

RESOLUTION NO. 147-06

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 PALM BEACH COUNTY TO ACCEPT VOUCHERS FROM THE COUNTY'S DROWNING PREVENTION COALITION PROGRAM FOR REDEMPTION FOR PAYMENT OF SWIMMING LESSON PROVIDED BY PARKS AND RECREATION DEPARTMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Riviera Beach offers swimming lessons to individuals for a fee; and

WHEREAS, the Palm Beach County Drowning Prevention Coalition Program offers vouchers for redemption for such swimming lessons; and

WHEREAS, the City of Riviera Beach desires to accept the vouchers redeemed for payment for swimming lessons to individuals.

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 hereby authorizes the Mayor and City Clerk to execute the Agreement with Palm Beach County, to accept vouchers to be redeemed for payment for swimming lessons to individuals.

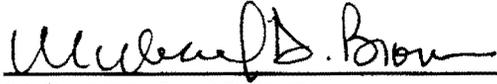
SECTION 2. That this Resolution shall take effect upon its passage and approval by City Council.

PASSED AND APPROVED this 4 day of October 2006.

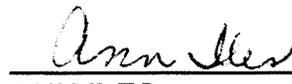
RESOLUTION NO. 147-06

PAGE -2-

APPROVED:



MICHAEL D. BROWN
MAYOR

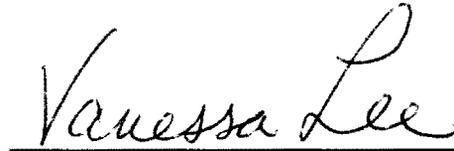


ANN ILES
CHAIRPERSON

ATTEST:



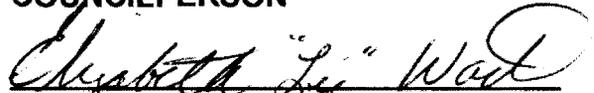
CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK



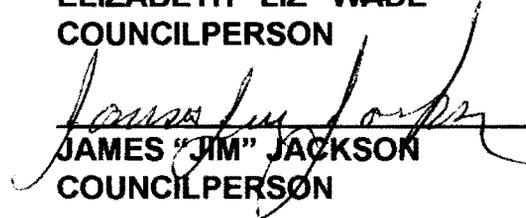
VANESSA LEE
CHAIR PRO TEM



NORMA DUNCOMBE
COUNCILPERSON



ELIZABETH "LIZ" WADE
COUNCILPERSON



JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: V. Lee

SECONDED BY: N. Duncombe

A. ILES: aye

V. LEE: aye

N. DUNCOMBE: aye

E. WADE: aye

J. JACKSON: aye

REVIEWED AS TO LEGAL SUFFICIENCY


PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 9/22/06

RESOLUTION NO. 148-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE PURCHASE OF (1) 2006 VOLVO MODEL L70E WHEEL LOADER FROM FLAGLER CONSTRUCTION EQUIPMENT OF DAVIE, FLORIDA, IN THE AMOUNT OF \$148,256.00 BY PIGGY-BACKING FROM THE FLORIDA SHERIFFS ASSOCIATION, FLORIDA ASSOCIATION OF COUNTIES BID NO. 06-14-0821; AUTHORIZING THE FINANCE DIRECTOR TO APPROPRIATE FUND BALANCE IN THE STORM WATER FUND IN THE AMOUNT OF \$148,256.00; AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE THE CONTRACT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 9-107 of the City's Procurement Ordinance #2412, provides for the procurement of Goods, Services, and Equipment through utilizing contact pricing terms established by other governmental agencies, "Piggy Backing"; and

WHEREAS, this "Piggy Back" purchase will provide Riviera Beach Storm Water Division with a Wheel Loader for the removal and disposal of debris from various City of Riviera Beach government facilities/sites.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, FLORIDA THAT:

SECTION 1. The City Council hereby accepts and approves the proposal from Flagler Construction Equipment of Davie, Florida for the purchase and delivery of a new 2006 Volvo Model L70E Wheel Loader in the total amount of \$148,256.00.

SECTION 2. The Finance Director is authorized to appropriate fund balance in the Storm Water fund in the amount of \$148,256.

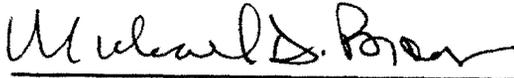
SECTION 3. The Mayor and Finance Director are authorized to make payment from Account No. 460-1127-5410-6455.

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

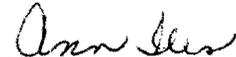
RESOLUTION NO. 148-06
PAGE 2.

PASSED AND APPROVED this 4 day of October 2006

APPROVED:



MICHAEL D. BROWN
MAYOR



ANN ILES
CHAIRPERSON

ATTEST:



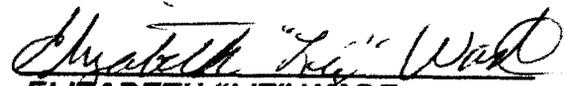
CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK



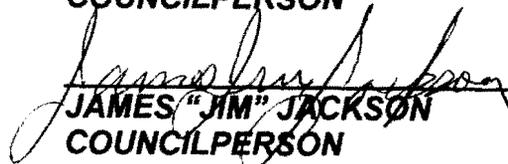
VANESSA LEE
CHAIR PRO TEM



NORMA DUNCOMBE
COUNCILPERSON



ELIZABETH "LIZ" WADE
COUNCILPERSON



JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: V. Lee

SECONDED BY: N. Duncombe

A. ILES aye

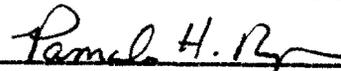
V. LEE aye

N. DUNCOMBE aye

E. WADE aye

J. JACKSON aye

REVIEWED AS TO LEGAL SUFFICIENCY



PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 9/28/06

PURCHASE AGREEMENT

THIS AGREEMENT made and entered into this 4 day of October, 2006 by and between FLAGLER CONSTRUCTION EQUIPMENT hereinafter referred to as "Independent Contractor," whose mailing address is 5210 Resse Rd. Davie, FL 33314 and the CITY OF RIVIERA BEACH, FLORIDA, a municipal corporation, hereinafter referred to as "City," whose address is 600 West Blue Heron Boulevard, Riviera Beach, Florida, 33404.

WHEREAS, the City request the right to piggy back on a recent contract resulting from an Invitation to Bid No.06-14-0821 posted by The FLORIDA SHERIFFS ASSOCIATION, FLORIDA ASSOCIATION OF COUNTIES & FLORIDA FIRE CHIEFS' ASSOCIATION for a 2006 Volvo model L70E Wheel Loader to wit, hereinafter referred to as the "BID", the terms of which are incorporated herein by reference; and

WHEREAS, Independent Contractor was the successful bidder to sell the Volvo L70E Wheel Loader to Florida Sheriffs Association, Florida Association of Counties & Florida Fire Chiefs' Association.

WHEREAS, the City staff desires and is authorized under Sec.9-107 the City Procurement Code (Ordinance 2412) to utilize contract prices establishes by other governmental units "Piggy Back".

In consideration of the mutual covenants and promises set forth herein, the parties to this Agreement do hereby agree as follows:

1. Independent Contractor agrees to be bound by all the terms and conditions as set forth in the Invitation to BID 06-14-0821.

2. To the extent that there exist a conflict between the BID and this Agreement, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

3. The City does hereby retain the services of the Independent Contractor for the purposes of providing a Volvo L70E Wheel Loader set forth more fully in Florida Sheriffs Association, Florida Association of Counties & Florida Fire Chiefs' Association BID No. 06-14-0821 herein after referred to as Exhibit "A" attached hereto and incorporated herein by reference.

4. Items to be purchased under the terms of this agreement shall be delivered to the City no later than one hundred and twenty (120) days after receipt of City purchase order, the timely delivery of said materials being an essential condition of this agreement.

5. If through no fault of the City, Independent Contractor delivers a product that is not acceptable, Independent Contractor shall be responsible for correcting and replacing and shall bear all costs associated with above.

6. The City agrees to compensate the Independent Contractor in the amount of \$148,256.00 in accordance with the fee proposal as 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 Independent Contractor for any travel costs incurred as a direct result of the Independent Contractor providing deliverables to the City in pursuant to the terms and conditions contained in Exhibit "A".

7. Independent Contractor hereby represents that it has complied and shall continue to comply with all applicable Federal and State statutes and local ordinances. Further, Independent Contractor shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations, required for the work to be performed pursuant to the terms of this Agreement from any federal, state, regional, county, or city agency.

8. The Independent Contractor represents that it has, or will secure at its own expense, all necessary personnel, equipment and materials required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.

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

10. The Independent 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 Independent Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City.

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

12. The City is exempt from payment of Florida State Sales and Use Taxes. The City will sign an exemption certificate submitted by the Independent Contractor. The Independent Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City.

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

14. The Independent Contractor shall maintain, during the life of this Agreement, commercial general liability, including contractual liability insurance in the amount of \$500,000 per occurrence to protect the Independent Contractor from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the Independent Contractor or by anyone directly employed by or contracting with the Independent Contractor.

15. The Independent Contractor shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injury and property damages liability to protect the Independent Contractor from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Independent Contractor or by anyone directly or indirectly employed by the Independent Contractor.

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

17. The Independent Contractor further agrees to indemnify, save harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the Independent Contractor not included in the paragraph above and for which its employees are alleged to be liable. Nothing contained in this provision 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.

18. The Independent Contractor shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the Independent Contractor .

19. The Independent 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 Agreement.

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

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

22. Upon receipt of notice from the City of failure or defect of any part covered under such warranty/guaranty period, the affected parts shall be replaced promptly with new parts by the Independent Contractor at no expense to the City. In the event the Independent Contractor fails to make the necessary repairs or replacements within 30 days after notification by the City, the City may make repair or repairs at the expense of the Independent Contractor.

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

24. 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.

