

LEGAL SERVICES AGREEMENT

THIS LEGAL SERVICES AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2018, by and between the City of Riviera Beach, a Florida municipal corporation (“City”) and KEITH W. DAVIS, ESQ, a Florida corporation or individual (“Attorney”).

RECITALS

WHEREAS, the City is in need of a licensed attorney to serve as the City’s Development Special Magistrate (hereinafter “Magistrate”), per City Code Sec. 31-36 for variance hearings and administrative appeals; and

WHEREAS, the Attorney is qualified and willing to serve as the Magistrate; and

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for legal services provided by the Attorney to the City.

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and the Attorney agree as follows:

SECTION 1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Agreement as true and correct statements.

SECTION 2: ATTORNEY’S SERVICES. The Attorney shall serve as the City’s Development Special Magistrate as assigned from time to time by City staff. This is a non-exclusive Agreement and the City reserves the right to use the Attorney or another attorney for any and all legal services.

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP: No relationship of employer or employee is created by this Agreement. It is understood that Attorney will act hereunder as an independent contractor and the relationship between the City and Attorney shall not be construed as a joint venture, partnership or other relationship of the other for any purpose expressly or by implication.

SECTION 4: TERM AND TERMINATION.

a. Term. The term of this Agreement shall be for two (2) years commencing the date this Agreement is approved by the City Council of the City of Riviera Beach (“Term”). The parties may agree in writing to extend the Term of this Agreement for an additional two (2) year period. Attorney will advise the City at least sixty (60) days before the end of the Term that the Attorney desires to renew, or does not desire to renew the Agreement for an additional Term.

b. Termination without cause. Either party may terminate this Agreement at any time with or without cause by giving not less than thirty (30) days prior written notice of termination. The City Council hereby gives the City Manager, or designee, the authority to terminate on its behalf.

c. **Effect of Termination.** Termination of this Agreement 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 the City is a municipal corporation of the State of Florida and as such, this Agreement (and all exhibits hereto) are 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 Agreement to the contrary, in the event that no funds are appropriated or budgeted by the City Council in any fiscal year to pay the costs associated with the City's obligations under this Agreement, 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 Attorney of such occurrence and either the City or Attorney may terminate this Agreement 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; however, City shall pay Attorney for all services performed under this Agreement

SECTION 5: COMPENSATION.

a. **Payments.** The City agrees to compensate the Attorney at an hourly rate of two hundred dollars (\$200) per hour.

b. The Attorney shall submit invoices to the City for services that have been rendered in conformity with this Agreement. The City will endeavor to pay invoices within thirty (30) days following the City's receipt of the Attorney's invoice.

c. All invoices must be submitted to the operating department director with a copy to the City Attorney's Office. Invoices should be itemized to specifically and concisely identify each task performed and should reflect the actual time spent on each task using 1/10 of an hour increments. The City does not accept grouping of activities or "block billing" except for hearings the Attorney presides over. Otherwise, each task must be billed separately and each billing entry must be sufficiently descriptive so that it can be determined exactly what professional service was provided and the appropriateness of the related time charge can be assessed. Additionally, the personnel who perform each task must be specified together with their hourly rate. Any other type of billing or timekeeping, which allows compensation for time not actually spent by the Attorney is not permitted by the City.

d. The City will reimburse the Attorney for any out-of-pocket expenses, including, but not limited to, filing fees, long distance telephone charges, postage charges, courier fees, outside printing, photocopying, court reporting and transcription fees, payment for some of these fees is outlined more specifically below.

e. In-house photocopying will paid at the rate of ten cents (.10) per page. (It would be helpful if each invoice specified the number of copies for which reimbursement is sought.)

f. The City will not pay for local facsimile transmissions.

g. Long distance telephone calls must state the number of calls, date, length of call, and per minute cost.

h. Any travel, per diem, mileage, or meal expenses, which may be reimbursable, must be approved in advance (orally) and will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.

i. The City does not pay for local travel (Palm Beach County), including but not limited to, attorney's time for such local travel.

j. For all disbursements, the City requires copies of paid receipts, invoices, or other documentation acceptable to the City. Such documentation must be sufficient to establish that the expense was actually incurred and necessary in the performance of legal services provided.

k. The City will not be response for the cost of any computerized legal research service that the Attorney receives on a fixed or "flat fee" basis. For payment of computerized research on a "per minute" basis, the City requires copies of transaction reports indicating the total time for each research session, the charge per minute, and a brief description of the issues researched. Any extensive research project (research in excess of three hours whether said research is performed during one session or over several sessions or which is likely to exceed \$300) must be discussed with an approved in advance.

