CITY OF RIVIERA BEACH CITY COUNCIL
AGENDA ITEM SUMMARY

MEETING DATE: May 16, 2012 **AGENDA ITEM SUMMARY NO.** D12-052-2

[ ] AWARDS / PRESENTATIONS / PETITIONS
[X] CONSENT
[ ] PUBLIC HEARING
[ ] ORDINANCE ON SECOND READING
[ ] ORDINANCE ON FIRST HEARING
[ ] REGULAR
[X] RESOLUTION
[ ] DISCUSSION & DELIBERATION
[ ] BOARD APPOINTMENT
[ ] WORKSHOP

SUBJECT: A resolution to award Koldaire, Inc. of Sunrise, Florida, the contract for construction services for the installation of a new HVAC unit at the Police Department; and authorizing the Interim Finance Director to transfer $59,777. from the General Fund Contingency Account for FY2012 expenditures to account number 001-0817-521-0-6405 and authorizing the interim Finance Director to make payment for same from account number 001-0817-521-0-6405.

RECOMMENDATION / MOTION: Staff recommends that the City Council approve the resolution.

• Assistant City Manager		Library	N/A
• City Attorney		Marina	N/A
• City Clerk		• Police	5/23/12
Community Development	N/A	• Public Works	5-24-12
• Finance	5/24/12	• Purchasing	5/24/2012
Fire	N/A	Recreation & Parks	N/A
Human Resources	N/A	Utilities	N/A
Information Systems	N/A	Other	N/A

APPROVED BY CITY MANAGER: **DATE:** May 29, 2012

Originating Dept. – Police	Costs: $59,777.00 Current FY: $59,777.00 Funding Source: [ ] Capital Improvement [ ] Operating [X] Other: General Fund Contingency	City Council Actions: [ ] Approved [ ] Approved w/conditions [ ] Denied_____ [ ] Tabled to_____ [ ] Referred to Staff_____
User Dept. – Police		
Advertised: Date: Paper: [ ] Not Required Affected Parties [X] Notified [ ] Not Required	Budget Account Number: Repair & Maintenance – Building 001-0817-521-0-6405	Attachments: 1. Resolution 2. Public Works recommendation to City Manager 3. Purchasing Recommendation 4. Bid Tabulation 5. Contract

SUMMARY/BACKGROUND:

Over the past two (2) years, the Police Department has experienced many mechanical problems with the current Heating Ventilation and Air Conditioning (HVAC) unit. There has been a combination of major and minor issues that, collectively over the last two (2) years, have a repair history that exceeds $25,000, not including the most recent repair quote of $7,000. Repairing the HVAC unit does not seem to be the most economical solution when compared to the cost of replacing it.

Due to the constant malfunctions and the amount of money already expended, the Purchasing Department solicited contractors for replacement of the HVAC unit through the issuance of Bid #310-11. Based on bids provided (attached), Koldaire, Inc. of Sunrise, Florida is the lowest responsive and responsible bidder.

Neither the Police Department's nor Public Works' budget will support the replacement cost; therefore, it is recommended that the necessary funds be transferred from the General Fund Contingency account.

Staff recommends that City Council approve both the contract with Koldaire, Inc. and the transfer of funds for the replacement of the HVAC unit at the Police Department.

Item No. 4

EXHIBIT A-1

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	$65,755				
Operating Costs					
External Revenues					
Program Income (City)					
In-Kind Match (City)					
NET FISCAL IMPACT	$65,755				
NO. ADDITIONAL FTE POSITIONS (Cumulative)	n/a	n/a	n/a	n/a	n/a

Is Item Included In Current Budget? Yes ____ No X

Budget Account No.: Fund 001 Dept/Division 0817 Org. 521 Object 0 Reporting Category 6405

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

Transfer from General Fund Contingency for FY 2012 Expenditures

Expenditures from Account No. 001-0817-521-0-6405

Contract Price	$59,777.00
Ten Percent (10%) Contingency	$ 5,978.00
Total Expenditures	$65,755.00

C. Departmental Fiscal Review: _____ 5/29/12

Clarence D. Williams, Chief of Police

III. REVIEW COMMENTS

A. Finance Department and/or Purchasing/Intergovernmental Relations/Grants Comments:

_____ _____

Finance Department **Purchasing and Grants**

B. Other Department Review:

_____

Department Director

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING BID NO. 310-11 TO KOLDAIRE, INC. OF SUNRISE, FLORIDA FOR THE INSTALLATION OF A NEW HVAC UNIT AT THE POLICE DEPARTMENT; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE PROPOSED CONSTRUCTION SERVICES CONTRACT; AUTHORIZING THE INTERIM FINANCE DIRECTOR TO TRANSFER $59,777 FROM GENERAL FUND CONTINGENCY FOR EXPENDITURES TO ACCOUNT NUMBER 001-0817-521-0-6405 AND MAKE PAYMENT FROM SAME; AUTHORIZING THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO TEN PERCENT (10%); AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Riviera Beach Police Department is in need of a new Heating, Ventilation and Air Conditioning (HVAC) unit to replace the current malfunctioning unit; and

WHEREAS, the City's Purchasing Department solicited bids for the installation of the new unit with Koldaire, Inc, being the lowest responsive and responsible bidder; and

WHEREAS, neither the Police Department's budget nor the Public Works' budget can support the expense of replacing the HVAC System; and

WHEREAS, the new HVAC unit will cost $59,777.00 and a request is being made to pay for the replacement through a transfer from the General Fund Contingency account.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1: The City Council accepts the bid proposal and awards the Construction Services Contract to Koldaire Inc. of Sunrise, FL, the lowest responsive and responsible bidder, in the amount of $59,777.00 for the installation of a new HVAC unit at the Police Department.

