

- 9 A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY (THE AGENCY) APPROVING AN AGREEMENT FOR OWNER'S REPRESENTATIVE CONSTRUCTION SERVICES FOR CONSTRUCTION PROJECTS WITHIN THE REDEVELOPMENT AREA WITH GILBANE BUILDING COMPANY ("GILBANE"); AUTHORIZING THE CHAIRPERSON AND EXECUTIVE DIRECTOR TO EXECUTE THE AGREEMENT; PROVIDING AN EFFECTIVE DATE
(ATTACHMENT #9)



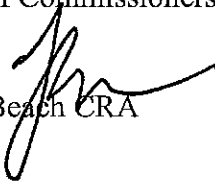
Florida's Dynamic
Waterfront Community

RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY

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MEMORANDUM

TO: Honorable Chair and Members, CRA Board of Commissioners
City of Riviera Beach, Florida

FROM: Tony T. Brown, Executive Director, Riviera Beach CRA 

DATE: May 23, 2012

CC: Ruth Jones, City Manager
Michael Haygood, Interim CRA Attorney

SUBJECT: Agenda Items No. 10 & 11 Resolution to approve a contract with Gilbane Building Company for the provision of Owners Representative Services for Construction Related Activities in the CRA, and Resolution approving the first work order for an amount not to exceed \$25,000 dollars.

Request for Board Action Agenda Item 10

The Agency is requesting the Board of Commissioners to approve a resolution authorizing execution of a contract with Gilbane Building Company for the provision of Owners Representative Services for construction related activities in the CRA, assisting the agency to effectively manage \$25 million in redevelopment project initiatives over the next five (5) years. The Contract establishes that all work will be authorized and completed under individual work orders that will be required to be approved by the CRA Board.

Request for Board Action Agenda Item 11

Resolution authorizing a work order in the amount of \$25,000 to assist the CRA with the following tasks:

- Develop Preliminary Construction Schedules, and Budgets
- Provide assistance with development of the Contract for Construction Documents
- Develop a plan for Construction Management of the Marine District South Redevelopment Project.

The work provided above will be based on the hourly rates approved in the Construction Management contract with Gilbane Building Company LLC.,

Summary

On April 11, 2012, the CRA Board authorized the CRA to negotiate a contract with the Gilbane Building Company. Negotiations focused on the hourly rates provided by Gilbane which would be used in future work orders as the CRA requires assistance. The City/CRA negotiation group identified

appropriate costs based on existing similar services provided to the City/CRA. The Gilbane team revised their proposed hourly rates to be generally consistent with the rates suggested by the negotiation team.

The CRA anticipates presenting two work orders for approval in 2012. Specifically they will be needed to provide the following assistance for the 2012 Calendar year, The anticipated work starting in July is as follows:

1. Review overall project and specifically the Marine District phase one components develop a plan for Construction Management and assist the City/CRA to negotiate responsibilities with Viking Developers, LLC. (Master Developer) for the design, development and construction of project elements.
2. Advise on best method to design and construct the project elements, including process to ensure local minority participation.
3. Advise the City/CRA on process, selection and negotiations for the construction design contract, including assistance with issuing related RFQ/RFP; or oversee these responsibilities and mitigate public involvement risks if assigned to the Master Developer.
4. Review development of the master plans, site plans for constructability and to develop appropriate construction phasing and scheduling plans.
5. Review development of the construction plans providing guidance and input for cost estimating, value engineering for both the Marine District and Riviera Beach Heights.

In 2013 and beyond, the Owner's Representative would be responsible for coordination and implementation of all aspects of the project for the CRA. They will monitor the work of the project team, provide value engineering, and continue schedule & budget planning for all phases of the project as they are developed. The Owners representative will assist the City/CRA with qualification processes, review the construction documents, bids, and lead construction meetings. They will maintain a log of all project and construction meetings and minutes, verify insurance and finance requirements, approve draw requests and monitor progress of construction through on-site observation. Detailed reporting on all aspects of the project will be required.

Background

In September 2008, Viking Developers, LLC. (Master Developer) responded to RFP 2008-001 to lease and develop the Riviera Beach Municipal Marina and the development of other nearby redevelopment property. The Master Developer's response outlined mutual responsibilities and the Owners Representative will enable the City/CRA to fulfill its obligations under the plan and to manage its capital contributions in a manner to meet our financial covenants under terms of the BB&T loan and to effectively implement capital improvements based on the priorities and schedule set by the CRA Board. Viking's response to RFP 2008-001 was codified into a Master Development Agreement on September 16, 2010.

RFQ 344-11 for Owners Representative Services for Construction related activities in the CRA was advertised in the Palm Beach Post on November 21, 2011 to solicit sealed proposals from qualified

firms to provide Owners Representative services through a continuing services contract for a term of two years with an option for two additional 12 month renewals.

On January 26, 2012, an evaluation committee consisting of CRA and City staff convened to review and discuss the responses to the CRA's RFQ. The firms were evaluated and ranked based on the criteria established in the CRA's RFQ. The top three firms were short listed and those firms were invited to make Oral presentations on March 16, 2012. Committee members evaluated each oral presentation and scored each according to interaction, presentation and ability to communicate technical information. Although all short listed firms are each qualified to provide the required services, the Committee's consensus scored Gilbane Building Company as the top ranked firm.

