

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: December 4, 2012 Consent Regular
 Workshop Public Hearing

Department

Submitted By: Environmental Resources Management
Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

- A) Change Order No. 5 decreasing the construction Contract (R2011 1042) with Brang Construction Incorporated (Brang) in the amount of \$116,207.96 for quantity adjustments and increasing the contract time by 159 days to the substantial completion date of August 16, 2012 for South Cove Natural Area Project No. 2011ERM02 (Project); and,
- B) Contract Close-Out Agreement on construction Contract (R2011 1042) with Brang in the amount of \$122,832.44.

Summary: On July 19, 2011, the Board entered into a \$2,498,035.00 Contract with Brang to construct the South Cove Natural Area Restoration Project within the Lake Worth Lagoon in the City of West Palm Beach. Four (4) change orders totaling a reduction of \$118,193.97 were issued. Change Order No. 5 accounts for final quantity adjustments and increases time by 159 days. The Contract Close-Out Agreement is a negotiated resolution of a disagreement over the extension of time. The new Contract amount is \$2,263,633.07, a net decrease of \$234,401.93. Brang achieved the Contract required 22.91% small business enterprise (SBE) participation which exceeds the established 15% SBE goal. District 7 (JM)

Background and Justification: The Department of Environmental Resources Management, County Attorney's Office and Brang entered into discussions on the time extension associated with the increased scope of work associated with the engineering and installation of the aluminum railings used in the Project. This Close-Out Agreement resolves the outstanding contractual issues.

Attachments:

- 1. Change Order No. 5
- 2. Contract Close-Out Agreement
- 3. Contract

Recommended by: *[Signature]* 11/15/12
 Department Director Date

Approved by: *[Signature]* 11/29/12
 County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	(\$116,207.96)	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT (\$116,207.96)	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?		Yes <u>X</u>	No _____		
Budget Account No.:	Fund <u>1226</u>	Department <u>380</u>	Unit <u>3073</u>	Object <u>3401</u>	
	Program _____				

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Change Order No. 5 (\$116,207.96) *JF*

C. Department Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

M. Moran 11/20/2012
Mr. J. Jacobson 11/27/12
 OFMB _____ Contract Development and Control _____

B. Legal Sufficiency:

[Signature]
 Assistant County Attorney

C. Other Department Review:

 Department Director

CHANGE ORDER NO. 5:

(Mark applicable category:)

- Owner Initiated
- Differing Site Conditions
- Zoning/Code/Ordinance Changes
- Errors/Omissions/In Design

- Quantity Overruns/Underruns
- Request By Another Agency/Outside Party
- A. Reimbursable
- B. Non-Reimbursable
- Other

PROJECT NAME: South Cove Natural Area
PROJECT NO.: 2011ERM02

CONTRACTOR:
 Brang Construction Incorporated
 4300 Oak Circle
 Boca Raton, FL 33431

CONTRACT RESOLUTION NO.: R2011 1042
COMMISSIONER DISTRICT NO.: 7
CONTRACT DATE: 7/19/2011
NOTICE TO PROCEED DATE: 8/15/2011
COMMENCEMENT DATE: 8/29/2011
BUDGET LINE ITEM: _____

You are directed to make the following Contract change(s):

1. A unit quantity adjustment for the following line items:

- Item # 3: An increase in excavate fill (from airport PBIA) / transport / place fill to finished lines and grades (at South Cove Natural Area) by 985cy for a total of 34,915cy \$ 22,852.00
- Item # 4: A decrease of Armor Stone by 141.67 tons for a total of 7,958.33 tons \$(10,200.24)
- Item # 5: An increase of Bedding Stone by 436.12 tons for a total of 1,786.12 tons \$ 30,092.28
- Item # 6: A decrease in 14" Pre-stressed concrete pilings for signs by 15 LF for a total of 60 LF \$(990.00)
- Item # 7: A decrease in 3 - 14" Test Piles, 1 Test Pile w/ PDA analyzer by 100 LF for a total of 95 LF \$(12,000.00)
- Item # 8: A decrease in 14" Pre-stressed concrete pilings to by 2,862 LF for a total of 2,473 LF \$(145,962.00)

2. 159 day time extension to the Substantial Completion Date per Contract Close-Out Agreement

NOT VALID UNTIL SIGNED BY COUNTY. SIGNATURE OF THE CONTRACTOR INDICATES HIS AGREEMENT HEREWITH INCLUDING ANY ADJUSTMENT IN THE CONTRACT SUM OR CONTRACT TIME, AND NO ADDITIONAL COST OR TIME INDICIATED HEREIN WILL BE RELATED TO THIS CHANGE.

