

RESOLUTION NO. 10-09UD

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT, PALM BEACH COUNTY, FLORIDA, APPROVING THE SETTLEMENT AGREEMENT BY AND AMONG PEPSIAMERICAS, INC. (PEPSI), THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT, AN INDEPENDENT SPECIAL DISTRICT AND THE CITY OF WEST PALM BEACH, A FLORIDA MUNICIPAL CORPORATION; IN THE AMOUNT OF \$110,000.00; AUTHORIZING THE DISTRICT CHAIRPERSON AND DISTRICT CLERK TO EXECUTE SAID CONTRACTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, by a Pretreatment Agreement dated November 7, 2001, The City of Riviera Beach Utility Special and West Palm Beach jointly agreed that West Palm Beach would enforce the provisions of Riviera Beach's Pretreatment Ordinance (located at sections 20-286 through 20-450 of Riviera Beach's Code of Ordinances) and permits and that West Palm Beach would collect all fees, penalties and fines from industrial users within Riviera Beach's service area and would directly forward such to Riviera Beach; and

WHEREAS, the Riviera Beach Wastewater System is now owned and operated entirely by the District; and

WHEREAS, Pepsi operates a bottling facility in Riviera Beach, discharges its wastewater into the District's Wastewater System as an industrial user, and is authorized to discharge its wastewater through the District's Wastewater System and into the East Central Regional Wastewater Treatment; and

WHEREAS, the District and West Palm Beach, individually and as enforcement agent for both Riviera Beach and the ECR Board have asserted and alleged that Pepsi has been in significant noncompliance with the Industrial Discharge Permit, the IP Ordinances and certain other municipal and/or Interlocal wastewater ordinances with regard to Pepsi's biochemical oxygen demand (BOD), chemical demand (COD) and pH discharge levels; and

WHEREAS, certain fines have been levied and have been accruing against Pepsi with regards to the Alleged Noncompliance (altogether, the "Fines"), which Fines have been contested by Pepsi; and

WHEREAS, a dispute has therefore arisen between Pepsi, on the one hand, and the District and West Palm Beach on the other hand, regarding the Alleged Noncompliance and the Fines; and

WHEREAS, the Parties desire to amicably resolve any and all issues related to the Alleged Noncompliance, including any and all disputes and claims regarding payment of the Fines from their initial institution and in their entirety, all according to the terms set forth herein. Pepsi shall pay \$110,000.00 to West Palm Beach as enforcement agent for the District. Within fifteen (15) business days of receipt, West Palm Beach shall directly forward the District Settlement Sum, in its entirety, to the District.

WHEREAS, staff recommends that the Utility District Board approve the Settlement Agreement by and among PepsiAmericas, Inc. (Pepsi), the City of Riviera Utility Special District and the City of West Palm Beach.

NOW, THEREFORE, BE IT RESOLVED BY THE UTILITY SPECIAL DISTRICT BOARD OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1: That the Utility District Board hereby approves the Settlement Agreement by and among PepsiAmericas, Inc. (Pepsi), the City of Riviera Utility Special District and the City of West Palm Beach in the amount of \$110,000.00.

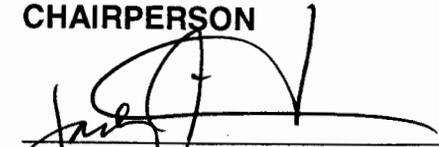
SECTION 2: That the Utility District Board authorizes the District Chairperson and District Clerk to execute the aforementioned agreement on behalf of the Utility District.

SECTION 3: This Resolution shall take effect upon its passage and approval by the Utility District Board.

APPROVED:

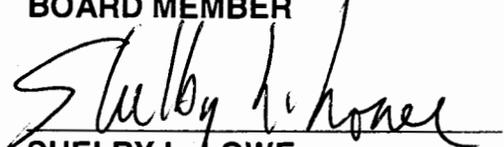

CARRIE E. WARD
MASTER MUNICIPAL CLERK
DISTRICT BOARD CLERK


DAWN S. PARDO
CHAIRPERSON


JUDY L. DAVIS
VICE CHAIRPERSON

Absent
BILLIE E. BROOKS
BOARD MEMBER


TONYA DAVIS JOHNSON
BOARD MEMBER


SHELBY L. LOWE
BOARD MEMBER

MOTIONED BY: J. DAVIS

SECONDED BY: T. DAVIS-JOHNSON

D. PARDO AYE

J. DAVIS AYE

B. BROOKS *Absent*

T. JOHNSON AYE

S. LOWE AYE

APPROVED: November 18, 2009

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into as of this 17th day of August, 2009, by and among PepsiAmericas, Inc. ("Pepsi"), the City of Riviera Beach Special Utility District (the "District") and the City of West Palm Beach ("West Palm Beach") (each individually, a "Party" and collectively, the "Parties").

