

RESOLUTION NO. 74-11

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO SONG AND ASSOCIATES OF WEST PALM BEACH, FLORIDA FOR PROFESSIONAL ARCHITECTURAL DESIGN SERVICES FOR DEVELOPMENT OF DESIGN SPECIFICATIONS, CONSTRUCTION DOCUMENTS AND RELATED SERVICES FOR A NEW RIVIERA BEACH PUBLIC WORKS COMPLEX IN THE AMOUNT OF \$397,300.00; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE PROFESSIONAL SERVICES CONTRACT; AUTHORIZING THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO TWELVE PERCENT (12%); AUTHORIZING THE INTERIM FINANCE DIRECTOR TO MAKE PAYMENT FOR SAME FROM ACCOUNT NUMBERS 460-1127-541-0-6201 AND 310-1123-519-0-6251 AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, in accordance with the Consultants Competitive Negotiations Act, Chapter 287, Fla. Stat., the City issued a Request for Qualifications (RFQ) No. 259-10, seeking qualifications from qualified corporations, firms, or individuals to provide professional design services for the City's new Public Works Complex; and

**WHEREAS**, pursuant to applicable procedures, the City selected Song and Associates to provide said professional design services based on the firm's qualifications in the desired field of design services; and

**WHEREAS**, on February 16, 2011, the City Council approved Resolution No. 20-10 authorizing staff to negotiate with Song and Associates to provide professional architectural design services for development of design specifications, construction, documents, and related services for a new Public Works Complex; and

**WHEREAS**, the City's negotiation team reached an amicable agreement with Song and Associates through negotiation efforts.

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

**SECTION 1.** That the City Council hereby awards a Professional Services Contract to Song and Associates of West Palm Beach, Florida to provide professional design services for development of design specifications, construction, documents, and related services for the new Public Works Complex.

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**SECTION 2.** That the Mayor and City Clerk are authorized to execute the Professional Services Contract.

**SECTION 3.** That the Interim Finance Director is authorized to make payment for same from Account Numbers 310-1123-519-0-6251 and 460-1127-541-0-6201.

**SECTION 4.** That the City Manager shall have authority to approve change orders in an amount not to exceed twelve percent (12%) of the contract amount.

**SECTION 5.** That this Resolution shall take effect upon its passage and approval by City Council.

PASSED and APPROVED this 1 day of June, 2011.

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APPROVED:

Thomas A. Masters  
THOMAS A. MASTERS  
MAYOR

Judy L. Davis  
JUDY L. DAVIS  
CHAIRPERSON

ATTEST:

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

Billie E. Brooks  
BILLIE E. BROOKS  
CHAIR PRO TEM

Cedrick A. Thomas  
CEDRICK A. THOMAS  
COUNCILPERSON

Dawn S. Pardo  
DAWN S. PARDO  
COUNCILPERSON

Shelby L. Lowe  
SHELBY L. LOWE  
COUNCILPERSON

MOTIONED BY: Pardo

SECONDED BY: Brooks

J. DAVIS Aye

B. BROOKS Aye

C. THOMAS Aye

D. PARDO Aye

S. LOWE Aye

REVIEWED AS TO LEGAL SUFFICIENCY

Pamala H. Ryan  
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 5/23/11

**CONTRACT FOR PROFESSIONAL SERVICES**

THIS CONTRACT (hereinafter called Contract) is made this 1 day of June, 2011, by and between the City of Riviera Beach, Florida, a municipal corporation of Florida (hereinafter called CITY) and SONG AND ASSOCIATES, INC., a Florida Corporation, (hereinafter called ARCHITECT) whose Federal I.D. number is 650848859.

