

RESOLUTION NO. 37-07-06

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE A DEBRIS REMOVAL CONTRACT FOR THE 2006 HURRICANE SEASON BETWEEN THE TOWN OF LAKE PARK AND RKC LAND DEVELOPMENT, INC.; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Town of Lake Park (“Town”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town and RKC Land Development, Inc. (“Contractor”) have agreed to Debris removal within the Town limits for the up coming Hurricane season; Starting June 1, 2006 thru November 30, 2006 for a cost of \$ 11.00 per cubic yard.

WHEREAS, the Town Commission has determined that it is in the best interest of the health, safety and general welfare of the Town and its citizens to enter into a Contract with RKC Land Development, Inc..

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

SECTION 1.

The whereas clauses are hereby incorporated as true and correct as the findings of fact and conclusions of law of the Town Commission.

SECTION 2.

That Mayor is hereby authorized and directed to execute the contract for Hurricane debris removal with RKC Land development Inc.

SECTION 3.

This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was offered by Commissioner Balius who moved its adoption. The motion was seconded by Commissioner Carey, and upon being put to a roll call vote, the vote was as follows:

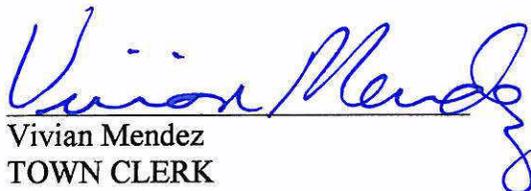
	AYE	NAY
MAYOR PAUL W. CASTRO	<u>X</u>	___
VICE-MAYOR ED DALY	<u>X</u>	___
COMMISSIONER CHUCK BALIUS	<u>X</u>	___
COMMISSIONER JEFF CAREY	<u>X</u>	___
COMMISSIONER PATRICIA OSTERMAN	<u>X</u>	___

The Town Commission thereupon declared the foregoing Resolution NO. 37-07-06 duly passed and adopted this 5th day of July, 2006.

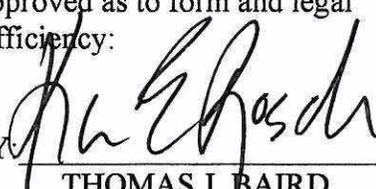
TOWN OF LAKE PARK, FLORIDA

BY: 
PAUL W. CASTRO
MAYOR

ATTEST-:


Vivian Mendez
TOWN CLERK



Approved as to form and legal sufficiency:
BY: 
THOMAS J. BAIRD
TOWN ATTORNEY

DEBRIS REMOVAL CONTRACT

TOWN OF LAKE PARK AND RKC LAND DEVELOPMENT, INC.

THIS CONTRACT made this 5th day of July, 2006, by and between the Town of Lake Park, a municipal corporation of the State of Florida, hereinafter designated as the "**TOWN**", and RKC LAND DEVELOPMENT, INC., a Florida Corporation, Florida State Contractor's License No.: N/A, FEID Number 65-1040404, 7040 Seminole-Pratt Whitney Road, Suite 25-4, Loxahatchee, FL 33470, (hereinafter designated as the "**CONTRACTOR**").

WITNESSETH THAT:

WHEREAS, the TOWN is a municipality with those powers and responsibilities enumerated by Chapter 166 Florida Statutes and the Florida Constitution; and

WHEREAS, the TOWN is empowered to enter into contractual arrangements with public agencies, private corporations or other persons, pursuant to Florida Statutes; and

WHEREAS, the TOWN has previously determined that it is need for the provision of the debris removal in the event of a natural or other disaster; and

WHEREAS, the TOWN has solicited and received competitive proposals for the required debris clearing and removal response assistance and services from debris located within legally declared disaster areas which may exist within the corporate limits of the TOWN, as a result of a disaster occurring during the calendar year 2006 generally, and the 2006 Hurricane season in particular; and

WHEREAS, the CONTRACTOR has submitted a Proposal in response to the TOWN's solicitation and the CONTRACTOR has represented that it is qualified, able and willing to satisfactorily provide said services; and

WHEREAS, the TOWN has found the CONTRACTOR's Proposal to be acceptable and the parties wish to enter into this CONTRACT; and

WHEREAS, the TOWN has budgeted funds in its current fiscal year budget which are available for the funding of this CONTRACT;

NOW, THEREFORE, the TOWN and the CONTRACTOR in consideration of the benefits flowing from each to the other do hereby agree as follows:

1. STATEMENT OF WORK

- 1.1 It is the intent of this Contract to provide equipment and manpower to remove all hazards to life and property in the affected communities within

the Town. Clean-up, demolition, debris removal will be limited to that which is determined to be in the interest of public safety and which is considered essential to the economic recovery of the affected area. The Work shall consist of the removal of damaged vegetation, damaged and fallen trees, bushes and shrubs, broken and partially broken and severed tree limbs, untreated structural timber, untreated wood products, brush, and the clean-up and removal of such debris to an approved dumpsite.

