

RESOLUTION NO. 131-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH GALLAGHER BASSETT SERVICES AND AUTHORIZING THE INTERIM FINANCE DIRECTOR TO MAKE MONTHLY PAYMENTS FROM THE INSURANCE LIABILITY FUND ACCOUNT NO. 602-0539-513-0-3101 UP TO THE AMOUNT OF \$84,759.00 FOR CLAIMS ADMINISTRATION; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, Gallagher Bassett Services, Inc. submitted a proposal for Claims Administration and Loss Control Services; and

**WHEREAS**, Gallagher Bassett Services, Inc. has positively performed while providing Claims Administration and Loss Control Services to the City of Riviera Beach.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA as follows:**

**SECTION 1.** That Mayor and City Clerk are authorized to execute an Agreement with Gallagher Bassett Services to provide Claims Administration and Loss Control Services.

**SECTION 2.** That the Interim Finance Director is authorized to make monthly payments from Account No. 602-0539-513-0-3101 in the amount not exceeding \$84,759.00 to Gallagher Bassett Services.

**SECTION 3.** A copy of the Agreement is attached hereto and made a part hereof.

**SECTION 4.** This Resolution shall take effect immediately upon its passage and approval by the City Council.

PASSED AND APPROVED this 20 day of October, 2010.

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APPROVED:

Thomas A. Masters  
THOMAS A. MASTERS  
MAYOR

Dawn S. Pardo  
DAWN S. PARDO  
CHAIRPERSON

ATTEST:

Carrie E. Ward  
CARRIE E. WARD  
MASTER MUNICIPAL CLERK  
CITY CLERK

Judy L. Davis  
JUDY L. DAVIS  
CHAIR PRO TEM

Billie E. Brooks  
BILLIE E. BROOKS  
COUNCILPERSON

Shelby L. Lowe  
SHELBY L. LOWE  
COUNCILPERSON

Cedrick A. Thomas  
CEDRICK A. THOMAS  
COUNCILPERSON

MOTIONED BY: Brooks

SECONDED BY: Thomas

D. PARDO Aye

J. DAVIS Aye

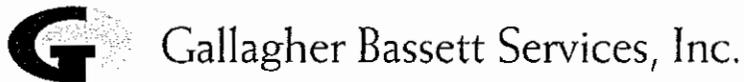
B. BROOKS Aye

S. LOWE Aye

C. THOMAS Aye

REVIEWED AS TO LEGAL SUFFICIENCY  
Pamela H. Ryan  
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 10/8/10



### THIRD PARTY ADMINISTRATOR AGREEMENT

This Third Party Administrator Agreement ("Agreement") is made and entered into as of October 1, 2010 ("Effective Date") by and between **Gallagher Bassett Services, Inc.**, a Delaware corporation together with its subsidiaries and affiliates ("GB") with its principal place of business at Two Pierce Place, Itasca, Illinois 60143 and **City of Riviera Beach, Florida**, with its principal place of business at 2051 Martin Luther King, Jr., Port Center Building, 3rd Floor, Riviera Beach, FL 33404 ("CLIENT").

WHEREAS, GB provides certain third party administration services; and

WHEREAS, CLIENT desires to retain GB to provide certain third party administration services and GB desires to provide such services to CLIENT.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

**Section 1. Definitions.** As used in this Agreement, the following terms shall have the meanings set forth below:

**Allocated Expenses.** Any cost or expense incurred by CLIENT or by GB in connection with any services of any third party provided in connection with any investigation, adjustment, settlement or defense of a Claim. Allocated Expenses shall include, but not be limited to, the following costs and expenses whether directly incurred by GB for CLIENT or charged to GB by third parties: all costs and fees for any and all legal services, court costs and costs of suit, professional photographs, medical records, experts' rehabilitation costs, accident reconstruction, architects, contractors, engineers, police, fire, coroner, and weather reports or any other report, property damage appraisals, costs for witness statements, official documents and transcripts, sub rosa investigations, medical examinations, subrogation (at 15% of gross recoveries or otherwise), second injury fund recovery, travel made at CLIENT's request, court reporters, fees for service of process, pre- and post-judgment interest paid, chemists, collection costs or any other similar costs, any fee or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a claim or loss, managed care, outside investigation, index bureau reporting, file management and retrieval, services provided by GB and outside vendors to assist the CLIENT in compliance MMSEA, and legal bill auditing.

**Claim.** Any report of injury or accident (first or third party) alleging or resulting in injury, damage, or loss which could give rise to a demand for the payment of money.

**Claimant.** Any person or entity, who directly or indirectly submits a Claim to GB.

**CMS.** The Centers for Medicare and Medicaid Services under MMSEA.

**Confidential Information.** Information furnished by either party hereto or its representatives (“Disclosing Party”) to the other party (“Receiving Party”) whether furnished before, on or after the Effective Date, regardless of the manner furnished relating to the business, Claimant, customers, products and affairs of the Disclosing Party (including without limitation, marketing, information) deemed or treated confidential by the Disclosing Party, or which the Receiving Party knows or reasonably should have known to be confidential, and trade secrets, including without limitation designs, processes, pricing policies, methods, inventions, technology, technical data, and financial information. Confidential Information shall not include information concerning Disclosing Party which (a) is or becomes generally available to the public or within the industry to which such information relates other than as a result of a breach of this Agreement by the Receiving Party, or (b) at the time of disclosure to Receiving Party by Disclosing Party was already known by Receiving Party as evidenced by its written records, or (c) becomes available to the Receiving Party on a non-confidential basis from a source that is entitled to disclose it on a non-confidential basis, or (d) was or is independently developed by or for the Receiving Party without reference to the Confidential Information.

**Discretionary Settlement Authority.** The amount up to which GB is authorized to make payment, for loss or expense, as GB deems necessary. This amount is set forth on Exhibit A attached hereto.

**Managed Care.** Any services provided to, or related to, a Claimant pertaining to medical care and any information related thereto, including, but not limited to, preferred provider organization networks, state fee scheduling, usual, customary and reasonable bill review, medical case management and vocational rehabilitation network, utilization review services, light-duty and return-to-work programs, prospective injury management services, hospital bill audit services, wholesale pharmaceutical network, and retail pharmaceutical network.

**MIR.** Mandatory Insurer Reporting under MMSEA.

**MMSEA.** Medicare, Medicaid, and SCHIP (State Children’s Health Insurance Program) Extension Act of 2007 (P.L. 110-173).

**Program.** Qualified Claims handled by GB on behalf of CLIENT pursuant to this Agreement.

**Qualified Claim.** A Claim GB is authorized and required to handle pursuant to this Agreement.

**RISX-FACS®.** GB’s proprietary risk management information system.

**RRE.** Responsible Reporting Entity under MMSEA.

**Service Fees.** Fees billed by GB to CLIENT for or related to the services provided for in this Agreement. Such Service Fees shall include, but not be limited to, those fees provided for on Exhibit A incorporated herein and attached hereto.

**Service Instructions.** Instructions on file with GB, as drafted by GB and CLIENT covering the process for handling Qualified Claims for CLIENT.

**Term.** The Term of this Agreement as set forth in Section 12.1.

**Workers' Compensation Medical Only Claim.** A work-related Claim that (i) involves medical treatment and related payments only, (ii) the Claimant is not considered Medicare Eligible by CMS, (iii) no payments for indemnity or vocational rehabilitation exists, (iv) the Claim is not contested or in suit, (v) no investigations, loss notices, captioned reports, client meetings, or Discretionary Settlement Authority is necessary to process the Claim, and (vi) payment on the Claim does not exceed \$2,500. Services provided beyond the guidelines above will be considered indemnity cases and will be on a contracted basis only.

**Section 2. Obligations of GB.**

2.1 With regard to Claims administration, GB shall provide the following services:

- a. Review each Claim and loss report submitted by the CLIENT.
- b. Investigate each Qualified Claim to the extent deemed necessary by GB.
- c. Maintain a record for each Qualified Claim that shall be available for review by the CLIENT.
- d. Adjust, settle or resist all Qualified Claims within the Discretionary Settlement Authority limit or, with specific approval (or, as appropriate, acknowledgement) of the CLIENT, if outside the Discretionary Settlement Authority limit.
- e. Perform necessary and customary administrative and clerical work in connection with each Qualified Claim, including to the extent applicable the preparation of checks or vouchers, releases, agreements and other documents needed to finalize a Qualified Claim.
- f. Establish and update Claim reserves as needed.
- g. Assist the CLIENT in establishing a banking arrangement for loss and expense payments as set forth in Section 4 of this Agreement.
- h. Notify only CLIENT's agent or carriers which are specifically listed with detailed contact and timing information in the Service Instructions, as set forth in the Service Instructions, of all Qualified Claims which may exceed the CLIENT's retention or deductible and, if set forth in the Service Instructions, provide information on the status of such Qualified Claims as set forth in the Service Instructions.
- i. Coordinate investigations on litigated Claims with attorneys representing CLIENT and with representatives of the carrier, as required.
- j. Investigate and pursue subrogation possibilities on behalf of CLIENT in all states permitting subrogation. Funds received from all subrogation collections, less Allocated Expenses, shall be considered revenue of CLIENT or its carrier as appropriate.
- k. Maintain an automated loss and information system, and provide CLIENT with reports from RISX-FACS® as set forth in the Service Instructions.

