

**PROFESSIONAL ENGINEERING CONSULTING SERVICES  
FOR THE CITY OF RIVIERA BEACH**

**THIS CONTINUING SERVICES CONTRACT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, between the City of Riviera Beach, Florida, (hereinafter referred to as “CITY”) and **Erdman Anthony**, a Florida Corporation whose office is in West Palm Beach, Florida and whose Federal Identification number is 20-0930234 (hereinafter referred to as (“ENGINEER”).

**WITNESSETH:**

**WHEREAS**, it has been determined that it is advisable and desirable to employ a regionally recognized firm of engineers having special and broad experience in the desired fields for the purpose of providing professional engineering planning, and design services required in conjunction with improvements to the City of Riviera Beach; and

**WHEREAS**, the CITY, in accordance with section 287.055, Florida Statutes, known as the Consultant’s Competitive Negotiation Act, has selected ENGINEER to be one of the most qualified firms to provide engineering services to the City; and

**WHEREAS**, the CITY is now desirous of contracting with ENGINEER to provide continuing professional engineering services as set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises and benefits herein contained, the parties hereto mutually understand and agree as follows:

**ARTICLE 1 – BASIC SERVICES OF ENGINEER**

ENGINEER shall serve as CITY’s professional engineer and planning representative in those phases of all projects to which this contract applies, and will give consultation and advice to the CITY during the performance of its services.

- A. General Project Development - ENGINEER shall perform professional services as hereinafter provided which include general civil engineering services relating to projects as assigned by CITY. Services include, but are not limited to: (1) the preparation of construction plans, documents and specifications; (2) providing engineering services during construction (3) providing studies, investigations, and consultation as requested by staff; (4) preparing grants and permit applications and representing the CITY before all applicable governing and regulatory agencies; and (5) and providing monthly status reports of Projects.

In the event, that it is determined that a Work Order will be undertaken on a Lump Sum Basis, the ENGINEER shall submit to the CITY, for its approval, a detailed Scope of Service with an hourly staff rate estimate for each portion of the scope. The ENGINEER’s Lump Sum Fee shall be determined based on the actual hourly labor rates of the ENGINEER’s employees as indicated in Exhibit “2” attached hereto.

- B. Definitions Index - For the purpose of this CONTRACT, the following terms are defined as indicated in the sections below:

TERM	ARTICLE	SECTION	PARAGRAPH
Record Drawing	2	(A)	(12)
Project Representative	2	(B)	___
CITY'S Representative	3	(H)	___
Contract Period of Service	4	___	___
Payroll Costs	5	(D)	___
Reimbursable Expenses	5	(E)	___
Opinion of Probable Project Cost	49	___	___

- C. Study and Report Phase - After written authorization to proceed, ENGINEER shall:

1. Consult with CITY to determine its requirements for a Project and review available data.
2. Advise CITY as to the necessity of the CITY providing or obtaining from others data or services of the types described in Article 3(C) and act as CITY's representative in connection with any such services.
3. Provide special analyses of CITY's needs, planning surveys, site elevations and comparative studies of prospective sites and solutions.
4. Provide general economic analysis of CITY's requirements applicable to various alternatives.
5. Prepare a Report with appropriate exhibits indicating clearly the considerations involved and the alternative solutions available to CITY, and setting forth ENGINEER'S findings and recommendations with opinions of probable costs.
6. Furnish seven (7) copies of the Report and present and review it, in person, with CITY representatives.

- D. Preliminary Design Phase - After written authorization to proceed with the Preliminary Design Phase, ENGINEER shall:

1. In consultation with CITY and on the basis of the accepted Report, determine the Scope of a Project.
2. Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications.
3. Based on the information contained in the preliminary design documents, submit a revised opinion of probable cost for each Project including construction cost, contingencies, compensation for all professionals and engineers, cost of land, rights-of-way, and

compensation for or damages to properties and interest and financing charges (all of which are hereinafter called "Project Costs").

4. Furnish seven (7) copies of the above preliminary design documents and present and review them in person with CITY representatives.
5. Furnish copies and solicit review comments from interested governmental and regulatory agencies and utility companies.

E. Final Design Phase - After written authorization to proceed with the Final Design Phase, ENGINEER shall:

1. On the basis of the accepted preliminary design documents prepare for incorporation in the Contract Documents, final drawings to show the character and scope of the work to be performed by Contractors on the Project (hereinafter called "Drawings"), and Specifications.
2. Furnish to CITY such documents and design data as may be required for, and prepare the required documents so that CITY may obtain approvals of such governmental authorities as having jurisdiction over design criteria applicable to each Project, and assume engineering responsibility in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.
3. Advise CITY of any adjustments to its latest opinion of probable Project Cost caused by changes in scope, design requirements or construction costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications.
4. Prepare bid forms, notice to bidders, instructions to bidders, general conditions and supplementary conditions, and assist in the preparation of the other related documents.
5. Prepare routine application for approvals and permits from all governmental authorities having jurisdiction over each project and from others as may be necessary for completion and operation of each project. However, ENGINEER upon certification to the CITY that the application or permit is not routine, may have this service be considered as additional service. This shall include the furnishing of back-up data as required during the various permit application procedures.
6. Furnish seven (7) copies of the above mentioned documents and present and review them in person with CITY representatives.