SECTION 6: INDEMNIFICATION. The Attorney shall indemnify and hold harmless the City, including its officers, employees and agents 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 of the Attorney in the performance of the services under this Agreement. The City agrees to be responsible for its own negligence and will indemnify and hold harmless the Attorney, employees and agents from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), for its negligence in the performance its duties under this Agreement. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the Attorney, nor shall this Agreement be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes.

SECTION 7: COMPLIANCE AND DISQUALIFICATION. Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement, including, without limitation, the applicable licensure requirements and The Florida Bar.

SECTION 8: FEDERAL AND STATE TAX. The City is exempt from payment of Florida State Sales and Use Tax. The Attorney is not authorized to use the City's Tax Exemption Number.

SECTION 9: PROFESSIONAL LIABILITY INSURANCE: Attorney will maintain in full force and effect, during the life of this Engagement, Standard Professional Liability Insurance with limits not less than three hundred thousand dollars (\$300,000) each occurrence with a maximum deductible of ten thousand (10,000). Certificates of liability insurance, satisfactory to the City, shall be furnished to the City immediately upon commencement of any legal services, with complete copies of policies to be furnished upon the City's request. Such certificates of

insurance will provide the City with thirty (30) days prior written notice of any cancellation or non-renewal.

SECTION 10: SUCCESSORS AND ASSIGNS. The City and the Attorney each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successor, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

SECTION 11: DISPUTE RESOLUTION, LAW, VENUE AND REMEDIES. All claims arising out of this Agreement or its breach shall be submitted first to mediation. The parties shall share the mediator's fee equally. The mediation shall be held in Palm Beach County. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every 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 12: WAIVER OF JURY TRIAL. 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 THIS AGREEMENT.

SECTION 13: ACCESS AND AUDITS: The Attorney shall maintain adequate records to justify all payments made by the City under this Agreement for at least three (3) years after completion of this Agreement and longer if required by applicable federal or state law. 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 Attorney's place of business. In no circumstances will Attorney be required to disclose any confidential or proprietary information regarding its products and service costs.

If sent to the ATTORNEY, shall be sent to:

Keith W. Davis, Esquire
701 Northpoint Parkway, Suite 205
West Palm Beach, Florida 33407

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

SECTION 14. PUBLIC RECORDS. The City and Attorney shall comply with Florida's Public Records Act, and specifically section 119.0701, Florida Statutes, by agreeing to:

(a) Keep and maintain public records required by the City 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 (561) 845-4068, cityattorney@rivierabch.com, 600 W. Blue Heron Blvd., Riviera Beach, FL, 33404.

SECTION 15: AUTHORITY TO PRACTICE. The attorney 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 required under this Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner. Proof of such licenses and approvals shall be submitted to the City upon request.

SECTION 16. SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, 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 Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 17. NOTICE. All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the CITY shall be sent to:

Office of the City Attorney
City of Riviera Beach
600 W. Blue Heron Blvd.
Riviera Beach, FL 33404

With a copy sent via email to the operation department director.

If sent to the ATTORNEY, shall be sent to:

Keith W. Davis, Esquire
701 Northpoint Parkway, Suite 205
West Palm Beach, Florida 33407

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

SECTION 18: ENTIRETY OF AGREEMENT. The City and the Attorney agree that this Agreement 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 Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 19: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 20: PREPARATION. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

SECTION 21: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event Attorney fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and City may at its option provide notice to the Attorney to terminate for cause.

SECTION 22: NOTICE OF COMPLAINTS, SUITS & REGULATORY VIOLATIONS. 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 Agreement. 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.

SECTION 23: SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 24: COUNTERPARTS. This Agreement 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 the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Legal Services Agreement as the day and year set forth below by the City.

CITY OF RIVIERA BEACH

CORPORATE SEAL

ATTORNEY

BY: _____
THOMAS A. MASTERS
MAYOR

BY: _____
KEITH W. DAVIS, ESQ.

ATTEST:

BY: _____
CLAUDENE B. ANTHONY
CITY CLERK, CMC

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
ANDREW DEGRAFFENREIDT, III,
CITY ATTORNEY

DATE: _____