SECTION 2: The Mayor and City Clerk are authorized to execute the Construction Services Contract.

SECTION 3: The Interim Finance Director is authorized to transfer $59,777.00 from General Fund Contingency to account number 001-0817-521-0-6405 and make payment from same.

SECTION 4: The Interim Finance Director is authorized to make payment from the Police Department Repair & Maintenance Building Account number 001-0817-521-0-6405, in the amount of $59,777.00 to Koldaire, Inc.

SECTION 5: That the City Manager shall have authority to approve change orders in an amount not to exceed ten percent (10%) of the contract amount.

SECTION 6: This Resolution shall take effect immediately upon its passage and approval.

PASSED AND APPROVED this _____ day of _____, 2012.

APPROVED:

_____
THOMAS A. MASTERS
MAYOR

_____
BILLIE E. BROOKS
CHAIRPERSON

ATTEST:

_____
CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

_____
DAWN S. PARDO
CHAIR PRO TEM

_____
JUDY L. DAVIS
COUNCILPERSON

_____
CEDRICK A. THOMAS
COUNCILPERSON

_____
SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: _____

SECONDED BY: _____

B. BROOKS _____

D. PARDO _____

J. DAVIS _____

C. THOMAS _____

S. LOWE _____

REVIEWED AS TO LEGAL SUFFICIENCY

Pamala H. R

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 5/29/12

PURCHASING DEPARTMENT INTER-DEPARTMENTAL COMMUNICATION

To: BRYNT JOHNSON, INTERIM PUBLIC WORKS DIRECTOR

From: BENJAMIN GUY, PURCHASING DIRECTOR

Date: JULY 12, 2011

Subject: **AWARD RECOMMENDATION: BID NO. 310-11 "TURNKEY INSTALLATION FOR THE CITY OF RIVIERA BEACH POLICE DEPARTMENT HVAC UNIT**

In accordance with the City of Riviera Beach Procurement Code invitation for bids were advertised in the **"Legal Notices"** section of the Palm Beach Post on **May 29, 2011** to solicit qualified, licensed and insured HVAC contractors to provide a turnkey installation for its Police Department HVAC located at 600 West Blue Heron Boulevard, Riviera Beach, FL.

To provide additional exposure and to ensure maximum competition for the project, the solicitation was also advertised on the City's internet web-page **www.rivierabch.com** and **www.demandstar.com** on **May 31, 2011**.

Bid proposals were publicly opened and announced on June 28, 2011 at 3:00 p.m. in the City Manager's Conference Room. The offers ranged from $59,777.00 to $94,917.00. (Please Refer to attached Bid Tabulation)

The low bid, $59,777.00 was submitted by Koldiare, Inc. of Sunrise, Florida. Sunrise, Inc., a certified air conditioning contractor, has been determined to be the lowest responsive and responsible bidder. The contractor is in good standing with the State Department of Business and Professional Regulation. In addition, Koldiare, Inc. is an accredited business with the Better Business Bureau and received A+ rating from the Bureau.

Additionally, the Purchasing Department has verified the following reference:

COMPANY	NATURE OF PROJECT	RATING
Heico Aerospace Corporation 3000 Taft Street Hollywood, FL	Install (15) ton a/c units with associated equipment Value of Project: $250,000	Good
City of Greenacres 5750 Melaleuca Lane Greenacres, FL	HVAC Upgrades Value of Project: 102,108	Good
City of Fort Lauderdale 100 N. Andrews Avenue, Suite 619 Fort Lauderdale, FL	Replace Two (2) split units with Two (2) 35 Ton units Value of Project: $75,000	Outstanding

AWARD RECOMMENDATION: BID NO. 310-11 "TURNKEY INSTALLATION FOR THE CITY OF RIVIERA BEACH POLICE DEPARTMENT HVAC UNIT

For your records we are enclosing copies of all documents used to determine the bidder's responsibility.

Accordingly, the Purchasing Department recommends the contract be awarded to, the low responsive and responsible bidder Koldaire, Inc. of Sunrise, Florida, in the amount of $59,777.00.

Please note that a bid bond and performance bond will not be required for this contract. Finally, certificates of insurance naming the City of Riviera Beach as additional insured for all insurance types and coverage amounts indicated in the "Materials and Installation Contract" must be submitted by the contractor and forwarded to the Purchasing Department.

cc: BG/PW
Purchasing File

BID #310-11 TURNKEY INSTALLATION FOR THE CITY OF RIVIERA BEACH POLICE DEPARTMENT HVAC UNIT OPENED: JUNE 28, 2011 @ 3:00 P.M.