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

26. Time is of the essence in all respects under this Agreement.

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

AGREEMENT WITH THE CITY OF RIVIERA BEACH

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

CITY OF RIVIERA BEACH

INDEPENDENT CONTRACTOR

BY: Michael D. Brown
MICHAEL D. BROWN
MAYOR

BY: Mark Marino
MARK MARINO/ EQUIPMENT SALES
FLAGLER CONSTRUCTION EQUIPMENT

ATTEST:

BY: C. E. Ward
CARRIE E. WARD, MASTER MUNICIPAL CLERK
CITY CLERK

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

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

BY: _____
ALAN WINN
INTERIM DIRECTOR, PUBLIC WORKS

DATE: 9/28/06

RESOLUTION NO. 149-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE PURCHASE OF (1) 2007 SCHWARZE MODEL A7000 STREET SWEEPER FROM CONTAINER SYSTEMS & EQUIPMENT CO. INC., OF DAYTONA BEACH, FLORIDA IN THE AMOUNT OF \$141,191.00 BY PIGGY-BACKING FROM BREVARD COUNTY FLORIDA BID NO. B-4-06-82; AUTHORIZING THE FINANCE DIRECTOR TO APPROPRIATE FUND BALANCE IN THE STORM WATER FUND IN THE AMOUNT OF \$141,191.00; AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE THE CONTRACT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 9-107 of the City's Procurement Ordinance #2412, provides for the procurement of goods, services, and equipment by utilizing contract pricing and terms established by other governmental agencies "Piggy Backing"; and

WHEREAS, this "Piggy Back" purchase will provide Riviera Beach Storm Water Division with an additional means for adequately maintaining the cleanliness of city streets and gutters.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, FLORIDA THAT:

SECTION 1. The City Council hereby accepts and approves the proposal from Container Systems & Equipment Co. Inc. of Daytona Beach, Florida for the purchase and delivery of a 2007 Schwarze Model A7000 Street Sweeper in the total amount of \$141,191.00.

SECTION 2. The Finance Director is authorized to appropriate fund balance in the Storm Water fund in the amount of \$141,191.00.

SECTION 3. The Mayor and Finance Director are authorized to make payment from Account No. 460-1127-5410-6455.

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

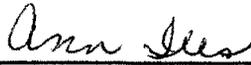
RESOLUTION NO. 149-06
PAGE 2.

PASSED AND APPROVED this 4 day of October 2006

APPROVED:

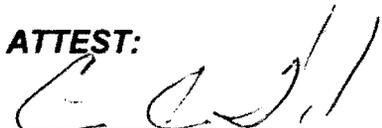


MICHAEL D. BROWN
MAYOR



ANN ILES
CHAIRPERSON

ATTEST:



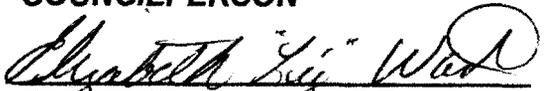
CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK



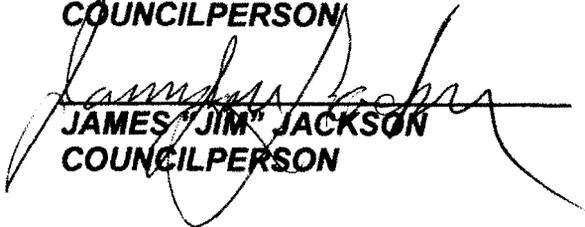
VANESSA LEE
CHAIR PRO TEM



NORMA DUNCOMBE
COUNCILPERSON



ELIZABETH "LIZ" WADE
COUNCILPERSON



JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: V. Lee

SECONDED BY: N. Duncombe

A. ILES aye

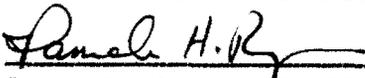
V. LEE aye

N. DUNCOMBE aye

E. WADE aye

J. JACKSON aye

REVIEWED AS TO LEGAL SUFFICIENCY



PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 9/28/06

PURCHASE AGREEMENT

THIS AGREEMENT made and entered into this 4 day of ~~September~~ ^{October}, 2006 by and between CONTAINER SYSTEMS & EQUIPMENT CO. INC. hereinafter referred to as "Independent Contractor," whose mailing address is 506 Bellevue Avenue Daytona Beach, Fl 32114 and the CITY OF RIVIERA BEACH, FLORIDA, a municipal corporation, hereinafter referred to as "City," whose address is 600 West Blue Heron Boulevard, Riviera Beach, Florida, 33404.

WHEREAS, the City request the right to piggy back on a recent contract resulting from an Invitation to Bid No. B-4-06-82 posted by Brevard County, Florida for a 2007 model Schwarze A7000 Street Sweeper to wit, hereinafter referred to as the "BID", the terms of which are incorporated herein by reference; and

WHEREAS, Independent Contractor was the successful responsible bidder to sell the Schwarze A700 Street Sweeper to Brevard County.

WHEREAS, the City staff desires and is authorized under Sec. 9-107 the City Procurement Code (Ordinance 2412) to utilize contract prices establishes by other governmental units "Piggy Back".

In consideration of the mutual covenants and promises set forth herein, the parties to this Agreement do hereby agree as follows:

1. Independent Contractor agrees to be bound by all the terms and conditions as set forth in the Invitation to Brevard County BID No. B-4-06-82.
2. To the extent that there exist a conflict between the BID and this Agreement, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.
3. The City does hereby retain the services of the Independent Contractor for the purposes of providing a Schwarze A7000 Street Sweeper as set forth more fully in Brevard County BID No.B-4-06-82 herein after referred to as Exhibit "A" attached hereto and incorporated herein by reference.
4. Items to be purchased under the terms of this agreement shall be delivered to the City no later than ninety (90) days after receipt of City purchase order, the timely delivery of said materials being an essential condition of this agreement.
5. If through no fault of the City, Independent Contractor, delivers a product that is not acceptable, Independent Contractor shall be responsible for correcting and replacing and shall bear all costs associated with above.
6. The City agrees to compensate the Independent Contractor in the amount of \$141,191.00 in accordance with the fee proposal as set forth in Exhibit "A." 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 Independent Contractor for any travel costs incurred as a direct result of the Independent Contractor providing deliverables to the City pursuant to of the terms and conditions in Exhibit "A".
7. Independent Contractor hereby represents that it has complied and shall continue to comply with all applicable Federal and State statutes and local ordinances. Further, Independent Contractor shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations, required for the work to be performed pursuant to the terms of this Agreement from any federal, state, regional, county, or city agency.
8. The Independent Contractor represents that it has, or will secure at its own expense, all necessary personnel, equipment and materials required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.

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

10. The Independent 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 Independent Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City.

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

12. The City is exempt from payment of Florida State Sales and Use Taxes. The City will sign an exemption certificate submitted by the Independent Contractor. The Independent Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City.

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

14. The Independent Contractor shall maintain, during the life of this Agreement, commercial general liability, including contractual liability insurance in the amount of \$500,000 per occurrence to protect the Independent Contractor from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the Independent Contractor or by anyone directly employed by or contracting with the Independent Contractor.

15. The Independent Contractor shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injury and property damages liability to protect the Independent Contractor from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Independent Contractor or by anyone directly or indirectly employed by the Independent Contractor.

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

17. The Independent Contractor further agrees to indemnify, save harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the Independent Contractor not included in the paragraph above and for which its employees are alleged to be liable. Nothing contained in this provision 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.

18. The Independent Contractor shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the Independent Contractor.

19. The Independent 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 Agreement.

20. The City reserves the right to make changes in the scope of purchasing the street sweeper. Upon receipt by the Independent Contractor of the City's notification of a contemplated change, the Independent

Contractor shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the City of any estimated change in the completion date, and (3) advise the City if the contemplated change shall effect the Independent Contractor's ability to meet the completion dates or schedules of this Agreement. If the City so instructs in writing, the Independent Contractor shall suspend work on that portion of the work affected by a contemplated change, pending the City's decision to proceed with the change.

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

22. Upon receipt of notice from the City of failure or defect of any part covered under such warranty/guaranty period, the affected parts shall be replaced promptly with new parts by the Independent Contractor at no expense to the City. In the event the Independent Contractor fails to make the necessary repairs or replacements within 30 days after notification by the City, the City may make repair or repairs at the expense of the Independent Contractor.

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

24. 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.

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

26. Time is of the essence in all respects under this Agreement.

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

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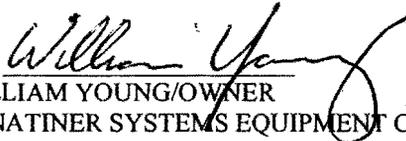
AGREEMENT WITH THE CITY OF RIVIERA BEACH

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

CITY OF RIVIERA BEACH

INDEPENDENT CONTRACTOR

BY: _____
MICHAEL D. BROWN
MAYOR

BY: 
WILLIAM YOUNG/OWNER
CONATINER SYSTEMS EQUIPMENT CO.,INC

ATTEST:

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

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

BY: _____
PAMALA H. RYAN
CITY ATTORNEY

BY: _____
ALAN WINN
INTERIM DIRECTOR , PUBLIC WORKS

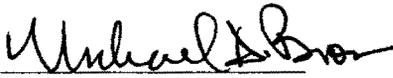
DATE: _____

AGREEMENT WITH THE CITY OF RIVIERA BEACH

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

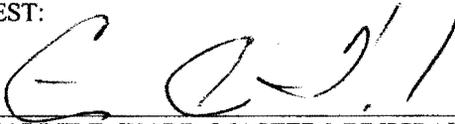
CITY OF RIVIERA BEACH

INDEPENDENT CONTRACTOR

BY: 
MICHAEL D. BROWN
MAYOR

BY: _____
ROLAND BEAULIEU/SALES
CONATINER SYSTEMS EQUIPMENT CO.,INC

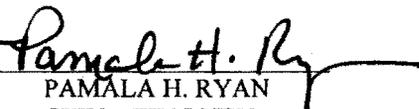
ATTEST:

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

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

BY: 
PAMALA H. RYAN
CITY ATTORNEY

BY: _____
ALAN WINN
INTERIM DIRECTOR , PUBLIC WORKS

DATE: 9/28/06

RESOLUTION NO. 150-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE SECOND AMENDMENT TO THE SOLID WASTE AND RECYCLING COLLECTION AGREEMENT WITH WASTE MANAGEMENT FOR AN ADDITIONAL FOUR (4) YEARS AS PROVIDED IN THE INITIAL AGREEMENT TO EXTEND THE TERM, MODIFY THE ENFORCEMENT PROVISIONS AND INCREASE CERTAIN SERVICES COMMENCING OCTOBER 4, 2006, AND ENDING SEPTEMBER 30, 2010, AT THE CURRENT RATES AS MODIFIED BY THE APPLICABLE CONSUMER PRICE INDEX BEGINNING OCTOBER 4, 2006; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City and Contractor are parties to that certain Solid Waste and Recycling Collection Franchise Agreement (the "Agreement") dated September 17, 1997; and

WHEREAS, the Agreement provided that the initial term may be extended for two (2) additional five (5) year terms upon successful negotiations of the rates; and

WHEREAS, the City and Contractor exercised their rights and entered into the First Amendment to the Solid Waste and Recycling Collection Franchise Agreement ("First Amendment") dated August 2, 2000, which extended the term of the Agreement through September 2005; and

WHEREAS, the City and Contractor by letter agreement approved by the City Council of the City of Riviera Beach extended the term to March 31, 2006 and;

WHEREAS, the Contractor by letter further extended the current franchise agreement through June 30, 2006, and further if needed until negotiations are completed at the current rates and;

WHEREAS, the City and Contractor now desire to exercise their rights and enter into a Second Amendment for an additional four (4) years from October 4, 2006, as provided in the initial Agreement to extend the term, modify the enforcement provisions and increase certain services.

