

RESOLUTION NO. 2023-003

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, ACCEPTING THE SELECTION AND NEGOTIATION COMMITTEE'S RECOMMENDATION AND AWARDED A CONTINUING CONTRACT TO RE CHISHOLM ARCHITECTS. INC. FOR THE UBIQUITOUS SERVICES CONTAINED WITHIN ITS RESPONSE TO THE TOWN'S REQUEST FOR LETTERS OF INTEREST RELATING TO ARCHITECTURAL SERVICES, AS ATTACHED HERETO AS EXHIBIT "A"; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT IN SUBSTANTIALLY THE SAME FORM AS ATTACHED HERETO AS EXHIBIT "B"; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on June 20, 2022, the Town Advertised a Request for Qualifications (RFQu) #22-013 for Continuing Architect and/or Engineer Consulting Services; and

WHEREAS, on September 27, 2022, the Town's Selection and Negotiation Committee recommended that the Town enter into a contract with RE Chisholm Architects, Inc. for Architectural Services; and

WHEREAS, services will be completed on an as-needed basis for Town Projects; and

WHEREAS, such services will come back to the Town Council for approval prior to the commencement of any work; and

WHEREAS, the issuance of the procurement, and the selection of this vendor has been performed in accordance with the Town's Procurement Code, the State of Florida's Consultant's Competitive Negotiation Act, and federal law; 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 Selection and Negotiation Committee's selection of RE Chisholm Architects, Inc. for Architectural Services as outlined in RE Chisholm Architects, Inc.'s response to the Request for Letters of Interest attached hereto and incorporated herein as Exhibit "A".

Section 3. The Town Council hereby approves awarding a Continuing Contract with RE Chisholm Architects, Inc. as set for in Composite Exhibit "B", which has been attached hereto and has been incorporated herein by reference.

Section 4. 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 "B," and to make such nonmaterial modifications, additions, and/or deletions which are necessary and proper to effectuate the intent of this Resolution.

Section 5. 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 13th day of Oct 2022 on a motion by

V/m Jablonski and seconded by Chm Hartmann.

Breitkreuz Yes
Jablonski Yes
Allbritton Yes
Hartmann Yes
Kuczenski Yes

Ayes 5
Nays 0
Absent 0
Abstaining 0

[Signature]
Steve Breitkreuz, Mayor

Attest:

[Signature]
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

[Signature]
Keith Poliakoff, Town Attorney
1001.158.01

**CONTINUING CONTRACT FOR PROFESSIONAL
ARCHITECTURAL SERVICES**

This Continuing Contract for Professional Architectural Services ("Continuing Contract") is made and entered into this 13 day of October, 2022, between the Town of Southwest Ranches, Florida, a political subdivision of the State of Florida ("Town"), and, R.E. Chisholm Architects, Inc. a Florida Corporation licensed as an Authorized Professional Architectural Company, with qualifying architect, Robert E. Chisholm, FAIA, NCARB, License No. AR0007442, collectively hereinafter referred to as "Architect".

WITNESSETH:

RECITALS:

WHEREAS, the Town has provided notice of the desired professional services and pursuant to RFQu 22-013, and adhered to the selection process pursuant to and in accordance with the Consultants' Competitive Negotiation Act, Fla. Stat. §287.055, as amended from time to time, and the Town's Procurement Code; and,

WHEREAS, the Town desires to engage the Architect to perform certain professional architectural services in accordance with this Continuing Contract, as permitted by the Consultants' Competitive Negotiation Act; and

WHEREAS, the Architect desires to provide such professional engineering services in accordance with this Continuing Contract; and

WHEREAS, the Town represents that it has the authority to engage the Architect for the services set forth in RFQu 22-013, this Continuing Contract, and as approved by the Town's Resolution No. 2023-003.

NOW, THEREFORE, in consideration of the premises and the mutual benefits which will accrue to the parties hereto in carrying out the terms of this Continuing Contract, it is mutually understood and agreed as follows:

The above Recitals are true and correct and are incorporated herein and made a part of this Continuing Contract.

ARTICLE 1 - DESCRIPTION OF PROFESSIONAL SERVICES

1.1 Standard of Care. All services rendered by Architect and its consultants pursuant to this Continuing Contract will be performed in accordance with the standard of professional skill and care required for architects and other design professionals retained to design, document, coordinate and assist with, from commencement to finish of construction, the planning, design documentation, permitting and field observation of construction of the projects contemplated by this Continuing Contract; provided, however, that no work shall be performed unless and until a work authorization is executed and the Town has issued a Notice to Proceed as to any of the projects. Architect will perform all services consistent with the interests of the Town and in accordance with the requirements of the State of Florida, including those promulgated by the South

Florida Water Management District (“SFWMD”), the Central Broward Water Control District (“CBWCD”), South Broward Drainage District (“SBDD”), the Florida Department of Environmental Protection (“DEP”), the Florida Department of Transportation (“FDOT”), Broward County, Florida, the applicable edition of the Florida Building Code, with Broward County Amendments (“Florida Building Code”) and all other applicable codes, laws, regulations, ordinances, and all other applicable standards that govern the design and construction of projects under this Contract, including those of the Federal Emergency Management Agency (“FEMA”), the U.S. Army Corps of Engineers and the Environmental Protection Agency (“EPA”) as well as those requirements imposed by other governmental authorities having jurisdiction over the Town. Architect agrees to timely perform its services so as not to delay the projects under this Contract, time being of the essence, and as set forth in the Notice to Proceed. The projects (“Project” or “Projects”) which may be assigned to Architect, and subject of a Notice to Proceed, are those listed in RFQu 22-013, which RFQu is incorporated herein by reference.