	KOLDAIRE, INC. 5181 NW 109 AVENUE SUNRISE, FL 33351	FLORIDA MECHANICAL LLC 3615 FISCAL COURT RIVIERA BEACH, FL 33404	DAC AIR CONITIONING CORP. 12440 SW 128 STREET SUITE #6 MIAMI, FL 33186	THERMAL CONCEPTS INC. 2201 COLLEGE AVENUE DAVIE, FL 33317	CEDARS ELECTRO-MECHANICAL, INC. 1712 S.DIXIE HWY. LAKE WORTH, FL 33460	OPTIMU COC 7613 HOLI LAKE W(
	$3,000.00	$1,250.00	$4,143.00	$5,300.00	$1,500.00	$
	$50,000.00	$52,145.00	$64,932.00	$54,825.00	$63,024.00	$5
	$1,196.00	$1,500.00	$2,500.00	$1,750.00	$200.00	$
	$5,000.00	$4,080.00	$8,286.00	$2,925.00	$7,500.00	$
NY	$581.00	$3,876.00	$15,056.00	$2,100.00	$1,800.00	
	$59,777.00	$62,851.00	$94,917.00	$66,900.00	$75,824.00	$7
	YES	YES	YES	YES	YES	
	YES	YES	YES	YES	YES	
	YES	YES	YES	YES	YES	
	YES	YES	YES	YES	YES	
	N/A	N/A	100%	10%	0%	

CITY OF RIVIERA BEACH
CONTRACT FOR CONSTRUCTION

This Contract is made as of this _____ day of _____, _____ by and between the CITY OF RIVIERA BEACH, a Political Subdivision of the State of Florida, by and through its CITY COUNCIL, hereinafter referred to as the CITY, and Koldaire, Inc. of Sunrise, FL [ ] an individual, [ ] a partnership, [X] a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal I.D. or Social Security number is 592295754.

In consideration of the mutual promises contained herein, the CITY and the CONTRACTOR agree as follows:

ARTICLE 1 - SERVICES

The CONTRACTOR'S responsibility under this Contract is to provide construction services in the area of HVAC unit replacement, as more specifically set forth in the Scope of Work detailed in Exhibit "A", attached hereto and made a part hereof.

The CITY'S representative/liaison during the performance of this Contract shall be Director of Public Works, telephone no. 561-845-4080.

ARTICLE 2 - SCHEDULE

A. Time of Completion - Construction work must begin within five (5) calendar days of the date of equipment delivery and contract time to be calculated based on the date of receipt of official notice to proceed; provided the CITY has received proof of insurance as set forth in Article 11 and a Performance and Surety Bond as set forth in Article 31 in a form satisfactory to the CITY. Construction work shall be carried on at a rate to insure its full completion within ninety (90) calendar days, including delivery time, from the date of official notice to proceed, the rate of progress and time of completion being essential conditions of this Contract.

B. Deduction for not completing on time - If the contract work is not fully complete according to the terms of this Contract within the limits herein stipulated, the CONTRACTOR shall pay the CITY, not as a penalty, but as liquidated damages, a sum equal to one two hundred and fifty dollars ($250) for each day elapsing between the expiration of such time limit and the date of full completion, providing, however, that the time limits herein stated are subject to extension without payment of damages, as provided in Article 17, herein. It is agreed that these liquidated damages are a good faith and reasonable pre-estimate of CITY's actual damages due to delay by CONTRACTOR because it is difficult, if not impossible, to accurately estimate the actual damages suffered by CITY due to any such delay.

C. Reports - Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A."

ARTICLE 3 - PAYMENTS TO CONTRACTOR

A. Generally - The CITY agrees to compensate the CONTRACTOR in accordance with the fee proposal set forth in Exhibit "B". The total and cumulative amount of this Contract shall not exceed Fifty-Nine Thousand Seven Hundred Seventy-Seven ($59,777.00). The CITY shall not reimburse the CONTRACTOR for any travel costs incurred as a direct result of the CONTRACTOR providing deliverables to the CITY in pursuance of the scope of work contained in Exhibit A, without specific, prior written approval of the CITY.

B. Progress Invoices - No later than the 20th day of every month, the CONTRACTOR shall prepare and submit, on a form approved by the CITY'S representative, a detailed estimate and invoice of work which has been completed from the start of the job up to and including the last day of the preceding month, together with such supporting evidence of the expenditures as required by this Contract. The CONTRACTOR shall also submit with each invoice an updated revised work schedule. The CONTRACTOR shall include in the Progress Invoice a Warranty of Title indicating that as of the date of Progress Invoice that all work, materials, and equipment covered by the Progress Invoice passes to the City at the time of payment of the Progress Invoice and that all laborers, materialmen, and subcontractors have been paid in full for all work, materials, and equipment covered by the Progress Invoice and also provide Partial Releases of Lien and/or Partial Releases of Payment Bond from all laborers, materialmen, and subcontractors as to such work, materials, and equipment covered by the Progress Invoice. CITY has no obligation to pay any Progress Invoice until both a Warranty of Title and Partial Releases of Lien and/or Partial Releases of Payment Bond are provided to CITY.

