

RESOLUTION NO. 2022-032

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN AGREEMENT WITH BACALLAO CONSTRUCTION & ENGINEERING DEVELOPMENT, LLC (BC&E) IN THE AMOUNT OF FIVE HUNDRED SEVENTY-SEVEN THOUSAND THREE HUNDRED NINETY-THREE DOLLARS AND FORTY-TWO CENTS (\$577,393.42) TO COMPLETE THE HANCOCK ROAD GUARDRAIL IMPROVEMENTS, AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; APROVING A BUDGET AMENDMENT TO THE FISCAL YEAR 2021-2022 ADOPTED BUDGET; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town desires to install guardrails along Hancock Road; and

WHEREAS, the Town's Drainage and Infrastructure Advisory Board has ranked and prioritized this project; and

WHEREAS, this project is specifically named in the Fiscal Year 2020-2021 Town Budget (Account # 101-5100-541-63320 – Transportation: Infrastructure – Guardrails); and

WHEREAS, the Fiscal Year 2019 General Appropriations Act provided the Town with an appropriation of Three Hundred Seventy-Five Dollars and Zero Cents (\$375,000.00) with an anticipated One Hundred Thousand Dollar and Zero Cents (\$100,000.00) Town Match in the Economic Development Transportation Projects for guardrail installation on Hancock Road; and

WHEREAS, pursuant to Resolution No. 2019-067 the Town entered into an agreement with the Florida Department of Transportation to accept this funding; and

WHEREAS, these improvements must be completed by June 30, 2022; and

WHEREAS, on June 10, 2021, the Town advertised Invitation for Bid (IFB) 21-006 for the Guardrail Installation along Hancock Road; and

WHEREAS, on July 13, 2021, the Town originally received three (3) responses: DBI Services, Inc, Bacallao Construction & Engineering Development, LLC (BC&E), and Weekley Asphalt Paving, Inc.; and

WHEREAS, after reviewing the bids, it was determined that DBI Services, LLC. was the lowest responsive and responsible bidder that met the requirements of the IFB; and

WHEREAS, pursuant to Resolution 2021-077, the Town entered into an Agreement with DBI Services, Inc., which totaled Five Hundred Twenty-Four Thousand Eight Hundred Twenty Dollars and Twenty-Five Cents (\$524,820.25); and

WHEREAS, DBI Services, Inc. went out of business on October 22, 2021 prior to project construction; and

WHEREAS, Western Surety Company executed and delivered a Payment and Performance Bond with DBI Services contract; and

WHEREAS, the Town made a demand upon Western Surety Company under the Performance Bond to complete the work undertaken by DBI Services as defined in the Contract Documents; and

WHEREAS, Western Surety Company desires to cooperate with the Town by tendering a completion contractor, duly bonded, licensed and acceptable to the Town known as BC&E; and

WHEREAS, Western Surety Company as bonding agent represents BC&E whom submitted a revised bid in the amount of Five Hundred Seventy-Seven Thousand Three Hundred Ninety-Three Dollars and Forty-Two Cents (\$577,393.42) to perform the Remaining Work; and

WHEREAS, Western Surety Company will, at a minimum, pay the Town the cost difference of Fifty-Two Thousand Five Hundred Seventy-Three Dollars and Seventeen Cents (\$52,573.17); and

WHEREAS, the Town desires to enter into an agreement with the BC&E who originally was, the next lowest responsive and responsible bidder that met the requirements of the IFB; and

WHEREAS, the project includes, but is not limited to the furnishing of all labor, materials, tools, equipment, machinery, expertise, services, and all else necessary for proper construction and completion of the project; and

WHEREAS, the Town of Southwest Ranches desires to enter into an Agreement under the terms and conditions set forth hereinafter.

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 the Agreement between the Town of Southwest Ranches and BC&E totaling Five Hundred Seventy-Seven Thousand Three Hundred Ninety-Three Dollars and Forty-Two Cents (\$577,393.42) providing the installation of guardrails along Hancock Road as outlined in the Agreement attached hereto as Exhibit "A".

Section 3. The Town Council hereby authorizes the Mayor, Town Administrator, and Town Attorney to enter into the 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. The Town Council hereby approves the necessary Fiscal Year 2021-2022 budget amendment for the Installation of guardrails along Hancock Road as follows:

Transportation Fund:

Revenues:

101-0000-369-36990	Miscellaneous Revenues	
	– Performance Bond Proceeds	\$52,574

Expenditures:

101-5100-541-63320	Infrastructure Guardrail	\$52,574
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Section 5. That this Resolution shall become effective immediately upon its adoption.

[Signatures of Following Page]


PASSED AND ADOPTED by the Town Council of the Town of Southwest

Ranches, Florida, this 27th day of January 2022 on a motion by

Vice Mayor Jablonski and seconded by Council Member Kuczenski.


