

MATERIALS AND/OR SERVICE CONTRACT

THIS CONTRACT made and entered into this _____ day of _____, 2016 by and between **U.S. WATER SERVICES CORPORATION**, hereinafter referred to as **“Independent Contractor,”** whose mailing address is 4939 Cross Bayou Boulevard, New Port Richey, FL 34652 and the **CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT**, a municipal corporation, hereinafter referred to as **“District”** whose address is 600 West Blue Heron Boulevard, Riviera Beach, Florida, 33404.

WHEREAS, City of Riviera Beach posted a Request for Proposal No. 803-16 hereinafter the **“RFP”** for Assessment, Analysis and Corrective Action Related to Consent Decree for Utility District, the terms of which are incorporated herein by reference; and

WHEREAS, Independent Contractor was the successful responsible bidder; and

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, the parties to this Contract do hereby agree as follows:

1. Independent Contractor agrees to be bound by all the terms and conditions as set forth in the Bid.
2. To the extent that there exists a conflict between the Bid and this Contract, 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.
3. That the District does hereby retain the services of the Independent Contractor for the purpose of Assessment, Analysis and Corrective Action Related to Consent Decree for Utility District as set forth more fully in Exhibit **“A”** attached hereto and incorporated herein by reference.
4. Work must begin within ten (10) calendar days from the date of receipt of official notice to proceed and shall be carried on at a rate to insure its full completion within ninety (90) days from the date of official notice to proceed, the rate of progress and time of completion being essential conditions of this contract.
5. If the contract work is not fully complete according to the terms of this Contract within the limits herein stipulated, the Independent Contractor shall pay the District, not as a penalty, but as liquidated damages, a sum equal to one hundred dollars (\$100) for each day elapsing between expiration of such time limit and the date of full completion, providing, however, that the time limits herein stated are subject to extension without payment of damages, as provided in section 21, herein.
6. The District agrees to compensate the Independent Contractor in the amount not to exceed \$78,489.52, as set forth in more detail in the fee proposal, attached hereto as Exhibit **“B”**. The total and cumulative amount of this contract shall not exceed the amount of funds

for these services. The District shall not reimburse the Independent Contractor for any travel costs incurred as a direct result of the Independent Contractor providing deliverables to the District in pursuance of the scope of work contained in herein or in an exhibit.

7. Independent Contractor hereby represents that it has complied and shall continue to comply with all applicable Federal and State statutes and local ordinances. Further, Independent Contractor shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations, required for the work to be performed pursuant to the terms of this Contract from any federal, state, regional, county, or city agency.

8. The Independent Contractor represents that it has, or will secure at its own expense, all necessary personnel, equipment and materials required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the District.

9. All of the services required hereunder shall be performed by the Independent Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. All of the Independent Contractor's personnel (and all Subcontractors) while on City premises will comply with all District requirements governing conduct, safety and security.

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

11. All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the District shall be mailed (and emailed) to:

Executive Director
City of Riviera Beach Utility Special District
600 West Blue Heron Blvd.
Riviera Beach, FL 33404
mguarascio@rivierabch.com

and if sent to the Independent Contractor shall be mailed (and emailed) to:

Gary Deremer, President
U.S. Water Services Corporation
4939 Cross Bayou Boulevard
New Port Richey, FL 34652
GDeremer@uswatercorp.net

12. The District is exempt from payment of Florida State Sales and Use Taxes. The District will sign an exemption certificate submitted by the Independent Contractor. The Independent Contractor shall not be exempted from paying sales tax to its suppliers for materials

used to fulfill contractual obligations with the District, nor is the Independent Contractor authorized to use the District's Tax Exemption Number in securing such materials.

13. Prior to execution of this Contract by the District, the Independent Contractor shall provide certificates evidencing insurance coverages 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 Independent Contractor 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 District's representative. Compliance with the foregoing requirements shall not relieve the Independent Contractor of its liability and obligations under this Contract.

14. The Independent Contractor shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$500,000 per occurrence to protect the Independent Contractor 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 Independent Contractor or by anyone directly employed by or contracting with the Independent Contractor.

15. The Independent Contractor shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injury and property damages liability to protect the Independent Contractor 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 rented automobiles whether such operations be by the Independent Contractor or by anyone directly or indirectly employed by the Independent Contractor.

16. The Independent Contractor shall maintain, during the life of this Contract, adequate Workers' Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees per Florida Statute 440.02.

17. All insurance, other than Workers' Compensation, to be maintained by the Independent Contractor shall specifically include the City as an "Additional Insured."

18. The Independent Contractor shall indemnify and save harmless and defend the District, 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 Independent Contractor, its agents, servants, or employees in the performance of services under this Contract.

19. The Independent Contractor further agrees to indemnify, save harmless and defend the District, its agents, servants 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 Independent Contractor not included in the paragraph above and for which the District, its agents, servants or employees are alleged to be liable. Nothing contained in this provision shall

be construed or interpreted as consent by the District to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

20. This Contract may be terminated by either party with or without cause upon thirty (30) days prior written notice. In the event that the District terminates this Contract, for any reason whatsoever, the Independent Contractor understands and agrees that it shall not receive any further compensation beyond the termination date. This shall be true even where there are remaining months under the terms of this Contract.

