

RESOLUTION NO. 171-00

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, REQUESTING PAYMENT TO THE LAW FIRM OF HOLLAND & KNIGHT, LLP, IN THE AMOUNT OF \$12,629.99 FOR PROFESSIONAL SERVICES RENDERED IN THE REDEVELOPMENT OF THE OCEAN MALL PROJECT; AND AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO MAKE PAYMENT FOR SAME FROM ACCOUNT NO. 305-0202-512-0-3106 AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City of Riviera Beach has been attempting to negotiate a development agreement with Ocean Land, Inc., for the redevelopment of the Ocean Mall property; and

**WHEREAS**, Holland & Knight, LLP was hired to assist the City in reviewing documents and in preparing a development agreement; and

**WHEREAS**, money has been budgeted in the 1999-2000 Budget for services in connection with the Ocean Mall project.

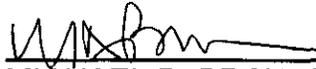
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA as follows:**

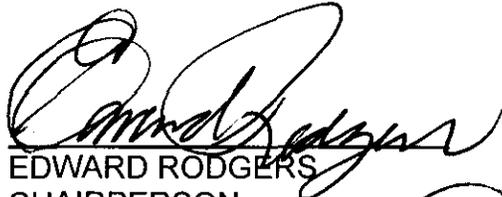
**Section 1.** That the Mayor and Finance Director are authorized to make payment to Holland & Knight, LLP, in the amount of \$12,629.99, from Account No. 305-0202-512-0-3106.

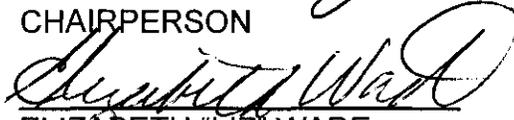
**Section 2.** This Resolution shall take effect immediately upon passage and adoption by the City Council.

**PASSED and ADOPTED this 4th day of October, 2000.**

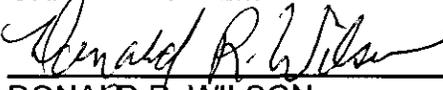
APPROVED:

  
MICHAEL D. BROWN  
MAYOR

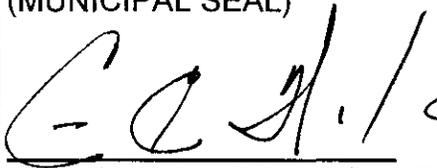
  
EDWARD RODGERS  
CHAIRPERSON

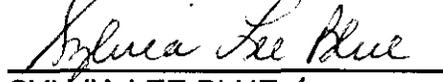
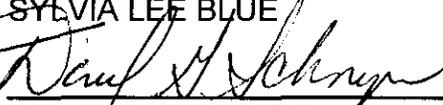
  
ELIZABETH "LIZ" WADE  
CHAIR PRO-TEM

ATTEST

  
DONALD R. WILSON

(MUNICIPAL SEAL)

  
CARRIE E. WARD, CMC/AE  
CITY CLERK

  
SYLVIA LEE BLUE  
  
DAVID G. SCHNYER  
COUNCILMEMBERS

MOTIONED BY: E. Wade

SECONDED BY: D. Wilson

E. RODGERS aye

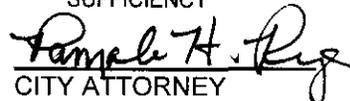
L. WADE aye

S. BLUE aye

D. WILSON aye

D. SCHNYER aye

REVIEWED AS TO LEGAL  
SUFFICIENCY

  
CITY ATTORNEY  
CITY OF RIVIERA BEACH

Date 9/28/00

MEM:mem  
9/27/00

RESOLUTION NO. 172-00

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO MAKE PAYMENT TO THE LAW FIRM OF LEWIS, LONGMAN & WALKER, P.A., IN THE AMOUNT OF \$11,392.36 FOR PROFESSIONAL SERVICES RENDERED IN DEVELOPING AN INTERLOCAL AGREEMENT BETWEEN THE CITY, PORT, AND COUNTY AS IT RELATES TO 13<sup>TH</sup> STREET EXPANSION, SAID PAYMENT TO BE MADE FROM GENERAL FUND BALANCE CARRYOVER AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City Council authorized Lewis, Longman & Walker, P.A., to work with City staff, the Port, and the County, to draft an interlocal agreement between the parties; and

**WHEREAS**, Lewis, Longman & Walker, P.A., has provided these professional legal services to the City.

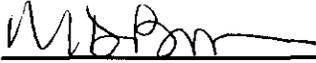
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA as follows:**

**Section 1.** That the Mayor and Finance Director are authorized to make payment to Lewis, Longman & Walker, P.A., in the amount of \$11,392.36 for professional services rendered.

**Section 3.** This Resolution shall take effect immediately upon passage and adoption by the City Council.

**PASSED and ADOPTED this 4th day of October, 2000.**

APPROVED:



MICHAEL D. BROWN, MAYOR

[MUNICIPAL SEAL]

ATTEST:



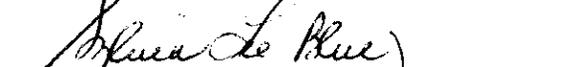
CARRIE E. WARD, CMC/AAE  
CITY CLERK



EDWARD RODGERS, CHAIRPERSON



ELIZABETH WADE, CHAIRPERSON PRO-TEM



SYLVIA LEE BLUE



DAVID SCHNYER



DONALD R. WILSON  
COUNCIL MEMBERS

MOTION BY: S. Blue

SECOND BY: D. Schnyer

E. ROGERS: aye

E. WADE: aye

S. BLUE: aye

D. SCHNYER: aye

D. WILSON: aye

REVIEWED AS TO LEGAL SUFFICIENCY

City Attorney  
City of Riviera Beach

Date Pamela H. Rye

RESOLUTION NO. 174-00

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING THE ANNUAL AUDIT CONTRACT TO HAAS DIAZ & COMPANY FOR AN AMOUNT NOT TO EXCEED \$49,500 FOR FISCAL YEAR ENDED SEPTEMBER 30, 2000; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City is required by State law to have an audit conducted on an annual basis by an independent certified public accountant; and

WHEREAS, the City generated Request for Proposal Number 02400 for these auditing services; and

WHEREAS, proposals were received from seven accounting firms and subsequently reviewed by a committee appointed to select the most qualified company to conduct the audit; and

WHEREAS, Haas, Diaz & Company was chosen to perform the audit through the September 30, 2003 fiscal year.

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 of Riviera Beach will enter into a contract with Haas, Diaz and Company to perform the annual audit.

SECTION 2. That the Mayor and City Clerk are authorized to execute the contract.

SECTION 3. That a copy of said contract is attached hereto and make a part thereof.

SECTION 4. This resolution shall take effect upon its passage and adoption by the City Council.

PASSED AND ADOPTED this 4th day of October, 2000.

APPROVED:

  
\_\_\_\_\_  
MICHAEL D. BROWN, MAYOR

  
\_\_\_\_\_  
EDWARD RODGERS, CHAIRMAN

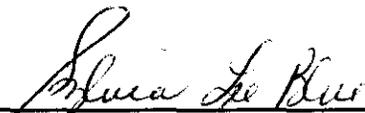
  
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ELIZABETH WADE, CHAIR PRO-TEM

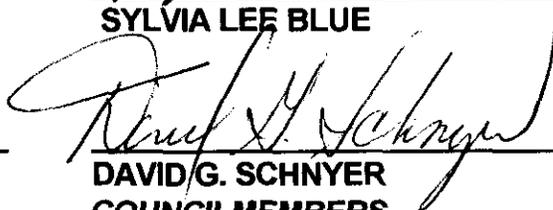
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\_\_\_\_\_  
DONALD R. WILSON

ATTEST:

  
\_\_\_\_\_  
CARRIE E. WARD, CMC/AE  
CITY CLERK

  
\_\_\_\_\_  
SYLVIA LEE BLUE

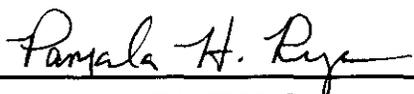
  
\_\_\_\_\_  
DAVID G. SCHNYER  
COUNCILMEMBERS

MOTIONED BY: S. Blue

REVIEWED AS TO LEGAL SUFFICIENCY

SECONDED BY: D. Wilson

E. RODGERS aye

  
\_\_\_\_\_  
CITY ATTORNEY  
CITY OF RIVIERA BEACH

E. WADE: aye

D. WILSON: aye

DATE: 10/4/00

S. BLUE: aye

D. SCHNYER: aye

**CONTRACT FOR PROFESSIONAL SERVICES  
RFP NO. 02400  
ANNUAL AUDIT SERVICES**

This Contract is made as of the 4th day of October, 2000 by and between the City of Riviera Beach Palm Beach County, Florida a Political Subdivision of the State of Florida, by and through its City Council, hereinafter referred to as the CITY, and Haas, Diaz & Co. [ ] an individual, [X] a partnership, [ ] a corporation authorized to do business in the State of Florida, hereinafter referred to as the Certified Public Accountants, whose Federal I.D. or Social Security number is 59-1934067.

In consideration of the mutual promises contained herein, the CITY and the CERTIFIED PUBLIC ACCOUNTANTS agree as follows:

**ARTICLE 1 - SERVICES**

The CERTIFIED PUBLIC ACCOUNTANTS responsibility under this Contract is to provide professional/consultation services in the area of Auditing as more specifically set forth in the Scope of Work detailed in Exhibit "A".

The CITY'S representative/liaison during the performance of this Contract shall be Dennis Widlansky, Finance Director, telephone no. 561-845-4043.

**ARTICLE 2 - SCHEDULE**

The CERTIFIED PUBLIC ACCOUNTANTS shall commence services on October 5, 2000 and complete all services by April 15, 2004, for fiscal year ending 9/30/03. Services for each fiscal year of this agreement shall be completed by the ensuing April 15<sup>th</sup>.

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

**ARTICLE 3 - PAYMENTS TO CERTIFIED PUBLIC ACCOUNTANTS**

- A. The CITY agrees to compensate the CERTIFIED PUBLIC ACCOUNTANTS in accordance with the fee proposal set forth in Exhibit B attached hereto and incorporated by reference herein. The total and cumulative amount of this contract shall not exceed the amount of funds annually budgeted for these services. Reimbursable expenses, as identified in said fee proposal, incurred during the course of performance of this contract, including, but not limited to, out-of-pocket expenses for express mail, computerized research, word processing charges, long distance telephone, postage and photocopying shall be itemized and invoiced separately. The CITY shall not reimburse the CERTIFIED PUBLIC ACCOUNTANTS for any travel costs incurred as a direct result of the CERTIFIED PUBLIC ACCOUNTANTS providing deliverables to the CITY in pursuance of the scope of work contained in Exhibit A, attached hereto and made part hereof.

RESOLUTION NO. 174-00

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING THE ANNUAL AUDIT CONTRACT TO HAAS DIAZ & COMPANY FOR AN AMOUNT NOT TO EXCEED \$49,500 FOR FISCAL YEAR ENDED SEPTEMBER 30, 2000; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City is required by State law to have an audit conducted on an annual basis by an independent certified public accountant; and

WHEREAS, the City generated Request for Proposal Number 02400 for these auditing services; and

WHEREAS, proposals were received from seven accounting firms and subsequently reviewed by a committee appointed to select the most qualified company to conduct the audit; and

WHEREAS, Haas, Diaz & Company was chosen to perform the audit through the September 30, 2003 fiscal year.

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 of Riviera Beach will enter into a contract with Haas, Diaz and Company to perform the annual audit.

SECTION 2. That the Mayor and City Clerk are authorized to execute the contract.

SECTION 3. That a copy of said contract is attached hereto and make a part thereof.

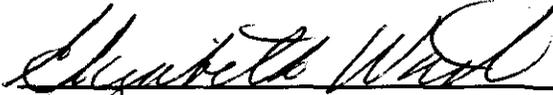
SECTION 4. This resolution shall take effect upon its passage and adoption by the City Council.

PASSED AND ADOPTED this 4th day of October, 2000.

APPROVED:

  
MICHAEL D. BROWN, MAYOR

  
EDWARD RODGERS, CHAIRMAN

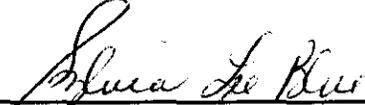
  
ELIZABETH WADE, CHAIR PRO-TEM

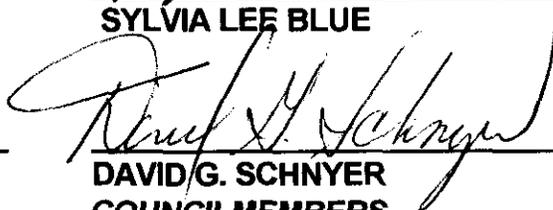
(MUNICIPAL SEAL)

  
DONALD R. WILSON

ATTEST:

  
CARRIE E. WARD, CMC/AE  
CITY CLERK

  
SYLVIA LEE BLUE

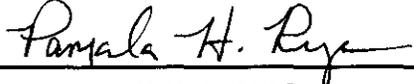
  
DAVID G. SCHNYER  
COUNCILMEMBERS

MOTIONED BY: S. Blue

REVIEWED AS TO LEGAL SUFFICIENCY

SECONDED BY: D. Wilson

E. RODGERS aye

  
CITY ATTORNEY  
CITY OF RIVIERA BEACH

E. WADE: aye

D. WILSON: aye

DATE: 10/4/00

S. BLUE: aye

D. SCHNYER: aye

**CONTRACT FOR PROFESSIONAL SERVICES  
RFP NO. 02400  
ANNUAL AUDIT SERVICES**

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In consideration of the mutual promises contained herein, the CITY and the CERTIFIED PUBLIC ACCOUNTANTS agree as follows:

**ARTICLE 1 - SERVICES**

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

**ARTICLE 3 - PAYMENTS TO CERTIFIED PUBLIC ACCOUNTANTS**

- A. The CITY agrees to compensate the CERTIFIED PUBLIC ACCOUNTANTS in accordance with the fee proposal set forth in Exhibit B attached hereto and incorporated by reference herein. The total and cumulative amount of this contract shall not exceed the amount of funds annually budgeted for these services. Reimbursable expenses, as identified in said fee proposal, incurred during the course of performance of this contract, including, but not limited to, out-of-pocket expenses for express mail, computerized research, word processing charges, long distance telephone, postage and photocopying shall be itemized and invoiced separately. The CITY shall not reimburse the CERTIFIED PUBLIC ACCOUNTANTS for any travel costs incurred as a direct result of the CERTIFIED PUBLIC ACCOUNTANTS providing deliverables to the CITY in pursuance of the scope of work contained in Exhibit A, attached hereto and made part hereof.

