

WATER AND SEWER EMERGENCY SERVICES AGREEMENT

This Agreement (this "Agreement") is entered into this 18 day of February, 2015, by and between the City of Miramar, Florida, a Florida municipal corporation, hereinafter referred to as "City",

AND

Madsen Barr Corporation, a Florida corporation, with its principal business address located at 1211 Indian Mound Road, Wellington, Florida 33449, hereinafter referred to as "Contractor".

WHEREAS, the City issued Invitation for Bid ("IFB") No. 15-003 for WATER AND SEWER EMERGENCY REPAIR SERVICES, and all of its terms and conditions, including definitions, are incorporated herein; and

WHEREAS, the Contractor was determined to be one of the two lowest responsive, responsible Bidders and whose Bid was one of two most advantageous to the City; and

WHEREAS, on February 18, 2015, the City Commission approved the award of IFB No. 15-003 for WATER AND SEWER EMERGENCY REPAIR SERVICES to Contractor As one of two lowest responsive and responsible bidders, on an as needed basis for an initial term of two years, with three optional one year renewal periods.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, and covenants hereinafter set forth, City and Contractor agree as follows:

SECTION 1 **RECITALS AND DEFINITIONS**

1.1 The above recitals are true and correct, and are hereby incorporated and made a part of this Agreement.

1.2 Except as specifically provided herein, the terms used in this Agreement are defined in and shall have the meanings indicated in IFB No. 15-004, which is deemed fully incorporated herein for all purposes. In the event of conflict, the definitions in the IFB shall govern.

SECTION 2 **SCOPE OF SERVICES**

2.1 Services. Contractor agrees to provide the following Services to the City (the "Services") during the Term of this Agreement:

This Agreement is subject to, and Contractor shall provide Services in accordance with, the Scope of Services, terms, conditions and requirements of City of Miramar Invitation for Bid (IFB) No. 15-003, the Contractor's Bid as accepted by the City, and any subsequently negotiated changes to same, which documents or agreements are incorporated by reference herein. In the case of any conflict between the provisions of this Contract, the Bid and the Bid response, the conflict shall be resolved in the following order of priority: terms of this Contract; terms of the Bid; terms of the Bid Response.

2.2 Representations and warranties. Contractor represents and warrants to the City that: (i) it possesses all qualifications, licenses and expertise required for the performance of the Services; (ii) it is not delinquent in the payment of any sums due the City; (iii) all personnel assigned to perform the Services are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; and (iv) the Services will be performed in the manner described in Attachment "A".

2.3 Estimates and quotations. All requests for related Services not covered under this Agreement shall be submitted in writing prior to any Work being undertaken or approved. The estimate must include a detailed list of the Work to be completed, listed item by item, and location where Work is to be performed. Estimates and quotations are to be submitted electronically, if desired, to the City to secure Purchase Order approval prior to the Work being performed, and such Work shall not exceed 15 percent of annual Contract for Services.

SECTION 3 **COMPENSATION**

The Contractor shall submit periodic invoices for the Goods and Services provided to The City of Miramar, ATTN: Accounts Payable, 2300 Civic Center Place, Miramar, FL 33025. The date of the invoice shall not exceed 30 calendar days from the date of acceptance of the Goods and Services by the City. Under no circumstance shall an invoice be submitted to the City in advance of the delivery and acceptance of the commodities and/or Services, unless otherwise agreed to. All invoices shall reference the appropriate Contract number, the address where the commodities were delivered or the Services performed, and the corresponding acceptance slip that was signed by an authorized representative of the City when the Goods and/or Services were delivered and accepted. Payment by the City shall be made within 30 days after receipt of Contractor's invoice, which shall be accompanied by sufficient supporting documentation and contain sufficient detail to allow a proper audit of expenditures should the City require one to be performed.