- 1.2 CONTRACTOR shall furnish all equipment, tools, labor, equipment, and other necessary items for the performance of the work which shall be included in the unit price set forth in Paragraph 2 of this Contract. Debris, including fallen trees, which extends from the TOWN right-of-way onto private property, shall be cut at the point it intersects with the right-of-way, and the part of the debris which lies within the TOWN right-of-way shall be removed. The CONTRACTOR shall not enter upon any private property without the prior written approval of the TOWN. Debris that is classified as "household hazardous waste" shall not be transported under this Contract. For purposes of this Agreement, the term "household hazardous waste" shall include but not be limited to, petroleum products, paint products, known or suspected hazardous materials such as asbestos, lead-based paint, and electrical transformer removed by others.
- 1.3 The CONTRACTOR shall conduct the Work so as not to interfere with the disaster response and recovery activities of the federal, state and local governments or agencies, or of any public utilities. Measurement for debris removal shall be by the cubic yard and may be predetermined by truck bed measurement based upon the interior dimensions of the truck's metal dump bed, if agreed upon by the parties in writing. In such event, the hauling capacity (in cubic yards) shall be recorded and marked on each truck or trailer with permanent markings, and each truck or trailer shall also be numbered for identification with a permanent marking. The TOWN shall have the right to inspect all debris removal operations of the CONTRACTOR and to verify quantities of debris at any time.
- 1.4 All debris shall be removed from each debris removal location by the CONTRACTOR and transported to a dumpsite approved by the TOWN. All dumping costs shall be paid by the TOWN. The CONTRACTOR shall coordinate with the dumpsite operator to facilitate effective dumping operations. All trucks used to haul debris must be capable of rapidly dumping its load without the assistance of other equipment; be equipped with a tailgate that will effectively contain the debris during transport and permit the truck to be filled to capacity; and measured and marked for its load capacity. Under no circumstances shall the CONTRACTOR mix debris hauled for third parties with debris hauled pursuant to this Agreement.

1.5 CONTRACTOR shall keep detailed written daily records and supporting documentation of the Work, specifically including a "Daily Report" describing the Work performed and the debris removed pursuant to this Contract. The records of the CONTRACTOR must at a minimum satisfy the required report and record keeping requirements of the Federal Emergency Management (FEMA) necessary for the reimbursement of the reasonable costs and expenses of this Contract by FEMA to the TOWN. In addition, each truckload of debris must be accurately measured and numbered and a "Debris Load Ticket" shall be prepared by the CONTRACTOR which shall contain at a minimum the following information:

1. The Load Ticket Number;
2. CONTRACTOR'S Name;
3. Date of truckload;
4. Quantity of debris measured by the cubic yard;
5. Truck Identification Number or License Tag Number;
6. Name of Truck Driver;
7. Classification of Debris (i.e., Vegetation, burnable, non-burnable, mixed, other);
8. Location of Debris Removal;
9. Location of Debris Dumpsite;
10. Loading Time (debris site arrival time and departure time)
11. Dumping Time (dumpsite arrival time and departure time)
12. Name of Contract Monitor.

1.6 CONTRACTOR shall provide the TOWN with two copies of the completed Load Tickets, and shall retain at least one copy for the CONTRACTOR's records. The CONTRACTOR shall submit the Daily Report to the TOWN each day during the term of the Contract, which Daily Report shall contain the following minimum information:

1. CONTRACTOR'S name
2. Crew Members Names
3. Location of Work
4. Date of report
5. Daily and cumulative totals of debris removed.

1.7 Discrepancies between the daily report and the Debris Load Tickets will be reconciled no later than the following day. Violation of the terms of this Paragraph 1 and its sub-parts shall constitute a material breach of the CONTRACT by the CONTRACTOR and the TOWN, at its sole discretion, may cancel the CONTRACT and all rights, title and interest of the CONTRACTOR shall thereupon cease and terminate

1.8 CONTRACTOR shall be responsible for control of pedestrian and vehicular traffic in the work area. The CONTRACTOR shall provide all

flag persons, signs, equipment, and other devices necessary to meet state, federal and local requirements. At a minimum, one flag person should be posted at each approach to the work area. The CONTRACTOR shall be responsible for taking corrective action in response to any notices of violation issued as a result of the CONTRACTOR's operations or actions or omissions during the performance of this Contract. Corrections for any such violations shall be at no additional cost to the TOWN.