F. Bidding or Negotiating Phase - Obtain bids from each separate prime Contract for construction or equipment.

1. Consult with and advise CITY as to the acceptability of subcontractors and other persons and organizations proposed by the prime Contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Contract Documents.
2. Consult with and advise CITY as to the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution is permitted by the Contract Documents.

3. Evaluate bids and assemble Contract Documents and recommend to CITY award of Contracts, and participate in presentation to CITY Board and other appropriate authorities as necessary.

G. Engineering Services During Construction Phase

During Construction Phase, ENGINEER shall perform the following services by the ENGINEER's design office staff and qualified design professionals:

1. Consult with and advise CITY and act as its representative. All of CITY's instructions to Contractor(s) will be issued through ENGINEER who will have authority to act on behalf of CITY except as otherwise provided in writing.
2. Make periodic visits to the site to observe as an experienced and qualified design professional the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the Contract Documents. ENGINEER shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work unless provided for in the Work Order. ENGINEER shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s) during such visits and keep CITY informed of the progress of the work, shall endeavor to guard CITY against defects and deficiencies in the work of Contractor(s), disapprove or reject work as failing to conform to the Contract Documents, and endeavor to achieve expeditious correction of such deficiencies.
3. Review and approve Shop Drawings and samples, the results of tests and inspections and other data which any Contractor is required to submit, for conformance with the design concept and operational requirements of each Project and compliance with the information given in the Contract Documents; determine the acceptability of substitute materials and equipment proposed by Contractor(s); and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor(s) in accordance with the Contract Documents.
4. Issue all instructions of CITY to Contractor(s); prepare routine change orders as required; ENGINEER may, as the CITY's representative, require special inspection or testing of the work; act as interpreter of the requirements of the Contract Documents and judge the performance thereunder by the parties thereto; make decisions on all claims of CITY and Contractor(s) relating to the execution and progress of the work, and all other matters and questions related thereto; but ENGINEER shall not be liable for the results of any such interpretations or decisions rendered by it as a result of erroneous or incomplete information or data provided to it by the CITY.
5. Whenever the CITY gives written notice of defects and deficiencies in any Project, as provided in Article 3-I, the ENGINEER shall endeavor to achieve expeditious correction of such defects and/or deficiencies.
6. Based on ENGINEER's on-site observations as an experienced and qualified design professional, input from the Project Representative(s) and its review of Contractor(s)' application for payment and the accompanying data and schedules, determine the amounts owing to Contractor(s) and approve in writing payments to Contractor(s) in such amounts; such

approvals of payment to constitute a representation to CITY, based on such observations and review, that the work has progressed to the point indicated and that, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in his recommendation). By recommending any payment, ENGINEER will not thereby be deemed to have represented that continuous or exhaustive examinations have been made by ENGINEER to check the quality or quantity of the work or to review the means, methods, sequences, techniques or procedures or construction or safety precautions or programs incident thereto. Approving an application for payment ENGINEER will not be deemed to have represented that he has made any examination to determine how or for what purposes any Contractor has used the monies paid on account of the Contract Price, or that title to any of the Contractor(s)' work, materials or equipment has passed to CITY free and clear of any lien, claims, security interests or encumbrances.

7. Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the Project has been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that ENGINEER may approve, in writing, final payment to each Contractor.
8. ENGINEER shall not be responsible for the acts or omissions of any Contractor, any subcontractor or any of the Contractor(s)' or subcontractors' agents or employees or any other persons (except his own employees and agents) at the Project site or otherwise performing any of the work of the project.
9. ENGINEER shall provide, for each construction project, the set of original record Drawings, including capital asset listing, conforming to construction records, showing the significant changes made during the construction process, based upon the marked-up prints, Drawings and other data furnished to the ENGINEER by the Contractor(s) and/or by Designees of the CITY.
10. Conduct an inspection sixty (60) days prior to the expiration of a guarantee period related to any Project designed by the ENGINEER and report to Contractor and CITY discrepancies for correction under guarantees provided in the prime Contract for the Project.

## **ARTICLE 2 - ADDITIONAL SERVICES OF ENGINEER**

- A. General - If authorized in writing by CITY, ENGINEER shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services; these will be paid for by CITY as indicated in Article 5.
  1. (1) Preparation of applications and supplemental project information for governmental grants, loans or advances in connection with a Project; (2) preparation of review of environmental assessments and impact statements; and (3) assume engineering responsibility in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of any Project.
  2. Services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, CITY's schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond ENGINEER's control.