The Original Contract Sum was	<u>\$ 2,498,035.00</u>
Net Change by Change Orders	<u>\$ -118,193.97</u>
The Contract Sum prior to this Change Order was	<u>\$ 2,379,841.03</u>
The Contract Sum will be increase by this Change Order	<u>\$ -116,207.96</u>
The New Contract Sum including this Change Order will be	<u>\$ 2,263,633.07</u>
The Contract Time will be increased by	<u>159 days</u>
The Date of Substantial Completion including this Change Order	<u>8/16/2012</u>
The Date of Final Completion including this Change Order	<u>9/13/2012</u>

Execution of this Change Order acknowledges final settlement of, and releases, all claims for costs associated with the above stated modification(s), including all costs associated with any claim for cumulative delays or disruptions resulting from, caused by, or incident to such modification(s), and including any claim that the above stated modification(s) constitutes, in whole or part, a cardinal change to the Contract.

CONTRACTOR
 Brang Construction Incorporated
 4300 Oak Circle
 Boca Raton, FL 33431

OWNER
 Palm Beach County, Florida
 Board of County Commissioners

BY James R. Fedele DATE 11/13/12
 James R. Fedele

BY _____ DATE _____
 Chair

ATTEST:
 Sharon R. Bock, Clerk & Comptroller
 _____ DATE _____
 Deputy Clerk

APPROVED AS TO FORM & LEGAL SUFFICIENCY:
James R. Bock DATE 11/27/12
 Chief Assistant County Attorney

APPROVED AS TO TERMS & CONDITIONS:
Daniel Bates DATE 11/14/12
 Daniel Bates, Deputy Director, ERM

**Brang Construction
South Cove Natural Area
Project # 2011ERM02**

Contract Resol. No. R2011-1042

Contract Date: July 19, 2011

Original Contract SBE

Participation: 22.91% SEE NOTE BELOW

\$572,500.00

12/8/2011 Revised

SBE Participation 21.96%

\$548,800.00

Original Contract:

\$2,498,035.00

AMENDMENT/ CHANGE ORDER NUMBER	TOTAL/ SBE AMOUNT	AMENDMENT & CHANGE ORDER DESCRIPTION	APPROVED BY/DATE
Change Order 1	\$3,826.00 \$880.00	Relocate staging within Currie Park; 1 day extension	ERM 11/4/11
Change Order 2	(\$143,427.71) \$3,706.29	Provide engineering calcs & washers; remove mangrove planters & section of oyster reef; 3 day extension	BCC 3/6/12
Change Order 3	\$11,248.99 \$345.00	Provide plumbing/ hose bibs to get water to boardwalk, Provide irrigation and planter to planter adjacent to ramp.	ERM 4/10/12
Change Order 4	\$10,158.75 \$2,445.45	Provide railing modifications, provide and install grommets. Provide FDOT aluminum rail	ERM 10/4/12
Change Order 5	(\$116,207.96) \$0.00	Quantity adjustment and 159 day extension per Settlement Agreement	BCC Pending 12/4/12

Total \$ Changes: -\$234,401.93

Revised K \$: \$2,263,633.07

SBE \$ Changes: \$7,376.74

Revised SBE K \$: \$556,176.74

Revised SBE K %: 24.57%

Report File Date: November 15, 2012

Commencement Date 8/29/2011

Original Contract Time 190 Days

Additional Calendar Days Authorized by Change Order(s) 163 Days

Revised Contract Time 353 Days

Revised Date of Substantial Completion 8/16/2012

Note: Original Contract SBE Participation of 22.91% (\$572,500) reduced to 21.96% (\$548,800) by PBC Office of SBA on 12-08-11
Revised SBE K \$ and % is base on revised \$ 548,800

CONTRACT CLOSE-OUT AGREEMENT

This Agreement is made this ____ day of _____, 2012, between Brang Construction Incorporated (BRANG) and Palm Beach County (COUNTY).

