract balance reconciliation**

M. Vila Contract	\$2,464,283
Payments to M. Vila	\$2,138,370
Contract balance available	\$325,913

**Project completion expenses**

Valley Crest/Southeast completion proposal	\$ 410,000
Other unpaid Claimants	\$ 114,332
Engineering fees	\$ 26,500
Legal fees	\$ 31,370
Miscellaneous expenses	\$ 5,500
<del>Termination costs</del>	<del>70,800</del>

**Balance needed to complete the project** (\$281,789)

**Available funds**

CITT Fund	\$ 125,184
GO Bonds for Vogel Park expenses	\$ 74,382
General Fund Reserves	\$ 82,223

114(4)

11c(34)

**BUDGETARY IMPACT:**

There will be an approximate impact of \$281,789.00, since the additional funds needed to complete the Project, pay Claimants, and cover termination-related expenses is presently unbudgeted. However, the City Manager and City Attorney will attempt to minimize this impact by reducing claims where possible. Any cost savings realized will be allocated back to the General Reserve Fund.

**PERSONNEL IMPACT:**

No additional personnel are required, as the Work will be completed by Valley Crest using its forces and one or more subcontractors. However, staff will have time and effort expended to coordinate with the City's Consulting Engineers, Valleycrest and the City Attorneys.

**ATTACHMENTS:**

Default and Termination letters to MVila from City Manager  
Vila's Payment Requisition #20  
Spreadsheet of unpaid Vila subcontractors (Claimants) and other expenses for Causeway/Park  
Letter from Surety to City refusing claim  
Proposal from Valley Crest to complete Project  
Complaint filed by Valley Crest  
Complaint filed by Central Concrete  
Correspondences from Cemex's Attorney  
Kimley-Horn Work Authorization No. 06-12

**CONTACT:**

Dennis Kelly, City Manager  
Sam Zamacona, Public Works Director

11L(5)

11C(35)

**RESOLUTION NO: 2012-44**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE A COMPLETION CONTRACT WITH VALLEYCREST LANDSCAPE DEVELOPMENT, INC ("VALLEYCREST") FOR REDEVELOPMENT OF J. F. KENNEDY CAUSEWAY AND IMPROVEMENTS TO DR. PAUL VOGEL PARK ("PROJECT"); WAIVING COMPETITIVE BIDDING PURSUANT TO SECTION 36.25 OF CITY CODE TO UTILIZE THE SERVICES OF VALLEYCREST; AND AUTHORIZING EXPENDITURES TO VALLEYCREST AND SOUTHEAST UNDERGROUND UTILITIES CORP. ("SOUTHEAST") NOT TO EXCEED \$235,999.00 FOR PREVIOUSLY PERFORMED WORK ON THE PROJECT; AUTHORIZING EXPENDITURES NOT TO EXCEED \$174,001.00 FOR VALLEYCREST AND SOUTHEAST TO COMPLETE THE PROJECT; APPROVING PAYMENT TO OTHER UNPAID SUBCONTRACTORS AND SUPPLIERS OF M. VILA AND ASSOCIATES, INC, ("VILA") NOT TO EXCEED \$85,000; AUTHORIZING KIMLEY-HORN & ASSOCIATES, INC. ("KIMLEY-HORN") TO PROCEED WITH WORK ORDER NO. 06-12 FOR A COST NOT TO EXCEED \$23,000.00; AUTHORIZING THE APPROPRIATE OFFICIALS TO EXECUTE THE NECESSARY DOCUMENTS; AUTHORIZING THE APPROPRIATION AND BUDGETING OF APPROXIMATELY \$281,789.00 TOWARD THE COMPLETION OF THIS PROJECT AND AUTHORIZING THE CITY MANAGER TO EXPEND THE BALANCE OF THE BUDGETED FUNDS AND NEWLY APPROPRIATED FUNDS TO COMPLETE THE PROJECT; AND PROVIDING AN EFFECTIVE DATE. (INTRODUCED BY CITY MANAGER DENNIS KELLY)**