The Gilbane Building Company is a 138 year old privately held US corporation with six offices in the state of Florida as well as offices throughout the United States. Gilbane Building Company is currently working on 84 projects that include Owner's Representative Services, Program Management, and Construction Management Services. The firm has worked on over 55 Municipal Government projects in the last five years totaling 2.3 billion in project cost.

RESOLUTION NO. 2012-____

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY (THE AGENCY) APPROVING AN AGREEMENT FOR OWNER'S REPRESENTATIVE CONSTRUCTION SERVICES FOR CONSTRUCTION PROJECTS WITHIN THE REDEVELOPMENT AREA WITH GILBANE BUILDING COMPANY ("GILBANE"); AUTHORIZING THE CHAIRMAN AND EXECUTIVE DIRECTOR TO EXECUTE THE AGREEMENT; PROVIDING AN EFFECTIVE DATE.

* * * * *

WHEREAS, in accordance with the Consultants Competitive Negotiations Act, Chapter 287, Florida Statutes, the Agency issued a Request for Qualifications and Proposals, No. 344-11 ("RFP"), seeking qualifications and proposals from qualified corporations, firms, or individuals to provide Owner's Representation relating to the construction of various projects within the Community Redevelopment Area: and

WHEREAS, pursuant to its applicable procedures, the Agency selected Gilbane to provide said professional owner's representative services based on the firm's qualifications as a nationally recognized firm having specialized and broad experience in the constructions services; and

WHEREAS, on April 11, 2012, the Board of Commissioners of the Agency authorized staff to negotiate with Gilbane as the top ranked firm from the RFP; and

WHEREAS, the purpose of the Agreement between the Agency and Gilbane is to set forth certain terms and conditions for Gilbane to provide professional owner's representative services for the construction projects within the Community Redevelopment Area.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY THAT:

SECTION 1. The Agency hereby approves the Owner's Representative Agreement with Gilbane Building Company attached hereto as Exhibit "A".

SECTION 2. The Chairman and Executive are hereby authorized to execute the Agreement on behalf of the Agency.

SECTION 3. This resolution shall be effective immediately upon its adoption.

PASSED AND ADOPTED this 18th day of June, 2012.

RIVIERA BEACH COMMUNITY
REDEVELOPMENT AGENCY

By: _____
Name: BILLIE E. BROOKS
Title: Chairperson

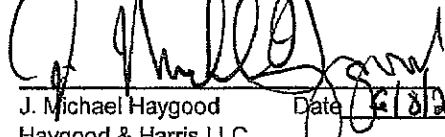
ATTEST:

Executive Director

MOTION BY: _____
SECONDED BY: _____

B. BROOKS _____
D. PARDO _____
C. THOMAS _____
S. LOWE _____
J. DAVIS _____

Approved as to form and legal sufficiency



J. Michael Haygood Date 6/8/2012
Haygood & Harris LLC
General Counsel to CRA

OWNER'S REPRESENTATIVE AGREEMENT
BY AND BEWTEEN
THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY
AND
GILBANE BUILDING COMPANY

THIS AGREEMENT ("Agreement" hereafter) is made by and between **Riviera Beach Community Redevelopment Agency** ("AGENCY" or "Owner"), and **Gilbane Building Company**, a corporation authorized to do business in the State of Florida ("GILBANE" or "Owner's Representative" hereafter).

In consideration of the promises and mutual covenants contained herein, the sufficiency of which is hereby acknowledged by both parties, the AGENCY and GILBANE agree as follows:

SECTION 1: OWNER'S REPRESENTATIVE SERVICES OF GILBANE.

A. Based on GILBANE's responsive proposal to the AGENCY's Request for Proposals for Owner's Representative Continuous Services, RFP No. 344-11, including any addenda (the RFP) for the implementation of the adopted Community Redevelopment Plan the following, but not limited arrears: (i) Marina District South, Riviera Beach Heights and Broadway West. (the "Project"). The AGENCY seeks to utilize and GILBANE seeks to provide those services identified in the RFP, and as further clarified in GILBANE's responsive proposal thereto, pursuant to the terms and conditions of this Agreement ("Services"). The RFP and GILBANE's responsive proposal thereto are hereby incorporated by reference into this Agreement. GILBANE shall provide the Services described in Exhibit "A" attached and incorporated hereto. The AGENCY and GILBANE acknowledge that the redevelopment services will occur in phased development. For each redevelopment activity/project, GILBANE shall prepare a proposal identifying the Services to be provided for the redevelopment activity/project and the schedule of compensation and payment ("Work Orders"). Work Orders submitted as provided herein shall be approved by the Board of Commissioners of the AGENCY.

B. Consistent with GILBANE's revised fee schedule which is attached hereto as **Exhibit "B"** ("**Hourly Fee Schedule**") and incorporated herein, GILBANE's Services shall include providing sufficient organization, personnel and management to perform the Services in an expeditious and economical manner. GILBANE agrees to promptly provide the Services in accordance with the terms of this Agreement pursuant to the adopted Work Orders and their specific project schedules, and within the Budget set forth for each Work Order. GILBANE shall perform all work in a manner fully consistent with the terms of this Agreement and shall exercise that degree of care and skill ordinarily exercised under similar circumstances by members of its profession performing the types of services for projects of comparable size and complexity as those to be performed by GILBANE under this Agreement. GILBANE accepts the fiduciary relationship of trust and confidence established between GILBANE and the AGENCY by this Agreement. GILBANE shall provide its own project team including sub-consultants at all times that shall have sufficient capacity, skill and experience to perform the Services. GILBANE shall not, without the AGENCY representative's prior written consent,

which shall not be unreasonably delayed, conditioned or withheld, replace or reassign any of its project team members unless they are no longer employed by GILBANE.

