

**AGREEMENT**

**Between**

**CITY of HALLANDALE BEACH, FLORIDA**

**and**

**BERMELLO AJAMIL & PARTNERS, INC.**

**for**

**DESIGN , PERMITTING AND CONSTRUCTION MANAGEMENT  
SERVICES FOR B.F. JAMES PARK, JOSEPH SCAVO PARK  
AND SOUTH BEACH PARK**

This is an Agreement, made and entered into by and between: the CITY OF HALLANDALE BEACH (the "CITY"), a Florida municipal corporation,

AND

BERMELLO AJAMIL & PARTNERS, INC., a Florida corporation, hereinafter referred to as "CONSULTANT."

WHEREAS, on July 14, 2011 The City of Hallandale Beach (City) adopted a Citywide Parks Master Plan; and

WHEREAS, on July 14, 2011 the City Commission directed staff to fully implement the development of B.F. James Park, Joseph Scavo Park, and South Beach Park as outlined in the Citywide Parks Master Plan immediately; and

WHEREAS, on November 16, 2011, pursuant to Chapter 23, Section 105, Award of Contracts, of the City of Hallandale Beach Code of Ordinances, the City Commission Awarded the Design, Permitting and Construction Management Services of the three above listed Parks to Bermello Ajamil & Partners, Inc., utilizing RFP #2007-2008-004, Continuing Services and Comprehensive Services, and

WHEREAS, The CONSULTANT will be providing construction documents and plans for B.F. James Park, Joseph Scavo Park and South Beach Park, and

WHEREAS, The CONSULTANT will be providing construction administration for B.F. James Park, Joseph Scavo Park and South Beach Park.

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, CITY and CONSULTANT agree as follows:

## **ARTICLE 1** **TERM**

The term of this Agreement for delivery of the final construction drawings to the City shall begin on the date it is fully executed by both parties and shall end on February 15, 2013, and shall be concurrent with that of the construction of the parks. From the time construction commences to the completion of the same the construction time frame utilized to determine the scope and fees of CONSULTANT is fifteen (15) months (see Exhibit 1 Task 9). Construction administration services shall commence and shall be concurrent with tasks 9 and 10 (construction of the parks).

All time frames will be based on the attached schedule of tasks, Exhibit 2.

**ARTICLE 2**  
**SCOPE OF SERVICES TO BE PROVIDED TO THE CITY**

The CITY has employed the CONSULTANT to provide services outlined in the attached Exhibits 1 & 2 for the design, permitting and construction services for B.F. James Park, South City Beach Park, and Joseph Scavo Park, which are hereby incorporated and made part of this Agreement by reference.

**ARTICLE 3**  
**INDEMNIFICATION**

To the fullest extent permitted by law, the CONSULTANT agrees to indemnify and hold-harmless the City, its officers and employees from any claims, liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney fees to the extent caused, in whole or in part, by the professional negligence, error or omission of the CONSULTANT or persons employed or utilized by the CONSULTANT in performance of the Agreement.

To the fullest extent permitted by law, the CONSULTANT agrees to indemnify and hold-harmless the City, its officers and employees from any claims, liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney fees to the extent caused, in whole or in part, by the recklessness or intentionally wrongful conduct, of the CONSULTANT or persons employed or utilized by the CONSULTANT in performance of the Agreement.

CONSULTANT shall at all times hereafter indemnify, hold harmless and, at the CITY Attorney's option, defend or pay for an attorney selected by the CITY Attorney to defend CITY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by intentional or negligent act of, or omission of CONSULTANT, their employees, agents, servants, or officers, or accruing, resulting from, or directly related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against CITY by reason of any such claim, cause of action or demand, CONSULTANT shall, upon written notice from CITY, resist and defend such lawsuit or proceeding by counsel satisfactory to CITY. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the CITY Attorney, any sum due CONSULTANT under this Agreement may be retained by CITY until all of CITY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by CITY.

To the extent considered necessary by the City Attorney, any sums due to CONSULTANT under this Agreement may be retained by CITY until all of CITY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by CITY.

In the event that any action or proceeding is brought by CONSULTANT against CITY, CONSULTANT hereby waives the right to a jury trial. Venue shall be Broward County, Florida. The provisions of this Article shall survive the expiration or early termination of this Agreement.

CONSULTANT acknowledges that it has received adequate consideration concerning the monetary limitation on the indemnification provided to City, which shall not be less than \$1 million per occurrence.

Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the City pursuant to Section 768.28 Florida Statutes.

#### **ARTICLE 4** **PERSONNEL**

##### **4.1 COMPETENCE OF STAFF.**

The CONSULTANT agrees to provide and assign the following Employee to this Agreement – Randy Hollingworth. In the event that any of CONSULTANT's employee is found to be unacceptable to the CITY, including, but not limited to, demonstration that he or she is not qualified, the CITY shall notify the CONSULTANT in writing of such fact and the CONSULTANT shall immediately remove said employee unless otherwise agreed and, if requested by the CITY, promptly provide a replacement acceptable to the CITY.

#### **ARTICLE 5** **INSURANCE REQUIREMENTS**

##### **PROFESSIONAL SERVICES AGREEMENT INSURANCE REQUIREMENTS:**

Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of any resulting contract the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under any resulting contract.

**Professional Liability:** Respondent agrees to maintain Professional (Incidental

Medical Malpractice) Liability at a limit of liability not less than **\$1,000,000** Per Claim, **\$1,000,000** Annual Aggregate, or a **\$1,000,000** Combined Single Limit. When a self-insured retention (SIR) or deductible exceeds **\$25,000**, the City reserves the right, but not the obligation, to review and request a copy of the Respondent's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, Respondent agrees to maintain a Retroactive Date prior to or equal to the effective date of any resulting contract. In the event the policy is cancelled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of any resulting contract, Respondent agrees to purchase a SERP with a minimum reporting period not less than **two (2)** years. The requirement to purchase a SERP shall not relieve Respondent of the obligation to provide replacement coverage.

**Waiver of Subrogation:** Contractor agrees by entering into this contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.

