PROFESSIONAL SERVICES CONTRACT FOR AGENT OF RECORD

THIS CONTRACT is made as of this _____day of _____, 2019, by and between the CITY OF RIVIERA BEACH, a municipal corporation existing under the laws of the State of Florida, by and through its City Council, hereinafter referred to as the "**CITY**", and RICHARD S. BERNSTEIN & ASSOCIATES, INC., a corporation authorized to do business in the State of Florida, hereinafter referred to as the "**AGENT OF RECORD**", whose mailing address is 1551 Forum Place, Suite 300A, West Palm Beach, Florida 33041, whose Federal I.D. number is **59-1759982.**

In consideration of the mutual promises contained herein, the **CITY** and the **AGENT OF RECORD** agree as follows:

ARTICLE 1 - SERVICES

The AGENT OF RECORD's responsibility under this Contract is to provide professional services in the area of Healthcare and Voluntary Insurances as set forth more fully in the Scope of Work detailed in Exhibit "A", attached hereto and made part hereof.

The CITY's representative/liaison during the performance of this Contract shall be **Marie Sullin**, who may be contacted at **561-840-4880** or by email **msullin@rivierabch.com.**

ARTICLE 2 - SCHEDULE

The AGENT OF RECORD shall commence services retroactively on February 1, 2019, and complete all services by February 1, 2020 or until CITY completes a competitive solicitation process for the services hereunder.

ARTICLE 3 – PAYMENT(S) TO AGENT OF RECORD

The CITY agrees with the commission to be paid to the AGENT OF RECORD by the appropriate insurance companies in accordance with the fee proposal set forth in Exhibit "B" attached hereto and incorporated by reference herein.

ARTICLE 4 - TRUTH-IN NEGOTIATION CERTIFICATE

Signature of this Contract by the AGENT OF RECORD 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 AGENT OF RECORD'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 AGENT OF RECORD 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 AGENT OF RECORD; 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 AGENT OF RECORD. Unless the AGENT OF RECORD is in breach of this Contract, the AGENT OF RECORD 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 AGENT OF RECORD shall:

A. Stop work on the date and to the extent specified.

B. Transfer all work in progress, completed work, and other materials related to the terminated work to the CITY.

C. Continue and complete all parts of the work that have not been terminated.

Termination for Misconduct by Agent of Record:

This Contract may be terminated immediately if Agent of Record is indicted or convicted of any criminal act, becomes the subject of any licensure or disciplinary action by any government agency, becomes the subject of any investigation for fraud or malfeasance by any government agency, or breaches any material provision of this Contract. Such termination shall be effective upon mailing of notice of termination by Certified Mail – Return Receipt Requested to Agent of Record.

This Agreement may also be terminated immediately by the City Council and/or through the Council's Representative, the City Manager, if a court of competent jurisdiction determines that the RFQ or the selection process leading to the AGENT OF RECORD's selection needs to be rebid through a new solicitation process, etc. In that event, the AGENT OF RECORD will be paid for services rendered through the date of termination or set out by the Court, and the AGENT OF RECORD will have no other claim(s) against the CITY.

ARTICLE 6 - PERSONNEL

The AGENT OF RECORD 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 AGENT OF RECORD 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 AGENT OF RECORD 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 AGENT OF RECORD is consulting with the CITY.

The AGENT OF RECORD agrees that it is fully responsible to the CITY for the negligent acts and omissions of subcontractors, subconsultants, and of persons either directly or indirectly employed by the AGENT OF RECORD (hereinafter referred to as "Subcontractor" or "Subcontractors"). Nothing contained herein shall create any contractual relationship between any subcontractor and the CITY.

All of the AGENT OF RECORD's personnel and all of the AGENT OF RECORD's subcontractors will comply with all CITY requirements governing conduct, safety, and security while on or utilizing CITY premises/property.

ARTICLE 7 - 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 AGENT OF RECORD. The AGENT OF RECORD shall not be exempted from paying sales tax to its suppliers for materials used to fill contractual obligations with the CITY, nor is the AGENT OF RECORD authorized to use the CITY's Tax Exemption Number in securing such materials.