Breitkreuz	Yes
Jablonski	Yes
Allbritton	Yes
Hartmann	Yes
Kuczenski	Yes

Ayes	5
Nays	0
Absent	0
Abstaining	0




Steve Breitkreuz, Mayor

Attest:



Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:



Keith Poliakoff, Town Attorney
1001.905.01

TOWN OF SOUTHWEST RANCHES, FLORIDA
GUARDRAIL INSTALLATION ALONG HANCOCK ROAD
IFB NO. 21-006

EXHIBIT A - AGREEMENT



AGREEMENT

BETWEEN THE

TOWN OF SOUTHWEST RANCHES

AND

BACCALLAO CONSTRUCTION & ENGINEERING DEVELOPMENT, LLC
(BC & E)

FOR

“IFB 21-006 GUARDRAIL INSTALLATION ALONG HANCOCK ROAD”

TOWN OF SOUTHWEST RANCHES, FLORIDA
GUARDRAIL INSTALLATION ALONG HANCOCK ROAD
IFB NO. 21-006

AGREEMENT FOR

“IFB 21-006 GUARDRAIL INSTALLATION ALONG HANCOCK ROAD”

THIS IS AN AGREEMENT (“Agreement” or “Contract”) made and entered into on this 27 day of January 2022 by and between the Town of Southwest Ranches, a Municipal Corporation of the State of Florida, (hereinafter referred to as “Town”) and BACCALLAO CONSTRUCTION & ENGINEERING DEVELOPMENT, LLC (BC & E) (hereinafter referred to as “Contractor”).

WHEREAS, the Town desires to IFB 21-006 Guardrail Installation along Hancock Rd (“Project”); and

WHEREAS, the Town advertised an Invitation for Bids, IFB No. 21-006 on JUNE 10, 2021 (“IFB”); and

WHEREAS, 3 bids were received by the Town on JULY 13, 2021; and

WHEREAS, the Town has adopted Resolution No. 2022-032 at a public meeting of the Town Council approving the recommended award and has selected BACCALLAO CONSTRUCTION & ENGINEERING DEVELOPMENT, LLC (BC & E) for award of the Project.

NOW THEREFORE, in consideration of the foregoing promises and the mutual terms and conditions herein, the Town and Contractor hereby agree as follows:

Section 1: Scope of Services

- 1.1 Upon execution of this Agreement, the Contractor agrees to perform the duties and responsibilities as defined herein and in the IFB to which this Agreement is EXHIBIT “A” and which is made a part hereof by this reference (“Work”). This Agreement, as well as all Exhibits, the IFB, the Contractor’s Bid, including all forms attached thereto, and all addenda, specifications, drawings and plans, shall be hereinafter collectively referred to as the “Contract Documents” and incorporated herein by reference. To the extent of any conflict among the Contract Documents, the more stringent criteria relative to the Contractor’s performance of the Work shall govern over the less stringent criteria.
- 1.2 All Work rendered pursuant to this Agreement by Contractor shall be performed in accordance with the applicable standard of care for persons or entities performing similar work in Broward County, Florida. Contractor shall perform the Work in strict accordance with the requirements of this Agreement, all of the Contract Documents, good construction practices for this type of Work performed in Broward County, Florida and all applicable codes, ordinances, rules, laws and regulations governing the Work, including, but not limited to, the Florida Building Code, along with Broward County Amendments to it.

TOWN OF SOUTHWEST RANCHES, FLORIDA
GUARDRAIL INSTALLATION ALONG HANCOCK ROAD
IFB NO. 21-006

- 1.3 By submitting its Bid and entering into this Agreement, Contractor represents that it has visited the location of the Work and informed itself of the conditions that exist at the site, including conditions of the facilities and difficulties associated with the execution of the Work. The existing site conditions have been accounted for within the Contract Price. Furthermore, all costs for the proper disposal of excess material generated on site in the performance of the Work have likewise been included and accounted for within the Contract Price.
- 1.4 Contractor, in addition to any manufacturer's warranty for materials or equipment, hereby warrants that its work will be free of defects and deficiencies for a period of one year from the Final Completion Date. If any defects or deficiencies arise within the warranty period, the Contractor shall correct the defect or deficiency at no cost to the Town. Nothing herein shall be construed as a waiver, limitation, or release of any right or remedy that the Town may have for breach of this Agreement, which rights are cumulative and in no way limited by the warranty.

Section 2: Term of this Agreement and Agreement Time

- 2.1 Town and Contractor agree that Contractor shall perform all Work under this Agreement for

“IFB 21-006 GUARDRAIL INSTALLATION ALONG HANCOCK ROAD”

- 2.2 Town shall have the ability to terminate this Agreement as provided in “Section 18: Termination.”
- 2.3 Contractor shall not be entitled to any claim for damages against Town on account of hindrance or delays from any cause whatsoever. If, however, Contractor is delayed in the prosecution of the Work occasioned by an act of God, or by act or omission on the part of the Town, or due to changes ordered in the Work by Town which expand the scope and costs of the Work, such act, hindrance, or delay shall only entitle Contractor to receive an extension of time as its sole and exclusive remedy for such hindrance or delay and Contractor waives any and all other claims against Town.
- 2.4 Time being of the essence, Town and Contractor agree that Contractor shall perform all Work under this Agreement and achieve substantial completion of the Work **within forty five (45) calendar days of the date of the Notice to Proceed**, subject to appropriate extensions of time as provided in this Agreement (“Substantial Completion Date”).
- 2.4.1 Substantial Completion of the Work at the Project shall be defined as the date upon which the last of all the following events have occurred:
- (i) All necessary approvals have been issued with respect to the Work by the appropriate governmental authorities;
 - (ii) Restoration of all utilities to operation that have been affected during performance of the Work;
 - (iii) All Work has been completed; and
 - (iv) The Town's engineer/architect of record for the Project, Town of Southwest Ranches Drainage Improvements, has issued its written acceptance of the

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Work performed by Contractor and executed and delivered to the Town a
Certificate of Substantial Completion.

