

AGREEMENT

This is an Agreement ("Agreement") dated 10/10, 2012, between the City of Dania Beach, Florida, a Florida municipal corporation (the "City"), with its principal place of business located at 100 West Dania Beach Boulevard, Dania Beach, Florida 33004, and W. D. Thompson, Inc., a Florida corporation, d/b/a Beach Raker (the "Contractor"), with its principal place of business located at 220 NE 13th Street, Pompano Beach, Florida 33060.

In consideration of the mutual terms, conditions, promises, covenants and payments set forth in this Agreement, the sufficiency and receipt of which are acknowledged, City and Contractor agree as follows:

ARTICLE 1.0 SERVICES AND RESPONSIBILITIES

1.1 The Contractor's responsibility under this Agreement is for beach cleaning services for the City as further described in the Scope of Services in Exhibit "A", a copy of which is attached to and incorporated into this Agreement by this reference. The cost for such services shall not exceed an amount of Seventy Nine Thousand Six Hundred Twenty One Dollars and 80 cents (\$79,621.80) per year.

1.2 Contractor agrees to do everything required by this Agreement and to comply with any and all other provisions in the documents and items incorporated by reference into this Agreement.

1.3 Contractor agrees that all work performed under this Agreement shall be done in a professional manner and that Contractor's efforts will produce quality results.

1.4 Contractor represents to City, with full knowledge that City is relying upon these representations when entering into this Agreement with Contractor that Contractor has the expertise, experience and work force sufficient to timely perform the services to be provided by Contractor, pursuant to the terms of this Agreement, and the terms of Request for Proposal No. 12-018 and the response to the Request for Proposal, which are made a part of and incorporated into this Agreement with this reference.

1.5 Contractor represents to City that Contractor is properly licensed by all applicable federal, state and local agencies to provide the services specified under this Agreement. If any of the Contractor's licenses are revoked, suspended or terminated for any reason by any governmental agency, Contractor shall notify the City immediately.

1.6 Contractor guarantees all work and shall immediately correct any defects or deficiencies which may appear upon written notification by the City.

ARTICLE 2.0 TERMS AND CONDITIONS

2.1 Contractor shall begin to perform the work as and when so directed by the City.

Exhibit "A"

2.2 The term of the Agreement will be for a one (1) year period with the City's option to renew for two (2) one (1) year periods.

2.3 In the event the services are scheduled to end either by contract expiration or by termination by the City (at the City's discretion), the Contractor shall continue the services, if requested by the City, until new services can begin. At no time shall this transitional period extend for more than one hundred eighty (180) days beyond the expiration date of the existing contract. The Contractor will be reimbursed for this service at the rate in effect when this transitional period clause is invoked by the City.

2.4 This Agreement may be terminated by City if Contractor fails to perform the work to City's sole and reasonable approval, after City sends written notice of any deficiency to Contractor and Contractor does not cure such deficiency within seven (7) days from the date of such notice. In such event, the Contractor shall be paid compensation for completed work accepted by the City, if such work meets City's sole and reasonable approval, which approval will not be unreasonably withheld. In the event that the Contractor abandons work specified in this Agreement or causes it to be terminated, Contractor shall indemnify the City against any loss pertaining to its abandonment up to a maximum of the amount to be paid under this Agreement. All finished or unfinished materials, documents and reports prepared by Contractor shall become the property of City and shall be delivered by Contractor to City before payment, if any, is made to Contractor by City.

2.5 Termination of Agreement for Convenience. It is expressly understood and agreed that the City may terminate this Agreement at any time for any reason or no reason at all by giving the Contractor notice by certified mail, return receipt requested, directed to the principal office of the Contractor, thirty (30) days in advance of the termination date. In the event that the Agreement is terminated pursuant to this provision, the Contractor shall be entitled to be compensated for the services rendered from the effective date of execution of the Agreement up to the date of receipt of Notice of termination. Such compensation shall be based on the percentage of work completed, as fairly and reasonably determined by City after conferring with Contractor.

ARTICLE 3.0
COMPENSATION AND METHOD OF PAYMENT

- 3.1 The Contractor will be compensated on a monthly basis.
- 3.2 Payment will be made to Contractor at:

W.D. Thompson, Inc.
Attn: Timothy Greener, President
220 NE 13th Street
Pompano Beach, Florida 30360

3.3 City's acceptance of work shall constitute a waiver of all claims by the City except for any or all claims arising from the guarantee in this Agreement, unsettled liens, lawsuits, deficiencies or faulty work appearing after final payment for such work. The acceptance of payment shall constitute a waiver of all claims against City by the Contractor.

