

**RESOLUTION 2005 - 093**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA APPROVING AN AGREEMENT BETWEEN CORRECTIONS CORPORATION OF AMERICA (CCA) AND THE TOWN OF SOUTHWEST RANCHES FOR THE DEVELOPMENT, CONSTRUCTION AND OPERATION OF A CORRECTIONAL FACILITY; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the Corrections Corporation of America (CCA) is considering construction of a correctional facility on CCA property located within the Town of Southwest Ranches; and

**WHEREAS,** the use of the CCA property for a correctional facility is consistent with the Town zoning and comprehensive plan designations; and

**WHEREAS,** CCA and the Town, for their mutual benefit, desire that the Town enter into Intergovernmental Agreements for the housing of inmates at the CCA facility; and

**WHEREAS,** CCA and the Town, for their mutual benefit, desire that CCA enter into Direct Procurement Agreements for the housing of inmates at the CCA facility; and

**WHEREAS,** CCA is willing to compensate Town for benefits provided under the Agreement by payment to the Town of a reasonable portion of the per diem received for the housing and care of inmates; and

**WHEREAS,** the Town Administrator has created an Agreement that has been agreed upon by the parties.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Southwest Ranches, Florida:

**Section 1:** The above referenced recitals are true and correct and are incorporated herein by reference.

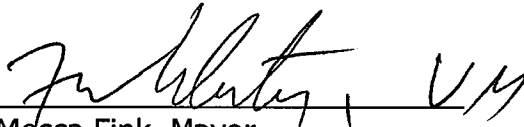
**Section 2:** The Town Council hereby approves an Agreement between the Town of Southwest Ranches and Corrections Corporation of America (CCA), for the development, construction and operation of a correctional facility of up to 1,500 inmates.

**Section 3:** The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into an Agreement in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions and/or deletions which they deem necessary and proper to effectuate the intent of this Resolution.

**Section 4:** That this Resolution shall become effective immediately upon its adoption.

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 14<sup>th</sup> day of July 2005, on a motion by Vice Mayor Forest Blanton and seconded by Council Member Don Maines.


Fink	<u>Y</u>	Ayes	<u>4</u>
Blanton	<u>Y</u>	Nays	<u>0</u>
Knight	<u>A</u>	Absent or	
Maines	<u>Y</u>	Abstaining	<u>1</u>
Nelson	<u>Y</u>		

  
\_\_\_\_\_  
Mecca Fink, Mayor

ATTEST:

  
\_\_\_\_\_  
Shari Canada, Town Clerk

Approved as to Form and Correctness:

  
\_\_\_\_\_  
Gary A. Poliakoff, J.D., Town Attorney

**AGREEMENT BETWEEN TOWN OF SOUTHWEST RANCHES AND  
CORRECTIONS CORPORATION OF AMERICA**

**THIS AGREEMENT** is hereby entered into between Corrections Corporation of America (CCA), a Maryland corporation, and the Town of Southwest Ranches (the Town), a municipal corporation of the state of Florida, as of the 18<sup>th</sup> day of July, 2005.

**WHEREAS**, CCA is considering constructing a correctional facility (Facility) on CCA property within Southwest Ranches, Florida; and

**WHEREAS**, the use of the CCA property for a correctional facility is consistent with both the Town zoning and comprehensive plan designations and CCA will comply with such regulations; and

**WHEREAS**, all required water, sewer and other utility services are available at the CCA property; and

**WHEREAS**, development of the CCA property as a correctional facility will reduce potential traffic congestion in the vicinity of the site by generating only about one-half of the traffic already allocated to the CCA property; and

**WHEREAS**, the Town supports CCA's request to construct such a facility, thereby creating employment opportunities and economic growth; and

**WHEREAS**, the operation of the facility would foster job training and job creation, thereby supporting the policy of Florida Administrative Code 9J5.010 (3)(c)(8); and

**WHEREAS**, the Town is willing and able to support CCA's construction of a facility by providing necessary development review and approval; and

**WHEREAS**, CCA and the Town, for their mutual benefit, desire that the Town enter into Intergovernmental Agreements (IGA) for the housing of inmates by CCA at the CCA facility; and

**WHEREAS**, CCA and the Town, for their mutual benefit, agree that CCA may enter into Direct Procurement Agreements (DPA) for the housing of inmates by CCA at the CCA facility; and

**WHEREAS**, CCA is willing to compensate Town for benefits provided under both IGA and DPA Agreements by paying the Town a reasonable portion of the per diem as a Town fee.