The AGENT OF RECORD 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 8 - AVAILABILITY OF FUNDS

The CITY's performance and obligation to pay under this Contract is contingent upon annual appropriations being made by the CITY.

ARTICLE 9 - INSURANCE

A. 1. Prior to execution of this Contract by the CITY, the AGENT OF RECORD 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 AGENT OF RECORD has obtained insurance of the type, amount, and classification as required for strict compliance with this 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 AGENT OF RECORD of its liability and obligations under this Contract.

2. The AGENT OF RECORD shall maintain during the term of this Contract, standard Professional Liability Insurance in the minimum amount of ONE MILLION DOLLARS AND ZERO CENTS ($1,000,000.00) per occurrence.

3. The AGENT OF RECORD shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($500,000.00) per occurrence to protect the AGENT OF RECORD 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 AGENT OF RECORD or by anyone directly or indirectly employed by or contracting with the AGENT OF RECORD.

4. The AGENT OF RECORD shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($500,000.00) combined single limit for bodily injury and property damages liability to protect the AGENT OF RECORD 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 AGENT OF RECORD or by anyone, directly or indirectly, employed by the AGENT OF RECORD.

5. The parties to this Contract shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes. In the event that a party does not carry Workers' Compensation Insurance and chooses not to obtain same, such party shall then, in accordance with Section 440.05, Florida Statutes, apply for and obtain an exemption authorized by the Department of Insurance and shall provide a copy of such exemption to the CITY.

6. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the AGENT OF RECORD shall specifically include the CITY as an "Additional Insured."

B. **Errors and Omissions Coverage:**

1. Errors and Omissions coverage shall be in the amount the minimum amount of ONE MILLION DOLLARS AND ZERO CENTS ($1,000,000.00).

ARTICLE 10 - INDEMNIFICATION

To the extent allowed by Florida law, the AGENT OF RECORD 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 AGENT OF RECORD, its agents, officers, or employees in the performance of services under this Contract.

The AGENT OF RECORD 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 AGENT OF RECORD not included in the paragraph above and for which the CITY, its agents, officers or employees are alleged to be liable.

The AGENT OF RECORD 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 11 - SUCCESSORS AND ASSIGNS

The CITY and the AGENT OF RECORD 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 AGENT OF RECORD 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 AGENT OF RECORD.

ARTICLE 12 - 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 13 - 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 14 - CONFLICT OF INTEREST

The AGENT OF RECORD 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 AGENT OF RECORD further represents that no person having any such conflicting interest shall be employed for said performance.

The AGENT OF RECORD 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 AGENT OF RECORD'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 AGENT OF RECORD 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 AGENT OF RECORD. The CITY agrees to notify the AGENT OF RECORD of its opinion by certified mail within thirty (30) days of receipt of notification by the AGENT OF RECORD. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the AGENT OF RECORD, the CITY shall so state in the notification and the AGENT OF RECORD 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 AGENT OF RECORD 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 15 – DELAYS AND EXTENSION OF TIME The AGENT OF RECORD 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 AGENT OF RECORD 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 AGENT OF RECORD's request, the CITY shall consider the facts and extent of any failure to perform the work and, if the AGENT OF RECORD'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 AGENT OF RECORD 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 AGENT OF RECORD'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 16 - INDEBTEDNESS

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

ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The AGENT OF RECORD 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 AGENT OF RECORD 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 AGENT OF RECORD shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the CITY as provided under section 119.011(2), Florida Statutes, specifically agrees 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 AGENT OF RECORD 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 AGENT OF RECORD or keep and maintain public records required by the CITY to perform the service. If the AGENT OF RECORD transfers all public records to the CITY upon completion of the Contract, the AGENT OF RECORD shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the AGENT OF RECORD keeps and maintains public records upon completion of the Contract, the AGENT OF RECORD shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records or designee, in a format that is compatible with the information technology systems of the CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT CLAUDENE ROBINSON, CITY CLERK, 561-845-3419, CROBINSON@RIVIERABCH.COM, 600 WEST BLUE HERON BLVD., RIVIERA BEACH, FLORIDA 33404.