C. Consistent with the AGENCY's policy and goal to have a minimum of fifteen percent (15%) participation of Minority Business Enterprises (M/WBE) in all AGENCY contracts and consistent with GILBANE's responsive proposal to meet such policy and goal, GILBANE shall utilize an M/WBE sub-consultant in performing the Services for a minimum of fifteen percent (15%) of the fee to be paid to GILBANE under this Agreement.

D. The Services to be provided by GILBANE shall be commenced subsequent to the execution and approval of this Agreement by the AGENCY and upon written notice from the AGENCY representative to proceed.

E. If requested by the AGENCY and agreed to by GILBANE, GILBANE will perform additional services above and beyond the Services identified herein ("Additional Services") and such Additional Services shall also be governed by the provisions of this Agreement. AGENCY and GILBANE will agree in writing to GILBANE's compensation and the scope for any Additional Services prior to commencing said Additional Services. The billable rate/hour shown in Exhibit " B" shall be utilized if the Additional Services require the services of the Owner's Representative and/or Contract Administrator/Technical Advisor.

F. GILBANE and any of its authorized sub-consultants shall perform all Services in compliance with all applicable federal, state and local laws, regulations and codes. GILBANE and all of its authorized sub-consultants shall maintain all required governmental licenses, certificates, approvals and permits throughout the term of this Agreement.

G. GILBANE will provide all Services in cooperation with the AGENCY and the AGENCY's Project Team. The AGENCY's Project Team includes: the "Architect" which means the design architect, the engineer or such other design and design-related consultant with whom the AGENCY has or will contract with for the Project and/or who will be preparing the plans, specifications, drawings, conducts inspections or provides other design-related services for the Project; the "Construction Contractor" or "Construction Manager" which means the person or entity with whom the AGENCY will contract with for preconstruction and construction services for the Project; and, "Consultants" which means such other consultants and professionals that perform consulting and other professional services for the Project. Nothing contained in this Agreement shall create any obligation or contractual relationship between GILBANE and any third party, including without limitation any member of the AGENCY's Project Team. GILBANE shall endeavor to promote harmony and cooperation among all Project Team members.

H. GILBANE shall not have the authority to bind the AGENCY on any Project matter without the AGENCY Representative's prior written approval. However, with regard to decisions which would extend the Project schedule or increase the cost of the Project, the AGENCY's prior written approval shall be obtained by AGENCY.

SECTION 2: PERIOD OF SERVICE.

A. This Agreement is effective on the Effective Date and shall terminate within two years of the Effective Date of this Agreement, unless sooner terminated pursuant to the terms of this Agreement. (hereafter the "Term"). GILBANE shall have a continuing obligation after the Term to comply with any provision of this Agreement and any amendment intended for the AGENCY's protection or benefit, or that by its sense and context is intended to survive the completion, expiration or termination of this Agreement. This Agreement may be extended by the parties for an additional two two year terms.

B. GILBANE shall not be considered in default by reason of any delay or failure in performance if such delay or failure arises out of causes reasonably beyond the control of GILBANE or its authorized 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; unreasonable permitting delays and abnormally severe and unusual weather conditions.

C. Notwithstanding the foregoing, GILBANE shall not be entitled to an increase in the agreed to compensation in this Agreement or increase in payment or compensation of any kind for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance which is due to GILBANE's sole fault and/or negligence.

SECTION 3: AGENCY'S RESPONSIBILITIES AND REPRESENTATIVE.

A. The AGENCY shall provide information regarding its design and construction requirements for the Project to AGENCY in a timely fashion.

B. Unless otherwise specified by the AGENCY, the AGENCY's representative shall be **Tony Brown, AGENCY Executive Director, or his designee.**

C. The AGENCY shall not be considered in default by reason of any delay or failure in performance if such delay or failure arises out of causes reasonably beyond the control of the AGENCY and without its fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; labor disputes; freight embargoes; unreasonable permitting delays and abnormally severe and unusual weather conditions.

D. The AGENCY waives consequential or incidental damages for claims, disputes or other matters in question arising out of or relating to this Agreement except as specifically provided for in this Agreement.

SECTION 4: COMPENSATION AND METHOD OF PAYMENT.

A. The AGENCY agrees to pay GILBANE for its Services, on a negotiated lump sum based a project by project which will be added to this Agreement as an Amendment, or based on the approved hourly rate set forth in Exhibit "B". If the Services involve a lump sum amount, then GILBANE shall be paid on a monthly basis based on the percentage of authorized work completed as set forth in the Work Order. GILBANE will invoice the AGENCY for services

performed based on the percentage of each work task. If the Services involve payment on the approved hourly rate set forth in Exhibit "B", then GILBANE shall be paid on a monthly basis for the time invoiced during the month. All submitted invoices from GILBANE (whether based upon lump sum or hourly rates) shall be accompanied by sufficient supporting documentation and contain sufficient detail to allow a proper audit or expenditure, should the AGENCY require one to be performed. Each monthly invoice will, at a minimum, indicate the tasks or activities performed or completed on a daily basis; the name of the person completing the tasks or activity; amount of time required to complete the tasks or activity; and the hourly rate of the person performing the tasks or activity.