**NOW THEREFORE, BE IT RESOLVED** that the parties agree as follows:

1. Correctional Facility

a. CCA shall present a site plan for the construction of the correctional facility in accordance with all applicable laws and regulations. The Town shall timely provide all necessary development permits, following the appropriate development review process, for CCA's construction of a correctional facility on said property and shall support all required development approvals by other governmental agencies. The Town shall expeditiously process all applications deemed necessary to bring the Town zoning into conformity with the proposed Facility. This Agreement reflects the complete understanding of the parties regarding the operation of the Facility. During the term of this Agreement, the Town shall not take additional authoritative action to further direct Facility operations, require additional consideration from CCA or prevent CCA's operation of the Facility.

b. The Facility will be designed to house no more than 1,500 inmates with the intent to originally construct a facility that will house a minimum of 1,000 inmates. This provision shall not be construed to prohibit expansion of the Facility in the future to accommodate customer needs, subject to Town Council approval.

2. Construction of Facility

a. CCA shall comply with all applicable laws and regulations regarding the submission of design plans, the acquisition of building permits and the inspection of construction. Representatives of the Town shall have reasonable access to the construction site and Facility to observe and monitor the construction process.

b. CCA agrees to provide a development fee in the amount of \$600,000. The first \$200,000 payment shall be made upon achievement of the following:

Execution of this Agreement and receipt of all requisite site and plat approvals with the additional \$400,000 due upon commencement of construction. If CCA does not construct the Facility within twelve months from the date of site plan approval, CCA shall pay the \$400,000 balance as follows: \$300,000 due upon renewed approval of the site plan (because site plan has a 12 month

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implementation timeframe) and \$100,000 due upon commencement of construction or the second renewed approval of the site plan, whichever comes first.

3. Direct Procurement Agreements (DPA)

a. CCA will assertively contact, identify and may enter into any DPA with any governmental entities with the express written advisory notification to the Town. CCA will use its best efforts to enter into DPAs with terms and conditions communicated to the Town. For purposes of the Agreement, a "DPA or Direct Procurement Agreement" shall refer to any direct agreement or agreement entered into between a third party entity and CCA to house inmates at the Facility.

b. CCA shall fully inform Town of negotiations related to development of DPAs concerning the Facility.

c. Classification and custody of inmates housed at the Facility shall be governed by the DPAs, but in any event shall not be higher than medium custody, pursuant to a generally recognized objective classification system.

d. Notwithstanding the terms of this provision, provision 4 below, or any other term of this Agreement, the parties understand and agree that CCA cannot ensure a minimum population at the facility, and the Town shall have no claim or cause of action related to the amount of population or the operating status of the facility.

4. Intergovernmental Agreements (IGA)

a. The parties will work together to establish contracts with third parties for housing inmates at the Facility. CCA and Town will assertively contact and identify, and CCA will provide necessary information about client agencies that potentially will provide inmates to be housed and cared for at the CCA facility. The Town will not contact any entity regarding the development of an agreement whereby CCA would provide correctional services unless the Town has advance approval of such contact from CCA. The Town and CCA will use its best efforts to enter into IGAs with terms and conditions agreeable to the Town and CCA. For purposes of the Agreement, an "IGA" shall refer to any intergovernmental agreement entered into between a third party governmental entity and the Town for the housing of inmates at the Facility by CCA.

b. During the term of the Agreement, the Town shall provide such services with respect to IGAs exclusively to CCA and shall not enter into an IGA on

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behalf of any other private correctional entity. Each party will fully inform the other parties of negotiations related to the development of IGAs concerning the Facility.

c. Classification and custody of inmates housed at the Facility shall be governed by the IGAs, but in any event shall not be higher than medium custody, pursuant to a generally recognized objective classification system.

d. CCA shall provide services required to meet the terms of the IGAs but shall not be obligated to comply with the terms of any IGA unless CCA has reviewed the IGA and approved its terms in writing. The Town will not amend, terminate or otherwise change the terms of the IGAs without the prior written consent of CCA.