**Certificate(s) of Insurance:** Contractor agrees to provide City a Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. Said Certificate(s) of Insurance shall include a minimum of thirty **(30)** day endeavor to notify due to cancellation or non-renewal of coverage. The Certificate Holder address shall read:

City of Hallandale Beach  
Attn: Risk Management Department  
400 S. Federal Highway  
Hallandale Beach, FL 33009

**Right to Revise or Reject:** City reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the criteria stated herein. Additionally, City reserves the right, but not the obligation, to review and reject any insurer providing coverage due of its poor financial condition or failure to operate legally.

### **STANDARD AGREEMENT INSURANCE REQUIREMENTS:**

Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of any resulting contract the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations *assumed* by Contractor under any resulting contract.

**Commercial General Liability** Contractor agrees to maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence, **\$2,000,000** Annual Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, or Cross Liability.

**Business Automobile Liability** Contractor agrees to maintain Business Automobile Liability at a limit of liability not less than **\$1,000,000** Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

**Worker's Compensation Insurance & Employers Liability** Contractor agrees to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440.

**Additional Insured** Contractor **agrees to** endorse City as an Additional Insured with a CG 2026 07 04 Additional - Insured – Designated Person or Organization endorsement or CG 2010 19 01 Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or Organization or CG 2010 07 04 Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or organization in combination with CO 2037 07 04 Additional Insured - Owners, Lessees Contractors- Completed Operations, or similar endorsements, to the Commercial General Liability. The Additional Insured shall read "City of Hallandale Beach."

**Waiver of Subrogation** Contractor agrees by entering into this contract to a *Waiver of Subrogation* for each required policy herein. When required by the insurer, or should a policy condition not permit Contractor to enter into an pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify *the* insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.

**Certificate(s) of Insurance** Contractor agrees to provide City a Certificate(s) of Insurance evidencing that all coverages, *limits* and endorsements required herein are maintained and in full force and effect. Said Certificate(s) of Insurance shall include a minimum thirty **(30)** day endeavor to notify due to cancellation or non-renewal of

coverage. The Certificate Holder address shall read:

City of Hallandale Beach  
Risk Manager  
400 South Federal Highway  
Halladale Beach, FL 33009

**Umbrella or Excess Liability.** Contractor may satisfy the minimum liability limits required above for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability. Contractor agrees to endorse City as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

**Right to Revise or Reject** City reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the criteria stated herein. Additionally, City reserves the right, but not the obligation, to review and reject any insurer providing coverage due of its poor financial condition or failure to operating legally.

## **ARTICLE 6** **COMPENSATION**

6.1 CITY agrees to pay CONSULTANT, in the manner specified in Section 6.2, the total amount of Three Hundred Four Thousand Eight Dollars (\$304,008.00) for BF James Park, Two Hundred Fifty Seven Thousand Five Hundred Fifty Three Dollars (\$257,553.00) for Joseph Scavo Park and Two Hundred Ninety Three Thousand Six Hundred Twenty Dollars (\$293,620.00) for South Beach Park for work actually performed and completed pursuant to this Agreement, which amount shall be accepted by CONSULTANT as full compensation for all such work. It is acknowledged and agreed by CONSULTANT that this amount is the maximum payable and constitutes a limitation upon CITY's obligation to compensate CONSULTANT for its services related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon CONSULTANT's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. The amounts include reimbursement of all expenses of CONSULTANT related to the project work. .

### 6.2 **METHOD OF BILLING AND PAYMENT**

6.1 CITY agrees to pay CONSULTANT, in the manner specified in Section 6.2, the total amount as set forth in Exhibit A for work actually performed and completed pursuant to this Agreement, which amount shall be accepted by CONSULTANT as full compensation for all such work. It is acknowledged and agreed by CONSULTANT that this amount is the maximum payable and constitutes a limitation upon CITY's obligation to compensate CONSULTANT for its services related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon CONSULTANT's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. No amount shall be paid to CONSULTANT to reimburse its expenses unless otherwise specified in Exhibit A.

**6.2 METHOD OF BILLING AND PAYMENT**

6.2.1 Payment shall be due within thirty (30) days of date stipulated on the invoice, provided, invoice is accepted for payment. Payment shall be made only for approved invoices. The CITY retains the right to delay or withhold payment for services which have not been accepted by the CITY.

6.2.1.1 **HOURLY NOT TO EXCEED (NTE) CONTRACTS** - For services provided on an Hourly Not to Exceed basis, the amount of each monthly invoice shall be determined based on the hourly rate expenditures during the invoicing period. The hourly rates will be based on the rates established in the prime agreement. Each park will be invoiced separately by the CONSULTANT. B&A will indicate the total amount invoiced as a percentage of the not to exceed amount by phase for each park with each billing.

6.3 Notwithstanding any provision of this Agreement to the contrary, CITY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the City's Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by CITY.

6.4 Payment shall be made to CONSULTANT at:

Ivette Vallecillo  
Accountant, A/R, Billing  
Bermello Ajamil & Partners, Inc.  
2601 South Bayshore Drive, 10th Floor  
Miami, FL 33133  
Phone: 305-859-2050  
Fax: 305-860-3768

**ARTICLE 7**

**TERMINATION**

7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. All Articles in this contract are material and a breach of any Article shall be grounds for termination for cause. This Agreement may also be terminated for convenience by the CITY. Termination for convenience by the CITY shall be effective on the termination date stated in written notice provided by the CITY, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the CITY Manager upon such notice as the CITY Manager deems appropriate under the circumstances in the event the CITY Manager determines that termination is necessary to protect the public health or safety. The parties agree that if the CITY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

7.2 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the CITY Manager, which the CITY Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

7.3 In the event this Agreement is terminated for convenience, CONSULTANT shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. CONSULTANT acknowledges and agrees that it has received good, valuable and sufficient consideration from CITY, the receipt and adequacy of which are, hereby acknowledged by CONSULTANT, for CITY's right to terminate this Agreement for convenience, and that CONSULTANT shall not be entitled to any consequential damages or loss of profits.

## **ARTICLE 8** **MISCELLANEOUS**

### **8.1 RIGHTS IN DOCUMENTS AND WORK**

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of CITY; and, if a copyright is claimed, CONSULTANT grants to CITY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by CONSULTANT, whether finished or unfinished, shall become the property of CITY and shall be delivered by CONSULTANT to the City's Contract Administrator within seven (7)

days of termination of this Agreement by either party. Any compensation due to CONSULTANT shall be withheld until all documents are received as provided herein.