- l. Provide forms, as determined by GB, needed to administer CLIENT's Program.
  - m. Provide ad hoc information, analysis, reports and services on a time and expense basis as requested by CLIENT and quoted by GB.
  - n. Assist CLIENT, as necessary, in selecting appropriate experts or specialists as each Claim may require.
  - o. Provide personnel needed to perform the services agreed to herein.
  - p. To the extent applicable, GB shall secure the services of a third party provider to assist CLIENT with its MIR obligations. GB shall have no obligation under this Agreement to perform any MIR on behalf of CLIENT.
  - q. With respect to self-insured qualification, as requested by CLIENT in writing, assist CLIENT in the filing of periodic reports and renewal applications required by state administrative agencies.
  - r. Report fraudulent or suspected fraudulent claims to state authorities as required by law.
- 2.2 **Risk Control Consulting.** GB shall provide those risk control consulting and appraisals or other services, set forth in Exhibit A or otherwise provided herein.
- 2.3 **Discretionary Settlement Authority.** The limit on any settlement payment by GB shall be the Discretionary Settlement Authority. It is agreed that GB shall have full authority in all matters pertaining to the payment, processing, investigation and administration of Qualified Claims or losses within this limit.
- 2.4 **Reporting.** GB shall be responsible for reporting to carriers Qualified Claims only as specifically set forth in the Service Instructions. GB has no responsibility to report Claims other than as specifically agreed to in this Agreement.
- 2.5 GB also agrees to perform GB's obligations according to the Service Instructions approved by GB and on file with GB, as may be amended from time to time.
- 2.6 Except as provided in Section 2 and 4, herein, GB shall have no obligation to provide any other services to CLIENT.

### **Section 3. Obligations of CLIENT.**

- 3.1 CLIENT shall pay GB for services the sums set forth in Exhibit A. At the end of each Agreement period, the annual compensation shall be subject to adjustment.

Where applicable, GB shall reconcile the Claim counts at the 18th and 24th month from the inception date of the Agreement and annually thereafter. CLIENT shall pay GB any additional fees due or be entitled to a refund as a result of these reconciliations.

- 3.2 CLIENT shall report all Qualified Claims to GB. CLIENT shall report each Qualified Claim to GB in a timely manner to allow GB to submit the first reports of injury for each

Qualified Claim to the applicable state and to comply with all applicable laws, rules and regulations.

- 3.3 CLIENT or its carrier shall provide funds for the payment of Qualified Claims, Allocated Expenses, bank charges and any fees related to Managed Care services, if applicable. GB shall not be required to advance funds to pay losses, Allocated Expenses, bank charges, or Managed Care services fees. In the event that GB, in its discretion, advances funds to pay amounts owed by CLIENT in any respect, CLIENT agrees to repay such funds to GB immediately on demand by GB. In the event CLIENT fails to repay such funds within 30 days of demand by GB, CLIENT agrees to also pay to GB interest on the outstanding principal amount of such funds due to GB at the lesser of 1% per month or the maximum rate allowed by law.
- 3.4 CLIENT acknowledges and agrees that CLIENT or CLIENT's insurance carrier has an obligation to perform MIR as set forth in Section 111 of the MMSEA. MMSEA provided for mandatory reporting requirements for group health plan arrangements and for liability insurance (including self-insurance), no-fault insurance, and workers' compensation (see 42 U.S.C. 1395y(b)(7) & (8)). CLIENT agrees to properly register (or, as appropriate, to cause its insurance carrier to properly register) with the CMS as the RRE provide to GB all relevant information including the RRE Identification Number(s) assigned, and properly designated a MIR reporting agent acceptable to GB. CLIENT agrees that for each and every claim reported to GB in which CLIENT possesses the information, CLIENT shall provide the following information as soon as required to comply with applicable law and avoid fines and penalties: claimant's first and last name, social security number, date of birth and gender. CLIENT consents to the disclosure of any required information to GB's designated third party for processing CLIENT's MIR. CLIENT further understands that there may be fees associated with the third party's services in order to facilitate proper claim handling under MMSEA, which fees will properly be Allocated Expenses. CLIENT acknowledges receipt of the third party's schedule of service fees associated with proper claim handling under MMSEA.
- 3.5 CLIENT shall pay all fees and assessments in connection with the reports and renewal applications filed in accordance with section 2.1q of this Agreement.

**Section 4. Banking-SIMMS.**

- 4.1 GB shall provide an on-line check data and banking communication system known as "APACS," which provides for automated payments and control. The account will be funded by CLIENT or its carrier and maintained with Citibank to administer a SIMMS cash management program. Such cash management program will deal directly with the funding program of CLIENT's banking facility. GB will assist CLIENT in establishing the initial imprest/opening balance of the fund. The details of CLIENT's program are set forth in a letter agreement between CLIENT, Citibank N.A. and Arthur J. Gallagher & Co. (GB) (hereafter the "Account Parameter Agreement"). In addition, GB will analyze the account from time to time and will submit advisory reports, including any excess or deficiencies to the imprest/opening balance. As a result of the advisories, the CLIENT agrees to fund any imprest increase within 30 days of notification. Changes to the frequency of funding and/or imprest/opening balance will require the execution of a new Account Parameter Agreement.

- 4.2 In the event of cancellation or nonrenewal of this Agreement, CLIENT agrees to fund Citibank in an amount sufficient to fund all of CLIENT's outstanding obligations as they become due.
- 4.3 If, at any time, CLIENT or its carrier fails to provide adequate funding, GB may issue "stop payment" orders on outstanding payments. Any bank charges resulting from inadequate funding including, but not limited to, interest, stop payment charges and overdraft fees shall be the obligations of CLIENT and shall be paid by CLIENT upon demand by GB.
- 4.4 If CLIENT or its carrier on more than one occasion fails to provide adequate funding, GB shall have the right to convert CLIENT's program to either daily clearance or voucher upon 48 hours notice to CLIENT. This right shall be without prejudice to other rights of GB under this Agreement.

**Section 5. Payment and Collection Matters.**

- 5.1 **Service Fees and Other Charges.** CLIENT shall pay the Service Fees and any and all other charges as provide herein and as billed by GB. Service Fees are payable by CLIENT immediately upon receipt of an invoice. GB reserves the right to charge and CLIENT agrees to pay the lesser of 1% per month, or the maximum legal rate, on balances unpaid by CLIENT after 30 days.
- 5.2 **Increased Fees.** GB reserves the right to modify fees if in the reasonable discretion of GB, GB determines either of the following:
  - a. That the historical data upon which GB's fees and service charges developed were based upon erroneous, obsolete or insufficient information, or that a change in CLIENT's business will materially change the nature and/or volume of its business or claims as contemplated at the inception of the Agreement.
  - b. Legislative and/or regulatory requirements materially impact or change the scope of GB's services or responsibilities.
- 5.3 **Taxes.** CLIENT shall be responsible for and pay GB any and all applicable taxes, duties, and assessments, including but not limited to sales, use, ad valorem and excise taxes, duties and assessments, which are assessed, levied or imposed by any governmental entity or tax authority in connection with any services rendered by GB hereunder. Furthermore, CLIENT shall be responsible for and pay any interest or penalties assessed on such tax for non-payment of such taxes by CLIENT.
- 5.4 **Claim Charges.** The Claim charge is applicable on a per occurrence, per Claimant, per line of coverage basis as defined in the RISX-FACS® system.
- 5.5 **Non-U.S. Dollar Transaction.** In the event that GB handles any non-U.S. Dollar Claims, CLIENT understands and recognizes that currency exchange rates are subject to change without notice and are not within the control of GB. CLIENT agrees that GB will be held harmless from any additional charges, fees or expenses incurred by CLIENT because of such currency rate fluctuations.

- 5.6 **Managed Care.** At no additional cost to CLIENT, Managed Care vendors may pay GB an administrative fee in exchange for bona fide administrative services. The administrative services may include, but not be limited to overhead costs for the oversight and management of Managed Care vendors which includes the development and oversight of quality standards, development and maintenance of EDI interfaces and reports, monitoring of Managed Care vendor performance, and ensuring proper mandatory state compliance and reporting. It is understood by the parties that the administrative costs as described herein are to be borne solely by GB and will not be a factor in determining the costs to GB of administering CLIENT's Claims under this Agreement.
- 5.7 **Survival.** CLIENT'S obligations provided for in this Section 5 shall survive the termination of this Agreement.
- 5.8 **Property Catastrophe Charges.** Any Property loss involving ten (10) or more buildings as a result of a single event (i.e., hurricane, tornado, flood, earthquake, etc), will be billed on a time and expense basis, and paid as an allocated claim expense against the Claim file. GB, at its discretion, reserves the right to utilize outside resources (adjusters) for the purpose of expediting the claim handling, as a result of the catastrophic event. If outside resources are used, their fees will also be billed as an Allocated Expense against the claim file.

## **Section 6. Representations and Warranties.**

### **6.1 Representations and Warranties of GB.** GB represents and warrants as follows:

- a. **Existence.** GB is a corporation, duly organized, validly existing and formed under the laws of the state of Delaware, and GB is duly qualified to carry on its business, and is in good standing in each state in which the nature of its business and activities requires it to be so qualified.
- b. **Power and Authority.** GB has all requisite power and authority to enter into this Agreement and to perform its obligations under this Agreement. The consummation of the transactions contemplated by this Agreement will not violate, nor be in conflict with, (i) any provision of GB's Certificate of Incorporation, By-Laws or other governing documents, (ii) any material agreement or instrument to which GB is a party or is bound, or (iii) any judgment, decree, order, statute, rule or regulation applicable to GB.
- c. **Authorization.** The execution and delivery and performance of this Agreement by GB and the transactions hereby have been duly and validly authorized by all requisite corporate action to be taken by GB.
- d. **Execution and Delivery.** This Agreement has been duly executed and delivered on behalf of GB and all documents and schedules required hereunder to be executed and delivered by GB have been duly executed and delivered. This Agreement constitutes legal, valid and binding obligations of GB enforceable in accordance with their terms, subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application with respect to creditors, (ii) general principles of equity and (iii) the power of a court to deny enforcement of remedies generally based upon public policy.

- e. **Compliance with Laws.** GB shall perform its obligations provided for in this Agreement in compliance with all applicable federal and state laws.
- f. **Litigation.** There is no action, suit, investigation, complaint or other proceeding pending against GB or, to the knowledge of GB, threatened against GB that restricts in any material respect or prohibits the exercise of its rights under the Agreement or the performance of its obligations under this Agreement.

