TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Bruce Taylor/327-3748

PREPARED BY: Bruce Taylor

SUBJECT: Resolution

AFFECTED DISTRICT: N/A

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT WITH AKERBLOM CONTRACTING, INC. FOR REHABILITATION OF LIFT STATION #5.

REPORT IN BRIEF:

The Town is in need of rehabilitation of Lift Station #5 at 5001 SW 61 Avenue and the Town Council approved the award of the bid to Akerblom Contracting, Inc. at the Council meeting on 5/3/06 (R2006-134). We are now asking the Mayor to sign the Agreement with Akerblom Contracting, Inc.

PREVIOUS ACTIONS: R-2006-134

CONCURRENCES: Sent to Town Attorney for review

FISCAL IMPACT:

Has request been budgeted? Yes

If yes, expected cost: $310,000

Account Name: Capital Outlay

If no, amount needed:

What account will funds be appropriated from: 040-1058-536-6400

RECOMMENDATION(S): Motion to approve the resolution

Attachment(s): Resolution, Resolution R-2006-134, Agreement, Construction Payment Bond, Construction Performance Bond, Insurance Certificate

RESOLUTION NO. R-2006-

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT WITH AKERBLOM CONTRACTING, INC. FOR REHABILITATION OF LIFT STATION #5.

WHEREAS, the Town is in need of rehabilitation of Lift Station #5 at 5001 SW 61 Avenue; and

WHEREAS, the Town Council approved the award of the bid for this project to Akerblom Contracting, Inc. (Resolution 2006-134).

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council hereby authorizes the Mayor to sign the Agreement with Akerblom Contracting, Inc. for rehabilitation of Lift Station #5.

SECTION 4. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF_____ , 2006.

_____
MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2006.

RESOLUTION NO. R-2006-134

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING THE BID FOR REHABILITATION OF LIFT STATION #5.

WHEREAS, the Town is in need of rehabilitation of Lift Station #5 at 5001 SW 61 Avenue; and

WHEREAS, the Town solicited sealed bids for such services; and

WHEREAS, after review, the Town Council wishes to accept the bid from Akerblom Contracting, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council hereby accepts the bid from Akerblom Contracting, Inc., for rehabilitation of Lift Station #5 in the amount of $310,000.00

SECTION 2. The Town Council hereby authorizes the expenditure from the Utilities Department Capital Outlay Account.

SECTION 4. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF_____ , 2006.

_____
MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2006.

AGREEMENT

THIS AGREEMENT, made and entered into on the _____ day of _____, 2006, by and between the Town of Davie, Florida, hereinafter called the Owner, and Akerblom Contracting, Inc, hereinafter called the Contractor.

WITNESSETH:

1. That the Contractor, for the consideration hereafter fully set out, hereby agree with the Owner as follows:

   That the Contractor shall furnish all the materials, equipment and labor to perform all the work necessary to complete the Rehabilitation of Lift Station # 5 for the Town of Davie, Florida, all in full and complete accordance with the following Specifications and Contract Documents, which are attached hereto and made a part thereof, as if fully contained herein; Advertisement for Bids; Instructions to Bidders; General Conditions, Supplementary Conditions, Addenda, Construction Drawings and Specifications; the Proposal and acceptance thereof.

2. That the Contractor shall commence the work performed under this Agreement on the date specified in the Notice to Proceed order from the Owner and shall fully complete all work within 120 days calendar days from said date.

3. That the Owner hereby agrees to pay the Contractor for the faithful performance of this Agreement, subject to additions and deductions as provided in the Specifications or Proposal, in lawful money of the United States, the amount of three hundred and ten thousand Dollars ($310,000.00) based on the estimate quantities and unit or lump sum prices contained herein.

4. That the Owner, within thirty (30) days from the day an Engineer's approved Application for Payment is presented to he/she, pay the Contractor the amount approved by the Engineer.