Whereas, BRANG and COUNTY entered into a contract (R2011-1042) for the construction of the South Cove Natural Area project (hereinafter Project) and

Whereas, during the course of the Project disputes arose as to delays associated with the completion of the Project with each party asserting that the other was responsible for those delays, and

Whereas, the parties have met and negotiated a mutually agreeable final resolution of all of the claims related to the Project, and

Whereas, the parties to this agreement desire to close out the construction contract and the Project,

Now, therefore, in consideration of the mutual promises contained herein, the parties agree that COUNTY will perform those items identified Palm Beach County's obligations and BRANG will perform those items identified as Brang's Obligations as follows:

I. Palm Beach County's Obligations

- A. COUNTY will execute a final change order for the Project adding 159 days to the substantial completion date.
- B. Upon satisfactory completion of all of Brang's Obligations, the COUNTY will pay BRANG all remaining monies due under the contract in the amount of One Hundred Twenty-two Thousand Eight Hundred Thirty-two Dollars and Forty-four Cents (\$122,832.44).

II Brang's Obligations

- A. BRANG will, upon execution of this agreement by COUNTY, issue and deliver to Ray Qualmann Marine Construction Inc. a joint check payable to Ray Qualmann Marine Construction Inc. and The Vance Construction Company in the amount of Thirty-nine Thousand Two Hundred Eighteen Dollars and Ninety Cents (\$39,218.90).
- B. BRANG will complete the contractually required actions for contract close and final payment consisting of the submission of the following documentation:
 - 1. SBE Schedule 4 for Brang in the amount of \$84,159.00
 - 2. Consent of Surety for Final Payment (Revised Form to be provided)

By executing this agreement, BRANG releases, and agrees to hold harmless, COUNTY and/or its

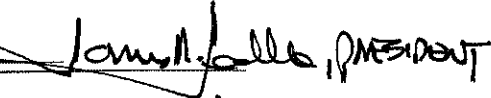
officers, employees, agents, successors, or assigns, from any and all claims which BRANG had, has, or might in the future have, against COUNTY and/or its officers, employees, agents, successors, or assigns, in any way arising out of the design, construction, or use of the Project including, but not limited to, claims related to any actions or inactions of COUNTY's officers, employees, agents, successors, or assigns which predate the execution of this agreement.

By executing this agreement, COUNTY releases BRANG, its officers, employees, agents, successors, or assigns, from any and all claims which COUNTY had, has, or might in the future have, arising out of or related to delays in the completion of the Project. Specifically excluded from this release are any claims which might arise from work performed on or materials supplied for the Project or from latent defects in the work or materials supplied by BRANG or from any other defects that could not have been detected by a reasonable inspection of the work and materials by COUNTY.

The parties hereto agree that this Contract Close-out Agreement and Change Order No. Five contain all of the agreements of the parties regarding the closeout of the Project, and have set their hands hereto

BRANG CONSTRUCTION
INCORPORATED

PALM BEACH COUNTY, FLORIDA,
by its Board of County Commissioners



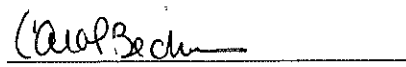
PRESIDENT
Title:

Chairman

Attest:

Attest:

SHARON R. BOCK, Clerk & Comptroller



Office Manager
Title:


Deputy Clerk

Corporate Seal:

Approved as to Form and Legal Sufficiency



Assistant County Attorney


11-28-12
**APPROVED AS TO TERMS
AND CONDITIONS.**

CONTRACT

R 2011 10 42

THIS CONTRACT, made and entered into this _____ day of JUL 19 2011, 20____, between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Brang Construction Incorporated, hereinafter referred to as the "CONTRACTOR".

WITNESSETH:

That the said Contractor having been awarded the Contract for the:

**PROJECT NAME: South Cove Natural Area
PROJECT NO.: 2011ERM02**

in accordance with the Bid therefore and for and in consideration of the promises and of the covenants and agreements, and of the payments herein specified, to be made and performed by the Contractor and the County, the Contractor hereby covenants and agrees to and with the County to undertake and execute all of the said named work, in a good, substantial and workmanlike manner, and to furnish and pay for all materials, labor, supervision, equipment, supplies, fees, expertise, and services necessary to fully complete all work in accordance with all requirements of the Contract Documents and in accordance with all applicable codes and governing regulations, within the time limit specified in the Bid Form. The Contract Documents consist of the following documents which are incorporated herein by reference.