3. Providing renderings or models for CITY's use.
4. Perform those functions required of the ENGINEER by bond resolutions, and as otherwise authorized by the CITY.
5. At request of CITY, furnishing the services of specialty engineers for special civil, geotechnical and environmental engineering incidental thereto.
6. Service resulting from the involvement of more separate prime Contracts for construction or for equipment not originally contemplated.
7. Services in connection with change orders to reflect changes requested by CITY if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered and services resulting from significant delays, changes in price increases occurring as a direct or indirect result of material, equipment or energy shortages.
8. Additional or extended services during construction made necessary by (1) work damaged by fire or other causes during construction; (2) prolongation of time of Contract on any prime Contract by more than sixty (60) days; (3) acceleration of the work schedule involving services beyond normal working hours; and (4) default by any Contractor. The CITY will be reimbursed by the Contractor for these additional services, and the ENGINEER shall prepare the Contract Documents in such a way as to provide for reimbursement by the Contractor to the CITY for the required additional services, including CITY's costs.
9. (1) Preparation of systems operating and maintenance manuals; (2) extensive assistance in the utilization of any equipment or system (except for initial start-up, testing, adjusting and balancing to demonstrate an operating facility as necessary to obtain the initial operating permit but in no case shall this exceed two weeks); and (3) training personnel for operation and maintenance.
10. Preparing to serve or serving as a witness for CITY in any litigation, public hearing or other legal or administrative proceeding involving a Project.
11. Additional services in connection with a Project, including services normally furnished by CITY and services not otherwise provided for in this CONTRACT.
12. Services to make measured drawings of or to investigate existing conditions of facilities or to verify the accuracy of drawings or other information furnished by CITY.
13. Preparing documents for alternative bids requested by CITY for work which is not executed or for out-of-sequence work.
14. Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any Contract for the Project (except for the 60 day inspection).
15. Preparation of community planning, and utility studies, updating of CITY'S maps, utility maps, utility ordinances, subdivision regulations, review of reports, drawings and plans of the type customarily required by the CITY incident to its normal functions. Consult with and advise CITY in regard to Federal and State utility requirements.

16. Provide a Registered Land Surveyor, directly or subconsultant, to assist in easement or utility location, description and stake-out.
17. Services in connection with laboratory or field investigations.
18. Inspect and review necessary test borings or other subsurface explorations not covered under professional services during construction. The cost of borings or other subsurface explorations will be paid by the CITY.
19. Provide any services required in connection with re-advertisements for construction bids.

**B. Project Representative(s) Service During Construction**

1. The ENGINEER shall provide resident inspection services at the CITY'S request. Project Representative(s) will act as requested by the CITY in order to provide more extensive representation at the Project site during the Construction Phase.
2. The duties and responsibilities and the limitation on the authority of the Project Representative(s) is as set forth in Exhibit 1.
3. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the Project Representative(s) (if furnished) ENGINEER shall endeavor to provide further protection for CITY against defects and deficiencies in the work, but the furnishing of such Project representation will not make ENGINEER or CITY responsible for construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or for Contractor(s) failure to perform the construction work in accordance with the Contract Documents.

**ARTICLE 3 – CITY RESPONSIBILITIES**

**CITY SHALL:**

- A. Provide complete and detailed information as to its requirements for a Project.
- B. Assist ENGINEER by placing at the company's disposal all available information pertinent to a project including previous reports and any other data relative to design and construction of a Project.
- C. Furnish to ENGINEER, as required by him for performance of his Basic Services, data prepared by or services of others, such as core borings, geophysical logs, probing and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples; appropriate professional interpretations of all of the foregoing; photogram metric surveys, property, boundary, easement, right-of-way, and property descriptions; zoning and deed restrictions; and other special data or consultations not covered in Article 2-A; all of which ENGINEER may rely upon in performing his services.
- D. Make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform its services.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other engineers as

deemed appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

- F. Pay all costs incidental to obtaining bids or proposals from Contractors. This includes advertising and mailing, but does not include reimbursement for ENGINEER'S time to discuss the Contract Documents with bidders or equipment suppliers.
- G. Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for a Project, and such auditing service as CITY may require to ascertain how or for what purpose any Contractor has used the monies paid under the construction Contract.
- H. The City Manager or designee shall act as CITY'S representative with respect to the work to be performed under this CONTRACT. Such person shall have complete authority to transmit instructions, receive information, interpret and define CITY'S policies and decision with respect to materials, equipment, elements and systems pertinent to ENGINEER'S services.
- I. Give prompt written notice to ENGINEER whenever CITY observes or otherwise becomes aware of any defect in a Project.
- J. Furnish, as required, support and fees necessary during the various permit application processes required from all governmental authorities having jurisdiction over the approval, construction and operation of a Project.
- K. Furnish or direct ENGINEER to provide necessary Additional Services as stipulated in Section 2 of this Contract or other services as required.
- L. Bear all costs incidental to compliance with the requirements of this Section

#### **ARTICLE 4 – PERIOD OF SERVICE**

It is mutually agreed by CITY and ENGINEER that this Contract is of a continuing nature, subject to termination by either party as hereinafter provided. The period of service shall commence upon execution of this Contract and continue for a period of three (3) years unless otherwise terminated as provided herein or until completion of all outstanding Service authorizations issued within the period of the Contract, unless terminated as otherwise provided herein. At the option of the CITY, the City Manager shall have authority to renew the Contract for up to two (2) additional twelve (12) month periods.

#### **ARTICLE 5 – PAYMENTS TO ENGINEER**

Method of Payment for Services and Expenses of Engineer - Basic Services. CITY shall pay the ENGINEER for Basic Services rendered under Article 1 on one of the following bases, the choice to be mutually agreed upon at the time a Project is authorized.

- A. Per Hour, Per Assigned Employee Fee with a not to Exceed Maximum Price – CITY will submit a series of individual tasks or projects as more particularly described herein. Each task to be performed under this Contract shall be assigned to the ENGINEER for accomplishment by separate written authorization. For each task, CITY shall request ENGINEER to provide a scope of services and an estimate of cost, for the CITY'S review, including MBE goal setting, as particularly set forth in Article 10.