ARTICLE 18 - INDEPENDENT CONTRACTOR RELATIONSHIP

The AGENT OF RECORD 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 AGENT OF RECORD's sole direction, supervision, and control. The

AGENT OF RECORD shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the AGENT OF RECORD'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 AGENT OF RECORD 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 19 - CONTINGENT FEES

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

ARTICLE 20 - ACCESS AND AUDITS

The AGENT OF RECORD 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 AGENT OF RECORD's place of business.

ARTICLE 21 - NONDISCRIMINATION

The AGENT OF RECORD 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, AGENT OF RECORD 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 22 - ENFORCEMENT COSTS

All parties shall be responsible for their own attorneys' 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 23 - AUTHORITY TO PRACTICE

The AGENT OF RECORD 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 AGENT OF RECORD 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 24 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, 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 25 - PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133 by entering into this Contract or performing any work in furtherance hereof, the AGENT OF RECORD 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 26 - 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 AGENT OF RECORD of the CITY's notification of a contemplated change, the AGENT OF RECORD 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 AGENT OF RECORD'S ability to meet the completion dates or schedules of this Contract.

If the CITY so instructs in writing, the AGENT OF RECORD 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 AGENT OF RECORD shall not commence work on any such change until such written amendment is signed by the AGENT OF RECORD and approved by the CITY or its designated representative.

ARTICLE 27 - 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: Karen Hoskins, City Manager
600 W. Blue Heron Blvd.
Riviera Beach, FL 33404

And

City of Riviera Beach – City Attorney's Office
ATTN: Dawn S. Wynn, Esq., City Attorney
600 W. Blue Heron Blvd.
Riviera Beach, FL 33404

If sent to the AGENT OF RECORD shall be mailed to:

Richard S. Bernstein & Associates, Inc.
ATTN: Richard S. Bernstein
1551 Forum Place, Suite 300 A
West Palm Beach, FL 33401

ARTICLE 28 - ENTIRETY OF CONTRACTUAL AGREEMENT

The CITY and the AGENT OF RECORD 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 29 – PROTECTION OF WORK AND PROPERTY

If applicable, the AGENT OF RECORD 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 AGENT OF RECORD shall provide any necessary materials to maintain such protection.

ARTICLE 30 – TIME

Time is of the essence in all respects under this Contract. The CITY and AGENT OF RECORD shall work in an expeditious manner to complete the objectives as set forth in the Scope of Work described in **Exhibit "A."**

ARTICLE 31 - 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 32 - 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 33 - PREPARATION

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

ARTICLE 34 - MATERIALITY

All provisions of the Contract shall be deemed material, in the event AGENT OF RECORD 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 35 - REPRESENTATIONS/BINDING AUTHORITY

AGENT OF RECORD 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, **Richard S. Bernstein & Associates, Inc.**, hereby represents to the CITY that Richard Bernstein 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 36 - 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 37 - CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS

This Contract consists of this Contract and all exhibits attached hereto. The AGENT OF RECORD 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 38 - LEGAL EFFECT

This Contract shall not become binding and effective until approved by the City Council.

ARTICLE 39 - 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 40 – 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 41 - 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 AGENT OF RECORD;

(b) The filing of any judgment lien against the assets of the AGENT OF RECORD 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 AGENT OF RECORD; or

(c) The filing of a petition by or against the AGENT OF RECORD for relief under the Bankruptcy Code, or for its reorganization or for the appointment of a receiver or trustee of the AGENT OF RECORD or the AGENT OF RECORD's property; or an assignment by the AGENT OF RECORD for the benefit of creditors; or the taking possession of the property of the AGENT OF RECORD by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of the AGENT OF RECORD; or if a temporary or permanent receiver or trustee shall be appointed for the AGENT OF RECORD or for the AGENT OF RECORD's property and such temporary or permanent receiver or Trustee shall not be discharged within thirty (30) days from the date of appointment.

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

ARTICLE 42 - WAIVER OF SUBROGATION

The AGENT OF RECORD 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 AGENT OF RECORD 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 AGENT OF RECORD enter into such an agreement on a pre-loss basis.