1.1.1 Points of Contact. The Town’s Designated Point of Contact (or “Representative”) shall be:

**Mr. Andrew D. Berns, Town Administrator, 954-434-0008,
aberns@southwestranches.org or his designee.**

The Architect’s Designated Point of Contact shall be:

**Mr. Robert E. Chisholm, FAIA, NCARB , 305-542-9233,
bob@chisholmarchitects.com**

1.1.2 Licensing and Other Obligations of Architect. The Architect will provide appropriate documentation to the Town to demonstrate that it and all of its consultants are properly licensed to perform all services relative to this Continuing Contract.

1.1.2.1 A consultant is a person or entity who the Architect has retained and who the Architect will pay to perform any of the services described in this Continuing Contract. Reasonable funds for such payment have been included as part of Architect’s compensation under this Continuing Contract.

1.1.2.2 The Architect shall be responsible to the Town for the acts and omissions of its employees, consultants, sub-consultants, subcontractors and their respective employees or persons performing any of the services under this Continuing Contract.

1.1.2.3 The Architect shall have the sole obligation and responsibility to control and supervise all of its consultants. All subcontractors shall be approved by the Town, and the Architect may not contract with anyone with whom the Town has a reasonable objection. Contracts between the Architect and the consultants shall require each consultant to be bound to the Architect for all obligations and responsibilities which the Architect, by this Continuing Contract assumes toward the Town. This provision also applies to substitute consultants hired during the course of this Continuing Contract to replace existing consultants in accordance with this Continuing Contract. The Architect shall retain responsibility for coordination of any consultants engaged by the Architect to provide services under this Continuing Contract and will

likewise coordinate its services with those consultants retained by the Town. The Town agrees that all communications of the Town with the Architect's consultants will be made through the Architect's Representative unless such consultants have also been retained by the Town.

1.1.2.4 The Architect and its consultants will perform, without expense to the Town, such services as may be required to correct or remedy any negligent act, error or omission of the Architect or its consultants.

1.1.2.5 The Architect shall be responsible to the Town for the acts and omissions of its employees, consultants, sub-consultants subcontractors and their respective employees or persons performing any of the services under this Agreement.

1.1.2.6 The Architect shall have the sole obligation and responsibility to select, control, payment and supervision of all of its consultants.

1.1.2.7 Should the design produced by the Architect result in construction bids that exceed the Project Budget for an individual project, the Architect shall provide all services to Town, at no charge, in order to modify the design to conform to the Project Budget requirements of the Town, provided, however, if the Architect proceeds based on the Construction Manager's confirmation that cost estimates for the Project are within the Project Budget, any re-design by Architect that may be needed due to Construction Manager's mis-estimation shall be provided as Additional Services by Architect, and based upon the Rate and Fee Schedule set forth at **Exhibit "B"** hereto, or as may otherwise be agreed upon by the parties. At the end of the second year, and each year thereafter, from the effective date of this Continuing Contract, the Architect may request an adjustment to the Rate and Fee Schedule, which adjustments are subject to the Town's review and approval. The Town's Construction Manager may be a designated employee or independent contractor. Further, references herein to a "Construction Manager" are for convenience only. Nothing herein shall be construed as requiring the Town to retain a Construction Manager, and the Town's obligations pursuant to this Continuing Contract may be otherwise fulfilled by person(s) appointed by the Town Administrator.

1.1.3 Architect's Basic Services for each assigned Project shall consist of the phases described below, with each phase more particularly described herein, and include normal structural, mechanical and electrical engineering services, lighting design, civil engineering, landscape architectural, code consulting, interior color palette, interior and exterior signage design, and any other services included herein as part of Basic Services. The phases, labeled A through G, below include:

- A. Programming for the Project, at the Town's discretion, may include cost estimating and a design charette with the public;
- B. Site Planning approval process for the Project;
- C. Schematic design;
- D. Design development;
- E. Construction documents, including Bid Documents and Specifications Manual;
- F. Permitting assistance/coordination; and

- G. Construction administration, including, but not limited to, sufficient quality and quantity of inspections to certify the Project, review of shop drawings, pay requests and other submittals, and a CADD/electronic file Record Set of Final As-Built Drawings.

1.1.4 Conflicts of Interest. The Architect shall not engage in any activity, or accept any employment, receive any monetary compensation, interest or contribution that could create the appearance of impropriety or compromise the Architect's professional judgment with respect to this Continuing Contract.

1.1.5 Programming. The Architect shall analyze and provide a written evaluation of the information furnished by the Town for each assigned Project, Town's schedule requirements for construction, and the Town's budget for the Cost of the Work of the Project, each in terms of the other (the "Project Program"). The Architect shall prepare the Project Program in a manner such that the Project Program is consistent with the requirements of the Project and shall notify the Town of all other information or consultant services that may be reasonably needed for the Project. Upon request by the Town, the Architect shall make a presentation to representatives of the Town to explain the Programming Services to be utilized in developing the Project. The Architect shall submit programming documents to the Town for evaluation and approval at intervals appropriate to the process. The Architect shall be entitled to rely on written approvals received from the Town to complete the Programming Services and in the further development of the Project.

