

Temp. Reso. No. 5746  
1/6/15  
2/9/15

**CITY OF MIRAMAR  
MIRAMAR, FLORIDA**

**RESOLUTION NO. 15-70**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, APPROVING THE AWARD OF INVITATION FOR BID NO. 15-003, ENTITLED "WATER AND SEWER EMERGENCY REPAIR SERVICES", TO MADSEN BARR CORPORATION AND HINTERLAND GROUP INC., ON AN AS NEEDED BASIS, IN A COMBINED TOTAL ANNUAL AMOUNT NOT-TO-EXCEED \$150,000; AUTHORIZING THE CITY MANAGER TO EXECUTE APPROPRIATE AGREEMENTS WITH MADSEN BARR CORPORATION AND HINTERLAND GROUP, INC. FOR AN INITIAL TERM OF TWO YEARS WITH THREE OPTIONAL ONE YEAR RENEWAL PERIODS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City's Utilities Department is responsible for the maintenance and repair of and improvements to the water and sewer infrastructure throughout the City; and

**WHEREAS**, the City's Utilities Department, on occasion, has identified emergency cases that require specialized equipment and the expertise of supplemental contractors to maintain City standards and meet safety regulations; and

**WHEREAS**, the City's existing contract for such repair services expires on March 24, 2015; and

**WHEREAS**, on November 23, 2014, the City advertised Invitation for Bid No.15-003, entitled "Water and Sewer Emergency Repair Services" ("IFB"), in a newspaper of general circulation and on Demandstar; and

Reso. No. 15-70

Temp. Reso. No. 5746  
1/6/15  
2/9/15

**WHEREAS**, on December 2, 2014, the City conducted a pre-bid conference, at which two firms participated; and

**WHEREAS**, five firms responded to the IFB as of the December 16, 2014 due date; and

**WHEREAS**, the City's Procurement Department reviewed the bid responses for conformance with the bid documents, and determined that Madsen Barr Corporation and Hinterland Group, Inc. to be the two lowest responsive and responsible firms; and

**WHEREAS**, the City Manager recommends that the City Commission approve the award of the IFB to and seeks authorization to execute agreements with Madsen Barr Corporation and Hinterland Group, Inc., on an as-needed basis, for an initial term of two years with three one year renewal options, in an annual amount not-to-exceed \$150,000; and

**WHEREAS**, the City Commission deems it to be in the best interest of the citizens and residents of the City of Miramar to award the IFB to Madsen Barr Corporation and Hinterland Group, Inc., on as-needed basis, in an annual amount not-to-exceed \$150,000, and to authorize the City Manager to execute the appropriate agreements in substantial conformity with the attached Exhibits "A" and "B".

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA AS FOLLOWS:**

Temp. Reso. No. 5746  
1/6/15  
2/9/15

**Section 1:** That the foregoing "**WHEREAS**" clauses are ratified and confirmed as being true and correct, and are made a specific part of this Resolution.

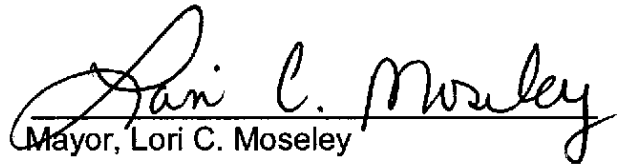
**Section 2:** That it approves the award of the IFB to Madsen Barr Corporation and Hinterland Group, Inc., as the two lowest responsive and responsible bidders.

**Section 3:** That it authorizes the City Manager to execute agreements with Madsen Barr Corporation and Hinterland Group, Inc., in substantial conformity with the attached Exhibits "A" and "B", together with such non-substantial changes as are deemed appropriate by the City Manager and approved as to form and legal sufficiency by the City Attorney.