21. The Independent Contractor 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 Independent Contractor 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 Independent Contractor's request, the District shall consider the facts and extent of any failure to perform the work and, if the Independent Contractor's failure to perform was without it or its subcontractors fault or negligence, as determined by the District, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the District's rights to change, terminate, or stop any or all of the work at any time. If the Independent Contractor is delayed at any time in the process of the work by any act or neglect of the District or its employees, or by any other contractor employed by the District, or by changes ordered by the District or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Independent Contractor's control, or by delay authorized by the Engineer pending negotiation or by any cause which the Engineer shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the District may decide. In the case of continuing cause of delay, only one (1) claim is necessary.

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

23. The District reserves the right to make changes in the scope of work, including alterations, reductions therein or additions thereto. Upon receipt by the Independent Contractor of the District's notification of a contemplated change, the Independent Contractor shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the District of any estimated change in the completion date, and (3) advise the District if the contemplated change shall effect the Independent Contractor's ability to meet the completion dates or schedules of this Contract. If the District so instructs in writing, the Independent Contractor shall suspend work on that portion of the work affected by a contemplated change, pending the District's decision to proceed with the change.

24. If the District elects to make the change, the District shall initiate a Contract Amendment and the Independent Contractor shall not commence work on any such change until such written amendment is signed by the Independent Contractor and approved and executed by the Chairperson of the District Board of Directors for the District.

25. All materials and/or work to be furnished and/or installed by the Independent Contractor under this Contract shall be guaranteed by the Independent Contractor for a period of one year from the date of final acceptance thereof by the District against defects in design, workmanship, or materials. Upon receipt of notice from the District of failure or defect of any part covered under such warranty/guaranty period, the affected part, parts, or materials shall be replaced promptly with new parts or materials by the Independent Contractor at no expense to the District. In the event the Independent Contractor fails to make the necessary repairs or replacements within 30 days after notification by the District, the District may accomplish the work at the expense of the Independent Contractor.

26. If applicable, the Independent Contractor shall continuously maintain adequate protection of all work from damage, and shall protect such work and the District's property from injury or loss arising during the term of the Contract. Except for any such damage, injury, or loss which may be directly due to errors caused by the District or employees of the District, the Independent Contractor shall adequately protect adjacent property, as provided by the law, and shall provide guard fences, lights, and any other necessary materials to carry out such protection.

27. Until acceptance of the work by the District, the City's property shall be under the charge and care of the Independent Contractor and the Independent Contractor shall take every necessary precaution against injury or damage to the work by the action of elements or from any other cause whatsoever, and the Independent Contractor shall repair, restore and make good, without additional charge any work occasioned by any of the above causes before its completion and acceptance by the District.

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

29. 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.

30. 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. Moreover, in the event of litigation arising from this Contract, all parties voluntarily and intentionally waive any right to a trial by jury. The parties hereunder hereby acknowledge that this waiver provision is a material inducement for each party agreeing to enter into this Contract.

31. In accordance with Palm Beach County ordinance number 2011-009, the Independent Contractor understands that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Independent Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance. The contractor further understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the contractor or its subcontractors to fully cooperate with the Inspector General when requested may be deemed by the District to be a material breach of this Contract justifying its termination.

32. This Contract is subject to any and all applicable conflict of interest provisions found in the CITY procurement ordinance (4010), 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, Independent Contractor shall continue to disclose to the District any possible conflicts of interests. The Independent Contractor's duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of the District.

33. The Independent Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and if determined to be acting on behalf of the District as provided under section 119,011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain all public records required by the District to perform the service.
- (b) Upon request from the District's custodian of public records or designee, provide the District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the District.
- (d) Upon completion of this Contract, transfer, at no cost, to the District all public records in possession of the Contractor or keep and maintain public records required by the District to perform the service. If the Contractor transfers all public records to the District upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the District, upon requires from the District's custodian of public records or designee, in a format that is compatible with the information technology systems of the District.

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, THE USD EXECUTIVE DIRECTOR OR DESIGNEE AT 561-845-4185, MGUARASCIO@RIVIERABCH.COM AND UTILTIY SPECIAL DISTRICT 600 WEST BLUE HERON BLVD, RIVIERA BEACH, FLORIDA 33404.

34. Time is of the essence in all respects under this Contract.

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

SIGNATURES ON FOLLOWING PAGE

**CONTRACT WITH THE CITY OF RIVIERA BEACH
UTILITY SPECIAL DISTRICT**

IN WITNESS WHEREOF, the parties unto this Contract have set their hand and seal on the day and year above written.

