

RESOLUTION NO. 24-06UD

A RESOLUTION OF THE UTILITY DISTRICT BOARD OF THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE DISTRICT CHAIRPERSON AND DISTRICT CLERK TO EXECUTE A CONTRACT BETWEEN THE CITY OF RIVIERA BEACH UTILITY DISTRICT AND D.S. EAKINS, INC., OF LAKE PARK, FLORIDA, FOR INFRASTRUCTURE SERVICES TO INCLUDE MAINTENANCE AND REPAIR SERVICE OF THE DISTRICT'S INFRASTRUCTURE AT ANNUAL ESTIMATED COST OF \$500,000.00; UNDER THE PIGGY-BACK BID #2003-013 ANNUAL PUBLIC WORKS CONTRACT BETWEEN THE CITY OF PALM BEACH GARDENS AND D.S. EAKINS, INC., OF LAKE PARK, FLORIDA; AND AUTHORIZING THE INTERIM DISTRICT FINANCE DIRECTOR TO PAY THIS AMOUNT FROM ACCOUNT NO. 412-1430-533-0-4604 AND NO. 412-1438-535-0-4604 (A 50/50 SPLIT) FUNDED WITH A TRANSFER FROM CONTINGENCY ACCOUNT NO. 412-1417-536-0-5999; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Utility Special District is in need of a specialty vendor that can promptly provide maintenance and repair services for the District's infrastructure; and

WHEREAS, D.S. Eakins, Inc., has consistently demonstrated the ability to provide needed services within the time constraints required by the Utility Special District and has agreed to offer the District a discounted rate for all repair and maintenance services based upon terms, conditions and pricing established by Palm Beach Gardens City Bid #2003-013.

WHEREAS, this agreement will piggy-back off the Annual Public Works Contract Bid #2003-013 between the City of Palm Beach Gardens and D.S. Eakins, Inc.

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

SECTION 1. The District Board of the City of Riviera Beach Utility Special District, Palm Beach County, Florida, does hereby accept the Purchasing Department's recommendation and approves the contract for infrastructure rehabilitation services, to include maintenance and repair service of the District's systems with D.S. Eakins, Inc., of Lake Park, Florida; and

SECTION 2. The District Board Chairperson and District Clerk are authorized to execute a contract agreement with D.S. Eakins, Inc., for infrastructure rehabilitation services to include maintenance and repair service of District systems at an annual estimated cost of \$500,000.00.

SECTION 3. The Interim District Finance Director is authorized to make payment from the operating Expenditure Fund Account No. 412-1430-533-0-4604 and 412-1438-535-0-4604, with required funds from the Contingency Account No. 412-1417-536-0-5999.

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

PASSED AND APPROVED THIS 16 day of August, 2006

APPROVED:

UTILITY SPECIAL DISTRICT
BOARD OF DIRECTORS

Ann Iles
ANN ILES
CHAIRPERSON

ATTEST:

Carrie E. Ward
CARRIE E. WARD,
MASTER MUNICIPAL CLERK
DISTRICT CLERK

Vanessa Lee
VANESSA LEE
VICE-CHAIRPERSON

Absent
NORMA DUNCOMBE
BOARD MEMBER

Elizabeth "Liz" Wade
ELIZABETH "LIZ" WADE
BOARD MEMBER

James "Jim" Jackson
JAMES "JIM" JACKSON
BOARD MEMBER

MOTIONED BY: E. Wade

SECONDED BY: V. Lee

A. ILES aye

V. LEE aye

N. DUNCOMBE absent

E. WADE aye

J. JACKSON AYE

REVIEWED AS TO LEGAL SUFFICIENCY

Pamela Hanna Ryan
PAMALA HANNA RYAN
DISTRICT ATTORNEY

DATE: 8/11/06

MATERIAL AND MAINTENANCE SERVICE CONTRACT

THIS AGREEMENT made and entered into this 16th day of August, 2006 by and between

D.S. EAKINS CONSTRUCTION CORPORATION, hereinafter referred to as “**Independent Contractor**,” whose mailing address is P. O. Box 530185, Lake Park, Florida, 33403-8902 and the **CITY OF RIVIERA BEACH UTILITY DISTRICT, FLORIDA**, a municipal corporation, hereinafter referred to as “**District**,” whose address is 600 West Blue Heron Boulevard, Riviera Beach, Florida, 33404.

WHEREAS, The City of Palm Beach Gardens, Florida posted an ITB No.: 2003-013, hereinafter the “ITB” for an **ANNUAL PUBLIC WORKS CONTRACT**, the terms of which are incorporated herein by reference; and

WHEREAS, Independent Contractor was the successful responsible bidder under that contract; and

WHEREAS, the ITB allowed for and encouraged the successful bidder to extend such terms and conditions to other governmental agencies; and

WHEREAS, Independent Contractor desires to extend material and maintenance services for the District’s infrastructure/construction work. In consideration of the mutual covenants and promises set forth herein, the parties to this Agreement do hereby agree as follows:

1. Independent Contractor agrees to be bound by all the terms and conditions as set forth in the ITB.
2. To the extent that there exists a conflict between the ITB and this Agreement, the terms, conditions, covenants, and/or provisions of this Agreement 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.
3. That the District does hereby retain the services of the Independent Contractor for the purpose of providing Utility Construction Services on an “as needed” bases.
4. All materials and services provided under this Agreement shall be delivered to the District in accordance with the terms and condition of City of Palm Beach Gardens Contract #2003-013, no later than thirty (30) days after receipt of official notice to supply such materials, the timely delivery of said materials being essential conditions of this Agreement.
5. The District agrees to compensate the Independent Contractor **in an amount not to exceed \$500,000 annually**. The total and cumulative amount of this Agreement shall not exceed the amount of funds annually budgeted for these materials. **This contract shall expire three (3) years after execution**. In the event this contract term is not the same as the fiscal year end (10/1/05 – 9/30/06), renewal of this agreement is subject to any required Utility Board approval or ratification and appropriation of funds necessary to make payment to successful bidder. The District shall not reimburse the Independent Contractor for any travel costs incurred as a direct result of the Independent Contractor providing deliverables to the District. The District agrees to compensate the Independent Contractor in accordance with Annual Public Works Contract as outlined in the City of Palm Beach Gardens’ bid.
6. Independent Contractor hereby represents that it has complied and shall continue to comply with all applicable Federal and State statutes and local ordinances. Further, Independent Contractor shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations, required for the furnishing of materials pursuant to the terms of this Agreement from any federal, state, regional, county, or city agency.
7. The Independent Contractor represents that it has, or will secure at its own expense, all necessary personnel, equipment and materials required to provide the materials as set forth in this Agreement. Such personnel shall not be employees of or have any contractual relationship with the District.

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

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

10. All of the Independent Contractor's personnel (and all Subcontractors) while on District premises will comply with all District requirements governing conduct, safety and security.

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

12. Prior to execution of this Agreement by the District the Independent 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 Independent 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 District's representative. Compliance with the foregoing requirements shall not relieve the Independent Contractor of its liability and obligations under this Agreement.

13. The Independent Contractor shall maintain, during the life of this Agreement, commercial general liability, including contractual liability insurance in the amount of \$500,000 per occurrence to protect the Independent 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 Agreement, whether such operations be by the Independent Contractor or by anyone directly employed by or contracting with the Independent Contractor.

14. The Independent Contractor shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injury and property damages liability to protect the Independent 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 rented automobiles whether such operations be by the Independent Contractor or by anyone directly or indirectly employed by the Independent Contractor.

15. The Independent Contractor shall maintain, during the life of this Agreement, adequate Workers' Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees per Florida Statute 440.02.

16. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the Independent Contractor shall specifically include the District as an "Additional Insured."

17. The Independent Contractor shall indemnify and save harmless and defend the District, its agents, servants, and employees from and against any and all claims, liability, losses, and/or causes of action which may arise from any negligent act or omission of the Independent Contractor, its agents, servants, or employees in the performance of services under this Agreement.

18. The Independent Contractor further agrees to indemnify, save harmless and defend the District, its agents, servants 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 Independent Contractor not included in the paragraph above and for which the District, its agents, servants or employees are alleged to be liable. Nothing contained in this provision shall be construed or interpreted as consent by the District to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

19. The Independent Contractor shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the Independent 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 Independent Contractor's request, the District shall consider the facts and extent of any failure to perform the work and, if the Independent Contractor's failure to perform was without it or its subcontractors fault or negligence, as determined by the District, the Agreement Schedule and/or any other affected provision of this Agreement shall be revised accordingly; subject to the District's rights to change, terminate, or stop any or all of the work at any time. If the Independent Contractor is delayed at any time in the process of the work by any act or neglect of the District or its employees, or by any other contractor employed by the District, or by changes ordered by the District or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Independent Contractor's control, then the time of completion shall be extended for any reasonable time the District may decide. In the case of continuing cause of delay, only one (1) claim is necessary.

20. The Independent Contractor does not have the power or authority to bind the District in any promise, agreement or representation other than as specifically provided for in this Agreement.

21. The District reserves the right to make changes in the scope of work, including alterations, reductions therein or additions thereto. Upon receipt by the Independent Contractor of the District's notification of a contemplated change, the Independent Contractor shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the District of any estimated change in the completion date, and (3) advise the District if the contemplated change shall effect the Independent Contractor's ability to meet the completion dates or schedules of this Agreement. If the District so instructs in writing, the Independent Contractor shall suspend work on that portion of the work affected by a contemplated change, pending the District's decision to proceed with the change.

22. If the District elects to make the change, the District shall initiate an Agreement Amendment and the Independent Contractor shall not commence work on any such change until such written amendment is signed by the Independent Contractor and approved and executed by the District Manager for the District.

23. All materials and/or work to be furnished and/or installed by the Independent Contractor under this Agreement shall be guaranteed by the Independent Contractor for a period of one (1) year from the date of final acceptance thereof by the District against defects in design, workmanship, or materials. Upon receipt of notice from the District of failure or defect 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 Independent Contractor at no expense to the District. In the event the Independent Contractor fails to make the necessary repairs or replacements within 30 days after notification by the District, the District may accomplish the work and/or replace the materials at the expense of the Independent Contractor.

24. The Independent Contractor shall continuously maintain adequate protection of all materials from damage, and shall protect such materials and the District's property from injury or loss arising during the term of the Agreement.