RESOLUTION NO. 150-06
PAGE TWO

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

SECTION 1. The City Council authorizes the Mayor and City Clerk to execute the Second Amendment to the Solid Waste and Recycling Collection Franchise Agreement with Waste Management, Inc, to commence on October 4, 2006 and ending September 30, 2010.

SECTION 2. This Resolution shall take effect upon its passage and approval by the City Council.

PASSED and APPROVED this 4th day October, 2006.

APPROVED:



MICHAEL D. BROWN
MAYOR

[ATTEST]

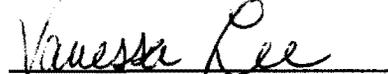
[Municipal Seal]



CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK



ANN ILES
CHAIRPERSON



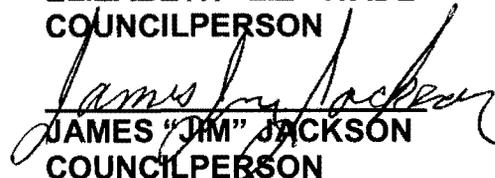
VANESSA LEE
CHAIR PRO TEM



NORMA DUNCOMBE
COUNCILPERSON



ELIZABETH "LIZ" WADE
COUNCILPERSON



JAMES "JIM" JACKSON
COUNCILPERSON

Motioned by: E. Wade

Seconded by: N. Duncombe

A. ILES aye

V. LEE aye

N. DUNCOMBE aye

E. WADE aye

J. JACKSON aye

Approved as to legal sufficiency

By: _____

Pamala H. Ryan
City Attorney

Date: _____

**SECOND AMENDMENT TO THE SOLID WASTE
AND RECYCLING COLLECTION FRANCHISE AGREEMENT**

This Second Amendment to the Solid Waste and Recycling Collection Franchise Agreement is made this 4 day of 10 2006 by and between the City of Riviera Beach, Florida ("City") and Waste Management of Palm Beach, a division of Waste Management Inc. of Florida ("Contractor"), with its principal place of business at 651 Industrial Way, Boynton Beach, FL 33426.

WHEREAS, the City and Contractor are parties to that certain Solid Waste and Recycling Collection Franchise Agreement (the "Agreement") dated September 17, 1997 (Exhibit A); and

WHEREAS, the Agreement provided that the initial term may be extended for two (2) additional five (5) year terms upon successful negotiations of the rates; and

WHEREAS, the City and Contractor exercised their rights and entered into the First Amendment to the Solid Waste and Recycling Collection Franchise Agreement ("First Amendment") dated August 2, 2000, which extended the term of the Agreement through September 2005 (Exhibit B); and

WHEREAS, the City and Contractor by letter agreement approved by the City Council of the City of Riviera Beach extended the term to March 31, 2006 (Exhibit C) and;

WHEREAS, the City and Contractor now desire to exercise their rights and enter into a Second Amendment for an additional five (5) years as provided in the initial Agreement to extend the term, modify the enforcement provisions and increase certain services.

NOW, THEREFORE, upon material consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Article I, Section 2.1 Term is amended **FROM:**

The term of this contract shall commence on October 1, 2000 and shall expire on September 30, 2005 unless renewed as provided herein. This Contract may be extended commencing with the expiration of the initial term for two (2) additional five (5) year terms upon successful negotiations of the rates between the City and the Contractor. Negotiations for the renewal term shall commence at least nine (9) months before the expiration of the initial term and shall be concluded 180 days prior to the expiration of the initial term. The City shall notify the Contractor of its intent to renegotiate the rates and extend the term of the contract. Failure of the City to notify the Contractor shall constitute notice not to renew. Any such written notice shall be served by certified or registered mail, return receipt requested.

TO:

The term of this agreement shall commence on October 4, 2006, and shall expire on September 30, 2010.

2. Article II, Section 4.1 Scope is amended **FROM:**

Scope: Contractor shall provide exclusive residential and commercial solid waste collection services within the city limits of Riviera Beach.

TO:

Article II, Section 4.1 Scope is amended as follows:

Scope: Contractor shall provide exclusive residential, commercial and roll off solid waste collection services within the city limits of Riviera Beach. Except, the City, through its Public Works Department and Code Enforcement Division, is authorized to establish and provide a special pick-up operation to those residential and commercial customers who have been issued a twenty-four (24) hour notice citation to clear any and all solid waste or be fined pursuant to Riviera Beach Code of Ordinance, Chapter 17.5-18.

3. Article II, Section 4.9 Cart Substitution is added as follows:

Contractor shall supply at no charge to the resident a 64 gallon Refuse Cart in place of a residential customer's existing Refuse Cart to a resident (i) who by reason of age, disability or impairment is incapable of utilizing a 96 gallon Refuse Cart; and (ii) who provides corroboration of such condition in such form that is reasonably acceptable to City and Contractor.

4. Article II, Section 5.1 Scope is amended **FROM:**

Scope: Contractor shall have the exclusive right to collect and dispose of all solid waste from all single-family homes and Multi-Dwelling units.

TO:

Article II, Section 5.1 Scope is amended as follows:

Scope: Contractor shall have the exclusive right to collect and dispose of all solid waste from all single-family homes and Multi-Dwelling units. Except, the City, through its Public Works Department and Code Enforcement Division, is authorized to establish and provide a special pick-up operation to those residential and commercial customers who

have been issued a twenty-four (24) hour notice citation to clear any and all solid waste or be fined pursuant to Riviera Beach Code of Ordinance, Chapter 17.5-18.

5. A new section 5.7 is added as follows: Time frame for Container and bin Replacement

Contractor shall be required to replace or make the necessary repairs to Contractor-provided containers or bins within fifteen business days (excluding weekends and Holidays) or be subject to Article VII, Section 19.3, Complaints not Serviced.

6. Article II, Section 6.1 Scope is amended **FROM:**

Scope: Contractor shall have the exclusive right to collect and dispose of all solid waste from or generated by any commercial or industrial unit.

TO:

Article II, Section 6.1 Scope is amended as follows:

Scope: Contractor shall have the exclusive right to collect and dispose of all solid waste from or generated by any commercial or industrial unit. Except, the City, through its Public Works Department and Code Enforcement Division, is authorized to establish and provide a special pick-up operation to those residential and commercial customers who have been issued a twenty-four (24) hour notice citation to clear any and all solid waste or be fined pursuant to Riviera Beach Code of Ordinance, Chapter 17.5-18.

7. A new Section 6.6, Increase in Collection Frequency is added as follows:

The Contractor agrees to provide larger commercial/industrial containers for commercial/industrial establishments and/or increase the frequency of collections for said commercial/industrial establishments within seven (7) days upon notification to the Contractor by the City that such commercial/industrial establishments have been cited for noncompliance of the City's property maintenance standards.

8. A new section 6.7, Enforcement of Roll offs is added as follows:

The Contractor shall have the exclusive right to provide roll offs to dispose of all solid waste from or generated by commercial or industrial units. The City shall assist the Contractor in enforcing the exclusivity of the roll-off service. In the event that the Contractor determines that a commercial establishment or construction site has not contracted with the Contractor for roll off collection service, the Contractor shall notify the City by submitting a Noncompliance Form, substantially in the form attached hereto.

Within three days of receipt of the Noncompliance Form, the City shall notify the commercial establishment to cure the noncompliance. (Building inspection findings may "red tag" or suspend further inspections until contractor or commercial business is in compliance). If the noncompliance is not cured, the City shall file appropriate enforcement action against the commercial establishment and unauthorized hauler. The Contractor has an affirmative duty to advise the City if it does not have roll-offs available. If the Contractor does not have roll-offs available, the City will allow the commercial establishment to use a separate roll-off collection service, and the commercial establishment will not be subject to enforcement action provided that the following factual circumstance exist:

Contractor shall have 72 hours to provide the roll-off after a request from a commercial establishment. The 72 hours shall not run on Sundays, legal holidays and at any time that a natural disaster, severe inclement weather or any other causes that is beyond the reasonable control of Contractor and which prevents performance hereunder. If the Contractor cannot provide the roll-off within such 72 hour period after request, the customer may seek a separate roll-off collection service to provide same during such period as Contractor is unable to perform. At such time as Contractor regains its ability to provide roll-off containers, customer shall cease utilizing the services of the separate roll-off collection service; provided, however, that any roll-off container that is on the customer's site at the time the Contractor is able to provide containers may continue to be utilized until such time as it is removed from the site.

9. Article II, Section 8.3 Storm and Hurricane is amended **FROM:**

In case of a storm or hurricane, the City Manager or his designee may grant the Contractor reasonable variance from regular schedules and routes. As soon as practicable after such storm, the Contractor shall advise the City Manager and the customer of the estimated time required before regular schedules and routes can be resumed. In the case of a storm where it is necessary for the Contractor and the City to acquire additional equipment and to hire extra crews to clean the City of debris and refuse resulting from the storm, the Contractor shall be required to work with the City in all possible ways for the efficient and rapid cleanup of the City. The Contractor shall receive extra compensation above the Contract Agreement for additional men, overtime and cost of rental equipment provided he has first secured prior written authorization from the City Manager or his designee. The total cost for such service shall be based on rates jointly agreed to in advance by the City Manger or his designee and the Contractor. In the event of such storm or hurricane emergency, the City reserves the right to assign route or pickup priorities as deemed necessary by the City Manager.