1.1.5.1 The Architect shall recommend common standards utilized by other equivalently sized municipalities for such elements as area allowances, space allocation, travel distances, and furniture and equipment requirements.

1.1.5.2 The Architect shall establish general space quality standards for the Project related to such elements as lighting levels, equipment performance, acoustical requirements, security and aesthetics.

1.1.5.3 The Architect shall determine specific space requirements for the Project by:

- .1 identifying required spaces,
- .2 establishing sizes and relationships,
- .3 establishing space efficiency factors (ratio of net square footage to gross square footage), and
- .4 documenting particular space requirements such as special HVAC, plumbing, power, lighting, acoustical, furnishings, equipment, or security needs.

1.1.5.4 As part of the interim steps to the final version of the Project Program, the Architect shall provide to the Town no less than two different space allocation plans. At the Town's discretion, the Architect shall conduct a design charette with the public.

1.1.5.5 The Architect shall prepare, for the Town's review and approval, a final program document detailing all items identified hereinabove, incorporating written and graphic materials that shall include:

- .1 an executive summary;
- .2 documentation of the methodology used to develop the program;
- .3 all relationship and flow diagrams and matrices utilized to identify space allocations and relationships;
- .4 space listings by function and size;
- .5 space program sheets including standard requirements and special HVAC, plumbing, power, lighting, acoustical, furnishings, equipment, or security needs; and
- .6 estimated construction cost of the project, and if required by the Town, estimated operational and maintenance costs.

Upon the Town's written acceptance of the final program document that has been signed by the Town Administrator, it shall become the final Project Program. If otherwise required by Florida law, Architect shall also sign and seal the final Project Program.

1.1.6 Site Planning. As the Projects consist of existing sites, the Town and the Architect anticipate site planning needs for the Project to be minimal. Nevertheless, the Architect shall provide an evaluation of the site for the Project and the final Project Program, each in terms of the other, with a review of the existing site information to ascertain that it is consistent with the requirements of the Project.

1.1.7 Schematic Design Phase.

1.1.7.1 Upon the Town's written approval of the Project Program and any needed Site Planning, the Town may then authorize the Architect to proceed with the Schematic Design Phase of the Project. Only upon the Architect's receipt of a written and executed work order for schematic design for the Project from the Town that has been signed by the Town Administrator, shall the Architect be authorized to proceed with the Schematic Design Phase of the Project.

1.1.7.2 During the Schematic Design Phase, Architect shall review the Project Program and shall review and confirm in writing its understanding of these requirements and other design parameters with the Town, including the Town's Project Budget.

1.1.7.3 The Architect shall provide in writing a preliminary evaluation of the Project Program and comment on the Project Budget and Project Buildability requirements, each in terms of the other.

1.1.7.4 The Architect shall review with the Town and the Construction Manager's selection of materials, building systems and equipment; construction methods and methods of Project delivery.

1.1.7.5 Based on the mutually agreed upon Project Program and the Project Budget and Project Buildability requirements, the Architect shall prepare, for approval by the Town, Schematic Design Documents consisting of drawings, outline specifications and other documents illustrating the scale and relationship of Project components.

1.1.7.6 At intervals appropriate to the progress of the Schematic Design Phase, the Architect shall consult with the Town and provide schematic design studies for Town's and Construction Manager's review and comment, which comments will be provided promptly upon receipt of such studies so as to cause no delay to the Architect, and Architect shall promptly incorporate agreed changes so as to cause no delay to the Project.

1.1.7.7 Upon completion of the Schematic Design Phase the Architect shall provide the drawings, outline specifications and other documents approved by the Town, to the Town and shall not proceed with the Design Development Phase until so instructed, in writing, by the Town. Additionally, the Architect shall, at no additional cost to the Town, modify the drawings and outline specifications and other documents, as necessary, for the Town to be able to confirm general conformance of the Schematic Design, Project Buildability and Project Budget with each other. Despite such general conformance, the Town may still elect not to proceed with the Design Development Phase, in which case, the Town shall give written notice that the Project is to be abandoned and without further cost to the Town.

1.1.8 Design Development Phase

1.1.8.1 Upon the Architect's receipt of a written and executed work order for design development for the Project that has been signed by the Town Administrator, the Architect shall be authorized to proceed. Upon such authorization and based on the approved Schematic Design Documents and any adjustments required by the Town in the Project Program or the Project Budget, the Architect shall prepare, for approval by the Town, the Design Development Documents consisting of drawings, outline specifications and other documents to fix and describe the size and character of the entire Project as to architectural, structural, mechanical, electrical, security, fire protection, civil engineering, materials and all such other elements as may be appropriate.

1.1.8.2 At intervals appropriate to the progress of the Design Development Phase, the Architect shall consult with the Town and provide Design Development Documents for the Town's and the Construction Manager's review and comment, which comments will be provided promptly upon receipt of such interim Design Development Documents so as to cause no delay to the Architect, and Architect shall promptly incorporate agreed changes upon receipt of comments so as to cause no delay to the Project.

1.1.8.3 Upon completion of the Design Development Phase, the Architect shall provide the Town with drawings, outline specifications and other documents approved by the Town and shall not proceed with the Construction Documents Phase until so instructed, in writing, by the Town. Additionally, the Architect shall, at no additional cost to the Town, modify the Design Development Documents, as necessary, for the Town to be able to confirm general conformance of the Design Development Documents, Project Buildability and Project Budget with each other. Despite such general conformance, the Town may still elect not to proceed with the

Construction Documents Phase, in which case, the Town shall give written notice that the Project is to be abandoned and without further cost to the Town.