ARTICLE 43 - 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 44 – WAIVER OF TRIAL BY JURY

IN THE EVENT OF LITIGATION ARISING FROM THIS CONTRACT, CITY AND AGENT OF RECORD KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY. CITY AND AGENT OF RECORD HEREBY ACKNOWLEDGE THAT THIS

WAIVER PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY AGREEING TO ENTER INTO THIS CONTRACT.

ARTICLE 45 – PALM BEACH COUNTY INSPECTOR GENERAL

In accordance with Palm Beach County ordinance number 2011-009 as codified in 2-421 through 2-440 of the County's Code, the AGENT OF RECORD acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The AGENT OF RECORD has reviewed the ordinance and is aware of its rights and/or obligations under such ordinance.

This Contract is subject to any and all applicable conflict of interest provisions found in the City procurement ordinance, Chapter 16.5, the Palm Beach County Code of Ethics and Ch. 112, Part III, Florida Statutes. During the term of this Contract and any renewals or extensions thereof, the AGENT OF RECORD shall continue to disclose to the CITY any possible conflicts of interests. The AGENT OF RECORD's duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of the CITY.

PROFESSIONAL SERVICES CONTRACT FOR AGENT OF RECORD

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

ATTEST:

BY: _____
CLAUDENE L. ANTHONY
MASTER MUNICIPAL CLERK
CITY CLERK

CITY OF RIVIERA BEACH

BY: _____
THOMAS A. MASTERS
MAYOR

WITNESSES:

_____

_____

RICHARD S. BERNSTEIN & ASSOCIATES, INC.

BY: _____
RICHARD S. BERNSTEIN

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
DAWN S. WYNN
CITY ATTORNEY

Date: _____

EXHIBIT "A"

AGENT OF RECORD SCOPE OF SERVICE

The primary purpose of this RFQ is to select a qualified firm to serve as an Agent of Record for the City of Riviera Beach for Health, Dental, Life, Vision, STD, Prepaid Legal, employee assistance and the other supplemental programs for group Health insurances.

The City is particularly interested in a broker who can offer creative, innovative approaches, with a proven track record, that allows the City to maintain quality programs and contain or reduce costs.

The selected firm will demonstrate the capacity to favorably negotiate rates, benefits services with various group insurance providers to ensure the CITY receives the best values for desired coverages. The scope of services may include but is not limited to the following:

Analysis and Reporting

1. Analyze existing coverage and identify or develop cost saving alternative benefit strategies and plans.

2. Assist in the development of long-range goals and strategies, including making projections of potential savings.

3. Provide analysis and recommendations based on utilization and performance reports, statistical/or financial reports and plan specific data.

4. Assist the City in monitoring and analyzing experience trends and providing timely alerts on changing patterns and appropriate recommendations.

5. Provide, maintain and update comparison reports of other public and private companies benefit plans offerings and costs to determine their competiveness with the City's program. Provide information on other municipalities of comparable size and location will be doing with their benefits in the upcoming year.

6. Provide financial and/ or performance reviews of self-funded and fully insured plans and programs.

7. Be available to provide various types of reports as needed, such as cost analysis for benefits changes, and other statistical, financial, forecasting, trend, labor negotiations or experience reports.

8. Advise and assist the City in evaluating and selecting among coverage alternatives such as plan coverage's, deductibles, co-payments, out of pocket payments, etc.

9. Review coverage documents and invoices to assure coverage has been correctly issued and billed.

10. Advise the City on potential gaps or overlaps in coverage's.

11. Resolve claims dispute, coordinate resolution with carrier on all issues including but not limited to claims, coverage, enrollment and billing.

12. Assist with COBRA/HIPAA administration audits, 5500s, forms and questions as needed.

13. Assist the City with Benefit Renewals through ensuring that all providers that meet City needs receive proposals and seek alternative coverage if requested.

14. Assist the City with Benefit Plan Design to contain cost and maximize benefit effectiveness.

15. Analyze and report utilization trends and cost. Help to provide management and staff overview education on how best utilize and limit premium increases.

16. Maintain full and accurate records with respect to all matters and services provided on behalf of the City's benefit plans and programs. Provide the City staff or officials all spreadsheets, assumptions and calculations upon completion of any project performed on behalf of the City's benefit plans and programs.