6.2 **Representations and Warranties of CLIENT.** CLIENT represents and warrants as follows:

- a. **Existence.** CLIENT is duly organized, validly existing and formed under the laws of the state of its jurisdiction, and CLIENT is duly qualified to carry on its business, and is in good standing in each state in which the nature of its business and activities requires it to be so qualified.
- b. **Power and Authority.** CLIENT has all requisite power and authority to enter into this Agreement and to perform its obligations under this Agreement. The consummation of the transactions contemplated by this Agreement will not violate, nor be in conflict with, (i) any provision of CLIENT's Certificate or Articles of Incorporation or Certificate of Formation, as applicable, By-Laws or other governing documents, (ii) any material agreement or instrument to which CLIENT is a party or is bound, or (iii) any judgment, decree, order, statute, rule or regulation applicable to CLIENT.
- c. **Authorization.** The execution and delivery and performance of this Agreement by CLIENT and the transactions hereby have been duly and validly authorized by all requisite corporate or other entity action to be taken by CLIENT.
- d. **Execution and Delivery.** This Agreement has been duly executed and delivered on behalf of CLIENT and all documents and schedules required hereunder to be executed and delivered by CLIENT have been duly executed and delivered. This Agreement constitutes legal, valid and binding obligations of CLIENT enforceable in accordance with their terms, subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application with respect to creditors, (ii) general principles of equity and (iii) the power of a court to deny enforcement of remedies generally based upon public policy.
- e. **Compliance with Laws.** CLIENT shall perform its obligations provided for in this Agreement in compliance with all applicable federal and state laws.
- f. **Litigation.** There is no action, suit, investigation, complaint or other proceeding pending against CLIENT or, to the knowledge of CLIENT, threatened against CLIENT that restricts in any material respect or prohibits the exercise of its rights under the Agreement or the performance of its obligations under this Agreement.
- g. **Recall of Claim.** Prior to placing a Qualified Claim with GB, CLIENT has recalled the Claim from any previous claim administrator.

- h. **True and Accurate Information.** All information provided by CLIENT to GB is true and accurate and may be relied upon by GB.
- i. **RRE.** To the extent applicable, CLIENT has properly registered with the CMS as the RRE.

**Section 7. Foreign Corrupt Practices Act.** CLIENT makes the following representations and warranties to the GB:

- 7.1 In the event that (i) any CLIENT equity holder, partner, officer, director, employee, or agent is or becomes an official or employee of any government, or of any department, agency, instrumentality, or political subdivision of any government, or of any political party, or of any public international organization; or (ii) an official or employee of any government, or of any department, agency, instrumentality, or political subdivision of any government, or of any political party, or of any public international organization, owns or acquires, directly or indirectly, any shares or other beneficial interest in CLIENT, CLIENT shall immediately inform the GB of such fact in writing. Upon receiving such notice, and notwithstanding any other provision of this Agreement, the GB may thereafter immediately terminate this Agreement. In the event of such termination, the GB shall have no liability to CLIENT under this Agreement for any fees, reimbursements or other compensation that may have been payable under this Agreement after the date of termination or for any other loss, cost, claim, or damage resulting, directly or indirectly, to CLIENT from such termination.
- 7.2 Neither CLIENT nor any of its equity holders, partners, officers, directors, employees, or agents shall, directly or indirectly, offer, pay, promise to pay, or authorize the payment of any money, or offer, give, promise to give, or authorize the giving of anything of value to (I) any official or employee of any government, or of any department, agency, or instrumentality thereof (in the United States of America or elsewhere); (II) any political party or official thereof or any candidate for political office (in the United States of America or elsewhere); or (III) any official or employee of any public international organization, in each case, for the purpose of influencing any act or decision of such official, employee, party, or candidate or of inducing such official, employee, party, or candidate to do or omit to do any act in violation of the lawful duty of such official, employee, party, or candidate, or of securing any improper advantage for the GB or otherwise promoting the business interests of the GB in any respect. No offer, payment, authorization, promise, or gift of the sort described in this paragraph has been made prior to the date of this Agreement.
- 7.3 All authorizations, licenses, property, contracts, and any other right, interest or asset that CLIENT has contributed, sold, assigned, licensed, or otherwise conveyed to the GB, in whole or in part, in connection with the subject matter of this Agreement, or that CLIENT may contribute, sell, assign, license, or otherwise convey to the GB in the future, in whole or in part, in connection with the subject matter of this Agreement, were obtained in a manner consistent with the paragraph above and in accordance with all applicable anti-bribery and anti-corruption laws.
- 7.4 CLIENT shall at all times be bound and abide by and strictly comply with all applicable laws of the United States of America concerning corrupt practices or which in any manner prohibit the giving of anything of value to any official, agent, or employee of any government, political party, or public international organization.

- 7.5 CLIENT shall promptly notify the GB of the occurrence of any fact or event which would render any representation, warranty, covenant, or undertaking in this Section incorrect or misleading.
- 7.6 Notwithstanding any other provision of this Agreement, should the GB receive information which, in its sole discretion, it determines to be evidence of a breach by CLIENT of any undertaking in this section, the GB shall consult with CLIENT and may thereafter immediately terminate this Agreement if the GB, in its sole discretion, is reasonably satisfied that such a breach has occurred. In the event of such termination, the GB shall have the option (1) to return to CLIENT some or all of the assets that CLIENT conveyed to the GB and to receive from CLIENT the money paid or the property given to CLIENT in exchange for the returned assets; or (2) to retain any or all assets that CLIENT conveyed to the GB and to pay to CLIENT only such sum as remains to be paid for the retained assets under the terms of this Agreement. In the event of such termination, the GB shall have no liability to CLIENT for any fees, reimbursements, or other compensation under this Agreement (including for services previously performed), and CLIENT shall defend and indemnify the GB for any third-party loss, cost, claim, or damage resulting from the breach of this Section and the GB's termination of this Agreement.

**Section 8. Confidentiality.**

- 8.1 **General.** In connection with the services provided hereunder, each party may disclose Confidential Information to the other. Each party agrees that it will not disclose any Confidential Information concerning the other to any third party without the prior written consent of the other party. Notwithstanding the foregoing, each party shall be permitted to disclose Confidential Information to its parent, affiliates, subsidiaries, employees, directors, officers, employees, independent contractors, agents, partners, attorneys, or vendors that have a need to know the Confidential Information. GB may use statistical information or other data, so long as the CLIENT's name and/or confidential data are adequately protected.
- 8.2 Nothing in this Agreement shall be deemed to prevent the Receiving Party (as defined in Section 1 under the definition of Confidential Information) from disclosing any Confidential Information of the Disclosing Party (as defined in Section 1 under the definition of Confidential Information) when requested or required to do so by a subpoena, civil investigative demand, other legal process, or by the authority of any State or Federal administrative agency or governmental body. In the event that the Receiving Party or its representatives become legally compelled to disclose any of the Disclosing Party's Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice of such requirement in order that the Disclosing Party may seek a protective order, other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order, other remedy or waiver is not obtained, the Receiving Party shall furnish only that portion of the Confidential Information that, in the opinion of the Receiving Party's counsel, is legally required to disclose and shall exercise reasonable efforts to preserve the confidentiality of the Disclosing Party's Confidential Information.
- 8.3 Each party shall keep the terms of this Agreement confidential.

**Section 9. Records Retention.**

- 9.1 GB will retain claim files in storage facilities for 36 months following date of closure of the Claim unless otherwise required by contract or law. Thereafter, it will be the CLIENT's responsibility for continued file storage either based on a reassignment of that responsibility with the storage facility from GB to the CLIENT, or by return of the files to the CLIENT or to such location as may be designated by the CLIENT. GB will not be responsible for the destruction of files, but will have indicators in the storage data base available to the CLIENT as to which files can be considered for destruction should the CLIENT wish to pursue such action independently.
- 9.2 GB will maintain electronic copies of checks at the respective banks in accordance with the policies and procedures of such banks.

**Section 10. Other Agreements.**

- 10.1 **Subrogation.** To the extent GB is involved in pursuing recoveries against third parties or otherwise undertaking subrogation activities on behalf of CLIENT, GB is authorized to collect, in the name of the CLIENT or in the name of GB, all funds due as a result of such recovery or subrogation activities. GB shall not be required to establish any trust accounts for the benefit of CLIENT, but shall promptly and fully account for all funds so received.
- 10.2 **Escheat.** The parties acknowledge that any and all escheat and unclaimed property obligations of any type or variety lie with CLIENT and not GB. Pursuant to the other terms and conditions of this Agreement, GB shall provide CLIENT with such information and reports as reasonably required by CLIENT to perform this function.
- 10.3 **Sole Claims Administrator.** During the terms of this Agreement and except as otherwise agreed to by the parties hereto, CLIENT agrees that GB shall be the sole claims administrator with respect to CLIENT's Program and that all new claims under CLIENT's Program shall be forwarded to GB. CLIENT further agrees not to self-administer or adjust any such claims or to forward any such claims to any other service organization or individual without GB's prior written consent.

**Section 11. Indemnification.**

- 11.1 **GB Indemnity.** GB agrees to defend, indemnify, protect, save and keep harmless CLIENT from any and all loss, cost, damage or exposure arising from (i) the breach of any representation, warranty or other covenant made by GB hereunder and (ii) the negligent acts or omissions of GB including, but not limited to, GB's obligations to secure the services of a third party provider to assist CLIENT with research and protection of MMSEA related lien obligations, if any.
- 11.2 **Cap on Amount of Indemnity.** Notwithstanding Section 11.1, CLIENT understands and agrees that claims administration services provided by GB pursuant to this Agreement are naturally subject to second-guessing with the benefit of hindsight; claims administration is more an art than an exact science, and problems associated with claims administration are not easily evaluated. Consequently, CLIENT agrees that GB's liability to CLIENT for claims, judgments, loss, expense, damages or costs arising from or in any way related to any alleged improper claims administration by GB shall not exceed the fee charged by GB to CLIENT as set forth on Exhibit A with respect to the specific claims alleged by CLIENT in

good faith to have been improperly administered. In any suit or proceeding brought by CLIENT in any way alleging or suggesting improper claims administration, CLIENT shall be required to demonstrate such improper claims administration by clear and convincing evidence.