1.1.9 Construction Document Phase

1.1.9.1 Upon the Architect's receipt of a written and executed work order for construction documents for the Project that has been signed by the Town Administrator, the Architect shall be authorized to proceed. Upon such authorization and based on the approved Design Development Documents and any further adjustments in the scope (including quantity) or quality of the Project or in the Project Budget by the Town, the Architect shall prepare, for approval by the Town, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project in such form to meet Project Buildability requirements and enable the governing jurisdiction (CAP Government, Inc. or other entity retained by the Town) to issue a building permit for the Project.

1.1.9.2 At intervals appropriate to the progress of the Construction Documents Phase, the Architect shall consult with the Town and provide documents for Town's and Construction Manager's review and ongoing Construction Cost Estimate and Project Buildability evaluation and comment, which comments will be provided promptly upon receipt of such interim Construction Documents so as to cause no delay to the Architect, and Architect shall promptly incorporate agreed changes upon receipt of such comments so as to cause no delay to the Project.

1.1.9.3 Upon completion of the Construction Documents, the Architect shall provide the Town with the Drawings and Specifications and other documents approved by the Town and shall not proceed with the next phase of the Project, including permitting, until so instructed, in writing, by the Town. Additionally, the Architect shall, at no additional charge to the Town, modify the Construction Documents, as necessary, for the Town to be able to confirm that the Construction Documents, Project Buildability and Project Budget requirements, including the Construction Cost Estimate, are in conformance with each other. Despite such general conformance, the Town may still elect not to proceed with submitting the Construction Documents to permitting, in which case, the Town shall give written notice that the Project is to be abandoned and without further cost to the Town.

1.1.10 Permitting Assistance/Coordination. Upon the Architect's receipt of a written and executed work order for permitting assistance/coordination for the Project that has been signed by the Town Administrator, the Architect shall be authorized to proceed. Upon such authorization and based on the approved Construction Documents, Architect shall assist the Town in connection with the Town's responsibility for filing all documents required for the approval of governmental authorities having jurisdiction over the Project. To the extent that governmental authorities require any substantive changes in the Construction Documents in **ORDER FOR THE REQUISITE PERMITS TO BE ISSUED FOR CONSTRUCTION OF THE PROJECT, THE ARCHITECT WILL** provide these proposed changes to the Town. If the required changes put the Construction Cost Estimate in excess of that provided for in the Project Budget, Architect will diligently work with Town (along with the permitting authorities) to revise the Construction Documents, at no additional cost to the Town, until these final Construction Documents meet the

requirements of the permitting authorities, meet the requirements for Project Buildability and also conform to the final Project Budget.

1.1.11 PREPARATION OF PROJECT MANUAL

1.1.11.1 Upon the Architect's receipt of a written and executed work order for preparation of a Project Manual for the Project that has been signed by the Town Administrator, the Architect shall be authorized to proceed. Upon such authorization and based on the final permitted Construction Documents approved by Town, the Architect shall prepare a Project Bid Documents and Specifications Manual that includes a complete set of the permitted Drawings and Specifications and other documents relevant to the construction of the Project.

1.1.11.2 If and when requested by the Town, the Architect shall assist the Town in promptly rendering interpretations and clarifications of the Drawings and Specifications in appropriate written form.

1.1.12 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT

1.1.12.1 The Construction Phase will commence with the issuance by the Town to the successful bidder for the construction Work of the Project (the "Contractor"), a written Notice to Proceed with construction in accordance with the Contract entered into between the Town and the Contractor (the "Construction Contract"), a copy of which will be provided to the Architect upon its execution. Upon the Architect's receipt of a written and executed work order for administration of the Construction Contract that has been signed by the Town Administrator, the Architect shall be authorized to proceed. Upon such authorization:

1.1.12.2 The Architect shall advise and consult with the Town during the Construction Phase.

1.1.12.3 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed by the Town and Architect in writing, to become generally familiar with the progress and quality of Work and to determine if Work is proceeding in accordance with the Contract Documents, as such documents are defined in the Construction Contract. The Architect shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of Work, provided, however, Architect shall make such on-site observations necessary to be able to keep the Town informed as to the quality and progress of the Work. On the basis of such on-site observations, Architect shall keep the Town informed of the progress and quality of the Work and shall endeavor to guard the Town against defects and deficiencies in the Work. After each visit, the Architect will promptly provide the Town with a written report. If the Architect becomes aware of any defects or deficiencies in the Work, the Architect will provide prompt notice, followed by written confirmation, to the Town. If, in the Architect's opinion, special testing or inspection of the Work is needed, the Architect shall provide written recommendations for such testing or inspection procedures to the Town.

1.1.12.4 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

1.1.12.5 The Architect shall promptly issue a written report to the Town relative to deviations from the most recent construction schedule including but not limited to all updated schedules submitted by the Contractor for the Project.

1.1.12.6 As requested by the Town and based on the Architect's observations at the site and an evaluation of Contractor's Application for Payment, the Architect shall determine the amounts owing to Contractor and shall issue a Certificate for Payment in such amounts, as provided in the Contract Documents.