WHEREAS, the City Commission adopted Resolution No. 2009-74 on October 13, 2009, which approved the *Design-Build Construction Contract Between City of North Bay Village and M. Vila & Associates, Inc.* (the "Agreement") for design and construction services for the redevelopment of the John F. Kennedy Causeway and concurrently authorized Work Order #1 in the amount of \$577,814 providing for design, permitting, and pre-construction activities along Kennedy Causeway; and

Exhibit "c"

11c(36)

**WHEREAS**, pursuant to the Agreement, M. Vila & Associates, Inc. ("Vila") was required to furnish payment and performance bonds ("Bonds") to protect the City from liability in the event that Vila failed to perform and complete the Project; and

**WHEREAS**, the City Commission approved Resolution No. 2010-32 on April 13, 2010, which authorized Work Order #2 in the amount of \$1,550,937 for construction of Phase 1 under the Agreement including new decorative walls, expanded concrete sidewalks, concrete curbs, concrete decorative crosswalks, irrigation, landscaping, and electrical on North Bay Island and a portion of Treasure Island at Adventure Avenue; and

**WHEREAS**; the City Commission approved Resolution No. 2011-49 on October 11, 2011, which authorized the City Manager to take all steps necessary to complete the design and construction of improvements to Dr. Paul Vogel Park ("Vogel Park"); and

**WHEREAS**, the City Commission approved Resolution No. 2011-56 on November 8, 2011, which authorized Change Orders 1 through 9 to the Agreement for a total increase of \$374,300.51, and to address, signage, street lighting repairs, irrigation, planting extensions and improvements to Vogel Park; and

**WHEREAS**, prior to completion of the work, Vila abandoned the Project, and, as a result, on or about May 31, 2012, the City terminated the Agreement for cause; and

**WHEREAS**, at the time of termination, the work under the Agreement was incomplete; and

**WHEREAS**, at the time of termination, the City had in its possession approximately \$305,913.75 in remaining contract funds; and

**WHEREAS**, subsequent to termination of the Agreement, the City in its due diligence determined that Vila had not purchased the required Bonds and had instead purchased a bond from Suretec Insurance Company ("Surety") in the amount of \$60,000.00 for a portion of the Work; and

**WHEREAS**, the City was provided with written notices of non-payment from Vila's subcontractors and suppliers for completed work on the Project in the amount of \$373,510.66 ("Claimants"); and

**WHEREAS**, despite demand from the City and Claimants, the Surety has declined to complete the remaining work or make payment to the Claimants, asserting that the Bonds do not provide coverage for the claims; and

**WHEREAS**, as a result of Vila's default and the Surety's actions, the City's most practical option is to complete the work with a completion contractor and arrange for payment of verified amounts to unpaid Claimants; and

**WHEREAS**, on May 8, 2012, the City Commission initially authorized the City Manager to attempt complete the work and pay unpaid Claimants in an amount not to exceed the remaining contract funds; and

**WHEREAS**, the City obtained several completion proposals, including one from Valley Crest; a general contractor (also a main subcontractor under Vila on the Project); and

**WHEREAS**, Valley Crest's completion proposal is based, in part, on using Southeast (the original electrical subcontractor on the job) to perform the remaining electrical and signalization work on the Project; and

**WHEREAS**, Valley Crest and Southeast have agreed to the negotiated and discounted lump sum amounts of \$235,999.00 for work performed for Vila on the Project and \$174,001.00 to complete the Project (totaling \$410,000.00); and

**WHEREAS**, the Claimants other than Valley Crest and Southeast have asserted claims for non-payment totaling approximately \$114,332.00; and

**WHEREAS**, Kimley-Horn has agreed to provide construction administration services to the City to oversee completion of the Project under Work Authorization number 06-12, for a cost not to exceed \$23,000.00; and

**WHEREAS**, based upon information presently available to the City, the total anticipated cost of completion of the work using Valley Crest, Southeast, and Kimley-Horn, payment to other unpaid Claimants, and termination-related expenses, including legal expenses, incurred and to be incurred by the City, is approximately \$587,702.00 ("Completion Sum"); and

