

Meeting Date: Sept 13, 2011

Agenda Item 1

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration Workshop

SHORT TITLE A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONTRACT BETWEEN THE CITY OF POMPANO BEACH AND SHIFF CONSTRUCTION & DEVELOPMENT, INC. FOR OPEN CONSTRUCTION WORK; PROVIDING AN EFFECTIVE DATE.

OR MOTION: _____

Summary of Purpose and Why:

At the April 27, 2010 meeting, the City Commission approved the City to utilize a Job Order Contract (JOC) by piggybacking an existing contract between Broward County and Shiff Construction & Development, Inc. This resolution formalizes the agreement between the City and Shiff Construction & Development, Inc. incorporating all contract terms and conditions for each individual job order that will be executed. The process will continue as previously directed: each job order will be presented to City Commission for consideration and funding approval.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Staff
 - (2) Primary staff contact: Robert A. McCaughan, Public Works Director Ext. 4097
 - (3) Expiration of contract, if applicable: _____
 - (4) Fiscal impact and source of funding: None.
- _____

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
General Services		Approve	
Public Works	9/6/2011	Approve	<i>Robert A. McCaughan</i>
Finance	9/7/2011	Approve	<i>S. Sublette</i>
Budget	9/7/11		<i>John Brown</i>
City Attorney	9/7/11		

Advisory Board
 Development Services Director
 City Manager

James Beard

ACTION TAKEN BY COMMISSION:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>	<u>Workshop</u>
1st Reading _____	1st Reading _____	Results: _____	Results: _____
2nd Reading _____	_____	_____	_____
_____	_____	_____	_____



City Attorney's Communication #2011-1627

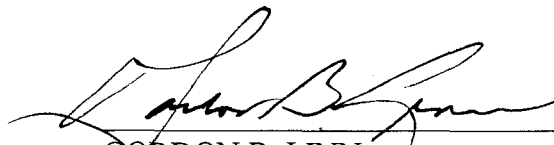
September 1, 2011

TO: Robert A. McCaughan, Public Works Director
FROM: Gordon B. Linn, City Attorney
RE: Shiff Construction & Development, Inc. – Open Construction Work Contract

As discussed, I have prepared and attached the following form of ordinance:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONTRACT BETWEEN THE CITY OF POMPANO BEACH AND SHIFF CONSTRUCTION & DEVELOPMENT, INC. FOR OPEN CONSTRUCTION WORK; PROVIDING AN EFFECTIVE DATE.

Please ensure that any blanks in the agreement are filled in prior to submitting the resolution to the City Commission.



GORDON B. LINN

/jrm
l:cor/pw/2011-1627

Attachment

RESOLUTION NO. 2011-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONTRACT BETWEEN THE CITY OF POMPANO BEACH AND SHIFF CONSTRUCTION & DEVELOPMENT, INC. FOR OPEN CONSTRUCTION WORK; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a Contract between the City of Pompano Beach and Shiff Construction & Development, Inc. for open construction work, a copy of which Contract is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Contract between the City of Pompano Beach and Shiff Construction & Development, Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2011.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

GBL/jrm
9/1/11
l:reso/2011-419

CONTRACT

THIS IS A CONTRACT, by and between City of Pompano Beach, a municipal corporation of the State of Florida, hereinafter referred to as City, and Shiff Construction & Development, Inc., a Florida corporation, hereinafter referred to as Contractor.

WITNESSETH, that Contractor and City, for the considerations hereinafter named, agree as follows:

ARTICLE 1. SCOPE OF WORK

- 1.1. This is an indefinite quantity contract for construction work.
- 1.2. The Contractor shall be bound by the General Conditions and all other items forming the Contract Documents.
- 1.3. The Contractor shall provide and perform all Work and take all the necessary measures to complete the Detailed Scope of Work for each individual Job Order in accordance with the General Conditions attached hereto and made a part hereof, and in a proper and workpersonlike manner in strict accordance with the Contract Documents, and shall perform all other obligations imposed by the Contract.

ARTICLE 2. CONTRACT TERM

- 2.1. The Base Period of this Contract is for 12 months.
- 2.2. For each Job Order issued, the Contractor shall complete the Detailed Scope of Work within the Job Order Completion Time. The Contractor may, on individual Job Orders, be required to pay to the City as Liquidated Damages a sum in accordance with the General Conditions for each and every calendar day that the Contractor shall be in default on that individual Job Order.

ARTICLE 3. THE CONTRACT SUM

- 3.1. The Minimum Contract Value is \$20,000.
- 3.2. The Contractor shall be paid the Job Order Amount for completing each Job Order.
- 3.3. The Job Order Amount shall be calculated using the Unit Prices published in the Construction Task Catalog® and the following Adjustment Factors.
 - 3.3.1. Normal Working Hours:

1.0730

3.3.2. Other Than Normal Working Hours:

1.0730

3.4. For calculating the price of all Non-Prepared Tasks, the Contractor shall use the following Adjustment Factor:

3.4.1. Non-Prepriced Task:

1.0800

ARTICLE 4. MISCELLANEOUS

4.1. Independent Contractor: The Contractor is an independent contractor under this Contract. Services provided by the Contractor pursuant to this Contract shall be subject to the supervision of the Contractor. In providing such services, neither the Contractor nor its agents shall act as officers, employees, or agents of the City. This Contract shall not constitute or make the parties a partnership or joint venture.

4.2. Third Party Beneficiaries: Neither the Contractor nor the City intend to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a claim against either of them based upon this Contract. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Contract.

4.3. Notices: Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

4.3.1. For City: Robert McCaughan, Public Works Director
1201 NE 5th Ave
Pompano Beach, FL 33060

4.3.2. For Contractor: Justen Shiff
914 NE 20th Avenue
Fort Lauderdale, FL 33304

4.4. Materiality and Waiver of Breach: The City and Contractor agree that each requirement, duty, and obligation set forth in these Contract Documents is substantial and important to the formation of this Contract and, therefore, is a material term hereof.

- 4.4.1. The City's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Contract.
- 4.5. Severance: In the event a portion of this Contract is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless the City or Contractor elects to terminate this Contract. An election to terminate this Contract based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- 4.6. Applicable Law and Venue: This Contract shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Contract and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward City, Florida, the venue situs, and shall be governed by the laws of the State of Florida. By entering into this Contract, **THE CONTRACTOR AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THE WORK. THE CONTRACTOR, PURSUANT TO ARTICLE 29 OF THE GENERAL CONDITIONS, SHALL SPECIFICALLY BIND ALL SUBCONTRACTORS TO THE PROVISIONS OF THIS CONTRACT.**
- 4.7. Amendments: No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Contract.
- 4.8. Prior Agreements: This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Contract that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Article 4.7 above.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

MARY L. CHAMBERS, CITY CLERK

(SEAL)

Approved by:

GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2011 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"CONTRACTOR":

Witnesses:

SHIFF CONSTRUCTION & DEVELOPMENT, INC., a Florida corporation

[Signature]
Signature

By: [Signature]

Print Name JUSTEN D. SHIFF

Title: PRESIDENT

[Signature]
Signature

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 6th day of SEPT, 2011, by JUSTEN SHIFF, as PRESIDENT of SHIFF CONSTRUCTION & DEVELOPMENT, INC., a Florida corporation. He/she is personally known to me or who has produced (type of identification) as identification.

NOTARY IS SEAL:



[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Lorna D Henriques
(Name of Acknowledger Typed, Printed or Stamped)

DD885449
Commission Number

GBL/jrm
91/11
l:agr/pw/contract
2011-1626