**Section 4:** That this Resolution shall take effect immediately upon adoption.

Temp. Reso. No. 5746  
1/6/15  
2/9/15

**PASSED AND ADOPTED** this 18 day of February, 2015.

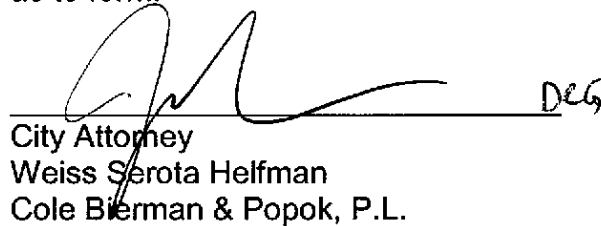
  
Mayor, Lori C. Moseley

  
Vice Mayor, Yvette Colbourne

ATTEST:

  
City Clerk, Denise A. Gibbs

I HEREBY CERTIFY that I have  
approved this RESOLUTION  
as to form:

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

**Requested by Administration**  
Commissioner Winston F. Barnes  
Vice Mayor Yvette Colbourne  
Commissioner Wayne M. Messam  
Mayor Lori C. Moseley

**Voted**  
Yes  
Yes  
Yes  
Yes

## Exhibit A

### WATER AND SEWER EMERGENCY SERVICES AGREEMENT

This Agreement (this "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 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, Dlorida 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**

10.1 Contractor shall, without additional expense to the City, be responsible for paying any taxes, obtaining any necessary licenses and for complying with all applicable federal, state, county, and municipal laws, ordinances and regulations in connection with the performance of the Services specified herein.

10.2 Precautions shall be exercised at all times for the protection of persons and property. Contractor and all Subcontractors shall conform to all OSHA, federal, state, county, and City regulations while performing under the terms and conditions of this Agreement. Any fines levied by the above-mentioned authorities because of failure to comply with these requirements shall be borne solely by the contractor responsible for the same.

## **SECTION 11**

### **AUDIT AND INSPECTION RIGHTS**

11.1 The City may, at reasonable times and for a period of up to three years following the date of final performance of Services by Contractor under this Agreement, audit, or cause to be audited those books and records of Contractor which are related to Contractor's performance under this Agreement. Contractor agrees to maintain all such books and records at its principal place of business for a period of three years after final payment is made under this Agreement.

11.2 The City may, at reasonable times during the term hereof, perform such inspections as the City deems reasonably necessary to determine whether the Services required to be provided by Contractor under this Agreement conform to the terms of this Agreement. Contractor shall make available to the City all reasonable assistance to facilitate the performance of inspections by the City's representatives.

## **SECTION 12**

### **AMENDMENTS AND ASSIGNMENT**

12.1 This Agreement constitutes the entire agreement between Contractor and City, and all negotiations and oral understandings between the parties are merged herein. The terms and conditions set forth in this Agreement supersede any and all previous agreements, promises, negotiations or representations. Any other agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force or effect.

12.2 No modification, amendment or alteration of the terms and conditions contained shall be effective unless contained in a written document executed with the same formality as this Agreement.

12.3 Contractor shall not transfer or assign the performance of Services called for in the Agreement without the prior written consent of the City, which may be withheld or conditioned in the City's sole discretion.

**SECTION 13**  
**GOVERNING LAW AND VENUE**

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.  
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 \_\_\_\_\_, 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 \_\_\_\_\_, 201\_\_.

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: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

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

## Exhibit B

### WATER AND SEWER EMERGENCY SERVICES AGREEMENT

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

AND

Hinterland Group, Inc., a Florida corporation, with its principal business address located at 5401 N. Havenhill Road, Unit 114, West Palm Beach, FL 33407, 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**

10.1 Contractor shall, without additional expense to the City, be responsible for paying any taxes, obtaining any necessary licenses and for complying with all applicable federal, state, county, and municipal laws, ordinances and regulations in connection with the performance of the Services specified herein.

10.2 Precautions shall be exercised at all times for the protection of persons and property. Contractor and all Subcontractors shall conform to all OSHA, federal, state, county, and City regulations while performing under the terms and conditions of this Agreement. Any fines levied by the above-mentioned authorities because of failure to comply with these requirements shall be borne solely by the contractor responsible for the same.

## **SECTION 11**

### **AUDIT AND INSPECTION RIGHTS**

11.1 The City may, at reasonable times and for a period of up to three years following the date of final performance of Services by Contractor under this Agreement, audit, or cause to be audited those books and records of Contractor which are related to Contractor's performance under this Agreement. Contractor agrees to maintain all such books and records at its principal place of business for a period of three years after final payment is made under this Agreement.