25. Until acceptance of the materials by the District, said materials shall be under the charge and care of the Independent Contractor and the Independent Contractor shall take every necessary precaution against injury or damage to such by the action of elements or from any other cause whatsoever, and the Independent Contractor shall repair, restore and make good, without additional charge any work and/or damage occasioned by any of the above causes before its acceptance by the District.

26. This Agreement and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County.

27. 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.

28. If any action, whether in law, equity or otherwise, is brought for any dispute, disagreement, or issue of construction, declaration or interpretation arising hereunder whether relating to the Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

29. Time is of the essence in all respects under this agreement.

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

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AGREEMENT WITH THE DISTRICT OF RIVIERA BEACH

IN WITNESS WHEREOF, the Parties unto this Agreement have set their hands and seals on the day and date first written above.

DISTRICT OF RIVIERA BEACH UTILITY DISTRICT

INDEPENDENT CONTRACTOR

BY: Ann Iles
ANN ILES, CHAIRPERSON
BOARD OF DIRECTORS

BY: Douglas S. Eakins
DOUGLAS S. EAKINS
PRESIDENT

ATTEST:
BY: Carrie E. Ward 9/16/06
CARRIE E. WARD
MASTER MUNICIPAL CLERK
DISTRICT CLERK

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

BY: Pamela H. Ryan
PAMALA H. RYAN
DISTRICT ATTORNEY

BY: _____
BENJAMIN GUY
PURCHASING DIRECTOR

DATE: 8/11/06

BY: _____
EDWARD E. SIERRA, PH.D
UTILITY DISTRICT DIRECTOR

RESOLUTION NO. 25-06UD

A RESOLUTION OF THE UTILITY DISTRICT BOARD OF THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT, PALM BEACH COUNTY, FLORIDA, APPROVING THE LOWEST BID PROPOSAL BY U. S. FILTER DISTRIBUTION GROUP OF TAMPA, FLORIDA (U.S. FILTER); AND AUTHORIZING THE DISTRICT CHAIRPERSON AND DISTRICT CLERK TO EXECUTE A SERVICES AND MATERIALS CONTRACT BETWEEN THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT AND U.S. FILTER, TO PROVIDE BASIN REHABILITATION SERVICES TO THE DISTRICTS'S SOUTH SOFTENDING BASIN AT THE WATER TREATMENT PLANT; IN THE AMOUNT OF \$482,000, PLUS A 10% CONTINGENCY, FOR A TOTAL AMOUNT OF \$530,200; AND AUTHORIZING THE INTERIM DISTRICT FINANCE DIRECTOR TO TRANSFER \$530,200 FROM THE UTILITY DISTRICT CONTINGENCY ACCOUNT NO. 412-1417-536-0-5999 TO THE CAP: PLANT (WATER) ACCOUNT NO. 412-1438-535-0-6559; AND MAKE PAYMENT FROM ACCOUNT NO. 412-1437-533-0-6559; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Utility Special District Board of Directors approves the lowest responsive bidder's proposal and the Services and Materials Contract between the City of Riviera Beach Utility Special District and U.S. Filter Distribution Group, in the amount of \$530,200 (includes 10% contingency amount); and

WHEREAS, the primary purpose for the basin rehabilitation is to meet increased water production demands and to sustain future City development; and

WHEREAS, the basin rehabilitation will include the restoration and/or replacement of electrical, structural and mechanical components.

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

SECTION 1. The District Board of the City of Riviera Beach Utility Special District, Palm Beach County, Florida, does hereby accept the proposal from U.S. Filter, the lowest bidder, in the amount of \$530,200, for purchases outlined above.

SECTION 2. The District Board Chairperson and District Clerk are authorized to execute a Services and Materials Contract between the City of Riviera Beach Utility Special District and U. S. Filter Distribution Group, to provide rehabilitation services to the District's South Softening Basin at the Water Treatment Plant.

SECTION 3: That the District Director is authorized to approve Change Orders in an amount not to exceed ten percent (10%) of the contract amount.

SECTION 4. The Interim District Finance Director is authorized to transfer funds in the amount of \$530,200.00 from the Utility District Contingency Account No. 412-1417-536-0-5999 to the CAP: Plant (Water) Account No. 412-1437-533-0-6559; and pay this amount from Account No. 412-1437-533-0-6559.

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

PASSED AND APPROVED THIS 16 day of August, 2006

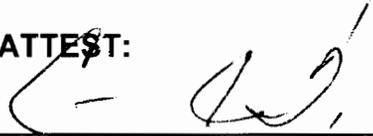
APPROVED:

UTILITY SPECIAL DISTRICT
BOARD OF DIRECTORS

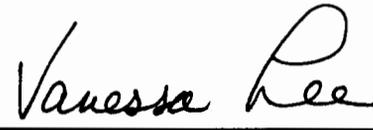


ANN ILES
CHAIRPERSON

ATTEST:



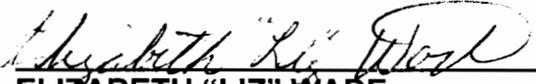
CARRIE E. WARD,
MASTER MUNICIPAL CLERK
DISTRICT CLERK



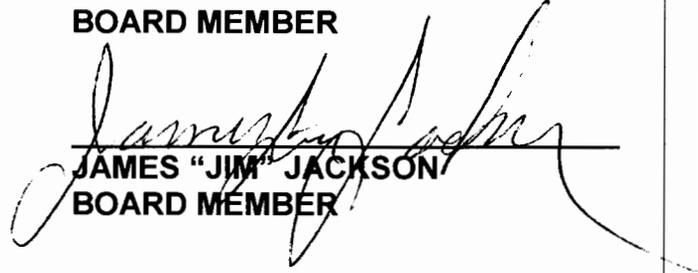
VANESSA LEE
VICE-CHAIRPERSON



NORMA DUNCOMBE
BOARD MEMBER



ELIZABETH "LIZ" WADE
BOARD MEMBER



JAMES "JIM" JACKSON
BOARD MEMBER

MOTIONED BY: E. WADE

SECONDED BY: V. LEE

A. ILES AYE

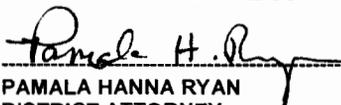
V. LEE AYE

N. DUNCOMBE ABSENT

E. WADE AYE

J. JACKSON AYE

REVIEWED AS TO LEGAL SUFFICIENCY



PAMALA HANNA RYAN
DISTRICT ATTORNEY

DATE: 8/11/06

**CITY OF RIVIERA BEACH
CONTRACT FOR CONSTRUCTION**

This Contract is made as of this 10th day of August, 2006 by and between the CITY OF RIVIERA BEACH UTILITY DISTRICT, a Political Subdivision of the State of Florida, by and through its DISTRICT BOARD, hereinafter referred to as the DISTRICT, and US Filter Inc.

[] 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 95-4328532.

In consideration of the mutual promises contained herein, the DISTRICT 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 Water Softening, as more specifically set forth in the Scope of Work detailed in Exhibit "A", attached hereto and made a part hereof.

The DISTRICT'S representative/liaison during the performance of this Contract shall be Julian Deleon, telephone no. 644-2376.

ARTICLE 2 - SCHEDULE

- A. Time of Completion - Construction work must begin within ten (10) calendar days from the date of receipt of official notice to proceed; provided the DISTRICT 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 DISTRICT. Construction work shall be carried on at a rate to insure its full completion within one hundred fifty (150) calendar days 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 DISTRICT, not as a penalty, but as liquidated damages, a sum equal to one hundred dollars (\$100) 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.

- 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 DISTRICT 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 the amount of funds annually budgeted for these services. The DISTRICT shall not reimburse the CONTRACTOR for any travel costs incurred as a direct result of the CONTRACTOR providing deliverables to the DISTRICT in pursuance of the scope of work contained in Exhibit A, without specific, prior approval of the DISTRICT
- B. Progress Invoices - No later than the 20th day of every month, the CONTRACTOR shall prepare and submit, on a form approved by the DISTRICT'S representative, a detailed estimate and invoice 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.
- C. Progress Payments - Invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the DISTRICT representative, indicating that services have been rendered in conformity with the Contract and then will be sent to the Finance Department for payment. The DISTRICT will pay to the CONTRACTOR ninety percent (90%) of the value based on the CONTRACTOR'S estimate and invoice, as approved by the DISTRICT representative. Invoices will normally be paid within thirty (30) days following the DISTRICT representative's approval.
- D. Payment of Expenses - All requests for payment of expenses eligible for reimbursement under the terms of this Contract 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 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 DISTRICT. This certifies that all services have been properly performed and all charges and costs have been invoiced to the DISTRICT. 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 DISTRICT shall have no obligations for any other costs or expenses thereafter.

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 DISTRICT 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 DISTRICT 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 DISTRICT'S representative in the event of substantial failure by the DISTRICT to perform in accordance with the terms of this Contract through no fault of the CONTRACTOR; provided the DISTRICT fails to cure same within that thirty (30) day period. It may also be terminated, in whole or in part, by the DISTRICT, 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 DISTRICT'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the DISTRICT, 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 DISTRICT.
- 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 DISTRICT.

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, 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 DISTRICT'S representative and written approval must be granted by the DISTRICT'S representative before said change or substitution can become effective.

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

The CONTRACTOR agrees that it is fully responsible to the DISTRICT 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 DISTRICT.

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

ARTICLE 7 - SUBCONTRACTING

The DISTRICT reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor 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. 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 of the new subcontractor by the DISTRICT.

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 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 – M/WBE PARTICIPATION

Minority/Women-Owned Business Enterprises ("M/WBE") shall have the opportunity to participate in this project. CONTRACTOR is hereby informed that the DISTRICT has established a goal of a minimum of 15% participation of M/WBE. A good faith effort will be made to hire M/WBE.

In keeping with the DISTRICT'S policy, the CONTRACTOR further agrees to hire minority sub-contractors to work on this project.

In accordance with the CITY'S M/WBE Ordinance #2412, as amended, the CONTRACTOR agrees to the M/WBE participation for this Contract and agrees to abide by all provisions of the M/WBE Ordinance and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONTRACTOR agrees to maintain all relevant records and information necessary to document compliance with Ordinance #2412, as amended, and will allow the DISTRICT to inspect such records.