- 2.4.2 The parties agree that time is of the essence in execution of the Work delineated within the Agreement and any breach of same shall go to the essence hereof, and Contractor, in agreeing to substantially complete the Work within the time herein mentioned, has taken into consideration and made allowances for all hindrances and delays incident to its Work.

Liquidated/Delay Damages (“LD’s”) – In the event Contractor does not achieve Substantial Completion of the Work as defined in Paragraph 2.4.1 above, in whole or in part due to its own fault, the parties acknowledge that any delay beyond the scheduled Substantial Completion Date may cause grave injury and damage to the Town by virtue of locating, moving to, and paying rent for temporary quarters, loss of use, extension of overhead costs, additional costs of design professionals and otherwise. Accordingly, the calculation of the actual damages to the Town would be uncertain and difficult if not impossible to determine. Consequently, if the Contractor has not achieved Substantial Completion of the Work within **forty five (45) calendar days after the issuance of the Notice to Proceed** and has not obtained written authorization for such delay, the parties agree that liquidated damages and not as a penalty, the Contractor shall pay to the Town an amount equal to two hundred Dollars (\$200.00), for each day or portion thereof, that the date of completion is later than the scheduled Substantial Completion Date set forth above. Contractor shall be entitled to an extension of time and relief from liquidated damages to the extent that additional out of scope work is authorized by the Town in accordance with a properly executed Change Order and such work causes the delay in meeting the Substantial Completion Date. The liquidated damages shall be paid by Contractor to Town weekly, immediately upon each such failure of Contractor to comply with the scheduled Substantial Completion Date. In the event that the Contractor fails to make timely payments to Town, the Town shall have the right to deduct any and all such amounts from any amounts due or to become due to Contractor.

All work shall be substantially complete no later than **forty-five (45) days** from the issuance of the Notice to Proceed. Final Completion of the project shall be achieved no later than **fifteen (15) calendar days** from Substantial Completion or within **sixty (60)** days from the date of issuance of the Notice to Proceed, whichever occurs first. Final Completion Date is defined as the date when all punch list items have been completed as evidenced by the issuance of a written Certification of Final Completion by the Town’s design professional for this Project, and all other conditions precedent to Final Completion as outlined below have been satisfied:

Contractor shall:

- (i) Deliver to the Town all warranties, final certifications, and similar documentation to confirm that all necessary approvals have been issued for the Work by the appropriate governmental authorities;
- (ii) Complete all Punch List items of Work;
- (iii) Remove temporary facilities from the site, along with construction tools and similar elements;

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- (iv) Complete final clean-up including repair, replace and restore any items damaged by Contractor as a consequence of performing Work;
- (v) Deliver to the Town confirmation that all permits have been closed; and
- (vi) Confirm that the Town's engineer/architect of record for the Project, Town of Southwest Ranches Drainage Improvements, has issued written acceptance of the Work performed and executed and delivered to the Town a Certificate of Final Completion.

Notwithstanding the foregoing, Contractor acknowledges that, among other damages the Town may suffer from Contractor's delays, the Town may be required to forfeit payment of, or may be required to make reimbursement for, grant monies from the Broward Surtax if the Project is not timely completed. Accordingly, Contractor hereby agrees to indemnify and hold Town harmless from and against any forfeitures or losses of such grant monies resulting from Contractor's delays. Contractor acknowledges and agrees that Town, at its sole option, may elect to recover from Contractor its actual damages, including the actual loss of such grant monies, in lieu of assessing liquidated damages, where such actual losses exceed the amount of liquidated damages. This Section 2.4.2 shall survive termination of this Agreement pursuant to Sections 18C or 18E herein, or other termination for cause.

- 2.5 Contractor shall be instructed to commence the Work by written instruction in the form of a Purchase Order issued by the Procurement and Budget Officer. The Notice to Proceed and Purchase Order will not be issued until Contractor's submission to Town of all required documents and after execution of this Contract by both Parties. Preliminary work, including submission of a project schedule, schedule of values, submittals, submittal schedule, and other documents required for permitting, and performance of work that does not require permits, shall commence within ten (10) days after the date of the Notice to Proceed. Contractor shall have ten (10) days after receipt of signed and sealed contract Drawings from Consultant to apply for construction permits to the applicable permitting authority. Except for the reimbursement of permit application fees as may be provided in the Contract Documents, Contractor shall not be entitled to compensation of any kind
- 2.6 Upon failure of Contractor to obtain Substantial Completion within the deadline stated in Section 2.4, as extended by any approved time extensions, Contractor shall pay to Town the sum of two hundred Dollars (\$200.00) for each day after the deadline for Substantial Completion, as extended by any approved time extensions, until Substantial Completion is obtained. After Substantial Completion, should Contractor fail to complete the remaining Work within the deadline stated in Section 2.4, as extended by approved time extensions thereof, Contractor shall pay to Town the sum of two hundred Dollars (\$200.00) for each day after the deadline for Final Completion, as extended by any approved extensions, until Final Completion is obtained. These amounts are not penalties but are liquidated damages to Town for its inability to obtain full beneficial occupancy and/or use of the Project. Liquidated damages are hereby fixed and agreed upon between the Parties based on (1) a mutual recognition of the impossibility of precisely ascertaining the amount of damages that will be sustained by Town as a consequence of Contractor's failure to timely obtain Substantial Completion; and (2) both Parties' desire to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of Contractor to complete this

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Contract on time. These liquidated damages shall apply separately to each portion of the Project for which a deadline for completion is given.