C. Progress Payments – Progress Invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the CITY representative within ten days of receipt of the invoice, indicating that services have been rendered in conformity with the Contract unless the CITY requires clarification or a correction of the invoice. The invoices will be sent to the Finance Department for payment. The CITY will pay to the CONTRACTOR ninety percent (90%) of the value based on the CONTRACTOR'S estimate and invoice, as approved by the CITY representative. Invoices will normally be paid within thirty (30) days following the CITY representative's approval.

D. Payment of Expenses - All requests for payment of expenses eligible for reimbursement under the terms of this Contract, if any, shall include copies of said receipts, invoices, or other documentation acceptable to the Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the scope of work described in this Contract. Long distance telephone calls shall identify the person(s) called, purpose of call, time and costs. Mileage charges shall identify the destination, number of miles, rate, and purpose of travel. Duplication charges shall describe the documents, purpose of duplicating, and rate charged. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Contract, if any, will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.

E. Final Invoice - In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "Final Invoice" on the CONTRACTOR'S final/last billing to the CITY. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this

account will thereupon be closed, any and other further charges if not properly included on this Final Invoice are waived by the CONTRACTOR and the CITY shall have no obligations for any other costs or expenses thereafter. Further, the CONTRACTOR shall include in the Final Invoice a Warranty of Title indicating that that all work, materials, and equipment covered by this Contract passes to the City at the time of payment of the Final Invoice and that all laborers, materialmen, and subcontractors have been paid in full for all work, materials, and equipment covered by Contract and also provide Final Releases of Lien and/or Final Releases of Payment Bond from all laborers, materialmen, and subcontractors as to such work, materials, and equipment covered by the Contract. CITY has no obligation to pay the Final Invoice until both a Warranty of Title and Final Releases of Lien and/or Final Release of Payment Bond are provided to CITY.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONTRACTOR shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged to the CONTRACTOR'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or non current wage rates or due to inaccurate representations of fees paid to outside contractors. The CITY shall exercise its rights under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

This Contract may be canceled by the CONTRACTOR upon thirty (30) days prior written notice to the CITY'S representative in the event of substantial failure by the CITY to perform in accordance with the terms of this Contract through no fault of the CONTRACTOR; provided the CITY fails to cure same within that thirty (30) day period. This Contract may also be terminated, in whole or in part, by the CITY, with or without cause, immediately upon written notice to the CONTRACTOR. Unless the CONTRACTOR is in breach of this Contract, the CONTRACTOR shall be paid for services rendered to the CITY'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the CITY, the CONTRACTOR shall:

A. Stop work on the date and to the extent specified.

B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

C. Transfer all work in process, completed work, and other materials related to the terminated work to the CITY.

D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 - PERSONNEL

The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the CITY.

All of the services required hereunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and licensed and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONTRACTOR'S key personnel, as may be listed in Exhibit "A", must be made known to the CITY'S representative and written approval, at CITY's sole discretion, must be granted by the CITY'S representative before said change or substitution can become effective.

The CONTRACTOR warrants that all services shall be performed by skilled, properly licensed, and competent personnel to the highest professional standards in their respective field(s).

The CONTRACTOR agrees that it is fully responsible to the CITY for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the CONTRACTOR. Nothing contained herein shall create any contractual relationship between any subcontractor and the CITY.

All of the CONTRACTOR'S personnel (and all Subcontractors) while on CITY premises will comply with all CITY requirements governing conduct, safety and security.

ARTICLE 7 - SUBCONTRACTING

The CITY reserves, at its sole discretion and for any reason, the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor by CONTRACTOR and to inspect all facilities and approve all qualifications of any subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. However, in any event the CONTRACTOR shall be responsible for performing 50% of the work, at a minimum, by its own forces and equipment. Any changes or substitutions in the CONTRACTOR'S subcontractors must be made known to the CITY'S representative and written approval must be granted by the CITY'S representative before said change or substitution can become effective. The CONTRACTOR is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance, in writing and at the CITY's sole discretion, of the new subcontractor by the CITY.

If subcontractor(s) are used, the CONTRACTOR shall use only licensed and insured subcontractor(s), and shall require any subcontractor, as may be applicable, to provide a payment and performance bond. All subcontractors shall be required to promptly make payments to any person who, directly or indirectly, provides services or supplies

under this Contract.

The CONTRACTOR shall be responsible for the performance of all subcontractors.

ARTICLE 8 – SBE PARTICIPATION

As set forth in the City's Procurement Ordinance, Small Business Enterprises (SBE) shall have the opportunity to participate in this project. CONTRACTOR is hereby informed that the CITY has established a minimum of 15% participation of SBE. In accordance with the Procurement Code, the CONTRACTOR agrees to the SBE participation for this Contract and agrees to abide by the provisions of the SBE section of the procurement code. The CONTRACTOR agrees to maintain all relevant records and information necessary to document compliance with the Ordinance, and agrees to allow the CITY to inspect such records and provide such records to the CITY upon request.