SECTION 4

TERM OF AGREEMENT

The term of this Agreement shall commence upon the date this Agreement is executed by both parties and shall run for two years, with the City having the option to renew the Agreement, on an annual basis, for up to three additional one year renewal terms, unless terminated earlier pursuant to Section 5 of this Agreement. The Chief Procurement Officer may authorize up to a 90 day extension of this Contract in accordance with its terms and conditions, and the City Manager or her designee is authorized to extend this Agreement, for operational purposes only, for a maximum of 180 days.

SECTION 5 **TERMINATION OF AGREEMENT**

City may terminate this Agreement for convenience by giving the Contractor 30 calendar day's written notice. City may terminate this Agreement for cause by giving the Contractor five calendar days' written notice upon the failure of Contractor to cure any default after being provided with notice of that default and a demand for cure within 10 calendar days. The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination, and any such accrued liability shall survive the termination of this Agreement.

SECTION 6 **INDEPENDENT CONTRACTOR**

Contractor is an independent contractor under this Agreement. Services provided by Contractor shall be by employees of Contractor and subject to supervision by Contractor, and not as officers, employees or agents of City. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, travel, per diem policy, and purchasing policies under the Agreement shall be the sole responsibility of Contractor. Contractor shall have no rights under the City's worker's compensation, employment, insurance benefits or similar laws or benefits.

SECTION 7 **INDEMNIFICATION/HOLD HARMLESS CLAUSE**

Contractor shall indemnify, defend and hold harmless City, its officials, agents, employees, and volunteers from and against any and all liability, suits, actions, damages, costs, losses and expenses, including attorneys' fees, demands and claims for personal injury, bodily injury, sickness, diseases or death or damage or destruction of tangible property or loss of use resulting therefrom, arising out of any errors, omissions, misconduct or negligent acts of Contractor, its respective officials, agents, employees or Subcontractors in the Contractor's performance of Services pursuant to this Agreement.

SECTION 8 **NON-APPROPRIATION OF FUNDS**

In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal year for payments due under this Agreement, then the City, upon written notice to Contractor of such occurrence, shall have the unqualified right to terminate this Agreement without any penalty or expense to the City.

SECTION 9 **INSURANCE**

9.1 For programs that are active in nature, which shall be determined in the sole and exclusive discretion of the City, Contractor shall maintain general commercial, automobile (where applicable), workers compensation and professional liability insurance in an amount acceptable to the City's Risk Manager. Contractor shall maintain the following required types and minimum limits of insurance coverage during the term of this Agreement:

	<u>Per Occurrence</u>	<u>Aggregate</u>
General Liability	\$1,000,000	\$2,000,000
Automobile Liability		\$2,000,000
Professional Liability	\$500,000	\$1,000,000
Workers' Compensation	Statutory Amount	

9.2 This Agreement shall not be deemed approved until the Contractor has obtained all insurance required under this section and has supplied the City with evidence of such coverage in the form of a Certificate of Insurance and endorsement. The City of Miramar shall be named as an additional insured in the endorsement for commercial and automobile liability coverage. The City shall approve such Certificates prior to the performance of any Services pursuant to this Agreement.

9.3 ALL INSURANCE COMPANIES PROVIDED SHALL: Be rated at least A VII per Best's Key Rating Guide and be licensed to do business in Florida. Contractor's liability insurance policies shall be endorsed to add the City of Miramar as an additional insured. The Contractor's liability insurance shall be primary to any liability insurance policies that may be carried by the City. The Contractor shall be responsible for all deductibles and self-insured retentions on their liability insurance policies.

9.4 All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be cancelled, materially changed or renewal refused until at least 30 calendar days written notice has been given to the City by certified mail.

SECTION 10 **MISCELLANEOUS**

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any action arising out of or relating to this Agreement shall be in Broward County, Florida.