- 11.3 **Limitation on Liability.** Failure of GB to settle a qualified Claim or loss within the Discretionary Settlement Authority shall not subject GB to liability to any party in the event of an adverse judgment entered by any court or the settlement of such Claim or loss for an amount in excess of such limit. GB shall have no liability or responsibility whatsoever with respect to any Claims that are not Qualified Claims.
- 11.4 **Medicare Liability Disclaimer.** CLIENT acknowledges that the only way to make certain Medicare's interests are protected and CLIENT is insulated from future liability concerning any conditional or future medical payments made by Medicare (other than making the payment payable jointly to the claimant and Medicare) is through a Claims Settlement Allocation (CSA). GB recommends this approach for CLIENT's protection. If CLIENT chooses to proceed with settlement without incurring the cost of a CSA, CLIENT will not be insulated from future claims for reimbursement of amounts paid by Medicare and related costs.
- 11.5 **CLIENT Indemnity.** CLIENT agrees to defend, indemnify, protect, save and keep harmless GB from any and all loss, cost, damage or exposure arising from (i) the breach of any representation, warranty or covenant made by CLIENT hereunder, (ii) the negligent acts or omissions of CLIENT including but not limited to the timely and accurate remittance to GB of any information in CLIENT's possession required for MIR, and (iii) the failure of GB or any other person or entity to report any Claims that are not Qualified Claims. CLIENT further agrees to hold GB harmless for any expenses incurred related to the third party provider's services to assist CLIENT with its MMSEA obligations, if any.
- 11.6 **Survival.** The foregoing indemnification provisions shall survive termination of this Agreement.

## **Section 12. Termination.**

- 12.1 This Agreement shall commence on the Effective Date and shall terminate on October 1, 2011, unless terminated earlier as may be provided herein.
- 12.2 Either party may cancel this Agreement at any time, for any reason, upon 60 (sixty) days prior written notice to the other party.
- 12.3 *To the extent workers compensation claims will be handled in Michigan, the following terms shall apply:* Either party may cancel this Agreement at any time, for any reason, by giving the other party written notice of intent to cancel at least sixty (60) days in advance, with a copy to The State of Michigan, Department of Labor, Bureau of Workers' Disability Compensation ("the State"). Subsequent to either party hereunder giving the other party notice of cancellation, CLIENT shall continue to pay GB for the claims services hereunder at the terms and rates in effect on the date notice of cancellation is given and as further set forth below. In the event the parties agree that GB will not continue handling pending

Claims, GB will remain obligated to handle such Claims until or unless GB is relieved of that responsibility in writing by the State.

- 12.4 Other than for CLIENT'S failure to pay amounts billed as described in Section 12.5 below, either party may terminate this Agreement upon 10 (ten) days written Notice to the other party, if the other party breaches the Agreement and such breach is not cured within 72 hours of receipt of a written notice clearly describing such failure and demanding cure.
- 12.5 If the CLIENT fails to pay any amounts billed, including but not limited to GB's service fee during the Agreement period; reconciliation billings; the service fee to continue handling claims past termination date; or bank charges, within 30 days, GB shall have the right to cancel the Agreement by giving the CLIENT ten (10) days notice in writing. After receipt of payment of all fees due, GB will then return all files to the CLIENT in an orderly manner. Costs for file transfer shall be the obligation of the CLIENT.
- 12.6 Either party may terminate this Agreement if the other party shall:
- a. Become insolvent or generally unable to pay its debts as they become due;
  - b. Apply for, consent to, or acquiesce in, the appointment of a trustee, receiver, sequestrator or other custodian for any of its property, or make a general assignment for the benefit of its creditors;
  - c. In the absence of any such application, consent or acquiescence, permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for it or a substantial portion of its property, and such trustee, receiver, sequestrator or other custodian shall not be discharged within sixty (60) days;
  - d. Permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law or any dissolution, winding up or liquidation proceeding, in respect of it, and, if any such case or proceeding is not commenced by it, such case or proceeding shall be consented to or acquiesced in by it or shall result in the entry of an order for relief or shall remain for sixty (60) days undismissed; or
  - e. Take any formal action authorizing, or in furtherance of, any of the foregoing.

12.7 **Actions following termination.**

- a. In the event of cancellation or nonrenewal of this Agreement, GB may, at its sole discretion, continue to manage all pending run-off claims, and run-off claims incurred during the Term but not reported prior to the date of termination if CLIENT pays GB a mutually agreed upon per claim per year open fee to continue handling open claims. If run-off services are provided by GB, the services will be provided at a claims servicing branch selected by GB, and a reduced electronic RISX-FACS® reporting package will be provided at the CLIENT's expense. Banking and administration fees will be charged to the CLIENT as long as GB handles the claims.
- b. *To the extent workers compensation claims will be handled in Michigan, the following terms shall apply:* In the event GB and CLIENT cannot agree to ongoing per claim

per year open run-off fees, GB will so notify the State, and continue to service the Claims until the State has provided notice to both parties that a replacement Self Insured Claims Third Party Administrator has been approved to take over claim handling.

- c. Should CLIENT renew only a portion of the existing program under this Agreement (fewer states, locations, coverages, etc.), all open claims not part of the renewed portions of the program shall be considered in run-off and subject to per claim per year open fees to be agreed upon by the parties. A reduced electronic RISX-FACS® reporting package will be provided at the CLIENT's expense, as appropriate. Banking and administration fees will be charged to the CLIENT as long as GB handles the claims. Should no agreement be reached regarding these open claims, they will be returned to the CLIENT or forwarded to another party as designated by the CLIENT.
- d. Should the CLIENT elect to have the files returned to them, CLIENT agrees to reimburse GB for all payments made and subsequently paid by the bank, on behalf of the CLIENT, until all claims are closed within the RISX-FACS® system and all claim files have been returned to the CLIENT. GB will provide an electronic, tape or paper copy of the claim information in RISX-FACS® at GB's prevailing rate on the date of termination. Upon delivery of this information to CLIENT, claim information may be deleted from the system.

**Section 13. Miscellaneous.**

- 13.1 **Amendment and/or Modification.** This Agreement, including all exhibits attached hereto, contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, agreements and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by all parties. An electronic copy or facsimile will be considered an original for purposes of enforcement.
- 13.2 **Notice.** All notices, requests and other communications concerning this Agreement from either party to the other shall be in writing and delivered either personally or by certified mail, return receipt request or by overnight mail. Any such notice, request or other communication shall be deemed given on the date of personal delivery or, if mailed, on the date of mailing. All communications shall be addressed as follows:

If to GB:                      Chief Financial Officer  
   Gallagher Basset Services, Inc.  
   The Gallagher Centre  
   Two Pierce Place  
   Itasca, Illinois 60143-3141

With a copy to:              General Counsel  
   Arthur J. Gallagher & Co.  
   The Gallagher Centre  
   Two Pierce Place  
   Itasca, Illinois 60143-3141

If to CLIENT: Ms. Marie Sullin  
City of Riviera Beach, Florida  
2051 Martin Luther King Jr.  
Port Center Building, 3rd Floor  
Riviera Beach, FL 33404

- 13.3 **Successors/Affiliates.** This Agreement shall be not be assignable by either party except with the prior written consent of the other party; provided, however, the services to be provided by GB hereunder may be provided in whole or in part by any affiliated entity of GB, at the sole discretion of GB. In such event, the terms of this Agreement shall be binding upon and shall inure to the benefits of such affiliated entity.
- 13.4 **Solicitation of Employees.** CLIENT agrees that, during the term of this Agreement and for a two-year period thereafter, CLIENT shall not, without the written consent of GB, solicit to hire on behalf of itself or others, any employee of GB who, during the term of this Agreement, has performed, or contributed to the performance of, services hereunder. CLIENT further acknowledges that the damages suffered by GB as a result of a breach of this obligation would be significant but not susceptible of easy calculation. Accordingly, in the event of a breach of the aforesaid obligation, CLIENT agrees to pay GB an amount equal to one hundred fifty percent (150%) of such employee's annualized salary amount at GB as of the date of breach.
- 13.5 **Independent Contractor.** It is understood by both parties that GB is engaged to perform services under this Agreement as an independent contractor of CLIENT and not as an agent of CLIENT.
- 13.6 **Governing Law.** This Agreement shall be governed by the laws of the State of Illinois without regard to conflict of law rules.
- 13.7 **Counterparts.** This Agreement may be executed in counterparts (including by facsimile), all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other party.
- 13.8 **Severability.** If any portion of this Agreement is determined to be illegal or unenforceable under the law, then the portion shall be stricken from the Agreement without effect to the remainder of the Agreement.
- 13.9 **Headings.** The descriptive headings of the several Sections of this Agreement were formulated, used and inserted in this Agreement for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

The parties hereto have caused this Agreement to be duly executed as of the date first referenced above.

Gallagher Bassett Services, Inc.

