

**CONTRACT FOR CONSULTING AND PROFESSIONAL SERVICES
JH SPRAGUE CONSULTING, LLC**

This Contract is made as of this _____ day of _____, by and between the City of Riviera Beach, Palm Beach County, Florida, a municipal government existing under the laws of the State of Florida, by and through its City Council, hereinafter referred to as the CITY, and JH SPRAGUE CONSULTING, LLC, a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT, whose Federal I.D. number is 90-060-6261.

In consideration of the mutual promises contained herein, the CITY and the CONSULTANT agree as follows.

ARTICLE 1 - SERVICES

The CONSULTANT's responsibility under this Contract is to prepare and submit an environmental resources permit application, coordinate, administer and present grant funding for marina construction with city staff, professional services providers, consultants, developers, and other governmental entities to ensure that all grant requirements are met as to timelines, grant regulations and construction; identify and apply for additional marina construction funding grants, and research grants that can be used for overall projects development elements and other elements as outlined in Exhibit "A," the Scope of Work.

The CITY's representative/liaison during the performance of this Contract shall be Danny D. Jones, Deputy City Manager, who may be contacted by phone at 561-845-4131 or by email at ddjones@rivierabch.com.

ARTICLE 2 - SCHEDULE

The CONSULTANT shall commence services on April 1st, 2017 and complete all services by March 30th, 2018.

ARTICLE 3 - PAYMENTS TO CONSULTANT

- A. Generally - The CITY agrees to compensate the CONSULTANT 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 \$48,000 for CONSULTANT's services. The CITY shall not reimburse the CONSULTANT for any travel costs incurred as a direct result of the CONSULTANT providing deliverables to the CITY in pursuance of the scope of work contained in Exhibit "A," without specific, prior approval of the City's representative.
- B. Invoices received from the CONSULTANT 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. Invoices will then be sent to the Finance Department for payment and 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 receipts, invoices, or other documentation acceptable to the Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Contract as Exhibit "A". If eligible for reimbursement, the Finance Department requires that long distance telephone calls shall identify the person(s) called, purpose of call, time, and costs. Mileage charges shall identify the destination, number of miles, rate, and purpose of travel. Duplication charges shall describe the documents, purpose of duplicating, and rate charged. Any travel, per diem, mileage, meals or lodging expenses, which may be reimbursable under the terms of this Contract, will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.

- D. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "Final Invoice" on the CONSULTANT's final/last billing to the CITY. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges, if not properly included in this final invoice, are waived by the CONSULTANT and the CITY shall have no obligations for any other costs or expenses thereafter.

Payments to the CONSULTANT shall be sent to:

John H. Sprague
JH SPRAGUE CONSULTING, LLC
10918 Larch CT,
Palm Beach Gardens, FL 33418

ARTICLE 4 - TRUTH-IN NEGOTIATION CERTIFICATE

Signature of this Contract by the CONSULTANT's representative shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged to the CONSULTANT'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 consultants. The CITY shall exercise its right under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

This Contract may be cancelled by the CONSULTANT 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 CONSULTANT; provided the CITY fails to cure same within that thirty (30) day period. It may also be terminated, in whole or in part, by the CITY, with or without cause, immediately upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the CITY's satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the CITY the CONSULTANT 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 progress, 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 CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the CITY.

All of the services required hereunder shall be performed by the CONSULTANT 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.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel in accordance with the applicable standard of care in the field for which CONSULTANT is consulting with the CITY.

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

All of the CONSULTANT's personnel and all of the CONSULTANT's subcontractors/subconsultants ("hereinafter subcontractors") will comply with all CITY requirements governing conduct, safety, and security while on or utilizing CITY premises/property.

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 subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

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

If subcontractor(s) are used, the CONSULTANT shall use only licensed and insured subcontractor(s), and shall require any subcontractor, as may be applicable, to provide a payment bond. All subcontractors shall be required to promptly make payments to any person who, directly or indirectly, provides services or supplies under this Contract.

The CONSULTANT shall be responsible for the performance of all subcontractors.

ARTICLE 8 – SBE PARTICIPATION

The City's Procurement Ordinance has a Small Business Enterprises (SBE) participation component which may apply to this Contract. If it is determined by CITY staff that it applies, the CONSULTANT agrees to abide by the provisions of the SBE section of the procurement code. The CONSULTANT further agrees to maintain all relevant records and information necessary to document compliance with the Ordinance, and agrees to allow the CITY to inspect such records and provide such records to the CITY upon request.