- B. Invoices received from the CERTIFIED PUBLIC ACCOUNTANTS pursuant to this Contract will be reviewed and approved by the CITY's representative, indicating that services have been rendered in conformity with the Contract and then will be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the CITY representative's approval.
  
- C. All requests for payment of expenses eligible for reimbursement under the terms of this Contract shall include copies of said receipts, invoices, or other documentation acceptable to the CITY OF RIVIERA BEACH Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the scope of work described in this Contract. Long distance telephone calls shall identify the person(s) called, purpose of call, time and costs. Mileage charges shall identify the destination, number of miles, rate, and purpose of travel. Duplication charges shall describe the documents, purpose of duplicating, and rate charged. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Agreement will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.
  
- D. Final Invoice: In order for both parties herein to close their books and records, the CERTIFIED PUBLIC ACCOUNTANTS will clearly state "final invoice" on the CERTIFIED PUBLIC ACCOUNTANT'S final/last billing to the CITY. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY OF RIVIERA BEACH. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CERTIFIED PUBLIC ACCOUNTANTS.

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

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

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

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

This Contract may be canceled by the CERTIFIED PUBLIC ACCOUNTANTS upon thirty (30) days' prior written notice to the CITY's representative in the event of substantial failure by the CITY to perform in accordance with the terms of this Contract through no fault of the CERTIFIED PUBLIC ACCOUNTANTS. It may also be terminated, in whole or in part, by the CITY, with or without cause, immediately upon written notice to the CERTIFIED PUBLIC ACCOUNTANTS. Unless the CERTIFIED PUBLIC ACCOUNTANTS are in breach of this Contract, the CERTIFIED PUBLIC ACCOUNTANTS shall be paid for services rendered to the CITY'S satisfaction through the of termination. After receipt of a Termination Notice and except as otherwise directed by the CITY the CERTIFIED PUBLIC ACCOUNTANTS shall:

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

## **ARTICLE 6 - PERSONNEL**

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

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

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

The CERTIFIED PUBLIC ACCOUNTANTS warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

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

## **ARTICLE 7 - SUBCONTRACTING**

The CITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CERTIFIED PUBLIC ACCOUNTANTS are encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CERTIFIED PUBLIC ACCOUNTANTS shall promptly do so, subject to acceptance of the new subcontractor by the CITY.

In accordance with CITY OF RIVIERA BEACH M/WBE Ordinance #2412, as amended, the CERTIFIED PUBLIC ACCOUNTANTS agree to the M/WBE participation for this contract and agrees to abide by all provisions of the M/WBE Ordinance and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CERTIFIED PUBLIC ACCOUNTANTS incorporates Schedule 1 (Participation of M/WBE Contractors) and Schedule 2 (Letter of Intent) attached hereto and made a part hereof, the names, addresses, scope of work, dollar value of the M/WBE participation on Schedule 1 and the Letter of Intent, Schedule 2, signed by each of the listed M/WBE sub/Certified Public Accountants on Schedule 1 agreeing to perform the contract at the listed dollar value.

The CERTIFIED PUBLIC ACCOUNTANTS agree to maintain all relevant records and information necessary to document compliance with Ordinance #2412, as amended, and will allow the City to inspect such records.

#### **ARTICLE 8 - FEDERAL AND STATE TAX**

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

The CERTIFIED PUBLIC ACCOUNTANTS shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

#### **ARTICLE 9 - AVAILABILITY OF FUNDS**

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

#### **ARTICLE 10 - INSURANCE**

- A. Prior to execution of this Contract by the CITY the CERTIFIED PUBLIC ACCOUNTANTS 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 CERTIFIED PUBLIC ACCOUNTANTS have obtained insurance of the type, amount, and classification as required for strict compliance with the 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 CERTIFIED PUBLIC ACCOUNTANTS of its liability and obligations under this Contract.
- B. The CERTIFIED PUBLIC ACCOUNTANTS shall maintain during the term of this Contract, standard Professional Liability Insurance in the minimum amount of \$1,000,000 per occurrence.
- C. The CERTIFIED PUBLIC ACCOUNTANTS shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$500,000 per occurrence to protect the CERTIFIED PUBLIC ACCOUNTANTS from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the CERTIFIED PUBLIC ACCOUNTANTS or by anyone directly employed by or contracting with the CERTIFIED PUBLIC ACCOUNTANTS.

- D. The CERTIFIED PUBLIC ACCOUNTANTS shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injury and property damages liability to protect the CERTIFIED PUBLIC ACCOUNTANTS 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 CERTIFIED PUBLIC ACCOUNTANTS or by anyone directly or indirectly employed by the CERTIFIED PUBLIC ACCOUNTANTS.
- E. The CERTIFIED PUBLIC ACCOUNTANTS shall maintain, during the life of this Contract, adequate Workers' Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees per Florida Statute 440.02.
- F. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the CERTIFIED PUBLIC ACCOUNTANTS shall specifically include the CITY as an "Additional Insured".

#### **ARTICLE 11 – INDEMNIFICATION**

The CERTIFIED PUBLIC ACCOUNTANTS 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 cause of action which may arise from any negligent act or omission of the CERTIFIED PUBLIC ACCOUNTANTS, its agents, servants, or employees in the performance of services under this Contract.

The CERTIFIED PUBLIC ACCOUNTANTS further agree 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 CERTIFIED PUBLIC ACCOUNTANTS not included in the paragraph above and for which the CITY, its agents, servants or employees are alleged to be liable.

#### **ARTICLE 12 - SUCCESSORS AND ASSIGNS**

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

#### **ARTICLE 13 – REMEDIES**

This Contract shall be governed by the laws of the State of Florida. Any and all legal action initiated with respect to this contract will be held in Palm Beach County. 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 remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single

or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

#### **ARTICLE 14 - CONFLICT OF INTEREST**

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

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

#### **ARTICLE 15 - EXCUSABLE DELAYS**

The CERTIFIED PUBLIC ACCOUNTANTS 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 CERTIFIED PUBLIC ACCOUNTANTS or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the CERTIFIED PUBLIC ACCOUNTANTS request, the CITY shall consider the facts and extent of any failure to perform the work and, if the CERTIFIED PUBLIC ACCOUNTANTS failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time.

#### **ARTICLE 16 - ARREARS**

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

## **ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

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

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

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

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

## **ARTICLE 18 - INDEPENDENT CONTRACTOR RELATIONSHIP**

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

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

## **ARTICLE 19 - CONTINGENT FEES**

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

**ARTICLE 20 - ACCESS AND AUDITS**

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

**ARTICLE 21 - NONDISCRIMINATION**

The CERTIFIED PUBLIC ACCOUNTANTS warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

**ARTICLE 22 - ENFORCEMENT COSTS**

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

**ARTICLE 23 - AUTHORITY TO PRACTICE**

The CERTIFIED PUBLIC ACCOUNTANTS hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the CITY's representative upon request.

**ARTICLE 24 - SEVERABILITY**

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

**ARTICLE 25 - PUBLIC ENTITY CRIMES**

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

**ARTICLE 26 - MODIFICATIONS OF WORK**

The CITY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CERTIFIED PUBLIC ACCOUNTANTS of the CITY'S notification of a contemplated change, the CERTIFIED PUBLIC ACCOUNTANTS 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 CERTIFIED PUBLIC ACCOUNTANTS ability to meet the completion dates or schedules of this Contract.

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

If the CITY elects to make the change, the CITY shall initiate a Contract Amendment and the CERTIFIED PUBLIC ACCOUNTANTS shall not commence work on any such change until such written amendment is signed by the CERTIFIED PUBLIC ACCOUNTANTS and approved and executed by the CITY OF RIVIERA BEACH.

**ARTICLE 27 - NOTICE**

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

City Manager

600 W. Blue Heron Blvd.

Riviera Beach, FL 33404

and if sent to the CERTIFIED PUBLIC ACCOUNTANTS shall be mailed to:

Haas, Diaz & Co.

1601 Belvedere Road, Suite 200

West Palm Beach, FL 33406

**ARTICLE 28- ENTIRETY OF CONTRACTUAL AGREEMENT**

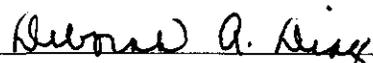
The CITY and the CERTIFIED PUBLIC ACCOUNTANTS agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 26 - Modifications of Work.

IN WITNESS WHEREOF, the parties have hereunto signed their names and affixed their seals at Riviera Beach, Palm Beach County, Florida, this 4 day of October, 2000.

CITY OF RIVIERA BEACH  
APPROVED

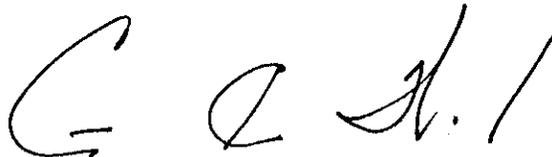
HAAS, DIAZ & CO.  
Certified Public Accountants

  
MICHAEL BROWN, MAYOR

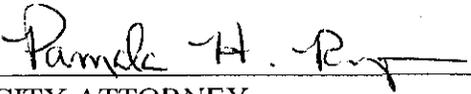
Signature:   
(Type name and Title) Deborah A. Diaz, Partner

[MUNICIPAL SEAL]

ATTEST:

  
CARRIE E. WARD, CMC/AAE  
CITY CLERK

REVIEWED AS TO LEGAL SUFFICIENCY:

  
CITY ATTORNEY  
CITY OF RIVIERA BEACH

DATE: 10/4/00

## SCOPE OF WORK

Based on our understanding of your expectations and the requirements set forth in your Request for Proposal, we summarize the scope of our proposed services.

### **AUDIT OF THE CITY'S FINANCIAL STATEMENTS**

We will perform an examination of the general purpose financial statements of the City of Riviera Beach for the year ending September 30, 2000, and subsequent fiscal years through September 30, 2003, in order to express an opinion on the fairness with which they present financial position and the results of operations in conformity with generally accepted governmental accounting principles, and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. The audit will include an "in relation to" opinion on the combining and individual fund financial statements and supporting schedules, based on the auditing procedures applied during the audit of the general purpose financial statements.

The scope of the financial and compliance audit will encompass the additional activities necessary to establish compliance with standards set forth by the provisions of the Federal Single Audit Act Amendments of 1996, the provisions of the Florida Single Audit Act, Florida Statutes 11.45(3)(a)4.0, and any other required standards that are or become applicable.

### **Work Products**

We will issue the following compliance reports in accordance with applicable rules and standards:

Report on Compliance and on Internal Control Over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards.

We will issue the following reports on federal and state financial assistance, if applicable:

Report on Compliance with Requirements Applicable to each Major Program and Internal Control over Compliance in Accordance with OMB Circular A-133.

Independent Auditor's Report on Examination of Management's Assertion about Compliance with Specified Requirements.

We will review the Annual Local Government Financial Report prior to its submission to the Florida Department of Banking and Finance pursuant to Section 218.32, Florida Statutes.

### **Management Letter**

We will also prepare a management letter which will identify any management weaknesses observed and offer our recommendations for changes in accounting and other procedures in order to eliminate the deficiencies. As each potential management letter point is identified in the audit process, we will document the condition, our recommendation, and the costs and benefits of recommended action. All potential comments will be reviewed with management prior to delivery of the management letter in final form.

**SCHEDULE FOR PAYMENT AND PROPOSED BUDGET  
FOR PROFESSIONAL SERVICES/CERTIFIED PUBLIC ACCOUNTANTS**

Haas, Diaz & Co. and Ward & Smith, P.A. present this fee proposal to serve the City of Riviera Beach as independent certified public accountants and to perform an examination of the general purpose financial statements for the year ended September 30, 2000 through September 30, 2003.

The fee for our services related to the financial and compliance audit is as follows:

9/30/00	\$ 42,000
9/30/01	44,000
9/30/02	46,000
9/30/03	<u>48,000</u>
Total	<u>\$ 180,000</u>

The fee includes the review of the Annual Local Government Financial Report before submission to the Department of Banking and Finance. Incidental expenses shall be limited to a maximum of \$1,500 per year for the printing of seventy-five copies of the annual financial report.

Should a single audit be required, our fees would be \$6,000 for grants up to \$2,000,000. This fee assumes that only one grant needs to be audited as a major program. If the City has grants in excess of this amount, a mutually agreeable fee would be arranged but would never exceed \$10,000 per single audit.

- A breakdown of the hours anticipated to be invested in the initial year of the contract are:

Partners	140
Managers	80
Supervisory Staff	100
Staff Accountants	<u>130</u>
	<u>450</u>

The above fee estimate assumes reasonable conditions and accessibility of records, and client assistance in obtaining the required items we will need to perform our procedures. In an effort to minimize costs, it is our practice to utilize client personnel, as authorized by the City, to assist us with this engagement.