ARTICLE 9 - FEDERAL AND STATE TAX

The DISTRICT is exempt from payment of Florida State Sales and Use Taxes. The DISTRICT 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 DISTRICT, nor is the CONTRACTOR authorized to use the DISTRICT'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 DISTRICT'S performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the CITY OF RIVIERA BEACH UTILITY DISTRICT BOARD.

ARTICLE 11 - INSURANCE

A. Prior to execution of this Contract by the DISTRICT, 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 DISTRICT'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.

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 DISTRICT.

F. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the CONTRACTOR shall specifically include the DISTRICT as an "Additional Insured."

ARTICLE 12 - INDEMNIFICATION

To the extent allowed by law, the CONTRACTOR shall indemnify and hold harmless the DISTRICT, 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.

The CONTRACTOR further agrees to indemnify and hold harmless the DISTRICT, 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 DISTRICT, its agents, officers, or employees are alleged to be liable.

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 DISTRICT 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 DISTRICT 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 DISTRICT 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 DISTRICT which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the DISTRICT 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 will be 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 DISTRICT'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 DISTRICT as to whether the association, interest or circumstance would, in the opinion of the DISTRICT, constitute a conflict of interest if entered into by the CONTRACTOR. The DISTRICT 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 DISTRICT, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the DISTRICT 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 DISTRICT 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 any failure in performance if such 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 DISTRICT shall consider the facts and extent of any failure to perform the work and, if the CONTRACTOR'S failure to perform was without it or its subcontractors' fault or negligence, as determined by the DISTRICT, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the DISTRICT'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 process of the work by any act or neglect of the DISTRICT or its employees, or by any other contractor employed by the DISTRICT, or by changes ordered by the DISTRICT or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the Engineer pending negotiation or by any cause which the Engineer shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the DISTRICT may decide. No extension shall be made for a delay occurring more than seven (7) days before a claim therefore is made in writing to the Engineer. 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.

This Article does not exclude the recovery of damages for delay by either party under other provisions in the Contract.

ARTICLE 18 - INDEBTEDNESS

The CONTRACTOR shall not pledge the DISTRICT'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 DISTRICT'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 DISTRICT 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 DISTRICT 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 DISTRICT'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 DISTRICT'S expense shall be and remain the DISTRICT'S property and may be reproduced and reused at the discretion of the DISTRICT.

The DISTRICT 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 DISTRICT. 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 DISTRICT shall be that of an Independent Contractor and not as employees or agents of the DISTRICT.

The CONTRACTOR does not have the power or authority to bind the DISTRICT 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 DISTRICT 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

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, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including,

without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

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. Proof of such licenses and approvals shall be submitted to the DISTRICT'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 DISTRICT 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 DISTRICT'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 DISTRICT of any estimated change in the completion date; and (3) advise the DISTRICT if the contemplated change shall affect the CONTRACTOR'S ability to meet the completion dates or schedules of this Contract.

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

If the DISTRICT elects to make the change, the DISTRICT 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 OF RIVIERA BEACH UTILITY DISTRICT or its designated representative.

ARTICLE 29 - NOTICE

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

City of Riviera Beach Utility District
ATTN: Julian Deleon
600 W. Blue Heron Blvd
Riviera Beach, Fl 33404

and if sent to the CONTRACTOR shall be mailed to:

US Filter Wastewater Group Inc
ATTN: Kevin Burt
600 Arrasmith Trail
Ames, IA 50010

ARTICLE 30 - ENTIRETY OF CONTRACTUAL AGREEMENT

The DISTRICT 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 accordance with the plans and specifications approved by the DISTRICT.

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 DISTRICT 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 DISTRICT 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 DISTRICT substitute another bond and surety company, at no cost to the DISTRICT, meeting the above requirements.

ARTICLE 32 – INSPECTION OF WORK

The DISTRICT'S representative or the DISTRICT'S Engineer 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 Engineer's instructions, laws, ordinances or any public authority requires any work to be specially tested or approved, the CONTRACTOR shall give the Engineer timely notice of its readiness for inspection. Inspections by the Engineer shall be made promptly and where practicable, at the source of supply. If any work should be covered up without approval or consent of the Engineer, it must, if required by the Engineer, 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 construction of Softener Project shall be guaranteed by the Manufacturer, if any, for a period of (1) years 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 materials for a period of (1) years. Upon receipt of notice from the DISTRICT 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 DISTRICT. In the event the CONTRACTOR fails to make the necessary repairs or replacements within thirty (30) days after notification by the DISTRICT, the DISTRICT may accomplish the work at the expense of the CONTRACTOR.

The CONTRACTOR shall provide the DISTRICT 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 construct the Softener Project.

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 DISTRICT'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 DISTRICT or employees of the DISTRICT, 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 DISTRICT, the DISTRICT'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 DISTRICT.

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

ARTICLE 38 - PREPARATION

This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

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 DISTRICT 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, Tim O'Sullivan hereby represents to the DISTRICT 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 of Schedule A, and US-Filter Letter. The CONTRACTOR agrees to be bound by all the terms and conditions set forth in this Contract and Schedule A, and US-Filter Letter. To the extent that there exists a conflict between this Contract and any other applicable document, 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 by the CITY OF RIVIERA BEACH UTILITY DISTRICT BOARD or its designated representative.