ARTICLE 9 - FEDERAL AND STATE TAX

The CITY is exempt from payment of Florida State Sales and Use Taxes. The CITY will sign an exemption certificate submitted by the CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the CITY, nor is the CONTRACTOR authorized to use the CITY'S Tax Exemption Number in securing such materials.

The CONTRACTOR shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

ARTICLE 10 - AVAILABILITY OF FUNDS

The CITY'S performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the CITY OF RIVIERA BEACH CITY COUNCIL.

ARTICLE 11 - INSURANCE

A. Prior to execution of this Contract by the CITY, the CONTRACTOR shall provide certificates evidencing insurance coverages as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount, and classification as required for strict compliance with this ARTICLE and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the CITY'S representative. Compliance with the foregoing requirements shall not relieve the CONTRACTOR of its liability and obligations under this Contract.

B. The CONTRACTOR shall maintain during the term of this Contract, standard Professional Liability Insurance in the minimum amount of $1,000,000.00 per occurrence.

foregoing requirements shall not relieve the CONTRACTOR of its liability and obligations under this Contract.

B. The CONTRACTOR shall maintain during the term of this Contract, standard Professional Liability Insurance in the minimum amount of $1,000,000.00 per occurrence.

C. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability, insurance in the amount of $500,000.00 per occurrence to protect the CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the CONTRACTOR or by anyone, directly or indirectly, employed by or contracting with the CONTRACTOR.

D. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of $500,000.00 combined single limit for bodily injury and property damages liability to protect the CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles including, but not limited to, leased and rented automobiles, whether such operations be by the CONTRACTOR or by anyone, directly or indirectly, employed by the CONTRACTOR.

E. The parties to this Contract shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes. In the event that a party does not carry Workers' Compensation Insurance and chooses not to obtain same, then such party shall. in accordance with Section 440.05, Florida Statutes, apply for and obtain an exemption authorized by the Department of Insurance and shall provide a copy of such exemption to the CITY.

F. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the CONTRACTOR shall specifically include the CITY as an "Additional Insured." Further, if CITY is being reimbursed in whole or in part for the cost of the work contemplated by the Contract by any third party, including but not limited to, any County, State, or Federal agency, CONTRACTOR, at CITY's request, will also list any such third party as an "Additional Insured" on all insurance.

ARTICLE 12 - INDEMNIFICATION

To the extent allowed by law, the CONTRACTOR shall indemnify and hold harmless the CITY, its agents, officers, and employees from and against any and all claims, liability, losses, and/or causes of action which may arise from any negligent act, recklessness, or intentional wrongful conduct or omission of the CONTRACTOR, its agents, officers, or employees in the performance of services under this Contract, including, but not limited to, to all attorneys' fees and costs incurred by CITY.

The CONTRACTOR further agrees to indemnify and hold harmless the CITY, its agents, officers and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or

misconduct of the CONTRACTOR not included in the paragraph above and for which the CITY, its agents, officers, or employees are alleged to be liable, including, but not limited to, to all attorneys' fees and costs incurred by CITY.

CONTRACTOR shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, all costs, expert witness fees, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Contract or any renewal thereof.

Nothing contained in this Article shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

ARTICLE 13 - SUCCESSORS AND ASSIGNS

The CITY and the CONTRACTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Neither the CITY nor the CONTRACTOR shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the CITY which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the CITY and the CONTRACTOR.

ARTICLE 14 - VENUE

This Contract and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided therein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Venue for any and all actions arising from and/or relating to the Contract shall be exclusively held in Palm Beach County, Florida.

ARTICLE 15-REMEDIES

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 16 - CONFLICT OF INTEREST

The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Florida Statutes, Section 112.311. The CONTRACTOR further represents that no person having any such conflicting interest shall be employed for said performance.

The CONTRACTOR shall promptly notify the CITY'S representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONTRACTOR'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the CITY as to whether the association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by the CONTRACTOR. The CITY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the CONTRACTOR. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the CITY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the CITY by the CONTRACTOR under the terms of this Contract.

ARTICLE 17 – DELAYS AND EXTENSION OF TIME

The CONTRACTOR shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions. Upon the CONTRACTOR'S request, the CITY shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the CONTRACTOR and, if the CONTRACTOR'S delay and failure to timely perform was without it or its subcontractors' fault or negligence, as determined by the CITY in its sole discretion, the time of completion shall be extended for any reasonable time that the CITY, in its sole discretion, may decide; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time.

If the CONTRACTOR is delayed at any time in the progress of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the CITY pending negotiation or by any cause which the CITY, in its sole discretion, shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY, in its sole discretion, may decide.

No extension of time shall be made for any delay occurring more than seven (7) days before a claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary.

If no schedule or other agreement sets forth the dates by which the drawing(s) shall be furnished, then no claims for delay shall be allowed because of failure to furnish such drawing(s), until two (2) weeks after demand for the drawings and not then unless said claim is reasonable.

The CONTRACTOR's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and CONTRACTOR specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged

monetary losses which may be allegedly suffered by CONTRACTOR due to a delay in completion of the work.

ARTICLE 18 - INDEBTEDNESS

The CONTRACTOR shall not pledge the CITY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 19 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the CITY'S representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the CITY under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the CITY or at its expense will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the CITY'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the CITY'S expense shall be and remain the CITY'S property and may be reproduced and reused at the discretion of the CITY.