Upon mutual agreement of the scope of services, ENGINEER shall develop an estimate of cost based upon a per hour, per assigned employee fee with a “not to exceed” maximum price as provided for herein in accordance with rates set forth in Exhibit 2.

1. The “Per Hour, Per Assigned Employee” fee, shall include all allowable and allocable costs that are incurred in the performance of the work, up to, but not exceeding a predetermined maximum price. Allowable and allocable cost shall include direct labor plus fringe benefits, overhead fee, and direct non-salary expenses. Pending establishment of final approved overhead rates for any period, the ENGINEER shall be reimbursed at provisional overhead rates subject to appropriate adjustment when the final overhead rates for the fiscal period are established. The overhead rates shall not change the predetermined cost ceiling.
2. For a project that utilizes the “Per Hour, Per Assigned Employee” method of compensation, it is anticipated that the total cost to the CITY for the performance of the services will not exceed the estimated cost and that the ENGINEER agrees to use his good faith effort to perform his services within such estimated cost. If at any time, as the actual work progresses, the ENGINEER has reason to believe that the cost for the work will be greater than the estimated cost, the ENGINEER shall notify the CITY in writing to that effect, giving the revised estimate of such cost for said work or a suggested revised scope of work which will remain within the original estimate of cost.
3. The CITY shall not be obligated to reimburse the ENGINEER for costs incurred in excess of the estimated cost set forth above, and the ENGINEER shall not be obligated to continue performance of said work or otherwise to incur cost in excess of the estimated cost set forth above, unless and until the CITY shall have notified the ENGINEER in writing that such estimated cost has been increased or that a modification of scope of work is acceptable and shall have specified in such notice a revised estimated cost which shall thereupon constitute the revised estimated cost of said work. When and to the extent that the estimated cost has been increased, any costs incurred by the ENGINEER in excess of the estimated cost prior to such increases shall be allowable to the same extent as if such cost had been incurred after the increase.
4. Except as otherwise provided, if the ENGINEER stops performance before completion of the work hereunder because it has incurred costs in the amount of or in excess of the estimated cost set, and the CITY elects not to increase such estimated cost, then the CITY shall pay to the ENGINEER the balance due on its cost and fee for said work. Both parties shall execute full and binding releases of the party from any and all obligations with regard to the work and the ENGINEER shall deliver to the CITY copies of the ENGINEER’S work product subject to receipt of payment due.
5. The ENGINEER may elect to waive notifying the CITY and agencies participating in the cost of the Project and is expected to do so whenever the work is close to completion and it is estimated that the cost increase will be small. In such event, if the cost subsequently exceeds that originally estimated by the ENGINEER, the ENGINEER may exercise his above obligation to notify the CITY of the cost increase then estimated, but the CITY shall not be obligated to pay for any overrun, unless the City had materially altered the scope.
6. The term “Per Diem” shall mean a fixed hourly rate, which includes direct and indirect labor, overhead, fringe benefits and profit, for each category of personnel employed on the project, plus reimbursement for direct non-salary expenses.

7. In addition to the above methods, any other mutually agreed upon method of payment may be used.
- B. Additional Service - CITY shall pay ENGINEER for Additional Services rendered under Article 2 as follows:
1. General - For Additional Services rendered under Article 2, Section (A) paragraphs 1 through 19, on the basis of any method in Article 5(A).
  2. Day-to-Day Consulting Services - For day-to-day Consulting Services not considered as being covered under Article 1, Basic Services of ENGINEER, on the basis of Payroll Costs Times a Factor of 2.4 for services rendered by principals and employees assigned to the Project.
  3. Special Engineers - For services and reimbursable expenses of special engineers or surveyors (when included in special task authorization) employed by ENGINEER, the amount billed to ENGINEER therefore times a factor of 1.10.
  4. Serving as a Witness - For the services for the principals and employees as engineers or witnesses in any litigation, hearing or proceeding, on the basis of payroll costs times a factor of 2.4.
  5. Project Representative(s) Services - For Resident Project Representative(s) Services during construction, on any mutually agreed basis.
  6. Reimbursable Expenses - In addition to payments provided for in Article 5 (A) and (B), CITY shall pay ENGINEER the actual costs of all reimbursable expenses incurred in connection with all Basic and Additional Services.
- C. Time of Payment  
ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for reimbursable expenses incurred. These monthly statements shall be based upon ENGINEER's payroll cost times the appropriate factor. CITY shall make monthly payments in response to ENGINEER'S monthly statements, and as further outlined in subsection (F) below.
- D. Payroll Cost  
The payroll costs used as a basis for payment mean the salaries and wages paid to all personnel engaged directly on the Project, including, but not limited to, engineers, surveyors, designers, drafters, specifications writers, estimators, other technical personnel, administrative personnel, typists and clerks; plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workmen's compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. The amount of customary and statutory benefits of all personnel will be considered equal to 30% of salaries and wages.
- E. Reimbursable Expenses  
Reimbursable expenses shall mean the actual expense incurred directly or indirectly in connection with the Project to include but not be limited to: transportation and meals incidental thereto; obtaining bids or proposals from Contractor(s), furnishing and maintaining field office facilities; phone calls and faxes, excluding those to home office; reproduction of reports, Drawings and Specifications and similar Project related items in addition to those required under Article 1; and, if authorized in advance by CITY, overtime work requiring higher than regular rates.