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 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 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 DISTRICT 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 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
- c. 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 DISTRICT of the occurrence of any event of default within ten (10) days of CONTRACTOR'S receipt of notice of any such default.

ARTICLE 47 - WAIVER OF SUBROGATION

CONTRACTOR hereby waives any and all rights to Subrogation against the DISTRICT, 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 DISTRICT, 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 DISTRICT 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.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

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 UTILITY DISTRICT

BY: Ann Iles

ANN ILES, UTILITY DISTRICT CHAIRPERSON

CONTRACTOR,
U.S. FILTER Wastewater Group, Inc.
U.S. FILTER WASTEWATER GROUP, INC

BY: Timothy O'Sullivan
TIMOTHY O'SULLIVAN
DIRECTOR OF OPERATORS
NAME & TITLE Timothy O'Sullivan
Director of Operations

ATTEST:
BY: Carrie E. Ward 8/16/06

CARRIE E. WARD, MMC,
CITY CLERK



APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: Pamala H. Ryan

PAMALA H. RYAN,
CITY ATTORNEY

APPROVED AS TO TERMS AND
CONDITIONS

BY: Edward Sierra

EDWARD SIERRA,
EXECUTIVE DIRECTOR OF UTILITIES

DATE: 8/16/06

EXHIBIT "A"

SCOPE OF WORK

[Reports if Applicable]

[Key Personnel if Applicable]

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.



A Siemens Business

MEMCOR, MICROFLOC, AND GENERAL
FILTER PRODUCTS
441 MAIN STREET
STURBRIDGE, MA 01566

TELEPHONE
FACSIMILE
WEBSITE

508-347-7344
508-347-7049
www.usfilter.com

7/20/06

City of Riviera Beach
600 W. Blue Heron Boulevard
Riviera Beach, FL 33404
Phone 561-845-4054
FAX: 561-840-7292

Attn: Julian DeLeon

Subject: City of Riviera Beach, Fl
Retrofit to a CT Contraflo

Dear Julian

USFilter has reviewed the terms and conditions associated with the above-mentioned project. As we had discussed in our meeting, this process in never accomplished without comments and this one is no different. We have attempted to keep all of the trivial comments out in order to move forward in a more expeditious manner. We respectfully request that you incorporate the below terms modifications into the contract. Should you have any questions, please do not hesitate to call.

Article 2.SCHEDULE Paragraph B – Add: “Liquidated damages are the sole and exclusive remedy for late delivery and shall not exceed 10% of the agreement price.”

Article 12 INDEMNIFICATION – In the first paragraph change “which may arise from” to “to the extent caused by”. In the second paragraph delete “conduct or” and replace with “willful”. Rewrite the last paragraph as follows “The CONTRACTOR shall have the sole authority to direct the defense of and settled any indemnified claim.”

Article 19 DISCLOSURE AND OWNERSHIP OF DOCUMENTS – Delete “or at its expense” from the econd line of the second paragraph. Delete the last sentence of the second paragraph and replace with “All devices, designs (including drawings), estimates, prices, notes electronic data and other documents or information prepared or disclosed by Contractor, and all related intellectual property rights, shall remain Contractor’s property. Contractor grants the DISTRICT a non-exclusive, non-transferable license to use any such material solely for the DISTRICT’s use of the Equipment. The DISTRICT shall not disclose any such material to third parties without Contractor’s prior written consent.

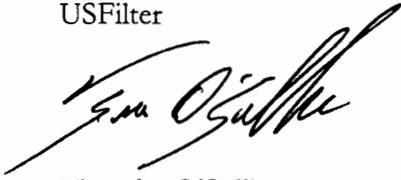
Article 33 – WARRANTY/GUARANTY – Change “of 5 years from the date of final acceptance therof” to “the lesser of 1 year from the date of final acceptance or 18 months from final ship date”. Add the following at the end of this article “THE WARRANTIES SET FORTH IN THIS SECTION ARE CONTRACTOR’S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO ARTICLE 40 BELOW. CONTRACTOR MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR PURPOSE.”

Add "Article 40 LIMITATION OF LIABILITY – NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, CONTRACTOR SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR ANY OTHER INDIRECT DAMAGES AND CONTRACTOR'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE EQUIPMENT IS LIMITED TO \$1,000,000. THESE LIMITATIONS APPLY WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY. The foregoing provisions of this Article 40 shall not limit the scope or amount of Contractor's liability with respect to third party claims that are or become subject to the indemnification provisions of Article 12 of this contract.

We would also request that the attached erection terms be included. The erection terms aren't terms in the way we normally think about them but more about site requirements so we can do the work.

Thanks again for your consideration.