B. For reimbursable expenses, the AGENCY shall pay GILBANE the cost of all necessary, reasonable and ordinary reimbursable expenses incurred by GILBANE and its sub-consultants in the provision of Services with no mark-up on said reimbursable expenses. Reimbursable expenses shall include, but is not limited to, Project-related travel (if outside Palm Beach County, Florida); long distance telephone services and other communication services; AGENCY requested printing, reproductions, plots and standard forms; postage, handling and delivery of Instruments of Services or Works for Hire as requested by the AGENCY; and, renderings, models, mockups, professional photography and presentation materials requested by the AGENCY. All Project-related travel (outside Palm Beach County, Florida) shall be reimbursed pursuant to AGENCY policy and/or applicable law. Local travel within Palm Beach County, Florida, is not reimbursable.

C. Notwithstanding anything to the contrary in this Agreement, the AGENCY may withhold payment to GILBANE hereunder if and for so long as the AGENCY finds GILBANE's Services to be defective, untimely or unsatisfactory or GILBANE fails to perform any of its obligations under this Agreement or is otherwise in breach or default; provided that, any such holdback shall be limited to an amount sufficient in the AGENCY's reasonable opinion to cure any such breach, default or failure of performance of GILBANE, and after GILBANE has first received written notice of such event and given a reasonable opportunity to cure.

D. Final payment under this Agreement for any Work Order shall not be due to GILBANE until GILBANE submits to the AGENCY the following in such form as may be required by the AGENCY: (1) a statement that all sub-consultants used have been paid or the amount to be paid with final payment; and, (2) a final invoice including all outstanding reimbursable expenses. The final invoice shall certify that all Services and goods related to a Work Order have been properly performed and provided and that all charges have been invoiced to the AGENCY. All other further charges if not properly included in the final invoice must be submitted to AGENCY within 30 days of the final invoice or are waived by GILBANE.

E. With respect to future Work Orders, Services undertaken or expenses incurred which exceed the amount or terms set forth in a Work Order without prior written authorization from the AGENCY shall be the sole liability of GILBANE.

F. GILBANE waives consequential or incidental damages for claims, disputes or other matters in question arising out of or relating to this Agreement except as specifically provided for in this Agreement.

SECTION 5. USE OF DOCUMENTS AND INFORMATION.

A. GILBANE will be provided with all reports, documents, drawings, plans, specifications and other works of any similar nature related to the Project and reasonably necessary for GILBANE to provide the Services hereunder ("Documents") except those reports, documents and other works required to be prepared by GILBANE. GILBANE shall be familiar with the AGENCY's rights to such Documents under the AGENCY's contracts with the Architect and Construction Contractor or Manager and any other AGENCY Project Team member. GILBANE shall not use the Documents on other projects or for additions to this Project or in any manner beyond the AGENCY's rights to use such Documents without the specific written consent of the AGENCY, which consent the AGENCY may withhold in its sole discretion.

B. Any information which GILBANE receives under this Agreement which is considered confidential under any applicable federal, state or local law, GILBANE shall keep confidential and shall use said confidential information only for those purposes necessarily related to the provision of Services hereunder.

C. All reports, document and other works required to be prepared by GILBANE under this Agreement shall be considered "Works for Hire" and the exclusive property of the AGENCY. To the extent such reports, documents and other works required to be prepared by GILBANE under this Agreement may not be deemed "Works for Hire" under applicable law, GILBANE will assign to the AGENCY all right, title and interest in and to GILBANE's copyright(s) or other ownership interest for such reports, documents or other works. GILBANE shall execute and deliver to the GILBANE such instruments of transfer and take such other action that GILBANE may reasonable request, including, without limitation, executing and filing, at GILBANE's expense, copyright applications, assignments and other documents required for the protection of GILBANE's right to such reports, documents and other works. Upon the request of the GILBANE, GILBANE shall provide to the AGENCY all reports, documents and other works required to be prepared by GILBANE under this Agreement.

D. Upon the request of the AGENCY, GILBANE shall return to the AGENCY all original Documents, reports, other documents, data and works provided by the AGENCY or any other Project Team member to GILBANE under this Agreement.

SECTION 6: INDEMNIFICATION.

A. GILBANE shall indemnify and hold harmless the AGENCY, and its officers and employees, from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of GILBANE and other persons employed or utilized by GILBANE in the performance of this Agreement. Notwithstanding the foregoing, the GILBANE agrees to be responsible for its own negligence.

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

C. ACCORDINGLY, NO RIGHTS OR INTERESTS GRANTED HEREIN BY THE AGENCY SHALL BE DEEMED TO CONFER ANY RIGHTS OF SOVEREIGN IMMUNITY TO GILBANE, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, INDEPENDENT CONTRACTORS, AUTHORIZED SUB-CONSULTANTS AND REPRESENTATIVES, AND AS SUCH, ALL RIGHTS AND INTERESTS OF SOVEREIGN IMMUNITY SHALL BE STRICTLY LIMITED TO THE AGENCY UNDER THE LAWS AND CONSTITUTION OF THE STATE OF FLORIDA.