If, during the contractual period covered by the agreement, additional services are needed by the City, compensation for these engagements will be negotiated separately for each service and shall be billed based on the following hourly rates:

Partners	\$165 per hour
Managers	125 per hour
Supervisory Staff	95 per hour
Staff Accountants	65 per hour

Please contact Charles F. Haas at (561) 686-1551 or Zenora S. Kerr Ward at (561) 697-9468 for any additional information you may need regarding this fee proposal.

**SCHEDULE 1**

**PARTICIPATION FOR M/WBE CONTRACTORS/PROPOSERS**

BID/RFP TITLE: Annual Audit Services

BID/RFP NUMBER: 02400

NAME OF PRIME BIDDER: Haas, Diaz & Co.

BID OPENING DATE: August 25, 2000

CONTACT PERSON: Charles F. Haas TELEPHONE NO. (561) 686-1551

DEPARTMENT: \_\_\_\_\_

**CONTRACT AMOUNT - MBE / WBE**

	NAME, ADDRESS & TELEPHONE NUMBER OF MINORITY CONTRACTOR	TYPE & DESCRIPTION OF WORK TO BE PERFORMED	BLACK	HISPANIC	OTHER	WOMEN
1.	<u>Ward &amp; Smith, P.A.</u> <u>5725 Corporate Way, Suite 206</u> <u>West Palm Beach, FL 33407</u>	<u>Annual Audit</u> <u>FYE September 30, 2000,</u> <u>through September 30, 2003</u>	<u>\$ 81,000</u>	<u>\$ _____</u>	<u>\$ _____</u>	<u>\$ _____</u>
2.	_____	_____	<u>\$ _____</u>	<u>\$ _____</u>	<u>\$ _____</u>	<u>\$ _____</u>
3.	_____	_____	<u>\$ _____</u>	<u>\$ _____</u>	<u>\$ _____</u>	<u>\$ _____</u>
4.	_____	_____	<u>\$ _____</u>	<u>\$ _____</u>	<u>\$ _____</u>	<u>\$ _____</u>
5.	_____	_____	<u>\$ _____</u>	<u>\$ _____</u>	<u>\$ _____</u>	<u>\$ _____</u>
		<b>TOTAL:</b>	<u>\$ _____</u>	<u>\$ _____</u>	<u>\$ _____</u>	<u>\$ _____</u>

TO BE COMPLETED BY PRIME BIDDER:

BID/RFP PRICE: \$ 180,000

TOTAL % PARTICIPATION: 45%



CITY OF RIVIERA BEACH  
M/WBE PAYMENT CERTIFICATION

This is to certify that Ward & Smith, P.A.  
(M/WBE CONTRACTOR)

received (Monthly ) or (Final) payment of \$ \_\_\_\_\_ on \_\_\_\_\_  
(DATE)

from Haas, Diaz & Co.  
(PRIME CONTRACTOR) for labor and/or materials used on

Contract RFP No. 02400, Annual Audit Services  
(NAME/NUMBER)

SIGNED \_\_\_\_\_  
(PRIME CONTRACTOR OFFICIAL)

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000 by  
\_\_\_\_\_ who is personally known to me or who has produced \_\_\_\_\_  
as identification and who did (did not) take an oath.

[SEAL]

\_\_\_\_\_  
(SIGNATURE OF PERSON TAKING ACKNOWLEDGEMENT)  
\_\_\_\_\_  
(NAME OF OFFICER TAKING ACKNOWLEDGEMENT)  
\_\_\_\_\_  
(TITLE OR RANK)  
\_\_\_\_\_  
(SERIAL NUMBER, IF ANY)

Signed by Official of M/WBE Contractor \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
2000, by \_\_\_\_\_ who is personally known to me or who has produced \_\_\_\_\_  
as identification and who did (did not) take an oath.

[SEAL]

\_\_\_\_\_  
(SIGNATURE OF PERSON TAKING ACKNOWLEDGEMENT)  
\_\_\_\_\_  
(NAME OF OFFICER TAKING ACKNOWLEDGEMENT)  
\_\_\_\_\_  
(TITLE OR RANK)  
\_\_\_\_\_  
(SERIAL NUMBER, IF ANY)

DUE: To be submitted with Pay Request, immediately following any payment to the M/WBE from the Prime Contractor.

PROPOSAL TO THE CITY OF RIVIERA BEACH

The undersigned as Bidder declares that no person, other than the Bidder, herein named, has any interest in this proposal, or in the contract(s) which may result and is in all respects fair and without collusion or fraud.

The undersigned further states that he has carefully examined the specifications of this Bid Proposal and is thoroughly familiar with all its provisions and has provided any and all required documentation within:

Proposed Total Fee to Provide Requested Services \$ 180,000  
(FOR THE FOUR YEAR TERM)

Prices set forth above are Firm Proposals and are not subject to price adjustments except as defined in the General and Technical Specifications.

NAME OF FIRM: HAAS, DIAZ & CO.

BY: CHARLES F. HAAS  
(TYPE OR PRINT)

AUGUST 25, 2000  
(DATE)

SIGNATURE: *Charles F. Haas* \*

ADDRESS: 1601 BELVEDERE ROAD, SUITE 200 EAST, WEST PALM BEACH, FL 33406

TELEPHONE: (561) 686-1551 FAX: ( 561) 471-120

STATE LICENSE #: AD-0010779

COUNTY LICENSE #: 1998-03826 (PALM BEACH COUNTY)

CITY LICENSE #: 8720022900-2 (WEST PALM BEACH)

LICENSE TYPE: OCCUPATIONAL

CERTIFICATIONS: CPA FIRM

TAX I.D. # 59-1934067

\*PLEASE AFFIX SIGNATURE WHERE INDICATED.

## DRUG FREE WORKPLACE

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this form complies fully with the above requirements.

THIS CERTIFICATION is submitted by CHARLES F. HAAS the  
(INDIVIDUAL'S NAME)  
PARTNER of HAAS, DIAZ & CO.  
(TITLE/POSITION WITH COMPANY/VENDOR) (NAME OF COMPANY/VENDOR)

who does hereby certify that said Company/Vendor has implemented a drug free workplace program which meets the requirements of Section 287.087, Florida Statutes, which are identified in numbers (1) through (6) above.

SIGNATURE Charles F Haas DATE 8/25/00

## DRUG FREE WORKPLACE

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy on maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this form complies fully with the above requirements.

THIS CERTIFICATION is submitted by ZENORA S. KERR WARD the  
(INDIVIDUAL'S NAME)

PARTNER of WARD & SMITH, P.A.  
(TITLE/POSITION WITH COMPANY/VENDOR) (NAME OF COMPANY/VENDOR)

who does hereby certify that said Company/Vendor has implemented a drug free workplace program which meets the requirements of Section 287.087, Florida Statutes, which are identified in numbers (1) through (6) above.

SIGNATURE Zenora S. Kerr Ward DATE 8/25/00

CITY OF RIVIERA BEACH  
NOTIFICATION OF PUBLIC ENTITY CRIMES LAW

Pursuant to Section 287.133, Florida Statutes (1995), you are hereby notified that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 [F.S.] for CATEGORY TWO [\$10,000.00] for a period of 36 months from the date of being placed on the convicted vendor list.

Acknowledged by:

Acknowledged by:

HAAS, DIAZ & CO.

Firm Name

WARD & SMITH, P.A.

Firm Name

Charles F Haas  
Signature

Zenora S. Kerr Ward  
Signature

CHARLES F. HAAS, PARTNER

Name & Title (Print or Type)

ZENORA S. KERR WARD, PARTNER

Name & Title (Print or Type)

## Qualifications and Experience

### Related Work Experience – Haas, Diaz & Co.

The following are examples of the services the firm provides to governmental clients. All clients listed are current clients of the firm.

	Auditing Services	Management Consulting	Computer Consulting	Arbitrage Services
Village of Wellington	✓	✓		✓
Town of Highland Beach	✓	✓	✓	
Town of Palm Beach Shores	✓			
Village of Palm Springs	✓	✓	✓	✓
Village of North Palm Beach	✓	✓		
Town of Lantana	✓	✓		
Town of Lake Clarke Shores	✓	✓	✓	
Town of Manalapan	✓	✓		
Town of Mangonia Park	✓	✓		
Islamorada, Village of Islands	✓	✓		
City of Greenacres	✓			
School District of Palm Beach County	✓			
Loxahatchee River Environmental Control District	✓	✓	✓	
Indian Trail Improvement District	✓	✓	✓	✓
Lake Worth Drainage District	✓	✓	✓	
County Line Drainage District	✓			
East Charlotte Drainage District	✓			
Joshua Water Control District	✓			
Pine Tree Water Control District	✓			
Loxahatchee Groves Water Control District	✓	✓	✓	
South Central Regional Wastewater Treatment & Disposal Board	✓	✓		
East Central Regional Wastewater Treatment Facilities	✓	✓		
Palm Beach County Health Facilities Authority	✓			
Northern Palm Beach County Improvement District	✓	✓	✓	✓
South Indian River Water Control District		✓	✓	✓
Everglades Agricultural Area Environmental Protection District		✓		
Delray Beach Housing Authority		✓	✓	

# Qualifications and Experience

## Related Work Experience – Ward & Smith, P.A.

The following are examples of the services the firm has provided to governmental and not-for-profit clients.

	Auditing Services	Management Consulting	Computer Consulting	Arbitrage Services
City of Sunrise *	✓			
Palm Beach County *	✓			
Workforce Development Board *	✓			
South Florida Water Management District *	✓			
Northern Palm Beach County Improvement District (subcontractor)	✓			
Pleasant City Community Redevelopment Corporation, Inc.	✓			
Urban League of Palm Beach County, Inc.	✓	✓		
Total Community Development, Inc.		✓		
Sickle Cell Foundation of Palm Beach County, Inc.	✓			
New Day Outreach Center, Inc.		✓		
R.J. Hendley Christian Education Center		✓		
Center for Information and Crisis Services, Inc.	✓			

\* Joint venture



Florida Department of Labor and Employment Security  
Minority Business Advocacy and Assistance Office

Jeb Bush  
Governor

Mary B. Hooks  
Secretary

March 21, 2000

Zenora Kerr Ward  
Ward & Smith, P.A.  
5725 Corporate Way, Suite 206  
West Palm Beach, Fl 33407

Arnell Bryant-Willis  
Director of Operations

Dear Ms. Ward:

Your application for Statewide and Inter-Local Minority Business Enterprise (MBE) certification is hereby approved and effective for a period of one year from March 21, 2000 thru March 21, 2001. The certification of the business, which is designated as **African American** is applicable when business is conducted consistent with this specialty(s).

**Accounting/Auditing Services**

Your submittal of bids to supply other products or services outside of this specialty(s) will result in the contracting entity not getting credit for MBE participation in that business transaction.

You are encouraged to become an active bidder in the participating programs of the Statewide and Interlocal Agreement. You must remember, however, that the disparity studies of most MBE/DBE programs determine the relevant market areas in which certified businesses must be domiciled. (See the attached directory list of participating entities and their relevant market areas). **You must also be aware that some of the participating entities have certification eligibility criteria unique to those of the reciprocal certification network because they have been imposed by their disparity studies. As a result, some program offices may ask you to submit additional documentation before you are eligible to bid as a certified MBE with that jurisdiction or organization.**

The Laws of Florida require that the Minority Business Advocacy and Assistance Office be advised of any and all changes in the company's status occurring within fourteen (14) days of the transfer or change taking place. This law is applicable throughout the effective certification dates.

Questions concerning your MBE/DBE certification may be directed to this office at (850) 487-0915.

Sincerely,

Wesley Hall  
Deputy Director

WH/and

effective date of a transfer, Franchisee shall submit to the Mayor an application for approval of the transfer. Such application shall include the following:

1. A statement of the reason for the contemplated transfer.
2. The name, address, and telephone number of the proposed transferee.
3. A detailed statement of the corporate or other business entity

organization of the proposed transferee, including but not limited to the following:

(a) the names, business addresses, state of residence and country of citizenship of all general partners and/or corporate officers and directors of the proposed transferee.

(b) the names, business addresses, state of residence and country of citizenship of all persons and entities having, controlling, or being entitled to have or control five percent (5%) or more of the ownership of the proposed transferee and the respective ownership share of each such person or entity.

(c) the names and addresses of any of the proposed transferee and of any other business entity owning or controlling in whole or in part or owned or controlled in whole or in part by the proposed transferee.

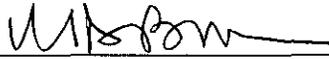
(d) detailed and complete financial statements including audited reports of the proposed transferee, prepared by a certified public accountant and certified by a duly authorized financial officer of the proposed transferee, for the three (3) fiscal years immediately preceding the date of the request for transfer approval, and a letter or other acceptable evidence in writing from a duly authorized officer of the proposed transferee setting forth a clear and accurate

RESOLUTION NO. 175-00

-2-

PASSED and ADOPTED this 4th day of October, 2000.