11.2 The City may, at reasonable times during the term hereof, perform such inspections as the City deems reasonably necessary to determine whether the Services required to be provided by Contractor under this Agreement conform to the terms of this Agreement. Contractor shall make available to the City all reasonable assistance to facilitate the performance of inspections by the City's representatives.

## **SECTION 12**

### **AMENDMENTS AND ASSIGNMENT**

12.1 This Agreement constitutes the entire agreement between Contractor and City, and all negotiations and oral understandings between the parties are merged herein. The terms and conditions set forth in this Agreement supersede any and all previous agreements, promises, negotiations or representations. Any other agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force or effect.

12.2 No modification, amendment or alteration of the terms and conditions contained shall be effective unless contained in a written document executed with the same formality as this Agreement.

12.3 Contractor shall not transfer or assign the performance of Services called for in the Agreement without the prior written consent of the City, which may be withheld or conditioned in the City's sole discretion.

**SECTION 13**  
**GOVERNING LAW AND VENUE**

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:**

Daniel Duke III  
Hinterland Group, Inc.  
5401 N. Havenhill Road  
Unit 114  
West Palm Beach, FL 33407  
561-640-3503

**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.  
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 \_\_\_\_\_, 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 \_\_\_\_\_, 201\_\_.

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: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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

Item No.	Description	Quantity	Unit
<b>Excavated Point Repairs on Gravity Sewers</b>			
1	Point repairs to 6-inch to 10-inch pipe at depth up to 5 feet	1	LF
2	Point repairs to 6-inch to 10-inch pipe at depth from 5 to 8 feet	1	LF
3	Point repairs to 6-inch to 10-inch pipe at depth from 8 to 12 feet	1	LF
4	Point repairs to 6-inch to 10-inch pipe at depth from 12 to 16 feet	1	LF
5	Point repairs to 12-inch to 16-inch pipe at depth up to 5 feet	1	LF
6	Point repairs to 12-inch to 16-inch pipe at depth from 5 to 8 feet	1	LF
7	Point repairs to 12-inch to 16-inch pipe at depth from 8 to 12 feet	1	LF
8	Point repairs to 12-inch to 16-inch pipe at depth from 12 to 16 feet	1	LF
9	Point repairs to 12-inch to 16-inch pipe at depth greater than 16 feet	1	LF
10	Point repairs to 18-inch and greater pipe at depth up to 5 feet	1	LF
11	Point repairs to 18-inch and greater pipe at depth from 5 to 8 feet	1	LF
12	Point repairs to 18-inch and greater pipe at depth from 8 to 12 feet	1	LF
13	Point repairs to 18-inch and greater pipe at depth from 12 to 16 feet	1	LF
14	Point repairs to 18-inch and greater pipe at depth greater than 16 feet	1	LF
<b>Water Main and Forcemain Repairs</b>			
15	6" PVC (C-900)	1	LF
16	8" PVC (C-900)	1	LF
17	6" DIP Main	1	LF
18	8" DIP Main	1	LF
19	12" DIP Main	1	LF
20	16" DIP Main	1	LF
21	20" DIP Main	1	LF
22	24" DIP Main	1	LF
23	30" DIP Main	1	LF
24	6" Gate Valve Replacement	1	Each
25	8" Gate Valve Replacement	1	Each
26	12" Gate Valve Replacement	1	Each

27	16" Gate Valve Replacement	1	Each
28	20" Gate Valve Replacement	1	Each
29	24" Gate Valve Replacement	1	Each
30	30" Gate Valve Replacement	1	Each
31	Fire Hydrant Assembly Installation	1	Each
<b>Surface Restoration</b>			
32	Asphalt Roadway Replacement	1	SY
33	Asphalt Overlay	1	SY
34	Concrete Sidewalk Replacement	1	SY
35	Concrete Curb and Gutter Replacement	1	LF
36	Brick Paver Replacement	1	SF
37	6' Chainlink Fence Replacement	1	LF
38	6' Wood/Shadow Box Fence Replacement	1	LF
39	St. Augustine Floratam Sod Replacement	1	SF
40	St. Augustine FX-10 Sod Replacement	1	SF
41	Bahia Sod Replacement	1	SF
<b>Other</b>			
42	Indemnification	1	LS
43	Permits Allowance	1	LS
44	Maintenance of Traffic (Work on FDOT ROW)	1	LS
45	Maintenance of Traffic (Work on Miramar Parkway)	1	LS
	Total		



