STANDARD FORM OF AGREEMENT

THIS AGREEMENT is dated and will be effective on the 25th day of January, 2017, by and between the City of Riviera Beach Utility Special District, a political subdivision of the City of Riviera Beach, Florida (hereinafter referred to as the "OWNER" or "DISTRICT") and WHARTON-SMITH, INC., a Florida corporation, whose address is 125 W. Indiantown Road, Suite 201, Jupiter, Florida 33067, hereinafter referred to as the ("CONTRACTOR").

WHEREAS, the prior contractor for this Project, Close Construction, LLC was terminated by the DISTRICT before the Work (as defined herein) was completed. Close's Surety, Hartford Fire Insurance Company, through its engineer, Donald A. Eckler of Eckler Engineering, Inc., issued an invitation for bids for the completion of the Work (as defined herein) (Surety's Claim Number 564558348) (hereinafter the "IFB"); and

WHEREAS, the CONTRACTOR submitted a bid in response to the IFB; and

WHEREAS, the DISTRICT desires to accept CONTRACTOR'S bid; and

WHEREAS, the DISTRICT finds awarding IFB to the CONTRACTOR as described herein serves a valid public purpose.

NOW THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is acknowledged by both parties, the DISTRICT and CONTRACTOR agree as follows:

ARTICLE 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The CONTRACTOR's responsibility under this Contract is to furnish all materials, labor and equipment for the Rehabilitation/Replacement of Lift stations No. 10 and No. 50 (as further described in the Contract Documents) and installation of a 6 Foot Black Chain Link Fence with 3 Strands of Barbed Wire to Match Existing Fence, as more specifically set forth in the Scope of Work, Schedule of Bid Prices consisting of the Wharton-Smith Bid Form, dated December 22, 2016, and amended letter dated December 22, 2016, to Donald A. Eckler and P.E. "Re: (IFB No. 493.14) City of Riviera Beach LS No. 10 and LS No. 50 Project Undertaking," detailed in Exhibits "A", "B" and "C", respectively. The performance of the Contract will be completed as more specifically set out in the Enclosures and in the Invitation to Bid No. 493-14, including Addendums 1 through 5, which are made a part hereof by reference (as further described in the Contract Documents).

The City's representative/liaison during the performance of this Contract shall be Troy Perry, Assistant to City Manager, telephone number 561-845-4168, email: TPERRY@rivierabch.com.

ARTICLE 2. CONTRACT PRICE.

2.1. OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, subject to adjustment as provided therein, in current funds as follows: The amount of: One Million Eight Hundred Fifty Seven Thousand and Seven Hundred and Thirty Dollars ($1,857,730), which includes an allowance of Two Hundred Thousand Dollars ($200,000),

that can be used for permit fees and unknown equipment or materials, subject to the approval of the District, which is based on the price(s) in the Bid Form.

ARTICLE 3. MISCELLANEOUS.

3.1. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

3.2. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replaced such stricken provision or part thereof with a valid and enforceable provisions that comes as close as possible to expressing the intention of the stricken provision.

3.3. Failure of either party to enforce or exercise any right(s) under the Contract Documents shall not be deemed a waiver of either party's right to enforce said right(s) at any time thereafter.

3.4. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THE CONTRACT DOCUMENTS.

3.5. The CONTRACTOR is, and shall be, in the performance of all Work under the Contract Documents, an Independent Contractor, and not an employee, agent, or servant of the Owner. All persons engaged in any of the Work performed pursuant to the Contract Documents shall at all times and in all places be subject to the CONTRACTOR's sole direction, supervision and control.

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

3.7. If the CONTRACTOR is determined to be providing services on behalf of the City, the CONTRACTOR shall comply with Florida's Public Records Laws, and specifically agrees to:

a) Keep and maintain public records that ordinarily and necessarily would be required by the OWNER in order to perform the service.

b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the City.

d) Upon completion of this Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate

public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT CLAUDENE L. ANTHONY, CMC, CITY CLERK, TELEPHONE NUMBER 561-849-3419, EMAIL CROBINSON@RIVIERABCH.COM, OFFICE OF THE CITY CLERK, 600 W. BLUE HERON BLVD. RIVIERA BEACH, FLORIDA 33404.

3.8. Governing Law; Consent to Jurisdiction: The Contract Documents shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions, and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for federal actions, the purposes of any suit, action or other proceeding arising out of, or relating to, the Contract Documents; and, (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever.