1.1.12.7 The issuance of a Certificate for Payment shall constitute a representation by the Architect to the Town that, based on the Architect's observations at the site and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the Architect's knowledge, information and belief, that the quality of Work is in accordance with the Contract Documents (subject to an evaluation of Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has made any examination to ascertain how and for what purpose the Contractor has used the money paid by the Town with respect to the Contract Sum. The Architect's review of the Contractor's Application for Payment shall be promptly performed, and in order to facilitate the Town's compliance with applicable Prompt Pay statutes.

1.1.12.8 The Architect shall be the interpreter of the requirements of the Construction Documents and the judge of the performance of such requirements by Contractor. The Architect shall render interpretations necessary for the proper execution or progress of Work, with reasonable promptness and in accordance with agreed upon time limits as described in this Continuing Contract and the Construction Contract. The Architect shall render written decisions, within a reasonable time so as not to delay the Work, on all claims, disputes, and other matters in question between the Town and the Contractor relating to the execution or progress of Work or the interpretation of the Construction Documents.

1.1.12.9 All interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Construction Documents, and shall be in written or graphic form. In the capacity of interpreter, the Architect shall endeavor to secure faithful performance by both the Town and Contractor and shall not show partiality to either.

1.1.12.10 The Architect's decisions in disputed matters with the Contractor relating to artistic effect shall be final if consistent with the intent of the Construction Documents, provided, however, such decision by the Architect shall be subject to approval of the Town. The Architect's decisions on any other claims, disputes or other matters, including those in question between the Town and the Contractor shall be subject to Dispute Resolution as provided in this Continuing Contract and the Contract Documents.

1.1.12.11 The Architect shall have authority to reject Work which does not conform to the Construction Documents and Architect will promptly deliver a written report to the

Town detailing the reasons for rejecting the Work. Whenever, in the Architect's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Construction Documents, the Architect will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed or completed; but the Architect shall take action only after consultation with the Town and Contractor.

1.1.12.12 The Architect, in conjunction with the Town, shall review the shop drawings, samples or catalogue cuts which are required by the Construction Documents after review and approval by the Contractor (hereinafter "shop drawings"). The Architect and Town shall either approve or disapprove with written comments, as appropriate, shop drawings for conformance with the design intent of the Construction Documents and transmit them to the Contractor. The review of shop drawings shall be limited to two (2) submissions per identified issue under the scope of Basic Services and will be conducted only after the Contractor has coordinated said documents to indicate field conditions, proposed deviations from the Construction Documents, and other requirements which affect design intent. All submissions shall specifically include a representation by the Contractor to indicate that the required coordination has been performed. The Town will not be responsible for any additional compensation to the Architect for submission reviews in excess of two submissions for the same issue. Architect will seek compensation from the Contractor for its additional services for review of shop drawings submitted by the Contractor that exceed two (2) reviews for the same issue. If the Contractor unreasonably refuses to pay the Architect a reasonable fee for such Additional Services, such reasonable fee may, as provided in the agreement between the Town and Contractor, be paid by the Town to the Architect and back-charged by the Town to Contractor.

1.1.13 CHANGE ORDERS

1.1.13.1 RFI's. The Architect will acknowledge the receipt of each Contractor-generated Request for Information (hereinafter "RFI") within five working (5) days after receiving it. The Architect will simultaneously issue a written responsive answer to the Contractor and the Town for each RFI along with necessary descriptive drawings, specifications, or other documents with the promptness necessary to avoid unnecessary delay or cost but in no case no more than five working (5) days after the RFI is received by the Architect, subject to the Town , in its sole discretion, extending the time for responding to an RFI based upon a written request by the Architect setting forth the reasons for the extension. Approval of requests for extensions of time to respond to RFIs will not be unreasonably withheld by Town. Time is of the essence with respect to the Architect's review as referenced herein and for delivery of the documents and Services referenced herein.

1.1.13.2 Change Orders. The Architect will review and comment upon or take other appropriate action on proposed change orders prepared by the Contractor and review same with the Town for the Town's subsequent authorization in accordance with Contract Documents. The Architect will also analyze written requests by the Town for such changes in the Work. The Architect shall deliver the results of his analysis of all such proposed change orders in writing to the Town and Contractor within a reasonable time but in no case shall Architect's delivery of results of analysis be later than five working (5) days after the Architect's receipt of the request. If necessary, the Architect shall prepare, reproduce, and distribute Drawings and

Specifications to describe Work to be added, deleted or modified. The Architect will modify, clarify, reproduce, and distribute Drawings and Specifications or other Contract Documents at no charge or expense to the Town, if the modification and/or clarification is the result of an error, omission or ambiguity created by the Architect.

1.1.13.3 The Architect, upon written approval by Town, shall have authority to order minor changes in Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and which are not inconsistent with the intent of the Construction Documents. Such proposed changes shall **first** be reviewed with the Town and ultimately be memorialized by written order issued to the Contractor.

1.1.13.4 The Architect shall conduct inspections to determine the dates of Substantial Completion and Final Completion of the Work and shall issue appropriate Project Certificates for Payment as requested by the Town and Contractor.

1.1.13.5 The extent of the duties, responsibilities, and limitations of authority of the Architect as a representative of the Town during construction shall not be modified or extended without the written consent of the Town and the Architect.

1.1.13.6 Whether provided by the Construction Manager or determined through site visits, the Architect shall maintain written records to document all changes in the Work in a form that the Town may reasonably require. In addition, Architect will prepare a CADD file set of final record drawings based upon redlined/as-built drawings submitted by the Construction Manager/Contractor. These final record drawings in electronic CADD format will be delivered to the Town at the same time as Final Payment is made by the Town to reflect all changes to the permit set of drawings on file with the building department.