5. Partial payment shall be made on the basis or work performed during the preceding calendar month, less ten percent (10%) of the amount of such estimate, which is to be retained by the Owner until all work within a particular part has performed strictly within accordance with this Agreement and until such work has been accepted by the Owner.

6. That upon submission by the Contractor of evidence satisfactory to the Owner that all payrolls, material bills, and other costs incurred by the Contractor in connection with the construction of the work have been paid in full, final payment on account of this Agreement shall be made within thirty (30) days after the completion by the Contractor of all work covered by this Agreement and the acceptance of such work by the Owner.

7. It is mutually agreed between the parties hereto that time is of the essence of this Contract, and in the event the construction of the work is not completed within the time herein specified, it is agreed that from the compensation otherwise to be paid to the Contractor, the Owner may retain the sum of one hundred dollars ($100.00) per calendar day for each day thereafter, Sundays and Holidays included, that the work remains uncompleted, which sum shall represent the actual damages which the Owner will have sustained per day by the failure of the Contractor to complete the work within the time stipulated, and this sum is not a penalty, being the liquidated damages the Owner will have sustained in the event of such default by the Contractor.

8. It is further mutually agreed between the parties hereto that if, at any time after the execution of the Agreement and the Surety Bond hereto attached for its faithful performance and payment, the Owner shall deem the Surety or Sureties upon such Bond to be unsatisfactory or if, for any reason, such Bond ceases to be adequate to cover the performance of the work, the Contractor shall replace the Surety at its expense, within five (5) days after the receipt of notice from such form and amount and with such Surety or Sureties as shall be satisfactory from the Owner. In such event, no further payment to the Contractor shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in a manner and form satisfactory to the Owner.

9. No additional work or extras shall be performed unless the same shall be duly authorized by appropriate action of the Owner in writing.

10. That in the event either party brings suit for enforcement of disagreement, the prevailing party shall be entitled to attorney's fees and court costs in addition to any other remedy afforded by law. The Contractor shall guarantee the complete project against poor workmanship and faulty materials for a period of twelve (12) months after final payment and shall immediately correct any defects which may appear during this period upon notification by the Owner or the Engineer. The venue for any legal action shall be in Broward County, Florida.

11. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner other than those arising from unsettled liens, from faulty work appearing within twelve (12) months after final payment, or from requirements of all specifications. It shall also constitute a waiver of all claims by the Contractor, except those previously made and still unsettled.

12. The Contractor shall perform all work required by the Contract Documents for the Rehabilitation of Lift Station # 5, **Bid No. B-06-17**

13. The Contractor may requisition payments for work completed during the project at monthly intervals. The Contractor's requisition shall show a complete breakdown of the project components, the quantities completed and the amount due, together with such supporting evidence as may be required by the Engineer. Each requisition shall be submitted in quintuplet (5) to the Engineer for approval. Ten percent (10%) of all monies earned by the Contractor shall be retained by the Owner until the project is totally completed as specified and accepted.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first written above, in quintuplet (5) counterparts, each of which shall, without proof or accounting for the other counterpart, be deemed an original Contract.

_____	WITNESS:
CONTRACTOR	
_____	_____
BY	
_____	DATE: _____
TITLE	
	OWNER
Town of Davie, Florida Municipal Corporation	ATTEST:
_____	_____
RUSSELL MUNIZ Acting Assistant Town Administrator	TOM TRUEX Mayor
(Seal)	
_____	
KEN COHEN Acting Town Administrator	APPROVED AS TO FORM AND CORRECTNESS:
DATE: _____	_____
	MONROE D. KIAR Town Attorney, Town of Davie

Council Approved: May 3, 2006

Contract Amount: $310,000.00

END OF DOCUMENT

CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address and Phone No.)
Akerblom Contracting, Inc.
2017 SW 28 Terrace
Fort Lauderdale, Florida 33312
954-224-1766

SURETY (Name and Principal Place of Business)
_____
_____
_____

OWNER (Name and Address and Phone No.):