3.4 Contractor shall, before any final payment is made by City, provide City copies of releases of all liens from any and all subcontractors, materials' providers and the like, who or which supplied or furnished any labor, services or materials that were used in the work. Contractor shall then furnish the City a "No Lien Affidavit". Final payment shall be made upon submission by the Contractor of evidence satisfactory to the City that all payrolls, material bills and other costs incurred by the Contractor in connection with the work, have been paid in full, and after all guarantees and specifications for products, materials, or both, incorporated into the work that appear in this Agreement have been furnished to and found acceptable by the City.

ARTICLE 4.0 **CHANGES IN SCOPE OF WORK**

4.1 City or Contractor may request changes that increase, decrease or otherwise modify the work, as described in this Agreement. These changes may affect the compensation, and, if so, they must be described in a written amendment, executed by the authorized agents of both of the parties, prior to any deviation from the terms of this Agreement. In no event will Contractor deviate or permit deviation from the work described in this Agreement without City's advance written consent.

ARTICLE 5.0 **PROTECTION OF CITY'S PROPERTY**

5.1 At all times during the performance of this Agreement, the Contractor shall protect the City's property and the property of others from all damage whatsoever on account of Contractor's performance of work.

ARTICLE 6.0 **INDEMNIFICATION**

6.1 Contractor shall, in addition to any other obligation to indemnify the City and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the City, including its agents, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), or costs arising out of any actual or alleged:

- (a) bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting from, or any other damage or loss arising out of or resulting or claimed to have resulted in whole or in part from any actual or alleged act or omission of the Contractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the work;

- (b) any violation of law, statute, ordinance, governmental administrative order, rule, regulation, or infringement of patent rights by Contractor in the performance of the work;
- (c) liens, claims, actions made by the Contractor or other party performing the work;
- (d) claims of whatsoever nature related to collection practices or any actions of a contradictory nature pursuant to Contract or in an attempt to collect monies due or claimed to be due to the City.

ARTICLE 7.0 INSURANCE

7.1 The Contractor shall not commence work under this Agreement until Contractor has obtained all insurance required by the City Risk Manager, and that such insurance has been approved by the Risk Manager of the City. The Contractor shall not allow any subcontractor to commence work on any subcontract until the subcontractor has all of the insurance coverages required of any subcontractor, and that they have been approved by City. In addition, Contractor shall be responsible for any policy deductibles and self-insured retentions. Contractor shall provide, pay for and maintain in force at all times during the term of this Agreement, such insurance, including Workers' Compensation, and Comprehensive General Liability insurance as stated below:

- A. General Liability Insurance is to include bodily injury, broad form property damage, products and completed operations, blanket contractual liability with limits of not less than one million dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) annual aggregate. City shall be an "additional insured" under this policy, and Owner shall be provided a certificate of insurance evidencing coverage and named insured status on the policy.
- B. 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, for the benefit of the Contractor or its employees.

Employers' Liability. Minimum limits of One Hundred Thousand Dollars (\$100,000.00) each accident.

- C. Comprehensive general liability insurance, including contractual, with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence, combined single limit for bodily injury liability and property damage liability. The City shall be included as an "additional insured" under this policy, and Owner shall be provided a certificate of insurance evidencing coverage and named insured status on the policy.

- D. Automobile Liability with minimum limit of One Million Dollars (\$1,000,000.00) combined single limit.
- E. If Contractor hires a subcontractor for any portion of any work, then such subcontractor shall provide general liability insurance with minimum limits of liability of One Million Dollars (\$1,000,000.00).
- F. The Contractor shall provide the Risk Manager of the City Certificates of Insurance for coverages and policies required by this Agreement. All certificates shall state that the City shall be given thirty (30) days' advance notice prior to expiration or cancellation of any policy. Such policies and coverages shall not be affected by any other policy of insurance which the City may carry in its own name. All certificates (of insurance) must clearly identify the contract to which they pertain, including a brief description of the subject matter of the contract.

7.2 Contractor shall file Certificates of Insurance with the City, reflecting evidence of the coverages. The City is to be named as an "additional insured" with respect to any coverages required by this Agreement. They shall be filed with the City Risk Manager within ten (10) days of the date of this Agreement by all parties. These Certificates shall contain a provision that coverages afforded under these policies will not be canceled until at least thirty (30) days' prior written notice has been given to the City. Policies for coverages shall be issued by companies authorized to do business under the laws of the State of Florida and any such companies' financial ratings must be no less than "A" in the latest edition of the "BEST'S KEY RATING GUIDE", published by A.M. Best Guide.