ARTICLE 2 - TOWN-PROVIDED ITEMS

2.1 The Town's preliminary program requirements sets forth the Town's objectives, known constraints and criteria for the Project. The Town's listing of its preliminary project requirements shall be provided to the Architect along with the Notice to Proceed and shall be utilized by the Architect to prepare the Project Program.

2.2 The Architect shall be entitled to rely on the accuracy and completeness of the information provided by the Town. The Architect shall not be held responsible for any errors or omissions that may arise solely as a result of erroneous or incomplete information provided by the Town and/or the Town's consultants, provided, however, this does not relieve the Architect of its obligation to report any observed error or inconsistency with the intent of the Project Program.

2.3 Service Authorization Forms. For all services covered under this Continuing Contract, Architect shall be required to obtain a written Notice to Proceed, in the form attached hereto as **Exhibit "A,"** signed by the Town Administrator in advance of providing any such services to the Town. The Notice to Proceed shall specify in detail the nature of the services requested, the not to exceed cost to the Town for same (with actual cost to be fully substantiated by Architect upon completion), and the time frame for completion. All services performed by Architect without a written authorization from the Town shall be performed at Architect's sole cost and expense.

ARTICLE 3 - FEES

3.1 Subject to the Town's issuance of a Notice to Proceed and individual work orders, the Town shall pay the Architect the total compensation for the Project(s), in accordance with the total fee indicated in a Project fee schedule executed by both the Town and Architect, and which will be developed based upon the approved Rate and Fee Schedule. Architect's total compensation includes all fees, costs and expenses that may be incurred by the Architect to complete the design and construction administration of the Project, including, but not limited to, all professional services provided by or through the Architect, drawings, calculations and other documents, travel expenses and all other costs or expenses, for or related to the Project, as well as the time for performance. A Notice to Proceed shall not be issued by the Town until a Project fee schedule has been fully executed. Additionally, Architect shall not perform any services without individual work orders which may be required to be provided by the Town Administrator, and in accordance with this Continuing Contract. Hourly rates for Architect's consultants shall also be in accordance with the Rate and Fee Schedule.

3.2 Payment on account of services rendered, shall be made monthly, based on the percentage of completion of the Project, upon presentation of the Architect's invoice for same, along with a partial waiver and release from Architect indicating a release of all claims, including, but not limited to, equitable liens, through the last date of services rendered and included in the invoice. Should any portion of the invoice be in dispute, other portions, if any, that are not in dispute or not deemed, by the Town, to be funds likely necessary to be put towards the issue in dispute, shall be paid per the terms of this Continuing Contract. Any billing concerns shall be submitted in writing by the Town to the Architect describing the disputed portion of the invoice in detail for discussion and resolution.

3.3 Payment on account of undisputed amounts of the Architect's Total Compensation shall be made within thirty (30) days of invoice date or as otherwise provided by Florida Statute 218.73.

3.4 Payments due the Architect which remain unpaid for thirty (30) days after the due date provided herein, shall bear interest at the statutory rate provided by Florida Statutes 218.74.

3.5 Payment for the Architect's services will be made in accordance with the local government Prompt Payment Act Section 218.73, Florida Statutes.

3.6 Purchasing Card (PCARD) Acceptance: The method of payment (check/credit card) is at the Town's sole option. The Town may choose to compensate vendors for goods and/or services via a Town Purchasing Card (PCARD), provided that the fee for use of such service does not exceed three percent (3%) of the invoice amount. No other costs or services shall be billed to the Town, and without limiting the generality of the foregoing, vendor shall not impose any service charge or fee, penalty, or other exaction of any kind against payments rendered by the PCARD. Payments made by PCARD shall be accepted on a "same as cash" basis.

ARTICLE 4 - CHANGE ORDERS

4.1 Definition of Change. Change in the services to be performed by the Architect, or the Architect's consultants, may only be accomplished after execution of this Continuing Contract,

without invalidating the Continuing Contract, by mutual agreement and execution of a written Change Order. Architect assumes all risks and responsibilities for performing all services on behalf of the Town for the amount determined in accordance with Article 3. The Town shall not be liable for any cost increases that may arise during the performance of services. Any adjustments to the services must be by written Change Order issued in accordance with the terms and conditions of this Continuing Contract. To the extent that Architect proceeds to perform additional services in excess of those services described in an executed Notice to Proceed that has been signed by the Town Administrator without an executed written Change Order issued in accordance with this Continuing Contract, such services shall be at Architect's own risk at no charge to Town.

ARTICLE 5 - OWNERSHIP OF DOCUMENTS

5.1 Drawings, specifications, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. The Town shall have the right to use the Instruments of Service. The Town's right of use in accordance with this Paragraph specifically authorizes the Town to utilize the Instruments of Service to complete the Project as well as to perform alterations, repair and additions to the Project. This right of use applies even if this Agreement is terminated. In that event, the Town will be entitled to continue to utilize the Instruments of Service and shall have the unrestricted right to use, reproduce and to make derivative works of the Instruments of Service to complete the Project as long as the Town has paid Architect for all fees associated only with the preparation of the Instruments of Service in accordance with this Continuing Contract. Should this Continuing Contract be terminated, Architect and its consultants will continue to own the copyright to these Instruments of Service in accordance with this Continuing Contract. However, the Town will, through an irrevocable, perpetual, royalty-free license, have the exclusive right to use the Instruments of Service, without restriction or limitation, to construct the buildings and improvements relative to this Project as well as repair, maintain or construct future additions to the Project. Upon the Town's request, the Architect and its consultants will furnish to the Town, copies, including reproducible copies, electronic data and computer files of the Drawings and Specifications and other Instruments of Service.