TO:

Article II, Section 8.3 Storm and Hurricane is amended as follows:

In the event of a hurricane, tornado, major storm, natural disaster, or other such event ("disaster event"), the City Manager may grant the Contractor a variance from regular routes and schedules. As soon as practicable after such natural disaster, though not more than forty-eight hours, or as soon Solid Waste Authority facilities are open for receipt of waste, normal collection routes and schedules shall resume. The City Manager or designee shall make an effort through the local news media to inform the public when regular services may be resumed and any special conditions required for collection. If authorized to provide storm debris removal services by the City Manager, the contractor's clean-up activities from some natural disasters may require that the Contractor acquire additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the natural disasters. The Contractor shall receive compensation above the normal compensation based on the rates set forth in New Schedule IV -2006, provided the Contractor has first secured written authorization and approval from the City Manager prior to the work being performed. In addition, the City may require the Contractor to provide citywide emergency Vegetative Waste Collection service prior to a pending natural disaster, such as a storm. The City's Purchasing Director and Finance Director shall audit all such costs prior to payment.

During the month of March each year, the City's Emergency Manager will review the City's current disaster preparedness plan to initially coordinate the regular collection activities of the Contractor in the event of a natural disaster. On January 1 of each year to this Agreement, the Contractor is required to provide a disaster preparedness plan to the City for review and approval. This plan shall include provisions for additional manpower and equipment and will establish a reasonable, verifiable rate for collection in the event of a natural disaster to be compensated through the City's Contract Service fees if the Contractor is authorized to provide removal services by the City. In the event that excess work resulting from a natural disaster is compensated by the Federal Emergency Management Agency, or any other local, state, or federal agency, the extra compensation shall be subject to such agency's approval. The Contractor shall update his natural disaster plan each year of the term of the Agreement for the City Manager's review and approval. The parties hereto understand that there shall be no double billing for services hereunder.

The parties hereto further understand that the City retains other contractors and consultants to assist in hurricanes and other natural disasters debris removal and assistance. The Contractor agrees to work with such parties as part of its duties in this Agreement.

10. Article II Section 8.4 Holidays shall be amended **FROM:**

The City agrees to exempt residential and commercial collection from the normal collection schedule on the following holidays: New Year's Day, Thanksgiving Day and Christmas Day.

TO:

Article II Section 8.4 Holidays shall be amended as follows:

The City agrees to exempt residential, commercial and roll off collection from the normal collection schedule on the following holidays: Thanksgiving Day and Christmas Day. From time to time the Palm Beach County Solid Waste Authority (with proper notification) may close disposal facilities thus forcing the temporary cessation of collection services on those days.

11. Article IV Section 13.5 Preparation of Yard Waste for Collection: **FROM**

The Contractor shall pick up all yard waste generated from residential units which has been properly prepared and stored for collection as follows:

Grass, leaves and small cuttings shall be containerized but not commingled with refuse.

Non-containerized loose yard waste shall be collected providing that it does not exceed five (5) feet in length nor be greater than fifty (50) pounds in weight for any piece or segment yard waste exceeding these dimensions and weight shall be collected by a special service, arranged between the customer and Contractor at an additional fee.

All yard waste shall be taken to the Recycling Center located at 1001 Congress Avenue, Riviera Beach, Florida or such other location as agreed to by the Contractor and the City.

TO:

Article IV Section 13.5 Preparation of Yard Waste for Collection is amended as follows:

The Contractor shall pick up all yard waste generated from residential units which has been properly prepared and stored for collection as follows:

Grass, leaves and small cuttings shall be containerized but not commingled with refuse.

Non-containerized loose yard waste shall be collected providing that it does not exceed five (5) feet in length nor be greater than fifty (50) pounds in weight for any piece or segment yard waste exceeding these dimensions and weight shall be collected by a special service, arranged between the customer and Contractor at an additional fee.

12. Article VI, Section 16.1 shall be amended **FROM:**

Compensation (Residential Services). The City shall bill for all residential collection service and pay the Contractor compensation for the performance of the Contract, the

sums due based on the unit prices listed in the Appendix I, Schedule I, subject to any conditions as provided under the Contract. Contractor shall submit an invoice by the 10th of each month for services rendered during the preceding month, and payments will be made to the Contractor within 45 days upon receipt and verification of the invoice submitted. On a monthly basis, the City shall deduct an amount per month for administrative fees as shown in the Appendix I, Schedule III.

Each month the Contract payment(s) for all residential services hereunder shall be adjusted to correspond with the number of residential units billed by the City based on the occupancy of existing and new buildings, and the demolition of old buildings. Any new unit shall be considered billable when a certificate of occupancy has been issued by the Building Department. It shall be the City's responsibility to send proof of Certificate of Occupancies to the Contractor on a monthly basis. The Contractor adjustments shall be based on unit costs included in the Appendix I. Schedule I.

TO:

Article VI, Section 16.1 shall be amended as follows:

Compensation (Residential Services). The City shall bill for all residential collection service and pay the Contractor compensation for the performances of the Agreement, the sums due based on the unit prices per residential units listed in the Appendix I, New Schedule I-2006, subject to any conditions as provided under the Agreement. Contractor shall submit an invoice by the 10th of each month for services rendered during the preceding month, and payments will be made to the Contractor within 45 days upon receipt and verification of the invoice submitted. On a monthly basis, the City shall deduct an amount per month for administrative fees as shown in Appendix I, the New Schedule V- 2006. This monthly administrative fee shall be adjusted annually effective October 1 of each year by the same percentage change in the Consumer Price Index that is applicable to adjustment of New Schedule I- 2006 Residential Rates, New Schedule II-2006 Commercial Rates, New Schedule III- 2006 Roll off Rates and New Schedule IV-2006 Debris Removal Rates. This administrative fee is compensation for the City's efforts to bill, receive and transmit to the Contractor the residential portion of the charges and for customer service for the residential accounts.

Each month the Agreement payment(s) for all residential services hereunder shall be adjusted to correspond with the number of residential units billed by the City based on the occupancy of existing and new buildings, and the demolition of old buildings. Any new unit shall be considered billable when the Certificate of Occupancy has been issued by the Building Department. It shall be the City's responsibility to send proof of certificate of Occupancies to the Contractor on a monthly basis. The Contractor adjustments shall be based on unit costs included in the Appendix I, New Schedule I-2006.

13. Article VI, Section 16.6 is added as follows:

Consumer Price Index Adjustment. Commencing on October 1, 2007, and each year thereafter on October 1, the Residential Rates in New Schedule I- 2006, the Commercial Rates in New Schedule II- 2006, Roll off Rates in New Schedule III- 2006 and the Debris Removal Rates in New Schedule IV – 2006 shall be adjusted utilizing the indexing procedures provided for in Exhibit D and E attached hereto and made a part hereof.

14. Article VI, Section 16.7 is added as follows:

Disposal Costs. The disposal rate for residential service shall be based upon the generation rate established by the Solid Waste Authority of Palm Beach County (“SWA”). From time to time this rate may change. The commercial rate is also determined in part by the SWA and in part actual disposal costs.

The parties acknowledge that the current cost of disposal is \$28.00 per ton for Municipal Solid Waste (MSW) and \$21.00 per ton for garden and yard waste. However, it is recognized that, from time to time, the actual cost charged to the Contractor by the Palm Beach County Solid Waste Authority (“tipping fee”) will change. In the event of such change in the tipping fee, the Contractor may request and the City, upon submission of sufficient proof of such change, shall grant such increase in contract price for the disposal cost existing at the time of execution of this Agreement, as will compensate for the actual change of disposal costs. Decreases in disposal cost shall be cause for a like dollar decrease in contract price based upon the disposal cost enumerated in the rate schedule. Nothing in this Agreement shall allow an increase in contract price due to a change in the tipping fee in excess of the actual cost increase to the Contractor. At all times, the cost of disposal will reflect the actual cost of the tipping fee for the disposal of all non-recyclable materials collected.

15. Article VI, Section 16.9 is added as follows:

Waste Generation Study. At any time after the first year of the Agreement, the Contractor may request a waste generation study to update and establish a new Annual Curbside Residential Waste Generation Factor. The Contractor understands and agrees that the cost of said generation study shall be borne by the Contractor. The City and the Contractor jointly shall select the organization to perform the study. The Contractor and the City shall work together to develop the methodology for the generation study, including the selection of routes, providing all necessary data, and all other aspects to successfully complete the generation study. In the event the generation study results in a higher residential generation rate than established by the SWA, the generation rate shall be revised in accordance with the results of the generation study, and the disposal rate set forth in subparagraph above shall be revised accordingly. The actual rate charged to the City and commercial customers may be adjusted to reflect the disposal rate established by the study.

16. Article VII, Section 19.3 shall be amended as underlined:

Complaints not Serviced. Should the Contractor fail to perform in accordance with the provisions of the Agreement, the City shall withhold from any money due the Contractor or require payment, not as a penalty, but as liquidated damages for such breach of the Agreement, the following amounts, for the following infractions:

Unresolved Complaints (1-4)	\$10.00 each case
Unresolved Complaints (5-9)	\$15.00 each case
Unresolved Complaints (10-14)	\$20.00 each case
Unresolved Complaints (15-19)	\$25.00 each case
Unresolved Complaints (20 or more)	\$30.00 each case
Using improper vehicles without City or County consent	\$30.00 each case
Failure to clean vehicles or containers	\$15.00 each case
Loaded vehicles left standing on street unnecessarily	\$30.00 each case
Complaints requiring City or County action in collecting of trash or garbage	\$50.00 each case
<u>Failure to maintain schedules as Established by the requirements of this Contract</u>	<u>\$100.00 per route</u>
<u>(Failure to maintain schedule shall mean that Contractor failed to complete the route as evidenced by a pattern of consecutive missed locations and said failure was not due to a Force Majeure event)</u>	
<u>Failure to deliver mobile refuse cart or recycling bin(s) to new customer or replace or repair cart (due to Contractor negligence) as may be required within the time frames set forth in this Agreement</u>	<u>\$ 20 per incident</u>
<u>Failure to properly clean up Contractor caused spillage (instances where resident complied with properly preparing requirement)</u>	<u>\$ 15 per incident</u>

These sums shall be reflective of violations of the terms of the Agreement on a per occurrence per day basis. However, the Contractor shall not be liable for damages because of any delays in the performance of the work due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God or of the public enemy, acts of the government, fires, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors or supplies due to such causes. Continuous or repeated instances of complaints not serviced shall be considered breach of this Agreement and subject to the provision in Section 20 of this Agreement.