SECTION 14 **NOTICES**

Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended, at the place last specified in writing, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

FOR CONTRACTOR:

John Barr
Madsen & Barr, Inc.
12113 Indian Mound Road
Wellington, FL 33449
(561) 753-6363

FOR CITY:

Kathleen Woods-Richardson
City Manager
City of Miramar
2300 Civic Center Place
Miramar, Florida 33025
Telephone: (954) 602-3115
Facsimile: (954) 602-XXXX

With A Copy to:

Jamie Alan Cole, Esq.
City Attorney
Weiss Serota Helfman Cole Bierman & Popok, P.L. **CNE**
200 East Broward Boulevard Suite 1900
Fort Lauderdale, Florida 33301
Telephone: 954- 763-4242
Facsimile: 954-764-7770

SECTION 15 **NON-DISCRIMINATION**

Contractor represents and warrants to the City that Contractor does not and will not engage in discriminatory practices and that there shall be no discrimination in

connection with Contractor's performance under this Agreement on account of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for delivery of Services. Contractor further covenants that no otherwise qualified individual shall, solely by reason of his/her race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for delivery of Services, be excluded from participation in, be denied Services, or be subject to discrimination under any provision of this Agreement.

SECTION 16 **PUBLIC RECORDS**

16.1 Contractor acknowledges that the public shall have access, at all reasonable times, to certain documents and information pertaining to City contracts, pursuant to the provisions of Chapter 119, Florida Statutes. Contractor agrees to maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement and to provide the public with access to public records in accordance with the record maintenance, production and cost requirements set forth in Chapter 119, Florida Statutes, or as otherwise required by law. Contractor shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.

16.2 Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City. In the event of termination of this Agreement by either party, any reports, photographs, surveys and other data and documents and public records prepared by, or in the possession or control of, Contractor, whether finished or unfinished, shall become the property of City and shall be delivered by Contractor to the City Manager, at no cost to the City, within seven days of termination of this Agreement. All such records stored electronically by Contractor shall be delivered to the City in a format that is compatible with the City's information technology systems. Upon termination of this Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure. Any compensation due to Contractor shall be withheld until all documents are received as provided herein. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.

SECTION 17 **HEADINGS, CONFLICT OF PROVISIONS,** **WAIVER OR BREACH OF PROVISIONS**

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement. In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement shall prevail. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision, and no waiver shall be effective unless made in writing.

SECTION 18 **SEVERABILITY**

If any provision of this Agreement or the application thereof to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 19 **SURVIVAL**

All representations and other relevant provisions herein shall survive and thereby continue in full force and effect upon termination of this Agreement.

SECTION 20 **ENTIRE AGREEMENT**

This Agreement represents the entire and integrated Agreement between the City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral.

SECTION 21 **JOINT PREPARATION**

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein, and the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: City, signing by and through its City Manager, attested to and duly authorized to execute same by the City Commission of the City of Miramar, and by the Contractor, by and through its

President attested to and duly authorized to execute same and to legally bind the Contractor.

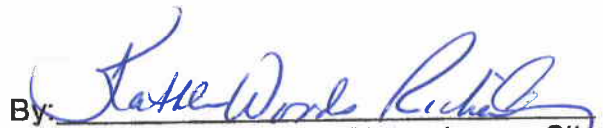
CITY

ATTEST:

CITY OF MIRAMAR

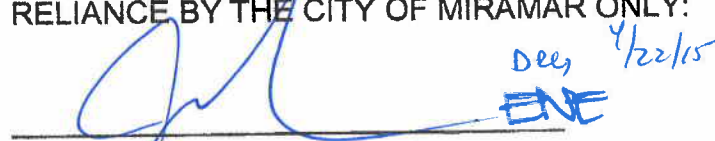


Denise Gibbs, City Clerk
Manager

By: 
Kathleen Woods Richardson, City

This day of April 28, 2015.

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY FOR THE USE OF AND
RELIANCE BY THE CITY OF MIRAMAR ONLY:


City Attorney
Weiss Serota Helfman Cole
Bierman & Popok, P.L.

CONTRACTOR

WITNESSES:


Print Name: DANNY GUSTAFSON


Print Name: NICK FERRO

By: 
JOHN BARR, PRESIDENT
MADSEN/BARR CORP.

Date: FEB. 26, 2015