5.2 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Town's or Architect's rights.

5.3 Architect represents and warrants to Town that it is the owner of all Instruments of Service prepared by itself and has the sole authority to grant Town use provisions of these Instruments of Service in accordance with this Agreement. With respect to Instruments of Service for the Project owned by Architect's consultants, Architect, in its agreement with such consultants to provide services for this Project, shall cause such consultants to grant to the Town the same use provisions as are included herein

ARTICLE 6 - TERM OF CONTRACT

6.1 The continuing contract shall have a term of five (5) years, with an option for five (5) one (1) year extensions. An extension shall be by mutual agreement by both parties. A contract extension may be approved by the Town Administrator.

ARTICLE 7 - TERMINATION BY ARCHITECT

7.1 If the Town fails to make payment for services not in or related to a dispute, for more than 60 days after such payment is due or otherwise materially defaults under the terms of this Continuing Contract, the Architect, provided it is not in default, may, after 30 days written notice to the Town of such default, terminate the Continuing Contract.

ARTICLE 8 - TERMINATION BY TOWN

8.1 Termination for Convenience. This Continuing Contract may be terminated by the Town for convenience upon at least thirty days' written notice to the Architect. Under such conditions, Architect will only be entitled to receive compensation for services rendered that are specifically within the services for which the Town Administrator has, in writing, authorized Architect to proceed and only up through the date that is no later than thirty days after the date written notice for such termination for convenience is issued by the Town to Architect. Architect will also be able to recover its direct, actual, and reasonable expenses that are directly attributed to the termination for convenience. Upon receipt of a notice of termination for convenience by the Town, the Architect will initiate all reasonable steps to mitigate further expenses from accruing. No other compensation and/or damages will be due Architect from the Town pursuant to this Paragraph.

8.2 Default by Architect. In addition to defaults resulting from the Architect's failure to strictly comply with any term, condition, or agreement set forth herein, the Architect shall be in default under this Continuing Contract if:

A. The Architect ceases to carry the insurance required hereunder or the insurance is cancelled.

B. A default should occur in the performance of any consultant or engineer employed by the Architect and not corrected by Architect or another replacement consultant or engineer employed by Architect within ten (10) days after notice from the Town.

C. The Architect fails to maintain all permit-related documents and make such documents available to the Town upon reasonable request.

D. The Architect fails to timely pay any consultant employed by the Architect. Notwithstanding the foregoing, Architect shall have the right to contest disputed invoices in good faith, without being in default of this Continuing Contract, but will bond off or cause to be satisfied of record any liens that may be recorded erroneously in connection therewith within ten (10) days of the date of recording of such lien.

E. The Architect fails to correct any error or material inconsistency in its or its consultants Drawings and Specifications or other Instruments of Service within ten (10) days after such error or material inconsistency is reported to the Architect.

The Architect fails to perform its obligations under this Continuing Contract in a timely and expeditious manner within ten (10) days after notice from the Town.

The Architect fails, within a reasonable period of time, to approve or comment on any shop drawing, sample or other submittal, or fails to provide adequate basis for rejection of any of the same.

8.3 Town's Compensation for Default by Architect. In the event of termination due to the fault of the Architect under this Continuing Contract, the Town shall be compensated for all reasonable costs and expenses including reasonable attorneys' fees and costs incurred in connection with replacing the Architect hereunder, in reviewing, analyzing, or enforcing the Town's rights hereunder or in connection with a replacement architect and the completion of the Architect's services hereunder. This is not intended to limit the Town's rights or ability to recover damages in the event of a breach by the Architect under this Continuing Contract. Additionally, the Town shall have the right to use the Architect's Drawings, Specifications and other Instruments of Service in the event of a default by the Architect, regardless of the payment status for such Instruments of Service.

ARTICLE 9 - MISCELLANEOUS PROVISIONS

9.1 Governing Law, Jurisdiction, Venue and Attorney's Fees. In the event of any action, litigation, or proceedings of any type regarding or relating to performance of this Continuing Contract, the prevailing party shall be entitled to recover its reasonable costs, expert's fees and attorney's fees at all hearing, trial, bankruptcy, and appellate levels. All disputes pursuant to this Continuing Contract shall be first subject to mediation in Broward County with a mutually agreeable Florida Supreme Court Certified Mediator who is knowledgeable in the rendering of professional engineering services for construction projects similar to the projects under this Continuing Contract. Failing resolution by mediation, any litigation shall be filed in a court of competent jurisdiction and the sole and exclusive venue shall be in Broward County, Florida. This Continuing Contract shall be governed by the laws of the State of Florida. Mediation shall be conducted within sixty (60) days of either Party's written request. The parties shall share, 50/50, the cost of the mediator.

9.2 Waiver of Right to Jury Trial

BY ENTERING INTO THIS CONTINUING CONTRACT, ARCHITECT 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 CONTINUING CONTRACT.

9.3 Insurance Coverages and Minimum Amounts. Architect shall secure and maintain, at its own expense, and keep in effect during the full period of the Continuing Contract and at least

one (1) year beyond its completion a policy or policies of insurance, which must include the following coverages and minimum limits of liability:

9.3.1 Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.