17. Article VIII, Section 23.2 Purchase of Equipment of and from Contractor is deleted in its entirety.

18. Article VII, Section 25.1 Subcontractors is amended **FROM:**

Subcontractors shall be allowed only with the prior approval of the City Council or City Manager acting as their legal representative. The consent of the City Council or City Manager shall not be construed as making the City a part of or to such subcontract or subjecting the City to liability of any kind to any subcontractor. No subcontract shall, under any circumstances, relieve the Contractor of any liability and obligation under this Contract and despite such subcontracting, the City shall only communicate with the Contractor. Subcontractors will be dealt with as agents and representatives of the Contractor and, as such, shall be subject to the same requirements as to character and competence as the other employees of Contractor. During the term of this Agreement, the Contractor shall subcontract to a minority contractor the services performed by the Contractor pursuant to the agreement between the City and the Contractor known as the "Contract and Specifications for Collection Services" within the City of Riviera Beach, Florida dated as February 4, 1993.

TO:

Article VII, Section 25.1 Subcontractors is amended as follows:

Subcontractors shall be allowed only with the prior approval of the City Council or City Manager acting as its designee. Consent shall not be unreasonably withheld. The consent of the City Council or City Manager shall not be construed as making the City a part of or to such subcontract or subjecting the City to liability of any kind to any subcontractor. No subcontract shall, under any circumstances, relieve the Contractor of his liability and obligation under this Agreement and, despite such subcontracting, the City shall operate only through the Contractor. Subcontractors will be dealt with as workers and representatives of the Contractor and, as such, shall be subject to the same requirements as to character and competence as the other employees of Contractor. During the term of this Agreement should subcontracting be necessary, the Contractor shall use its best reasonable efforts to subcontract with experienced minority firms that are able and available to perform the required services.

19. Article VIII, Section 29.1 Indemnification is amended **FROM:**

The Contractor shall defend, indemnify save harmless and exempt the City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees resulting from injury to persons or damage to property arising out of or resulting from this

agreement or from work done by the Contractor in the performance of this agreement. In connection with legal proceedings arising hereunder, the City reserves the right to retain counsel or its choice and at its own expense, or, in the alternative, approve counsel of its choice at its own expense, or, in the alternative approve counsel obtained by the Contractor.

TO:

Article VIII, Section 29.1 Indemnification is amended as follows:

The Contractor shall defend, and to the extent of its fault, Contractor shall save harmless and exempt the City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees resulting from injury to persons or damage to property arising out of or resulting from this agreement or from work done by the Contractor in the performance of this agreement. In connection with legal proceedings arising hereunder, the City reserves the right to retain counsel or its choice and at its own expense, or, in the alternative, approve counsel of its choice at its own expense, or, in the alternative approve counsel obtained by the Contractor. Nothing contained in this provision 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.

20. Article VIII, Section 33 Force Majeure is added as follows:

The performance of any obligations under this Agreement, except for the payment of money for services already rendered, may be suspended by either party in the event that such performance is prevented by a cause or causes beyond reasonable control of such party. Such causes shall include, but are not limited to, acts of God, acts of war, riot, fire, explosion, accident, flood, sabotage, lack of adequate fuel or power, changes in governmental laws, regulations, rule markings, permits, approvals, requirements, orders or actions which significantly affect either party; national defense requirements, injunctions or retraining orders, strikes and/or unusually severe weather. A party claiming a force majeure event shall provide written notice to the other detailing the reasons for same and the expected duration. Such claiming party shall utilize its best commercial efforts to end the force majeure event.

21. It is agreed by the parties that those provisions of the Agreement that require reserve or replacement equipment be "new" are modified to provide that such equipment need not be new but must be functional.

22. The Schedule I Residential Rates and Schedule II Commercial Rates attached as Appendix I to the Agreement are deleted and replaced with the new Appendix I, New Schedule I-2006 Residential Rates, New Schedule II-2006 Commercial Rates, New

Schedule III- 2006 Roll off Rates and New Schedule IV- 2006 Debris Removal Rates attached hereto. The rates therein are subject to adjustment as set forth in the Agreement.

23. The Schedule III Administrative Fee Paid to the City attached as Appendix I to the initial Agreement is now changed and replaced with the Amended New Schedule V-2006 attached hereto this Second Amendment.

24. All provisions not specifically modified herein remain in full force and effect as set out in the Agreement and First Amendment.

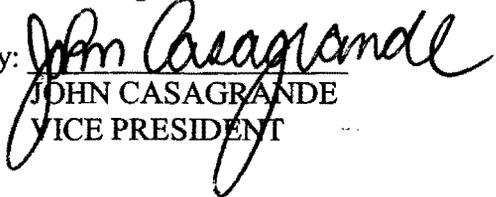
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IN WITNESS WHEREOF, the parties have executed this Second Amendment to Solid Waste and Recycling Collection Franchise Agreement on the day and date first above written.

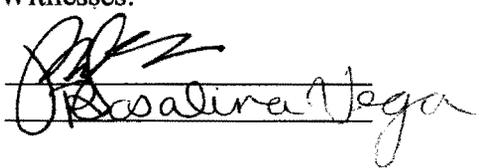
CITY OF RIVIERA BEACH, FLORIDA

WASTE MANAGEMENT OF
PALM BEACH, A Division of
Waste Management Inc. of Florida

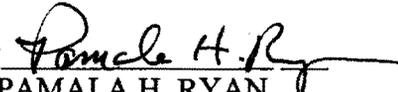
By: 
MICHAEL D. BROWN
MAYOR

By: 
JOHN CASAGRANDE
VICE PRESIDENT

Attest: 
By: 
CARRIE E. WARD, MMC
CITY CLERK

Witnesses:


Approved as to legal sufficiency

By: 
PAMALA H. RYAN
CITY ATTORNEY

Date: 10/4/06

[100406]

**City of Riviera Beach Solid Waste Revenue Analysis
Monthly Revenue By Line of Business- 2006 estimate**

	10/1/2006	2000-2005
Residential Services	\$225,000	\$119,507 (\$225,000 less Admin. Fee of \$105,493)
Commercial Services	\$155,341	\$155,341
Roll off Services	\$125,000	\$125,000
Total Collection Revenue	\$505,341	\$399,848
City Administration Fee	<\$105,493>*	
Gross Revenue	\$399,848**	\$399,848**

**Does not include expenses, liabilities and disposal costs = net revenue

Waste Management bills the City for Residential collection services monthly.
WM bills Commercial and Roll off customers monthly and pays the City the monthly Administration Fee from all revenues collected from all lines of business.

The City remits a payment for residential services on a monthly basis.

* The Administration Fee increases on 10-1-06 to \$108,150 and is adjusted annually based on the Consumer Price Index.



OFFICE OF
FINANCE DIRECTOR

City of Riviera Cost of Solid Waste Disposal

for the year ended 9/30/06

In accordance with Section 403.7049 of the Florida State Statutes, the following is the full cost of Solid Waste Management services provided by the City of Riviera Beach, Florida, for the fiscal year ending on September 30, 2006. Services are provided by City staff along with independent franchise contractors; therefore, the costs shown below include both collection and disposal costs.

Waste hauling charges:	Cost per unit
Residential	\$ 151.08
Commercial	1,617.39 *
Roll-off containers	

Waste disposal charges: billed by the Palm Beach County Solid Waste Authority

Residential	128.00
Commercial	Chaged per volume or
Roll-off containers	per weight

* Represents an average customer.

**Waste Management of Palm Beach
Rate Schedule for the City of Riviera Beach
Effective October 1, 2006**

NEW SCHEDULE I- 2006

**RESIDENTIAL MONTHLY GARBAGE SERVICES - Single Family/ Multi-Family/ Mobile Homes
95 gallon Mobile Cart Serviced 2 times per week**

Unit Rate per Mo.

Collection - Solid Waste, Recycling, Yard Waste and Bulk 6 Route Days \$ 14.34

NEW SCHEDULE II- 2006

COMMERCIAL CONTAINERIZED MONTHLY GARBAGE SERVICES -

SIZE	FREQ	Collection Cost	Disposal Cost	Total Cost
2YD	1x / Week	\$ 134.06	\$ 16.26	\$ 150.32
2YD	2x / Week	\$ 148.44	\$ 32.51	\$ 180.95
2YD	3x / Week	\$ 227.36	\$ 48.77	\$ 276.13
2YD	4x / Week	\$ 284.99	\$ 65.03	\$ 350.02
2YD	5x / Week	\$ 393.81	\$ 81.29	\$ 475.10
2YD	6x / Week	\$ 421.10	\$ 97.54	\$ 518.64
3YD	1x / Week	\$ 144.70	\$ 24.39	\$ 169.09
3YD	2x / Week	\$ 230.82	\$ 48.77	\$ 279.59
3YD	3x / Week	\$ 251.71	\$ 73.16	\$ 324.87
3YD	4x / Week	\$ 411.62	\$ 97.54	\$ 509.16
3YD	5x / Week	\$ 489.18	\$ 121.93	\$ 611.11
3YD	6x / Week	\$ 523.77	\$ 146.32	\$ 670.09
4YD	1x / Week	\$ 155.34	\$ 32.51	\$ 187.85
4YD	2x / Week	\$ 284.15	\$ 65.03	\$ 349.18
4YD	3x / Week	\$ 415.15	\$ 97.54	\$ 512.69
4YD	4x / Week	\$ 547.12	\$ 130.06	\$ 677.18
4YD	5x / Week	\$ 679.13	\$ 162.57	\$ 841.70
4YD	6x / Week	\$ 811.19	\$ 195.09	\$ 1,006.28
6YD	1x / Week	\$ 213.99	\$ 48.77	\$ 262.76
6YD	2x / Week	\$ 418.48	\$ 97.54	\$ 516.02
6YD	3x / Week	\$ 521.92	\$ 146.32	\$ 668.24
6YD	4x / Week	\$ 625.25	\$ 195.09	\$ 820.34
6YD	5x / Week	\$ 728.64	\$ 243.86	\$ 972.50
6YD	6x / Week	\$ 831.97	\$ 292.63	\$ 1,124.60
8YD	1x / Week	\$ 289.95	\$ 65.03	\$ 354.98
8YD	2x / Week	\$ 506.66	\$ 130.06	\$ 636.72
8YD	3x / Week	\$ 628.71	\$ 195.09	\$ 823.80
8YD	4x / Week	\$ 872.77	\$ 260.12	\$ 1,132.89
8YD	5x / Week	\$ 948.99	\$ 325.15	\$ 1,274.14
8YD	6x / Week	\$ 994.80	\$ 390.18	\$ 1,384.98
96 GAL	2x / Week	\$ 71.87	\$ 8.13	\$ 80.00

Extra Pickups calculated one time per service divided by 4.333 plus a \$10 service fee
Compacted Service calculated at three times non compacted service.