APPROVED:



Michael D. Brown  
Mayor



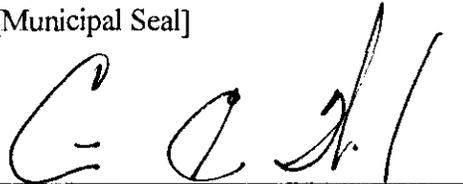
Edward Rodgers  
Chairperson

Attest:

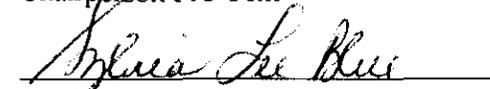


Elizabeth Wade  
Chairperson Pro Tem

[Municipal Seal]



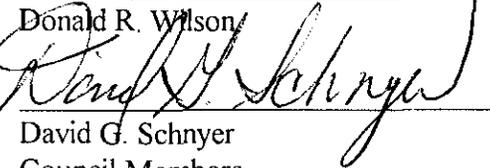
Carrie E. Ward, CMC/AAE  
City Clerk



Sylvia Lee Blue



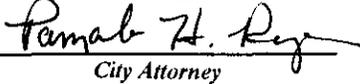
Donald R. Wilson



David G. Schnyer  
Council Members

PHR:dpm [092600]

Approved as to legal sufficiency

By:   
City Attorney

Date: 9/28/00

Motion by: E. Wade

Second by: S. Blue

E. Rodgers	<u>aye</u>
E. Wade	<u>aye</u>
S. Blue	<u>aye</u>
D. Wilson	<u>aye</u>
D. Schnyer	<u>aye</u>

# CITY OF RIVIERA BEACH, FLORIDA

## FRANCHISE AGREEMENT

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**CABLE TELEVISION FRANCHISE AGREEMENT  
BETWEEN THE CITY OF RIVIERA BEACH, FLORIDA AND  
COMCAST CABLEVISION OF WEST PALM BEACH, INC.**

A FRANCHISE AGREEMENT ENTERED INTO BETWEEN THE CITY OF RIVIERA BEACH, FLORIDA, AND COMCAST CABLEVISION OF WEST PALM BEACH, INC., PURSUANT TO THE CITY OF RIVIERA BEACH, FLORIDA CABLE TELEVISION ORDINANCE NO. 2861 AND GRANTING A FRANCHISE TO OWN, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF RIVIERA BEACH, FLORIDA, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF SUCH FRANCHISE AND PROVIDING FOR REGULATION AND USE OF SUCH SYSTEM.

THIS AGREEMENT, effective this 4<sup>th</sup> day of October 2000, is by and between the CITY OF RIVIERA BEACH, FLORIDA (the "City") and Comcast Cablevision of West Palm Beach, Inc. ("Comcast" or "Franchise").

WHEREAS, pursuant to the Communications Act of 1934, as amended, 47 U.S.C. §§ 521 et seq., the City may grant or renew a franchise to construct, operate and maintain a cable television system; and

WHEREAS, on June 21, 2000, the City Council of Riviera Beach, Florida ("Council"), adopted Ordinance No. 2861, providing for the issuance and regulation of cable television franchises for, and the installation, construction and operation of cable television systems within the City; and

WHEREAS, Comcast's existing franchise granted by the City expired March 6, 1998; and

WHEREAS, Comcast has provided the City with its acceptance of the terms and conditions of this Franchise as representing an extension of its previous agreement; and

WHEREAS, Comcast desires to renew its franchise to construct, install, maintain, and

operate a cable system in the City, and has applied to the City for such renewal; and

WHEREAS, the construction, installation, maintenance, and operation of such a system involves the use and occupation of the Streets of the City, over which the City exercises governmental control; and

WHEREAS, the Council has evaluated Comcast's request in light of the requirements of Federal and State law and the Ordinance, and has conducted a public hearing concerning Comcast's request and application; and

WHEREAS, the Council has relied on Comcast's representations both oral and written and has considered all information presented to it by Comcast, the Mayor and City Staff, the City's consultants, and the public; and

WHEREAS, based on said representations and information, the Council has determined that a grant of nonexclusive franchise to Comcast to construct, install, maintain and operate a cable television system in the City, subject to the terms and conditions set forth herein and in the Ordinance, is consistent with the public interest; and

WHEREAS, the Council determined to grant Comcast a nonexclusive franchise to own, construct and operate a cable television system within the City, subject to the terms and conditions of the Ordinance and subject also to the City and Comcast entering into a franchise agreement; and

WHEREAS, the City and Comcast have reached agreement on the terms and conditions of such a franchise agreement.

NOW, THEREFORE, in consideration of the City's grant of Comcast's franchise to own, construct, install, maintain and operate a cable system within the City, and to use and occupy the

Streets of the City for that purpose, and in consideration of Comcast's promise to provide cable service to residents of the City pursuant to the Ordinance and under the terms and conditions set forth herein, and in consideration of the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged, the franchise is hereby granted and

THIS SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

Section 1. Definitions. Except as otherwise provided herein, the definitions in Section 10-31.1.1 of Ordinance No. 2861 of the City of Riviera Beach, Florida shall govern this Franchise Agreement. In addition, the following definitions shall apply:

A. Ordinance shall mean Ordinance No. 2861 of the City of Riviera Beach, Florida and as said Ordinance may hereinafter be amended.

B. Franchisee shall mean Comcast, and its lawful and permitted successors, assigns and transferees pursuant to Section 28 and 29 of this Agreement and Ordinance No. 2861 of the City of Riviera Beach, Florida.

C. Franchise Area shall mean the entire area within the legal boundaries of the City, and such other areas as may hereinafter be annexed or incorporated by the City during the term of the franchise.

D. Cable Service shall mean the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service; provided, however, that for purposes of Sections 2(B) and 22 herein, respectively, high-speed Internet access

shall be treated as a cable service, unless otherwise prohibited by state or federal law.

E. Notice to the cable operator shall be deemed effective upon receipt. Notice to the City shall be effective upon receipt by the Mayor.

Section 2. Grant of Franchise.

A. Subject to the terms of this Franchise Agreement and the Ordinance, the City hereby grants Franchisee a franchise for the right and privilege to own, construct, install, maintain, and operate a cable television system within the Franchise Area.

B. The cable system herein franchised shall be used and operated only for the purposes of providing cable services unless and until franchisee obtains written authorization from the Mayor to provide other services, including but not limited to, telephony and non-cable video services (such as open video systems), unless the City is otherwise prohibited by applicable law from the exercise of such authority.

Section 3. Term of Franchise. This franchise shall be for a period of ten (10) years unless otherwise sooner terminated or otherwise extended in accordance with the terms of this Franchise Agreement. The Franchise shall commence upon the date of the Council Resolution approving the grant of the franchise, provided the City is in receipt of the written acceptance required by the Ordinance and Section 36 hereof.

Section 4. Non-Exclusive Franchise. The Franchisee's right to use and occupy the Streets shall be non-exclusive, and the City reserves the right to grant a similar or other use of said Streets, or any portions thereof, to any person, including the City, at any time during the term of this Franchise Agreement.

Section 5. Franchise Subject to Communications Act, State Law and Ordinance.

A. This Franchise Agreement is subject to and shall be governed by all terms, conditions and provisions of the Communications Act, any amendments thereto, and any other applicable provision of Federal, State or local law.

B. This Franchise Agreement is subject to and shall be governed by all terms, conditions and provisions of the Ordinance of the City except to the extent such requirements are modified or waived as expressly set forth herein.

Section 6. Franchisee Subject to Other Laws, Police Power.

A. The Franchisee is subject to and agrees to comply with all applicable local, city, state and federal laws, ordinances, rules, regulations, and orders.

B. The Franchisee shall at all times be subject to all lawful exercise of the police power of the City, and this Agreement is not limited the City's exercise of such power in any way.

Section 7. Reservation of Rights. The City reserves the right to acquire, purchase, own, and/or operate a cable system to the extent permitted by local, state, and federal law.

Section 8. Insurance.

A. Franchisee shall obtain and maintain insurance of the types and minimum amounts required in Section 10-31.1.10 of the Ordinance in such a manner as to comply with each and every requirement of the Section.

B. The Franchisee shall provide proof to the City Manager of compliance with this Section no later than forty-five (45) days from the date of the Council resolution approving the grant of the franchise. Failure to provide the City Manager with proof of insurance within the

prescribed time period will render this Franchise Agreement and the grant of the franchise null and void without further action by the City.

Section 9. Indemnification of the City. Pursuant to Section 10-31.1.10 of the Ordinance, Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, Councils, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses arising out of the construction, maintenance or operation of its cable system, the conduct of Franchisee's business in the City, or in any way arising out of the Franchisee's enjoyment or exercise of the Franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Ordinance or Franchise agreement, provided, however, that Franchisee's obligation hereunder shall not extend to any claims caused by the misconduct or gross negligence of the City, its officials, boards, Council, agents or employees. This provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceeding; and claim arising out of copyright infringements or a failure by the Franchisee to secure consents from the owners, authorized distributors, or providers of programs to be delivered by the cable system, claims arising out of Section 638 of the Communications Act, 47 U.S.C. 558, and claims against the Franchisee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark or patent, or of any other right of any person, firm or corporation or any suit, claim or demand for violation of any law that arises from Franchisee's provision or failure to provide

channels, facilities and services to handicapped persons including but not limited to the hearing impaired. Franchisee shall obtain the approval of the City Attorney of any counsel to be retained to represent the City's interest pursuant to this Section, which approval shall not be unreasonably withheld. City agrees to notify Franchisee, in writing, within ten (10) days of City receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own cost if in the City's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing in the provision shall be construed to affect in any way the City's rights, privileges, and immunities as set forth in Section 768.28, Florida Statutes.

Section 10. Construction Bond. Pursuant to Section 10-31.1.12 of the Ordinance, prior to any cable system construction, upgrade, rebuild or other work in the streets, Franchisee shall furnish a construction bond in favor of the City in an amount equal to fifty percent (50%) the value of the construction. If such construction bond is not furnished to the City ten (10) days prior to the start of any such construction, construction shall be delayed until such time as the construction bond is provided in a form acceptable to the City Manager. The construction bond must be approved by the City Manager or his/her designee, which approval shall not be unreasonably withheld. The construction bond shall be maintained until said construction work is completed and activated and for a period of twelve (12) months thereafter. Franchisee shall notify the City Manager in writing when it believes the construction has been completed and the date on which it believes the bond may be eliminated pursuant to this Section.

Section 11. Use of Streets.

A. Franchisee agrees at all times to comply with and abide by all applicable provisions of the City Code.

B. Franchisee's cable system distribution facilities shall be installed and maintained underground where other telecommunications, cable, communications, power, electric company and utility facilities are located underground.

C. Franchisee shall utilize, with the owner's permission, existing conduits, poles, or other facilities whenever feasible. The Franchisee has the duty and the responsibility to obtain or establish the existence of an easement or dedicated for its use.

D. All of Franchisee's transmission lines, equipment, structures and other facilities shall be installed, located and maintained so as to cause minimum interference with the rights and convenience of property owners. The City may issue such rules and regulations concerning the installation and maintenance of a cable system installed in, on, or over public Streets, as may be consistent with the Ordinance.

E. All safety practices required by applicable federal, state or local law or accepted industry practices and standards shall be used during construction, maintenance, and repair of the cable system.

F. As required by the City, and upon receipt of written notice from the City, Franchisee shall remove, relocate, replace or modify at its own expense (except as otherwise required by law) its facilities within any public Street as set forth in Section 10-31.1.21 of the Ordinance.

G. Before commencing any construction on or otherwise disturbing any private

property or public Streets as a result of its construction or operations, Franchisee shall obtain any required permits and pay any required fees. Franchisee shall, at its own expense, restore such property pursuant to the requirement of the Ordinance. If such restoration is not performed in a reasonable and satisfactory manner within thirty (30) business days, the City may, after prior written notice to Franchisee, cause the repairs to be made at Franchisee's expense.

H. In the event of an emergency, the City shall make a good faith effort to provide notice to Franchisee. However, if the City is required to perform emergency Street work requiring relocation of Franchisee's facilities in the Streets, then Franchisee shall reimburse the City for its reasonable costs associated with such relocation.

I. Franchisee shall not place facilities, equipment or fixtures where they will unreasonably interfere with any other companies lawfully using the public rights-of-way serving the residents of the City. All such facilities, equipment or fixtures placed in any public Street or public right-of-way shall, to the best of the Franchisee's ability, be placed close to the line of the lot abutting on the public Street, in a manner so as not to interfere with use of the public Street.

J. Neither the Construction Bond nor the Franchise Fee payment required pursuant to the Ordinance or this Agreement shall reduce Franchisee's obligation to pay any and all permit fees generally required by the City of other entities accessing or using the public rights of way unless otherwise prohibited by applicable law.

Section 12. Minimum System Facilities and Services.

A. Pursuant to Section 10-31.1.13 of the Ordinance, Franchisee's cable system shall no later than December 31, 2003, at a minimum, be able to pass frequencies of at least 860

MHZ; have a minimum channel capacity of at least seventy-eight (78) analog video channels or the equivalent thereto; and have video channel capacity to the headend from the locations specified herein, and in the amount necessary to satisfy the downstream access channel requirements set forth in section 16 hereof. In the event that Franchisee completes said rebuild to provide activation to all subscriber in the city by December 31, 2002, the term of this agreement shall be extended from 10 years to 12 years. In the event that Franchisee completes said rebuild to provide activation to all subscriber in the city by December 31, 2001, the term of this agreement shall be extended from 10 years to 15 years.

B. Municipal Facilities

1. Franchisee agrees to provide four cable outlets per location (including installation and service) without charge, to the City facilities as set forth in Exhibit B to this Franchise Agreement, and upon request of the City to all facilities of the City that may be constructed or opened within the City or annexed areas during the term of this Franchise Agreement, within sixty (60) days of receipt of a request from the City Manager or his designee. Such service shall at minimum include the basic cable service tier (BST), all programming offered on the expanded and cable programming service tier.