- 2.7 The liquidated damages shall be paid by Contractor to Town weekly, immediately upon each such failure of Contractor to comply with the scheduled Substantial Completion Date. In the event that the Contractor fails to make timely payments to Town, the Town shall have the right to deduct liquidated damages from monies due or to become due to Contractor. Final Completion of the Work shall be achieved no later than 60 calendar days from Substantial Completion or within one hundred eighty (180) days from the date of issuance of the Notice to Proceed, whichever occurs first. Final Completion Date is defined as the date when all punch list items have been completed as evidenced by the issuance of a written Certification of Final Completion by the Town's design professional for this Project, and all other conditions precedent to Final Completion as outlined below have been satisfied.
- 2.8 Contractor shall reimburse Town, in addition to liquidated damages, for all costs incurred by Consultant in administering the construction of the Project beyond the completion dates specified above, as extended by any approved time extensions. Consultant construction administration costs shall be in the amounts set forth in the contract between Town and Consultant, a copy of which is available upon request of the Contract Administrator. All such costs shall be deducted from the monies due Contractor for performance of Work under this Contract by means of unilateral credit Change Orders issued by Town as costs are incurred by Consultant and agreed to by Town.

Section 3: Compensation & Method of Payment

- 3.1 Contractor shall render all Work to the Town under the Agreement for a total, not to exceed, \$577,393.42 Dollars ("Contract Price").
- 3.2 Town shall not be liable for any cost increases or escalation associated with labor, services, materials, equipment, or any other costs that may arise during the performance of the Work. In the event, the cost of the Work exceeds the amounts defined in Section 3.1, Contractor shall pay such excess from its own funds and Town shall not be liable for any excess. The only exception shall be adjustments to the Contract Price pursuant to written Change Orders, duly executed by Town and Contractor in accordance with the terms and conditions of this Agreement and with the same formality and dignity afforded the original Agreement.
- 3.3 Town and Contractor agree that payment will be subject to (a) the delivery of an invoice by Contractor to the Town once every 30 days, and (b) confirmation by Town, that the Work included in the invoice, has been performed in accordance with this Agreement. Upon verification by Town that the invoiced Work has adequately been performed, Town shall have thirty (30) days thereafter to pay the invoice.
- 3.4 Each invoice must be accompanied by all supporting documentation and other information reasonably requested by Town, including, but not limited to a Partial Release of Lien or Final Release of Lien as appropriate and in compliance with forms set forth in Chapter 713.20, Florida Statutes. Reference herein to Chapter 713, Florida Statutes is for convenience, and shall not be construed as a waiver of sovereign immunity or authority for imposition of liens against public property. Each progress payment shall be reduced by 10% retainage. Subject to other requirements of the Contract Documents, retainage shall

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be released after final completion of the Work and Town's receipt of acceptable reports and other documentation including certification of payment to subcontractors, if any, and a Final Release of Lien form set forth in Section 713.20, Florida Statutes, as well as satisfaction of the conditions included in Section 3.5 of this Agreement.

- 3.5 A final payment invoice must be accompanied by written notice from Contractor that the Work is complete. The Town's engineer/architect will make a final inspection and provide a punch list to Contractor of all portions of the work they deem to be incomplete or defective. Contractor shall immediately take such measures as are necessary to complete the punch list and remedy the deficiencies. Contractor's obligation to perform and complete the Work in strict accordance with the Contract Documents shall be absolute. The Town may refuse payment if (a) the Work is defective or damaged requiring correction or replacement, (b) it becomes necessary for the Town to correct defective Work, or (c) liens, claims, or other items have been asserted against the Town in connection with Contractor's performance of the Work entitling the Town to a set-off the amount due. No payment will be made for Work performed by the Contractor to replace defective work, for work which is not shown or ordered in the Contract Documents, or additional work performed by Contractor without prior written approval of Town.

Section 4: Assignment

No assignment of this Agreement or the Work hereunder shall be valid without the express written consent of Town, which may be given or withheld, in Town's sole discretion. All Work to be performed pursuant to this Agreement shall be performed by the Contractor, and no Work shall be subcontracted to other parties or firms without the prior written consent and approval of the Town Administrator.

Section 5: Contractor's Responsibility for Safety

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work provided in order to prevent damage, injury or loss to (a) employees performing the Work and all other persons who may be affected thereby, (b) all the Work, materials and equipment to be incorporated therein and (c) other property at the site or adjacent thereto. Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders, of any authority with jurisdiction regarding the safety of persons and property, in order to provide protection from damage, injury, or loss.

Section 6: Insurance

- 6.1 Throughout the term of this Agreement and during applicable statute of limitation periods, Contractor shall maintain, in full force and affect, all of insurance coverages required within the Agreement and IFB.
- 6.2 All Insurance Policies shall be issued by companies that (a) are authorized to transact business in the State of Florida, (b) have agents upon whom service of process may be made in Broward County, Florida, and (c) have a rating of "A-" or better in accordance with A.M. Best's Key Rating Guide.
- 6.3 All Insurance Policies shall name and endorse the following as an additional named insured:

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Town of Southwest Ranches
13400 Griffin Road
Southwest Ranches, FL 33330-2628