3.9. Except where specifically provided for in the Contract Documents, the CONTRACTOR shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from the OWNER for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising out of or related to delay, disruption, interference or hindrance from any cause whatsoever. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery or damages by the CONTRACTOR for hindrances or delays due solely to fraud, bad faith or active interference on the part of the OWNER. Otherwise, the CONTRACTOR shall be entitled only to extensions of the Contract Times as the sole an exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided in the Contract Documents.

3.10. All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the CONTRACTOR or its subcontractors under the Contract Documents shall be considered a "Work for Hire" and the exclusive property of the OWNER. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, the CONTRACTOR and its subcontractors will assign to the OWNER all right, title and interest in and to CONTRACTOR's and/or its subcontractors' copyright(s) for such Documents. CONTRACTOR shall execute and deliver to OWNER such instruments of transfer and take such other action that OWNER may reasonable request, including, without limitation, executing and

filing, at OWNER's expense, copyright applications, assignments and other documents required for the protection of OWNER's right to such Documents. The CONTRACTOR shall retain copies of the Documents for a period of three (3) years from the date of completion of the project. The OWNER grants to the CONTRACTOR and its subcontractors the right and/or limited license to use a portion of the Documents prepared by the CONTRACTOR or its subcontractors in future projects of the CONTRACTOR or its subcontractors with said right and/or limited license to use a portion at CONTRACTOR's or its subcontractor's own risk and without any liability to the OWNER. Any modifications made by the OWNER to any of the CONTRACTOR's or its subcontractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the CONTRACTOR or its subcontractor(s) will be at the OWNER's sole risk and without liability to the CONTRACTOR or its subcontractor(s).

3.10.1. The DISTRICT has SBE, MBE and Local Preference requirements that are more fully set forth in the Contract Documents that the CONTRACTOR must comply with. Failure to comply with said requirements may be grounds for termination.

3.11. Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

3.12. The WHEREAS clauses set forth at the outset of the Standard Form of Agreement are incorporated herein as true and correct statements.

ARTICLE 4. CONTRACT DOCUMENTS.

Upon execution by the OWNER AND CONTRACTOR, this Standard Form of Agreement shall be and is considered part of the Contract Documents. The Contract Documents which comprise the entire agreement between OWNER AND CONTRACTOR concerning the Work consist of the following:

4.1 Executed Change Orders, Work Directives, or other authorized changes to the Contract Documents executed after the execution of this Standard Form of Agreement.

4.2 Executed Standard Form of Agreement.

4.3 The General Conditions.

4.4 DISTRICT'S ISSUED Notice of Award and Notice to Proceed.

4.5 Addenda issued to the Invitation to Bid and Instructions to Bidders.

4.6 The Invitation to Bid, Instructions to Bidders, all attachments to the Instruction to Bidders; and Appendix A and Appendix B.

4.7 Technical Specifications/Drawings/Plans

4.8 Issued Permits for the Work.

4.9 The CONTRACTOR's Certificate of Insurance; Performance Bond and Payment Bond (plus Power of Attorney Forms as applicable).

4.10 CONTRACTOR's Bid and all required submittals.

4.11 CONTRACTOR's submittals after Work has commenced.

4.12 Any other documents otherwise incorporated in the Contract Documents by reference.

There are no Contract Documents other than those listed above in this Article 4. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions. In the event of a discrepancy or conflict in the Contract Documents, the above order of precedence for the Contract Documents will govern the interpretation of the Contract Documents after award with those Contract Documents identified in paragraph 4.1 taking precedence over all other Contract Documents.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the OWNER and CONTRACTOR have caused this Standard Form of Agreement to be executed the day and year shown below.

CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT

By: _____
TERRENCE DAVIS, UTILITY DISTRICT CHAIRPERSON

ATTEST:

By:_____
CLAUDENE L. ANTHONY, CMC
DISTRICT CLERK

Approved as to legal sufficiency:

By:_____
ANDREW DEGRAFFENREIDT, III
DISTRICT ATTORNEY

Date:_____

CONTRACTOR: WHARTON-SMITH, INC.

By: _____

Print Name: _____

Title: _____

[Corporate Seal]

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by_____, as _____ of _____, a corporation authorized to do business in the State of Florida, and who is personally known to me or who has produced the following _____ as identification.

Notary Public: _____

Print Name: _____

My commission expires:_____

EXHIBIT "A"

SCOPE OF WORK

REPLACEMENT/REHABILITATION LIFT STATIONS #10 AND #50

Furnish all materials, labor and equipment for the completion of the Rehabilitation/Replacement of Lift Station #10 and # 50, as specified in the drawings and specifications prepared by C Solutions Inc., as part of the Bid No. 49314 package (and installation of a 6 Foot Black Chain Link Fence w/3 Strands of Barbed Wire to match existing fence).