City of Riviera Beach, Florida

By: 

By: 

Name: Forrest Norris

Name: THOMAS A. MASTERS

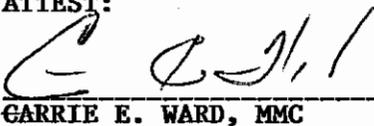
Title: Chief Financial Officer

Title: MAYOR

Date: 10/13/10

Date: 10/20/10

ATTEST:

 10/20/10

GARRIE E. WARD, MMC  
CITY CLERK

**EXHIBIT A**  
**SERVICES AND FEES**

Client: City of Riviera Beach, Florida

GB Client #: 000160

Service Period: From October 1, 2010 to October 1, 2011

**SERVICES PROVIDED**

**A. Claims Administration**

X Auto Liability – Bodily Injury (AB)	7,196
X Auto Liability - Property Damage (AD)	2,088
X Auto Physical Damage (APD)	405
X Gen. Liability - Bodily Injury (GB)	10,280
X Gen. Liability - Property Damage (GD)	1,044
X Products Liability	
X Professional Liability	4,620
X Property	
<b>Workers' Compensation (WC)</b>	
X Medical Only	10,553
X Indemnity	27,945
Claim Reporting	

**B. Information Services**

<b>RISX-FACS®</b>	14,438
X Report Package	Incl.
X risxfacs.com	Incl.
Data Transfer	
Other	

**SERVICES PROVIDED**

**C. Loss Funding**

X SIMMS	1,433
Voucher	
Client Owned Banking	

**D. Supplemental**

Loss Notice Program Rpt. Level:	4,253
X Detailed Status Rpts. Rpt. Level:	Incl.
\$50,000	
X Meetings	Incl.
X Discretionary Settlement Authority:	Incl.
\$5,000	
X Coordination	Incl.
X Audits	Incl.
X Acknowledgements	Incl.
X Incident Processing	504
Update Appraisals	
Risk Inspections	
X Managed Care (Paid Off File)	N/C
X Index Bureau Reporting (Paid Off File)	

**E. Risk Control Consulting**

Risk Control Consulting -

**TOTAL**      \$84,759.00

**ADDITIONAL SERVICE TERMS AND CONDITIONS:**

Client will be billed \$1,028 per claim for each Auto Liability Bodily Injury claim reported against the initial deposit of \$7,196, \$522 per claim for each Auto Liability Property Damage claim reported against the initial deposit of 2,088, \$405 per claim for each Auto Physical Damage claim reported against the initial deposit of \$405, \$1,028 per claim for each General Liability Bodily Injury claim reported against the initial deposit of \$10,280, \$522 per claim for each General Liability Property Damage claim reported against the initial deposit of \$1,044, \$1,155 per claim for each Professional/Product Liability claim reported against the initial deposit of \$4,620, \$843 per claim for each Property claim reported, \$173 per claim for each Workers' Compensation Medical Only claim reported against the initial deposit of \$10,553 and \$1,215 per claim for each Workers' Compensation Indemnity claim reported against the initial deposit of \$27,945.

E & O Excpt-100 claims will be input and billed at the rate of \$63 per record. Any additional work done on Excpt-100 claims will be billed on a time and expense basis at the rate of \$151 per hour.

**BILLING AND PAYMENT TERMS:**

Fee is payable in 12 monthly installments beginning 10/1/10. Fees are payable upon receipt of invoice. GB reserves the right to charge 1% per month or the maximum legal rate, on balances unpaid after 30 days.

RESOLUTION NO. 132-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE INTERIM FINANCE DIRECTOR TO REDUCE THE UTILITY ACCOUNTS RECEIVABLE BALANCE AND THE ALLOWANCE FOR BAD DEBTS BY THE AMOUNT OF \$91,600.02; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, these water, sewer, trash and storm water collection accounts have a very low probability of collection; and

**WHEREAS**, adjustment to the account records is required by Generally Accepted Accounting Principles (GAAP); and

**WHEREAS**, collection efforts will continue unless the accounts have been legally discharged;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, FLORIDA, PALM BEACH COUNTY as follows:**

**SECTION 1. The Interim Finance Director is hereby authorized to reduce the Utilities' Accounts Receivable and Allowance for Bad Debts by the amount of \$91,600.02 through effective fiscal year ending 9/30/08 with an effective date of 9/30/10.**

PASSED AND Adopted this 20 day of October, 2010

RESOLUTION NO.: 132-10  
PAGE - -

APPROVED:

Thomas A. Masters  
THOMAS A. MASTERS  
MAYOR

+ Dawn S. Pardo  
DAWN S. PARDO  
CHAIRPERSON

ATTEST:

Carrie E. Ward  
CARRIE E. WARD  
MASTER MUNICIPAL CLERK  
CITY CLERK

Judy L. Davis  
JUDY L. DAVIS  
CHAIR PRO TEM

Billie E. Brooks  
BILLIE E. BROOKS  
COUNCILPERSON

Cedrick A. Thomas  
CEDRICK A. THOMAS  
COUNCILPERSON

Shelby L. Lowe  
SHELBY L. LOWE  
COUNCILPERSON

MOTIONED BY: Brooks

SECONDED BY: Thomas

D. PARDO Aye

J. DAVIS Aye

B. BROOKS Aye

C. THOMAS Aye

S. LOWE Aye

REVIEWED AS TO LEGAL SUFFICIENCY

Pamala H. Ryan  
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 10/8/10

RESOLUTION NO. 133-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING THE BID FOR THE WEST 32<sup>ND</sup> STREET DRAINAGE REPAIR PROJECT TO MIGUEL LOPEZ JR INC. IN THE AMOUNT OF \$110,680.00; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE CONTRACT; AUTHORIZING THE FINANCE DIRECTOR TO MAKE PAYMENT FOR SAME; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, bids for the West 32<sup>nd</sup> Street Drainage Repair project were opened on August 20, 2010; and

**WHEREAS**, Miguel Lopez Jr Inc. is the responsible low bidder.

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

**SECTION 1.** The bid submitted by Miguel Lopez Jr Inc for the West 32<sup>nd</sup> Street Drainage Repair project is accepted in the amount of \$110,680.00.

**SECTION 2.** The Mayor and City Clerk are authorized to execute the contract with Miguel Lopez Jr Inc.

**SECTION 3.** The City Manager is hereby authorized to approve change orders in the amount not to exceed 10% of the contract price.

**SECTION 4.** The Finance Director is authorized to make payment for same from the following accounts:

108-0716-541-2-6355	\$98,876
301-0716-541-2-6355	\$31,124

RESOLUTION NO. 133-10  
PAGE 2

**SECTION 5.** This resolution shall take effect upon its passage and approval by the City Council.

PASSED and APPROVED on this 20 day of October, 2010.

The remainder of this page has been left blank intentionally.

RESOLUTION NO. 133-10  
PAGE 3

APPROVED:

*Thomas A. Masters*  
THOMAS A. MASTERS  
MAYOR

*Dawn S. Pardo*  
DAWN S. PARDO  
CHAIRPERSON

ATTEST:

*C. E. Ward*  
CARRIE E. WARD  
MASTER MUNICIPAL CLERK  
CITY CLERK

*Judy L. Davis*  
JUDY L. DAVIS  
CHAIR PRO TEM

*Billie E. Brooks*  
BILLIE E. BROOKS  
COUNCILPERSON

*Cedrick A. Thomas*  
CEDRICK A. THOMAS  
COUNCILPERSON

*Shelby L. Lowe*  
SHELBY L. LOWE  
COUNCILPERSON

MOTIONED BY: *Brooks*

SECONDED BY: *Thomas*

D. PARDO *Aye*

J. DAVIS *Aye*

B. BROOKS *Aye*

C. THOMAS *Aye*

S. LOWE *Aye*

REVIEWED AS TO LEGAL SUFFICIENCY  
*Pamela H. Ryan*  
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 10/13/10

**CITY OF RIVIERA BEACH  
CONTRACT FOR CONSTRUCTION**

This Contract is made as of this 20 day of October, 2010 by and between the CITY OF RIVIERA BEACH, a Political Subdivision of the State of Florida, by and through its CITY COUNCIL, hereinafter referred to as the CITY, and Miguel Lopez Jr. 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 **650095596**.

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

**ARTICLE 1 - SERVICES**

The CONTRACTOR'S responsibility under this Contract is to provide construction services in the area of repair of the closed drainage system along West 32<sup>nd</sup> Street between Avenue R and Avenue O, as more specifically set forth in the Scope of Work detailed in Exhibit "A", attached hereto and made a part hereof.

The CITY'S representative/liason during the performance of this Contract shall be the City Consulting Engineer, at telephone no. 561-845-4061.

**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 CITY has received proof of insurance as set forth in Article 11 and a Performance and Surety Bond as set forth in Article 31 in a form satisfactory to the CITY. Construction work shall be carried on at a rate to insure its full completion within ninety (90) calendar days from the date of official notice to proceed, the rate of progress and time of completion being essential conditions of this Contract.
- B. Deduction for not completing on time - If the contract work is not fully complete according to the terms of this Contract within the limits herein stipulated, the CONTRACTOR shall pay the CITY, not as a penalty, but as liquidated damages, a sum equal to one 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 CITY agrees to compensate the CONTRACTOR in accordance with the fee proposal set forth in Exhibit "B". The total and cumulative amount of this Contract shall not exceed the amount of funds annually budgeted for these services. The CITY shall not reimburse the CONTRACTOR for any travel costs incurred as a direct result of the CONTRACTOR providing deliverables to the CITY in pursuance of the scope of work contained in Exhibit A, without specific, prior approval of the City.
- B. Progress Invoices - No later than the 20<sup>th</sup> day of every month, the CONTRACTOR shall prepare and submit, on a form approved by the CITY'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 CITY representative, indicating that services have been rendered in conformity with the Contract and then will be sent to the Finance Department for payment. The CITY will pay to the CONTRACTOR ninety percent (90%) of the value based on the CONTRACTOR'S estimate and invoice, as approved by the CITY representative. Invoices will normally be paid within thirty (30) days following the CITY representative's approval.
- D. Payment of Expenses - All requests for payment of expenses eligible for reimbursement under the terms of this Contract 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 CITY. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONTRACTOR and the CITY shall have no obligations for any other costs or expenses thereafter.

### **ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE**

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

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

#### **ARTICLE 5 - TERMINATION**

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

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the CITY.
- D. Continue and complete all parts of the work that have not been terminated.

#### **ARTICLE 6 - PERSONNEL**

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

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

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

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

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

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

**ARTICLE 7 - SUBCONTRACTING**

The CITY reserves 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 CITY.

If subcontractor(s) are used, the CONTRACTOR shall use only licensed and insured subcontractor(s), and shall require any subcontractor, as may be applicable, to provide a payment 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 CITY 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 CITY'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 CITY to inspect such records.

**ARTICLE 9 - FEDERAL AND STATE TAX**

The CITY is exempt from payment of Florida State Sales and Use Taxes. The CITY will sign an exemption certificate submitted by the CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to

its suppliers for materials used to fulfill contractual obligations with the CITY, nor is the CONTRACTOR authorized to use the CITY'S Tax Exemption Number in securing such materials. The CONTRACTOR shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

**ARTICLE 10 - AVAILABILITY OF FUNDS**

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

**ARTICLE 11 - INSURANCE**

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

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

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

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

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

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

## **ARTICLE 12 - INDEMNIFICATION**

To the extent allowed by law, the CONTRACTOR shall indemnify and hold harmless the CITY, its agents, officers, and employees from and against any and all claims, liability, losses, and/or causes of action which may arise from any negligent act, recklessness, or intentional wrongful conduct or omission of the CONTRACTOR, its agents, officers, or employees in the performance of services under this Contract.