2. CONTRACT TERM; PERIOD OF PERFORMANCE

2.1 Unless extended or terminated, the period of performance of this CONTRACT shall commence upon the effective date of the Notice to Proceed and continue for a period of thirty (30) days until terminated by the TOWN or renewed at the option of the TOWN. The CONTRACTOR shall not proceed with work under this CONTRACT until a written Notice to Proceed is received from the TOWN. No minimum or maximum number of hours is guaranteed by the TOWN.

2.2 The parties agree that the TIME IS OF THE ESSENCE, in the performance of each and every obligation under this CONTRACT. The CONTRACT type may be changed only by a change order or written amendment.

3. CONSIDERATION

3.1 **Debris Removal.** The consideration for the full and complete performance under this CONTRACT, subject only to such additions and deductions as are agreed to by the parties in writing shall be **\$11.00 PER CUBIC YARD**, which includes the costs of transportation to the debris disposal site, but does not include dumping fees.

3.2 **Additional Optional Work:** Stump grinding shall be performed at the TOWN'S request at a cost of \$_____ (per stump) for each stump removed with 25 to 36 inch diameter base cuts. . Stump grinding shall be performed at the TOWN's request at a cost of \$_____ (per stump) for each stump removed with 37 to 48 inch diameter base cuts. . Stump grinding shall be performed at the TOWN's request at a cost of \$_____ (per stump) for each stump removed with 49 inch and larger diameter base cuts. The CONTRACTOR shall submit certified pay requests for completed work, and the TOWN shall have ten (10) days within which to disapprove a payment request. The TOWN shall pay the CONTRACTOR for performance under this Contract within thirty (30) days of the receipt of the pay request and verification of the Work by the TOWN.

4. SUPERVISION OF THE WORK BY CONTRACTOR

The CONTRACTOR, at all times during performance and until the work is completed and accepted, shall maintain a competent superintendent ("Project

Manager”) at the Site while work is in progress to act as the CONTRACTOR’s agent. The Project Manager shall have the full authority to receive instructions from the TOWN and to execute the orders or directions of the TOWN, including promptly supplying any materials, tools, equipment, labor, and incidentals that may be required. The Project Manager must speak and understand English fluently.

5. INSURANCE REQUIREMENTS

5.1 The CONTRACTOR shall maintain, or cause to be maintained, the following specified insurance coverage’s in the amounts set forth hereafter during the full period of the CONTRACT, which must include the following coverage’s and minimum limits of liability:

- a. **WORKERS’ COMPENSATION AND EMPLOYERS’ LIABILITY INSURANCE** for all employees of the CONTRACTOR for Statutory Limits in compliance with the applicable state and federal laws. Notwithstanding the number of employees or any other statutory provisions to the contrary, coverage shall extend to all employees of the CONTRACTOR and all subcontractors.
- b. **COMPREHENSIVE GENERAL LIABILITY** with the minimum limits of \$1,000,000.00, Per Occurrence, Combined Single Limit for Bodily Injury Liability, Property Damage Liability, Premises and Operations, Independent contractors, Products and Completed Operations, Broad Form Property / Personal Injury, XCU coverage, and a contractual Liability Endorsement.
- c. **BUSINESS AUTO LIABILITY** with minimum limits of \$1,000,000.00, Per Occurrence, Combined Single Limit for Bodily Injury and Property Damage Liability. This insurance must be an "any-auto" policy including Owned, Hired, Non-Owned, and Employee Non-Ownership Coverage.

5.2 The TOWN shall be included as an Additional Named Insured under the General Liability and Automobile Liability policies. Current valid insurance policies meeting the requirements herein identified shall be maintained during the duration of the CONTRACTOR. There shall be a thirty (30) day notification to the TOWN, in the event of cancellation or modification of any stipulated insurance policy. It shall be the responsibility of the CONTRACTOR to ensure that all subcontractors are adequately insured or covered under their policies.

5.3 All Certificates of Insurance shall be kept on file with the TOWN, and approved by the TOWN prior to the commencement of any work activities. The TOWN may at its discretion, require the CONTRACTOR to provide a complete certified copy of the insurance policy(s). If this CONTRACT includes the installation of machinery and/or equipment into an existing structure, the Comprehensive General Liability policy must include an endorsement covering

same, including installation and transit.

5.4 The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the State of Florida with the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide: Financial Stability: B+ to A+.