D. AGENCY shall require all parties contracting with the AGENCY, including but not limited to the Architect and the Construction Manager or Construction Contractor to indemnify and hold harmless GILBANE and its officers and employees, from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by their negligence, recklessness, or intentionally wrongful conduct and other persons employed or utilized by them in the performance of the project under in this Agreement.

SECTION 7: PERSONNEL. GILBANE represents that it has, or will secure at its own expense, all necessary personnel required to perform the Services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the AGENCY. All of AGENCY's personnel (and all authorized sub-consultants) while on AGENCY's premises and/or at the Project site, will comply with all AGENCY and other legal requirements governing conduct, safety, and security.

SECTION 8:SUB-CONSULTANTS.

A. The AGENCY reserves the right to reasonably reject the selection of a particular GILBANE sub-consultant and approve all qualifications of any sub-consultant in order to make a determination as to the capability of the sub-consultant to perform properly under this Agreement.

B. All authorized sub-consultants providing services to AGENCY under this Agreement will also be required to provide their own insurance coverage as mutually agreed in writing by GILBANE and the AGENCY representative.

C. If a subconsultant fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subconsultant to complete the work in a timely fashion, GILBANE shall promptly do so, subject to acceptance, in writing and at the AGENCY's sole discretion, of the new subconsultant by the AGENCY.

SECTION 9: TERMINATION AND SUSPENSION.

A. This Agreement may be cancelled by GILBANE upon thirty (30) days prior written notice to the AGENCY. It may also be terminated, in whole or in part, by the AGENCY, with or without cause, upon thirty (30) days written notice to GILBANE. Unless GILBANE is in breach or default of this Agreement, GILBANE shall be paid for Services rendered to the AGENCY's satisfaction through the date of termination together with reimbursable expenses then due. After receipt of a notice of termination and except as otherwise directed by the AGENCY, GILBANE shall:

1. Stop all Services on the date (and to the extent) specified in the notice of termination.
2. Immediately terminate and/or settle with the consent of the AGENCY all orders and sub-consultants relating to the performance of the terminated Services.
3. Transfer all work in progress, completed work, and other materials related to the Services to the AGENCY on or before the date of termination.
4. Continue and complete all parts of the Services and/or work that have not been terminated.
5. Furnish the CITY with copies of all Documents and Project-related materials within seven (7) days of the notice of termination provided GILBANE has received payment in full for services performed to date.

In no event shall GILBANE be paid for work performed or costs incurred after the date of termination or for costs incurred which could have reasonably been avoided. GILBANE shall not be paid for loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination.

B. The AGENCY may, without cause, order GILBANE in writing to suspend its Services, in whole or in part, for such period of time as the AGENCY may determine. If the AGENCY suspends GILBANE's Services in whole for more than thirty (30) consecutive days, prior to the AGENCY ordering GILBANE to resume Services in writing, the AGENCY and GILBANE shall agree to an amount of compensation to be paid to GILBANE for reasonable expenses incurred as a direct result of the suspension, interruption and resumption of GILBANE's Services. If appropriate, GILBANE's fees for the remaining Services to be provided after resumption and the time schedules related thereto shall be equitably adjusted by the parties. If the AGENCY suspends GILBANE's Services in whole for more than sixty (60) consecutive days for reasons other than the fault of GILBANE, GILBANE may terminate this Agreement by giving not less than ten (10) days written notice.

SECTION 10: FEDERAL AND STATE TAX. The AGENCY is exempt from payment of

Florida State Sales and Use Tax. GILBANE shall not be exempted from paying sales tax under the AGENCY's exemption nor is GILBANE authorized to use the AGENCY's Tax Exemption Number in securing any materials necessary for the Services. GILBANE shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

SECTION 11: INSURANCE. Prior to commencing any Services, GILBANE shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the state of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the AGENCY and GILBANE. All such insurance policies may not be modified or terminated without the express written authorization of the AGENCY.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Professional liability/ Errors and Omissions	\$1,000,000 per occurrence \$3, 000,000 annual aggregate
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent contractor, personal injury)	\$1, 000,000 per occurrence \$3,000,000 annual aggregate
Excess liability	\$3,000,000
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker's Compensation	\$ statutory limits
Including employer's liability insurance	\$ 1,000,000 per occurrence

The commercial general liability and excess liability policies will name the AGENCY as an additional insured and proof of all insurance coverage shall be furnished to the AGENCY by way of an endorsement to same or certificate of insurance prior to the provision of Services and upon renewal of each policy each year this Agreement remains in effect and for a period of one (1) year after the termination or expiration of this Agreement. GILBANE shall continue to furnish the AGENCY with evidence of such insurance coverage upon renewal of each policy each year this Agreement remains in effect and for a period of one (1) year after the termination or expiration of this Agreement. The certificates shall clearly indicate that GILBANE has obtained insurance of the type, amount, and classification as required for strict compliance with this section and that no material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the AGENCY's representative. Failure to comply with the foregoing requirements shall not relieve GILBANE of its liability and obligations under this Agreement.

SECTION 12:SUCCESSORS AND ASSIGNS. The AGENCY and GILBANE each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this

Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the AGENCY nor GILBANE shall assign, sublet, convey or transfer its interest in this Agreement 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 AGENCY which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the AGENCY and GILBANE.