## 8.2 **AUDIT RIGHT AND RETENTION OF RECORDS**

CITY shall have the right to audit the books, records, and accounts of CONSULTANT and its subcontractors that are related to this Project. CONSULTANT and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CONSULTANT and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CONSULTANT or its subcontractor, as applicable, shall make same available at no cost to CITY in written form.

CONSULTANT and its subcontractors shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONSULTANT's and its subcontractors' records, CONSULTANT and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

CONSULTANT shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section.

## 8.3 **PUBLIC ENTITY CRIME ACT**

CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a consultant, or other provider 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 CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a CONSULTANT, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY in

excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by CITY pursuant to this Agreement, and may result in debarment from CITY's competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

#### 8.4 **INDEPENDENT CONSULTANT**

CONSULTANT is an independent CONSULTANT under this Agreement. In providing the services, neither CONSULTANT nor its agents shall act as officers, employees, or agents of CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to CONSULTANT or CONSULTANT's agents any authority of any kind to bind CITY in any respect whatsoever.

#### 8.5 **THIRD PARTY BENEFICIARIES**

Neither CONSULTANT nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

#### 8.6 **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 sent by commercial express carrier with acknowledgement of delivery, 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:

FOR CITY: \*  
Renee Crichton, City Manager  
400 S. Federal Highway  
Hallandale Beach, Florida 33009

WITH COPY TO:  
Capital Projects Manager

400 S. Federal Highway  
Hallandale Beach, Florida 33009

AND:

V. Lynn Whitfield, City Attorney  
400 S. Federal Highway  
Hallandale Beach, FL 33009

FOR CONSULTANT:  
Randy P. Hollingworth  
Vice President, Bermello Ajamil & Partners, Inc.  
2601 South Bayshore Drive, 10<sup>th</sup> Floor  
Miami, Florida 33133

#### 8.7 **ASSIGNMENT AND PERFORMANCE**

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. CITY may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by CONSULTANT of this Agreement or any right or interest herein without CITY's written consent.

CONSULTANT represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT's performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the applicable local standards.

#### 8.8 **CONFLICTS**

Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is in conflict with or incompatible with CONSULTANT's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

In the event CONSULTANT is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, CONSULTANT agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as CONSULTANT.

8.9 **MATERIALITY AND WAIVER OF BREACH**

CITY and CONSULTANT agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

CITY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

8.10 **COMPLIANCE WITH LAWS**

CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

8.11 **SEVERANCE**

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CONSULTANT elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

8.12 **JOINT PREPARATION**

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

8.13 **PRIORITY OF PROVISIONS**

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 8 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 8 shall prevail and be given effect.

#### 8.14 **JURISDICTION, VENUE, WAIVER OF JURY TRIAL**

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward CITY, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the City pursuant to Section 768.28 Florida Statutes.

#### 8.15 **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 Agreement and executed by the CITY and CONSULTANT or others delegated authority to or otherwise authorized to execute same on their behalf.

#### 8.16 **PRIOR AGREEMENTS**

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

#### 8.17 **PAYABLE INTEREST**

8.17.1. **Payment of Interest.** CITY shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof CONSULTANT waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

8.17.2. **Rate of Interest.** In any instance where the prohibition or limitations of Section 8.17.1 are determined to be invalid or unenforceable, the annual rate of interest payable by CITY under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

8.18 **INCORPORATION BY REFERENCE**

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties.

8.19 **REPRESENTATION OF AUTHORITY**

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

8.20 **MULTIPLE ORIGINALS**

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

**ARTICLE 9**

**NONDISCRIMINATION, EQUAL OPPORTUNITY  
AND AMERICANS WITH DISABILITIES ACT**

CONSULTANT shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines and standards.

CONSULTANT's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16 ½), gender identity, gender expression, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

CONSULTANT shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, gender identity, gender expression, national origin, marital status, political affiliation, or physical or mental disability. In addition, CONSULTANT shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship, and accessibility).

CONSULTANT shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16 ½), gender identity, gender expression, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff; termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

CONSULTANT shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16 ½) in performing any services pursuant to this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the respective dates under each signature: CITY OF HALLANDALE BEACH through its authorization to execute same by Commission action on 16th, day of November, 2011, and BERMELO AJAMIL & PARTNERS INC., signing by and through its Vice President, Randy Hollingworth, duly authorized to execute same.

**CITY**

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

CITY OF HALLANDALE BEACH

By   
\_\_\_\_\_  
Renee Crichton, CITY MANAGER

Approved as to legal sufficiency and form by  
CITY ATTORNEY

  
\_\_\_\_\_  
V. Lynn Whitfield 8/31/12

CONSULTANT MUST EXECUTE THIS AGREEMENT AS INDICATED BELOW.  
USE CORPORATION OR NONCORPORATION FORMAT, AS APPLICABLE.

If the Company President does not sign the Agreement, there must be a Secretary's Certificate Form provided to the CITY of Hallandale Beach, Florida indicating designee signing, has the authority to sign.

(If incorporated sign below).

ATTEST:

SAB  
(Secretary)

CONSULTANT

[Signature]  
BY: Randy Hollingworth  
Bermello Ajamil & Partners Inc.

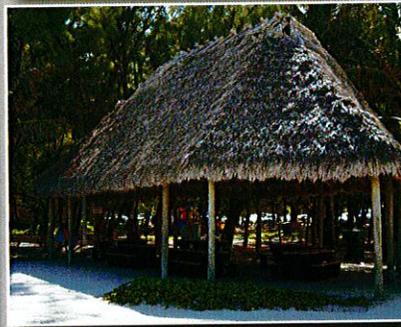
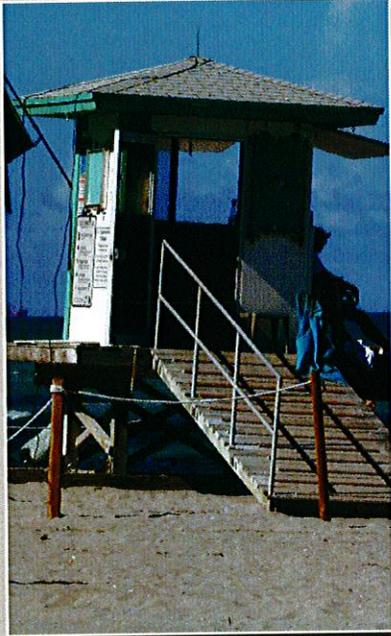
By \_\_\_\_\_