- 6.4 All Insurance Policies shall be endorsed to provide that (a) Contractor's Insurance is primary to any other Insurance available to Town or any other additional insured with respect to claims covered under the policy and (b) Contractor's insurance applies separately to each insured, against who claims are made or suit is brought, and (c) that the inclusion of more than one insured shall not operate to increase the Insurer's limit of liability. Self-insurance by Contractor shall not be acceptable for providing the required insurance coverages of this Agreement.
- 6.5 If the Contractor fails to submit the required insurance certificate, in the manner prescribed within the executed Agreement, at the time of execution of this Agreement, Contractor shall be deemed in default, and the Agreement shall be cancelled or rescinded without liability of the Town.
- 6.6 Contractor shall carry the following minimum types of Insurance:
- A. **WORKER'S COMPENSATION:** Worker's Compensation Insurance is to apply to all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. Contractor shall carry Worker's Compensation Insurance with the statutory limits, which shall include employer's liability insurance with a limit of not less than **Five Hundred Thousand Dollars (\$500,000)** for each incident, and **Five Hundred Thousand Dollars (\$500,000)** for each disease. Policy(ies) must be endorsed with waiver of subrogation against Town.
 - B. **BUSINESS AUTOMOBILE LIABILITY INSURANCE:** Contractor shall carry business automobile liability insurance with minimum limits of **Five Hundred Thousand Dollars (\$500,000)** per occurrence, combined single limits bodily injury liability and property damage. The policy must be no more restrictive than the latest edition of the business automobile liability policy without restrictive endorsements, as filed by the Insurance Services Office, and must include all owned vehicles and all hired or non-owned vehicles.
 - C. **COMMERCIAL GENERAL LIABILITY:** Contractor shall carry Commercial General Liability Insurance with limits of not less than **Five Hundred Thousand Dollars (\$500,000)** per occurrence combined single limit for bodily injury and property damage, and not less than **One Million Dollars (\$1,000,000)** in the aggregate. The insurance policy must include coverage that is no more restrictive than the latest edition of the commercial general liability policy, without restrictive endorsements as filed by the Insurance Service Office (ISO), and the policy must include coverages for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, personal injury and explosion, collapse and underground (X-C-U). Personal injury coverage shall include coverage that has the employee and contractual exclusions removed. The ISO form of the policy must be acceptable to the Town.

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- 6.7 Contractor shall provide Town with a copy of the Certificates of Insurance or endorsements evidencing the types of Insurance and coverages required by this Section prior to beginning Work under this Agreement and, at any time thereafter, upon request by Town.
- 6.8 Contractor's Insurance Policies shall be endorsed to provide Town with at least thirty (30) calendar days prior written notice of cancellation, non-renewal, restrictions, or reduction in coverages or limits. Notice shall be sent to:
- Town of Southwest Ranches
13400 Griffin Road
Southwest Ranches, Florida 33330
- And
- Keith M. Poliakoff, Esq.
Government Law Group, PLLC
200 South Andrews Avenue
Suite 601
Fort Lauderdale, Florida 33301
- 6.9 Contractor's Commercial General Liability Insurance policy shall be on an "occurrence" basis only and shall not be a "claims-made" policy.
- 6.10 If any of Contractor's Insurance policies include a general aggregate limit and provides that claims investigation or legal defense costs are included in the general aggregate limit, the general aggregate limit that is required shall be at least five (5) times the occurrence limits specified above in this article.
- 6.11 The Contractor shall not commence operations, and/or labor to complete any of the Work pursuant to this Agreement until certification or proof of insurance issued directly by the insurance company underwriting department or insurance agent, detailing terms and provisions of coverage, has been received and approved by the Town.
- 6.12 If any of Contractor's initial insurance expires prior to the completion of the Work, renewal copies of Policies shall be furnished to Town at least thirty (30) days prior to the date of their expiration, and Town shall be an additional named insured by endorsement on all of Contractor's renewal policies.
- 6.13 **UPON EXECUTION OF THIS AGREEMENT, CONTRACTOR SHALL SUBMIT TO TOWN COPIES OF ITS CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES REQUIRED HEREIN AND SPECIFICALLY PROVIDING THE ENDORSEMENT TO THE POLICIES THAT SHOWS THE TOWN OF SOUTHWEST RANCHES IS AN ADDITIONAL NAMED INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND CONTRACTOR'S WORK UNDER THE AGREEMENT.**
- 6.14 The official title of the owner is Town of Southwest Ranches. This official title shall be used in all insurance policies and documentation.
- 6.15 All required insurance policies shall preclude any insurer's or underwriter's rights of recovery or subrogation against Town with the express intention of the parties being that

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the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.

- 6.16 Contractor shall ensure that any company issuing insurance to satisfy the requirements contained in this Agreement agrees that they shall have no recourse against Town for payment or assessments in any form on any policy of insurance.
- 6.17 The clauses “Other Insurance Provisions” and “Insured Duties in the Event of an Occurrence, Claim or Suit” as it appears in any policy of insurance in which Town is named as an additional named insured shall not apply to Town in any respect. Town shall use its best efforts to provide written notice of occurrence within thirty (30) working days after Town’s actual notice of such event.
- 6.18 Notwithstanding any other provisions of this Agreement, Contractor’s obligation to maintain all required insurance as specified in this Section of the Agreement shall survive the expiration or earlier termination of this Agreement.

Section 7: Copyrights and Patent Rights

Contractor warrants that there has been no violation of copyrights, trademarks, or patent rights in manufacturing, producing, and/or selling the item(s) ordered or shipped as a result of this Agreement. Contractor agrees to indemnify and hold harmless Town, its employees, agents, or servants against any and all liability, loss, or expense resulting from any such violation(s).