SECTION 13: DISPUTE RESOLUTION, LAW, VENUE, REMEDIES AND WAIVER OF JURY TRIAL.

A. All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the local rules for mediation in Palm Beach County, Florida, prior to the commencement of any formal legal action in court. 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. Notwithstanding the foregoing, should any party need to seek emergency injunctive relief in any court having jurisdiction thereof, the requirement for mediation shall be stayed until the appropriate court rules on the request for emergency injunctive relief.

B. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

C. THE AGENCY AND GILBANE SPECIFICALLY AGREE THAT NEITHER SHALL SEEK AND EACH HEREBY WAIVES ANY AND ALL RIGHTS TO A JURY TRIAL ON ANY AND ALL DISPUTES THAT MAY ARISE OUT OF OR BE RELATED TO THIS AGREEMENT.

SECTION 14: INDEPENDENT CONTRACTOR RELATIONSHIP. GILBANE is, and shall be, in the performance of all Services under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the AGENCY. All persons engaged in any of the Services performed pursuant to this Agreement shall at all times, and in all places, be subject to GILBANE's sole direction, supervision, and control. GILBANE shall exercise control over the means and manner in which it, its employees and any authorized sub-consultants perform the Services.

SECTION 15: ACCESS AND AUDITS. GILBANE shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Services for at least five (5) years after completion of this Agreement. The 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 GILBANE's place of business. In no circumstances will GILBANE be required to disclose any confidential or proprietary information regarding its products and service costs.

SECTION 16: NONDISCRIMINATION. GILBANE warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

SECTION 17: ENFORCEMENT COSTS. Except for mediation, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court awarded costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

SECTION 18: AUTHORITY TO PRACTICE. GILBANE hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the Services under this Agreement, and that it will at all times conduct its business and provide the Services under this Agreement in a reputable manner. Proof of such licenses and approvals shall be submitted to the AGENCY's representative upon request.

SECTION 19: SEVERABILITY.

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 20: PUBLIC ENTITY CRIMES. GILBANE acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or subcontractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Fla. Stat., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. GILBANE will advise the AGENCY immediately if it becomes aware of any violation of this statute.

SECTION 21: CONFLICTS OF INTEREST. GILBANE represents that it and any authorized sub-consultants presently have no interest and shall acquire no interest, either direct or indirect,

which would knowingly conflict in any manner with the Services required hereunder, as provided for in section 112.313, Florida Statutes, or the Palm Beach County code of ethics. GILBANE further represents that no person having any such interest shall be knowingly employed for said Services. GILBANE shall promptly notify the AGENCY, in writing of all known potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence GILBANE's and/or any of GILBANE's authorized sub-consultant's judgment or quality of Services being provided hereunder.

SECTION 22: NOTICE. All notices required in this Agreement shall be sent by certified mail, return receipt requested; hand-delivery with signed receipt; and/or, by nationally recognized overnight courier; and, if sent to the AGENCY shall be mailed/delivered to:

Riviera Beach Community Redevelopment AGENCY
c/o Tony Brown, Executive Director
2001 Broadway, Suite 300
Riviera Beach, FL 33404

With a copy to:

J. Michael Haygood, PA
AGENCY General Counsel
1551 Forum Place, Suite 400-B
West Palm Beach, FL 33401

and if sent to GILBANE shall be mailed/delivered to:

GILBANE Building Company
c/o Timothy Hensey, Vice President
8433 Enterprise Cir., Suite # 100
Lakewood Ranch, FL 34202

With a copy to:

Donald D. Clark, Senior Legal Counsel
8433 Enterprise Cir., Suite # 120
Lakewood Ranch, FL 34202

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be considered given on the date the receipt for certified mailing or hand-delivery is signed or the day after overnight courier is sent.

SECTION 23: ENTIRETY OF CONTRACTUAL AGREEMENT. The AGENCY and GILBANE agree that this Agreement sets forth the entire agreement between the parties, and that

there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 24: TIME. Time is of the essence in all respects under this Agreement.

SECTION 25: TERMINOLOGY AND CAPTIONS. All pronouns, singular, plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. Wherever the context may require, the singular shall mean and include the plural and the plural shall mean and include the singular. The term "Agreement" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter" and the like mean this Agreement in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings are for reference and convenience only and do not enter into or become a part of the context of this Agreement, nor shall such headings affect the meaning or interpretation of this Agreement.

SECTION 26: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 27: PREPARATION. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

SECTION 28: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event GILBANE fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement.

SECTION 29: EXHIBITS AND AGREEMENT DOCUMENTS. Each exhibit and other Agreement documents referred to in this Agreement forms an essential part of this Agreement. The exhibits and other Agreement documents, if not physically attached, should be treated as part of this Agreement and are incorporated herein by reference.

SECTION 30: AGREEMENT DOCUMENTS AND CONTROLLING PROVISIONS. This Agreement consists of the RFP No. 301-11 (including all addenda); GILBANE's responsive proposal thereto, this Agreement and any and all exhibits or amendments hereto. GILBANE agrees to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between this Agreement (including its exhibit(s) and any amendments thereto) and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement (including its exhibit(s) and any amendments thereto) shall prevail with the RFP No. 301-11 taking precedence over GILBANE's responsive proposal. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

SECTION 31: LEGAL EFFECT. This Agreement shall not become binding and effective until approved and executed by the AGENCY.