NEW SCHEDULE III- 2006

ROLLOFF SERVICE:

Collection Rate per Pull \$ 173.32
(excluding disposal at current Solid Waste Authority tipping fee)

NEW SCHEDULE IV- 2006

ADMINISTRATIVE FEE:

Monthly Fee \$ 108,658.00

**Waste Management of Palm Beach
Rate Schedule for the City of Riviera Beach
Effective October 1, 2006**

NEW SCHEDULE I- 2006

**RESIDENTIAL MONTHLY GARBAGE SERVICES - Single Family/ Multi-Family/ Mobile Homes
95 gallon Mobile Cart Serviced 2 times per week**

Unit Rate per Mo.

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NEW SCHEDULE III- 2006

ROLLOFF SERVICE:

Collection Rate per Pull (excluding disposal at current Solid Waste Authority tipping fee) **\$ 173.32**

NEW SCHEDULE V- 2006

ADMINISTRATIVE FEE:

Monthly Fee **\$ 108,658.00**

Collection Rate Adjustment Schedule

The Collection Rate Adjustment (which applies to the Collection portion of Rates) shall be applied on October 1, 2007, and every subsequent October 1 thereafter for the term of this Contract, as described in more detail below. The Collection Rate Adjustment shall be calculated in the following manner:

By agreement the parties have established the Contractor's initial Operating Cost Statement, as described in Exhibit 16.6 A. For the Contract Year beginning October 1, 2006, the Collection Rate components shall be determined by the weight factors as shown in the Contractor's initial Operating Cost Statement. For every subsequent Contract Year thereafter for the term of this Contract, an Operating Cost Statement will not be required; the components of the Collection rate will be used as the basis for the Collection Rate Adjustment. However, the City reserves the right to require the Contractor to provide an Operating Cost Statement prior to each renewal period in order to recalculate the weight of each cost component, at the City's sole discretion.

1. The Operating Cost Statement shall be prepared as described in Exhibit 16.6A. Operating costs are for Contractor's collection business in Palm Beach County.
2. The expenses of operations for the Service Area shall be broken down into one of the following five cost component categories: Labor, Fuel, Vehicle Replacement, Vehicle Maintenance, and Other. Each cost component category is assigned a weighted percentage factor based on that cost component's percentage total of all cost component categories.
3. The following indexes are used to calculate the adjustment for each cost component category. Each component's adjustment shall become effective on October 1, 2007 and every October 1 thereafter for the term of this Contract.

CPI: The change in the CPI shall be calculated as the percentage change from May of the preceding year to May of the current year.

Fuel and Oil: The change in the average price of diesel fuel for the Lower Atlantic No 2 Diesel Retail Sales by All Sellers (reported by the Energy Information Association as series DDR01Z) will be used to adjust the fuel and oil cost component. The fuel and oil component shall be adjusted effective October 1, 2007, calculated based on the average of each monthly change in series DDR01Z from May of the preceding year to May of the current year.

COST COMPONENT	INDEX	SOURCE
Other than Fuel and Oil	CPI (Unadjusted), US City Average, All Urban Consumers, All Items	CPI detailed report, published by BLS.
Fuel and oil	Series DDR01Z (Average), Lower Atlantic No. 2 Diesel Retail Sales by All Sellers	EIA, published monthly.

If either of these indexes becomes obsolete during the term of this Contract, an alternative, related index may be used, as agreed upon between the Contractor and the Contract Administrator.

4. The percentage weight for each cost component is multiplied times the existing Collection Rate to calculate the cost associated with each component, as shown in the "Weight Applied to Rate" column in the table below. This computation will be performed only once, in order to establish the baseline cost component values, but could be repeated at the sole discretion of the City should the City require of the Contractor an updated Operating Cost Statement at the time of each contract renewal. The percentage change in each index is multiplied times the Collection Rate Component to calculate the Adjusted Rate for each respective portion of the Collection Rate Adjustment. The table below is intended for demonstration purposes only, and should not be interpreted as actual Collection Rate Adjustments.

Collection Rate Adjustment Example-Initial Adjustment

Collection Rate Component	Weight	Weight applied to Collection Rate (\$13.84)	Source	% Change of Index	Adjusted Rate	Change Effective
Other than Fuel and Oil	87.5%	\$12.11	CPI-All Items	3.20%	\$12.50	October 1
Fuel and Oil	12.5%	\$1.73	Series DDR01Z (Average), Lower Atlantic No. 2 Diesel Retail Sales by All Sellers	5.42%	\$ 1.82	October 1

Collection Rate Adjustment Example --Subsequent Periods

Collection Component	Rate	Actual Rate	Source	% Change of Index	Adjusted Rate	Change effective
Other		\$12.50	Same	2.0%	\$12.75	Oct. 1
Fuel and Oil		\$1.82	Same	2.5%	\$1.86	Oct. 1

RESOLUTION NO. 151-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE FINANCE DIRECTOR TO APPROPRIATE GENERAL FUND, FUND BALANCE ACCOUNT NO. 001-00-399999 IN THE AMOUNT OF \$265,757 FOR THE RENOVATION OF THE 2ND FLOOR OF POLICE HEADQUARTERS AND MOVE OF THE POLICE EVIDENCE SECTION, AND FURTHER AUTHORIZING THE CITY MANAGER TO TAKE THE NECESSARY STEPS TO ABATE THE ENVIROMENTAL ISSUES AT THE CURRENT EVIDENCE LOCATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Riviera Beach Police Department is in need of suitable storage space for Police Evidence Section; and

WHEREAS, the City has determined that the current space used by the Police Evidence Section is no longer a usable space due to environmental issues; and

WHEREAS staff is recommending the relocation of the Police Evidence Section to the 2nd floor of Police Headquarters which was formerly occupied by the Detective Section; and

WHEREAS, funds to renovate the 2nd floor of Police Headquarters are needed in order to facilitate the Police Evidence Section's move.

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

SECTION 1: The City Manager is authorized to take the necessary steps to abate the environmental issues at the current evidence storage facility and renovate the 2nd floor of the police headquarters.

SECTION 2: The Finance Director is hereby authorized to appropriate fund balance as follows:

Revenue	Fund Balance	
001-00-399999	Fund Balance	\$ 265,757.00

RESOLUTION NO. 151-06

PAGE 2

Expenditure

Design & Architecture	001-0817-521-1-3101	\$	10,000.00
Evidence Cabinets	001-0817-521-1-6454	\$	26,482.00
Camera System	001-0817-521-1-6454	\$	13,500.00
Moving Expenses	001-0817-521-1-3106	\$	2,500.00
Temporary renovations	001-0817-521-1-5201	\$	1,500.00
Renovation \$78per sq ft	001-0817-521-1-6251	\$	192,500.00
Furniture	001-0817-521-1-6454	\$	12,500.00
Environmental Services	001-0817-521-1-3101	\$	2,775.00
Evidence Tracking Software	001-0817-521-1-6404	\$	4,000.00

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

PASSED AND APPROVED THIS 4TH **DAY OF** OCTOBER , 2006.

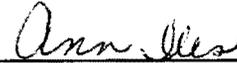
RESOLUTION NO. 151-06

PAGE 3

APPROVED:



MICHAEL D. BROWN
MAYOR



ANN ILES
CHAIRPERSON

ATTEST:



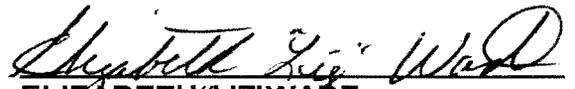
CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK



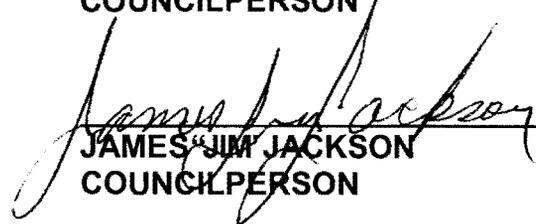
VANESSA LEE
CHAIR PRO TEM



NORMA DUNCOMBE
COUNCILPERSON



ELIZABETH "LIZ" WADE
COUNCILPERSON



JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. Wade

SECONDED BY: N. Duncombe

A. ILES aye

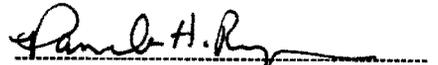
V. LEE aye

N. DUNCOMBE aye

E. WADE aye

J. JACKSON aye

REVIEWED AS TO LEGAL SUFFICIENCY


PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 9/28/04

RESOLUTION NO. 152-06

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 FINANCE DIRECTOR TO MAKE PAYMENTS FROM THE INSURANCE LIABILITY FUND ACCOUNT NO. 602-0539-513-0-3101 UP TO THE AMOUNT OF \$79,000 FOR CLAIMS ADMINISTRATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Gallagher Bassett Services, Inc. submitted a three (3) year proposal for Claims Administration and Loss Control Services beginning with the 2006/2007 fiscal year and ending with the 2008/2009 fiscal year, and requiring annual renewal authorization while capping the potential annual rate increases at 4% and 5 ½% respectively; and

WHEREAS, Gallagher Bassett Services, Inc. has performed positively 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 Finance Director is authorized to make payment from Account No. 602-0539-513-0-3101 in the amount not exceeding \$79,000 to Gallagher Bassett Services.

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

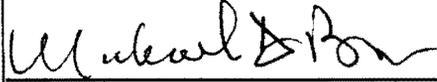
SECTION 4. This Resolution shall take effect immediately upon its passage and approval by the City Council.

PASSED AND APPROVED this 4 day of October, 2006.