(Corporate Seal)

Scott BAKOS, Secretary  
(Type Name and Title Signed Above)

30 Day of Aug., 20 12.

Exhibit 1



Proposal for Professional Design Services:

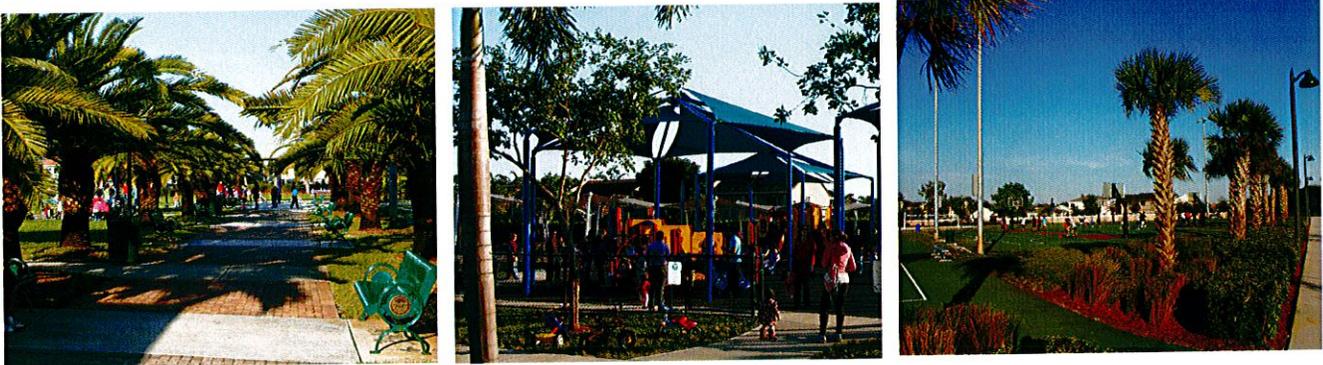
B.F. JAMES PARK  
JOSEPH SCAVO PARK  
SOUTH BEACH PARK

November 16, 2011

*Stallanmable*



Bermello Ajamil & Partners, Inc.



## INTRODUCTION

This proposal provides the City with a general scope of services that can be applied to each of the three park projects. The difference between each scope would be the program details for the components that make up each park. We understand the intent of the City is to have the design and construction of each park occur concurrently.

## TEAM ORGANIZATION

On Attachment B, we have provided an organizational chart which illustrates the structure of the Design Team we propose for each of the park assignments. This structure consists of the same members that were provided to the City of Hallandale Beach under the Continuing Services Agreement already in place.

## SCOPE OF SERVICES

The Scope of Services for this proposal are provided as a typical scope for all three parks. The Scope of Work for this assignment has been based on the three park plan concepts as presented in the City Wide Parks Master Plan Document, dated July 14, 2011, see attachments C, D and E. Should the park plans or programs change significantly from the plans provided in the referenced Master Plan, the Scope of Services and Fees will need to be revised.

### Task 1 - Kick off Meeting

B&A will coordinate the kick off meeting with the City and its designated project team. The purpose of the kick off meeting will be to:

- Confirm project goals and objectives
- Establish organizational responsibilities and relationships between and among the City and the Team
- Agree upon management tools and procedures, setting standards to be followed for the duration of the project.
- Agree on the project schedule, timing and content of meetings/workshops, record keeping standards, and communications with the City, distribution procedures, meeting dates, public notification and preliminary and final submissions.

During start-up, B&A will work closely with the City staff on the start-up agenda and schedule and review of key contractual issues. These will include schedule, report and invoice formats, and other day-to-day administrative and management issues.

## Task 2 – Program Development

The B&A Team will meet with City staff to confirm the development program and spatial configuration for each park based on the Master Plan Document Dated July 14, 2011.

## Task 3 - Plan Refinement

Based upon input from the City and utilizing the confirmed program from Task 2, B&A will develop a final scaled AutoCAD layout plan. The plan will indicate the location of walkways, buildings/structures and any paved areas for parking or vehicle access.



## Task 4 - Park Renderings and Public Presentations

This Task will include a full color rendering (to scale) of each park plan as approved in the City Wide Parks Master Plan. The plans will be suitable for both powerpoint presentation and full 24"x36" printed format for public presentations. The City will be provided a high resolution digital copy of each rendered park plan.

In addition, B&A will attend and make presentations to up to two meetings (per park) with neighborhood groups and/or elected officials. B&A will present the plans in powerpoint format.

## Task 5 through Task 8 – Development of Construction Documents to 100%

Based on the final accepted Plan Refinement Drawing as approved by the City, B&A will further develop and prepare design drawings for use in permitting and construction. B&A will review the plans with the City at the 30%, 60% and 90% completion stage of the construction document phase.

B&A will prepare all drawings necessary for submission to City/County agencies for review and approval including plans for coastal permitting for South Beach Park. The City will route the construction plans through the City's permitting process prior to construction. B&A will prepare possible/probable construction cost estimates for construction at the 30% submission. Based on the City approved Design Development plans and input from City agencies, B&A will incorporate changes and proceed with developing final detailed construction drawings to include:

### LANDSCAPE:

- Tree disposition plan
- Hardscape layout plans including walkways and sports facilities
- Planting plans and planting details
- Site furniture plans and product specifications and details where necessary, including benches, waste receptacles, bicycle racks, fountains etc.
- Irrigation layout, details and materials schedule
- Pool and pool decking layout and design (B.F. James only)

### CIVIL:

- Site grading, paving and drainage plans
- Water and sewer plans for service to the rest rooms
- Driveway connections



**STRUCTURAL** (for the rest room/concessions/pool building as per each individual park):  
 Structural analysis, design and detailing of  
     concrete masonry unit (CMU) walls  
 Foundation design and detailing  
 Slab on grade design and detailing  
 Structural notes, design criteria and design loads  
 Roof framing plan and detailing  
 Structural typical sections and details  
 Structural schedules

**ARCHITECTURAL:**

Site structure location plan  
 Building plans,  
 Building sections,  
 Building Elevations  
 Details and on-plan product specifications

**MEP:**

Site electrical service and distribution plans  
 Parking lot lighting plans, details and lighting calculations to determine design illumination levels,  
     lighting design to meet minimum code requirements  
 Walkway lighting plans  
 Mechanical (ventilation and plumbing) and electrical (power and lighting) plans for the respective  
     park buildings)

**Environmental:** (South Beach Park only)

One (1) pre-application meeting per permit  
 Preparation of one (1) permitting application package per permit.  
 Permits anticipated:

- USACE Coastal Permit for Beach/Dune Nourishment
- FDEP/Broward County- Joint Coastal Permit for Beach/Dune Nourishment

The City is responsible for all application and permitting fees associated with plan submissions.