5.5 All required insurance shall preclude any underwriter's rights of recovery or subrogation against the TOWN with the express intention of the parties being that the required coverage's protect both parties as the primary insurance for any and all losses covered by the above described insurance.

5.6 The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as they appear in any policy of insurance in which the TOWN is named as an additional named insured shall not apply to TOWN.

5.7 Violation of the terms of this Paragraph 5 and its sub-parts shall constitute a material breach of the CONTRACT by the CONTRACTOR and the TOWN, at its sole discretion, may cancel the CONTRACT and all rights, title and interest of the CONTRACTOR shall thereupon cease and terminate.

6. **INDEMNIFICATION**

6.1 For \$100.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged as part of the first payment for services, the CONTRACTOR shall indemnify, defend, and save harmless the TOWN, its elected officials, agents, guests, invitees and employees, from all suits, actions, claims, demands, damages, losses, expenses, including attorney's fees, costs and judgments of every kind and description to which the TOWN, its agents, guests, invitees, or employees may be subjected by reason of personal injury, bodily injury including death, or property damage, resulting from or growing out of any intentional, negligent, reckless, or careless act of commission, omission, or consequential damage directly or indirectly connected with the CONTRACTOR, its subcontractors, its agents, or employees, and committed in connection with this CONTRACT, CONTRACTOR'S performance hereof, or any work performed hereunder. CONTRACTOR shall pay all losses, claims, liens, settlements, or judgments of any nature whatsoever in connection with the foregoing indemnification, including but not limited to, reasonable attorney's fees (including appellate attorneys' fees and costs).

6.2 TOWN reserves the right to select its own counsel to conduct any defense in any such proceedings and all costs and fees associated therewith shall be the responsibility of the CONTRACTOR under the indemnification agreement set forth herein. Nothing contained herein is intended nor shall it be construed to waive TOWN's rights and immunities under the common law or Florida Statute 768.28, as amended from time to time.

7. SUBCONTRACTORS

The CONTRACTOR is as fully responsible to the TOWN for the acts, coordination and omissions of his subcontractors and of persons either directly or indirectly employed by said subcontractor, as he is for the acts and omissions of persons directly employed by him. The CONTRACTOR shall submit the names of the subcontractors proposed for the work for TOWN acceptance at the pre-construction conference. The CONTRACTOR shall not substitute any subcontractor without the prior written consent of the TOWN. Nothing contained in the CONTRACT shall create any contractual relationship between any subcontractor and the TOWN.

8. PERMITS AND LICENSES

The CONTRACTOR shall, without additional expense to the TOWN, be responsible for obtaining all applicable and required licenses and permits and for complying with any applicable Federal, State and municipal laws, codes, and regulations in connection with the prosecution of the work. The CONTRACTOR shall use its best efforts to obtain all necessary permits as soon as possible after the date of CONTRACT commencement. Any delays in obtaining permits must be brought to the attention of the TOWN without delay. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work. The TOWN shall not be responsible for monitoring the CONTRACTOR's compliance with any laws or regulations.

9. INSPECTION AND ACCEPTANCE OF THE WORK

All work shall be subject to inspection by the TOWN at all reasonable times and at all places prior to acceptance. Any such inspection and testing is for the sole benefit of the TOWN, and shall not relieve the CONTRACTOR of the responsibility of providing quality control measures to assure that the work strictly complies with the CONTRACT requirements. No inspection by the TOWN shall be construed as constituting or implying acceptance. Unless otherwise provided in this CONTRACT, acceptance by the TOWN shall be made as promptly as practicable after completion and inspection of all work required by this CONTRACT, or that portion of the work, that the TOWN determines can be accepted separately.

10. OCCUPATIONAL SAFETY AND HEALTH REQUIRMENT

The CONTRACTOR shall take all precautions necessary for the protection of life, health, and general occupational welfare of all persons, including employees of both the CONTRACTOR and the TOWN, until the CONTRACTOR has completed the work required under the CONTRACT as provided under Section 17. Inspection and Acceptance. The CONTRACTOR shall comply at all times with applicable Federal, State, and local laws, provisions, and policies governing

safety and health, including 29 CFR 1926, including all subsequent revisions and updates.

11. FORCE MAJEURE

Notwithstanding any provisions of this CONTRACT to the contrary, the parties shall not be held liable if failure or delay in the performance of this CONTRACT arises from fires, floods, strikes, terrorists acts, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties.

12. GOVERNING LAW AND VENUE

The laws of the State of Florida shall govern all aspects of this CONTRACT. In the event it is necessary for either party to initiate legal action regarding this CONTRACT, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justifiable in federal court.

13. NO ASSIGNMENT

The CONTRACTOR shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this CONTRACT without the prior written consent of the TOWN.