2. After Franchisee or its affiliate makes cable modem service available within the Franchise Area or node, Franchisee will, upon written request, provide at least one free cable modem (including installation) and free Internet service to a location at City Hall designated by the City Manger. Upon written request, Franchisee shall provide modem and Internet service to four additional outlets at municipal locations at no more than Franchisee's direct cost. Should the

City desire additional outlets beyond those set forth above within municipal locations to receive modem and Internet service, the Franchisee shall charge the City no more than its lowest residential or commercial rate charged for such Internet service within Palm Beach County.

3. As part of Franchisee's upgrade of the cable system to 860 MHz, at no cost to the City, Franchisee hereby agrees to wire each and every floor of the municipal building located at 600 West Blue Heron Blvd., Riviera Beach, FL 33404 and for installing all facilities, cabling, electronics and wiring necessary for live cable-casting of the meetings from the Council Chambers.

C. School Commitments.

1. Where Franchisee's plant is the closest franchised cable operator to any public or private school expressly excluding home schooling serving grades K-12 (as defined in Ch. 205.022(6)(b) FL Stat., as amended) within the territorial boundary of the City, Franchisee hereby agrees to provide, at minimum, four cable outlets and cable service at no charge to those schools listed on Exhibit B. Any public or private schools expressly excluding home schooling serving grades K-12 (as defined in Ch. 202.022(6)(b)) FL Stat., as amended constructed after the effective date hereof shall upon written request be provided with installations at no more than Franchisee's direct cost. However, where Franchisee receives reasonable prior written notice of the construction of a new facility, Franchisee shall cooperate with the builder to install all cable related facilities during construction so as to allow for activation of cable services simultaneous with occupancy of the building. If any internal wiring installation is requested to serve additional outlets in any school, it will be provided at no more than Franchisee's actual cost. Internal wiring will be

provided without charge if Franchisee is able to coordinate with other comparable electrical wiring installation in cases of new construction or substantial rehabilitation of existing schools in the City.

2. If reasonably available, Franchisee will provide to each connected school materials for teachers that explain the educational applications of Franchisee's cable services and programming.

3. After Franchisee or any affiliate offers cable modem service in the Franchise Area or node, Franchisee will, upon written request by the City manager, the School Board or any individual school, provide those schools within the City requesting such service with at minimum one free cable modem and free unlimited use of any on-line services available on Franchisee's system. At a minimum, such on-line service will provide access to the Internet. Additional cable modems and service will be provided at no more than cost. Operational support and services (for example, assisting connected schools in setting up and maintaining reliable Internet connections), will be provided to connected schools, upon request. In addition, upon request but no more than once per year, Franchisee will conduct or sponsor a training program in the City to educate teachers about its on-line service and to provide connected schools with an opportunity for hands-on training.

D. Franchisee agrees not to seek to recover the cost for the connections provided pursuant to sub-sections (B) and (C) above as external or other costs nor shall such costs be considered fees, taxes or in-kind benefits.

E. Nothing herein shall preclude Franchisee from providing benefits to schools or municipal facilities which exceed those provided herein.

F. All video signals received for transmission that contain closed circuit captioning information for the hearing impaired shall in turn contain such information in the form received when transmitted by the cable operator to the subscribers of the system.

G. Franchisee's system shall be capable of transmitting, and shall transmit, to subscribers any stereo signals and any other form of advanced television signals received and carried by the system in the form received.

H. Franchisee shall take affirmative, economically feasible steps to ensure maximum availability of the services and facilities of the system, including without limitation all access channel services and facilities, to handicapped persons, including hearing impaired persons. Franchisee shall comply fully with all applicable laws concerning handicapped or disabled persons.

I. If the Franchisee makes any fiber capacity available for commercial lease to any third party, upon the request of the City Manager, the Franchisee shall lease to the City capacity equivalent to at least one analog video channel (6MHZ) on terms and conditions no less favorable than those offered by Franchisee or its affiliate to any other third party. Any other lease of capacity shall be upon mutually agreeable terms and conditions. The Franchisee shall allow the City to co-locate necessary equipment with the cable system and to interconnect such equipment into the cable system, at the City's cost, provided said equipment does not interfere with the cable system's technical integrity.

Section 13. Technological Improvements to System.

A. The Franchisee and the City recognize that the technology of cable system and the services available are advancing at a rapid rate. Thus, Franchisee hereby agrees to provide

the City and its subscribers, during the term of this agreement, with at minimum, comparable technology, products, services, and benefits, including but not limited to those related to cable modems and Internet access which are provided by the Franchisee or its parent, affiliate or subsidiary to any other community in Palm Beach County, FL.

B. In the event Franchisee offers cable Internet services over its cable system in the City, it shall provide open access on a "Most Favored Nations" basis. This means (1) any access through its cable modem platform which Franchisee makes available to any unaffiliated third party providers of Internet access and on-line services in any other community in Palm Beach County will be made available by Franchisee to unaffiliated providers in the City on comparable terms and conditions, or (2) any access through its cable modem platform which Franchisee provides to unaffiliated third party providers of Internet access and on-line services due to agreements with government entities in Palm Beach County or the lawful non-discriminatory regulations of government entities in Palm Beach County, will be made available by Franchisee to all such providers in the City on comparable terms and conditions. Franchisee shall comply with all lawful requirements with respect to access to Franchisee's cable modem platform for providers of Internet access and on-line services.

C. Upon request, but no sooner than on the Fifth Annual Anniversary of the grant of this Franchise, the Franchisee shall report in writing to the City Council, in a form agreed to between to the City Manager and Franchisee, on technological advances and the availability of new and enhanced services for cable systems. The report shall state what plans, if any, the Franchisee has for the upgrade or rebuilding of its cable system to the State-of-the-Art. The report

shall also contain an analysis of the impact of updating the cable system to include new advances upon the Franchisee's technical plant, customer service, subscriber rates, and the Franchisee's financial capabilities. The Franchisee shall also provide the City manager with a comparison of the services, facilities and technologies utilized by Franchisee or any parent, affiliate or subsidiary of Franchisee in all jurisdictions in the State of Florida including, but not limited to a description of the services, facilities and technologies and an assessment of the impact on subscriber rates associated with implementing the new technologies in the City.

Section 14. Technical Standards. Franchise shall maintain and operate its cable system, at a minimum, in full compliance with FCC regulations and the Ordinance. Franchisee shall further comply with each of the following requirements:

A. All antennae, supporting structures, and outside plant used in operating and maintaining Franchisee's cable system within the City shall comply with all generally accepted industry standards and all applicable federal, state, county, City and/or utility laws, ordinance, rules, regulations and applicable lease agreements relating to tower structures and outside plant.

B. All construction, installation and maintenance of Franchisee's cable system shall comply with the National Electrical Safety Code, the National Electrical Code, all applicable state and local laws and regulations, and accepted industry practices.

C. Franchisee's cable system shall, at a minimum, meet or exceed all technical and signal quality standards of the FCC and the National Cable Television Association, including such standards as hereinafter may be adopted or promulgated.

Section 15. Proof of Performance Tests. Franchisee shall perform, expense, the proof of

performance tests as required by FCC rules and Section 10-31.1.14(c) of the Ordinance to demonstrate compliance with the requirements of that Section, this Franchise Agreement, FCC standards and the standards of Good Engineering Practices for Measurements on Cable Systems, published by the National Cable Television Association. Notwithstanding anything to the contrary, upon written request, Franchisee will provide proof of performance test results within thirty (30) days to the City Manager.

Section 16. Access Channels and Facilities.

A. Access Channel Capacity.

1. Upon the effective date of the Franchise, and within no more than 120 days of receipt of a written request from the City, the Franchisee shall provide to the City, for its exclusive use one channel to be used for non-commercial governmental and/or educational access (until the completion of the rebuild, the access channel will only be available to approximately 90% of Franchisee's subscribers the Franchise Area); and that equipment listed in Exhibit C or the equivalent thereof plus any necessary cabling and electronics.

2. After the rebuild required pursuant to Section 12(A) herein and within sixty (60) days of receipt of written request from the City Manager, Franchisee agrees that it will cablecast live all City Council meetings.

3. The City shall have the right to request an additional access channel for non-commercial governmental and/or educational access if, at any time during the term of the Franchise, the initial access channel is programmed at least six hours per day with locally produced, (which may include County government and education programming) non-character generated, non-

duplicative programming, Monday-Friday for four consecutive weeks. Notwithstanding anything to the contrary, in no event shall the City be denied the exclusive use of the first access channel.

4. Franchisee shall make available all necessary headend and system electronic and distribution equipment so that any programming transmitted from the City Hall municipal complex may be transmitted to all subscribers in the Franchise Area on the access channel(s) provided pursuant to Section 16 herein. The City Hall Municipal Complex will be linked to the headend by the most technically feasible and cost effective means. Franchisee will make available the necessary system electronic and distribution equipment to Franchisee's headend and distribution system to make possible the live cablecasting of the programming from the City Hall.

5. During the term of the Franchise, if the Franchisee decides to provide all channels on the Cable System as digital channels and, thus, no longer provides analog channels, the Franchisee shall provide the City at least one hundred twenty (120) days notice before implementing such change. On and after the date of such change, the City shall have the right, upon their written request, to use digital channel capacity on the basic tier equivalent to the spectrum capacity occupied by the analog access channels being provided to the City at the time such change is made; provided the City meets the usage triggers set forth above for any additional equipment channel capacity being requested.

6. Franchisee agrees that all access channels provided to the City in accordance with Section 16A.1 and 3 above and all access channels carrying County education and government programming will be provided to subscribers in the Franchise Area on the system as a part of the lowest tier of basic service and that, if programming information is supplied to Franchisee

in writing, Franchisee will publicize programming on the access channel as a part of any ordinary printed or on-air program listings it provides which include program listings for the basic tier of service or will include access channel programming listings in any monthly program guide sent to subscribers, which include program listings for the basic tier of service.

7. Consistent with Section 16A.1, 3, and 6 above Franchisee shall be obligated to provide a maximum of three (3) government/education access channels, to the City. It will be at the City's sole discretion as to the combination of City and County access programming that shall be provided in the Franchise Area.

8. In the event the terms of this Franchise is extended from ten (10) years to fifteen (15) years pursuant to Section 12(A) herein, Franchisee shall in year ten (10) replace all equipment provided pursuant to Section 16 (A) (1) Exhibit B at a cost not to exceed Forty Thousand Dollars (\$40,000.00).

B. Access Facilities, Equipment and Support.

1. Franchisee, at Franchisee's sole expense, shall provide all on-site facilities and cable production equipment as described in Section 16 above and on Exhibit C attached hereto, necessary to permit both live and delayed cablecasting of all City Council meetings and other City or public meetings, events and programs held at the City Hall complex, to all subscribers in the City upon the completion of the rebuild. The system electronic and distribution facilities and equipment and cabling provided by Franchisee shall be of sufficient quality and performance specifications to enable all material cablecast on the access channels provided pursuant to this Agreement to meet all video and audio signal quality standards adopted by the FCC and as provided

generally by the Franchisee on the system when transmitted downstream to subscribers, including any such standards as may be adopted or amended during the term of this Franchise Agreement.

2. Franchisee shall provide, at its sole expense, personnel for initial training of authorized representatives of the City to operate the production and transmission equipment in such a manner so as to ensure that the quality of the cablecast would be the same as if an employee of the Franchisee was fulfilling the duties.

3. In addition to the City Council meetings, the City Manager may designate up to a maximum of twenty four (24) municipal or civic events (“designated Municipal Events”) per year that Franchisee shall cablecast on the first access channel. Franchisee, if capable, (for the purpose of this Section “capable” means that Franchisee has the equipment and manpower), shall video tape such events and provide the City Manager with a copy of such video tape so that the City may play such tape on a designated access channel. If Franchisee has the capability, as defined above, to video tape Events, the City Manager shall notify Franchisee of each such Designated Municipal Event, and its place and time, no less than one (1) week before each such Designated Municipal Event is held. Franchisee shall also provide the City with a videocassette copy of every Designated Municipal Event that it videotapes. In addition, Franchisee agrees to provide the City with advertising avails to advertise municipally sponsored events during reasonable viewing periods with a value of not less than Five Thousand Dollars (\$5,000.00) per year during each year of the term of this Agreement. The value of said time shall be calculated based on the lowest rate franchisee charges to any adviser.

4. The City may cablecast character generated information on the City’s

designated Access Channel from the designated location in the City Hall Municipal Complex at any time of its choosing.

5. Franchisee shall make its studio facilities, if any, located in Palm Beach or Martin County reasonably available so as not to interfere with Franchisee's normal business operation for use by the City and area educational institutions for government and educational access programming.

6. Franchisee hereby agrees to provide to the City a grant in the amount of One Hundred Thousand Dollars (\$100,000.00). The Franchisee shall pay the full balance of the grant to the City no later than the earlier of ninety (90) days after the date of the Council approval of this Franchise, or ten (10) days after the close of the transaction between Franchisee and Adelpia Communication Corp. is completed.

7. Notwithstanding anything to the contrary, Franchisee hereby agrees that the facilities, equipment, services, and all other support to be provided by Franchisee pursuant to this Franchise constitute capital costs which are required by the franchise to be incurred by Franchisee for public, educational, or governmental access facilities within the meaning of Section 622(g)(2)(C) of the Communications Act, 47 U.S.C. § 542 (g) (2) (C); that such grant does not constitute a franchise fee tax or in-kind benefit within the meaning of Communications Act, State law, the Ordinance, or this Franchise Agreement; and that Franchisee hereby waives, and will not assert in any proceeding, any claim to the contrary. The City and Franchisee further agree that such amount, whether in the form of a facilities equipment, advertising time or financial amount shall not be passed through to subscribers in excess of One Hundred Thousand Dollars (\$100,000.00).

