RESOLUTION NO: _____

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 CONRACT 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 ASSOCIATIES, INC. ("VILA") NOT TO EXCEED $114,332.00; 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

11L(10)A

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

11L(101)B

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

11C(101)C

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 $114,332.00; and

c) authorize Kimley-Horn to proceed with Work Order 06-12.

11L(101)D

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.

FINAL VOTE AT ADOPTION:

Mayor Connie Leon-Kreps _____
Vice Mayor Eddie Lim _____
Commissioner Stuart Blumberg _____
Commissioner Richard Chervony _____

PASSED AND ADOPTED this 11th 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.

11C(10)E

MEMORANDUM
City of North Bay Village

DATE: September 6, 2012

TO: Yvonne P. Hamilton, CMC
City Clerk

FROM: Dennis Kelly, City Manager

SUBJECT: Introduction of Resolution

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

> **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 CONRACT 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 ASSOCIATIES, INC. ("VILA") NOT TO EXCEED $114,332.00; 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.**

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

DK:yph

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