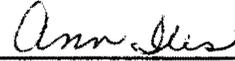
RESOLUTION NO. 152-06

PAGE -2-

APPROVED:



**MICHAEL D. BROWN
MAYOR**

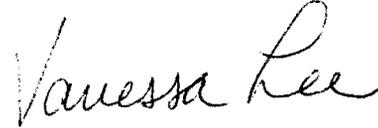


**ANN ILES
CHAIRPERSON**

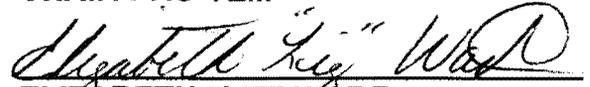
ATTEST:



**CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK**



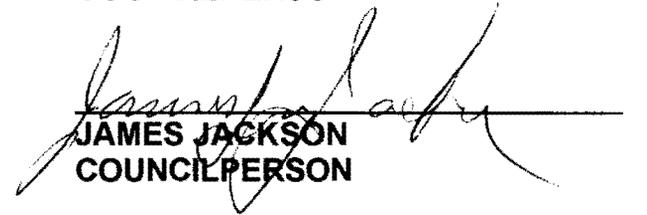
**VANESSA LEE
CHAIR PRO TEM**



**ELIZABETH "LIZ" WADE
COUNCILPERSON**



**NORMA DUNCOMBE
COUNCILPERSON**



**JAMES JACKSON
COUNCILPERSON**

MOTIONED BY: E. WADE

SECONDED BY: V. LEE

A. ILES: AYE

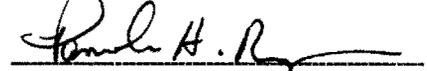
V. LEE: AYE

E. WADE: AYE

N. DUNCOMBE: AYE

J. JACKSON: AYE

REVIEWED AS TO LEGAL SUFFICIENCY



PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 10/4/06



GALLAGHER BASSETT SERVICES, INC.

CONTRACT FOR SERVICES

PARTIES

City of Riviera Beach, Florida (hereinafter "CLIENT") hereby retains Gallagher Bassett Services, Inc. (hereinafter "GB") to perform the services listed on Schedule V.

TERM

This contract shall be in effect from 10/1/06 to 10/1/09 and shall remain in full force and effect unless amended or terminated.

ATTACHMENTS

Attached hereto and made a part hereof are the following schedules:

- I. OBLIGATIONS OF THE PARTIES
- II. BANKING
- III. TERMS AND CONDITIONS
- IV. DEFINITIONS
- V. SERVICES AND FEES

CITY OF RIVIERA BEACH, FLORIDA

By: Michael D. Brown
MICHAEL D. BROWN
MAYOR

Date: October 3, 2006

ADDRESS: 600 W. Blue Heron Blvd.
Riviera Beach, FL 33404

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

GALLAGHER BASSETT SERVICES, INC.

By: Robert Mason
ROBERT MASON
CHIEF FINANCIAL OFFICER

Date: 9/29/06

ADDRESS: Two Pierce Place
Itasca, IL 60143-3141

SCHEDULE I

OBLIGATIONS OF THE PARTIES

A. Obligations of GB

GB agrees to perform the following services:

1. With regard to Claims Administration, GB shall:
 - a. Review each claim and loss report submitted by the CLIENT during the term of this contract.
 - b. Conduct an investigation of each qualified claim or loss to the extent deemed necessary by GB and as agreed to by CLIENT.
 - c. Maintain a file for each qualified claim or loss that shall be available for review by the CLIENT.
 - d. Adjust, settle or resist all qualified claims or losses:
 - 1) within the stated discretionary settlement authority limit;
 - 2) with specific approval of the CLIENT, if outside the stated authority limit.
 - e. Perform necessary and customary administrative and clerical work in connection with each qualified claim or loss, including the preparation of checks or vouchers, releases, agreements and other documents needed to finalize a 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 Schedule II.
 - h. Notify CLIENT, CLIENT's agent or carriers, as designated by the CLIENT, of all qualified claims or losses which may exceed the CLIENT's retention and, if requested, provide information on the status of those claims or losses.
 - i. Coordinate investigations on litigated claims with attorneys representing the CLIENT and with representatives of the excess carrier, as required. It is expressly understood that all legal costs and loss payments will be charged to the CLIENT.
 - j. Investigate and pursue subrogation possibilities on behalf of the CLIENT in all states permitting subrogation. Funds received from all subrogation collections shall be considered revenue of the CLIENT.
 - k. Maintain an automated loss and information system, and provide the CLIENT with reports from RISX-FACS® as set forth in Schedule V.
 - l. Provide forms, as determined by GB, needed to administer the CLIENT's program.
 - m. Provide additional ad hoc information, analysis, reports and services, when requested by CLIENT, on a time and expense basis.
 - n. Assist the CLIENT in selecting appropriate experts or specialists as the claims may require.
 - o. Provide personnel needed to perform the services agreed to herein.

2. With respect to Self-Insurance Qualification, if any, GB shall assist the CLIENT in the filing of periodic reports and renewal applications required by state administrative agencies. All fees and assessments in connection with such are the obligation of the CLIENT.
3. With regard to Risk Control Consulting and Appraisals, GB shall provide the services set forth in Schedule V.
4. Provide other services as set forth in Schedule V.

B. Obligations of CLIENT

1. CLIENT shall pay GB for services the annual sum set forth on Schedule V, as agreed to under the "Billing and Payment Terms" section. At the end of each contract period, the annual compensation shall be subject to adjustment.

Where applicable, GB shall audit the claim counts at the 18th, 24th, 36th and 48th month from the inception date of the contract. CLIENT shall pay GB any additional fees due as a result of these audits as specified under the Billing and Payment Terms section in Schedule V.

2. CLIENT shall provide funds for the payment of qualified claims or losses, allocated loss expenses, and any Managed Care fees, if applicable. GB shall not be required to advance funds to pay losses, allocated loss expenses, bank charges, or Managed Care fees.
3. 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.

SCHEDULE II

BANKING - SIMMS

GB will provide an on-line check issuance and banking communication system known as "APACS", which provides for automated payments and control. The account will be funded with Citibank to administer a SIMMS cash management program, hereinafter the CLIENT's program. Such cash management program will deal directly with the funding program of the CLIENT's banking facility. GB will assist the CLIENT in establishing the initial imprest/opening balance of the fund. The details of the CLIENT's program are set forth in a letter agreement between the 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. GB will charge an annual fee, subject to audit, for these services.

It is expressly understood that GB shall not be required to advance its own funds to pay any of the CLIENT's obligations.

In the event of cancellation or nonrenewal of this contract, CLIENT agrees to fund Citibank in an amount sufficient to fund all of the CLIENT's outstanding obligations.

If, at any time, CLIENT fails to provide adequate funding, GB shall issue "stop payment" orders on outstanding payments. CLIENT agrees to indemnify GB for any losses resulting from CLIENT's failure to fund its obligations. Any bank charges resulting from inadequate funding including, but not limited to, interest, stop payment charges and overdraft fees shall be the obligations of the CLIENT and shall be billed to the CLIENT when known.

In the event CLIENT fails to provide adequate funding, GB shall have the right to convert the CLIENT's program to either daily clearance or voucher upon 48 hours notice to the CLIENT.

- 4 -

SCHEDULE III
TERMS AND CONDITIONS

- A.** Discretionary Settlement Authority - The limit on any settlement payment by GB shall be as set forth in Schedule V. 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. Failure of GB to settle a qualified claim or loss within such limit 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, provided such failure is not due to any negligence on the part of GB.
- B.** Terms of Cancellation or Nonrenewal - Either party shall have the right to cancel this contract at any time by giving the other party written notice of intent to cancel at least sixty (60) days in advance.

Unless stated otherwise in Schedule V, GB agrees that all claim files for claims incurred during the contracted periods will be handled for no additional fees for as long as the CLIENT continues to renew this Agreement.

In the event of cancellation or nonrenewal of this program, GB may, at its sole discretion, continue to manage all pending run-off claims, and run-off claims incurred in this service 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, 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.

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.

Should the CLIENT elect to have the files returned to them, GB will do so within a reasonable amount of time, but in no event later than thirty (30) days. Cost for file transfer will be the obligation of the CLIENT. Additionally, 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.

If the CLIENT fails to pay any amounts billed, including but not limited to GB's service fee during the contract period; audit billings per Schedule I, Section B, 1, Paragraph 2; the service fee to continue handling claims past termination date or bank charges, within 30 days, GB shall have the right to terminate the contract 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.

- C.** 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.
- D.** Practice of Law - GB will not perform any services which may constitute the unauthorized practice of law.
- E.** Mutual Indemnification - GB agrees to defend, indemnify, protect, save and keep harmless CLIENT from any and all loss, cost, damage or exposure arising from the negligent acts or omissions of GB.

CLIENT agrees to defend, indemnify, protect, save and keep harmless GB from any and all loss, cost, damage or exposure arising from the negligent acts or omissions of CLIENT.

The foregoing indemnification provisions shall survive termination of this Agreement.

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

- F. Notices - Any notice required to be given under this contract shall be sent by certified mail to the following in the case of GB:

Mr. Robert Mason
Chief Financial Officer
Gallagher Bassett Services, Inc.
The Gallagher Centre
Two Pierce Place
Itasca, IL 60143-3141

and in the case of the CLIENT:

Mr. Robbie Littles
Risk Manager
City of Riviera Beach
600 W. Blue Heron Blvd.
Riviera Beach, FL 33404

- G. Successors/Affiliates - This contract shall be binding upon and shall inure to the benefit of all assigns, transferees and successors in interest of the parties. 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.
- H. Modification - This contract represents the entire Agreement between the parties and may be modified only in writing. GB reserves the right to modify fees if:
- It is determined 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.
 - During the term of the Agreement, legislative and/or regulatory requirements materially impact or change the scope of GB's services or responsibilities.
- I. Confidentiality of Data - All data furnished by the CLIENT, or generated as a result of services performed under this agreement, and other information designated by the CLIENT in writing, shall be treated as confidential. GB reserves the right to use statistical information or other data, so long as the CLIENT's name and/or confidential data are adequately protected.
- J. Status - It is understood that GB is engaged to perform services under this contract as an independent contractor and not as an agent of the CLIENT. This contract shall be governed by the laws of the State of Florida.