Recitals

WHEREAS, the City of Riviera Beach ("Riviera Beach") and West Palm Beach entered into that certain Agreement between the City of Riviera Beach and the City of West Palm Beach for the Implementation and Enforcement of a Pretreatment Ordinance by the City of West Palm Beach, dated November 7, 2001 (the "Pretreatment Agreement") (attached hereto as Exhibit A); and

WHEREAS, pursuant to the Pretreatment Agreement, Riviera Beach and West Palm Beach jointly agreed that West Palm Beach would enforce the provisions of Riviera Beach's pretreatment ordinance (located at sections 20-286 through 20-450 of Riviera Beach's Code of Ordinances) (the "Riviera Beach IP Ordinance") and permits and that West Palm Beach would collect all fees, penalties and fines from industrial users within Riviera Beach's service area and would directly forward such to Riviera Beach; and

WHEREAS, subsequent to the date of the Pretreatment Agreement, Riviera Beach relinquished all rights and obligations that it had, has or might have concerning Riviera Beach's wastewater system, facilities, pipes, lift stations, property and equipment (altogether, the "Riviera Beach Wastewater System") to the District, including any such rights or obligations established pursuant to any contract or agreement; and

WHEREAS, the Riviera Beach Wastewater System is now owned and operated entirely by the District; and

WHEREAS, Pepsi operates a bottling facility in Riviera Beach, discharges its wastewater into the District's Wastewater System as an industrial user, and is authorized to discharge its wastewater through the District's Wastewater System and into the East Central Regional Wastewater Treatment Facilities pursuant to Pepsi's Industrial Discharge Permit No. S 95103119 (the "Industrial Discharge Permit", which Industrial Discharge Permit is governed by West Palm Beach's pretreatment ordinance (located at sections 90-121 through 90-136 of West Palm Beach's Code of Ordinances) (the "West Palm Beach IP Ordinance", and together with the Riviera Beach IP Ordinance, the "IP Ordinances"); and

WHEREAS, the District and West Palm Beach, individually and as enforcement agent for both Riviera Beach and the East Central Regional Wastewater Treatment Facilities Board ("ECR"), have asserted and alleged that Pepsi has been in significant noncompliance with the Industrial Discharge Permit, the IP Ordinances and certain other municipal and/or interlocal wastewater ordinances with regard to Pepsi's biochemical oxygen demand ("BOD"), chemical

oxygen demand (“COD”) and pH discharge levels (altogether, the “Alleged Noncompliance”); and

WHEREAS, certain fines have been levied and have been accruing against Pepsi with regard to the Alleged Noncompliance (altogether, the “Fines”), which Fines have been contested by Pepsi; and

WHEREAS, a dispute has therefore arisen between Pepsi, on the one hand, and the District and West Palm Beach on the other hand, regarding the Alleged Noncompliance and the Fines; and

WHEREAS, the Parties desire to amicably resolve any and all issues related to the Alleged Noncompliance, including any and all disputes and claims regarding payment of the Fines from their initial institution and in their entirety, all according to the terms set forth herein.

NOW THEREFORE, in connection with the foregoing, the mutual covenants and considerations set forth herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree and stipulate as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Standing to Enforce the IP Ordinances. The District and West Palm Beach represent and warrant that West Palm Beach, as the enforcement agent of the IP Ordinances, is the only entity authorized by ECR, the District and Riviera Beach to fine and/or cite Pepsi for the Alleged Noncompliance and/or the Fines as referenced herein. Further, the District and West Palm Beach represent and warrant that neither Riviera Beach nor ECR has standing to fine and/or cite Pepsi for the Alleged Noncompliance and/or the Fines.

3. Settlement and Payment. No later than thirty (30) calendar days following the date on which the last Party signs this Settlement Agreement (such date of final signature shall hereinafter be referred to as the “Effective Date”), Pepsi shall pay the following amounts to the following entities, each by separate certified or bank check (altogether, the “Payments”): (1) the sum of One Hundred Ten Thousand Dollars (\$110,000.00) to West Palm Beach as enforcement agent for the District (the “District Settlement Sum”); and (2) the sum of Twenty-Three Thousand Five Hundred Dollars (\$23,500.00) to West Palm Beach (the “West Palm Beach Cost Sum”). Within fifteen (15) business days of receipt, West Palm Beach shall directly forward the District Settlement Sum, in its entirety, to the District.

4. Fine Discontinuance and Discharge; Releases. The District and West Palm Beach agree that the foregoing Payments shall be a full settlement and satisfaction of the Fines. Furthermore, the District and West Palm Beach—agree to remise, release, acquit, satisfy, and forever discharge Pepsi, and all of Pepsi’s past, present and future officers, shareholders, employees, directors, representatives, beneficiaries, agents, attorneys, predecessors in interest, successors and assigns (together with Pepsi, “Released Persons”), from the Fines that have accrued from the beginning of the world to the Effective Date of this Settlement Agreement.