Section 8: Laws and Regulations

Contractor agrees to comply with all applicable Federal, State, County, and local laws, rules, regulations, ordinances, and codes in performing all Work under this Agreement.

Section 9: Taxes and Costs

All federal, state, and local taxes relating to the Contractor’s Work under this Agreement and, similarly, all costs for licenses, permits, or certifications to perform the Work under this Agreement shall be paid by the Contractor.

Section 10: Indemnification

To the fullest extent permitted by Florida law, including Florida Statutes, Section 725.06, the Contractor shall indemnify, defend and hold harmless the Town, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney’s fees, at both trial and appellate levels, to the extent caused by the negligence, recklessness, or willful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Work or anyone else for whose actions Contractor may be responsible, regardless of the partial fault of any party indemnified hereunder. Notwithstanding any other provisions of this Agreement, the Contractor’s duty to indemnify, defend and hold the Town harmless shall survive the termination or earlier expiration of this Agreement.

Section 11: Non-discrimination

Contractor shall not discriminate against any client, employee, or applicant for employment because of race, gender, age, color, religion, sex, national origin, physical or mental disability, or marital status. Contractor shall take affirmative action to ensure that applicants, subcontractors, Independent contractors, and employees are treated without discrimination in regard to their race, gender, age, color, religion, sex, national origin, physical or mental disability, or marital status.

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Contractor shall comply with all applicable sections of the Americans with Disabilities Act. Contractor agrees that compliance with this Article constitutes a material condition to this Agreement, and that it is binding upon the Contractor, its successors, transferees, and assigns for the period which Work is provided. Contractor further assures that all subcontractors and independent contractors are not in violation of the terms of this Section of the Agreement.

Section 12: During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this

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contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Section 13: Sovereign Immunity

Nothing in this Agreement is intended, nor shall it be construed to waive or modify the Town's Sovereign Immunity defense or the Town's immunities and limitations on liability as provided for in Florida Statutes, as worded or amended and all Florida case law interpreting same.

Section 14: Prevailing Party Attorneys' Fees

In the event either party to this Agreement incurs legal fees, legal expenses or costs to enforce the terms of this Agreement on trial or on appeal, the prevailing party shall be entitled to recover reasonable costs of such action so incurred, including, without limitation, reasonable attorney's fees and costs and expert witness fees and costs incurred.

Section 15: No Third-Party Beneficiaries

This Agreement is solely for the benefit of the parties hereto and is not entered into for the benefit of any other person or entity. Nothing in this Agreement shall be deemed or construed to create or confer any benefit, right or cause of action for any third party or entity.

Section 16: Funding

The obligation of Town for payment to Contractor for the Work is limited to the availability of funds appropriated in a current fiscal period, and continuation of any contractual relationship into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

Section 17: Manner of Performance

Contractor agrees to perform all Work in a professional manner and in accordance with Local, State, County, and Federal laws, rules, ordinances, regulations, and codes. Contractor agrees that the Work provided shall be provided by employees that are educated, trained, experienced, certified, and licensed in all areas encompassed within their designated duties. Contractor agrees to furnish to Town any and all documentation, certification, authorization, license, permit, or registration currently required by applicable laws, rules, and regulations. Contractor further certifies that it and its employees will keep all licenses, permits, registrations, authorizations, or certifications required by applicable laws or regulations in full force and effect during the term of this Agreement. Failure to comply with this paragraph shall constitute a material breach of this Agreement.

Section 18: Public Records

The Town is subject to Chapter 119, Florida Statutes, "Public Records Law." No claim of confidentiality or proprietary information in any portion of a response will be honored unless a specific exemption from the Public Law exists and is cited in the response. An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed. Contractor acknowledges the public shall have access at all reasonable times, to all documents and information pertaining to Town's contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the Town and the public to all documents subject to disclosures under applicable law.

To the extent that Contractor has been provided access to or has received security sensitive information, as defined by Florida Statutes, Section 119.071 and/or has executed a Confidential Information Acknowledgement and Agreement as part of the IFB process, Contractor shall keep and maintain the security sensitive information as confidential and exempt from public disclosures as required by Florida Statutes.

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Contractor agrees to keep and maintain public records required by the Town to perform the service in Contractor's possession or control in connection with Contractor's performance under this IFB and any Contract awarded, and upon the request from the Town's custodian of public records, to provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable amount of time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract if the Contractor does not transfer the records to the Town.

Upon completion of the Contract, Contractor agrees, at no cost to Town, to transfer to the Town all public records in possession of the Contractor or keep and maintain public records required by the Town to perform the service. If the Contractor transfers all public records to the Town upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology system of the Town.

Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination for cause of the Contract by Town.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT PHONE: (954) 434-0008; EMAIL: RMUNIZ@SOUTHWESTRANCHES.ORG; RUSSELL MUNIZ, ASSISTANT TOWN ADMINISTRATOR/TOWN CLERK, TOWN OF SOUTHWEST RANCHES, 13400 GRIFFIN ROAD, SOUTHWEST RANCHES, FLORIDA, 33330.