ARTICLE 9 - FEDERAL AND STATE TAX

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

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

ARTICLE 10 - AVAILABILITY OF FUNDS

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

ARTICLE 11 - INSURANCE

- A. Prior to execution of this Contract by the CITY, the CONSULTANT shall provide certificates evidencing insurance coverage 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 CONSULTANT has 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 CONSULTANT of its liability and obligations under this Contract.
- B. The CONSULTANT shall maintain during the term of this Contract, standard Professional Liability Insurance in the minimum amount of \$1,000,000.00 per occurrence.
- C. The CONSULTANT shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$500,000.00 per occurrence to protect the CONSULTANT 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 CONSULTANT or by anyone directly or indirectly employed by or contracting with the CONSULTANT.
- D. "This section intentionally deleted"
- E. "This section intentionally deleted"
- F. "This section intentionally deleted"

ARTICLE 12 - INDEMNIFICATION

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

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

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

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

ARTICLE 13 - SUCCESSORS AND ASSIGNS

The CITY and the CONSULTANT 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 CONSULTANT 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 CONSULTANT.

ARTICLE 14 - VENUE

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

ARTICLE 15 - REMEDIES

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 16 - CONFLICT OF INTEREST

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

The CONSULTANT 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 CONSULTANT's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT 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 CONSULTANT. The CITY agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the CITY shall so state in the notification and the CONSULTANT 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 CONSULTANT under the terms of this Contract.

Further, please be advised, in accordance with section 112.313, Florida Statutes, and pertinent Opinions of the Florida Commission on Ethics, that if you or certain representatives of your company are a member of a city board, including an advisory board, you may be ineligible to enter into a contract/agreement with the City. If you are a member of a city board, including an advisory board, prior to executing this contract, please contact the Florida Commission on Ethics at (850) 488-7864 to secure an informal advisory opinion regarding your eligibility to enter into this contract.

ARTICLE 17 – DELAYS AND EXTENSION OF TIME

The CONSULTANT 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 CONSULTANT 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 CONSULTANT's request, the CITY shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT's 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.

If the CONSULTANT is delayed at any time in the process of the work by any act or neglect of the CITY or its employees, or by any other consultant employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONSULTANT's control, or by delay authorized by the CITY pending negotiation or by any cause which the CITY shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY may decide. No extension shall be made for delay occurring more than seven (7) days before claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary.

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

ARTICLE 18 - INDEBTEDNESS

The CONSULTANT 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 CONSULTANT further

warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 19 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONSULTANT 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 CONSULTANT 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 or similar 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.

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.

The CITY and the CONTRACTOR shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law), and specifically section 119.0701, Florida Statutes, by agreeing to:

- (a) Keep and maintain all public records that ordinarily and necessarily would be required by the CITY to keep and maintain in order to perform the services under this Contract.
- (b) Provide the public with access to said public records on the same terms and conditions that the CITY would provide the records and 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.
- (d) Meet all requirements for retaining said public records and transfer, at no cost, to the CITY all said public records in possession of the CONTRACTOR upon termination of this Contract and destroy any duplicate public records that are exempt or confidential and exempt from public record disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.

ARTICLE 20 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONSULTANT 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 CONSULTANT's sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT's relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

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

ARTICLE 21 - CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT 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 CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 22 - ACCESS AND AUDITS

The CONSULTANT 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 CONSULTANT's place of business.

ARTICLE 23 - NONDISCRIMINATION

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

ARTICLE 24 - ENFORCEMENT COSTS

All parties shall be responsible for their own attorney's fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract.

ARTICLE 25 - AUTHORITY TO PRACTICE

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals which are legally 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 upon request.

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

ARTICLE 26 - SEVERABILITY

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

ARTICLE 27 - PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133 by entering into this Contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants 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 thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 28 - MODIFICATIONS OF WORK

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

If the CITY so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by the 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 CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and approved by the CITY COUNCIL FOR THE CITY OF RIVIERA BEACH or its designated representative.

ARTICLE 29 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, and also via email. If sent to the CITY shall be mailed to:

**City of Riviera Beach
ATTN: City Manager
600 W. Blue Heron Blvd.
Riviera Beach, FL 33404**

If sent to the CONSULTANT shall be mailed to:

**John H. Sprague
JH SPRAGUE CONSULTING, LLC
10918 Larch CT,
Palm Beach Gardens, FL 33418**

ARTICLE 30 - ENTIRETY OF CONTRACTUAL AGREEMENT

The CITY and the CONSULTANT agree that this Contract and any attachments hereto or other documents as referenced in the 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 28-Modifications of Work.

ARTICLE 31 – PROTECTION OF WORK AND PROPERTY

The CONSULTANT shall continuously maintain adequate protection of all work from damage, and shall protect the CITY’S property from injury or loss arising in connection with the Contract. Except for any such damage, injury, or loss, except that which may be directly due to errors caused by the CITY or employees of the CITY, the CONSULTANT shall provide any necessary materials to maintain such protection.

ARTICLE 32 – TIME

Time is of the essence in all respects under this Contract. The CITY and CONSULTANT shall work in an expeditious manner to complete objectives as set forth in the aforementioned Scope of Work described in Exhibit “A.”