Moreover, the District and West Palm Beach agree to release and forever discharge (“Release”) all Released Persons from any and all possible claims, demands, losses, actions, causes of action, costs, expenses, fines, fees, damages and liabilities whatsoever, known or unknown, which the District and West Palm Beach, or any of them, may have had, now have or hereafter could have against any Released Persons, if any (altogether, “Claims”), in connection with the Alleged Noncompliance and/or the Fines and which originate, in whole or in part, on or before the Effective Date of this Agreement. Notwithstanding the foregoing, this Paragraph 4 shall not be deemed to Release Pepsi from any future standard charges, fees, surcharges, costs or fines to be paid by Pepsi pursuant to the Industrial Discharge Permit, the IP Ordinances and/or other applicable law, so long as such standard charges, fees, costs or fines are not related to the Alleged Noncompliance or the Fines. The District and West Palm Beach represent and warrant that they have not assigned or otherwise transferred any of their rights or Claims that they may have against any Released Persons to any third party.

5. pH Pretreatment. Pepsi has constructed, installed and will continue to operate and maintain, a continuous pH monitoring system on the batch process effluent discharged in the sanitary sewer. The system shall be operated and maintained on Pepsi’s property and at Pepsi’s expense. The pH monitoring system shall record the process effluent pH continuously in duration of the batch discharge. Pepsi shall maintain the pH of such wastewater within the range set forth in Industrial Discharge Permit with certain exceptions defined therein.

6. Limitation of Settlement Agreement. Pepsi acknowledges and agrees that this Settlement Agreement is limited to resolving any and all issues related to the Alleged Noncompliance, including any and all disputes and claims regarding payment of the Fines from their initial institution and in their entirety. This Settlement Agreement in no way releases Pepsi or any of the Released Persons from violations of the IP Ordinances, the Industrial Discharge Permit, other municipal and/or interlocal wastewater ordinances or any other applicable laws, ordinances, regulations or codes, including, but not limited to, the Florida Statutes and the Florida Administrative Code, which are not specifically addressed herein with regard to the Alleged Noncompliance and the Fines, or which violations occur after the Effective Date. All such violations will be subject to enforcement under the applicable ordinance, permit, regulation, plan, law or code.

7. No Admission of Wrongdoing or Liability. The District and West Palm Beach agree and acknowledge that Pepsi denies any liability with regard to the Alleged Noncompliance and the Fines. The District and West Palm Beach agree that this Settlement Agreement and the furnishing of any consideration under this Settlement Agreement shall not be construed as, interpreted as or used to prove (1) any liability of Pepsi, or (2) unlawful conduct of Pepsi.

8. Remedies. In the event that any Party breaches this Settlement Agreement, the non-breaching Party (or Parties) shall be entitled to seek any appropriate remedy at law and/or specific performance of the provisions of this Settlement Agreement in court.

9. Drafting. The Parties hereby represent, acknowledge and agree that they have each had the benefit of consulting or conferring with counsel of their choosing and that all

counsel has had an active role in the drafting of this Settlement Agreement such that it shall not be construed more strictly against any of the Parties.

10. Governing Law; Venue. This Settlement Agreement has been made in and shall be construed and enforced in accordance with the laws of the State of Florida. Venue for any legal proceeding arising hereunder shall be in the 15th Judicial Circuit of the State of Florida or the Southern District of Florida.

11. Severability. If any part of this Settlement Agreement is deemed to be invalid by any court of law, the remaining provisions of this Settlement Agreement shall remain in full force and effect and may be enforced in accordance with the provisions hereof.

12. Counterparts and Originals. This Settlement Agreement may be executed in one or more counterparts and such executed counterparts, taken collectively, will constitute one agreement. Executed versions of this Settlement Agreement delivered electronically or by facsimile shall be considered originals.

13. Fees and Costs. Each of the Parties agrees to be responsible for its own attorneys' fees related to this Settlement Agreement and the matters addressed herein; provided, however, that if any legal action or other proceeding is brought for the enforcement of this Settlement Agreement because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Settlement Agreement, the successful or prevailing Party or Parties shall be entitled to recover, court costs and all expenses (including taxes), even if not taxable as court awarded costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in such action or proceeding, in addition to any other relief to which such Party or Parties may be entitled.

14. Binding on Successors. This Settlement Agreement and the covenants and conditions contained herein shall apply to, and be binding upon and/or inure to, any and all assignees, successors, agents and assigns of the respective Parties.