F. Provision for Prompt Payment

1. If CITY fails to make any payment due ENGINEER for services and expenses within thirty (30) days after receipt of a non-contested ENGINEER'S bill, the amounts due ENGINEER shall include a charge at the rate of 1% per month for any time in excess of thirty (30) days from the date of invoice and in addition ENGINEER may, after giving thirty (30) days written notice to CITY, suspend services under this Contract until he has been paid in full all amounts due him for services and expenses.
2. If this Contract is terminated by CITY during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis of payroll costs times a factor of 2.4 for services rendered during that phase to date of termination by principals and employees assigned to Project, or the allocated percentage for that phase, whichever is less. In the event of any termination, ENGINEER will be paid for all unpaid Additional Services as provided in this paragraph.

**ARTICLE 6 - TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Contract by the ENGINEER 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 ENGINEER'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 non-current wage rates or due to inaccurate representations of fees paid to outside engineers. The CITY shall exercise its right under this Article within three (3) years following final payment.

**ARTICLE 7 - TERMINATION**

This Contract may be cancelled by the ENGINEER 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 ENGINEER; 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 ENGINEER. Unless the ENGINEER is in breach of this Contract, the ENGINEER 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 ENGINEER 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 in the format acceptable to CITY.
- D. Continue and complete all parts of the work that have not been terminated.

Prior to settlement upon termination of this Contract, the ENGINEER and the CITY shall execute and deliver a mutual release by each party to the other of all claims and demands of any nature whatsoever arising under or by virtue of this Contract.

## **ARTICLE 8 - PERSONNEL**

The ENGINEER 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 ENGINEER 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 ENGINEER shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind.

The ENGINEER agrees that it is fully responsible to the CITY for the acts and omissions of sub-consultants and of persons either directly or indirectly employed by the ENGINEER. Nothing contained herein shall create any Contractual relationship between any subcontractor and the CITY.

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

## **ARTICLE 9 - SUBCONTRACTING**

The CITY reserves the right to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant and to inspect all facilities 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 ENGINEER is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

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 ENGINEER shall promptly do so, subject to acceptance of the new sub-consultant by the CITY.

Once a sub-consultant is listed in an ENGINEER's response to an RFP or a bid and the ENGINEER 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 ENGINEER 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 ENGINEER's specific agreement with the sub-consultant including issues of pricing.

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

The ENGINEER shall be responsible for the performance of all sub-consultants.

## **ARTICLE 10 - M/WBE PARTICIPATION**

Minority/Women-Owned Business Enterprises (“M/WBE”) shall have the opportunity to participate in this project. ENGINEER is hereby informed that the CITY has established a goal of a minimum of 15% participation of M/WBE. A good faith effort will be made to hire M/WBE.

In keeping with the CITY’S policy, the ENGINEER further agrees to hire minority sub-consultants to work on this project.

In accordance with the city’s M/WBE Ordinance, the ENGINEER agrees to the M/WBE participation for this Contract and to abide by all provisions of the M/WBE Ordinance and understands that failure to comply with any of the requirements will be considered a breach of Contract.

The ENGINEER agrees to maintain all relevant records and information necessary to document compliance with the City’s M/WBE Ordinance and will allow the CITY to inspect such records.

## **ARTICLE 11- 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 ENGINEER. The ENGINEER shall not be exempted from paying sales tax to its suppliers for materials used to fulfill Contractual obligations with the CITY, nor is the ENGINEER authorized to use the CITY’S Tax Exemption Number in securing such materials.

The ENGINEER 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 12- INSURANCE**

- A. Prior to execution of this Contract by the CITY, the ENGINEER 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 ENGINEER 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 ENGINEER of its liability and obligations under this Contract.
- B. The ENGINEER 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 ENGINEER 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 ENGINEER 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 ENGINEER or by anyone directly or indirectly employed by or Contracting with the ENGINEER.
- D. The ENGINEER 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 ENGINEER 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 ENGINEER or by anyone, directly or indirectly, employed by the ENGINEER.

E. 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, then such party shall 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.

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

### **ARTICLE 13 - INDEMNIFICATION**

To the extent allowed by law, including section 725.06(2), Florida Statutes, ENGINEER shall indemnify and save harmless and defend the CITY, its agents, servants, and employees from and against any and all claims, liability, losses, and/or causes of action which may arise from any negligent act or omission of the ENGINEER, its agents, servants, or employees in the performance of services under this Contract.

The ENGINEER shall defend all actions arising from ENGINEER's negligent acts, in the name of the CITY, when applicable, and all costs and fees associated therewith shall be the responsibility of the ENGINEER.

**PURSUANT TO FLORIDA STATUTES §558.0035 (2013), AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.**

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 limits provided in Section 768.28, Florida Statutes.

### **ARTICLE 14 - SUCCESSORS AND ASSIGNS**

The CITY and the ENGINEER 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 ENGINEER 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 ENGINEER.

### **ARTICLE 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.

#### **ARTICLE 16 - 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 17 - CONFLICT OF INTEREST**

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

The ENGINEER 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 ENGINEER'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 ENGINEER 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 ENGINEER. The CITY agrees to notify the ENGINEER of its opinion by certified mail within thirty (30) days of receipt of notification by the ENGINEER. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the ENGINEER, the CITY shall so state in the notification and the ENGINEER 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 ENGINEER under the terms of this Contract.