**RECITALS**

**WHEREAS**, in accordance the Consultants Competitive Negotiations Act, Chapter 287, Fla. Stat., the CITY issued a Request for Qualifications and Proposals (No: 259-10) (hereafter called CITY's RFQ) seeking qualifications and proposals from qualified corporations, firms or individuals to provide professional design services for the CITY's new public works complex; and,

**WHEREAS**, pursuant to its applicable procedures, the CITY selected the ARCHITECT to provide said professional design services based on ARCHITECT's qualifications as a firm having specialized in the desired field of design services; and,

**WHEREAS**, the ARCHITECT is willing and able to perform such professional design services for the CITY in accordance with the basic terms and conditions herein set forth; and,

**WHEREAS**, the purpose of this Contract is intended to set forth certain terms and conditions which shall be specific to the design of the CITY's new Public Works Complex.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained, it is hereby agreed that the ARCHITECT shall serve as the CITY's design professional and owner's representative for the design of the new public works complex pursuant to the terms of this Contract and will give consultation, services and advice to the CITY during the performance of the services on the terms and conditions hereinafter set forth.

**SECTION 1: INCORPORATION OF RECITALS.** The foregoing true and correct recitals are hereby incorporated into this Contract.

**SECTION 2: ARCHITECT'S SERVICES.** The ARCHITECT will be engaged by the CITY to provide professional services for the design of the new public works complex. The terms and conditions of this Contract shall govern all such work unless specifically stated and agreed to by the parties in the executed contract. The services of the ARCHITECT may be for the following types of projects or similar disciplines:

- a. Programming Needs Assessment (if needed) for the new public works complex;
- b. Master Planning for the new public works complex;
- c. Standard Architectural and Engineering Services for the new public works complex; and,
- d. Additional Design Services including, but not limited to those identified in the CITY's RFQ and the ARCHITECT's revised responsive proposal to the CITY's RFQ number 259-10 (hereafter called ARCHITECT's Proposal).

Subsequently, other services falling generally into the areas of professional design services related to the public works complex may be added by executed work order.

**SECTION 3: ARCHITECT'S RESPONSIBILITIES.** In addition to other responsibilities described in this Contract, the ARCHITECT shall have the following responsibilities:

- a. The ARCHITECT shall perform the professional services to that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession practicing in the same or similar locality at the time the services are provided.
- b. Any amendment, extension or modification to this Contract must be coordinated and approved by the CITY in writing prior to execution and commencing any work under said amendment, extension or modification.
- c. The CITY shall have the right to approve or disapprove any sub-consultant or sub-contractor of the ARCHITECT.
- d. ARCHITECT shall perform all services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The ARCHITECT shall submit for the CITY's approval a schedule for the performance of the ARCHITECT's services. The schedule shall include allowances for periods of time required for the CITY's review, for the performance of the CITY's consultants, and for approval of submissions by authorities having jurisdiction over the Project.
- e. The schedule shall be extended as necessary in writing by the parties for periods of suspension or delay resulting from circumstances beyond the ARCHITECT's control. The ARCHITECT shall promptly provide the CITY with written notice of any such periods of suspension or delay resulting from circumstances beyond the ARCHITECT's control. The ARCHITECT shall not be entitled to an increase in the sum or payment or compensation of any kind from the CITY for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of periods of suspension or delay, disruption, interference or hindrance from any circumstances beyond the ARCHITECT's control. Provided, however, and subject to the provisions of sovereign immunity set forth in § 768.28, Fla. Stat., and otherwise under the law, that this provision shall not preclude recovery or damages by the ARCHITECT for hindrances or delays due solely to fraud, bad faith or active interference on the part of the CITY or its agents. Otherwise, the ARCHITECT shall be entitled only to extensions of the schedule or time as the sole and exclusive remedy for such resulting delay or suspension, in accordance with and to the extent specifically provided above. However, should any suspension or delay be due to circumstances within the ARCHITECT's control, the CITY shall have the right to withhold, set-off or reduce any payment to the ARCHITECT in an amount reasonably necessary to compensate CITY for any direct, incidental and consequential damages to the CITY. No extension of time shall be made for periods of suspension or delay resulting from circumstances beyond the ARCHITECT's control occurring more than seven (7) days before the

ARCHITECT provides written notice to the CITY of such periods of suspension or delay.

