

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: December 4, 2017

RE: **Construction Agreement with NuJak Development, Inc. for the Construction of Single-Family Residences within the new Lincoln Square Subdivision**

Attached for your consideration is a Construction Agreement with NuJak Development, Inc. for the construction of 21 single-family residences within the new Lincoln Square subdivision. The Lakeland Community Redevelopment Agency (CRA) purchased the former 120-unit Lincoln Square Apartment Complex for \$1,348,016 in 2011. The purchase was to support neighborhood stabilization of the Paul Diggs and Webster Park Neighborhoods. In 2015, the CRA Advisory Board voted to develop affordable housing on the 5-acre site. A civil engineer and architect were hired to begin the design process. The resulting design includes 21 single family residential units, ranging from 1,200 – 1,500 square feet and offering both 3 bedroom or 2 bedroom options. The CRA marketed the site for direct sale to individuals who qualify for mortgages and will homestead property.

Site work for the new subdivision is scheduled to be completed in mid-January. On May 25, 2017, Bid No. 7177 for the construction of 21 single family residential homes was issued. Five bids were received as follows:

Lincoln Square Vertical Construction Bids							
Company	Style A	Style B	Style C	Style D	Days to Complete		Days to Start
					Phase 1	Total	
SEMCO Construction Inc.	\$ 248,481.00	\$ 261,474.00	\$ 287,360.00	\$ 222,495.00	210	540	30
Rodda Construction	\$ 245,554.00	\$ 248,141.00	\$ 250,308.00	\$ 243,202.00	150	210	14
Strickland Construction	\$ 278,452.00	\$ 278,372.00	\$ 295,402.00	\$ 278,452.00	250	750	21
Nujak Companies	\$ 215,000.00	\$ 214,200.00	\$ 220,500.00	\$ 198,440.00	180	TBD	14
Henkleman Construction, Inc	\$ 269,410.00	\$ 269,862.00	\$ 261,868.00	\$ 251,853.00	255	930	14

Each bid was evaluated on the company's proposed unit prices, construction duration and their level of experience building single family homes in the Central Florida area. The CRA Advisory Board reviewed the bids and recommends awarding Bid No. 7177 to the low bidder, NuJak Companies. The total contract price is \$4,532,140. However, under the contract, the CRA reserves the right to evaluate the contractor's performance after completion of the first phase of construction and make changes if necessary. Staff has valued engineered the project and reduced the costs of the project by \$200,000 for the entire development. The three-bedroom, two bath homes will be sold for \$125,000 and the two bedroom, two-bathroom homes will be sold for \$119,000. All the homes have been secured with a contract.

It is recommended that the attached Construction Agreement with NuJak Development, Inc. for the construction of 21 single-family residences within the new Lincoln Square subdivision be approved by the City Commission acting in its capacity as the City's Community Redevelopment Agency and that the appropriate CRA officials be authorized to execute the Agreement.

Attachment

**CONSTRUCTION AGREEMENT
BID 7177**

THIS AGREEMENT is by and between the Community Redevelopment Agency of the City
of Lakeland, Florida

("Owner")

And Nujak Development Inc.

("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents.

ARTICLE 2 - ARCHITECT

2.01 The Project has been designed by Kirk Curtis Mundy Hunnicutt Associates Architects Inc., Lakeland, Florida ("Architect"), who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Architect in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIMES

3.01 Time of the Essence

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02 Days to Achieve Substantial Completion and Final Payment

Phase I, lots 12-15	Within 270 days of Phase I Notice to Proceed
Phase II, lots 16-21	Within 270 days of Phase II Notice to Proceed
Phase III, lots 1-5	Within 270 days of Phase III Notice to Proceed
Phase IV, lots 6-11	Within 270 days of Phase IV Notice to Proceed

The Work for each phase will be substantially completed within 270 days after the Notice to Proceed for the subject phase, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 330 days after the Notice to Proceed for the subject phase.

3.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$758.00 for each day that expires after the time specified in Paragraph 3.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$758.00 for each day that expires after the time specified in Paragraph 3.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 4 - CONTRACT PRICE

4.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds as provided in Paragraph 4.01.A below:

- A. For all Work, at the prices stated in Contractor's Bid (attached hereto as an exhibit), a **total Contract Price** of \$4,532,140.