#### **ARTICLE 18 – DELAYS AND EXTENSION OF TIME**

The ENGINEER 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 ENGINEER or its sub-consultants 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 ENGINEER's request, the CITY shall consider the facts and extent of any failure to perform the work and, if the ENGINEER'S failure to perform was without its or its sub-engineers 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 ENGINEER 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 ENGINEER 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 ENGINEER'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 19 - INDEBTEDNESS**

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

#### **ARTICLE 20 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The ENGINEER 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 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 ENGINEER 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, databases, reports 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. The CITY shall hold the ENGINEER harmless should the CITY use any of the ENGINEER's work products for a purpose other than that intended by the ENGINEER.

The CITY and the ENGINEER shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, Contracts, 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.

#### **ARTICLE 21 – PUBLIC RECORDS**

The ENGINEER shall comply with Florida Public Records Act, and specifically section 119.0701, Florida Statutes, by agreeing to:

- (a) Keep and maintain all public records that ordinarily and necessarily would be required by the CITY to keep and maintain in order to perform the services under this Contract.
- (b) Provide the public with access to said public records on the same terms and conditions that the CITY would provide the records and at cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.



- (d) Meet all requirements for retaining said public records and transfer, at no cost, to the CITY all said public records in possession of the ENGINEER upon termination of this Contract and destroy any duplicate public records that are exempt or confidential and exempt from public record and disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.
- (e) 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 AT (561-845-4090, crobinson@rivierabeach.org, and 600 W. Blue Heron Blvd, #140, Riviera Beach, Fl. 33404).

#### **ARTICLE 22 - INDEPENDENT CONTRACTOR RELATIONSHIP**

The ENGINEER 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 ENGINEER'S sole direction, supervision, and control. The ENGINEER shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the ENGINEER'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 ENGINEER does not have the power or authority to bind the CITY in any promise, CONTRACT or representation other than as specifically provided for in this Contract.

#### **ARTICLE 23 - CONTINGENT FEES**

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

#### **ARTICLE 24 - ACCESS AND AUDITS**

The ENGINEER 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 ENGINEER's place of business.

#### **ARTICLE 25 - NONDISCRIMINATION**

The ENGINEER 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, ENGINEER 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 26 - 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 27 - AUTHORITY TO PRACTICE**

The ENGINEER hereby represents and warrants that it has and will continue to maintain all licenses and approvals 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'S representative upon request.

The ENGINEER 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 28 - 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 29 - PUBLIC ENTITY CRIMES**

As provided in F.S. 287.132-133 by entering into this Contract or performing any work in furtherance hereof, the ENGINEER certifies that it, its affiliates, suppliers, sub-consultants 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 30 - 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 ENGINEER of the CITY'S notification of a contemplated change, the ENGINEER 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 ENGINEER'S ability to meet the completion dates or schedules of this Contract.

If the CITY so instructs in writing, the ENGINEER 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 ENGINEER shall not commence work on any such change until such written amendment is signed by the ENGINEER and approved and executed by the CITY COUNCIL FOR THE CITY OF RIVIERA BEACH or its designated representative.

### **ARTICLE 31 - NOTICE**

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

**CITY OF RIVIERA BEACH  
TERRENCE N. BAILEY,  
DIRECTOR OF PUBLIC WORKS  
1481 15<sup>TH</sup> STREET  
RIVIERA BEACH, FL 33404**

and if sent to the ENGINEER shall be mailed to:

**ERDMAN ANTHONY  
c/o DANA I. GILLETTE,  
PRINCIPLE ASSOCIATE  
5405 OKEECHOBEE BLVD, SUITE 200  
WEST PALM BEACH, FLORIDA 33417**

### **ARTICLE 32 - ENTIRETY OF CONTRACTUAL CONTRACT**

The CITY and the ENGINEER agree that this Contract and any attachments hereto or other documents as referenced in the Contract sets forth the entire CONTRACT 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 30- Modifications of Work.

### **ARTICLE 33 – 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 34 - PREPARATION**

CITY and CONTRACTOR acknowledge that each has had the benefit of counsel or the ability to retain counsel and full and free access to counsel in connection with the negotiation and execution of Contract, that each has consulted or could have consulted with counsel in connection with this Contract, and that each has had the opportunity, prior to execution, to read this Contract and fully understand all of its provisions. Should any provision in this Contract require judicial or quasi-judicial interpretation it is agreed that a Court or other dispute resolution forum interpreting or enforcing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any party by reason of the rule construction that a document is to be construed more strictly against the party who itself or through its agent has prepared the same. CITY and CONTRACTOR agree that this Contract is the product and result of a joint effort.

### **ARTICLE 35 - MATERIALITY**

All provisions of the Contract shall be deemed material, in the event ENGINEER 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 36 - REPRESENTATIONS/BINDING AUTHORITY**

ENGINEER 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, Peter Moore, 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 is signing and to bind and obligate such party with respect to all provisions contained in this Contract.