Sincerely
USFilter

A handwritten signature in black ink, appearing to read "Timothy O'Sullivan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Timothy O'Sullivan
Aftermarket Manager

Cc; File

GENERAL TERMS AND CONDITIONS
FOR
ERECTION WORK

1. Equipment location and staking, including plant orientation, influent and effluent location, is the responsibility of the Purchaser and/or his engineer.
2. The elevation of equipment above or below grade must be determined by the Purchaser and/or his engineer and entered upon the approved drawings. Purchaser is responsible for establishing benchmark at site for USFilter's Davis Products (USF) erection crew.
3. Purchaser agrees to provide a clear level work area at least 35 feet wide around the periphery of the erection site. Prior to starting erection any obstructions in the work area, such as excavations, overhead lines, fences, trees, shrubbery, etc., shall be removed by and at the expense of the Purchaser. The Purchaser shall keep the site properly drained and free from surface water during erection, and until the work has been completed and accepted. The site and site access shall be capable of supporting a crane up to and including 50-ton capacity and other erection equipment. Any fill or dewatering necessary to accomplish the above, or additional costs of oversized or special equipment required due to poor site conditions, will be the responsibility of the Purchaser. Site leveling, grading, etc., after erections, shall be the responsibility of the Purchaser. Site leveling, grading, etc. after erections, shall be the responsibility of the Purchaser. USF shall be responsible for the clean up and removal of trash, scrap materials, etc. left from USF erection work.
4. Purchaser agrees to provide site access and site working area capable of supporting the delivery trucks (70-75,000 pounds gross weight). Purchaser agrees to maintain site access and working area, daily if required to allow USF erection crew to perform work during all weather conditions. Should USF have to stop work and return to the site when access and/or work area permits or experience delays due to the site and site access being unsuitable for work due to Purchaser's failure to prepare and/or maintain the above, the Purchaser agrees to compensate USF for cost incurred and agrees USF shall be indemnified and held harmless from all loss or damages resulting from delays of job progress, that are directly or indirectly a result of the Purchaser's responsibility.
5. USF erection personnel are non-union and all work will be by non-union personnel. In case of interference in erection work due to labor problems by persons not employed by USF, or the imposition of requirements concerning labor, working conditions, wage rates, etc., which were not clearly defined prior to USF acceptance of the erection job, USF shall have the right to stop work without prejudice until such interference or condition is satisfactorily remove or resolved. If additional costs are incurred by USF due to such conflict the Purchaser hereby agrees to reimburse USF or the additional costs incurred. USF is an Equal Opportunity Employer and shall comply with government regulations pertaining to fair and equal employment. Work hours by USF at the site shall be as determined by USF. The Purchaser shall not define working hours, number of work days per week or prohibit USF from working evenings, weekends, holidays, etc., when deemed to be advisable by USF.

6. INSURANCE

During the period of erection of the equipment contemplated herein, USF will maintain the following insurance:

- a) Workmen's Compensation and Employer's Liability.
- b) Occupational Disease.
- c) Contractual Liability.
- d) Public Liability Insurance, Personal Injury and Property Damage.
- e) Automobile Liability, Personal Injury and Property Damage.

Any insurance required by Purchaser in addition to the above mentioned coverage shall not be considered to be included in the purchase price as set forth herein and shall be charged to the Purchaser.

7. UNLOADING OF EQUIPMENT

USF is responsible for unloading of equipment which is to be erected by USF. Purchaser is responsible for unloading any equipment or accessories shipped to Purchaser for his installation. (Such as base channels to be embedded in concrete foundation by Purchaser, blowers or other accessories to be installed by Purchaser).

8. PURCHASER ACCEPTANCE OF ERECTED EQUIPMENT

When erection of the equipment nears completion USF shall give Purchaser seventy-two hours verbal notice that the equipment shall be ready for inspection and acceptance. Purchaser agrees to provide, on seventy-two hours notice, an authorized agent to meet at the site with USF erection personnel, to inspect the erected equipment, and accept same for/on behalf of the Purchaser. Any backordered items not installed at the time shall be listed on the acceptance agreement with the written understanding that USF is responsible for installing the subject equipment. Backordered items shall be received by the Purchaser at the "Backordered Address" previously provided and stored until USF installation is scheduled.

9. PREPARATION FOR START-UP OF ERECTED EQUIPMENT

Upon completion of erection USF shall inform the Purchaser that the erected equipment is ready to be placed in service. The Purchaser shall make all preparations for which he is responsible, such as: Influent and effluent connections, installation of the required electrical power supply and circuitry, filling tanks with clean water for testing and start-up, etc. If any deficiencies in materials or workmanship by USF are discovered by the Purchaser while performing this work, the Purchaser shall immediately notify USF so that corrective action can be taken.

USF is responsible for providing start-up supervision as defined in the equipment proposal. For scheduling purposes, ten days notice of desired start-up date is required.

10. SECURITY AND PROTECTION OF EQUIPMENT

Purchaser is responsible for security of equipment stored on his site after delivery prior to arrival of USF crews to begin erection; and for any backordered material delivered to Purchaser after departure of USF Davis Products erection crews, USF shall not be responsible for deterioration, theft, vandalism or damage to equipment which is stored on site or left inoperative after installation due to delays in start-up. Purchaser agrees to be responsible for security and protection of such equipment.

11. BACKCHARGES

USF will accept no backcharges for any reason which have not been approved prior to any work being performed, in writing by an authorized manager of the company. Purchaser agrees to contact USF and receive written authorization prior to incurring any costs related to backcharges.

12. LICENSES AND PERMITS

Unless specifically stated in USF erection proposal, USF is not responsible for licenses, permits or fees required to perform the work defined in this proposal.