**WHEREAS**, the anticipated Completion Sum exceeds the remaining contract funds under the Agreement by approximately \$281,789.00, which is currently unfunded in the City's budget; and

WHEREAS, in order to minimize further delays in the completion of the Work, and to mitigate the City's damages, the City Commission finds that it is in the City's best interest to waive the competitive bidding process for the award of a completion contract for the Project pursuant to Section 36.25 of the City Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA:

**Section 1.** **Recitals.** The foregoing whereas clauses are hereby ratified and confirmed as being true; and the same are hereby made a specific part of this Resolution.

**Section 2.** **Waiver of Competitive Bidding.** Competitive bidding for the award of a Completion Contract for the Project is waived pursuant to Section 36.25 of the City Code.

**Section 3.** **Authorization of City Officials.** The City Manager and/or his designee and the City Attorney are authorized to take all actions necessary to:

- a) negotiate a completion contract with Valley Crest subject to formal approval by the Commission (the cost of which together with amounts owed to Valley Crest and Southeast for previously completed work will not exceed \$410,000.00);
- b) negotiate payment to other unpaid Claimants for a sum not to exceed \$85,000; and
- c) authorize Kimley-Horn to proceed with Work Order 06-12.

**Section 4.** **Appropriation of Funds and Authorization of Fund Expenditures.** The City Commission budgets and appropriates \$281,789.00 to be utilized to complete the Project as follows: \$125,184 from the CITT Fund, \$74,382 from GO Bonds (for use on Vogel Park), and \$82,223 from the General Fund Reserves; and further authorizes the City Manager to expend such funds to implement the terms and conditions of this Resolution; provided however, that the City Manager's authorization to expend funds under the Completion Contract with Valleycrest shall not be triggered until the City Commission approves the Completion Contract.

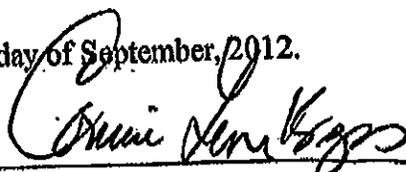
**Section 5. Effective Date.** This Resolution shall take effect immediately upon adoption.

The motion to adopt the foregoing Resolution was offered by Commissioner Stuart Blumberg, seconded by Mayor Connie Leon-Kreps.

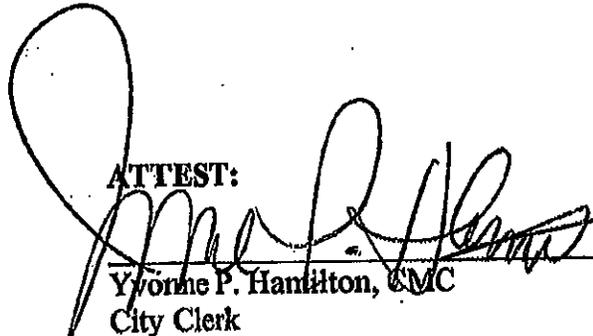
**FINAL VOTE AT ADOPTION:**

Mayor Connie Leon-Kreps	<u>Yes</u>
Vice Mayor Eddie Lim	<u>Yes</u>
Commissioner Stuart Blumberg	<u>Yes</u>
Commissioner Richard Chervony	<u>Yes</u>

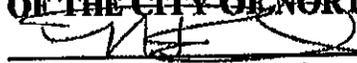
**PASSED AND ADOPTED** this 13<sup>th</sup> day of September, 2012.

  
\_\_\_\_\_  
Connie Leon-Kreps, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Yvonne P. Hamilton, CMC  
City Clerk

**APPROVED AS TO FORM FOR THE USE  
OF THE CITY OF NORTH BAY VILLAGE:**

  
\_\_\_\_\_  
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.  
City Attorney

City of North Bay Village Resolution: Completion and Payment/J. F. Kennedy Causeway Redevelopment and Dr. Paul Vogel Park Improvements Project.