Moreover, it is hereby agreed that any passthrough shall be amortized evenly over the ten (10) year term of this franchise.

Section 17. Commercial Leased Access. Franchisee shall provide commercial leased access channels as required by Federal Law.

Section 18. Emergency Use of Facilities.

A. Franchisee shall, at minimum, comply with all FCC rules, Ordinance No. 2861 of the City of Riviera Beach and procedures agreed upon with Palm Beach County with respect to emergency use of facilities.

B. Franchisee shall provide standby power generating capacity at the cable system headend and be capable of providing at least two (2) hours of emergency power supply. Standby batteries, capable of providing at least two (2) hours of emergency power, shall be installed in the cable distribution plant.

Section 19. Lock-out Devices. Franchisee shall make available at reasonable charge to any residential subscriber, upon the request of such subscriber, a “parental guidance” or “lock-out” device which shall permit the subscriber, at his or her option, to eliminate the audio and visual transmissions from any channel reception to the extent technically feasible.

Section 20. Line Extension Policy. Upon request and payment of all applicable charges, and provided that the requesting person gives Franchisee access to his or her premises in order to furnish, maintain and continue to offer service to that person, Franchisee shall, throughout the term of this Agreement, promptly furnish, maintain, and continue to provide all services distributed over the system to any person at his or her place of residence or commercial location within the City

where Franchisee's plant is the closest activated plant to the location.

Section 21. Cable Home Wiring Commitments.

A. At minimum, Franchisee shall comply with all FCC rules regarding cable home wiring, as amended, from time to time.

B. Upon commencement of service, and annually thereafter, Franchisee will notify customers of their rights and options relating to cable home wiring, pursuant to applicable law.

Section 22. Franchisee Fee.

A. In consideration of the privilege granted herein to use and occupy the Streets to own, construct, install, maintain and operate its cable system, Franchisee shall pay to the City a franchise fee in the amount of five percent (5%) of its gross revenues as defined in Section 10-31.1.1(q) of the Ordinance. However, should a change in applicable law increase the maximum allowable franchise fee percentage to an amount greater than five percent (5%), Franchisee hereby agrees to pay to the City that higher amount provided however, that such increase is affirmatively imposed by the City after a public hearing at which both the public and Franchisee are allowed to comment on the impact of the higher fee. Franchisee will pay to the City such higher amount effective with the next available billing cycle in which the higher charge may be placed on subscribers bills.

B. Franchisee shall pay the franchise fee to the City in full compliance with the requirements set forth in Section 10-31.1.16 of the Ordinance and Franchisee hereby agrees that its obligation to pay such amount became effective with the adoption of said Ordinance on June 21, 2000.

C. The annual statement required to be filed by the Franchisee with the City pursuant to Sections 10-31.1.16 and 10-31.1.17 of the Ordinance shall be audited and reported on by a certified public accountant or certified as true and correct by a duly authorized financial officer of Franchisee. Franchisee shall bear the cost of the preparation and audit of such statements.

D. The acceptance by the City of any payment from Franchisee of the franchise fee shall not constitute a release or an accord and satisfaction of any claim the City may have against Franchisee for performance of any of its obligations under the Ordinance, this Franchise Agreement, or local, State or Federal law, including, without limitation, Franchisee's obligation to pay the proper franchise fee amount owed, subject, however, to applicable statute of limitations, if any.

E. Following the expiration or the termination for any reason of its franchise, Franchisee shall pay the franchise fee owed as of the date that its operations ceased within ninety (90) calendar days of ceasing such operations. Such payment shall be accompanied by a gross revenues statement and audit report prepared by a certified public accountant showing the revenues received by Franchisee since the end of the previous fiscal year.

F. Franchisee expressly agrees that: (i) the franchise fee payments to be made pursuant to this Section shall not be deemed to be in the nature of a tax; (ii) such franchise fee payments shall be in addition to any and all taxes of a general applicability and not applicable solely to cable television operations within the City or other fees or charges which Franchisee shall be required to pay to the City or to any state or federal agency or authority, as required herein or by law, unless otherwise prohibited by applicable law; (iii) Franchisee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said franchise fee payments from or

against any of said City taxes or other fees or charges or general applicability which Franchisee is required to pay to the City, except as agreed herein or required by law; (iv) Franchisee shall not apply nor seek to apply all or any part of the amount of said franchise fee payments as a deduction or other credit from or against any of said City taxes or other fees or charges of general applicability, each of which shall be deemed to be separate and distinct obligations of Franchisee; (v) Franchisee shall not apply or seek to apply all or any part of the amount of any of said taxes or other fees or charges of general applicability as a deduction or other credit from or against any of its franchise fee obligations, each of which shall be deemed to be separate and distinct obligations of Franchisee; and (vi) the franchise fee specified herein is the minimum fair market value for the grant hereunder of a franchise for use of the Streets, including all public easements, public rights-of-way and other entitlement to use, occupy or traverse public property, for the purpose of operating a cable television system.

Section 23. Reports and Records. Upon request of the City Manager or his/her designee, Franchisee shall furnish the City with all of the information as required under the Ordinance.

Section 24. Right to Inspect Financial Records and Facilities.

A. Franchisee shall maintain a complete set of books and records, including plans, contracts, engineering, accounting, financial, statistical, customer and service records as required within Palm Beach County, FL.

B. Pursuant to the Ordinance, the City shall have the right to inspect, at Franchisee's local office, books and records as may be required by the City to perform its regulatory responsibilities under the Ordinance or applicable Federal, State or local law. The City agrees to

carry out any such inspection during Franchisee's normal business hours and upon reasonable notice.

Access by the City to perform its regulatory responsibilities to Franchisee's books and records shall not be denied on grounds that such books and records contain proprietary or confidential information.

C. The City shall accord all books and records that it inspects under this Section the degree of confidentiality such books and records are entitled to under Federal and State law. Franchisee's books and records shall not constitute public records, except to the extent required by Federal and State law.

D. Pursuant to the Ordinance, the City shall have the right to inspect Franchisee's facilities and property.

Section 25. Customer Service Requirements. Franchisee agrees to comply with each of the customer service requirements set forth in Section 10-31.1.18 of the Ordinance and as such requirements may be amended.

Section 26. City Purchase of Cable System. The City may, upon the recommendation of the City Manager and the approval of the Council, acquire ownership of and operate Franchisee's cable system in accordance with Section 10-1. 1. 25(d) or (e) of the Ordinance and applicable Federal Law.

Section 27. Modification of Franchise. Franchisee shall file an application with the City Manager for any modification of its franchise pursuant to the Ordinance. The application shall fully conform with each of the requirements set forth in that Ordinance that apply to applications for modification.

Section 28. Transfer of Franchise.

A. Franchisee shall not directly or indirectly assign, sell or transfer its franchise, or any right, title, or interest in same, this Franchise Agreement, or its cable system, nor shall any ownership interest or any other form of control of Franchisee or any lawful successor be transferred, assigned, directly or indirectly, without prior written notice to and approval of the City. In determining whether to approve a transfer, the City will consider the factors set forth in the Ordinance. However, in the event that an entity having a controlling interest of the Franchisee desires to transfer the franchise to another affiliated entity whose ownership is wholly controlled by the same entity, the City hereby agrees to designate such transaction a pro forma transfer pursuant to Section 10-31.1.1(dd) of the Ordinance. Where Franchisee provides reasonable notice to the City of an intracorporate transfer, the Franchisee need not comply with Section 1-31.1.7 and 24 of the Ordinance.

B. Franchisee shall file an application to transfer its franchise or to transfer control of Franchisee in full compliance with Sections 10-31.1.7 and 10-31.1.24 of the Ordinance unless such application has not been filed at least ninety (90) days prior to the effective date hereof.

Section 29. Procedures for Requesting Approval of Transfer.

In addition to the requirements set forth in the Ordinance, the following procedures shall be followed by Franchisee in requesting the City's consent to transfer its franchise or to transfer control of Franchisee unless such request has not been filed at least ninety (90) days prior to the effective date hereof.

A. At least one hundred twenty (120) calendar days prior to the contemplated

effective date of a transfer, Franchisee shall submit to the Mayor an application for approval of the transfer. Such application shall include the following:

1. A statement of the reason for the contemplated transfer.
2. The name, address, and telephone number of the proposed transferee.
3. A detailed statement of the corporate or other business entity

organization of the proposed transferee, including but not limited to the following:

(a) the names, business addresses, state of residence and country of citizenship of all general partners and/or corporate officers and directors of the proposed transferee.

(b) the names, business addresses, state of residence and country of citizenship of all persons and entities having, controlling, or being entitled to have or control five percent (5%) or more of the ownership of the proposed transferee and the respective ownership share of each such person or entity.

(c) the names and addresses of any of the proposed transferee and of any other business entity owning or controlling in whole or in part or owned or controlled in whole or in part by the proposed transferee.

(d) detailed and complete financial statements including audited reports of the proposed transferee, prepared by a certified public accountant and certified by a duly authorized financial officer of the proposed transferee, for the three (3) fiscal years immediately preceding the date of the request for transfer approval, and a letter or other acceptable evidence in writing from a duly authorized officer of the proposed transferee setting forth a clear and accurate

description of the amount and sources of funding for the proposed transferee to construct, install, rebuild, maintain and operate the proposed system in the City. If the corporate or business entity organization of the proposed transferee has not been in existence for a full three (3) years, the proposed transferee shall submit a certified financial statement for the period of its existence.

(e) a description of all previous experience of the proposed transferee in operating cable television systems and providing cable television services or related or similar services, including a statement identifying, by place and date, any other cable television franchise(s) awarded to the proposed transferee, its parent, subsidiaries, or affiliates; the status of said franchise(s) with respect to completion thereof; the total estimated cost of completion of such system(s); and a summary of the amount of the proposed transferee's and its parent's or subsidiary's resources committed to the completion thereof.

(f) upon request from the City Manager, a detailed pro forma financial plan describing for each remaining year of the franchise, the projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements, and statement of sources and uses of funds. Where the transfer is part of a larger transaction and such information is not prepared for the single system in the City, the proposed transferee may provide such information on a consolidated basis including the system in the City, but shall provide information on the size of the City system, in terms of number of subscribers, relative to the transaction, so that pro rata estimates may be made.

(g) a detailed description of the proposed plan of operation of the proposed transferee, which shall include, but not be limited to the following:

(i) a detailed map indicated all areas proposed to be served, a proposed time schedule for the installation of all equipment necessary to become operational throughout the new areas to be served, and the projected total cost for new construction of the system.

(ii) a statement or schedule setting forth all proposed products and services to be made available and classifications of rates and charges to be made against subscribers and all rates and charges and to each of any said classifications, including installation charges, service charges, equipment charges, special, extraordinary, or other charges.

4. Upon request, the proposed purchased price of the cable system, and the terms and conditions of the proposed transfer.

Section 30. Renewal of Franchise. The provisions of the Ordinance shall govern any and all proceedings to renew this franchise. If Franchisee decides to initiate a formal renewal process in accordance with Section 626(a)-(g) of the Communications Act, 47 U.S.C. §546(a)-(g), it and the City must comply with each of the requirements in the Communications Act as well as the additional requirements set forth in Section 10-31.1.23 of the Ordinance to the extent such requirements are not prohibited by applicable law.

Section 31. Rates.

A. Nothing in the Ordinance or this Franchise Agreement shall prohibit the City from regulating rates for cable service, installation, disconnection, and equipment rental to the full extent permitted by and consistent with State and Federal law.

B. Franchisee further agrees that it shall not increase rates or charges for basic

cable service, installation, disconnection, or equipment rental or change the services or channels offered without at least thirty (30) days prior notice to subscribers and the City.

C. Franchisee shall at all times charge nondiscriminatory rates throughout the City.

D. Franchisee shall not engage in predatory pricing or any other anti-competitive business practice as defined by applicable law.

Section 32. Bulk Contracts. The City expressly reserves all of its authority as it now exists or may exist in the future under local, state and federal law to enforce the applicable provisions of the Franchise Agreement and any and all applicable local, state and federal laws with respect to cable subscribers receiving cable service at a bulk rate under any agreement applicable to a multiple dwelling unit. The Franchisee expressly agrees that it will not enforce any bulk rate contracts beyond the termination of the Franchisee's rights to operate a cable television system in the City. Further, the Franchisee agrees that upon expiration of an existing bulk rate contract, any renewal thereof, or any new bulk rate agreement, it will not enforce any term in a bulk rate agreement that prohibits or has the effect of prohibiting bulk rate subscribers from choosing a competitive alternative to the service of the Franchisee under applicable law. This section does not constitute a waiver of any rights contained in federal, state, or common law.

Section 33. Security Fund.

A. Pursuant to Section 10-31.1.11 (b) of the Ordinance, Franchisee shall provide the City with a performance bond in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) as security for the faithful performance of all provisions of the Franchise Agreement,

the Ordinance, and all applicable State and Federal law. If such bond is not furnished to the City within thirty (30) business days of the date of Council resolution approving the grant of the Franchise, then Franchisee shall pay to the City a fine in the amount of Five Hundred Dollars (\$500.00) per day, beginning on the 31<sup>st</sup> day; beginning in the 36<sup>th</sup> day Franchisee shall pay to the City a fine in the amount of One Thousand Dollars (\$1,000.00) per day. In the event said bond is not received within forty five (45) days of the date after the Council resolution approving the grant of the Franchise, this Franchise Agreement and the grant of the Franchise may be revoked.

B. If thirty (30) calendar days after written notice Franchisee fails to pay to the City any fees or taxes due and unpaid, or any liquidated damages, damages, costs or expenses that the City has incurred by reason of any act, omission or default of Franchisee in connection with this Franchise Agreement or the Ordinance, the City may immediately withdraw that amount, with interest and any costs, from the security fund or make such equivalent claim against the guarantee. Upon such withdrawal or claim, the City shall notify Franchisee in writing of the amount and date of the withdrawal.