SECTION 32: SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 33: DEFAULT.

A. Notwithstanding anything contained in this Agreement to the contrary, the parties agree that the occurrence of any of the following shall be deemed a material event of default and following written notice and time for GILBANE to cure and if not cured shall be grounds for termination by the AGENCY:

1. The filing of a lien by GILBANE or any authorized sub-consultant of GILBANE upon any Project property, right of way, easement or other AGENCY property which lien is not satisfied, discharged or contested in a court of law within thirty(30) days from the date of notice to GILBANE;
2. The filing of any judgment lien against the assets of GILBANE related to the performance of this Agreement which is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to GILBANE; or
3. The filing of a petition by or against GILBANE for relief under the Bankruptcy Code, or for its reorganization or for the appointment of a receiver or trustee of GILBANE or GILBANE's property; or an assignment by GILBANE for the benefit of creditors; or the taking possession of the property of GILBANE by any governmental officer or AGENCY pursuant to statutory authority for the dissolution or liquidation of GILBANE; or if a temporary or permanent receiver or trustee shall be appointed for GILBANE or for GILBANE's property and such temporary or permanent receiver or Trustee shall not be discharged within thirty (30) days from the date of appointment.
4. GILBANE's failure to maintain the insurance coverage specifically required under this Agreement.

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

SECTION 34: WAIVER OF SUBROGATION. GILBANE hereby waives any and all rights to subrogation against the AGENCY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then GILBANE 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 GILBANE enter into such an agreement on a pre-loss basis.

SECTION 35: REPRESENTATIONS/BINDING AUTHORITY. GILBANE's representative Timothy Hensey has full power, authority and legal right to execute and deliver this Agreement on behalf of GILBANE, and bind GILBANE to perform all of its obligations under this Agreement. By signing this Agreement, Timothy Hensey represents to the AGENCY that he has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of GILBANE, the party for whom he is signing, and to bind and obligate GILBANE with respect to all provisions contained in this Agreement.

SECTION 36: NOTICE OF REGULATORY VIOLATIONS. GILBANE agrees to immediately notify the AGENCY of any and all instances of regulatory violations that are discovered during the Term of this Agreement including, but not limited to, those regulatory violations that concern matters outside the course and scope of this Agreement but which are related to the Project. GILBANE understands and agrees that failure to notify the AGENCY of any regulatory violation GILBANE discovered or should have discovered during the Term of this Agreement may result in immediate termination of this Agreement by the AGENCY in the AGENCY's sole and exclusive opinion.

SECTION 37: COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement.

SECTION 38: EFFECTIVE DATE. The Effective Date of this Agreement is the date this Agreement is approved and executed by the AGENCY.

SECTION 39. LITIGATION AS A NON-PARTY. If GILBANE is brought into litigation on this Project or in connection with this Agreement as a non-party through (for example) a subpoena for records, deposition request, court directive or otherwise, AGENCY, if it is a party to the litigation, will pay all reasonable costs incurred by GILBANE, in compliance with any subpoena, deposition, court directive or otherwise including, but not limited to, document and records reproduction costs, search and review time, preparation time, appearance time, legal fees incurred, travel (paid in accordance with Florida Statutes) and other expenses directly related to said litigation, at all employees' regular billing rate at the time these costs are incurred. If AGENCY is brought into litigation on this Project or in connection with this Agreement as a non-party through (for example) a subpoena for records, deposition request, court directive or otherwise, GILBANE, if it is a party to the litigation, will pay all reasonable costs incurred by AGENCY, in compliance with any subpoena, deposition, court directive or otherwise including, but not limited to, document and records reproduction costs, search and review time, preparation time, appearance time, legal fees incurred, travel (paid in accordance with Florida Statutes) and other expenses directly related to said litigation, at all employees' regular billing rate at the time these costs are incurred.

SECTION 40. NO LIABILITY FOR DESIGN, CONSTRUCTION OR HAZMAT. GILBANE will not be held responsible for design defects and does not assume any of the contractual responsibilities or duties of the Architect. The Architect is solely responsible for the Project

designs and shall perform all design related services in accordance with its contract. GILBANE also does not assume any of the contractual responsibilities or duties of the Construction Manager or Construction Contractor. The Construction Manager or Construction Contractor is solely responsible for construction means, methods, sequences and procedures used in the construction of the Project and for related performance in accordance with its contract. GILBANE will not be responsible for the presence and/or consequences of any asbestos, PCB's, petroleum, hazardous materials and/or radioactive materials on the Project but shall promptly inform the AGENCY of the presence of any asbestos, PCB's, hazardous materials or radioactive materials if GILBANE has knowledge of the same on or at the Project.

SECTION 41. GILBANE'S Control Systems, including estimating, scheduling, purchasing, cost reporting and project engineering systems, software programs, and all modifications, additions, or alterations thereto, are and shall remain the sole property of GILBANE.

SECTION 42. In no event, whether as a result of breach of contract, warranty, tort (including negligence and strict liability), or otherwise, shall GILBANE'S total liability to AGENCY for any and all loss, cost, damage, claim, action, expense, delay, fine, penalty, and/or otherwise arising out of or relating to this Agreement or GILBANE'S actions exceed the Fee Paid to GILBANE under this Agreement.