The CONTRACTOR further agrees to indemnify and hold harmless the CITY, its agents, officers and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the CONTRACTOR not included in the paragraph above and for which the CITY, its agents, officers, or employees are alleged to be liable.

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

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

## **ARTICLE 13 - SUCCESSORS AND ASSIGNS**

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

## **ARTICLE 14 - VENUE**

This Contract and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided therein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Venue for any and all actions arising from and/or relating to the Contract 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 CITY'S representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONTRACTOR'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the CITY as to whether the association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by the CONTRACTOR. The CITY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the CONTRACTOR. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the CITY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the CITY by the CONTRACTOR under the terms of this Contract.

#### **ARTICLE 17 - DELAYS AND EXTENSION OF TIME**

The CONTRACTOR shall not be considered in default by reason of 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 CITY 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 CITY, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time.

If the CONTRACTOR is delayed at any time in the process of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the 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 CITY 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 CITY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

#### **ARTICLE 19 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

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

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

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

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

#### **ARTICLE 20 - INDEPENDENT CONTRACTOR RELATIONSHIP**

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

relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

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

#### **ARTICLE 21 - CONTINGENT FEES**

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

#### **ARTICLE 22 - ACCESS AND AUDITS**

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

#### **ARTICLE 23 - NONDISCRIMINATION**

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

#### **ARTICLE 24 - ENFORCEMENT COSTS**

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 CITY'S representative upon request.

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

#### **ARTICLE 26 - SEVERABILITY**

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

#### **ARTICLE 27 - PUBLIC ENTITY CRIMES**

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

#### **ARTICLE 28 - MODIFICATIONS OF WORK**

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

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

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

City Engineer  
Community Development Department  
City of Riviera Beach  
600 West Blue Heron Boulevard  
Riviera Beach, Florida 33404

and if sent to the CONTRACTOR shall be mailed to:

Miguel Lopez Jr. Inc.  
7711 N.W. 74 Ave  
Medley, Florida 33166

### **ARTICLE 30 - ENTIRETY OF CONTRACTUAL AGREEMENT**

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

### **ARTICLE 31 - SPECIAL CONDITIONS**

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

The CONTRACTOR shall furnish Performance and Payment Bonds and maintain said bonds throughout the duration of the project, 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 Performance and Payment Bonds, each in the amount of one hundred percent (100%) of the Contract amount. The required premiums shall be paid for by the CONTRACTOR.

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

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

2. The surety company shall have at least the following minimum ratings in the latest revision of Best's Key Rating Guide: Best's Policy Holders Ratings –A- (minimum); Best Financial Category – Class 1.
3. For projects that do not exceed \$500,000.00, the CITY will accept bonds in accordance with Florida Statute section 287.0935.
4. If the surety is declared bankrupt, becomes insolvent, its right to do business in the State of Florida is terminated or it ceases to meet the requirements set forth above, the CONTRACTOR shall within ten (10) working days after notification by the CITY substitute another bond and surety company, at no cost to the CITY, meeting the above requirements.

**ARTICLE 32 – INSPECTION OF WORK**

The CITY'S representative or the CITY'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 the **West 32<sup>nd</sup> Street Drainage Repairs (between Avenue R and Avenue O)** shall be guaranteed by the Manufacturer, if any, for a period of one year 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 all material and labor for a period of one year. Upon receipt of notice from the CITY of failure of any part covered under such warranty/guaranty period, the affected part, parts, or materials shall be replaced promptly with new parts or materials by the CONTRACTOR or Manufacturer at no expense to the CITY. In the event the CONTRACTOR fails to make the necessary repairs or replacements within thirty (30) days after notification by the CITY, the CITY may accomplish the work at the expense of the CONTRACTOR.

The CONTRACTOR shall provide the CITY with a written warranty of its work and with a copy of the manufacture's warranty as it relates to the materials and parts used to construct the **West 32<sup>nd</sup> Street Drainage Repairs (between Avenue R and Avenue O)**.

**ARTICLE 34 – PROTECTION OF WORK AND PROPERTY**

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

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

**ARTICLE 35 – TIME**

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

**ARTICLE 36 - TERMINOLOGY AND CAPTIONS**

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

**ARTICLE 37 - WAIVER**

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

**ARTICLE 38 - PREPARATION**

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 CITY may at its option and without notice terminate this Contract.

**ARTICLE 40 - REPRESENTATIONS/BINDING AUTHORITY**

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

## **ARTICLE 41 - EXHIBITS**

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

## **ARTICLE 42 - CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS**

This Contract consists of the plans, specifications and this manual. The CONTRACTOR agrees to be bound by all the terms and conditions set forth in this Contract and the plans and specifications. To the extent that there exists a conflict between this Contract and the plans and specifications, 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 COUNCIL OF THE CITY OF RIVIERA BEACH 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 CITY which lien is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR;
- b. The filing of any 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 CITY 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 CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then the CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should the CONTRACTOR enter into such an agreement on a pre-loss basis.

**ARTICLE 48 - RIGHT TO REVIEW**

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

**SIGNATURES ON FOLLOWING PAGE**

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

CITY OF RIVIERA BEACH

CONTRACTOR

BY: Thomas A. Masters  
THOMAS A. MASTERS,  
MAYOR

BY: Miguel Lopez 10/11/10  
MIGUEL LOPEZ:  
PRESIDENT

ATTEST:

BY: C. E. Ward 10/20/10  
CARRIE E. WARD  
MASTER MUNICIPAL CLERK  
CITY CLERK

APPROVED AS TO TERMS AND  
CONDITIONS

BY: Mary McKinney  
MARY McKINNEY  
DIRECTOR OF COMMUNITY DEVELOPMENT

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

BY: \_\_\_\_\_  
PAMALA H. RYAN,  
CITY ATTORNEY

Date: \_\_\_\_\_

## **EXHIBIT "A"**

### **SCOPE OF WORK**

This project involves construction of repairs to portions of the drainage piping system serving West 32<sup>nd</sup> Street between Avenue R and Avenue O.

**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.

RESOLUTION NO. 134-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, ACCEPTING THE GRANT FUNDS FROM THE OFFICE OF THE ATTORNEY GENERAL – VICTIMS OF CRIME ACT (VOCA) FOR THE VICTIM ADVOCATE PROGRAM IN THE AMOUNT OF \$45,000; TO CONTINUE WITH CRISIS RESPONSE SERVICES FOCUSING IN AREAS OF HOMICIDE, DOMESTIC VIOLENCE, CHILD DEATHS, AND ELDERLY VICTIMIZATION; AUTHORIZING THE MAYOR TO EXECUTE CERTIFICATE OF ACCEPTANCE OF SUB GRANT AWARD; AUTHORIZING THE FINANCE DIRECTOR TO SET-UP THE BUDGET IN FUND 125 AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Office of the Attorney General has established a Victims of Crime Act (VOCA) Grant Program; and

**WHEREAS**, the City of Riviera Beach has been awarded funds in the amount of \$45,000.00 which requires a twenty-five percent (25%) match of \$11,250.00 which will be provided through in-kind match services from the City for a total of \$56,250.00; and

**WHEREAS**, these funds will be used for continuing the department's crisis response services, crisis intervention and assisting investigators.

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

**SECTION 1:** That the City Council accepts the Grant Funds on behalf of the City, and authorizes the Mayor's execution of the Certificate of Acceptance of Sub-grant Award.

**SECTION 2:** The Finance Director is authorized to set up the budget as follows:

Fund 125	Account Number	Account Description	Amount
Revenue	125-00-334296		\$45,000.00
Expenditure	125-0817-521-0-1201	Reg. Salary & Wages	\$37,901.00
Expenditure	125-0817-521-0-1401	FICA	\$3,140.00
Expenditure	125-0817-521-0-4001	VOCA-Communications	\$1,812.00
Expenditure	125-0817-521-0-5201	VOCA-General Supplies	\$2,147.00
TOTAL			\$45,000.00

**SECTION 3:** This Resolution shall take effect immediately upon its passage and approval by the City Council.

PASSED AND APPROVED this 20 day of October, 2010

RESOLUTION NO. 134-10  
PAGE 3

APPROVED:

*Thomas A. Masters*  
THOMAS A. MASTERS  
MAYOR

*Dawn S. Pardo*  
DAWN S. PARDO  
CHAIRPERSON

ATTEST:

*Carrie E. Ward*  
CARRIE E. WARD  
MASTER MUNICIPAL CLERK  
CITY CLERK

*Judy L. Davis*  
JUDY L. DAVIS  
CHAIR PRO TEM

*Billie E. Brooks*  
BILLIE E. BROOKS  
COUNCILPERSON

*Cedrick A. Thomas*  
CEDRICK A. THOMAS  
COUNCILPERSON

*Shelby L. Lowe*  
SHELBY L. LOWE  
COUNCILPERSON

MOTIONED BY: *Brooks*

SECONDED BY: *Thomas*

D. PARDO *Aye*

J. DAVIS *Aye*

B. BROOKS *Aye*

C. THOMAS *Aye*

S. LOWE *Aye*

REVIEWED AS TO LEGAL SUFFICIENCY

*Pamala H. Ryan*  
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 10/14/10

RESOLUTION NO. 136-10

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, GRANTING THE PETITION OF THE SONOMA BAY COMMUNITY DEVELOPMENT DISTRICT TO EXERCISE SECURITY POWER WITHIN DISTRICT BOUNDARIES AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A THREE (3) YEAR AGREEMENT TO PROVIDE POLICE SERVICES TO THE SONOMA BAY COMMUNITY DEVELOPMENT FROM JANUARY 2011 THROUGH DECEMBER 2014; AUTHORIZING THE FINANCE DIRECTOR TO ACCEPT QUARTERLY PAYMENTS IN THE AMOUNT OF \$22,500.87 FOR THREE YEARS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on May 18, 2005, the City Council adopted Ordinance No. 2990 establishing the Sonoma Bay Community Development District ("District") pursuant to Section 190.005, Florida Statutes; and

**WHEREAS**, the City Council has received a Petition from the Board of Supervisors of the District requesting the City Council to consent to the District's exercise of security powers within the District boundaries as provided in Section 190.012(2)(d), Florida Statutes; and

**WHEREAS**, the City Council, after due consideration, has determined that the District's Petition should be granted.

**WHEREAS**, the Sonoma Bay Community Development District seeks to continue to improve the level of security for its residents and property; and

**WHEREAS**, in partnership with the Sonoma Bay Community Development District, the Riviera Beach Police Department is prepared to continue an inter-local agreement and to provide police services specific to the needs of Sonoma Bay Community; and

**WHEREAS**, the City of Riviera Beach is willing and able to provide police services to the Sonoma Bay Community Development District for a reasonable fee; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, FLORIDA as follows:**

**RESOLUTION NO.:** 136-10  
**PAGE - 2-**

**SECTION 1.** The District's Petition is hereby granted, and the City Council hereby consents to the District's exercise of security powers within the District's boundaries as provided in Section 190.012(2)(d), Florida Statutes.