CITY OF RIVIERA BEACH
UTILITY SPECIAL DISTRICT

U.S. WATER SERVICES
CORPORATION

BY: _____
TERENCE D. DAVIS,
CHAIRPERSON

BY: _____
GARY DEREMER,
PRESIDENT

ATTEST:

BY: _____
CLAUDENE L. ANTHONY
CERTIFIED MUNICIPAL CLERK
DISTRICT CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

BY: _____
ANDREW DeGRAFFENREIDT
DISTRICT ATTORNEY

BY: _____
RUTH JONES
CITY MANAGER

Date: _____

Exhibit A

SECTION 1

SCOPE OF SERVICES

The City of Riviera Beach pursuant to Florida State Statute 287.055, Consultant Competitive Negotiation Act invites qualified engineering firms or individuals licensed by the State of Florida to provide assessment, analysis and corrective action related to Consent Order issued by the Florida Department of Health, Palm Beach County.

1-1 INTRODUCTION

The City of Riviera Beach Utility District (CRBUD) desires to retain a Professional Engineering Consultant to assess, analyze, and complete corrective action as directed in the Consent Order issued by the Florida Department of Health, Palm Beach County as outlined.

Schedule

- i. The Respondent, (CRBUD) shall select an assessment team and forward the names and qualifications to the Department within 30 days of the effective date of this Order.
- ii. The Respondent shall submit the assessment report and critical equipment list to the Department within 60 days of the Department's approval of the assessment team. The report shall address the Respondent's management team abilities and needs; a 5 year schedule and cost assessment to correct all deficiencies, repair or replace critical equipment rated 0 or 1; and any additional equipment needs including but limited to disinfectant residual booster stations within the distribution system.

Public Water System Improvements

- i. The Respondent shall initiate actions to correct all deficiencies in accordance with the following schedule:
 1. Within 90 days of submittal of the assessment report, and annually thereafter, the Respondent shall seek budget approval for the repair or replacement of all crucial equipment with a rating of 0 or 1 and any additional equipment needs based on the assessments report's 5 year schedule.
 2. In accordance with the 5 year schedule of the assessment report, the Respondent shall complete repairs or replacements of all critical equipment.
 3. In accordance with the 5 year schedule of the assessment report, the Respondent shall complete any and all upgrades to the water treatment plant and distribution system.
 4. The Respondent shall also evaluate operational procedures, policies and the ability of the plant operators to control plant

operation, chemical feed and any other parameters that affect the ability of the plant to optimize disinfection.

Public Water System Assessment: The Respondent shall have a comprehensive assessment of the Public Water System completed. The assessment shall meet the following minimum requirements and schedule:

a. Assessment Requirements

- i. The assessment shall be conducted by a third party team selected by the Respondent and approved by the Department.
- ii. The Assessment Team shall, as a minimum, include a Professional Engineer(s) licensed in the State of Florida as well as a Licensed Drinking Water Treatment Plant Operator (Class A); and a Licensed Distribution System Operator. The members of the Team shall be experienced with Water Treatment Plant and Distribution System Design, Operation and Maintenance.
- iii. The assessment shall be conducted in general conformance with a Level 2 Assessment under the Revised Total Coliform Rule. The Respondent is allowed to use the Florida Department of Environmental Protection's draft Form DEP Form 62-555.900(15) to document the assessment.
- iv. The assessment shall provide a list of all critical equipment, a description of the equipment and an assigned a rating between 0 and 3 to reflect the operational condition. The ratings shall reflect the following:
 1. 0 - Assigned to critical equipment that is non-operational at the time of assessment.
 2. 1 - Assigned to critical equipment that is in poor operational condition; in need of immediate maintenance, repair or replacement, lacks redundancy, or has an expired certification.
 3. 2 - Assigned to critical equipment that is in fair condition but lacks sufficient redundancy or requires minor maintenance.
 4. 3 - Assigned to critical equipment that is in good operational condition.
 5. The Assessment Team will also identify any plant facilities and equipment needed to optimize disinfection. The list and estimated cost of such equipment is to be included in the Assessment Report along with those items associated with Item 5(e) iv.

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**EXHIBIT B
U.S WATER SERVICES CORPORATION**

	Position	Rate	Days	Total Hours	
Assessment and Report					
	Principal	\$ 193.02	20	\$ 30,883.20	
	Director of Engineering Services: (Registered Professional Engineer)	\$ 156.12	0	\$ -	
	Engineer III (Registered Professional Engineer)	\$ 143.26	20	\$ 22,921.60	
	Project Manager	\$ 123.45	20	\$ 19,752.00	
	Compliance Manager	\$ 116.25	0	\$ -	
	Distribution System Operator with Vehicle	\$ 68.26	0	\$ -	
	Administrative Support	\$ 52.37	7	\$ 2,932.72	
				\$ 76,489.52	Labor Sub-Total
				\$ -	Laboratory Analysis Budget
				\$ 2,000.00	Sample Reagent Budget
				\$ 78,489.52	Assessment Total

Pricing Assumptions:

City will provide mechanical support staff as required
City will provide operational staff for field sampling & analysis
USWSC to provide training on sampling and analysis of results
City provides field meters capable of analyzing:
Free Chlorine
Total Chlorine
Monochloramine
Free Ammonia
Total Ammonia
pH
Alkalinity
City will provide GST inspection reports from 2016
City will provide copies of all current sampling plans
Scope of Services under this price proposal includes fulfilling the requirements of Section: e) **Public Water System Assessment**, a. Assessment Requirements of CO, WP -020-16