7.3 Coverages shall be in force at all times and until all work required to be performed under the terms of this Agreement is satisfactory to the City or until the conclusion of this Agreement, including any renewals of it. In the event insurance certificates provided to City indicate that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the Contractor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverages for the balance of the period of the Agreement and any extension of it is in effect. **THE CONTRACTOR SHALL NOT PERFORM OR CONTINUE TO WORK PURSUANT TO THIS AGREEMENT UNLESS ALL COVERAGES REMAIN IN FULL FORCE AND EFFECT.**

7.4 The Contractor shall hold the City, its agents and employees, harmless on account of claims for damages to persons, property or premises arising out of the operations to complete any work. The City reserves the right to require Contractor to provide and pay for any other insurance coverage that City deems necessary depending upon the possible exposure to liability.

ARTICLE 8.0
INDEPENDENT CONTRACTOR

8.1 This Agreement does not create an employee/employer relationship between the parties. Contractor agrees that it is not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act, minimum wages' laws and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the Florida Workers' Compensation Act, and the Florida unemployment insurance law. The Contractor shall retain sole and absolute discretion and exercise its judgment as to the manner and means of carrying out Contractor's activities and responsibilities toward completion of work. Administrative procedures applicable to services rendered under this Agreement shall be those of Contractor, which policies of Contractor shall not conflict with City, H.U.D., or United States policies, rules or regulations relating to the use of Contractor's funds provided for in this Agreement. The Contractor agrees that it is a separate and independent enterprise from the City, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Contractor and the City and the City will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages, overtime premiums or both.

ARTICLE 9.0
DEFAULT OF AGREEMENT AND REMEDIES

9.1 Remedies in Default. In case of any default by Contractor, the City shall notify the Contractor, in writing, of such default and direct Contractor to comply with all provisions of the Agreement. If Contractor does not timely cure such default of the date after notice was sent by City, City may declare a default of this Agreement and may notify the Contractor of such declaration of default in writing and terminate the Agreement.

ARTICLE 10.0
BANKRUPTCY

10.1 It is agreed that if the Contractor is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective on the date and at the time the bankruptcy petition is filed, and Contractor will automatically be in default of this Agreement and the provisions of Article 9 will be enforced at City's discretion.

ARTICLE 11.0
DISPUTE RESOLUTION

11.1 Venue; Fees. All claims, counterclaims, disputes and other matters in question between City and Contractor arising out of, relating to or pertaining to this Agreement, or the breach of it, or the services of it, or the standard of performance required in it, shall be addressed by resort to non-binding mediation as authorized under the laws and rules of Florida; provided, however, that in the event of any dispute between the parties, the parties agree to first negotiate with each other for a resolution of the matter or matters in dispute and, upon failure of such negotiations to resolve the dispute, the parties shall resort to mediation. If mediation is unsuccessful, any such matter may be determined by litigation in a court of competent jurisdiction in Broward County, Florida, or the Federal District Court of the Southern District of Florida and appropriate appellate courts for such venue and jurisdiction. In any litigation, the parties agree to each waive any trial by jury of any and all issues. In the event of any litigation which arises out of, pertains to, or relates to this Agreement, or the breach of it, or the standard of performance required in it, the prevailing party shall be entitled to recover reasonable attorneys' fees from the non-prevailing party.

11.2 Operations During Dispute.

In the event that a dispute, if any, arises between the City and the Contractor relating to this Agreement, or its performance or compensation, the Contractor agrees to continue to render service in full compliance with all terms and conditions of this Agreement as required by the City.

ARTICLE 12.0
MISCELLANEOUS

12.1 Legal Representation. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement. Further, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply to this Agreement due to the joint contributions to it of both parties.

12.2 Signature of this Contract by the Contractor shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the Contractor's most favored customer for the same or substantially similar service. The rates and costs shall be adjusted to exclude any significant sums should the City determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate presentation of fees paid to outside contractors. The City shall exercise its rights under this clause within three (3) years following final payment.

12.3 Assignments, Subcontracts and Amendments. This Agreement, and any interests in it, shall not in whole or in part be assigned, subcontracted, transferred in any way or otherwise encumbered, under any circumstances, by Contractor without the prior written consent of City. For purposes of this Agreement, any change of ownership of or controlling interest in Contractor shall constitute an assignment which requires City approval. Violation of the terms of this paragraph shall constitute a breach of this Agreement by Contractor and City may, in its discretion, cancel this Agreement and all rights of Contractor under this Agreement will terminate.

It is further agreed that no modification, amendment or alteration of the terms or conditions contained in this Agreement shall be effective unless contained in a written document executed by the authorized agents of the parties.

12.4 No Contingent Fees. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the City shall have the right to terminate the Agreement without liability and, in its discretion, to deduct from the Agreement price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

12.5 Notice. Whenever any party desires to give notice to the other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended. The places for giving of notice shall remain as set forth below until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the Contractor and the City designate the following as the respective persons and places for giving of notice:

City: Robert Baldwin, City Manager
City of Dania Beach, Florida
100 West Dania Beach Boulevard
Dania Beach, Florida 33004

Copies to: Thomas J. Ansbro, City Attorney
City of Dania Beach, Florida
100 West Dania Beach Blvd.
Dania Beach, FL 33004

Contractor: W.D. Thompson, Inc. d/b/a Beach Raker
Attn: Timothy Greener
220 NE 13th Street
Pompano Beach, Florida 33060

12.6 Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and is authorized to bind and obligate such party with respect to all provisions contained in this Agreement.