14. ATTORNEY'S FEES

If either party utilizes legal action, including appeals at all levels, to enforce this CONTRACT, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

15. INDEPENDENT CONTRACTOR STATUS

The CONTRACTOR is an independent contractor and is not an employee or agent of the TOWN. Nothing in this CONTRACT shall be interpreted to establish any relationship other than that of an independent contractor, between the TOWN and the CONTRACTOR, its employees, agents, subcontractors, or assigns, during or after the performance of this CONTRACT. The CONTRACTOR is free to provide similar services to others.

16. INTEGRATION

This CONTRACT states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. The CONTRACTOR recognizes that any

representations, statements or negotiations made by the TOWN staff do not suffice to legally bind the TOWN in a contractual relationship unless they have been reduced to writing, approved and signed by an authorized TOWN representative. This CONTRACT, once properly executed, shall bind the parties, their assigns, and successors in interest.

17. TERMINATION FOR CAUSE AND DEFAULT

In the event that the CONTRACTOR shall default in any of the terms, obligations, restrictions or conditions of the CONTRACT Documents, the TOWN shall give written notice to the CONTRACTOR, by certified mail, return receipt requested that action be taken to correct the default must be taken within ten (10) calendar days thereof, and that the default must be corrected to the satisfaction of the TOWN within fifteen (15) days of the notice, unless a longer time is specified by the TOWN. In the event the CONTRACTOR has failed to correct the conditions of default, or the default is not remedied to the satisfaction of the TOWN, the TOWN shall have all legal remedies available to it, including, but not limited to, the termination of the CONTRACT, in which case, the CONTRACTOR shall be liable for all procurement and re-procurement costs, and any and all damages permitted by law arising from the default and breach of the CONTRACT.

18. TERMINATION FOR CONVENIENCE OF TOWN

Upon seven (7) calendar days written notice, delivered by certified mail, return receipt requested to the CONTRACTOR, the TOWN may, without cause and without prejudice to any other right or remedy, terminate the CONTRACT for the TOWN'S convenience whenever the TOWN determines that such termination is in the best interest of the TOWN. Where the CONTRACT is terminated for the convenience of the TOWN, the notice of termination must state that the CONTRACT is being terminated for the convenience of the TOWN under the termination clause and the extent of the termination. Upon receipt of the notice of termination, the CONTRACTOR shall promptly discontinue all work at the time.

19. NON-EXCLUSIVITY

The Award of this CONTRACT shall not impose any obligation on the TOWN to utilize the CONTRACTOR, for all work of this type, which may develop during the CONTRACT period. The TOWN specifically reserves the right to concurrently contract with other companies for similar work if it deems such action to be in the TOWN's best interest.

20. FUNDING

In the event that sufficient budgeted funds are not available for a new fiscal period, the TOWN shall notify the CONTRACTOR of such occurrence and the

CONTRACT shall terminate on the last day of the current fiscal period without penalty or expense to the TOWN.

21. SAFETY

The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The CONTRACTOR shall comply with the rules and regulations of the Florida Department of Commerce regarding industrial safety (Fla. Stat. Section 440.56), and with the standards set forth in the Occupational Safety and Health Act of 1970 (OSHA), and its amendments. The CONTRACTOR shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- a. All employees on the work site and all other persons who may be affected thereby.
- b. The work and all materials and equipment incorporated therein.
- c. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, structures and utilities not designated for removal, relocation or replacement in the course of the work.

22. NOTICE

All notices and invoices to the TOWN shall be sent to the following address:

Town of Lake Park
Attention: Town Manager
535 Park Avenue
Lake Park, FL 33403

All notices and invoices to the CONTRACTOR shall be sent to the following address:

RKC Land Development Inc.
7040 Seminole-Pratt Whitney Road, Suite 25-4,
Loxahatchee, FL 33470
(Tel.) (561) 791-7866
(Fax) (561) 791-9219
(E-mail) rkclanddevelop@bellsouth.net

23. SEVERABILITY

Should any part, term or provision of this Agreement be by the courts decided to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby.

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

ATTEST

THE TOWN OF LAKE PARK

By: *Vivian Mendez*
Vivian Mendez, Town Clerk

By: *Paul Castro*
Paul Castro, Mayor



APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: *Ka E. Rash*
Town Attorney

ATTESTED

CONTRACTOR

By: *Kimberly A. Alexander*
Signature

By: *Robert K. Carter*
Signature

Kimberly A. Alexander
Printed Name

Robert K. Carter
Printed Name

Administrative Asst.
Title

Pres.
Title