- f. ARCHITECT shall designate a representative to act on ARCHITECT's behalf with respect to the Project. Such person shall have authority to transmit instructions, receive information, interpret and define the ARCHITECT's policies with respect to the Project. Unless otherwise specified, the ARCHITECT's representative shall be Peter Gilstad, Director Civic / Commercial Studio.
- g. The ARCHITECT shall maintain the confidentiality of information specifically designated as confidential by the CITY, unless withholding such information would violate the law, including, but not limited to, Florida's Public Records law, Chapter 119, Fla. Stat.
- h. ARCHITECT shall review laws, codes, and regulations applicable to the ARCHITECT's services. ARCHITECT shall comply with all laws, codes and regulations imposed by governmental authorities having jurisdiction over the Project, including but not limited to, CITY policies, Palm Beach County's Code of Ordinances, or other local, state or federal regulations for the Project, including the requirements of section 255.2572(2), Florida Statutes, as it applies to "green" standards.
- i. ARCHITECT shall be entitled to rely on the accuracy and completeness of services and information furnished by the CITY. However, ARCHITECT shall provide prompt written notice to the CITY if ARCHITECT becomes aware of any errors, omissions or inconsistencies in such services or information.
- j. If, after a Project has begun, an error or omission by the ARCHITECT is discovered and the Project can still be provided within the planned schedule without cost to the CITY, then the ARCHITECT will correct such error or omission in accordance with said schedule.

**SECTION 4: CITY'S RESPONSIBILITIES.** In addition to other responsibilities described in this Contract, the CITY shall have the following responsibilities:

- a. Designate in writing a person to act as the CITY's representative with respect to the services to be rendered under this Contract. Such person shall have authority to transmit instructions, receive information, interpret and define the CITY's policies with respect to the ARCHITECT's services for the Project. Unless otherwise specified, the CITY's representative shall be Brynt Johnson, Interim Director of Public Works.
- b. Provide all available criteria and full information as to the CITY's requirements for the Project, and performance requirements and expectations, flexibility and expandability, and any budgetary limitations; and furnish copies of all available information to be utilized in a Project. However, if such information is not provided, ARCHITECT shall immediately notify the CITY in writing of the information needed from the

CITY for a Project. Furthermore, it shall be ARCHITECT's sole responsibility to ensure that each Project is accomplished in accordance with all local, state and federal rules, ordinances, regulations and laws as they may be applicable to each Project.

- c. Arrange for access to and make all provisions for the ARCHITECT to enter upon public and private property as required for the ARCHITECT to perform services under this Contract.
- d. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the ARCHITECT, obtain advice of an attorney, insurance counselor and other consultants the CITY deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the ARCHITECT. The CITY shall be entitled to rely on the accuracy and completeness of services and information furnished by the ARCHITECT.
- e. Give prompt written notice to the ARCHITECT whenever the CITY observes or otherwise becomes aware of any development that affects the scope or timing of ARCHITECT's services, or any defect or nonconformance in any aspect of the Project.

**SECTION 5: TERM OF SERVICES AND COMPENSATION.**

- a. This Contract shall be for a term of two (2) years from the date of execution by the CITY unless earlier terminated in accordance with the terms and conditions of this Contract.
- b. The CITY shall pay the ARCHITECT the amount not to exceed Three Hundred Eighty-Nine Thousand Two Hundred Dollars (\$397,300.00) which shall not include certain reimbursable expenses (as addressed below). The fees are set forth more specifically in "Exhibit A". ARCHITECT's reimbursable expenses will be billed at 1.2 times cost under this Contract.
- c. ARCHITECT reimbursable expenses shall include only the following:
  - i. Mileage for travel that exceeds fifty (50) miles from ARCHITECT's principal place of business (in accordance with Florida Statutes);
  - ii. Long distance telephone calls;
  - iii. Fees paid for securing approval of authorities having jurisdiction over a Project;
  - iv. Reasonable expenses for reproductions, standard form documents, postage and delivery of same to the CITY or other authorities having jurisdiction over a Project;
  - v. Renderings, models and mock-ups requested by the CITY; and,
  - vi. Other similar direct Project-related expenditures approved in advance by the CITY.
- d. ALL of the ARCHITECT's compensation will be set forth in this contract. Services

undertaken or expenses incurred by the ARCHITECT exceeding an amount identified in this Contract shall be the liability of the ARCHITECT.