ARTICLE 33 - TERMINOLOGY AND CAPTIONS

All pronouns, singular, plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. Wherever the context may require, the singular shall mean and include the plural and the plural shall mean and include the singular. The

term "Contract" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter" and the like mean this Contract in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings are for reference and convenience only and do not enter into or become a part of the context of this Contract, nor shall such headings affect the meaning or interpretation of this Contract.

ARTICLE 34 - WAIVER

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

ARTICLE 35 - PREPARATION

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

ARTICLE 36 - MATERIALITY

All provisions of the Contract shall be deemed material, in the event CONSULTANT fails to comply with any of the provisions contained in this Contract or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Contract and CITY may at its option and without notice terminate this Contract.

ARTICLE 37 - REPRESENTATIONS/BINDING AUTHORITY

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

ARTICLE 38 - EXHIBITS

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

ARTICLE 39 - CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS

This Contract consists of this Contract and all exhibits attached hereto. The CONSULTANT agrees to be bound by all the terms and conditions set forth in this Contract. To the extent that a conflict exists between this Contract and the exhibits, the terms, conditions, covenants, and/or provisions of this

Contract shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

ARTICLE 40 - LEGAL EFFECT

This Contract shall not become binding and effective until approved by the City Manager of the City of Riviera Beach.

ARTICLE 41 - NOTICE OF COMPLAINTS OR SUITS

Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Contract. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

ARTICLE 42 – SURVIVABILITY

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

ARTICLE 43 - DEFAULT

Notwithstanding anything contained in this Contract to the contrary, the parties agree that the occurrence of any of the following shall be deemed a material event of default and shall be grounds for termination:

- a. The filing of a lien by any subcontractor or third tier subcontractor including, but not limited to materialmen, suppliers, or laborers, upon any property, right of way, easement, other interest in land or right to use such land within the territorial boundaries of the CITY which lien is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONSULTANT;
- b. The filing of any judgment lien against the assets of the CONSULTANT related to the performance of this Contract which is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONSULTANT; or
- c. The filing of a petition by or against the CONSULTANT for relief under the Bankruptcy Code, or for its reorganization or for the appointment of a receiver or trustee of the CONSULTANT or the CONSULTANT’s property; or an assignment by the CONSULTANT for the benefit of creditors; or the taking possession of the property of the CONSULTANT by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of the CONSULTANT; or if a temporary or permanent receiver or trustee shall be appointed for the CONSULTANT or for the CONSULTANT’s property and such temporary or permanent receiver or Trustee shall not be discharged within thirty (30) days from the date of appointment.

The CONSULTANT shall provide written notice to the CITY of the occurrence of any event of default within ten (10) days of the CONSULTANT's receipt of notice of any such default.

ARTICLE 44 - WAIVER OF SUBROGATION

The CONSULTANT hereby waives any and all rights to Subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then the CONSULTANT shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should the CONSULTANT enter into such an agreement on a pre-loss basis.

ARTICLE 45 - RIGHT TO REVIEW

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

ARTICLE 46 – WAIVER OF TRIAL BY JURY

IN THE EVENT OF LITIGATION ARISING FROM THIS CONTRACT, CITY AND CONSULTANT KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY. CITY AND CONSULTANT HEREBY ACKNOWLEDGE THAT THIS WAIVER PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY AGREEING TO ENTER INTO THIS CONTRACT.

ARTICLE 47 – PALM BEACH COUNTY INSPECTOR GENERAL

In accordance with Palm Beach County ordinance number 2011-009, the CONSULTANT acknowledges that this contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

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[SIGNATURES ON FOLLOWING PAGE]

CONTRACT WITH THE CITY OF RIVIERA BEACH

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

CITY OF RIVIERA BEACH

JH SPRAGUE CONSULTING, LLC

BY: _____
Thomas A. Masters,
MAYOR

BY: _____
John H. Sprague,
CONSULTANT

ATTEST:

BY: _____
CLAUDENE L. ANTHONY, CMC
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
Andrew Degraffenreidt, III
City Attorney

Exhibit "A"
JH SPRAGUE CONSULTING, LLC.
SCOPE OF WORK

- **CRA/City, Removal of portion of the wall blocking view of the water and upland. The wall disrupts the continuity and ambience between the marina and upland development.**
 - Examination of pedestrian retaining wall on the east end of the higher up portion of the upland.
 - Examination of the drawings/engineering etc. supplied to us by the CRA and SONG and Associates to aid in the determination as to what steps that would be required to remove portions.
 - Review a stainless steel railing/cable system to meet pedestrian code in the portions of the wall to be potentially removed.
 - Determine what the true FEMA height presently that is required and if removal of portions of the wall will potentially create issues and if so what are those issues.
 - If FEMA requires the wall, can the cut concrete panels be reinstalled in new installed slotted U pilings so that the panels can be installed in hurricane events and removed afterwards similar to the way it is done in Washington DC to protect monuments.
 - Set up a meeting with City, CRA staff to go over a recommendation based on review of the above prior to engineered drawings.