5. Operations

a. In operating the Facility, CCA shall comply with all applicable federal, state and local laws and regulations. During the term of the Agreement, CCA shall obtain and maintain its American Corrections Association (ACA) accreditation as required by the IGAs and DPAs.

b. The Town or the Town's Representative(s) shall have reasonable access to inspect the facility subject to security concerns as determined by the warden. CCA shall exercise due diligence for the safety and welfare of the Town, its designees, any other Town employee, and any visitor at the Facility.

c. During the term of the Agreement, following construction of the Facility, CCA and the Town shall jointly create a Community Relations Board for the purpose of planning, supporting and participating in Town community events and the operation of the Facility.

d. CCA shall provide the Town with written responses to any information requested by the Town as necessary to determine CCA's compliance under the Agreement unless the release of such information is prohibited from disclosure by law or contract or would pose security concerns. CCA shall provide said response as soon as reasonably possible after its receipt of the Town's request. CCA shall certify that said information is accurate, and if CCA is unable to so certify, then CCA shall state the reason therefore. The Town shall have the right and authority under the Agreement to observe CCA's performance thereunder. The Town's exercise of its rights hereunder, or the failure to exercise such right, shall not relieve CCA of its responsibility, obligation and liability under the Agreement.

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e. If the Town determines that CCA is not operating in compliance with a term or condition of the Agreement which, in the opinion of the Town poses imminent danger to the citizens of the Town or other individuals, the Town may notify CCA in writing (or verbally if it is believed an emergency situation exists) and request immediate corrective action.

f. At all times during the operation of the facility, CCA shall provide the Town's representative with access to view a written Policy and Procedures Manual which shall contain policies and procedures for services to be rendered by CCA in accordance with any IGA or DPA and applicable Federal, State and Local Standards.

g. CCA agrees to hold regularly scheduled quarterly meetings with the Town to report on the operations of the Facility and to respond to any questions raised by the Town. Said regular meetings shall be in addition to interim meetings requested by the Town; provided, however, the frequency of such meetings is subject to modification by CCA or Town. CCA agrees that a representative of CCA having supervisory responsibility and authority to address the issues raised shall be in attendance at said meetings.

h. CCA will provide sufficient employee job training for all employees hired at the Facility during the term of this Agreement. Upon the Town's request, CCA will report periodically to the Town on the implementation of employee job training and job creation for individuals that meet the criteria of earning less than 120% of the median income which require or need affordable housing.

6. Town Fees

a. Both parties agree that the Town shall receive a Town fee. The amount of the fee shall be determined by the agreement method utilized to provide the inmates.

b. If the agreement method utilized is a Direct Procurement Agreement (DPA), the fee shall be equal to three (3%) percent of the per diem compensation received by CCA.

c. CCA will be designated as a Payee on all DPAs and it shall pay the Town its fees within ten (10) working days after its receipt of the funds.

d. If the agreement method utilized is an Intergovernmental Agreement (IGA), the fee shall be equal to four (4%) percent of the per diem compensation received by Town.

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e. To the extent allowed under the IGAs, CCA will be the Payee and shall forward the Town its applicable fees within ten (10) working days after receipt of the funds. Otherwise, if the Town is the designated Payee, CCA agrees to submit to the Town the necessary documentation for payment as set forth in the IGA. In that instance, the Town shall pay amounts due CCA within ten (10) working days after receipt of payment, after deducting its fees pursuant to this Agreement. In consideration of the reporting and communication requirements to the Town during the term of the Agreement, the Town shall pay a Partnership Support Fee to CCA in an annual amount of \$150,000, payable in monthly installments, beginning at the end of the first full year of operations. CCA and Town agree that said fee shall be amended annually to address changing conditions. During any given year in which the prior year's Town Fee was less than One Million Dollars (\$1,000,000), the Partnership Support Fee shall be calculated by subtracting the difference between the prior year's Town Fee and One Million Dollars (\$1,000,000) from the \$150,000 or amended Partnership Support Fee.