15. Entire Agreement; Amendments; Waiver. The Parties acknowledge and agree that this Settlement Agreement represents the entire agreement of the Parties with regard to the subject matter hereof. All prior negotiations, discussions and representations have been merged into this Settlement Agreement. None of the provisions, covenants, terms or conditions of this Settlement Agreement shall in any manner be amended, altered, waived, modified, changed or abandoned except by a written instrument, duly signed, acknowledged and delivered by all of the Parties hereto. No waiver of any provision, covenant, term or condition of this Settlement Agreement shall constitute a waiver of any other provision, covenant, term or condition, and nor shall such waiver constitute a continuing waiver.

16. Approval. This Settlement Agreement shall not be binding or effective until each is approved by Pepsi and the governing bodies of the District and West Palm Beach.

17. Indemnification; No Consent to be Sued. Pepsi agrees to indemnify, defend and hold harmless the District and West Palm Beach from any and all possible claims, demands,

losses, actions, causes of action, costs, expenses, fines, fees and liabilities whatsoever, known or unknown, which any third party may have had, now has or hereafter could have against Pepsi, its officers, shareholders, employees, directors, representatives or agents in connection with the Alleged Noncompliance. Further, nothing in the Settlement Agreement should be construed or interpreted as consent by the District or West Palm Beach to be sued or as an agreement to indemnify, defend or hold harmless Pepsi, the Released Persons or any other person or entity for any reason. Moreover, this Settlement Agreement does not confer any benefit on any third party not specifically made a party hereto.

18. Conflicts. In the event of any conflict between any applicable federal, state or local laws, ordinances, codes, regulations or permits, on the one hand, including, but not limited to, the IP Ordinances (altogether, the "Applicable Laws"), and the terms and conditions of this Settlement Agreement, the Applicable Laws shall take precedence over this Settlement Agreement. Wherever possible and so long as there is no violation of any of the Applicable Laws, the Applicable Laws and this Settlement Agreement shall be construed in such a manner as to avoid conflicts between them.

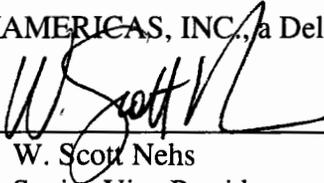
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[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Settlement Agreement effective as of the Effective Date.

PEPSIAMERICAS, INC., a Delaware corporation

By: _____



W. Scott Nehs
Senior Vice President
August 17, 2009

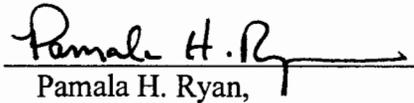
**CITY OF RIVIERA BEACH
SPECIAL UTILITY DISTRICT**

By: 
Dawn S. Pardo,
District Chairperson

ATTEST:

By: 
Carrie E. Ward,
Master Municipal Clerk
District Clerk

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: 
Pamala H. Ryan,
District Attorney

THE CITY OF WEST PALM BEACH

By: _____
Lois J. Frankel,
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: _____
City Attorney

EXHIBIT A

Pretreatment Agreement

**AGREEMENT BETWEEN THE CITY OF RIVIERA BEACH AND THE CITY
OF WEST PALM BEACH FOR THE IMPLEMENTATION AND
ENFORCEMENT OF A PRETREATMENT ORDINANCE BY THE CITY OF
WEST PALM BEACH**

November THIS AGREEMENT made and entered into this 07 day of November, 2001 between the City of Riviera Beach, a legal entity created pursuant to Chapter 163, Florida Statutes ("City") and the City of West Palm Beach, (a political subdivision of the State of Florida/municipality organized under the laws of the State of Florida) ("WPB").

WITNESSETH

WHEREAS, on September 9, 1992, the ECRWWTFB was established pursuant to the Florida Interlocal Cooperation Act of 1969 by the City of West Palm Beach, Palm Beach County, the City of Lake Worth, the City of Riviera Beach, and the Town of Palm Beach ("Entities") for the purposes of owning, operating and managing the East Central Regional Wastewater Treatment Facilities ("Facilities"); and

WHEREAS, the City currently utilizes the Facilities for the treatment of wastewater; and

WHEREAS, the ECRWWTFB is required to implement and enforce a pretreatment program to control discharges from all industrial users pursuant to the requirements set forth in 40 CFR, Part 403 and Rule 62-625, Florida Administrative Code (F.A.C.); and

WHEREAS, the ECRWWTFB is required to implement and enforce a pretreatment program as a condition of its National Pollutant Discharge Elimination System Permit ("NPDES Permit"); and

WHEREAS, the City of West Palm Beach is the holder of the NPDES permit on behalf of the ECRWWTFB and is authorized to administer and enforce a pretreatment program on behalf of the ECRWWTFB.