**Task 5 - 30% Construction Documents**

The 30% Construction Documents submittal will provide a full schematic design of all project elements and an outline specification identifying major project construction materials and finishes. B&A will also provide specific building and element locations and overall dimensioning of project elements.

**Task 6 – 60% Construction Drawings**

The 60% Construction Drawings submittal will include the full Design Development Package. B&A will work in close cooperation with the selected Construction Manager at Risk (CMAR) to provide all required drawings needed for the CMAR to prepare a Guaranteed Maximum Price.

### **Task 7 –90% Construction Drawings**

B&A will prepare a 90% complete set of Construction Documents for presentation to the City of Hallandale Beach for review and to carry out a "Dry Run" permit procedure. The Construction Document Drawings will be complete except for changes and corrections as may be required by the City of Hallandale Beach Building Department.

### **Task 8 – 100% Construction Drawings**

B&A will prepare a 100% complete set of Construction Documents for presentation to the City of Hallandale Beach based on the comments received from the City and the changes to the drawings required as per the City of Hallandale Beach and the City of Hallandale Beach Building Department review,

The selected CMAR is responsible for applying for permits for all three park projects with the City for Construction permits. B&A will provide a digital copy of the printed plans for submission.

### **Task 9 - Construction Administration**

During the Construction Administration Phase of the project, B&A will carry out the following:

- B&A will attend construction meetings every two weeks, from the time construction commences to the completion. (The construction time frame utilized to determine the time and fees for this task is eight (8) months per park. Should the construction periods for any park be longer than eight (8) months, additional meetings will be billed on an hourly basis with scope and fees based on the rates provided in Attachment A.
- B&A will respond to contractor RFI's within four working days of their receipt by B&A.
- B&A will review Shop Drawings within seven working days of their receipt by B&A.
- B&A will attend on site meetings once per month for the duration of the construction period. (based on an eight (8) month construction period for each park) Additional on site meetings will be billed on an hourly basis with scope and fees based on the rates provided in Attachment A.

### **Task 10 - Certification and Project Delivery**

B&A will prepare a final construction punch list and certification of the project for all aspects of the project defined within the scope of work in this proposal.

Two (2) final site visits will be conducted by a B&A Engineer, Landscape Architect and Architect to develop a punch list at the first meeting and to follow through with completion of the work at the second meeting. The certification of the work to conform with the drawings will be based on a complete set of as built plans provided by the Contractor/City. Additional site meetings or reviews will be billed on an hourly basis with scope and fees based on the rates provided in Attachment A.

## **REIMBURSABLE EXPENSES**

Reimbursable expenses will include all printing costs and production associated with the park plans and will be itemized and billed at actual costs. Expenses and trips associated with travel to the project sites, telephone and courier services and faxes are included in the fees for each Task of the projects.

## NOTES

This proposal includes the design of water and gravity sewer service lines from a point abutting the property. Design of a water main or gravity sanitary sewer extension along public right-of-way is not included in this proposal.

PGD services are limited to the area within the property of each park. Drainage improvements within the public right-of-way are not included in this proposal. If required by the City of Hallandale Beach Public Works Department, B&A will provide an additional service proposal for such services.

Review of Plant materials for each park will be on site and the scope and fees in this proposal do not include visiting individual nurseries for plant material selection or approval.

Dune restoration and/or rehabilitation is not included in the scope of services for South Beach Park.

This Scope of Services assumes that all documentation associated with surveys of existing conditions e.g. wildlife survey, etc. will be provided to B&A for inclusion into the permit application package. Any additional environmental services derived from agency's comments will be added as an out-of scope item and charged as additional services.

The City will provide the Consultant with complete surveys of each park site including all utility locations, property lines, all adjacent roadway ROW's, existing sidewalks, topographic mapping showing elevations on a 25' grid in 6" intervals, existing buildings, paved areas and all trees over 4" in caliper with heights, species and health condition of trees.

The City will provide all geotechnical information as required by the consultant.

The Consultant will incorporate storm drainage design of the adjacent ROWs for BF James Park (only) limited to the possible introduction of exfiltration trenches and does not include calculating new grades for regrading within the ROW.

Compensation for professional services will be as follows:

**BF JAMES PARK:**

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Task 1 (Kick off Meeting)	\$ 510.00	NTE
Task 2 (Program Development)	\$ 2,300.00	NTE
Task 3 (Plan Refinement)	\$ 5,800.00	NTE
Task 4 (Park Renderings and Public Presentations)	\$ 4,400.00	NTE
Task 5 (30 % Plans)	\$ 82,835.00	NTE
Task 6 (60 % Plans)	\$ 54,648.00	NTE
Task 7 (90 % Plans)	\$ 52,285.00	NTE
Task 8 (100 % Plans)	\$ 30,710.00	NTE

**BASE DESIGN FEE TOTAL: \$233, 488.00**

Task 9 (Construction Administration)	\$ 61,720.00	T&M (NTE)
Task 10 (Certification and Project Delivery)	\$ 4,800.00	NTE
Reimbursable Expenses (Printing costs only)	\$ 4,000.00	NTE

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**OVERALL FEE TOTAL: \$304,008.00**

**JOSEPH SCAVO PARK:**

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Task 1 (Kick off Meeting)	\$ 510.00	NTE
Task 2 (Program Development)	\$ 2,300.00	NTE
Task 3 (Plan Refinement)	\$ 6,200.00	NTE
Task 4 (Park Renderings and Public Presentations)	\$ 4,400.00	NTE
Task 5 (30 % Plans)	\$ 67,936.00	NTE
Task 6 (60 % Plans)	\$ 43,846.00	NTE
Task 7 (90 % Plans)	\$ 41,326.00	NTE
Task 8 (100 % Plans)	\$ 25,005.00	NTE