7. Indemnification and Insurance

CCA shall protect, defend, indemnify, save and hold harmless the Town, all its departments, agencies, boards and commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expenses and liability arising out of acts or omissions of the CCA, its agents, servants, subcontractors and employees and any and all costs, expenses and attorney's fees incurred as a result of any such claim, demand or cause of action including, but not limited to claims arising from:

- a. Any breach or default on the part of CCA in the performance of this Agreement;
- b. Services rendered by CCA, or by any subcontractor or other person or firm performing or supplying services, materials or supplies in connection with the planning, design, construction, or operation of the Facility;
- c. Personal injury or property damage;
- d. The publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the Agreement in a manner not authorized by the Contract, or by federal, state, or local statutes or regulations; and any failure of CCA, its officers, agents, or employees to observe the laws of the United States, the State of Florida, local, municipal laws, rules and regulations, and including but not limited to labor laws and minimum wage laws. In case any action or proceeding is brought against the Town by reason

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of any such claims, CCA, upon notice from the Town, shall defend against such action by qualified counsel. CCA's obligations hereunder shall be binding upon CCA's Performance Bond Surety and these obligations shall survive notwithstanding termination of this Agreement.

d. During the Term of the Agreement, CCA shall obtain and maintain sufficient insurance coverage by an insurance company(s) that is licensed to issue policies in the State of Florida and carries a minimum rating of A+ VIII as rated by A. M. Best. Such policies shall include standard liability coverage with a minimum coverage of \$5 Million Dollars for "all risk" property and fire insurance which shall include hazardous substance and waste coverage, medical and professional liability insurance in the minimum amount of \$1 Million/\$3 Million Dollars, comprehensive general liability insurance, workers compensation, Errors & Omissions coverage, personal liability blanket crime insurance covering employee dishonesty and AIDS/HIV exposure coverage.

e. In addition, CCA shall provide the Town with a performance bond in the amount of \$1,000,000 to be in effect during the term of this Agreement. The cost of the performance bond is to be paid by Town.

8. Land Use

The Town shall support continued assessment of the CCA property as an agricultural use or such other use so as to allow the Facility to exist and operate as a correctional facility. If the property is zoned for agricultural use CCA must use a portion of the property for agricultural purposes. The Town shall provide all possible support to CCA in securing an agricultural tax assessment from other governmental entities.

9. Term

The initial term of the Agreement shall commence upon the execution of this document by both parties and initial term shall be for twenty-two (22) years from the issuance of a Certificate of Occupancy (CO) for the initial Facility. The Agreement may be renewed by mutual agreement of the parties for an additional twenty (20) year term immediately following the initial term.

10. Termination and Change of Ownership

a. Either party may terminate this Agreement without penalty upon the permanent closure of the Facility as a prison.

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b. Either party may terminate this Agreement upon 120 days notice if the other party fails to cure a material breach of this Agreement within 60 days of receipt of notice of breach.

c. In the event that CCA elects to sell, or otherwise transfer, the property and Facility, CCA shall first notify the Town and provide the Town an opportunity to purchase the property and Facility at fair market value. If the parties are unable to negotiate a purchase agreement within thirty days, CCA shall have the option of putting the property and Facility on the market. CCA shall grant to the Town a right of first refusal to purchase the property and Facility in the event of any potential bona fide sale to any third party. Prior to selling the property and Facility to a third party, CCA shall provide the Town with the terms of the offer to purchase, and the Town may elect to match the terms and purchase the property and Facility. If the Town fails to match the offer within sixty days, CCA may then sell the property and Facility to the third party without penalty.

d. In the event CCA sells or otherwise transfers the Facility to a third party who continues, directly or indirectly, to operate the Facility as a corrections institution, the sale or transfer of the Facility to the third party shall be subject to the third party's agreement to be bound by the terms of this Agreement.

e. In the event CCA or any of its successor or assigns, files a petition for bankruptcy, the Town shall have the right to purchase the Facility for fair market price as agreed upon between the parties. If the parties are unable to agree upon the fair market price, the price shall be determined by the following appraisal process: each party shall select a professional licensed M.A.I. appraiser who will then select a third professional licensed appraiser to exercise his/her sole judgment. This provision shall not be construed to obligate the Town to purchase the Facility in the event of CCA's bankruptcy.

11. In operating the Facility CCA agrees to comply with the following:

a. All applicable standards, federal, state and local laws, court decisions, and Court Orders and consent agreements, whether currently existing or as may be enacted or rendered in the future and all mandatory ACA standards;

b. The Town agrees to cooperate with CCA in good faith in carrying out the terms of any IGA or DPA, and the parties shall work together to maintain a positive relationship with any customer. Notwithstanding any provision contained herein to the contrary, the parties agree that CCA shall be the operator of the Facility and shall have full discretion, subject to applicable law, regarding its operation. Neither the Town's ability to observe operations and

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access operational information hereunder, nor any other provision, shall be construed to grant the Town the ability or duty to direct or control the operation of the Facility.