Style A (Richmond) - \$215,000

Style B (Artisan) - \$214,200

Style C (Casita) - \$220,500

Style D (Artisan 2br) - \$198,440

- B. Owner has no obligation to proceed with the construction of any phase, or portion thereof, of the Project. Contractor shall only be paid for Work completed in accordance with the Contract Documents after issuance of a notice to proceed for the specified Work.

ARTICLE 5 - PAYMENT PROCEDURES

5.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Architect as provided in the General Conditions.

5.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 25th day of each month during performance of the Work as provided in Paragraphs 5.02.A.1 and 5.02.A.2 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.05.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Architect may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 15.01 of the General Conditions:
 - a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Architect, and if the character and progress of the Work have been satisfactory to Owner and Architect, subsequent progress payments shall be reduced to 5 percent retainage for the amount of Work completed; and
 - b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage). If the Work has been 50 percent completed as determined by Architect, and if the character and progress of the Work have been satisfactory to Owner and Architect, subsequent progress payments shall be reduced to 5 percent retainage for the amount of Work completed.
 2. Upon Substantial Completion, the Owner may reduce the remaining retainage withheld to an amount not to exceed 150 percent of the estimated total costs to complete punch list items.

5.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Architect as provided in said Paragraph 15.06.

ARTICLE 6 - INTEREST

6.01 All moneys not paid when due as provided in Article 15 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

7.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 5.06 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 5.06 of the General Conditions.
- E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. Contractor has given Architect written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Architect is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Construction Agreement.
 - 2. Bid and Public Construction bonds.
 - 3. General Conditions.
 - 4. Supplementary Conditions, if any.
 - 5. Plans, Specifications, Drawings and Permits.
 - 6. Bid Documents, including, without limitation:
 - a. Invitation to Bid.
 - b. All Addenda issued by Owner.
 - c. Contractor's Proposal.
 - d. Documentation submitted by Contractor prior to Notice of Award.

7. NuJak Value Engineering Clarification
8. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Order(s).
 - d. Certificates of Insurance.
- B. There are no Contract Documents other than those listed above in this Article 8.
- C. The Contract Documents may only be amended, modified, or supplemented by a written amendment duly executed by both parties or as provided in Paragraph 4.3 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

9.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

9.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 9.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

9.06 Access to Records/ Audit

- A. Contractor shall retain all records relating to this Contract for a period of five (5) years after final payment is made. Contractor shall maintain accounting records in accordance with generally accepted accounting principles and practices to substantiate all invoice amounts to the Owner. Owner reserves the right to audit such records upon notice to the Contractor.
- B. Contractor shall comply with all public records laws of the State of Florida, including Chapter 119, Florida Statutes. Contractor shall specifically:
 - 1. Keep and maintain public records that ordinarily and necessarily would be required by the Owner in order to perform the service.

2. Provide the public with access to public records on the same terms and conditions that the Owner would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
4. Meet all requirements for retaining public records and transfer, at no cost, to the Owner all public records in possession of Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner in a format that is compatible with the information technology systems of the Owner.

9.7 Prohibition of Contingent Fees

- A. Prohibition of Contingent Fees. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract 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 the Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of making of this Contract. In the event of breach of this provision, the Owner shall have the right to terminate this Contract without further liability and, in its sole discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid as a result of said breach.

9.8 Ownership of Documents

- A. All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda and other documents, instruments, information and material prepared or accumulated by the Contractor or its subcontractors in rendering services pursuant to this Contract shall be the sole property of the Owner, which may have access to the reproducible copies at no additional cost other than printing. In no event shall Contractor be liable or responsible to anyone for the Owner's use of any such information or material in another project or following termination of this Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____, 2016 (which is the Effective Date of the Agreement).

OWNER:
Lakeland Community Redevelopment Agency

CONTRACTOR:
NuJak Development Inc.

By: _____

By: _____

Title: _____

Title: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

Lakeland Community Redevelopment Agency

NuJak Development Inc.

228 S. Massachusetts Avenue

714 N. Massachusetts Ave.

Lakeland, Florida 33801-5086

Lakeland, FL 33801

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

License No.: _____
(Where applicable)

Agent for service or process: _____

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)

END OF SECTION