The CITY and the CONTRACTOR shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 20 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work, services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

The CONTRACTOR does not have the power or authority to bind the CITY in any promise, agreement or representation other than as specifically provided for in this Contract.

ARTICLE 21 - 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 the 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 any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 22 - ACCESS AND AUDITS

The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Contract. The CITY shall have access to such books, records, and documents as required in this Article for the purpose of inspection or audit during normal business hours, at the CONTRACTOR'S place of business.

ARTICLE 23 - NONDISCRIMINATION

The CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, CONTRACTOR shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

ARTICLE 24 - ENFORCEMENT COSTS

All parties shall be responsible for their own attorneys fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract.

ARTICLE 25 - AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. This includes, but is not limited to, maintaining all licenses and performing all the duties required under Section 489.128 of the Florida Statutes. Proof of such licenses and approvals shall be submitted to the CITY'S representative upon request.

The CONTRACTOR shall be solely responsible for obtaining and complying with all necessary permits, licenses, approvals and authorizations required for any work done pursuant to this Contract from any federal, state, regional, county or city agency.

ARTICLE 26 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 27 - PUBLIC ENTITY CRIMES

As provided in Sections 287.132-133, Florida Statutes, by entering into this Contract or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 28 - MODIFICATIONS OF WORK

The CITY reserves the right to make changes in the Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONTRACTOR of the CITY'S notification of a contemplated change, the CONTRACTOR shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change; (2) notify the CITY of any estimated change in the completion date; and, (3) advise the CITY if the contemplated change shall affect the CONTRACTOR'S ability to meet the completion dates or schedules of this Contract.

If the CITY so instructs in writing, the CONTRACTOR shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the CITY'S decision to proceed with the change.

If the CITY elects to make the change, the CITY shall initiate a Contract Amendment and the CONTRACTOR shall not commence work on any such change until such written amendment is signed by the CONTRACTOR and approved and executed by the CITY's designated representative and approved by the CITY COUNCIL FOR THE CITY OF RIVIERA BEACH.

ARTICLE 29 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

CITY OF RIVIERA BEACH
BRYNT JOHNSON
2391 AVENUE L
RIVIERA BEACH, FL 33404

and if sent to the CONTRACTOR shall be mailed to:

FRANK MONTI
KOLDAIRE, INC
4659 NW 103RD AVENUE
SUNRISE, FL 33351

ARTICLE 30 - ENTIRETY OF CONTRACTUAL AGREEMENT

The CITY and the CONTRACTOR agree that this Contract and any attachments hereto or other documents as referenced in the Contract sets forth the entire agreement between the parties, that there are no promises or understandings other than those stated herein, and this Contract supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 28 - Modifications of Work.

ARTICLE 31 - SPECIAL CONDITIONS

All materials and supplies provided by CONTRACTOR shall be in strict accordance with the plans and specifications approved by the CITY.

The CONTRACTOR shall furnish bonds and maintain said bonds throughout the duration of the project as provided for in Florida Statutes section 255.01 Et. Seq., covering the faithful performance of the Contract and payment of all obligations arising thereunder. The bonds shall be secured by the CONTRACTOR from a surety company licensed in the State of Florida with an "A-" rating or better in management and a "10" rating or better in strength as rated by Best's Key Rating Guide published by Alfred M. Best Company, Oldwick, New Jersey 08858.

The CONTRACTOR shall be required to provide Surety Bonds in the amount of one hundred percent (100%) of the Contract amount. The required premiums shall be paid for by the CONTRACTOR.

In addition to the above-minimum qualifications, the surety company must meet at least one of the following additional qualifications:

1. The surety company shall hold a current certificate or authority as an acceptable surety of federal bonds in accordance with the United States Department of Treasury Circular 570, Current Revision. The surety company shall provide the CITY with satisfactory evidence that such excess risk has been protected in an acceptable manner.

2. The surety company shall have at least the following minimum ratings in the latest revision of Best's Key Rating Guide: Best's Policy Holders Ratings –A- (minimum); Best Financial Category – Class 1.

3. For projects that do not exceed $500,000.00, the CITY will accept bonds in accordance with Florida Statute section 287.0935.

4. If the surety is declared bankrupt, becomes insolvent, its right to do business in the State of Florida is terminated or it ceases to meet the requirements set forth above, the CONTRACTOR shall within ten (10) working days after notification by the CITY substitute another bond and surety company, at no cost to the CITY, meeting the above requirements.

ARTICLE 32 – INSPECTION OF WORK

The CITY'S representative and the CITY'S Building Officials shall at all times have access to work wherever it is, in preparation or progress, and the CONTRACTOR shall provide proper facilities for such access and for inspection.

If the specifications, the CITY, the Building Official's instructions, laws, ordinances or any public authority require any work to be specially tested or approved, the CONTRACTOR shall give the CITY Representative and CITY Building Official timely notice of its readiness for inspection. If any such work should be covered up by CONTRACTOR and CITY Representative or CITY Building Official desires to inspect or re-inspect such work for any reason, at the sole discretion of CITY Representative or CITY Building Official, such work must be uncovered for examination, at the CONTRACTOR'S expense.