WHEREAS, the City will adopt and diligently enforce within ninety (90) days of the date of this agreement a pretreatment ordinance which is no less stringent and is as broad in scope as the model pretreatment ordinance approved and adopted by the ECRWWTFB.

NOW THEREFORE, in consideration of the mutual terms and conditions set forth herein, the parties agree as follows:

1. **Recitals.**

The recitals set forth above are true and correct and form a part of this Agreement.

2. **Enforcement of Pretreatment Ordinance.**

A. WPB shall diligently enforce local pretreatment standards set forth in the City's pretreatment ordinance, which is attached hereto as Exhibit "A".

B. WPB shall take all actions necessary to ensure that industrial users within its service area are subject to an approved pretreatment program to the extent required by Rule 62-625.500, F.A.C. and 40 CFR 403.8, including the performance of all technical and administrative duties necessary to implement and enforce the City's pretreatment ordinance against industrial users located within its jurisdiction. WPB shall: (1) periodically update the industrial waste survey; (2) issue permits to all significant industrial users as defined in Rule 62-625, F.A.C.; (3) conduct inspections, sampling, and analysis; (4) perform enforcement activities; (5) take emergency action to halt or prevent any discharge that may cause imminent danger to persons, the environment or the Facilities; and (6) perform any other technical or administrative duties deemed appropriate or necessary.

E. WPB shall maintain current information on industrial users located within the City's service area. WPB shall update the industrial waste survey at least once a year and will forward a copy of the survey to the City.

F. Upon identification of an industrial user within the City's service area by WPB or the City, or any time an existing industrial user increases its annual average discharge by twenty-five percent (25%) or modifies its discharge, WPB shall require the industrial user to respond to an industrial user questionnaire. The industrial user questionnaire shall be in a form acceptable to the City. WPB shall review the questionnaire and determine if the industrial user is significant as defined in Rule 62-625, F.A.C. All industrial users determined to be significant shall be issued a wastewater discharge permit.

G. WPB shall provide the City copies of all records, correspondence or documents relevant to the pretreatment program for any industrial user discharging through the City into the Facilities.

H. WPB shall periodically inspect and sample all significant industrial users located within the City's service area. All procedures will conform to those set forth in Rule 62-160.670, F.A.C., except as otherwise required by the Florida Department of Environmental Protection. Upon notice to WPB, the City may conduct additional inspections and sampling of significant industrial users discharging through the City's sewer system into the Facilities.

I. WPB shall issue permits to all significant industrial users located within the City's service area. Permits must be issued prior to any discharge. Permits must contain, at a minimum, appropriate effluent limitations, monitoring and reporting requirements, a statement of duration, a statement of non-transferability, a statement of applicable civil and criminal penalties, and any reasonable conditions requested to be included in the permit by the City. WPB shall promptly forward copies of all permits to the City.

J. WPB shall periodically report to the City on the compliance status of each significant industrial user and any enforcement response taken or anticipated. The report will include the time frames for initial enforcement actions, as well as any subsequent enforcement actions. Should formal enforcement be required by the City's code enforcement department, WPB shall notify the City of such requirement and the City will in turn notify the code enforcement department.

K. WPB shall enforce the provisions of the City's pretreatment ordinance and permits. In the event WPB fails to take adequate enforcement action against noncompliance users in the City; the City shall take such action on behalf of WPB.

L. The City may take emergency action, when necessary, to stop or prevent any discharge which presents, or may present, an imminent danger to persons, the environment, or which threatens to cause damage to the Facilities. The City shall provide informal notice to the industrial user and WPB of its intent to take emergency action prior to taking such action.

M. In the event that an industrial user located outside the City's service area discharges wastewater into the City's sewer system, the City and the ECRWWTFB shall enter into an agreement with the jurisdiction in which the industrial user is located to ensure implementation and enforcement of a pretreatment program by the City's delegated agent.

N. WPB shall provide annually to the City a list of industrial users who were in significant noncompliance with applicable pretreatment standards for the previous twelve (12) months. The City will in turn publish the list in the largest daily newspaper published within the service area.

O. WPB shall collect all fees, surcharges, penalties and fines from industrial users within the City's service area as required by the City's pretreatment ordinance. All fees, surcharges, penalties and fines collected by WPB shall be directly forwarded to the City within five (5) business days of receipt.

P. The ECRWWTFB and WPB shall periodically review and, if

necessary, revise this Agreement along with their respective pretreatment ordinances to ensure compliance with the Federal Clean Water Act and the rules and regulations issued thereunder.

3. Default.

The City and WPB agree that in the event either party is in default of its obligations under this Agreement, the party not in default shall provide to the party in default thirty (30) days written notice to cure the default before exercising any of its rights provided for in this Agreement, except as provided in Section 2(L) above. In the event WPB fails to enforce the City's pretreatment ordinance or permits, the City may, upon the required notice of default to WPB, take such action to enforce the same.