13. (a) USF shall not be liable for delays due to: (1) causes beyond its reasonable control or (2) acts of God, acts of customer, prerequisite work by others, acts of civil or military authority, government priorities, fires, strikes or other labor disturbances, floods, epidemics, war, riot, delays in transportation or (3) inability to obtain or delay in obtaining, due to cause beyond its reasonable control, suitable labor, materials, or facilities. In the event of any such delay; the time of performance shall be extended for a period equal to the time lost by reason of the delay.

(b) In the event USF is delayed by acts of the customer or by prerequisite work by other contractors or suppliers of the customer, USF shall be entitled to an equitable price adjustment in addition to extension of the time of performance.

14. USF reserves the right to subcontract any of the work to one or more subcontractors.
15. Purchaser shall protect all gauges, controls and factory finishes from the painting operation. Purchaser shall be responsible for the removal and reinstallation of any assembly that affects the painting operation.
16. Customer is responsible for the removal of all existing equipment and media.

RESOLUTION NO. 26-06UD

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT, PALM BEACH COUNTY, FLORIDA, ACCEPTING AND APPROVING THE PROPOSAL FROM D.S. EAKINS CONSTRUCTION CORPORATION, IN THE AMOUNT OF \$124,250 PLUS A 10% CONTINGENCY FOR A TOTAL OF \$136,675; TO PROVIDE CONSTRUCTION SERVICES TO CONTRUCT 2000 FT. OF 12 INCH DIAMETER POTABLE WATER MAIN IN CONJUNCTION WITH THE UTILITY IMPROVEMENTS ALONG PARKE AVENUE; PIGGYBACKING OFF THE ANNUAL PUBLIC WORKS CONTRACT (BID #2003-013) BETWEEN D. S. EAKINS CONSTRUCTION CORPORATION AND THE CITY OF PALM BEACH GARDENS, COMMENCING MAY 6, 2006 THROUGH MAY 5, 2007, AND AUTHORIZING THE INTERIM DISTRICT FINANCE DIRECTOR TO PAY THIS AMOUNT FROM ACCOUNT NO. 415-1430-533-0-6558; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, D. S. Eakins Construction Corporation, has prepared and submitted to the Utility District, a cost proposal for construction services to construct 2000 ft. of 12 inch diameter potable water main to implement the utility improvements along Parke Avenue, in the amount of \$124,250, plus a 10% contingency for a total of \$136,675; and

WHEREAS, the District is mandated by law to maintain a minimum service pressure of 20 psi for potable water distribution. From field investigations, we determined that utility distribution improvements are needed in the western communities to meet the mandated service pressure under fire flow conditions; and

WHEREAS, the District has submitted and received approved plans from the Palm Beach County Health Department to implement the utility improvements along Parke Avenue; and

WHEREAS, the work will be done under the annual contract with D. S. Eakins Construction Corporation.

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

SECTION 1: That the Utility District Board approves the proposal from D. S. Eakins Construction Corporation, in the amount of \$124,250 plus a 10% contingency, for a total of \$136,675.

SECTION 2: That the Interim District Finance Director is authorized to make payment for same under Account Number 415-1430-533-0-6558, in the amount of \$136,675.

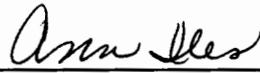
SECTION 3: This Resolution shall take effect upon its passage and approval by the Utility District Board.

PASSED AND APPROVED this 16 day of August, 2006.

RESOLUTION NO. 26-06UD
PAGE 3

APPROVED:

UTILITY SPECIAL DISTRICT
BOARD OF DIRECTORS

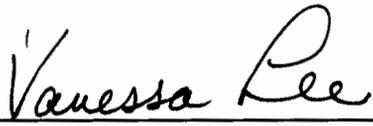


ANN ILES
CHAIRPERSON

ATTEST:



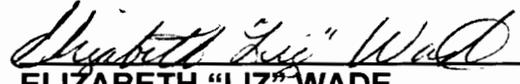
CARRIE E. WARD,
MASTER MUNICIPAL CLERK
DISTRICT CLERK



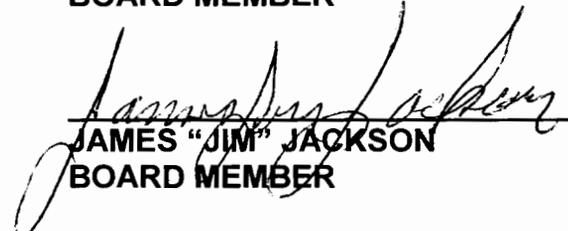
VANESSA LEE
VICE-CHAIRPERSON



NORMA DUNCOMBE
BOARD MEMBER



ELIZABETH "LIZ" WADE
BOARD MEMBER



JAMES "JIM" JACKSON
BOARD MEMBER

MOTIONED BY: E. Wade

SECONDED BY: V. Lee

A. ILES aye

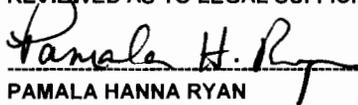
V. LEE aye

N. DUNCOMBE absent

E. WADE aye

J. JACKSON AYE

REVIEWED AS TO LEGAL SUFFICIENCY



PAMALA HANNA RYAN
DISTRICT ATTORNEY

DATE: 8/11/06