Annual Renewal Process, Evaluation and Compliance

1. Assist with setting up the renewals timing schedule annually. Assist with writing, reviewing, analyzing, and presenting Requests for Proposals during renewals. Provide side by side reporting for City review. Prepare and/or review and advise on contract renewals.

2. Establish a strategy for benefits, both annually and five (5) years projections based on the City's trends. Consider trends, union negotiations, prospective legislations, new delivery systems and geographic health-care practices to make long term projections.

3. Provide written update on new State or Federal legislation or judicial decisions impacting the City and suggested action or changes in operations or procedures to assure compliance.

4. Provide advice on data practice, records retention and privacy issues. Research benefits questions and provide advice to the City as needed.

5. Insurance coverage proposed shall be provided for employee/ retirees and dependents. Coverage will maximize group savings while maintaining a benefit plan comparable to the current if not better Benefit plans.

6. Periodic review (no less than bi annually) of the City's health insurance programs, specific coverage(s) etc.

7. Assist City Human Resources Risk Management Division staff with annual audit to ensure compliance with all mandated reporting and posting/ notice requirements for benefit plans.

8. Assist in developing communication materials and tools for conducting dependent verification audits.

9. Annual (March) estimates of renewal rates and cost trends and assist City staff in preparing of budget figures.

10. Conduct thorough and applicable market research in preparation for annual renewals.

11. Provide onsite training to City staff as needed, regarding regulatory updates and /or best practice seminars for the effective administration of benefit plan.

12. Representation in all negotiations with providers on various topics, including, but not limited to, premiums, benefit levels and plan design, performance measures and guarantees, contractual terms and conditions, and quality assurance standards.

13. Attend, coordinate and assure proper training of individuals who are assisting with open enrollment are knowledgeable with City benefits to assist employees during open enrollment meetings.

14. Coordinate, develop and produce Employee Benefits Handbook/Guide.

15. Assist Human Resources Risk Management Division with the coordination of employee benefit and wellness fair.

Liaison and Problem Intervention

1. Provide prompt response to questions and requests is an absolute requirement. It is expected that there will be more than one individual within the firm capable of addressing possible concerns of the City.

2. Provide day-to day consultation on plan interpretation and problem resolution, including but not limited to, explanation of plans, assisting employees/ retirees with selecting plans that meet their needs and geographic location, and transitioning retires from early retiree plans to Medicare-coordinated plans.

3. Provide timely customer service and assistance to staff, employees and retirees with issues involving provider billing, claims, vendor service issues/problems., advocacy for services, disputes, interpretation of contracts and services, changes and general troubleshooting.

4. Establish relationships with those providers that will most greatly benefit the needs of the City.

5. Act as an advocate or ombudsman in appeal, arbitration or court process between the City and the providers on unresolved issues if needed; provide advice when needed to enforce City, employee, retiree or their dependents' rights.

Other Service Requirements

1. Assist in the development and/or purchasing of web site technologies to support n-line enrollments, changes and employee education to assist employees/retirees in self-management benefits, and to reduce the related administrative demands on City staff.

2. Assist in the re-development of our employee wellness program to improve employee health and reduce employee and retiree health-care costs.

3. In addition, Agent of record will provide additional service to employees. These services will be covered at the expense of Agent of Record. Furthermore, after six (6) months, these additional programs will be reviewed to determine continuation of such programs. If the program implemented is unsuccessful, the City will modify the program element to the needs of employees.

4. At a minimum, attend two (2) monthly on site visits to facilitate and assist employees in the resolution of outstanding insurance issues.

Exhibit B

CITY agrees that up to the following maximum commissions may be paid to AGENT OF RECORD by the applicable vendors/underwriters and that such commissions shall be *based on paid premium or paid premium equivalent.*

Long Term Disability	9.0% of Paid Premium
Short Term Disability	9.0% of Paid Premium
Life & AD&D	9.0% of Paid Premium
Medical	3.5% of paid premium
Dental	9.0% of Paid Premium
Vision	9.0% of Paid Premium
EAP	0%
AFLAC	40% of Paid Premium for New Enrollment
Cafeteria Plans	Graded scale as filed with the Department of Financial Services