12.7 Headings. Headings in this Agreement are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

12.8 Severability. If any provision of this Agreement or application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, and shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

12.9 Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida.

12.10 Extent of Agreement. This Agreement represents the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral.

12.11 Waiver. Failure of the City to insist upon strict performance of any provision or condition of this Agreement, or to enforce any right contained in it, shall not be construed as a waiver or relinquishment for the future of any such provision, condition or right, but the same shall remain in full force and effect.

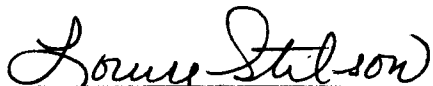
12.12 Conflict. In the event there is a conflict between any of the terms in any of the documents contained in any Exhibit to this Agreement and any terms of this Agreement, the terms of this Agreement shall prevail.


IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY:

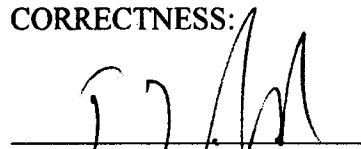
CITY OF DANIA BEACH, FLORIDA,
a Florida municipal corporation

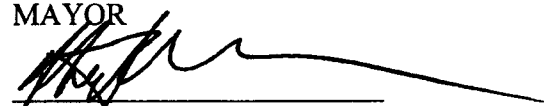
ATTEST:


LOUISE STILSON, CMC
CITY CLERK 10-10-12


PATRICIA FLURY
MAYOR

APPROVED FOR FORM AND
CORRECTNESS:

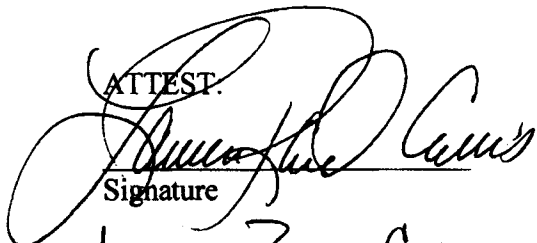

THOMAS J. ANSBRO
CITY ATTORNEY


ROBERT BALDWIN
CITY MANAGER



CONTRACTOR:

W. D. THOMPSON, INC., a Florida corporation, d/b/a BEACH RAKER

ATTEST.


Signature

LAUREN RAND-CALLIS
PRINT Name



Signature

Timothy Greener
PRINT Name

President.
TITLE

STATE OF FLORIDA
COUNTY OF Broward

BEFORE me on October 5, 2012, 2012, personally appeared Timothy Greener, as Pres. of W. D. THOMPSON, INC., a Florida corporation d/b/a BEACH RAKER, who acknowledged execution of the foregoing Agreement for the use and purposes mentioned in it, and that the instrument is the act and deed of the Contractor. Such person is personally known to me or produced FL Drivers License as identification.


NOTARY PUBLIC
State of Florida

My Commission Expires:

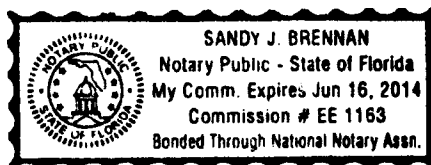


EXHIBIT "A"
SCOPE OF SERVICES

A. Tide line:

Remove all man-made material along approximately 2200 feet of shoreline within the City limits. Make multiple passes along shoreline with tractor-towed beach cleaner machine five (5) days per week. Those five (5) days will be Monday, Wednesday, Friday, Saturday and Sunday.

B. Upper Beach:

Sanitize and groom upper beach area from ten feet east of dune line, seaward to the high water line. This should provide a smooth cleaned combed appearance to the beach without tire tracks. This service shall only be performed during the months of November through February (outside of turtle nesting season). Special permits must be obtained from the Florida Fish and Wildlife Conservation Commission ("FWCC") on behalf of the City of Dania Beach to use this equipment during Turtle season.

C. Upper Beach, North and South of the Pier:

As required and directed by City (minimum of once per month), sift sand around volleyball and picnic areas on North side of pier and around restaurant area on South side of pier to remove shells, rocks, bottle caps, cigarette butts and small foreign objects.

D. Beach Entrances, Walkways, and Playground area:

As required and directed by City (minimum of once per month), sift sand around beach entrance walkways and children's playground areas to remove shells, rocks, bottle caps, cigarette butts, and small foreign objects. At entrances and walkways with wood decking, remove accumulated sand to expose wood decking as necessary and directed by City.