**SECTION 6: METHOD OF PAYMENT.**

- a. ARCHITECT shall invoice the CITY not more frequently than monthly for services that have been rendered in conformity with this Contract. The CITY's representative shall review each invoice and then forward each invoice to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the CITY representative's approval.
- b. Final Invoice - In order for both parties herein to close their books and records, ARCHITECT will clearly state "final invoice" on the ARCHITECT's final/last billing to the CITY. This certifies that all Services have been properly performed and all charges 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 ARCHITECT.
- c. If the CITY fails to make any payment due the ARCHITECT for services and expenses under this Contract within forty-five (45) days after the ARCHITECT's transmittal of its invoice to the CITY, the ARCHITECT may, after giving notice to the CITY, suspend services under this Contract until it has been paid in full all amounts due.
- d. If the CITY disputes any invoice or part of an invoice, CITY shall notify ARCHITECT of such dispute within fifteen (15) days of receipt of the invoice. CITY reserves the right to off-set, reduce or withhold any payment to ARCHITECT in accordance with the terms and conditions of this Contract.

**SECTION 7. USE OF DOCUMENTS.** All documents, including but not limited to drawings, specifications, plans, reports, other items and data stored electronically (collectively referred to as "Documents" hereafter), prepared by the ARCHITECT and ARCHITECT's sub-consultants or sub-contractors under this Contract shall be considered a "Work for Hire" and the exclusive property of the CITY. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, ARCHITECT and ARCHITECT's sub-consultants and sub-contractors will assign to CITY all right, title and interest in and to ARCHITECT's and/or ARCHITECT's sub-consultants' and sub-contractors' copyright(s) for such Documents. ARCHITECT shall execute and deliver to CITY such instruments of transfer and take such other action that CITY may reasonable request, including, without limitation, executing and filing, at CITY's expense, copyright applications, assignments and other documents required for the protection of CITY's right to such Documents. The ARCHITECT shall retain copies of the Documents for a period of three (3) years from the date of completion of the Project. The CITY grants to the ARCHITECT and ARCHITECT's sub-consultants and sub-contractors the right and/or limited license to use a portion of the Documents prepared by the ARCHITECT or the ARCHITECT's sub-consultants and sub-contractors in future projects of the ARCHITECT or the ARCHITECT's sub-consultants and sub-contractors with said right and/or



limited license to use a portion at ARCHITECT's or ARCHITECT's sub-consultant's and sub-contractor's own risk and without any liability to CITY.

The ARCHITECT and the ARCHITECT's sub-consultants and sub-contractors, upon written request from the CITY, will provide in electronic form applicable portions of any Documents prepared for a Project appropriate to and for use of CITY or CITY's consultants. Release of the electronic form to CITY's consultants shall be without liability to the ARCHITECT.

Any modifications made by the CITY to any of the ARCHITECT's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the ARCHITECT will be at the CITY's sole risk and without liability to the ARCHITECT. Any electronic files not containing an electronic seal are provided only for the convenience of the CITY, and use of them is at the CITY's sole risk.

**SECTION 8: INDEMNIFICATION.** The ARCHITECT shall indemnify and hold harmless the CITY, and its officers and employees, from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the ARCHITECT and other persons employed or utilized by the ARCHITECT in the performance of a Project.

The ARCHITECT shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnification including, but not limited to, all costs, expert witness fees, reasonable attorney's fees, and court and/or arbitration costs.

If, consistent with the foregoing indemnification, the ARCHITECT is responsible for indemnifying the CITY for a liability, damage, loss and/or cost to the CITY, any sums due ARCHITECT under this Contract may be offset, reduced or withheld by the CITY until that claim for indemnification by the CITY has been resolved or settled, and any amount offset, reduced or withheld by the CITY under this Section shall not be subject to payment of interest by the CITY.

Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either the CITY or ARCHITECT, nor shall this Contract be construed a waiver of sovereign immunity beyond the waiver provided in section 768.28, Fla. Stat.

**SECTION 9: PERSONNEL.** The ARCHITECT 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 ARCHITECT 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.

All of the ARCHITECT's personnel (and all sub-consultants and sub-contractors) while on CITY premises, will comply with all CITY requirements governing conduct, safety, and security.