4. Implementation and Enforcement Fees.

The City shall pay to WPB a fee of **\$400.00** per significant industrial user per year for implementation and enforcement of the City's pretreatment ordinance as detailed in this agreement. These costs shall be subject to audit and revision on an annual basis corresponding to the annual review and approval of the ECRWWTFB industrial pretreatment budget. For industries that are monitored for less than the full year, the annual implementation and enforcement fees shall be pro-rated per month of service.

5. Notices.

All notices are required to be given pursuant to this Agreement shall be deemed sufficient when delivered by United States mail to the following addresses:

if to the City:

City of Riviera Utilities Administration
600 West Blue Heron Boulevard
Riviera Beach, FL 33404

if to the ECRWWTFB:

East Central Wastewater Treatment Facility Board
4325 North Haverhill Road
West Palm Beach, FL 33422-0707

6. Applicable Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Any and all legal actions necessary to enforce this Agreement shall be held in Palm Beach County, Florida.

7. **Enforcement Costs.**

Any costs or expenses, including reasonable attorney's fees, associated with enforcement of the terms or conditions of this agreement shall be borne by the respective parties.

8. **Severability.**

In the event that any section, paragraph, sentence, clause or provision of this Agreement is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

9. **Entirety of Agreement.**

This Agreement represents the entire understanding of the parties and supersedes all other negotiations, representations or agreements, either written or oral relating to this Agreement. This Agreement shall bind the parties' agents, employees and independent contractors.

10. **Counterparts.**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original. All of which together shall constitute one (1) and the same instrument.

11. **Captions.**

The captions and section designations set forth herein are for convenience only and shall have no substantive meaning.

12. **Effective Date.**

This Agreement shall take effect upon execution by the parties hereto and shall continue in full force and effect until terminated as provided herein.

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RESOLUTION NO. 11-09UD

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT, PALM BEACH COUNTY, FLORIDA, AWARDING THE BID TO INTERSTATE ENGINEERING CORP., OF BOCA RATON, FLORIDA AND AUTHORIZING THE DISTRICT BOARD CHAIRPERSON AND DISTRICT CLERK TO EXECUTE THE PROPOSED BID AWARD WITH INTERSTATE ENGINEERING CORP.; FOR THE NORTH SINGER ISLAND (NSI) PUMP STATION IMPROVEMENTS PROJECT; IN THE AMOUNT OF \$1,018,000.00 PLUS A 10% CONTINGENCY, FOR A TOTAL AMOUNT OF \$1,119,800.00; APPROVING AND AUTHORIZING THE DISTRICT FINANCE DIRECTOR TO TRANSFER FUNDS IN THE AMOUNT OF \$1,119,800.00 FROM THE UTILITY DISTRICT CONTINGENCY ACCOUNT NO. 413-1417-536-0-5999 INTO THE UTILITY DISTRICT CAP. - PLANT (WATER) ACCOUNT NO. 413-1437-533-0-6558; AND AUTHORIZING THE FINANCE DIRECTOR TO PAY THIS AMOUNT FROM ACCOUNT NO. 413-1437-533-0-6558; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the primary purpose for this proposed contract award is to upgrade the existing aged pump station at North Singer Island, which is in need of improvements and repairs. These proposed improvements to the North Singer Island Pump Station will ensure that the City of Riviera Beach Utility District will continue to produce safe and good quality drinking water to the public; and

WHEREAS, work items include the following:

Replace the existing two (2) water pumps with new pumps;
Replace existing hydropneumatic tank, including new system controls;
Furnish and install one (1) new emergency generator with fuel storage tank;
Furnish and install two (2) new variable frequency drives;
Furnish and install new electrical system to serve the pumps and generator;
Furnish and install new control system to serve the pumps and generator;
Furnish and install various mechanical piping improvements and valves;
Furnish and install civil and yard improvements including new sidewalk and roadway pavement restoration;
Furnish and install various structural improvements;
Furnish and install various HVAC improvements;
Paint existing building, one (1) million gallon tank and piping; and

WHEREAS, four (4) companies responded to the District's Request for Bid No. 210-08. Interstate Engineering Corp., Boca Raton, Florida, submitted the lowest responsive and responsible bid in the amount of \$1,018,000.00; and

WHEREAS, the District Staff is recommending that the Board award this project to Interstate Engineering Corp., the lowest bidder, for the proposed improvements to the North Singer Island Pump Station.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1: That the District Board hereby accepts the bid proposal in the amount of \$1,018,000.00 from Interstate Engineering Corp., plus 10% contingency, totaling \$1,119,800.00; and that the Board Chairperson and District Clerk are hereby authorized to execute a contract between Interstate Engineering Corp., and the City of Riviera Beach Utility Special District, in the amount of \$1,119,800.00, for the North Singer Island (NSI) Pump Station Improvements.