**BASE DESIGN FEE TOTAL: \$191,523.00**

Task 9 (Construction Administration)	\$ 57,230.00	T&M (NTE)
Task 10 (Certification and Project Delivery)	\$ 4,800.00	NTE
Reimbursable Expenses (Printing costs only)	\$ 4,000.00	NTE

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**OVERALL FEE TOTAL: \$257,553.00**

**SOUTH BEACH PARK:**

Task 1 (Kick off Meeting)	\$ 510.00	NTE
Task 2 (Program Development)	\$ 2,300.00	NTE
Task 3 (Plan Refinement)	\$ 5,200.00	NTE
Task 4 (Park Renderings and Public Presentations)	\$ 4,400.00	NTE
Task 5 (30 % Plans)	\$ 74,080.00	NTE
Task 6 (60 % Plans)	\$ 52,840.00	NTE
Task 7 (90 % Plans)	\$ 50,310.00	NTE
Task 8 (100 % Plans)	\$ 31,610.00	NTE

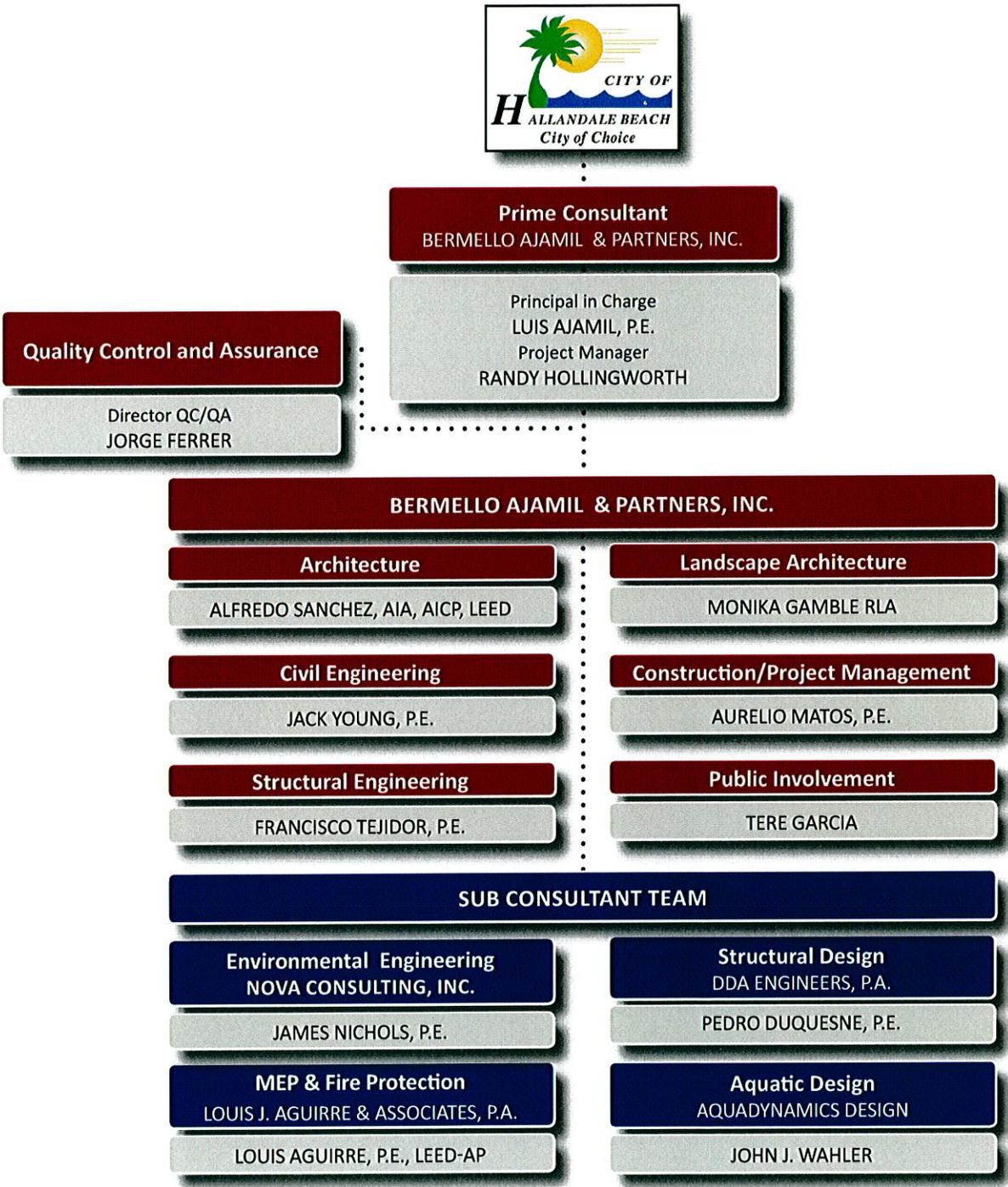
**FEE TOTAL: \$221,250.00**

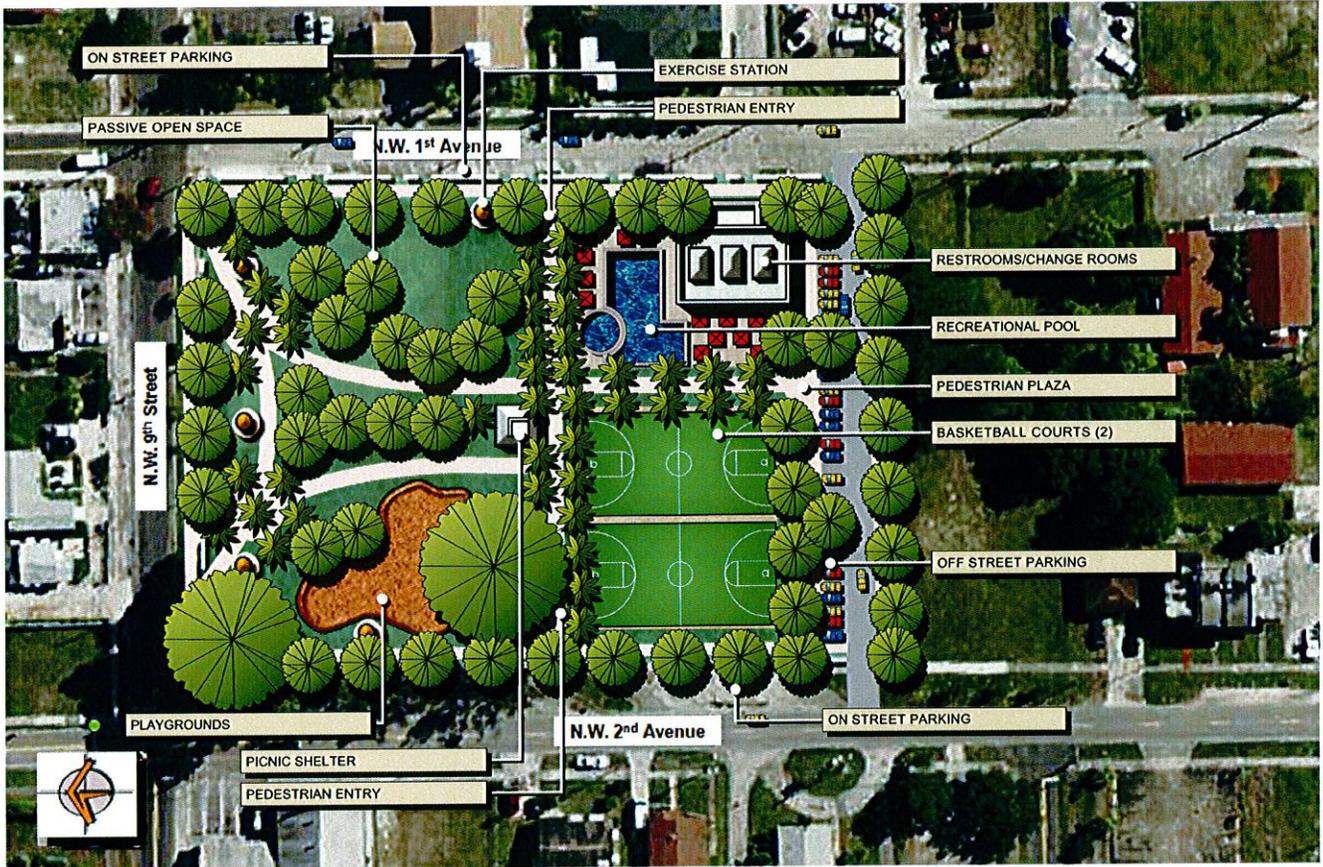
Task 9 (Construction Administration)	\$ 63,570.00	T&M (NTE)
Task 10 (Certification and Project Delivery)	\$ 4,800.00	NTE
Reimbursable Expenses (Printing costs only)	\$ 4,000.00	NTE