C. Within ten (10) calendar days after notice to Franchisee that an amount has been withdrawn by the City from the security fund, Franchisee shall restore the security fund to its original amount. If Franchisee fails to restore the security fund to the original amount within that ten (10) calendar day period, such failure shall be considered a material breach of this Franchise Agreement and a violation of the Ordinance, and shall constitute grounds for revocation of the franchise or other enforcement action by the City.

D. Where a bond is provided in lieu of a cash security fund, Franchisee shall pay

the City the amounts of all claims against said bond within thirty (30) calendar days after notice of such claim, maintaining the bond at its original amount. If after receiving notice, Franchisee fails to pay the City the amount of any claim within thirty (30) days or fails to restore the bond to its original amount, such failure may be considered a material breach of this Franchise Agreement and a violation of the Ordinance, and shall constitute grounds for enforcement action by the City consistent with Section 33(A) hereof.

E. Franchisee is entitled to return of the balance of the security fund that remains following any other form of expiration of the franchise, including denial of renewal, provided that there is no outstanding default and less any unpaid amounts owed to the City by Franchisee and any amount that is the subject of a pending dispute between the City and Franchisee.

F. If the Franchise terminates for reasons other than revocation, any performance bond will be maintained by the Franchisee for six (6) months from the date of termination and the remaining fund will be returned to Franchisee six (6) months from the termination date of this Franchise, provided there is no outstanding default or unpaid amounts owed to the City by Franchisee.

G. The rights reserved to the City under this Section are in addition to all other rights of the City, whether reserved in this Franchise Agreement or in the Ordinance, or authorized by other law, and no action, proceeding or exercise of a right with respect to the security fund will affect any other right the City may have.

Section 34. Enforcement Remedies.

A. Liquidated Damages. Because the City may suffer damages from any

violation by Franchisee of this Agreement or of the Ordinance, which damages may be difficult to quantify, the City and Franchisee agree to the following schedule of liquidated damages:

1. For failure to install, operate and maintain the cable system as required by Sections 12(A) and 13(A) hereof, unless the City specifically approves a delay caused by the occurrence of conditions beyond Franchisee's control, Franchisee shall pay to the City Five Hundred Dollars (\$500.00) per day for each day or part thereof, the violation continues. However, if such violation continues beyond sixty (60) days, beginning on the 61<sup>st</sup> day Franchisee shall pay to the City One Thousand Dollars (\$1,000.00) per day.

2. For material failure to provide data, documents, reports or information in a timely manner as required by this Franchise Agreement or by the Ordinance or as requested by the City consistent with FCC rules and regulations and all other applicable law, Franchisee shall pay One Hundred Dollars (\$100.00) per day, or part thereof, that each violation occurs or continues. A violation will be deemed to have occurred when Franchisee fails to provide information by the date requested by the City.

3. For failure to comply with any other provision of the Ordinance, or failure to comply with any other material provision of this Franchise Agreement other than those specifically referenced above, or failure to comply with any lawful order of the City within thirty (30) days of receipt of notice of such non-compliance from the City, Franchisee shall pay Three Hundred Dollars (\$300.00) per day for each day, or part thereof, that such non-compliance continues for thirty (30) days. Beginning on the 31<sup>st</sup> day of such non-compliance, Franchisee shall pay to the City Five Hundred Dollars (\$500.00) per day and beginning on the 61<sup>st</sup> day of such non-compliance Franchisee

shall pay One Thousand Dollars (\$1,000.00) per day.

B. Before assessing liquidated damages against Franchisee, the City shall give Franchisee written notice of the alleged violation and its intention to assess such damages, which notice shall contain a description of the alleged violation. Following receipt of such notice, Franchisee shall cure or commence to cure to the satisfaction of the City Manager or the violation within a thirty (30) day period. If the violation is not cured or commenced to be cured to the satisfaction of the City Manager in that thirty (30) day period, the City may effective on the 31<sup>st</sup> day collect liquidated damages owed, either through draw-down of the security fund or bond as provided in Section 33 of this Agreement, or through any other means allowed by law. In the event Franchisee desires to challenge the decision of the City manager, Franchisee may appeal to the City Council, however such appeal must be filed within thirty (30) days of the date of the City Manager's decision.

C. Revocation or Termination of Franchise. Franchisee's franchise is subject to revocation pursuant to the Ordinance for any of the reasons set forth therein. In the event the City exercises its right to revoke the franchise, the procedures set forth in the Ordinance shall apply.

Section 35. Area wide-Interconnection.

A. Upon completion of the system rebuild, Franchisee hereby agrees to interconnect with any or all other cable systems located within the City or servicing subscribers within the City for the purpose of sharing government and education programming. Interconnection of systems shall permit interactive transmission and reception of program material, and may be done by direct cable connection, microwave link, satellite, or other appropriate method.

B. Where it does not own the affected system or systems, Franchisee shall immediately initiate good faith negotiations with the operators of the other affected system or systems in order that costs for construction and operation of the interconnection link may be shared equitably among the systems. Franchisee shall report to the City the results of such negotiation no later than thirty (30) days after the effective date hereof or in the case of changed circumstances, after receipt of the City's request. Where Franchisee owns the affected system, Franchisee shall report to the City on the timing, method, and cost of interconnection within fifteen (15) days of the City's request.

C. Franchisee shall make all reasonable efforts to cooperate with any designated access organization, interconnection corporation, regional interconnection authority or City, county, state or federal regulatory agency with may be hereafter established for the purpose of regulation, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the franchise area.

D. Notwithstanding anything to the contrary Franchisee shall make available to all subscribers in the City, all government and education programming provided by Palm Beach County.

Section 36. Written Notice of Acceptance. Prior to the date of the Council resolution approving the grant of this franchise, Franchisee shall provide the City Manager with written acceptance of all the terms and conditions of this Franchise Agreement. In addition, such acceptance shall incorporate Franchisee's agreement to be bound by all obligations, including but not limited to liability for payments of all franchise fees and other amounts owed prior to the effective date

hereof during such time as Franchisee, its predecessor in interest or its affiliate operated a cable system in the City. Franchisee's failure to comply in full with this Section shall render this Franchise Agreement and the franchise null and void with no further action by the City, unless the City Manager agrees in writing or the Council takes action to extend such period.

Section 37. Execution in Counterpart. This Franchise Agreement may be executed in counterpart.

**IN WITNESS OF THE FOREGOING,** the parties have set their hands and seals the day and year first written above.

COMCAST CABLEVISION OF WEST PALM BEACH

ATTEST:

\_\_\_\_\_

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

ATTEST:

CITY OF RIVIERA BEACH, FLORIDA



CARRIE E. WARD, CMC/AE  
CITY CLERK

BY:   
MICHAEL D. BROWN  
MAYOR

REVIEWED FOR LEGAL SUFFICIENCY:

\_\_\_\_\_  
PAMALA H. RYAN  
CITY ATTORNEY

**RESOLUTION NO. 176-00**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF RIVIERA BEACH, FLORIDA,  
APPROVING THE TRANSFER OF THE  
COMCAST CABLEVISION OF WEST PALM  
BEACH INC., CABLE TELEVISION  
FRANCHISE TO CENTURY NEW MEXICO  
CABLE TELEVISION CORP. (d/b/a Adelphia);  
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, on March 8, 2000, the City of Riviera Beach, FL received an FCC 394 requesting the City to consent to the proposed transfer of control of the Comcast of West Palm Beach, Inc. ("Comcast"), a wholly owned subsidiary of Comcast Corporation, cable television franchise to Century New Mexico Cable Television Corp. a wholly owned subsidiary of Adelphia Communications Corporation ("Adelphia"); and

WHEREAS, pursuant to City of Riviera Beach Ordinance No. 2861 and amendments thereto and the Comcast Franchise Agreement, the City Council must approve any change of control; and

WHEREAS, the City has required that the applicant accept the obligations of the Ordinance and the Franchise and provide information on the proposed transaction including details on the legal, financial, technical qualifications of the transferee and such other information as may be in the public interest; and

WHEREAS, Adelphia has represented to the City that it has taken all actions and implemented all practices necessary to insure that the Franchisee is, unless otherwise noticed, in compliance with all provisions of the Ordinance and Franchise Agreement; and

WHEREAS, Adelphia has executed a written Acceptance of the terms and conditions of this Resolution, Ordinance No. 2861, and the Franchise Agreement, and to assume the obligations and liabilities of the current franchisee by agreement as a condition precedent to the adoption of this Resolution (Acceptance attached hereto as Exhibit A); and

WHEREAS, in the event the proposed transaction between Comcast and Adelphia is not consummated within one hundred eighty days (180) of the date hereof or does not reach final closure for any reason, or in the event such closure is reached on terms substantially or materially different to the terms described in the FCC Form 394 and exhibits thereto, the approval granted in this Resolution shall be null and void.

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

**Section 1.** The foregoing recitals are approved and incorporated herein by reference.

**Section 2.** To the extent required, the City of Riviera Beach, FL hereby consents to the change in ultimate control of the City of Riviera Beach Cable Television Franchise from Comcast to Adelphia.

**Section 3.** That the consent granted herein does not constitute and should not be construed to constitute a waiver or release of any obligations of the Franchisee under the Cable Television Ordinance and the Cable Television Franchise Agreement.

**Section 4.** That the consent granted herein does not and should not be construed to constitute a waiver of any right of the City under applicable law including but not limited to the Ordinance or the Cable Television Franchise; and further, this consent shall not prejudice the City's rights with respect to the enforcement, renewal or transfer of the current cable television franchise and any amendments thereto.

**Section 5.** That the consent herein granted is conditioned upon (a) Franchisee's execution of the Acceptance, attached hereto as Exhibit A; (b) payment to the City no later than October 4, 2000, of cost recovery for costs incurred by the City directly or indirectly related to the evaluation the transfer application and the transfer process and the grant of a franchise to the proposed transferee including, but not limited to, consulting fees and legal fees in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00).

**Section 6.** That the consent herein granted is limited to the right to provide cable service as defined by Title VI of the Communications Act, as amended.

**Section 7.** That the City hereby reserves all of its rights pursuant to Federal and local law including, but not limited to the rights in (a) the franchise renewal process including, but not limited to, the right to consider violations of the franchise by the current franchisee; (b) the franchise transfer process including, but not limited to, the right to act upon any application to sell, assign or otherwise transfer any interest in the franchisee or the cable system; and (c) the enforcement of the current Cable Television Ordinance and the current cable television franchise.

**Section 8.** That the consent herein granted expressly does not waive and expressly reserves to the City of Riviera Beach its rights to fully exercise all applicable legal rights and authority with regard to Comcast to Adelphia and their affiliates, parent or subsidiaries in connection with any use of rights of way not authorized by the City including, but not limited to levying fines or instituting litigation for trespass and ejection.

**Section 9.** That the consent herein granted is an express non-waiver and reservation of the City's rights and authority against Comcast and Adelphia for any franchise violations that may exist.

**Section 10.** That the consent granted herein is subject to the transferor's and transferee's compliance with all other applicable legal requirements and the City does not waive and expressly reserves the right to enforce full compliance with its ordinance and franchise requirements, whether or not any non-compliance that may be determined arose

before or after the transfer of control from Comcast to Adelphia.

**Section 11.** In the event the proposed transaction between Comcast and Adelphia is not consummated within one hundred eighty days (180) of the date hereof or does not reach final closure for any reason, or in the event such closure is reached on terms substantially or materially different to the terms described in the FCC Form 394 and exhibits thereto, the approval granted in this Resolution shall be null and void.

**Section 12.** That this Resolution shall become effective upon the date of its adoption herein.

**PASSED and ADOPTED** this 4th day of October, 2000.

**APPROVED:**



Michael D. Brown  
Mayor

Attest:

[Municipal Seal]



Carrie E. Ward, CMC/AAE  
City Clerk



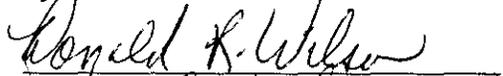
Edward Rodgers  
Chairperson



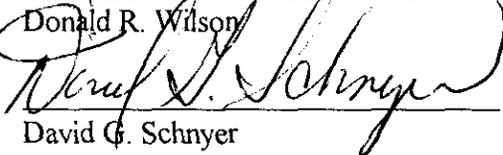
Elizabeth Wade  
Chairperson Pro Tem



Sylvia Lee Blue



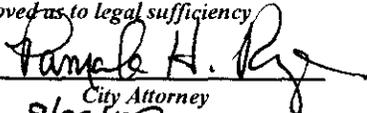
Donald R. Wilson



David G. Schnyer  
Council Members

PHR:dpm.[092600]

Approved as to legal sufficiency

By:   
City Attorney

Date: 9/28/00

Motion by: S. Blue

Second by: E. Wade

E. Rodgers	<u>aye</u>
E. Wade	<u>aye</u>
S. Blue	<u>aye</u>
D. Wilson	<u>aye</u>
D. Schnyer	<u>aye</u>

RESOLUTION NO. 178-00

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 EXTENSION AGREEMENT ON BEHALF OF THE CITY OF RIVIERA BEACH WITH DR. PETER LAMELAS/EMSA FOR THE PROVISION OF MEDICAL DIRECTION SERVICES FOR THE CITY'S PARAMEDICS, EMTS, AND LIFEGUARDS; AUTHORIZING THE FINANCE DIRECTOR TO MAKE PAYMENT IN THE AMOUNT OF \$1,500.00 PER MONTH AND NOT TO EXCEED \$9,000.00 OVER A SIX MONTH PERIOD FOR SAME; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Fire Department is licensed by the State of Florida to provide Advanced Life Support Emergency Medical Services to it's citizens and visitors; and

**WHEREAS**, the Fire Department is required by Florida State Statutes and the Florida Administrative Code to contract with a State Licensed Physician for the provision of Medical Direction services; and

**WHEREAS**, Dr. Peter Lamelas/EMSA has provided outstanding Medical Direction services to the City of Riviera Beach since October of 1989.