- **Dock G process for bidding, permits and FIND grant in place.**
 - Prepare bid documents for dock G contractor and dock purchase as one bid includes the pilings for the lifts and utilities. Lifts to be purchased separately as they generally have only approved contractors for their install.
 - Determination as to how 480V 3 phase power will be supplied to the dock as well as a separate float if required for the transformer.
 - Study of boat lifts in the 25,000 LB category, to ascertain which requires the least maintenance, ease of use, product satisfaction and warranty. Lifts to be installed with latch attachment to prevent movement during storm events and vessels strapping.
 - Dock to be a floating concrete Cat-loaded (to be determined) non-wailer type 14 ft. wide. Bollards and cleats east side.
 - Lift pilings to be high enough for hurricane flood events.
 - Look at stamped grey color variations for decking.
 - Pump-out to be installed, look at applying for CVA grant.
 - Power pedestals to supply vessels on lifts as well as smaller vessels on east side as well as 480 volt 3 phase power.
 - Steel pilings for dock retention
 - Determine type of pilings to be Steel, fiberglass or concrete for lifts and finger piers.
 - Determine if cost savings for aluminum floating finger piers is warranted.

- Set up meeting with City Managers office and 3rd party on any additional comments or recommendations.
 - Work with Randy in purchasing on finalizing bid documents.
- **Expansion and widening of Dock F (very south dock) and completion of the southern portion of marginal dock designated dock E in City Marina DEP and USACE permits. Creates 1 very large slip and marginal dockage Dock F plus slips along the marginal dock E for 60-70 ft. vessels.**
- Finish report on existing structure as to any issues as to widening as well as broken wave panel replacements. Required as to Murphy agreement.
 - Determine if needed where existing dock should be shortened.
 - Prepare cost estimates needed for 2017 FIND and possible FBIP grant application.
 - Look at early demo of finger piers and moving pilings along dock F for temporary use of marginal dockage for 1 large vessel off of Dock D.
 - Main existing dock F widened and top deck to be aluminum frame with IPE or composite decking.
 - New main floating dock to be wave attenuating concrete Cat 3 loaded.
 - Electric on New floating portion to be 3 phase 480 and 30-100 amp service for both sides. Fixed portion to have electrical as well to be discussed as to best use, taking into consideration foreign flag restrictions.
 - Look at additional pilings for south slip and protection from barges as well as turning assistance out from slip.
 - Pump-out available with pump-out grant applied for.
 - Stem-wall to be looked at to prevent adjoining property sand coming into basin. Also look at retention fence of better quality than chain link.
 - Once we have costs aligned with grants prepare support drawings for grant application details. Apply for grants April 1, 2017. Bid documents planning to take place in early 2018.
- **Based on meetings on possible floating dock restaurant to be held with DEP state lands in Tallahassee prepare work for placement of floating restaurant dock.**
- Sea-grass and depth studies where floating dock would be located needed for permitting.
 - Look at placement in another location within basin if issues arise as to present intended placement just North and east of where A dock goes South then East.
- Do any additional studies required for dredging to 15ft plus over-dredge for all docks along the ICW Right of Way, plus south basin for slips south of D and 2 new F docks. This to include are needed for finger piers off of E dock for marginal dock slips. This to include area between enhancement area proposed to north and the north side of A dock to insure sand does not migrate under A dock.
- Based on above with PBC ERM to determine mitigation needed for dredging and enhancing the area to the north off the park.

Start meetings with the permitting agencies to secure permits.

- **Extension of the City/DEP Deed of Dedication 33 ft. eastward to allow mooring of vessels within the allowable area of the ICW Right of Way. Reduction of the City/CRA Deed of Dedication area on the north side, to align with the city abandonment and sale of a portion of the Old Slip Rd parcel on the north side of the park to JH Family Holdings (Viking).**
- Prepare necessary surveying and legal description documents to apply for changes needed to the Deed of Dedication.
- Attend a meeting with appropriate DEP personnel in Tallahassee to present changes requested.
- **Prepare applications for FIND for 2017 dock F for approximately \$1,200,000.**
- Look at the need based on the pending cost estimates and or feasibility of applying for a FBIP and CVA grants as well for 2017. Both FIND and FBIP would be due end of March or early April.

Exhibit “B”

JH SPRAGUE CONSULTING, LLC.

FEE STRUCTURE

Ongoing services to the City/CRA joint Project effort to assist the City and CRA with development of the marina renovation, and in the area of grant application processes in the amount not to exceed \$48,000.

- A. Contractor will prepare and submit to the City invoices along with progress reports in order to receive compensation.