ARTICLE 33– WARRANTY/GUARANTY

All materials and equipment to be furnished and/or installed by the CONTRACTOR under this Contract as it relates to the installation of a new HVAC unit at the Police Department shall be guaranteed by the Manufacturer for a period of two (2) years for parts and five (5) years for compressor(s) from the date of final acceptance thereof against defective materials, design and workmanship. The CONTRACTOR shall guarantee all of its work, including but not limited to the HVAC unit, its parts and installation for a period of two (2) years. Upon receipt of notice from the CITY of failure of any part covered under such warranty/guaranty period, the affected part, parts, or materials shall be replaced promptly with new parts or materials by the CONTRACTOR or Manufacturer at no expense to the CITY. In the event the CONTRACTOR fails to make the necessary repairs or replacements within thirty (30) days after notification by the CITY, the CITY may accomplish the work at the expense of the CONTRACTOR.

The CONTRACTOR shall provide the CITY with a written warranty of its work and with a copy of the manufacture's warranty as it relates to the materials and parts used to install interior fixtures and lights.

ARTICLE 34 – PROTECTION OF WORK AND PROPERTY

The CONTRACTOR shall continuously maintain adequate protection of all work from damage, and shall protect such work and the CITY'S property from injury or loss arising during the term of the Contract. Except for any such damage, injury, or loss which may be directly due to errors caused by the CITY or employees of the CITY, the CONTRACTOR shall adequately protect adjacent property, as provided by the law, and shall provide guard fences, lights, and any other necessary materials to carry out such protection.

Until acceptance of the work by the CITY, the CITY'S property shall be under the charge and care of the CONTRACTOR and the CONTRACTOR shall take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, and the CONTRACTOR shall repair, restore and make good, without additional charge any work occasioned by any of the above causes before its completion and acceptance by the CITY.

ARTICLE 35 – TIME

Time is of the essence in all respects under this Contract.

ARTICLE 36 - TERMINOLOGY AND CAPTIONS

All pronouns, singular, plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. Wherever the context may require, the singular shall mean and include the plural and the plural shall mean and include the singular. The term "Contract" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter" and the like mean this Contract in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings are for reference and convenience only and do not enter into or become a part of the context of this Contract, nor shall such headings affect the meaning or interpretation of this Contract.

ARTICLE 37 - WAIVER

Failure of the CITY to enforce or exercise any right(s) under this Contract shall not be deemed a waiver of the CITY'S right to enforce or exercise said right(s) at any time thereafter.

ARTICLE 38 - PREPARATION

CITY and CONTRACTOR acknowledge that each has had the benefit of counsel or the ability to retain counsel and full and free access to counsel in connection with the negotiation and execution of Contract, that each has consulted or could have consulted with counsel in connection with this Contract, and that each has had the opportunity, prior to execution, to read this Contract and fully understand all of its provisions. Should any provision in this Contract require judicial or quasi-judicial interpretation it is agreed that a Court or other dispute resolution forum interpreting or enforcing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any

party by reason of the rule construction that a document is to be construed more strictly against the party who itself or through its agent has prepared the same. CITY and CONTRACTOR agree that this Contract is the product and result of a joint effort.

ARTICLE 39 - MATERIALITY

All provisions of the Contract shall be deemed material. In the event CONTRACTOR fails to comply with any of the provisions contained in this Contract or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Contract and CITY may at its option and without notice terminate this Contract.

ARTICLE 40 - REPRESENTATIONS/BINDING AUTHORITY

CONTRACTOR has full power, authority and legal right to execute and deliver this Contract and perform all of its obligations under this Contract. By signing this Contract, Frank Monti hereby represents to the CITY that he/she has the authority and full legal power to execute this Contract and any and all documents necessary to effectuate and implement the terms of this Contract on behalf of the party for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Contract.

ARTICLE 41 - EXHIBITS

Each exhibit referred to in this Contract forms an essential part of this Contract. The exhibits, if not physically attached, should be treated as part of this Contract and are incorporated herein by reference.

ARTICLE 42 - CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS

This Contract consists specifications and this manual. The CONTRACTOR agrees to be bound by all the terms and conditions set forth in this Contract and specifications. To the extent that there exists a conflict between this Contract and specification, the terms, conditions, covenants, and/or provisions of this Contract shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

ARTICLE 43 - LEGAL EFFECT

This Contract shall not become binding and effective until approved, in writing, by both CITY's designated representative and the CITY COUNCIL OF THE CITY OF RIVIERA BEACH.