**SECTION 2.** This Resolution shall take effect immediately upon its passage and adoption.

**SECTION 3:** The Mayor and City Clerk are authorized to execute an Interlocal Agreement with the Sonoma Bay Community Development District.

**SECTION 4:** The Finance Director is authorized to accept quarterly payments in the amount of \$22,500.87 for a period of three (3) years.

**SECTION 5:** This Resolution shall take effect upon its passage and approval by the City Council.

**PASSED AND APPROVED THIS 20TH DAY OF OCTOBER, 2010.**

**[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY]**

RESOLUTION NO.: 136-10  
PAGE -3-

APPROVED:  
[Signature]  
THOMAS A. MASTERS  
MAYOR

[Signature]  
DAWN S. PARDO  
CHAIRPERSON

ATTEST:  
[Signature]  
CARRIE E. WARD  
MASTER MUNICIPAL CLERK  
CITY CLERK

[Signature]  
JUDY L. DAVIS  
CHAIR PRO TEM

[Signature]  
BILLIE E. BROOKS  
COUNCILPERSON

[Signature]  
CEDRICK A. THOMAS  
COUNCILPERSON

[Signature]  
SHELBY L. LOWE  
COUNCILPERSON

MOTIONED BY: C. THOMAS

SECONDED BY: J. DAVIS

D. PARDO AYE

J. DAVIS AYE

B. BROOKS AYE

C. THOMAS AYE

S. LOWE AYE

REVIEWED AS TO LEGAL SUFFICIENCY

[Signature]  
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 10/14/10

**AGREEMENT FOR POLICE SERVICES**

This Agreement is made the 20 day of October 2010, by and between the Sonoma Bay Community Development District, a unit of special purpose local government established pursuant to Chapter 190, Florida Statutes (hereinafter the "District"), and the City of Riviera Beach, a Florida municipal corporation (hereinafter the "City"), existing under the laws of the State of Florida.

**WITNESSETH:**

WHEREAS, the District is a community development district established by City Ordinance No. 2990, with authority to provide certain public infrastructure improvements and services, including security improvements and services, within the community known as "Sonoma Bay" located in the City; and

WHEREAS, a need exists within the Sonoma Bay community for commissioned law enforcement presence differing in nature from the other areas of the City; and

WHEREAS, the City is willing and able to provide this unique presence to the Sonoma Bay community upon the terms set forth herein, which presence will benefit both the City and the residents of the Sonoma Bay community; and

WHEREAS, the District is willing to fund the costs of the City providing such unique law enforcement presence within the Sonoma Bay community;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein to be kept and performed by the parties hereto, and for the mutual welfare of Sonoma Bay and the City, it is agreed as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein by reference.
2. Term. Unless agreed by both parties in writing, and approved by their respective Boards, this Agreement shall expire at the end of three years from the Effective Date, subject to annual budgetary funding by the District. The Effective Date of this Agreement shall be that date on which the last party has executed this Agreement.
3. Services.
  - A. The City shall assign one (1) full-time uniformed police officer to Sonoma Bay, providing forty (40) hours per week of full-time law enforcement presence, on a

schedule to be mutually agreed upon by the District and the City. An option for additional police officers can be made available upon the request of the District, for an additional 40 hours per week of full-time law enforcement presence, on a schedule to be mutually agreed upon by the District and the City, and become a permanent part of this Agreement thereafter. Since an understanding of Sonoma Bay conditions will enhance the benefit of the officer to the Sonoma Bay community and the City, the City will attempt to assign an officer who has become familiar with those conditions. The District, at its own expense, shall provide the necessary training required familiarizing the assigned officer with the Sonoma Bay community and any other such training deemed necessary for the performance of said officer's unique police services in the Sonoma Bay community. The City shall determine training requirements that exceed those required to maintain an employee's law enforcement certification. The City shall not be responsible for any overtime cost associated with said training. Without altering the Police Department's Chain of Command structure, any officers assigned hereunder, shall prepare monthly reports of their activity and make said reports available to the District's Manager.

- B. The City, at its own expense, will provide to, and maintain for such officers, all such standard equipment as is provided to other City uniformed police officers, including without limitation, a City of Riviera Beach marked patrol car. Specialized equipment shall include, but not limited to, laptop computers, Mesh Network broadband wireless mobile devices, and mobile video cameras. These non-standard equipment items can be used to access NCIC / FCIC databases from a mobile device in the vehicle, in addition to viewing video from remote controlled cameras.
- C. At times other than during such tours of duty, and at least twice during a patrol shift, at irregular intervals, a uniformed officer in a marked patrol car will make a tour of the Sonoma Bay community, and make face-to-face contact with the on-duty Security Officer.
- D. The District recognizes that there are times of emergency when the City may have

to temporarily utilize the services of its assigned officer. The City agrees that in such event, the City will give the District Manager as much notice as necessary to alleviate any hardship on Sonoma Bay. Emergencies shall include but not be limited to hurricane preparation, rescue and recovery, civil disorders, and natural disasters.

4. City Responsibilities and Functions:

- A. Make such detentions and arrests, and exercise all other powers as shall be within the authority of law enforcement personnel of the City.
- B. Respond to requests for assistance as requested by Security personnel.
- C. Summon such other County, State and Federal Law Enforcement, City and/or County EMS, Fire and other personnel and services, as circumstances shall require.
- D. As part of the officer's 40 hour work week as set forth above, the officer will provide a minimum of five (5) hours per week performing Community Policing activities and performing law enforcement duties specific to Sonoma Bay.
- E. Notify the on-duty security officer concerning security and law enforcement matters related to the Sonoma Bay community and persons therein, and provide copies of reports of incidents occurring at Sonoma Bay to the District Manager, in addition to satisfying any other requirements of the City.
- F. Enforce traffic regulations within the Sonoma Bay community.

5. Coordination. Each Party shall designate, from time to time, an individual to serve as liaison for that party. The City Liaison Officer shall not hold a rank below Sergeant. The District's liaison shall be the District Manager. If requested by the District Manager and with 48 hours notice, the City Liaison Officer may attend local security meetings and attend local security committee meetings.

6. Payment. The District shall pay to the City, in exchange for the agreed upon levels of services required hereunder, the quarterly sum as indicated on the payment schedule (Appendix 1), commencing on the Effective Date. It is important to note the actual amount of payment shall be determined and will reflect the actual salary and benefits of

the uniformed patrol officer assigned to Sonoma Bay. The amount of the quarterly payment for this agreement will be adjusted to reflect salary adjustments in accordance with the IUPA Contract, or the City's in-force labor agreement. Any adjustments to the quarterly payment amount will be provided to Sonoma Bay, in writing, by the City.

7. Miscellaneous Provisions.

- A. The Agreement may be terminated by either party with sixty (60) days prior written notice. In the event that the agreement is terminated for any reason whatsoever, the City shall be entitled to payment on a prorated basis up to and including the termination date.
- B. No employee of either party to this Agreement shall perform any function or service which is not within the employee's scope of duties as defined or determined by that employee's employer (Appendix 2). The Chief of Police will determine those areas that exceed federal, state, and local requirements defining and limiting a law enforcement officer's scope of responsibility.
- C. All notices required in this Agreement shall be sent to the parties at the following addresses, by certified mail, facsimile or hand delivery:

If to the District:

A large black rectangular redaction box covering several lines of text, likely an address.

With a copy to:

A large black rectangular redaction box covering several lines of text, likely an address.

If to City:

City Manager  
City of Riviera Beach  
600 West Blue Heron Blvd.  
Riviera Beach, FL 33404

With a copy to:

City Attorney  
City of Riviera Beach  
600 West Blue Heron Blvd.  
Riviera Beach, FL 33404

- D. Nothing contained in this Agreement shall be construed to constitute a transfer of powers in any way whatsoever. The City's and the District's governing bodies shall each retain all legislative authority with regard to their respective governing body. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, and pensions and relief, disability, worker's compensation and other benefits which apply to the activity of officers, agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents or employees extraterritorially under the provisions of any such Agreement.
- E. Nothing contained herein shall be deemed a limitation of the jurisdiction or law enforcement responsibilities of the City with respect to the Sonoma Bay community.
- F. This Agreement and any dispute, disagreement, or issue of construction, declaration 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 action necessary to enforce the Agreement will be held in Palm Beach County, Florida. If any action whether in law, equity or otherwise is brought for the interpretation or enforcement of this Agreement, or because of an alleged dispute, 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, consistent with applicable state and federal law.