SECTION 43. AGENCY shall ensure that all parties contracting with the AGENCY, including but not limited to the Architect, the Construction Manager, Construction Contractor, or Consultant shall name GILBANE and GILBANE'S Subconsultants as an additional insured under any insurance policies for any projects which GILBANE is requested to perform any Services under this Agreement or any Amendment or Work Order hereto. Proof of being named as an Additional Insured under any such insurance policy shall be required to be provided to GILBANE upon request, and such proof shall include furnishing GILBANE with the appropriate endorsement and certificate of insurance acceptable to GILBANE. AGENCY shall endeavor or reasonably use its best efforts to seek all parties contracting with AGENCY, including the Architect, the Construction Manager, Construction Contractor, or Consultant to name GILBANE and GILBANE'S Subconsultants as Additional Insureds under any insurance policies for any projects which GILBANE is requested to perform any Services under this Agreement or any Amendment or Work Order hereto. In that regard, AGENCY shall endeavor and/or reasonably use its best efforts to include in any such parties contracts the following provisions: "GILBANE and GILBANE'S Subconsultants and their respective officers, directors, employees, representatives, partners, affiliates and agents, shall be (i) named as an Additional Insured on a primary, non-contributing basis to any commercial general liability, pollution liability and excess liability insurance policies; and (ii) provide a waiver of subrogation on all workers compensation and professional liability insurance policies."

SECTION 44. AGENCY shall require the Architect/Engineer, Construction Manager, Construction Contractor, and others who enter into a direct contract with the AGENCY with respect to any Project (Indemnitee's) to each separately agree to Indemnify, defend and hold harmless GILBANE, GILBANE'S Subconsultants, and the AGENCY, and their respective employees, representative, agents and officials, of and from any and all claims, suits, arbitrations, disputes and actions that arise from their work, services, actions, negligence, errors,

omissions, or conduct, and to pay all damages, costs and expenses, including attorney's fees, arising in connection therewith or resulting therefrom. AGENCY shall ensure that such provisions fully comply with all applicable rules, regulations, requirements and laws. Further, the duty of Indemnitor's to defend GILBANE and the AGENCY shall be in addition to Indemnitor's duty to Indemnify.

SECTION 45. AGENCY shall require all parties contracting with the AGENCY, including but not limited to the Architect, the Construction Manager, Construction Contractor, and Consultant to waive all rights of Subrogation against GILBANE, GILBANE'S Subconsultants, and the AGENCY, and their insurers, and to the extent any such policies of insurance require an endorsement to provide for continued coverage where there is such a waiver of subrogation, then require such endorsement and to provide copies upon request.

SECTION 46. AGENCY acknowledges it has independent legal counsel, and further acknowledges that GILBANE, nor the attorney listed in Exhibit "B" shall act as the legal counsel for AGENCY, and further AGENCY acknowledges that no attorney-client relationship exists nor shall exist between such attorney and AGENCY.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the AGENCY and GILBANE hereto have made and executed this Owner's Representative Agreement as of the day and year first above written.

GILBANE BUILDING COMPANY

BY: _____
NAME: _____
TITLE: _____

[Corporate Seal]

**RIVIERA BEACH COMMUNITY
REDEVELOPMENT AGENCY:**

BY: _____
BILLIE E. BROOKS, Chair

ATTEST:

BY: _____
Secretary

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

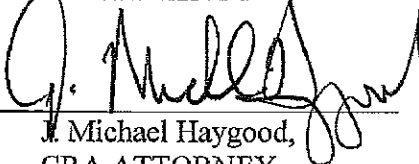
BY: 
J. Michael Haygood,
CRA ATTORNEY

EXHIBIT "B"

**GILBANE'S REVISED FEE SCHEDULE
(Per-hour Cost dated _____, 2012)**

Title	Individual	Gilbane's Per Hour Rate
Real Estate Development Consultant	Carlton Jones	\$ 140.00
Development Services Manager	Steven Stern	\$ 140.00
Project Executive	Steven Stern	\$ 140.00
Sr. Project Manager	Christopher Jones	\$ 127.50
Preconstruction Manager	Michael Beaumier	\$ 127.50
Technical Service Advisor	William R. Price	\$ 98.00
Sr. Structural/Certified Value Specialist	Ramesh Kalvakaalva, PE	\$ 108.00
Sr. Geotechnical/Foundation Engineer	Bruce Khosrozadeh, PE	\$ 108.00
Sr. Roadway/Civil/Utilities Engineer	Ali Najafi, PE	\$ 108.00
Sr. Materials/Testing Engineer	Bensa Nukunya, PhD, PE	\$ 108.00
Sr. Drainage/Permitting Engineer	Eric Falkenberry, PE	\$ 108.00
Resident engineer	Patti Waller	\$ 98.00
Chief Estimator	Joseph Strub	\$ 125.00
Estimator	Jason Wilson	\$ 86.00
Project Manager	David Anderson	\$ 98.00
Scheduler	Diana Kuka	\$ 83.00
Project Accountant	Diana Kuka	\$ 83.00
Minority Business Coordinator	Connell Heyward	\$ 75.00
Constructability Analyst	David Demery	\$ 98.00
Gilbane Legal Counsel	Donald D. Clark, Esq.	\$ 275.00