Section 19: Termination

The Agreement may be terminated upon the following events:

- A. **Termination by Mutual Agreement.** In the event the parties mutually agree in writing, this Agreement may be terminated on the terms and dates stipulated therein.
- B. **Termination for Convenience.** This Agreement may be terminated for Convenience by Town upon Town providing Contractor with **thirty (30) calendar day's** written notice of Town's intent to terminate this Agreement for Convenience. In the event that this Agreement is terminated by Town for Convenience, Contractor shall be paid ONLY for Work performed and approved by the Town as of the date of this Agreement is terminated, plus any direct and reasonable expense sustained up to the date of receipt of the written

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notice. In no event, shall Town be liable for consequential damages, including but not limited to, lost profits on Work not yet performed, and no other compensation or damages other than as set forth in this Section shall be paid to or recovered by Contractor in any legal proceeding against Town. Upon being notified of Town's election to terminate, Contractor shall immediately cease performing any further Work or incurring additional expenses. Contractor acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by Town, the adequacy of which is hereby acknowledged by Contractor, is given as specific consideration to Contractor for Town's right to terminate this Agreement for Convenience.

- C. **Termination for Cause.** In the event of a material breach by Contractor, Town shall provide Contractor written notice of its material breach. Contractor shall thereafter have fourteen (14) days from the date of its receipt of such notification to cure such material breach. If Contractor does not cure the material breach within that time period, Town may terminate this Agreement immediately. Material breaches shall include, but are not limited to, Contractor's violations of governing standards, failure to carry out the work in strict accordance with the Contract Documents, failure to supply sufficient work forces, violations of state or federal laws, violation of Town's policies and procedures, or violation of any of the terms and conditions of this Agreement. In the event that Town elects to terminate Contractor for cause as provided for in this Section, and Town's termination for cause is later determined by a court of competent jurisdiction to be improper, or in any other way wrongful or in breach of this Agreement, the termination will be automatically deemed converted to one for Convenience, and Contractor shall solely be paid and Contractor's damages are solely limited to the compensation Contractor would be entitled to pursuant to subparagraph (B) of this Section.
- D. **Termination for Lack of Funds.** In the event the funds to finance the Work under this Agreement become unavailable, Town may provide Contractor with thirty (30) days written notice of termination. Nothing in this Agreement shall be deemed or construed to prevent the parties from negotiating a new Agreement in this scenario. In the event that Town elects to terminate Contractor for lack of funds as provided for in this Section, and Town's termination for lack of funds is later determined by a court of competent jurisdiction to be improper, or in any other way wrongful or in breach of this Agreement, the termination will be automatically deemed converted to one for Convenience, and Contractor shall solely be paid and Contractor's damages are solely limited to the compensation Contractor would be entitled to pursuant to subparagraph (B) of this Section.
- E. **Immediate Termination by Town.** In addition to any other grounds stated herein, Town, in its sole discretion, may terminate this Agreement immediately upon the occurrence of any of the following events:
1. Contractor's violation of the Public Records Act;
 2. Contractor's insolvency, bankruptcy or receivership;
 3. Contractor's violation or non-compliance with Section 11 of this Agreement;
 4. Contractor's failure to maintain any Insurance required by Section 6 of this Agreement; or
 5. Contractor's violation of Section 19 of this Agreement.

Section 20: Public Entity Crimes Information Statement

Pursuant to Florida Statutes, Section 287.133: “A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant 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, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.” Violation of this section by Contractor shall result in Town’s immediate termination of this Agreement.

Section 21: Use of Awarded Bid by Other Governmental Units

Contractor agrees that this Agreement may be utilized by other governmental entities or units to provide the specified services. Town does not become obligated in any way, to pay for or become, in any way, responsible or liable for Contractor’s provision of Work or services to any other governmental unit.

Section 22: Change Orders and Modification of Agreement

Town and Contractor may request changes that would increase decrease or otherwise modify the Scope of Work to be provided under this Agreement. Such changes only become part of this Agreement and increase, decrease or otherwise modify the Work or the Contract Price under this Agreement if evidenced by a written Change Order executed by Town and Contractor, with the same formality and of equal dignity associated with the original execution of the Agreement.

Section 23: No Waiver of Rights

Neither the Town’s review, approval or payment for any of the Work required under this Agreement shall be construed to operate as a waiver of any of Town’s rights under this Agreement or of any causes of action arising out Contractor’s performance of the Work under this Agreement, and Contractor shall be and remain liable to the Town for all damages to the Town caused by the Contractor’s negligent or improper performance of any of the Work furnished under this Agreement, irrespective of the Town’s review, approval or payment for any of the Work under this Agreement. The rights and remedies of the Town provided for under this Agreement are in addition to all other rights and remedies provided to Town by law.

Section 24: Jurisdiction and Venue

The exclusive venue for any litigation arising from or relating to the Agreement shall be in a court of competent jurisdiction in the 17th Judicial Circuit in and for Broward County, Florida. This Agreement shall be governed by the substantive laws of the State of Florida.

Section 25: WAIVER OF RIGHT TO JURY TRIAL

BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND TOWN HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY IN ANY CIVIL LITIGATION RELATED TO OR ARISING OUT OF THIS AGREEMENT.

Section 26: Gender

Wherever the context shall so require, all words herein in the masculine gender shall be deemed to include the feminine, and all words herein in the feminine gender shall be deemed to include the masculine. All singular words shall include the plural, and all plural words shall include the singular.

Section 27: Time is of the Essence; Liquidated Damages

Time is of the essence for all of Contractor's obligations under this Agreement. The Town will be entitled to Liquidated Damages as set forth at Section 2.4.2.