SECTION 2: That the Board hereby authorizes the District Finance Director to transfer funds, in the amount of \$1,119,800.00, from the Utility District Contingency Account No. 413-1417-536-0-5999 into the Utility District's CAP-Plant (Water) Account No. 413-1437-533-0-6558.

SECTION 3: That the District Finance Director is authorized to make payment for same under Account Number 413-1437-533-0-6558, in the amount of \$1,018,000.00, plus 10% contingency, totaling \$1,119,800.00. *With City Manager's approval & notification to the City Council.*

SECTION 4: That the Interim District Director is authorized to approve Change Orders in an amount not to exceed ten percent (10%) of the contract amount. *With City Manager's approval & notification to the City Council.*

SECTION 5: This Resolution shall take effect upon its passage and approval by the District Board.

RESOLUTION NO. 11-09UD
PAGE 3

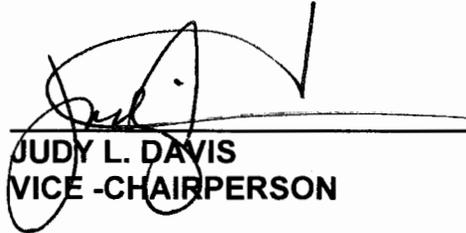
PASSED AND APPROVED THIS 18 day of November, 2009

APPROVED:

UTILITY SPECIAL DISTRICT BOARD OF DIRECTORS



DAWN S. PARDO
CHAIRPERSON



JUDY L. DAVIS
VICE -CHAIRPERSON

ATTEST:



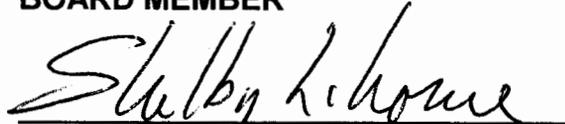
CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK



BILLIE E. BROOKS
BOARD MEMBER



TONYA DAVIS JOHNSON
BOARD MEMBER

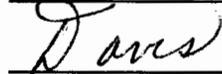


SHELBY L. LOWE
BOARD MEMBER

MOTIONED BY:



SECONDED BY:



B. BROOKS



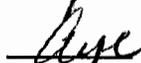
J. DAVIS



T. JOHNSON



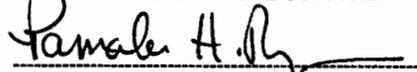
D. PARDO



S. LOWE



REVIEWED AS TO LEGAL SUFFICIENCY



PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 11/19/09

RESOLUTION NO. 12-09UD

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT, PALM BEACH COUNTY, FLORIDA, APPROVING THE PROPOSAL SUBMITTED BY R.C.T. ENGINEERING, INC., IN THE AMOUNT OF \$22,980.00, PLUS A 10% CONTINGENCY, TOTALING \$25,278.00; TO PROVIDE PROFESSIONAL CONSULTING ENGINEERING SERVICES FOR THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (SFWMD) WATER USE PERMIT RENEWAL ASSISTANCE; AND AUTHORIZING THE DISTRICT FINANCE DIRECTOR TO PAY \$22,980.00 PLUS A 10% CONTINGENCY TOTALING \$25,278.00 FROM ACCOUNT NO. 411-1417-536-0-3103; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Riviera Beach Utility District owns and maintains a lime softening Water Treatment Plant; and

WHEREAS, this water plant is permitted through the South Florida Water Management District (SFWMD), and our existing permit is overdue for renewal; and

WHEREAS, the Utility District staff met with the SFWMD on October 13, 2009, to discuss our renewal options. The three (3) critical items required are: (1) the City's Well Field Operation Plan and Schedule; (2) Assessment and Mitigation for Wetlands affected by our western wells; and (3) the Utility District's Conservation Plan Update; and

WHEREAS, the engineering firm of R.C.T. Engineering, Inc., of West Palm Beach, Florida, has prepared and submitted to the City of Riviera Beach Utility District, a proposal to render engineering services to collect, review, organize, tabulate, and submit information required to respond to the SFWMD request for additional information (RAI) in order to secure the renewal of the Consumptive Use permit (CUP) for the District.

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

SECTION 1: That the Utility District Board hereby approve the proposal from R.C.T. Engineering, Inc., of West Palm Beach, Florida, in the amount of \$22,980.00, for professional consulting engineering services, in order to secure the renewal of the CUP Water Use Permitting Assistance for the District.