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

**Section 1:** The Mayor and City Clerk are authorized to execute the extension agreement on behalf of the City of Riviera Beach with Dr. Peter Lamelas/EMSA for the provision of Medical Direction services for the City's Paramedics, EMTs, and lifeguards.

**Section 2:** The Finance Director is authorized to make payment to Dr. Peter Lamelas/EMSA in the amount of \$1,500 per month to be paid in monthly installments for the duration of the contract, not to exceed \$9,000 over a six-month period.

**Section 3:** This resolution shall take effect upon its passage and approval of the City Council.

**PASSED and APPROVED** this 4th day of October, 2000.

RESOLUTION NO. 178-00

PAGE 2

APPROVED:

  
MICHAEL D. BROWN, MAYOR

  
EDWARD RODGERS, CHAIR PERSON

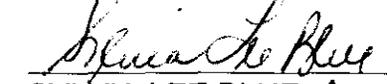
(MUNICIPAL SEAL)

  
ELIZABETH "LIZ" WADE, CHAIR PRO-TEM

ATTEST:

  
DONALD R. WILSON

  
CARRIE E. WARD, CMC/AAE  
CITY CLERK

  
SYLVIA LEE BLUE  
  
DAVID G. SCHNYER  
COUNCIL MEMBERS

MOTIONED BY: S. Blue

SECONDED BY: E. Wade

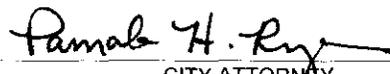
E. RODGERS: aye

E. WADE: aye

D. WILSON: aye

S. BLUE: aye

D. SCHNYER: aye

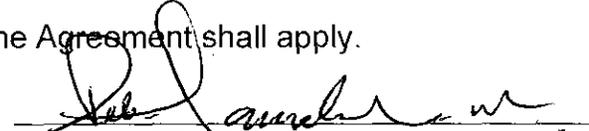
REVIEWED AS TO LEGAL SUFFICIENCY  
  
CITY ATTORNEY  
CITY OF RIVIERA BEACH  
DATE: 9/29/00

**Extension of Medical Director Agreement  
between  
City of Riviera Beach and EMS Contracting Services, Inc.**

It is hereby mutually agreed by both parties that the term stipulated in Article 3: Contract Time of the Agreement between the City of Riviera Beach and EMS Contracting Services Inc. be extended for a period of six months commencing upon the passage and approval of the City Council of the City of Riviera Beach.

All other provisions and stipulations of the Agreement shall apply.

  
\_\_\_\_\_  
MICHAEL D. BROWN, MAYOR

  
\_\_\_\_\_  
PETER LAMBLAS, MD

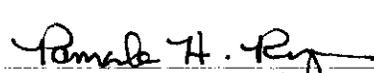
10/02/00  
\_\_\_\_\_  
DATE

9/29/00  
\_\_\_\_\_  
DATE

ATTEST:

  
\_\_\_\_\_  
CARRIE E. WARD, CMC/AAE  
CITY CLERK

REVIEWED AS TO LEGAL SUFFICIENCY

  
\_\_\_\_\_  
CITY ATTORNEY  
CITY OF RIVIERA BEACH

DATE: 9/29/00

**RESOLUTION NO. 179-00**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE PAYMENT OF \$11,000 TO COMMUNITY SAVINGS, FOR THE LEASE RENEWAL OF BAYS 8 & 9 AT 835 WEST 13<sup>TH</sup> COURT, RIVIERA BEACH, WHICH IS UTILIZED FOR STORAGE OF VEHICLES AND PROPERTY SEIZED BY THE RIVIERA BEACH POLICE DEPARTMENT; AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO MAKE PAYMENT FROM ACCOUNT NUMBER 001-0822-5210-4402; AND AUTHORIZING THE MAYOR, CITY CLERK, AND POLICE CHIEF TO SIGN THE ATTACHED LEASE RENEWAL FOR THE PERIOD OCTOBER 1, 2000 TO SEPTEMBER 30, 2001.**

**WHEREAS**, the City Council approves the payment of \$11,000 for a lease renewal of Bays 8 & 9, located at 835 W. 13<sup>th</sup> Court, Riviera Beach, Florida – a storage facility utilized by the Riviera Beach Police Department for seized vehicles and property; and

**WHEREAS**, a copy the Lease Renewal for the period October 1, 2000 through September 30, 2001 is attached hereto, and made a part of this resolution.

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

**Section 1:** That City Council approves the payment of \$11,000 for a lease renewal of a storage facility that is utilized by the Riviera Beach Police Department for seized vehicles and property.

**Section 2:** That City Council authorizes the Mayor, City Clerk, and Police Chief to sign the attached Lease Renewal for the period October 1, 2000 to September 30, 2001.

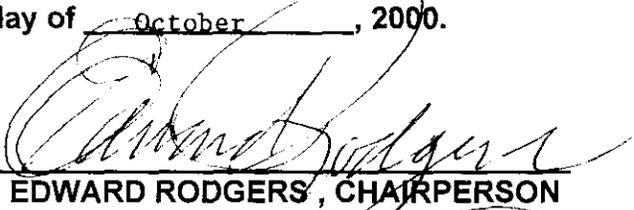
**Section 3:** That City Council authorizes the Mayor and Finance Director to pay the lease for this facility from Account Number 001-0822-5210-4402

RESOLUTION # 179-00  
PAGE 2

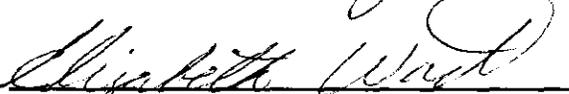
PASSED and APPROVED this 18th day of October, 2000.

APPROVED:

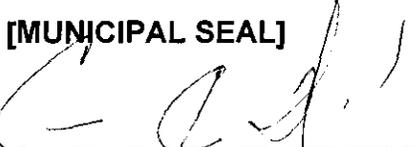
  
MICHAEL D. BROWN, MAYOR

  
EDWARD RODGERS, CHAIRPERSON

ATTEST:

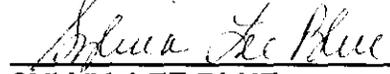
  
ELIZABETH WADE  
CHAIRPERSON PRO-TEM

[MUNICIPAL SEAL]

  
CARRIE E. WARD, CMC/AE  
CITY CLERK

  
DONALD R. WILSON

  
DAVID G. SCHNYER

  
SYLVIA LEE BLUE  
Council Members

MOTIONED BY: D. Wilson

SECONDED BY: D. Schnyer

E. RODGERS aye

E. WADE aye

D. SCHNYER aye

D. WILSON aye

S. BLUE aye

REVIEWED AS TO LEGAL SUFFICIENCY

  
CITY ATTORNEY  
CITY OF RIVIERA BEACH

DATE: 10/9/00

LEASE RENEWAL AND EXTENSION AGREEMENT

COMMUNITY SAVINGS, F. A., a Federal Savings & Loan Association (hereinafter referred to as Lessor), and RIVIERA BEACH POLICE DEPARTMENT (hereinafter referred to as Lessee), hereby agree to renew and extend that certain lease executed by them on the 15th day of September, 1994, for the property described as Bays 8 and 9 of 835 West 13th Court, Riviera Beach, Florida, also known as Lot 5 FUTURA INDUSTRIAL PARK as recorded on Plat Book 31, page 175 of the Public Records of Palm Beach County, Florida.

For good and valuable consideration, the receipt whereof is hereby acknowledged, the parties agree to extend the term of the lease for an additional year beginning October 1, 2000, and ending on the 30th day of September, 2001. The total annual rent for the extended one year lease term is Eleven Thousand Dollars (\$11,000.00), due and payable in full before October 1, 2000. Except as modified herein, the Business Lease executed between the parties dated the 15th day of September, 1994, remains in full force and effect. If there is any conflict between the terms and conditions of this Lease Renewal Extension Agreement and the Business Lease, the terms and conditions of this Lease Renewal and Extension Agreement apply.

Both parties acknowledge and agree that the Business Lease referred to herein is currently in good standing, and neither party has defaulted under any obligations contained therein. As of the date of this Lease Renewal and Extension Agreement, the rent is current.

IN WITNESS WHEREOF, the parties have executed this Lease Renewal and Extension Agreement for the purpose herein expressed.

Signed, sealed and delivered in the presence of:

COMMUNITY SAVINGS, F. A.

Matthew Van Riper  
Melanie Williams

By: Larry Koerner  
Larry Koerner, Vice President

Dated: \_\_\_\_\_

RIVIERA BEACH POLICE DEPARTMENT

Rosemarie Hoff

By: Jerry P. Poreba  
Jerry P. Poreba, Chief of Police

10/4/00

Dated: 10/3/00

Michael D. Brown  
Michael D. Brown, Mayor

REVIEWED FOR LEGAL SUFFICIENCY  
Pamela H. Ryz  
CITY ATTORNEY

Carrie E. Ward  
Carrie E. Ward, CMC/AEE  
City Clerk

CITY OF RIVIERA BEACH  
DATE: 10/9/00

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of July, 2000,  
by Lally Koerner as Officer-Vice President (type of authority, e.g.  
officer, trustee, attorney in fact), for COMMUNITY SAVINGS, F. A.



Charlene S. McBride  
MY COMMISSION # CC718831 EXPIRES  
March 27, 2002  
BONDED THRU TROY FAWN INSURANCE, INC.

Charlene S. McBride  
Signature of Notary Public  
State of Florida

Charlene S. McBride  
(Print, Type or Stamp Commissioned  
Name of Notary Public)

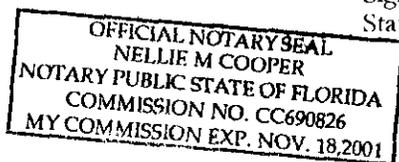
Personally Known  OR Produced Identification  
Type of Identification Produced \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of  
October, 2000, by Jerry P. Perda as  
\_\_\_\_\_  
(type of authority, e.g. officer, trustee, attorney in fact), for the  
RIVIERA BEACH POLICE DEPARTMENT.

Signature of Notary Public  
State of Florida

Nellie M. Cooper



NELLIE M. COOPER  
Print, Type, or Stamp Commissioned  
name of Notary Public)

Personally Known  OR Produced Identification  
Type of Identification Produced \_\_\_\_\_

RESOLUTION NO. 180-00

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE MAYOR AND THE CHIEF OF POLICE TO SIGN A MEMORANDUM OF UNDERSTANDING WITH THE FLORIDA DEPARTMENT OF JUSTICE TO FUND THE JUVENILE ASSESSMENT CENTER; AUTHORIZING THE CITY CLERK TO ATTEST THE SAME; AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO PAY \$5,400.00 FROM THE LAW ENFORCEMENT TRUST FUND ACCOUNT NUMBER 150-0000-521003106 TO THE PALM BEACH COUNTY SHERIFFS BUDGET OFFICE; AND PROVIDING AN EFFECTIVE DATE.

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

**SECTION 1.** The Mayor and The Chief of Police are hereby authorized to execute a "Memorandum of Understanding" with the Florida Department of Justice that establishes the financing of the Juvenile Assessment Center; the City Clerk is authorized to attest the same.

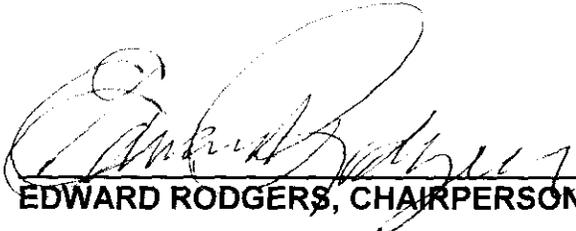
**SECTION 2.** The Mayor and Finance Director are hereby authorized to pay 5,400.00 to the Palm Beach County Sheriff's Budget Office, from the Law Enforcement Trust Fund Account Number 150-0000-5210-3106.

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

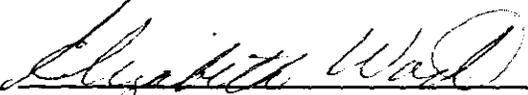
ASSESSED AND APPROVED this 18th day of October 2000.

APPROVED:

  
MICHAEL D. BROWN, MAYOR

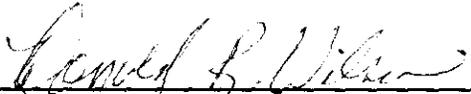
  
EDWARD RODGERS, CHAIRPERSON

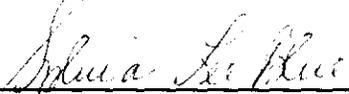
(MUNICIPAL SEAL)

  
ELIZABETH WADE  
CHAIR PRO-TEM

ATTEST:

  
CARRIE E. WARD, CMC/AE  
CITY CLERK

  
DONALD R. WILSON

  
SYLVIA LEE BLUE

  
DAVID G. SCHNYER  
Council Members

MOTIONED BY: D. Wilson

SECONDED BY: D. Schnyer

E. RODGERS aye

E. WADE aye

D. WILSON aye

S. BLUE aye

D. SCHNYER aye

REVIEWED AS TO LEGAL SUFFICIENCY

  
CITY ATTORNEY  
CITY OF RIVIERA BEACH

DATE 10/12/00