**SECTION 10: SUB-CONSULTANTS.** The CITY reserves the right to accept the use of a sub-consultant or sub-contractor (collectively "sub-consultant") or to reject the selection of a particular sub-consultant and approve all qualifications of any sub-consultant in order to make a determination as to the capability of the sub-consultant to perform properly under this Contract. The ARCHITECT

is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities. Rejection of a proposed sub-consultant may result in a change in pricing unless such rejection is due solely to a lack of qualifications or poor performance.

Once a sub-consultant is listed in an ARCHITECT's response to an RFP or a bid and the ARCHITECT wishes to change a sub-consultant, if the response or bid has been accepted by the CITY, then specific approval from CITY staff must be given prior to any change in sub-consultants. The CITY shall not unreasonably deny the request. However, the ARCHITECT must demonstrate that the sub-consultant being replaced is unable to perform the work, is performing the work poorly or untimely, or is unable to meet the requirements of the Contract with the CITY. The CITY will not address issues related to the ARCHITECT's specific agreement with the sub-consultant including issues of pricing.

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

All sub-consultants providing professional services to the ARCHITECT under this Contract will also be required to provide their own insurance coverage identical to those contained in this Contract. In the event that a sub-consultant does not have insurance or does not meet the insurance limits as stated in this Contract, the ARCHITECT shall indemnify and hold harmless the CITY for any claim in excess of the sub-consultant's insurance coverage, arising out of the negligent acts, errors or omissions of the sub-consultant. The CITY will make no attempt to fix the scope of services for any of the ARCHITECT's sub-consultants. The ARCHITECT shall be solely responsible for fixing the scope of services for the ARCHITECT's sub-consultants and the responsibilities of each. Nothing herein shall be construed as creating a contractual relationship between the CITY and the ARCHITECT's sub-consultants.

**SECTION 11: TERMINATION.** This Contract may be cancelled by the ARCHITECT 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 ARCHITECT; 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, upon ten (10) days prior written notice to the ARCHITECT. Unless the ARCHITECT is in breach of this Contract, the ARCHITECT 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 ARCHITECT 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.

Termination of this Contract shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Notwithstanding the foregoing, the parties acknowledge and agree that this Contract is subject to budgeting and appropriation by the CITY of funds sufficient to pay the costs associated herewith in any fiscal year of the CITY. Notwithstanding anything in this Contract to the contrary, in the event that no funds are appropriated or budgeted by the CITY's governing board in any fiscal year to pay the costs associated with the CITY's obligations under this Contract, or in the event the funds budgeted or appropriated are, or are estimated by the CITY to be, insufficient to pay the costs associated with the CITY's obligations hereunder in any fiscal period, then the CITY will notify ARCHITECT of such occurrence and either the CITY or ARCHITECT may terminate this Contract by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the CITY of any kind whatsoever and the CITY shall pay ARCHITECT in accordance with the terms of this Contract.

**SECTION 12: FEDERAL AND STATE TAX.** The CITY is exempt from payment of Florida State Sales and Use Tax. The ARCHITECT shall not be exempted from paying sales tax to its suppliers for materials used to fill contractual obligations with the CITY, nor is the ARCHITECT authorized to use the CITY's Tax Exemption Number in securing such materials. The ARCHITECT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes and benefits.

**SECTION 13: INSURANCE.**

- A. Prior to execution of this Contract by the CITY, the ARCHITECT 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 ARCHITECT has obtained insurance of the type, amount, and classification as required for strict compliance with this Section 13 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 ARCHITECT of its liability and obligations under this Contract.
- B. The ARCHITECT 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 ARCHITECT 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 ARCHITECT 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 ARCHITECT or by anyone directly or indirectly employed by or contracting with the ARCHITECT.
- D. The ARCHITECT shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$500,000.00 combined single limit for bodily injury and property damages liability to protect the ARCHITECT from claims for damages for bodily and personal injury, including death, as well as from claims for property damage,

which may arise from the Ownership, use, or maintenance of owned and non-owned automobiles, including, but not limited to, leased and rented automobiles whether such operations be by the ARCHITECT or by anyone, directly or indirectly, employed by the ARCHITECT.