EXHIBIT “B”

SCHEDULE OF BID PRICES

REHABILITATION REPLACEMENT
LIFT STATION NO. 10 AND NO. 50
REF: BID 493-14

Wharton-Smith Bid Form Dated December 22, 2016

BID FORM

BID DATE: Thursday, December 22, 2016

TIME: 10:00 A.M.

PROJECT IDENTIFICATION

Project Name: Completion of LS 10 and LS 50, Riviera Beach, FL

Surety's Claim Number: 564558348

THIS BID IS SUBMITTED TO

SURETY: The Hartford

Address: c/o Eckler Engineering, Inc.

4700 Riverside Drive, Suite 110

Coral Springs, Florida 33067

BIDDER

Name: Wharton-Smith, Inc.

Address: 750 Monroe Road, Sanford, FL 32771

Local: 125 W. Indiantown Road, Ste. 201, Jupiter, FL 33458

NAME OF PERSON TO CONTACT FOR ADDITIONAL INFORMATION ON THIS BID

Name: Greg Williams, Division Manager

Telephone Number: (561) 748-5956

DATE: December 22, 2016

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

2. BIDDER accepts all of the terms and conditions of The Hartford Completion Agreement. BIDDER shall submit Payment bonds within fifteen (15) calendar days after Notice of Award is issued by SURETY.

3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:

   A. BIDDER has examined copies of all the Bidding Documents and all data provided by SURETY and Eckler Engineering.

   B. BIDDER has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

   C. BIDDER has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions.

D. BIDDER has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by BIDDER in order to perform and furnish the Work at the Contract Price.

E. BIDDER has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

F. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidding or over SURETY.

4. BIDDER agrees that all Federal, State and local sales and use taxes are included in the stated bid prices for the Work.

5. Lump Sum Bid:

a. All Work for LS 10 $ 475,625

b. All Work for LS 50 $ 1,182,105

c. Allowance for Permit Fees, Unknown Equipment or Materials $ 200,000.00

Total of Items 1 through 3 listed above. $ 1,857,730

ONE Million EIGHT HUNDRED FIFTY SEVEN THOUSAND SEVEN HUNDRED THIRTY
(Written)

6. Provide an explanation of any exceptions or conditions of the Bid.

Please see attached letter.

7. Number of days for completion: Substantial - 180 days / final - 210 days

8. The CONTRACTOR shall submit a detailed price breakdown to the ENGINEER at the preconstruction conference. The price breakdown as reviewed and agreed upon by the CONTRACTOR, ENGINEER and SURETY shall be used for preparing future estimates for partial payments to the CONTRACTOR, and shall list the major items of the work and a price for each item. The price for items where materials are required and installation labor should be broken into the two components. Price breakdown shall be by Specification Section for each area of the project. Overhead, other general costs, and profit shall be prorated to each item so that the total of the prices for all items equals the lump sum price. The price breakdown shall be subject to the

review of the ENGINEER, and the CONTRACTOR may be required to verify the prices for any or all items.

9. At the preconstruction conference, the BIDDER shall submit a complete detailed schedule of shop drawing submittals which will show lead time for:

Date of Planned submittal.
Date of anticipated receipt of review (usually three weeks after submittal).
Delivery lead time.
Anticipated installation date.

10. If BIDDER is:

An Individual N/A

By _____ (SEAL)
(Individual's Name)
doing business as _____

Business address: _____

_____

Phone No.: _____

A Partnership N/A

By _____ (SEAL)
(Firm Name)

_____
(General Partner)

Business address: _____

_____

Phone No.: _____

A Corporation

By Wharton-Smith, Inc.
(Corporation Name)
Florida
(State of Incorporation)
By _____
(Name of Person Authorized to Sign)
Ronald F. Davoli, President/CEO
(Title)
(Corporate Seal)
Attest _____
(Secretary) Devon A. Lewis, Corporate Secretary
Business address: 750 Monroe Road, Sanford, FL 32771

_____

Phone No.: (407) 321-8410

A Joint Venture N/A

By _____
(Name)

_____
(Address)

By _____
(Name)

_____
(Address)

(Each joint venturer must sign. The manner for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

END OF SECTION

EXHIBIT “C”

Wharton Smith, Inc., Amended Letter Dated December 22, 2016 To Donald A. Eckler P.E., Eckler Engineering, Inc. “Re: (IFB No. 493.14) City of Riviera Beach LS No. 10 and LS No. 50 Project Undertaking”

Wharton-Smith, Inc.
CONSTRUCTION GROUP

December 22, 2016

Donald A. Eckler, P.E.
Eckler Engineering, Inc.
4700 Riverside Drive
Suite 110
Coral Springs, FL 33067

Re: (IFB No. 493.14) City of Rivera Beach LS No.10 and LS No. 50 Project Undertaking

Mr. Eckler:

Wharton Smith received a letter dated November 2, 2016 from Cunningham Law Firm requesting our participation in providing a competitive bid to undertake the completion of the referenced project. Subsequently, Eckler Engineering contacted us on behalf of the Hartford group with the same request.