### **ARTICLE 37 - 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 38 - CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS**

This Contract consists of the Contract, Exhibit "1", Exhibit "2" and RFQ No. 993-20-2. The ENGINEER agrees to be bound by all the terms and conditions set forth in this Contract and RFQ NO. 993-20-2. To the extent there exists a conflict between this Contract and RFQ NO. 993-20-2, 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 39 - LEGAL EFFECT**

This Contract shall not become binding and effective until approved by both parties.

### **ARTICLE 40 - 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 41 – 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 42 - 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 material, men, 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 ENGINEER;

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

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

#### **ARTICLE 43 - WAIVER OF SUBROGATION**

The ENGINEER 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 CONTRACT to waive subrogation without an endorsement, then the ENGINEER 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 ENGINEER enter into such a CONTRACT on a pre-loss basis.

#### **ARTICLE 44 - RIGHT TO REVIEW**

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.

#### **ARTICLE 45 - REUSE OF DOCUMENTS**

All documents including Drawings and Specifications furnished by ENGINEER pursuant to this Contract are instruments of his services in respect of a Project. They are not intended or represented to be suitable for reuse by CITY or others on extensions of the Project or any other project. Any reuse of said documents will be at CITY'S sole risk and without liability or legal exposure to ENGINEER, and CITY shall indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses including attorney's fees arising out of or resulting there from. All preliminary and final design drawings and specification, and the drawings conforming to construction records become the property of the CITY.

#### **ARTICLE 46 - OPINION OF PROBABLE PROJECT COST**

Since ENGINEER has no control over the cost of labor, materials or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable Project Cost or Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry,

but ENGINEER cannot and does not guarantee that proposals, bids or the Construction Cost will not vary from opinions of probable cost prepared by him. If prior to the Bidding or Negotiating Phase, CITY wishes greater assurance as to Project or Construction Cost he shall employ an independent cost estimator.

#### **ARTICLE 47 – SUBRECIPIENT REQUIREMENTS**

ENGINEER agrees and recognizes that CITY may be seeking reimbursement in whole or in part for the cost of the work contemplated by this Contract from a third party, including but not limited to, various County, State, and Federal agencies or subdivisions. The reimbursement sought by CITY may be dependent on, amongst other items, ENGINEER's compliance with the terms and conditions of this Contract and the furnishing of Subrecipient Requirement information by ENGINEER to CITY. ENGINEER agrees to fully cooperate with CITY in any requests of CITY to fulfill CITY's Subrecipient Requirements and to otherwise obtain the sought after reimbursement. ENGINEER agrees and recognizes that the failure to comply with all the terms and conditions of this Contract and the furnishing of Subrecipient Requirement information to CITY by ENGINEER may result in the CITY failing to obtain the sought after reimbursement in whole or in part for the cost of the work contemplated by this Contract and that such failure by the ENGINEER shall constitute a material default under this Contract.

#### **ARTICLE 48 – WAIVER OF TRIAL BY JURY**

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

**SIGNATURES ON FOLLOWING PAGE**

**CONTINUING CONTRACT WITH THE CITY OF RIVIERA BEACH**

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

CITY OF RIVIERA BEACH

ERDMAN ANTHONY

BY: \_\_\_\_\_  
RONNIE L. FELDER,  
MAYOR

BY: \_\_\_\_\_  
DANA I. GILLETTE, PE, PSM  
PRINCIPAL ASSOCIATE

ATTEST:

BY: \_\_\_\_\_  
CLAUDENE L. ANTHONY  
CERTIFIED MUNICIPAL CLERK  
CITY CLERK

APPROVED AS TO TERMS AND  
CONDITIONS

BY: \_\_\_\_\_  
TERRENCE N. BAILEY, PE  
DEPARTMENT DIRECTOR

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

BY: \_\_\_\_\_  
DAWN S. WYNN  
CITY ATTORNEY

Date: \_\_\_\_\_



## **EXHIBIT 1**

### Duties, Responsibilities and Limitations of the Authority of Resident Project Representative

#### GENERAL.

Resident Project Representative is ENGINEER's Agent. His dealings in matters pertaining to the on-site work will in general be only with the CITY, ENGINEER and Contractor. His dealings with subcontractors will only be through or with the full knowledge of Contractor or his superintendent.

#### DUTIES AND RESPONSIBILITIES.

Resident Project Representative shall:

1. Schedules: Review the progress schedule, schedule of Shop Drawing submissions, schedule of values and other schedules prepared by Contractor and consult with ENGINEER concerning their acceptability.
2. Conferences: Attend preconstruction conferences. Arrange a schedule of progress meetings and other job conferences and notify in advance those expected to attend. Attend meetings and maintain and circulate copies of minutes thereof.
3. Liaison:
  - a. Serve as ENGINEER'S liaison with Contractor, working principally through Contractor's superintendent and assist him in understanding the intent of the Contract Documents. Assist ENGINEER in serving as CITY'S liaison with Contractor when Contractor's operations affect CITY'S on-site operations.
  - b. Assist in obtaining from CITY additional details or information, when required at the job site for proper execution of the Work.
  - c. In the interest of preserving the proper channels of communication, advise ENGINEER of any direct communication between CITY and Contractor.
4. Shop Drawings and Samples:
  - a. Receive and record date of receipt of Shop Drawings and samples which has been furnished by Contractor.
  - b. Review the Shop Drawings for conformance with the information given in the Contract Documents.
  - c. Provide review and approval of Shop Drawings (as that term is defined in the General Conditions of the Project Contract Documents) and samples, the results of tests and inspections and other data which any Contractor is required to submit, but only for conformance with the design concept of the project and compliance with the information given in the Contract Documents; determine the acceptability of substitute materials and equipment proposed by Contractor (S); and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by

## **EXHIBIT 1 (Cont'd.)**

Contractor in accordance with the Contract Documents.