- E. The ARCHITECT shall maintain during the life of this Contract Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.
- F. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the ARCHITECT shall specifically include the CITY as an "Additional Insured".
- G. The CITY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, reject or accept any required policies of insurance, including limits, coverages, or endorsements, therein from time to time throughout the term of this Contract. The CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

**SECTION 14: SUCCESSORS AND ASSIGNS.** The CITY and the ARCHITECT 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 ARCHITECT 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 ARCHITECT.

**SECTION 15: DISPUTE RESOLUTION, LAW, VENUE AND REMEDIES.** All claims arising out of this Contract or its breach shall be submitted first to mediation in accordance with the local rules for mediation in Palm Beach County, Florida. The parties shall share the mediator's fee equally. The mediation shall be held in Palm Beach County, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Palm Beach County, Florida. 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.

**SECTION 16: INDEPENDENT CONTRACTOR RELATIONSHIP.** The ARCHITECT is, and shall be, in the performance of all Services under this Contract, an independent contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the services performed pursuant to this Contract shall at all times, and in all places, be subject to the ARCHITECT'S sole

direction, supervision, and control. The ARCHITECT shall exercise control over the means and manner in which it and its employees perform the services.

**SECTION 17: ACCESS AND AUDITS.** The ARCHITECT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the services 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 ARCHITECT's place of business.

**SECTION 18: NONDISCRIMINATION.** The ARCHITECT 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.

**SECTION 19: ENFORCEMENT COSTS.** Except for mediation, 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 awarded 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.

**SECTION 20: AUTHORITY TO PRACTICE.** The ARCHITECT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services under this Contract, and that it will at all times conduct its business and provide the services under this Contract in a reputable manner. Proof of such licenses and approvals shall be submitted to the CITY's representative upon request.

**SECTION 21: 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.

**SECTION 22: CONTINGENT FEES.** ARCHITECT warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the ARCHITECT to solicit or secure this Contract and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the ARCHITECT any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, the CITY shall have the right to terminate this Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

**SECTION 23: PUBLIC ENTITY CRIMES.** ARCHITECT acknowledges and agrees 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, proposal, or reply on a contract to provide any goods or services to a

public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, sub-contractor, or ARCHITECT under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The ARCHITECT will advise the CITY immediately if it becomes aware of any violation of this statute.

**SECTION 24: TRUTH-IN NEGOTIATIONS CERTIFICATE.** Signature of this Contract by the ARCHITECT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates and other factual unit costs supporting the ARCHITECT's compensation are accurate, complete, and current at the time of the CITY's approval and are no higher than those charged to the ARCHITECT's most favored customer for the same or substantially similar service. Accordingly, the original agreed to cost and any amendments thereto will be adjusted to exclude any significant sums by which CITY determines the cost was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such cost adjustments must be made within three (3) years following the end of this Contract.

**SECTION 25: NOTICE.** All notices required in this Contract shall be sent by certified mail, return receipt requested, or by nationally recognized overnight carrier, and if sent to the CITY shall be mailed to:

**BRYNT JOHNSON  
INTERIM DIRECTOR OF PUBLIC WORKS  
2391 AVENUE L  
RIVIERA BEACH, FL 33404**

With copy to:

**CITY ATTORNEY  
600 W. BLUE HERON BOULEVARD  
RIVIERA BEACH, FL 33404**

and if sent to the ARCHITECT shall be mailed to:

**PETER GILSTAD, DIRECTOR CIVIC / COMMERCIAL STUDIO  
SONG + ASSOCIATES, INC.  
400 AUSTRALIAN AVENUE SOUTH, SIXTH FLOOR  
WEST PALM BEACH, FL 33401**

The foregoing names and addresses may be changed if such change is provided in writing to the other party.

**SECTION 26: ENTIRETY OF CONTRACTUAL AGREEMENT.** The CITY and the ARCHITECT 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 ARCHITECT and the CITY by and through its CITY Council.

**SECTION 27: TIME.** Unless otherwise mutually agreed by the ARCHITECT and CITY, time shall be of the essence with respect to all Projects under this Contract.

**SECTION 28: 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.

**SECTION 29: WAIVER.** Failure of a party to enforce or exercise any of its right(s) under this Contract shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

**SECTION 30: PREPARATION.** This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

**SECTION 31: MATERIALITY.** All provisions of the Contract shall be deemed material. In the event ARCHITECT 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.