- A - Invitation for Bid, Instructions to Bidders, Bid Form and Attachments 1 through 10
- B - Completed Bonds and Insurance Forms
- C - General Conditions, Supplemental General Conditions and Appendices A, B
- D - Technical Specifications, including Figures, Attachments and Appendices
- E - Addenda
- F - Permits
- G - Drawings/Plans

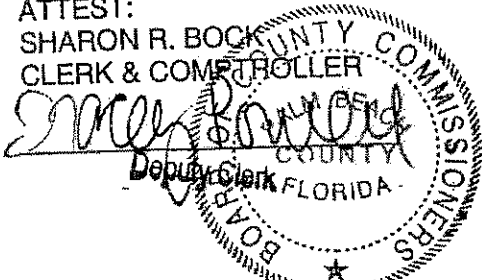
Contractor agrees to accept as full compensation for the satisfactory performance of this Contract the sum of \$2,498,035.00 (two million four hundred ninety-eight thousand thirty-five dollars and no cents. The prices named in the Bid are for the completed work and all expenses, direct or indirect, connected with the proper execution of the work and of maintaining the same until it is accepted by the Board of County Commissioners. It is understood that the Contractor holds and will maintain current appropriate certification(s) and/or license(s) for performing the specified work pursuant to this Contract. The time limit for the Substantial Completion of all work under this Contract shall be as stated in the Bid Form. The date fixing the beginning of this period upon the calendar shall be established and stated in the Notice to Proceed.

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida, has made and executed this Contract on behalf of the said County and caused the seal of the said County to be affixed hereto, and the Contractor has hereunto set its hand and seal the day and year written. The Contractor represents that it is authorized to execute this contract on behalf of itself and its Surety.

R 2011 10 42 JUL 19 2011

PALM BEACH COUNTY, FLORIDA, A
Political Subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER



By: [Signature]
Karen T. Marcus, Chair

APPROVED AS TO TERMS AND
CONDITIONS:

[Signature]
Richard E. Walesky, Director
Department of Environmental Resources Management

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:
[Signature]
Assistant County Attorney

CONTRACTOR:

Brang Construction Incorporated
(Corporate Name)

a Florida corporation
(insert state of corporation)

[Signature]
(witness signature)

Carol Beckman
(witness name printed)

By: [Signature]
(signatory)

James R. Fedele
(print signatory's name)

Its: President
(print title)

May 31, 2011

(date of execution)

4300 Oak Circle
(Contractor's Official Address)

Boca Raton, FL 33431
(Contractor's City, State, Zip Code)

59-2704044
(Federal Tax No.)

VC0000111521
Palm Beach County Vendor #
4300 Oak Circle, Boca Raton, FL 33431
Payment Remittance Address

(Corporate Seal)

**CERTIFICATE
(Corporation)**

The undersigned hereby certifies that the following are true and correct statements:

1. That he/she is the Secretary of Brang Construction Incorporated, a corporation organized and existing in good standing under the laws of the State of Florida hereinafter referred to as the "Corporation", and that the following Resolutions are true and correct copies of certain Resolutions adopted by the Board of Directors of the Corporation as the 31st day of May, 20 11, in accordance with the laws of the State of the state of incorporation of the Corporation, the Articles of Incorporation and the By-laws of the Corporation.

RESOLVED, that the Corporation shall enter into that certain Agreement between Palm Beach County, a political subdivision of the State of Florida and the Corporation, a copy of which is attached hereto, and be it

FURTHER RESOLVED, that James R. Fedele (name), the President (title) of the Corporation, is hereby authorized and instructed to execute such Agreement and such other instruments as may be necessary and appropriate for the Corporation to fulfill its obligations under the Agreement.

2. That the foregoing resolutions were passed with the required corporate formalities and have not been modified, amended, rescinded, revoked or otherwise changed and remain in full force and effect as of the date hereof.

3. That the Corporation is in good standing under the laws of the State of Florida or its state of incorporation, if other, and has qualified, if legally required, to do business in the State of Florida and has the full power and authority to enter into such Agreement.

IN WITNESS WHEREOF, the undersigned has set his hand and affixed the Corporate Seal of the Corporation the 31st day of May, 20 11.

(CORPORATE SEAL)

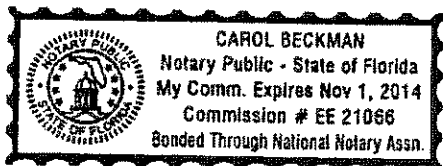
James R. Fedele
(Signature)

James R. Fedele, Secretary
(Print Signatory's name
Its Secretary)

SWORN TO AND SUBSCRIBED before me this 31st day of May, 20 11, by the Secretary of the aforesaid Corporation, who is personally known to me OR who produced N/A as identification and who did X take an oath.

Carol Beckman
(Notary Signature)

Carol Beckman
(Print Notary's Name)



NOTARY PUBLIC
State of Florida at Large
My Commission Expires:
11/1/2014

END OF SECTION