5. Review of Work, Rejection of Defective Work, Inspections and Tests:

- a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining that the project is proceeding in accordance with the Contract Documents and that completed Work will conform to the Contract Documents.
- b. Report to ENGINEER whenever he believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspections, test or approvals required to be made; and advise ENGINEER when he believes work should be corrected or rejected or should be uncovered for observation, or requires special testing or inspection.
- c. Verify that tests, equipment and systems startups and operating and maintenance instructions are conducted as required by the Contract Documents and in presence of the required personnel, and that Contractor maintains adequate records thereof; observe, record and report appropriate details relative to the test procedures and startups.
- d. Accompany CITY and visiting inspectors representing public or other agencies having jurisdiction over the Project, record the outcome of these inspections.
- e. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative and assistants, ENGINEER shall endeavor to provide further protection for CITY against defects and deficiencies in the work, but the furnishing of such resident project representation will not make ENGINEER responsible for construction means, methods, techniques, sequences or procedures or for safety precautions or programs.

6. Interpretation of Contract Documents:

Transmit to Contractor clarification and interpretation of the Contract Documents.

7. Modifications:

- a. Consider and evaluate Contractor's suggestion for modifications in Drawings or Specifications and report them with recommendations to ENGINEER.
- b. Prepare routine change orders as required; he may, as CITY'S representative, require special inspection or testing of the work; he shall act as interpreter of the performance there under by the parties thereto and shall make decisions on all claims of CITY and Contractor(s) relating to the execution and progress of the Work and all other matters and questions related thereto.
- c. Process Contract change orders to reflect final measured Contract quantities and to reflect changes in the Contract Drawings and Specifications.

8. Records:

- a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and sample submissions, reproductions of original Contract Documents including all addenda, change orders, field orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER'S clarifications and interpretations of the Contract Documents, progress reports and other Project-related documents.

## **EXHIBIT 1 (Cont'd.)**

- b. Keep a diary or log book and Daily Construction Reports.
  - c. Advise ENGINEER whenever Contractor is not currently maintaining an up-to-date copy of Record Drawings at the site.
  - d. Prepare and maintain a set of marked prints for use in future comparison with the Contractor's record set.
9. Reports:
- a. Furnish ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the approved progress schedule, schedule of Shop Drawing submissions and other schedules.
  - b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
  - c. Prepare and submit monthly reports, with the required number of copies for any participating Federal or State agency, concerning the general progress of the project.
  - d. Prepare monthly narrative report for submittal to CITY on project progress.
10. Payment Requisitions:
- a. Based on his on-site observations as an experienced and qualified professional and on his review of Contractor(s) and approve in writing payments to Contractor(s) in such amounts; such approval of payment will constitute a representation to CITY, based on such observations and review, that the Work has progressed to the point indicated and that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents ( subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents , and to any qualifications stated in his approval), but by approving an application for payment ENGINEER will not be deemed to have represented that he has made any examination to determine how or for what purposes any Contractor has used the monies paid on account of the Contract Price, or that title to any of the Contractor(s)' work , materials, or equipment has passed to CITY free and clear of any lien, claims, security interests or encumbrances.
  - b. Receive and check Contractor(s)' or subcontractor's payrolls for compliance with the provisions of the Contract.
11. Guarantees, Certificates, Maintenance and Operation Manuals:
- During the course of the Work verify that guarantees, certificates, maintenance and operation manuals and other data required be assembled and furnished by Contractor are applicable to the items actually installed; and deliver these data to ENGINEER for his review and forwarding to CITY prior to final acceptance of the Project.

## **EXHIBIT 1 (Cont'd.)**

### **12. Completion:**

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring correction.
- b. Conduct final inspection in the company of ENGINEER, CITY, and Contractor and prepare a final list of items to be corrected.
- c. Verify that all items on final list have been corrected and make recommendations to ENGINEER concerning acceptance.

### **LIMITATIONS OF AUTHORITY.**

The Resident Project Representative:

1. Shall not undertake any of the responsibilities of Contractor, subcontractors or Contractor's superintendent.
2. Shall not expedite Work of the Contractor.
3. Shall not advise on or issue directions as to safety precautions and programs in connection with the Work.
4. Shall not assist Contractor in maintaining up-to-date copy of Record Drawings.

**Exhibit 2**  
**City of Riviera Beach**  
**ERDMAN ANTHONY Rates 2020**

Labor Category	Billing Rate
Principal	\$245.00
Senior Project Manager	\$200.00
Senior Engineer / Landscape Architect / Planner	\$175.00
Senior Construction Specialist	\$120.00
Project Engineer / Landscape Architect / Planner	\$160.00
Construction Specialist	\$110.00
Staff Engineer / Landscape Architect / Planner	\$145.00
Senior Technician	\$125.00
Technician	\$110.00
Project Administrator / Clerical	\$95.00