In response to these requests, we contacted Mr. Mark Drummond of C Solutions to provide access to both sites in order to perform a preliminary assessment of project status. On Thursday November 10, 2016, myself along with other representatives from Wharton Smith visited both sites and reviewed the current construction status against the requirement of the contract documents. A representative from Wharton Smith attended another site visit/meeting organized by Eckler Engineering on November 22, 2016. Based on these meetings, our findings are as follows:

LS No. 10:

During the brief inspections of the site we tried to determine which portions of the project scope of work had been successfully completed to date, work performed but requires rework, and work not yet completed:

Work Assumed to have been Successfully Completed:

- Sheet C-4, By-Pass Pumping Stage 1. However, the "Discharge Valve Vault" has not been installed and therefore not being utilized as part of the system, as intended.
- Sheet C-5, flow channels reformed inside existing manhole
- Sheet C-4, All underground piping within Park Avenue.
- Sheet C-6, Demolition of existing yard piping as identified
- Sheet M-1, Demolition of existing lift station #10 mechanical components as identified.
- Sheet S-02, Demolition of existing lift station #10 structural components as identified.
-

Work Performed but Requires Rework:

- Sheet S-03, Installation of five (5) Auger Cast Piles. Four (4) underneath the location of the new Valve Vault and one (1) underneath the location of the new Retaining Wall. However, the installations are currently in conflict with an "existing abandoned underground structure" identified under Note 2 on sheet C-5 to be located in order to facilitate construction of the new work. Therefore, these pile may need to be removed and replaced in order to resolve the conflict.

LS No. 50:

During our brief inspection of the site, we recognized that there is an abundance of material and equipment onsite (some stored; some installed). We again tried to assess which portions of the work had been successfully completed, installed but requires some rework, and work that has yet to be completed. Given the extent of the scope and requirements, a more detail assessment, inventorying, and testing of the materials/equipment currently onsite will be required. Wharton Smith assumes that the established bid allowance will be utilized to purchase or correct any missing and/or damaged material/equipment.

Work Assumed to have been Successfully Completed:

- Sheets S-08 thru S-10, Office/Electrical Building appears to be fully constructed with the exception of some minor finishes
- Sheet M-04, Pump Area Slab. However, it was constructed prior to the installation of the precast "Security Wall", which will require some rework/slab modifications
- Sheet M-04, Emergency Generator is set in place
- Sheet M-04, Pumps 1 thru 4 have been set.
- Sheet M-07, Onsite Lift Station has been set
- Electrical switchgear is onsite and installed
- Seal water systems onsite and installed

Work Performed but Requires Rework:

- Sheet S-12, Pump Area Slab will require some modifications to facilitate installation of the precast Security Wall
- Sheet S-07, Pump Bases require extension in order to reposition Pumps 1 thru 4
- Sheet S-07, Pipe Support reinforcement modifications
- Sheet M-04, Pumps 1 thru 4 need to be repositioned due to misalignment
- Sheet M-04, Flanged Ductile Iron Piping will require repositioning due to misalignment

All subcontractor pricing included with our bid was supplied by Eckler Engineering; any pricing not supplied is not included within our proposal and will need to be added (if necessary) at a later date.

Wharton Smith does not offer any warranties of or guaranties as to the previous contractor's work, the Project Status or the portion or percentage of work currently complete.

In order to complete the project in the most efficient and economical manner, the completion durations provide on the bid form are estimates based solely on the utilization of our own skilled craft work force to perform the work. Wharton Smith will work with the city's Apprenticeship Program to minimize the impact of time and costs to the project.

We appreciate being given the opportunity to assist the City and Hartford with this sensitive issue and would welcome the opportunity to help provide closure to this project.

Respectfully,



Gregory L. Williams
South Florida – Water/Wastewater Division Manager

125 W Indiantown Road, Suite 201, Jupiter, FL 33458 | Phone: (561) 748-5956 | Fax: (561) 748-5958

FL - CG C032669 | AL – 45684 | LA – 52227 | MS – 18232MC | GA – GCCO 001333 | NC – 38755 | SC – G97817 | TN – 62419 | VA – 2705121584A