\$ 650.00
\$ 789.00
\$ 1,275.00
\$ 2,050.00
\$ 850.00
\$ 1,150.00
\$ 1,700.00
\$ 2,000.00
\$ 3,500.00
\$ 1,750.00
\$ 2,000.00
\$ 2,975.00
\$ 5,000.00
\$ 5,500.00
\$ 630.00
\$ 640.00
\$ 670.00
\$ 680.00
\$ 840.00
\$ 1,100.00
\$ 1,500.00
\$ 2,000.00
\$ 2,700.00
\$ 8,000.00
\$ 8,800.00
\$ 16,000.00

\$ 600.00
\$ 700.00
\$ 2,000.00
\$ 3,800.00
\$ 650.00
\$ 800.00
\$ 2,200.00
\$ 4,100.00
\$ 5,000.00
\$ 1,100.00
\$ 1,500.00
\$ 3,200.00
\$ 5,200.00
\$ 5,700.00
\$ 550.00
\$ 650.00
\$ 575.00
\$ 675.00
\$ 800.00
\$ 900.00
\$ 1,800.00
\$ 2,400.00
\$ 3,400.00
\$ 2,200.00
\$ 2,600.00
\$ 5,000.00

\$ 695.00
\$ 943.00
\$ 1,995.00
\$ 3,775.00
\$ 1,025.00
\$ 1,375.00
\$ 2,425.00
\$ 4,875.00
\$ 5,325.00
\$ 1,925.00
\$ 2,175.00
\$ 3,375.00
\$ 5,895.00
\$ 6,275.00
\$ 515.00
\$ 575.00
\$ 515.00
\$ 575.00
\$ 685.00
\$ 925.00
\$ 1,625.00
\$ 2,200.00
\$ 3,325.00
\$ 1,725.00
\$ 2,750.00
\$ 4,175.00

\$	26,000.00
\$	41,000.00
\$	53,000.00
\$	82,000.00
\$	14,000.00
\$	45.00
\$	25.00
\$	80.00
\$	35.00
\$	6.50
\$	10.00
\$	9.00
\$	2.00
\$	2.00
\$	2.00
\$	100.00
\$	100.00
\$	100.00
\$	100.00
	\$ 291,365.50

\$	9,500.00
\$	20,000.00
\$	29,000.00
\$	45,000.00
\$	8,500.00
\$	55.00
\$	30.00
\$	75.00
\$	75.00
\$	18.00
\$	35.00
\$	40.00
\$	3.00
\$	3.00
\$	2.00
\$	100.00
\$	1,000.00
\$	2,500.00
\$	1,800.00
\$	175,836.00

\$	9,775.00
\$	22,050.00
\$	31,250.00
\$	43,850.00
\$	8,975.00
\$	90.00
\$	34.00
\$	160.00
\$	149.00
\$	38.00
\$	31.00
\$	43.00
\$	3.25
\$	3.25
\$	3.25
\$	100.00
\$	100.00
\$	2,600.00
\$	2,200.00
\$	183,122.75



\$	19,475.00
\$	38,950.00
\$	59,450.00
\$	79,950.00
\$	11,275.00
\$	102.50
\$	56.38
\$	133.25
\$	174.25
\$	56.38
\$	66.63
\$	76.88
\$	7.18
\$	9.23
\$	7.18
\$	3,000.00
\$	3,000.00
\$	7,000.00
\$	7,000.00
\$	364,064.36

\$	16,500.00
\$	20,000.00
\$	21,000.00
\$	22,000.00
\$	5,500.00
\$	40.00
\$	15.00
\$	50.00
\$	30.00
\$	10.00
\$	25.00
\$	32.00
\$	0.40
\$	0.55
\$	0.33
\$	1.00
\$	50,000.00
\$	100,000.00
\$	75,000.00
\$	381,204.28