**City of North Bay Village  
Kennedy Causeway/Vogel Park Project  
M. Vila & Associates**

Sub Contractors Settlements	Feature	Previous Work under M. Vila		
		Amount Due	Settlement Amount	Savings
ValleyCrest	Causeway	\$ 152,239	\$ 137,323	\$ 14,916
Southeast Underground	Causeway	\$ 109,640	\$ 98,676	\$ 10,964
Cemex	Causeway	\$ 10,607	\$ 8,500	\$ 2,107
Central Concrete	Causeway	\$ 8,326	\$ 6,500	\$ 1,826
CT3S	Causeway	\$ 61,000	\$ 6,500	\$ 54,500
AECOM (Subcontractor to CT3S).	Causeway	\$ 9,750	\$ -	\$ 9,750
Safety Systems Barricades Corp.	Causeway	\$ 4,193	\$ 2,000	\$ 2,193
Signs For You Inc. dba:SFY Arch Signs	Causeway	\$ 11,570	\$ 8,500	\$ 3,070
<b>SUBTOTAL CAUSEWAY</b>		<b>\$ 367,325</b>	<b>\$ 267,999</b>	<b>\$ 99,326</b>
Adonel Concrete	Park	\$ 4,283	\$ 2,300	\$ 1,983
Bennett	Park	\$ 16,058	\$ 12,800	\$ 3,258
Allied Trucking	Park	\$ 6,167	\$ 4,000	\$ 2,167
Gametime	Park	\$ 29,175	\$ 19,500	\$ 9,675
Research	Park	\$ 11,500	\$ 8,000	\$ 3,500
<b>SUBTOTAL PARK</b>		<b>\$ 67,183</b>	<b>\$ 46,600</b>	<b>\$ 20,583</b>
<b>COMBINED SUBTOTALS-AMOUNT DUE</b>		<b>\$ 434,508</b>	<b>\$ 314,599</b>	<b>\$ 119,909</b>

**Total Average Savings**

**27.60%**

Updated by Gary Brown, City Attorney December 3, 2012

11C(41)  
Exhibit "D"

**City of North Bay Village  
Kennedy Causeway Project  
M. Vila & Associates**

	September 2012 Funding & Expenses	Revised January 2013 Funding & Expenses
M Vila Contract Balance reconciliation		
M. Vila contract	\$ 2,464,283	\$ 2,464,283
Payments to M Vila	\$ 2,158,370	\$ 2,158,370
Contract balance available	\$ 305,913	\$ 305,913

<b>Project Completion Expenses</b>		
Valley Crest/Southeast completion proposal	\$ 410,000	\$ 410,000
Other unpaid claimants	\$ 114,332	\$ 78,600
Engineering fees	\$ 26,500	\$ 26,500
Legal Fees	\$ 31,370	\$ 31,370
Miscellaneous Expenses	\$ 5,500	\$ 5,500
<b>Total Completion Costs</b>	<b>\$ 587,702</b>	<b>\$ 551,970</b>

Balance Needed to Complete the Project	\$ 281,789	\$ 246,057
Funds to replace FDOT ARRA funding	\$ -	\$ 118,121
<b>Funding needed to complete project</b>		<b>\$ 364,178</b>

<b>Available Funds</b>		
CITT Fund (4) September 2012	\$ 125,184	\$ 125,184
CITT Fund (5) January 2013	\$ -	\$ 192,394
GO Bonds for Vogel Park	\$ 74,382	\$ 46,600
General Fund Reserves	\$ 82,223	\$ -
<b>Total</b>	<b>\$ 281,789</b>	<b>\$ 364,178</b>

<b>CITT Funding</b>				
	Revenue	Expenditures	M Vila	Fund balance
FY 2010				\$ 66,081
FY 2011	\$ 269,990	\$ 75,887	\$ -	\$ 260,184
FY 2012	\$ 292,900	\$ 127,440	\$ 125,184	\$ 300,460
FY 2013	\$ 280,248	\$ 217,146	\$ 192,394	\$ 170,461

Prepared and updated by Bert Wrains  
January 8, 2013

**110(42)**  
**Exhibit "E"**