- G. 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.
- H. To the extent permitted by law, the City shall indemnify and hold the District harmless for any liability or causes of action for damages which may arise from the negligent acts or omissions of Riviera Beach employees in the performance of this Agreement. Likewise, to the extent permitted by law, the District shall indemnify and hold the City harmless for any liability or causes of action for damages which may arise from the negligent acts or omissions of the District in the performance of this Agreement while assisting Riviera Beach law enforcement personnel. Nothing in this provision shall be construed as consent by the City or by the District to be sued, nor as a waiver of sovereign immunity beyond the limits provided for in Section 768.28, Florida Statutes.
- I. Should any provision of this Agreement be declared invalid by a court of competent jurisdiction, same shall be deemed stricken here from and all other terms and conditions of this Agreement shall continue in full force and effect as if such invalid provision had never been made a part thereof.
- J. No delay by either party in enforcing any covenant or right hereunder shall be deemed a waiver of such covenant or right, and no waiver of any particular provision hereof shall be deemed a waiver of any other provision or a continuing waiver of such particular provision, and except as so expressly waived, all provisions hereof shall continue in full force and effect.

K. This Agreement constitutes the entire understanding of the parties with respect to the provision of law enforcement personnel and equipment. It may not be modified, nor any of its provisions waived unless such modification and/or waiver is in writing and is agreed to and signed by both parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have hereto set their hands and seals this \_\_\_\_  
\_\_ day of \_\_\_\_\_, 2010

ATTEST:

C. E. Ward  
CARRIE E. WARD, MMC  
CITY CLERK

CITY OF RIVIERA BEACH

Thomas A. Masters  
THOMAS A. MASTERS  
MAYOR

(CITY SEAL)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

Pamala H. Ryan  
PAMALA H. RYAN,  
CITY ATTORNEY

APPROVED AS TO TERMS AND  
CONDITIONS

Clarence Williams  
CLARENCE WILLIAMS,  
POLICE CHIEF

DATED: 10/18/10

ATTEST:

Richard [Signature]  
Asst. Secretary

SONOMA BAY COMMUNITY  
DEVELOPMENT DISTRICT

By: Jeanne M. Kulich  
\_\_\_\_\_, Chair/Vice Chair

DATED: \_\_\_\_\_

*Based on Average Pay Scale*

Rate (per hour)	Hours (hours per year)	Base Salary (hours x rate)	Holiday Pay (rate x 11 Holidays)	Clothing (\$5 x 52 weeks)	FICA (Salary x .0765)	Life (flat rate)	Health/Dental (flat rate)	Retirement (34.52% of Salary)	Total Cost (Excluding Overtime)
26.09	2,080	54,265.12	3,156.77	708.00	4,151.28	156.00	8,834.00	18,732.32	90,003.49

[REDACTED]

[REDACTED]

[REDACTED]

APPENDIX I

**APPENDIX 2**

**THE CITY OF RIVIERA BEACH**

<b>JOB CODE#:</b> 4005	<b>JOB TITLE:</b> POLICE OFFICER	
<b>EEO CLASS:</b> PROTECTIVE SERVICE	<b>SUPERVISED BY:</b> POLICE SERGEANT	
<b>PAY GRADE:</b> 13	<b>DEPARTMENT:</b> POLICE	<b>DIVISION:</b>
<b>STATUS:</b> NON-EXEMPT	<b>LOCATION:</b>	
<b>DEPT. APPROVAL:</b>	<b>HR APPROVAL:</b>	<b>CITY MGR. APPROVAL:</b>
<b>Date:</b>	<b>Date:</b>	<b>Date:</b>

**Job Summary**

General duty police work in the protection of life and property through the enforcement of laws and ordinances. An employee in this class is responsible for the protection of life and property; for the prevention, detection and investigation of crime; and for maintaining law and order. Work involves an element of personal danger. Specific assignments are received from superior officers and are carried out in accordance with established rules and procedures, however, employees must be able to act without direct supervision in meeting emergencies; Work is reviewed through reports, inspection and observation of results obtained.

**Supervision Received/Exercised**

Work is performed under the general supervision of a Police Sergeant.

**Essential Duties and Responsibilities**

1. Effect an arrest, forcibly if necessary, using handcuffs and other restraints; subdues resisting suspects using maneuvers and weapons and resort to the use of hands and feet, and other approved weapons in self-defense or in defense of others.
2. Prepare investigative and other reports, including sketches, using appropriate grammar, symbols and mathematical computations.
3. Exercise independent judgment in determining when there is reasonable suspicion to detain, when probable cause exists to search and arrest and when force may be used and as to what degree.
4. Operate a law enforcement vehicle during both the day and the night; in emergency situations involving speeds in excess of posted limits, in congested traffic and in unsafe road conditions caused by factors such as fog, smoke, and rain.
5. Communicate effectively and coherently over law enforcement radio channels while initiating and responding to radio communications.
6. Gather information in criminal investigations by interviewing and obtaining the statements of victims, witnesses, suspects, and confidential informants.
7. Pursue fleeing suspects and perform rescue operations which may involve quickly entering and exiting law enforcement patrol vehicles; lifting, carrying and dragging heavy objects; climbing over and pulling up oneself over obstacles; jumping down from elevated surfaces; climbing through openings; jumping over obstacles, ditches and streams; crawling in confined areas; balancing on uneven or narrow surfaces and using body force to gain entrance through barriers.

8. Load, unload, aim and fire from a variety of body positions- handguns, shotguns and other agency firearms under conditions of stress that justify the use of deadly force and at levels of proficiency prescribed in certification standards.
9. Perform searches of people, vehicles, buildings and large outdoor areas which may involve feeling and detecting objects, walking for long periods of time, detaining people and stopping suspicious vehicles and persons.
10. Conduct visual and audio surveillance for extended periods of time.
11. Engage in law enforcement patrol functions that include such things as working rotating shifts, walking on foot patrol and physically checking the doors and windows of buildings to ensure they are secure.
12. Effectively communicate with people, including juveniles, by giving information and directions disputes and advising of rights and processes.
13. Demonstrate communication skills in court and other formal settings.
14. Detect and collect evidence and substances that provide the basis of criminal offenses and infractions that indicate the presence of dangerous conditions.
15. Endure verbal and mental abuse when confronted with the hostile views and opinions of suspects and other people encountered in an antagonistic environment.
16. Perform rescue functions at accidents, emergencies and disasters to include directing traffic for long periods of time, administering emergency medical aid, lifting, dragging and carrying people away from dangerous situations and securing and evacuating people from particular areas.
17. Process and transport prisoners using handcuffs and other appropriate restraints.
18. Extinguish small fires by using a fire extinguisher and other appropriate means.
19. Read and comprehend legal and non-legal documents, including the preparation and processing of such documents as citations, affidavits, warrants and photo line-ups.
20. Process arrests suspects which may include taking their photographs and obtaining a legible set of linked fingerprint impressions.
21. When designated, trains, cares for, and uses K-9 dog in patrol and other assignments.
22. Serves subpoenas and warrants; escorts funerals and persons transporting money; assist children at street crossings and controls pedestrian compliance with safety laws.
23. Escorts prisoners to court; testifies and presents evidence in court.

### **Additional Duties and Responsibilities**

Performs other related duties as assigned.

The duties listed above are intended only as illustrations of the various types of work that maybe performed. The omission of specific statements of duties does not exclude them from the position, if the work is similar, related or a logical assignment to the position.

### **Necessary Skills, Knowledge and Abilities**

- Ability to analyze situations quickly and objectively and to determine proper course of action to be taken.
- Ability to cope with situations firmly, courteously and tactfully, and with respect for the rights of others.
- Ability to learn the geography of the City and its physical and social characteristics.
- Ability to understand and carry out oral and written instructions.
- Ability to read, write and speak effectively.
- Ability to meet physical requirements and standards.
- Ability to communicate effectively both orally and in writing.
- Ability to observe situations analytically and objectively and to report and record them clearly and completely.
- Ability to react quickly and calmly in emergencies.
- Ability to establish and maintain effective working relationships with associates and the general public.
- Ability to work shift schedules.

### **Minimum Education, Certification, and Experience Requirements**

High school graduation or possession of an acceptable equivalency diploma. Completion of the Minimum Standards courses as set forth by the Florida Police Standards Council. Florida Law Enforcement Certification. Applicants must possess before the date of hire a valid Florida Driver's License with an "E" endorsement. There must not be more than five (5) points within the most recent three (3) year period; and no convictions related endorsement must be maintained during the term of employment.

### **Special Requirements**

Must possess a Florida Law Enforcement Certification and a Valid Florida Driver's License. Random and reasonable suspicion drug and alcohol tests required. The City of Riviera Beach maintains a drug-free workplace policy and program, as established under the guidelines of the Federal Drug Free Workplace Act of 1988 and Section 440.102, Florida Statutes.

**Selection Guidelines**

Evaluation of education and experience; written test; oral interview; and staff evaluation.

**Tools and Equipment Used**

Gun, computer, fax machine, various software applications, vehicle, mobile, portable radio, laptop, taser, printer, regular and cellular telephone and any other equipment and tools designated by the Police Depart. Protective suits for 610 hazard calls.

**Physical Demands**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Hand-eye coordination is necessary to operate guns, computers and various pieces of police and office/equipment.

While performing the duties of this job, the employee is regularly required to reach with hands and arms. The employee frequently is required to sit, stand, walk, talk, hear, and use repetitive motions of the wrists, hands and/or fingers, handle, feel or operate objects, tools, or controls. The employee is occasionally required to climb, balance, stoop, kneel, crouch, and crawl.

The employee must occasionally lift and/or move 15 to 45 pounds, raising objects from lower to higher positions, and moving objects horizontally from position-to-position.

Specific vision abilities required by this job include close vision, depth perception, and the ability to adjust focus.

**Work Environment**

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee works inside and outside in various weather conditions. The employee is occasionally exposed to noise, electrical energy, odors, slippery surfaces, uneven surfaces, wet and/or humid conditions, fumes or airborne particles, toxic or caustic chemicals, extreme cold, extreme heat, and vibrations.

The noise level in the work environment is usually quiet in the office, and moderately noisy in the field.

**Signature/Approval**

\_\_\_\_\_  
**Employee**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Immediate Supervisor**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Department Director**

\_\_\_\_\_  
**Date**