Section 28: Days

The terms "days" as referenced in this Agreement shall mean consecutive calendar days.

Section 29: Written Mutual Agreement

This Agreement is binding upon the parties hereto, their successors and assigns, and replaces and supersedes any and all prior agreements or understanding between the parties hereto whether written or oral which are merged herein.

Section 30: No Amendment or Waiver

This Agreement may not be changed, altered, or modified except by an instrument in writing signed by all parties hereto, with the same formality and of equal dignity as the execution of this Agreement prior to the initiation of any Work reflecting such change.

Section 31: Severability

In the event any term or provision of this Agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning so as to remain in full force and effect, or be deemed severed from the Agreement so as not to affect the validity or enforceability of the remaining provisions of the Agreement. In case any one or more of the provisions of this Agreement shall be determined by appropriate judicial authority to be invalid, illegal or unenforceable, in any respect, the validity of the remaining provisions of this Agreement shall be in no way affected, prejudiced, or disturbed thereby.

Section 32: Resolution of Disputes; Florida Statutes, Chapter 558 Not Applicable

To prevent litigation, it is agreed by the parties hereto that Town Administrator shall solely decide all questions, claims, difficulties and disputes of, whatever nature, which may arise relative to this Agreement, including but not limited to, Contractor's fulfillment of its obligations under this Agreement as to the character, quality, amount and value of any Work done and materials furnished, or proposed, to be done or furnished, under or by reason of, the Agreement. Further, to the extent required or permitted by the agreement between the Town and its design professional for this Project, the design professional shall have access to the Work, the right to conduct testing or inspections, to reject non-conforming work, and to review pay applications. The Town

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Administrator's decision shall be reduced to writing, and a copy furnished to the Contractor within a reasonable time following submission to the Town of the question, claim, difficulty, or dispute as referenced above. The Town Administrator's decision shall be final and conclusive. Additionally, the parties understand and agree that Florida Statutes, Chapter 558 does not apply to this Agreement or the Work, and that the parties hereby "opt out" of the procedures set forth at Chapter 558.

Section 33: Notice

Whenever either party desires to give notice unto the other, such notice must be in writing by certified or registered mail, postage prepaid, return receipt requested, hand delivery, or facsimile transmission prior to 5:00 p.m. on the date of transmission (e.d.t. or e.s.t. as applicable), or via overnight express courier service. For the present, the parties designate the following individuals as the respective parties and places for giving of notice:

If to Town:

Town of Southwest Ranches
Town Administrator
13400 Griffin Road
Southwest Ranches, Florida 33330

With a copy to:

Keith M. Poliakoff, Esq.
Government Law Group, PLLC
200 South Andrews Avenue
Suite 601
Fort Lauderdale, Florida 33301

If to Contractor:

Section 34: Miscellaneous

- A. Ownership of Documents.** Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement by Contractor and all persons or entities employed or otherwise retained by Contractor are and shall remain the property of Town. In the event of termination of this Agreement for any reason, any reports, photographs, surveys and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of Town and shall be delivered by Contractor to the Town Administrator within seven (7) days of termination of this Agreement for any reason. Any compensation due to Contractor shall be withheld until all documents are received by Town as provided herein.
- B. Audit and Inspection Rights and Retention of Records.** Town shall have the right to audit the books, records and accounts of Contractor that are related to this Agreement. Contractor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

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Contractor shall preserve and make available, at reasonable times for examination and audit by Town, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after expiration or earlier termination of this Agreement, unless Contractor is notified in writing by Town of the need to extend the retention period. Such retention of such records and documents shall be at Contractor's sole expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by Town to be applicable to Contractor's records, Contractor shall comply with all requirements thereof.

However, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for Town's disallowance and recovery of any payment upon such entry. In addition, Contractor shall respond to the reasonable inquiries of successor Contractors and allow successor Contractors to receive working papers relating to matters of continuing significance. In addition, Contractor shall provide a complete copy of all working papers to the Town, prior to final payment by the Town under this Agreement.

- C. Independent Contractor.** Contractor is an independent contractor of Town under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees, or agents of the Town. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to the Work and services rendered under this Agreement shall be exclusively and solely those of Contractor. This Agreement shall not constitute or make Town and Contractor a partnership or joint venture.
- D. Conflicts.** Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Agreement. Contractor agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against Town in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of Town in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude Contractor or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event Contractor is permitted to utilize subcontractors to perform any services required by this Agreement, Contractor agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this Section.

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- E. Contingency Fee.** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, Town shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- F. Materiality and Waiver of Breach.** Town and Contractor agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Town's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- G. Joint Preparation.** Town and Contractor both acknowledge that they have sought and received whatever competent advice and legal counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein 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.
- H. Drug-Free Workplace.** Contractor shall maintain a drug-free workplace.
- I. Headings.** Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.
- J. Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- K. Truth-in-Negotiation Certificate.** Signature of this Agreement by Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

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IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: BC+E, and the TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the 27 day of January 2022.

WITNESSES:

Dayan

CONTRACTOR:

By: [Signature]
_____, _____ (title)
22 day of February 2022

TOWN OF SOUTHWEST RANCHES

By: [Signature]

Steve Breitkreuz, Mayor
27 day of January 2022

By: [Signature]

Andrew D. Berns, Town Administrator
27 day of January 2022

ATTEST:

[Signature]

Russell Muñiz, Assistant Town Administrator/Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

[Signature] For:

Keith M. Poliakoff, Town Attorney