ARTICLE 44 - NOTICE OF COMPLAINTS OR SUITS

Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Contract. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

ARTICLE 45 – SURVIVABILITY

Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

ARTICLE 46 - DEFAULT

Notwithstanding anything contained in this Contract to the contrary, the parties agree that, by way of inclusion and not limitation, the occurrence of any of the following shall be deemed a material event of default and shall be grounds for termination:

a. The filing of a lien or claim of any kind by any subcontractor or third tier subcontractor including, but not limited to materialmen, suppliers, or laborers, upon any property, right of way, easement, other interest in land or right to use such land within the territorial boundaries of the CITY which lien is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR;

b. The filing of any claim, including, but not limited to, a claim against any Payment Bond by any subcontractor or third tier subcontractor including, but not limited to materialmen, suppliers, or laborers, concerning the failure of the CONTRACTOR to pay any such subcontractor or third tier subcontractor including, but not limited to materialmen, suppliers, or laborers, for any work performed or materials supplied pursuant to this Contract;

c. The filing of any judgment lien against the assets of CONTRACTOR related to the performance of this Contract which is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR; or

d. The filing of a petition by or against the CONTRACTOR for relief under the Bankruptcy Code, or for its reorganization or for the appointment of a receiver or trustee of the CONTRACTOR or the CONTRACTOR'S property; or an assignment by CONTRACTOR for the benefit of creditors; or the taking possession of the property of the CONTRACTOR by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of the CONTRACTOR; or if a temporary or permanent receiver or trustee shall be appointed for the CONTRACTOR or for the CONTRACTOR'S property and such temporary or permanent receiver or Trustee shall not be discharged within thirty (30) days from the date of appointment.

The CONTRACTOR shall provide written notice to the CITY of the occurrence of any event of default within ten (10) days of CONTRACTOR'S notice of any such default.

ARTICLE 47 - WAIVER OF SUBROGATION

CONTRACTOR hereby waives any and all rights to Subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then the CONTRACTOR shall agree 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 a condition to the policy specifically prohibits such an endorsement, or voids coverage should the CONTRACTOR enter into such an agreement on a pre-loss basis.

ARTICLE 48 - RIGHT TO REVIEW

The CITY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, reject or accept any required policies of insurance, including limits, coverages, or endorsements, therein from time to time throughout the term of this Contract. The CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

ARTICLE 49 – SUBRECIPENT REQUIREMENTS

CONTRACTOR agrees and recognizes that CITY may be seeking reimbursement in whole or in part for the cost of the work contemplated by this Contract from a third party, including but not limited to, various County, State, and Federal agencies or subdivisions. The reimbursement sought by CITY may be dependent on, amongst other items, CONTRACTOR's compliance with the terms and conditions of this Contract and the furnishing of Subrecipient Requirement information by CONTRACTOR to CITY. CONTRACTOR agrees to fully cooperate with CITY in any requests of CITY to fulfill CITY's Subrecipient Requirements and to otherwise obtain the sought after reimbursement. CONTRACTOR agrees and recognizes that the failure to comply with all the terms and conditions of this Contract and the furnishing of Subrecipient Requirement information to CITY by CONTRACTOR may result in the CITY failing to obtain the sought after reimbursement in whole or in part for the cost of the work contemplated by this Contract and that such failure by the CONTRACTOR shall constitute a material default under this Contract.

ARTICLE 50 – WAIVER OF TRIAL BY JURY

IN THE EVENT OF LITIGATION ARISING FROM THIS CONTRACT, CITY AND CONTRACTOR KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY. CITY AND CONTRACTOR HEREBY ACKNOWLEDGE THAT THIS WAIVER PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY AGREEING TO ENTER INTO THIS CONTRACT.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties unto this Contract have set their hand and seal on the day and year above written.

CITY OF RIVIERA BEACH

BY: _____
THOMAS A. MASTERS,
MAYOR

KOLDAIRE, INC.

BY: Frank Monti
FRANK MONTI
PRESIDENT

ATTEST:

BY: _____
CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

APPROVED AS TO TERMS AND CONDITIONS

BY: _____
BRYNT JOHNSON
DIRECTOR OF PUBLIC WORKS

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY: Pamala H. Ryan
PAMALA H. RYAN,
CITY ATTORNEY

Date: 5/29/12

EXHIBIT "A"

SCOPE OF WORK

The specifications list in this exhibit shall be considered complete unless changes are made by addendum through the City's normal RFI process; otherwise, any additional work required in the installation of the new unit that is not listed in the specifications list of scope shall be the responsibility of the contractor at no cost to the City, unless deemed an unforeseen condition.

One (1) Fifty (50) Ton RTU 27-1/2 – 50 Ton Packaged Commercial Rooftop Unit YCD600B4.

DX Cooling with Natural Gas Heat

Downflow Supply and Upflow Return

460 Volt 60 Hertz 3 Phase

Low Heat

Standard Efficiency Throwaway Filter 2"

15 HP Supply Motor

675/562 (60/50 hz) Supply Fan Drive

0-100% Economizer, Dry Bulb Control

CV (ZTC) Zone Temp Control

Thru-the- Base Electrical Provision

Non-Fused Disconnect Switch

Trane Communication Interface

Reuse existing smoke detectors, high and low voltage electrical, curb adapter with VAV dampers and control wiring.

EXHIBIT "B"

SCHEDULE OF PAYMENTS

The Scope of Work to be completed by CONTRACTOR as defined in Exhibit "A" is based on 90% completion and compensation for the work tasks stated herein and shall be paid in accordance with Article 3 and the following Schedule of Values, which is attached herein and which forms a part of Exhibit B.