**SECTION 32: EXHIBITS AND CONTRACT DOCUMENTS.** Each exhibit and other contract documents referred to in this Contract (including those in Section 34 below) forms an essential part of this Contract. The exhibits and other contract documents, if not physically attached, should be treated as part of this Contract and are incorporated herein by reference.

**SECTION 33: CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS.** This Contract consists of the following contract documents: the CITY's RFQ; the ARCHITECT's Proposal; and, this Contract itself. The ARCHITECT agrees to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between any of the aforementioned documents, the order of precedence for the aforementioned documents shall be in the following order:

1. This Contract;
2. Then the CITY's RFQ; and,
3. Then the ARCHITECT's Proposal.

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

**SECTION 34: LEGAL EFFECT.** This Contract shall not become binding and effective until approved by the CITY by and through its CITY Council.

**SECTION 35: 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.

**SECTION 36: 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 immediate termination:

- a. The filing of a lien by any sub-consultant, sub-contractor or third tier sub-contractor including, but not limited to materialmen, suppliers, or laborers, upon any property, right of way, easement or other interest in land or right to use 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 ARCHITECT;
- b. The filing of any judgment lien against the assets of ARCHITECT 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 ARCHITECT; or
- c. The filing of a petition by or against ARCHITECT for relief under the Bankruptcy Code, or for its reorganization or for the appointment of a receiver or trustee of ARCHITECT or ARCHITECT's property; or an assignment by ARCHITECT for the benefit of creditors; or the taking possession of the property of ARCHITECT by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of ARCHITECT; or if a temporary or permanent receiver or trustee shall be appointed for ARCHITECT or for ARCHITECT's property and such temporary or permanent receiver or Trustee shall not be discharged within thirty (30) days from the date of appointment.
- d. Due to circumstances within the control of the ARCHITECT, ARCHITECT fails to provide Services under this Contract on schedule as agreed to by ARCHITECT.

ARCHITECT shall provide written notice to the CITY of the occurrence of any event of default within five (5) days of ARCHITECT's receipt of notice or knowledge of any such default.

**SECTION 37: WAIVER OF SUBROGATION.** ARCHITECT 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 ARCHITECT 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 ARCHITECT enter into such an agreement on a pre-loss basis.



**SECTION 38: COUNTERPARTS.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Contract.

**SECTION 39: CONFLICTS OF INTEREST.** The ARCHITECT 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 Section 112.311, Florida Statutes. The ARCHITECT further represents that no person having any such conflicting interest shall be employed for said performance. The ARCHITECT shall promptly notify the CITY's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the ARCHITECT'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 ARCHITECT 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 ARCHITECT. The CITY agrees to notify the ARCHITECT of its opinion by certified mail within thirty (30) days of receipt of notification by the ARCHITECT. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the ARCHITECT, the CITY shall so state in the notification and the ARCHITECT 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 ARCHITECT under the terms of this Contract.

**SECTION 40: INDEBTEDNESS.** The ARCHITECT 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 ARCHITECT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

**SECTION 41: REPRESENTATION AND BINDING AUTHORITY.** ARCHITECT 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, I.S.K. Reeves, President, 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 or she is signing and to bind and obligate such party with respect to all provisions contained in this Contract.

**SECTION 42: 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.

**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the CITY and ARCHITECT unto this Contract for Professional Services have set their hands and seals on the day and date first written above.

**CITY OF RIVIERA BEACH**


BY:   
THOMAS A. MASTERS  
MAYOR

**SONG AND ASSOCIATES, INC.**

BY:   
YOUNG SONG  
PRESIDENT

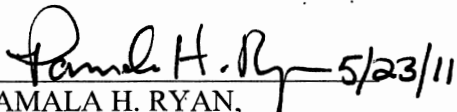
ATTEST:


(CORPORATE SEAL)

BY:   
CARRIE E. WARD, MMC,  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

BY:  5/23/11  
PAMALA H. RYAN,  
CITY ATTORNEY

BY:   
BRYNT JOHNSON  
INTERIM DIRECTOR  
OF PUBLIC WORKS