SECTION 2: That the Interim District Director is authorized to approve Change Orders in an amount not to exceed ten percent (10%) of the contract amount. *With the City Manager's approval & notification to the City Council.*

SECTION 3: That the District Finance Director is authorized to pay \$22,980.00 plus a 10% Contingency for same under Account Number 411-1417-536-0-3103, totaling \$25,278.00. *With City Manager's approval & notification to the City Council.*

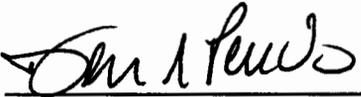
SECTION 4: This Resolution shall take effect upon its passage and approval by the Utility District Board.

RESOLUTION NO. 12-0900
PAGE 3

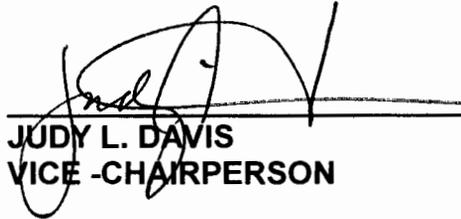
PASSED AND APPROVED THIS 18 day of November, 2009

APPROVED:

UTILITY SPECIAL DISTRICT BOARD OF DIRECTORS



DAWN S. PARDO
CHAIRPERSON



JUDY L. DAVIS
VICE -CHAIRPERSON

ATTEST:



CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK



BILLIE E. BROOKS
BOARD MEMBER



TONYA DAVIS JOHNSON
BOARD MEMBER



SHELBY L. LOWE
BOARD MEMBER

MOTIONED BY: J. DAVIS

SECONDED BY: S. LOWE

B. BROOKS Absent

J. DAVIS AYE

T. JOHNSON AYE

D. PARDO AYE

S. LOWE AYE

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: _____

RESOLUTION NO. 13-09UD

A RESOLUTION OF THE UTILITY SPECIAL DISTRICT BOARD OF DIRECTORS OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING STAFF TO NEGOTIATE CONTRACT TO BE EXECUTED BY THE DISTRICT BOARD CHAIRPERSON AND DISTRICT CLERK WITH A PROFESSIONAL INTERNAL AUDIT SERVICES FOR THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT, UPON REVIEW AND APPROVAL BY THE DISTRICT ATTORNEY, TO EXPEDITE AUDIT TO BE COMPLETED WITHIN THIRTY (30) DAYS; IN AN AMOUNT NOT TO EXCEED \$50,000; AND AUTHORIZING THE DISTRICT FINANCE DIRECTOR TO PAY THIS AMOUNT FROM ACCOUNT NO. 411-1417-536-0-3406 (CONTRACT SERVICES); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, staff solicited Request for Proposals (RFP 235-09) for professional internal audit services for the City of Riviera Beach Utility Special District; and

WHEREAS, the selection committee received five (5) offers in response to its public solicitation in accordance with the State of Florida's "Consultants' Competitive Negotiation Act" (FS 287.066) namely: TCBA Watson Rice, S. Davis & Associates, Harvey, Covington and Thomas, Sunera, and Gerstle, Rosen & Goldberg; and

WHEREAS, TCBA Watson Rice, LLC, of Ft. Lauderdale, Florida was selected as the top ranked firm to provide the services identified in the City Request for Proposals, and staff recommends that the Board authorize the negotiation and execution of a contract.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1: That the Utility Special District of the City of Riviera Beach, Palm Beach County, Florida, authorizes staff to negotiate and execute a contract with TCBA Watson Rice, LLC, to provide professional internal audit services contract for the Utility Special District.

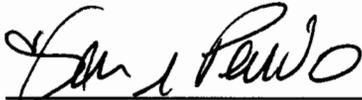
SECTION 2: That the District Finance Director is authorized to make payment for same under Account Number 412-1438-535-0-655, in the amount not to exceed \$50,000.00.

SECTION 3: This Resolution shall take effect upon its passage and approval by the District Board.

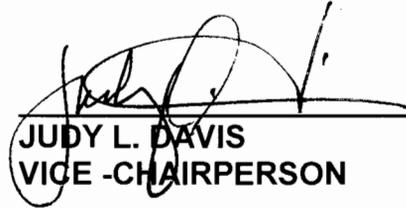
PASSED AND APPROVED THIS 28 day of September, 2009

APPROVED:

UTILITY SPECIAL DISTRICT BOARD OF DIRECTORS



DAWN S. PARDO
CHAIRPERSON



JUDY L. DAVIS
VICE -CHAIRPERSON

ATTEST:



CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK



BILLIE E. BROOKS
BOARD MEMBER

~~TONYA DAVIS JOHNSON~~
BOARD MEMBER



SHELBY L. LOWE
BOARD MEMBER

MOTIONED BY: B. Brooks

SECONDED BY: S. Lowe

B. BROOKS aye

J. DAVIS absent

T. JOHNSON _____

D. PARDO aye

S. LOWE aye

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: _____