**OVERALL FEE TOTAL: \$293,620.00**

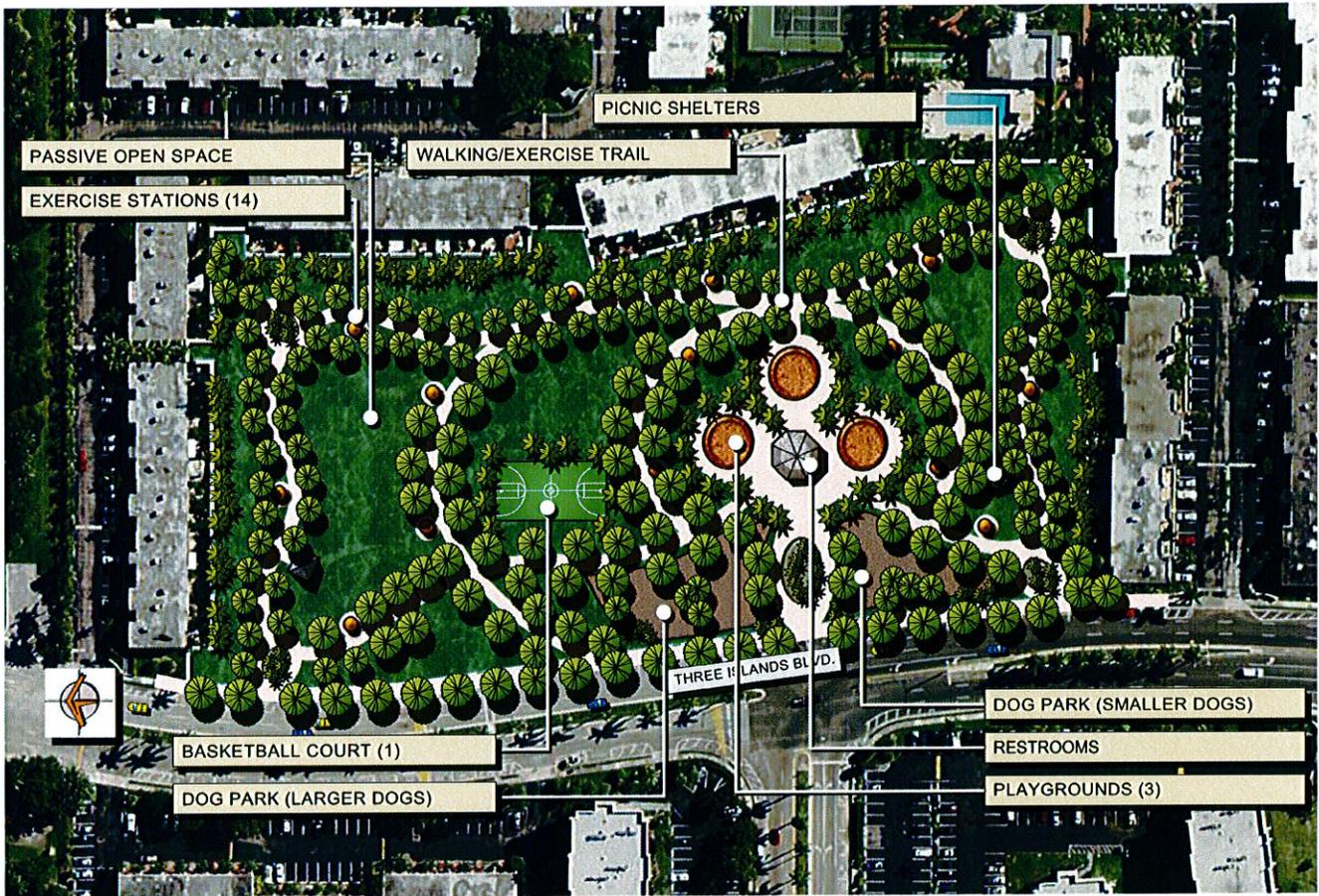
**November 16, 2011**

<b>Position Title</b>	<b>Hourly Rate</b>	
Principal (PE registered)	\$ 250.00	/ per hour
Project Manager	\$ 170.00	/ per hour
Landscape Architect (State Registered)	\$ 160.00	/ per hour
Landscape Designer	\$ 115.00	/ per hour
Senior Engineer (PE registered)	\$ 160.00	/ per hour
Engineer	\$ 105.00	/ per hour
Senior Planner	\$ 165.00	/ per hour
Planner	\$ 105.00	/ per hour
Environmental Scientist	\$ 95.00	/ per hour
Technician	\$ 90.00	/ per hour
Drafter/GIS	\$ 70.00	/ per hour
Field Inspector	\$ 150.00	/ per hour
Land Surveyor (PLS registered)	\$ 110.00	/ per hour
Staff Assistant	\$ 60.00	/ per hour
Specification Writer	\$ 60.00	/ per hour