12. Access to Records

The Town's representative shall have access to view CCA's policies, procedures, plans and records regarding emergency response, fire prevention, maintenance, employment, safety and security, staffing, use of force, command post, communications, transportation, armory, key control, Special Operations Response Team, emergency generator, media coordination and all other operational aspects of the Facility. The Town's representative shall also have access to view CCA's emergency plans regarding the following: disturbances, fire, violent death of staff or inmate, hazardous material, bomb threat, escape procedure, hostage situations, assault from the outside/terrorist activity, natural disasters, medical emergencies, total evacuation, partial evacuation, work stoppage, inclement weather, canine units, and hunger strikes. CCA shall ensure that such plans are in place at all times during the operation of the Facility. In the interest of Facility security, the Town shall keep all such information confidential. The Town shall not have access to employee salary information or any other information prohibited from disclosure by law or contract.

13. Safety and Security

At all times during the operation of the Facility including CCA's transport of inmates to or from the Facility, CCA shall provide adequate staffing and security controls to protect the inmates, staff and public and to prevent riots and escape.

14. Miscellaneous

a. If CCA receives notice from a customer whose inmates are housed at the Facility that CCA has committed a material breach that poses immediate and serious danger to the general public, the Town may elect to assess a fine of \$1,000.00 a day until the expiration of the cure period granted by the customer or until CCA cures the breach, whichever comes first.

b. The parties consent to the jurisdiction of the federal courts for the Southern District of Florida or the Broward County Circuit Court, in any action, suit or proceeding relating to this Agreement. The parties may elect, by mutual consent, to submit any dispute to binding arbitration. In the event either party prevails in a court action between the parties, the prevailing party shall be

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entitled to recover attorney's fees and court costs from the other party. The parties agree that an action at law for the award of monetary damages to the Town for a breach of the Agreement by CCA may not provide an adequate remedy to the Town. Therefore, the parties agree that the Town's remedy in the event of a breach of this Agreement by CCA may include the equitable right to obtain specific performance of this Agreement from CCA, its successors and assigns.

c. The failure of performance of any of the terms and conditions of this Agreement resulting from acts of nature, war, civil insurrection or riot shall not be a breach.

d. The provisions of the Agreement are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other person or entity.

e. This Agreement(s) shall be governed by and construed under the laws of the State of Florida.

f. This Agreement shall not be altered, changed or amended except in writing executed by both parties.

g. All notices sent pursuant to this Agreement shall be sent by certified mail, return receipt requested to:

Town: John Canada  
Town Administrator  
6589 SW 160 Avenue  
Southwest Ranches, FL 33331

With a copy to:  
Gary A. Poliakoff, J.D.  
Town Attorney  
Becker and Poliakoff, P.A.  
3111 Stirling Road  
Ft. Lauderdale, Florida 33312

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CCA: Gus Puryear IV, General Counsel  
Corrections Corporation of America  
10 Burton Hills Boulevard  
Nashville, TN 37215

h. No waiver of any breach of any of the terms or conditions of this Agreement shall be a waiver of any other or subsequent breach; nor shall any waiver be valid or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.

Independent Contractor. CCA is associated with the Town only for the purposes and to the extent set forth in this Agreement. With respect to the performance of the management services set out herein, CCA is and shall be an independent contractor.

Executive Officer. The Facility and its programs shall be managed by a single executive officer employed by CCA (sometimes referred to herein as "Warden"). The executive officers resume shall be provided to the Town.

**TOWN OF SOUTHWEST RANCHES**

  
\_\_\_\_\_  
Mecca Fink, Mayor


  
\_\_\_\_\_  
John Canada, Town Administrator

Dated: 7/28/05

Attest:

  
\_\_\_\_\_  
Shari Canada, Town Clerk

As to Form and Correctness:

  
\_\_\_\_\_  
Gary Poliakoff, P.A., Town Attorney

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**CORRECTIONS CORPORATION OF AMERICA**

By: *[Signature]*

Its:   *EVP*  

Dated:   *7-21-05*  

Contract:SouthWestRanches2

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