- K. Managed Care - If GB provides Managed Care services as part of the CLIENT's program, either directly or indirectly through an independent contractor, CLIENT agrees that GB may be entitled to an additional fee in connection with the Managed Care services (all or part of which may be paid to GB by the independent contractor) and to comply with the procedures for utilizing any such Managed Care services. Any such additional fee will be in exchange for bona fide administrative services provided by GB in connection with the Managed Care services. If GB provides CLIENT access to the First Health Preferred Provider Organization, CLIENT agrees to comply with the procedures for utilizing the First Health PPO Program.
- L. Reporting - GB will not assume that other coverage (unknown to GB) exists for a qualified claim or loss. GB shall not be responsible for reporting to carriers on a type of claim or loss not managed by GB.
- M. Fines and Penalties - GB shall not be responsible for any fines or penalties assessed by any governmental agency because of the acts or omissions of the CLIENT, or by previous or successor claim administrators.
- N. Solicitation of Employees - CLIENT agrees that, during the term of this Agreement and for a two-year period thereafter, CLIENT shall not, without the consent of GB, solicit to hire, or hire 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.
- O. Risk Control Consulting - With respect to any risk control consulting services, including any form of inspection service provided by GB to CLIENT:
1. Such services shall be in the nature of advisory to the CLIENT only and shall not be construed as imposing upon GB any duty to implement any recommendation made by GB or to otherwise ensure that any premises, equipment or other subject matter of a GB consulting service is safe or free from hazards or defects;
 2. Such services shall be solely for the benefit of CLIENT and shall not be construed as creating any duty to, or conferring any right to, any third party, including without limitation, any duty to warn any third party or the public at large;
 3. If GB fails to complete the contracted Risk Control Consulting Services during the term of this Agreement due to the CLIENT's failure to cooperate with GB's service delivery objectives, then GB will have an additional six (6) months in which to complete the contracted services. If the CLIENT fails to cooperate with GB's service delivery objectives during such six (6) month period, then GB's obligation to complete the contracted services will be deemed to be fulfilled and CLIENT shall not be entitled to any refund for services not provided. If for any reason other than CLIENT's lack of cooperation, GB fails to complete the contracted services during the term of the Agreement, then CLIENT, at its discretion, may either receive a refund for that portion of the contracted services which were not completed or may extend the term for completion of the contracted services by a period of six (6) months.
- P. Records Retention - GB will retain claim files for 24 months following date of closure. Thereafter, files will be returned to the CLIENT or forwarded to such location as may be designated by the CLIENT for continued storage. GB will retain hard-copy checks for 12 months following the date of bank clearance. Thereafter, copies of checks will be maintained on microfiche.
- Q. 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.

- R. Taxes - CLIENT shall be responsible for payment of all applicable sales, use, ad valorem and excise taxes; duties; and assessments relating to the services provided hereunder. CLIENT shall hold GB harmless from all claims and liability arising from CLIENT's failure to pay such taxes.
- S. Non-U.S. Dollar Transaction - In the event that GB handles any non-U.S. Dollar claims, CLIENT shall be responsible for any rate fluctuations.
- T. 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 contract, GB shall provide CLIENT with such information and reports as reasonably required by CLIENT to perform this function.

SCHEDULE IV

DEFINITIONS

Claim - Any report of an 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. The claim charge is applicable on a per occurrence, per claimant, per line of coverage basis as defined in the RISX-FACS® system.

Discretionary Settlement Authority - GB is authorized to make payment, for loss or expense, up to this amount, as GB deems necessary.

Qualified Claim or Loss - GB will investigate and adjust any loss or claim occurring within the service term, provided the loss or claim type is identified in Schedule V.

Allocated Expenses - Shall be the responsibility of the CLIENT and shall include, but not be limited to:

- | | |
|---|---|
| <ul style="list-style-type: none"> ● legal fees ● professional photographs ● medical records ● experts' rehabilitation costs ● accident reconstruction ● architects, contractors ● engineers ● police, fire, coroner, weather, or other such reports ● property damage appraisals ● extraordinary costs for witness statements ● official documents and transcripts ● sub rosa investigations | <ul style="list-style-type: none"> ● medical examinations ● extraordinary travel made at CLIENT's request ● court reporters ● fees for service of process ● pre- and post-judgment interest paid ● chemists ● collection costs payable to third parties on subrogation ● any other similar cost, fee or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a claim or loss which must have the explicit prior approval of the CLIENT ● Managed Care |
|---|---|

Managed Care - Managed Care services shall include, but not be limited to:

- | | |
|--|--|
| <ul style="list-style-type: none"> ● preferred provider organization networks ● state fee scheduling ● usual, customary and reasonable bill review ● medical case management and vocational rehabilitation network | <ul style="list-style-type: none"> ● utilization review services ● light-duty and return-to-work programs ● prospective injury management services ● hospital bill audit services ● wholesale pharmaceutical network ● retail pharmaceutical network |
|--|--|

**SCHEDULE V
SERVICES AND FEES**

Client: City of Riviera Beach, Florida

Service Period: From 10/1/06 to 10/1/07

GB Client #: 000160

SERVICES PROVIDED:	<u>Incl</u>	_____	SERVICES PROVIDED:	<u>Incl</u>	_____
A. Claims Administration			C. Loss Funding		
Auto Liability - Bodily Injury (AB)	X	<u>3,568</u>	SIMMS	X	<u>0</u>
Auto Liability - Property Damage (AD)	X	<u>3,171</u>	Voucher		_____
Auto Physical Damage (APD)	X	<u>2,112</u>	Client Owned Banking		_____
General Liability - Bodily Injury (GB)	X	<u>4,460</u>	D. Supplemental		<u>2,904</u>
General Liability - Property Damage (GD)	X	<u>2,265</u>	Loss Notice Program Rpt. Level \$		_____
Products Liability	X	_____	Detailed Status Rpts Rpt. Level \$50,000	X	<u>Incl.</u>
Professional Liability	X	_____	Meetings	X	<u>Incl.</u>
Property (PR)	X	<u>7,320</u>	Discretionary Settlement Authority \$5,000	X	<u>Incl.</u>
Workers' Compensation (WC)		_____	Index Bureau	X	<u>Incl.</u>
Medical Only	X	<u>8,700</u>	Coordination	X	<u>Incl.</u>
Indemnity	X	<u>31,650</u>	Account Administration	X	<u>Incl.</u>
Other		_____	Incident Processing	X	<u>Incl.</u>
Assumption		_____	Audits	X	<u>Incl.</u>
B. Information Services		<u>11,763</u>	Record Only Processing	X	<u>440</u>
RISX-FACS®		_____	Risk Inspections		_____
Standard Package	X	<u>Incl.</u>	Managed Care (Paid Off File)	X	<u>N/C</u>
Non-Standard Reports		_____	E. Risk Control Consulting		_____
risxfacs.com		_____	Loss Control - ____ Hours		_____
Terminals & Printers		_____	Risx-Control Consulting - ____ Hours		_____
Data Transfer		_____			_____
Other		_____			_____
			TOTAL	\$	<u>78,353</u>

ADDITIONAL SERVICE TERMS AND CONDITIONS:
 Client will be billed \$892 per claim for each Auto Liability Bodily Injury claim reported against the initial deposit of \$3,568, \$453 per claim for each Auto Liability Property Damage claim reported against the initial deposit of \$3,171, \$352 per claim for each Auto Physical Damage claim reported against the initial deposit of \$2,112, \$892 per claim for each General Liability Bodily Injury claim reported against the initial deposit of \$4,460, \$453 per claim for each General Liability Property Damage claim reported against the initial deposit of \$2,265, \$1,003 per claim for each Professional/Product Liability claim reported, \$732 per claim for each Property claim reported against the initial deposit of \$7,320, \$150 per claim for each Workers' Compensation Medical Only claim reported against the initial deposit of \$8,700 and \$1,055 per claim for each Workers' Compensation Indemnity claim reported against the initial deposit of \$31,650.

E & O Excpt-100 claims will be input and billed at the rate of \$55 per record against the initial deposit of \$440. Any additional work done on Excpt-100 claims will be billed on a time and expense basis at the rate of \$140 per hour.

This is the first year of a three-year agreement. The per claim rates will increase 4% from year one to year two (10/1/07-10/1/08) and the per claim rates will increase 5.5% from year two to year three (10/1/08-10/1/09).

BILLING AND PAYMENT TERMS:
 Fee is payable in 12 monthly installments beginning 10/1/06. 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. 153-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING ARTHUR J. GALLAGHER & COMPANY – MIAMI TO PLACE THE APPROPRIATE COVERAGES, AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE PAYMENTS FROM THE INSURANCE LIABILITY FUND ACCOUNT NO. 602-0539-5130-3101 UP TO THE AMOUNT OF \$3,690,000.00 TO ARTHUR J. GALLAGHER & CO. - MIAMI FOR RISK PACKAGE FIXED COSTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City is in need of its Worker's Compensation/Liability and Property/Casualty Protected Self-Insurance Program to be renewed for one year (2006-2007); and,

WHEREAS, a proposal from Arthur J. Gallagher & Co. – Miami/Gallagher Bassett Services provides the costs and services which best serve the City of Riviera Beach's interest at a total fixed cost not to exceed \$3,690,000.00; and,

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

SECTION 1. That Arthur J. Gallagher & Company – Miami provide a comprehensive protected Self-Insurance Program and place coverages as appropriate.

SECTION 2. That the Finance Director is authorized to make payments from Account Numbers 602-0539-513-0-1405 (4501) (4508) in the total amount not exceeding \$3,690,000.00 to Arthur J. Gallagher & Company – Miami for risk package fixed costs.

SECTION 3. That this Resolution shall take effect upon its passage and approval by City Council.

PASSED AND APPROVED this 4 day of October, 2006.

RESOLUTION NO. 153-06

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APPROVED:

Michael D. Brown
MICHAEL D. BROWN
MAYOR

Ann Iles
ANN ILES
CHAIRPERSON

ATTEST:

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

Vanessa Lee
VANESSA LEE
CHAIR PRO TEM

Elizabeth "Liz" Wade
ELIZABETH "LIZ" WADE
COUNCILPERSON

Norma Duncombe
NORMA DUNCOMBE
COUNCILPERSON

James Jackson
JAMES JACKSON
COUNCILPERSON

MOTIONED BY: V. LEE

SECONDED BY: E. WADE

A. ILES: AYE

V. LEE: AYE

E. WADE: AYE

N. DUNCOMBE: AYE

J. JACKSON: AYE

REVIEWED AS TO LEGAL SUFFICIENCY

Pamela H. Ryan
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 10/4/06