Junior Field Inspector	\$ 75.00	/ per hour
Estimator	\$ 90.00	/ per hour





Proposed Park Plan from Hallandale Beach - City Wide Parks Master Plan, July 14, 2011



Proposed Park Plan from Hallandale Beach - City Wide Parks Master Plan, July 14, 2011



Proposed Park Plan from Hallandale Beach - City Wide Parks Master Plan, July 14, 2011

# Bermello

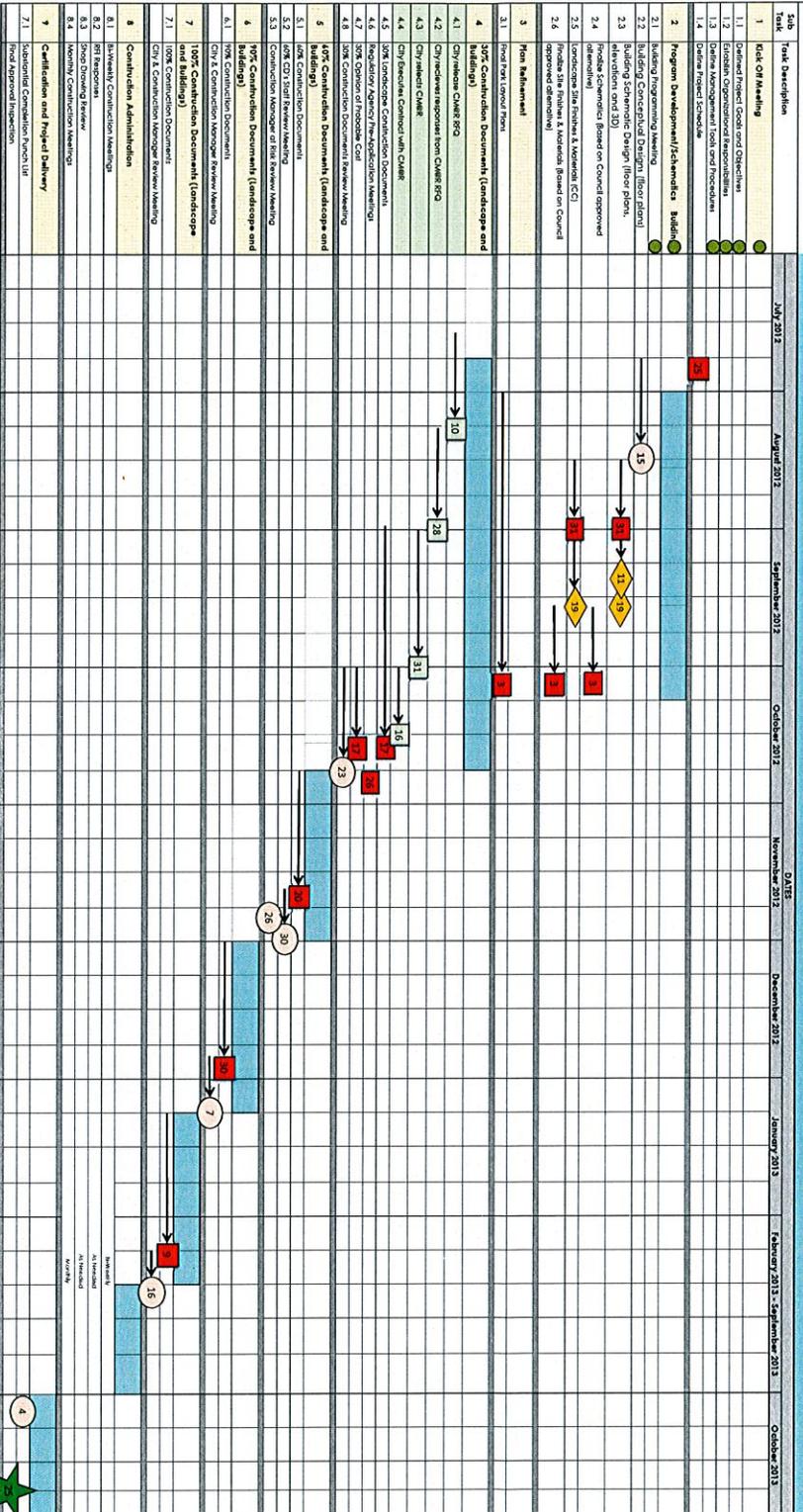
Architecture  
Engineering  
Planning  
Interior Design  
Landscape Architecture

▶ [www.bermelloajamil.com](http://www.bermelloajamil.com)



### Hollandale Beach, South Beach, Scavo & B. F. James Projects Schedules

August 1, 2012



- Overall Task Time Frame
- Significant Milestone
- Task Completed
- Review Meeting
- City Deadline
- Transition