TOWN OF DAVIE
6591 Orange Drive
Davie, Florida 33314
Phone (954) 797-1030

CONSTRUCTION CONTRACT
Date: _____
Amount:$_____
Description (Name and Location):

Rehabilitation of Lift Station # 5

BID NO. B-06-17
ADDRESS 6591 Orange Drive, Davie, FL 33314

BOND
Date (Not earlier than Construction Contract Date):
Amount: $_____
Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company (Corporate Seal)

Signature: _____
Name and Title:

SURETY
Company (Corporate Seal)

Signature: _____
Name and Title:

CONTRACTOR AS PRINCIPAL

Company (Corporate Seal)

Signature: _____
Name and Title:

Company (Corporate Seal)

Signature: _____
Name and Title:

EJCDC No. 1910-28B (1984 Edition)
_____ through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, American Institute of Engineers, American Subcontractors Association and the Associated Specialty Contractors.

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. With respect to the Owner, this obligation shall be null and void if the Contractor:

   2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

   2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3. With respect to Claims, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

   4.1 Claimants who are employed by, or have a direct contract with the Contractor, have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

   4.2 Claimants who do not have a direct contract with the Contractor:

      4.2.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied, or for whom the labor was done or performed; and

      4.2.2 Have either received a rejection in whole or in part from the Contractor, or not received within thirty (30) days of furnishing the above notice, any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

4.2.3 Not having been paid within the above thirty (30) days, have sent a written notice to the Surety (at the address described in paragraph 12) and sent a copy, or notice thereof, to the Owner stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5. If a notice required by Paragraph 4 is given by the Owner to the Contractor, or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly, and at the Surety's expense, take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within forty-five (45) days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing, and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor, and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond and shall have, under this Bond, no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one (1) year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (iii), or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be acceptable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom, and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include, without limitation, in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, Engineering services required for performance of the work of the Contractor, and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address and Phone No.)
Akerblom Contracting, Inc.
2017 SW 28 Terrace
Fort Lauderdale, Florida 33312
954-224-1766

SURETY (Name and Principal Place of Business)
_____
_____
_____

OWNER (Name and Address and Phone No.):

TOWN OF DAVIE
6591 Orange Drive
Davie, Florida 33314

CONSTRUCTION CONTRACT
Date: _____
Amount:$_____
Description (Name and Location):

Rehabilitation of Lift Station # 5

BID NO. B-06-17
ADDRESS: 6591 Orange Drive, Davie, FL 33314

BOND
Date (Not earlier than Construction Contract Date):
Amount: $_____
Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company (Corporate Seal)

Signature: _____
Name and Title:

SURETY
Company (Corporate Seal)

Signature: _____
Name and Title:

CONTRACTOR AS PRINCIPAL

Company (Corporate Seal)

Signature: _____
Name and Title:

SURETY

Company (Corporate Seal)

Signature: _____
Name and Title:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in subparagraph 3.1.

3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

   3.1 The Owner has notified the Contractor and the Surety, at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen (15) days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

   3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract, such Contractor Default shall not be declared earlier than twenty (20) days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

   3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a Contractor selected to perform the Construction Contract in accordance with the terms of the Contract with the Owner.

4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly, and at the Surety's expense, take one of the following actions:

   4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

   4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified Contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a Contract to be prepared for execution by the Owner and the Contractor, selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified Surety equivalent to the Bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new Contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to the Owner and, as soon as deemed practicable by the owner after the amount is determined, tender payment therefor to the Owner; or

2. Deny liability in whole or in part and notify the Owner citing reasons therefor.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen (15) days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds, as provided in Subparagraph 4.4, and the Owner refuses the payment tendered, or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2 or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract.

6.2 Additional legal, design, professional and delay costs resulting from the Contractor's Default and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contract.

7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in Broward County within two (2) years after Contractor Default, or within two (2) years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. The provisions of limitation available to Sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom, and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. DEFINITIONS:

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received, or to be received by the Owner, in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

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