9.3.2 Worker's Compensation and Employer's Liability Insurance for all employees of the Architect engaged in services under the Contract in accordance with the laws of the State of Florida. Architect hereby agrees to be responsible for the employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

9.3.3 (Comprehensive) Commercial General Liability Insurance with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence

Coverage shall specifically include the following minimum limits not less than those required for Bodily Injury Liability and Property Damage at \$2,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability annual aggregate.

- (1) Premises and Operations;
- (2) Independent Contractors;
- (3) Products and Completed Operations;
- (4) Broad Form Property Damage;
- (5) Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract;
- (6) Personal Injury Coverage with employment and contractual exclusions removed and deleted; and
- (7) Explosion, collapse, underground coverage (X-C-U)

9.3.4 Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by Architect in the performance of services pursuant to this Contract with the following minimum limits of liability: \$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence.

9.3.5 Aggregate Limits. Annual aggregates for Professional Liability shall be \$1,000,000, and for Commercial General Liability shall be \$2,000,000. ***All insurance policies shall name and endorse the following as "Additional Named Insureds":**

TOWN OF SOUTHWEST RANCHES
Attn: Andrew D. Berns, Town Administrator
13400 Griffin Road
Southwest Ranches, FL 33330

***The additional named insured endorsement shall be reflected on the Certificate of Insurance.**

All insurance shall be issued by companies rated “A-” or better per A.M. Best’s Key Rating Guide, latest edition and authorized to issue insurance in the State of Florida. It shall be the responsibility of the vendor and insurer to notify the Town Administrator of cancellation, lapse, or material modification of any insurance policies insuring the vendor, which relate to the activities of such vendor and the Town.

All notifications shall be in writing and shall be submitted to the Town Administrator within thirty (30) days prior to cancellation of such policies. This requirement shall be reflected on the Certificate of Insurance.

Architect is required to submit a list of claims presently outstanding and claims within the past ten (10) years against their liability coverage. This information must be listed on the form provided and signed by the agent of the insurance carrier. If no outstanding claims exist, a statement of this fact must be signed by the agent of the insurance carrier.

Failure to fully and satisfactorily comply with the Town’s insurance and bonding requirements set forth herein will authorize the Town Administrator to implement a rescission or cancellation of the Contract award within thirty (30) days of awarding.

9.4 Indemnification. To the fullest extent permitted by Florida Statutes, Section 725.08, Architect shall indemnify, hold harmless the Town, its officers, agents and employees, harmless from any and all claims, damages, losses, liabilities and expenses, arising out of or resulting from the negligence, recklessness or intentional wrongful conduct of the Architect or its subcontractors, agents, officers, employees or independent contractors pursuant to the Continuing Contract, specifically including but not limited to those caused by or arising out of negligent act, omission, or default of the Architect and/or its subcontractors, agents, or employees in the performance of the operations or services under the Continuing Contract.

9.4.1 Errors and Omissions: The Architect to the extent of its failure to perform in accordance with the standard of care set forth in this Agreement, is responsible for the professional quality, technical accuracy, completeness, performance, and coordination of all Work required under this Agreement (including the Work performed by sub-consultants and Sub-contractors), within the specified time period and specified cost. The Architect shall perform the Work utilizing the skill, knowledge and judgment ordinarily possessed and used by a proficient Architect with respect to the disciplines required for the performance of the Work in the State of Florida. The Architect is responsible for and represents that the Work conforms to Town’s requirements as set forth in this Agreement. The Architect shall be and remain liable to the Town for all damages to the Town caused by the Architect’s negligent acts, recklessness, intentionally wrongful conduct or errors or omissions in the performance of the Work. In addition to all other rights and remedies, which the Town may have, the Architect shall, at its expense, re-perform the services to correct any deficiencies, which result from the Architect’s failure to perform in accordance with the above standards. The Town shall notify the Architect in writing of any deficiencies and shall approve the method and timing of the corrections. Neither the Town’s

inspection, review, approval, or acceptance of, nor payment for, any of the Work required under this Agreement shall be construed to relieve the Architect or any sub-consultant or subcontractor of its obligations and responsibilities under this Agreement, nor constitute a waiver of any of the Town's rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The Architect and its sub-consultants and Subcontractors shall be and remain liable to the Town in accordance with applicable law for all damages to Town caused by any failure of the Architect or its sub-consultants and Subcontractors to comply with the terms and conditions of this Agreement or by the Architect's or Sub-consultants' or Subcontractors' misconduct, recklessness, unlawful acts, negligent acts, errors or omissions in the performance of this Agreement. With respect to the performance of Work by sub consultants and Subcontractors, the Architect shall, in approving and accepting such Work, ensure the professional quality, completeness, and coordination of sub-consultant's and subcontractor's Work.

9.5 Patent And Copyright Indemnification. Architect agrees to indemnify, defend, save and hold harmless the Town, its officers, agents and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other such work in connection with the performance of the Continuing Contract.

9.6 Successors and Assigns. This Continuing Contract is binding upon the parties hereto, their successors and assigns and replaces, provided, however, neither party shall assign or transfer any interest in this Continuing Contract without the written consent of the other party.

9.7 No Damage For Delays By Town. Architect's sole remedy for any (i) delay in the commencement, prosecution, or completion of its services, (ii) hindrance or obstruction in performance of its services, (iii) loss of productivity, or (iv) other similar claims (collectively referred to in this subparagraph as "delays"), whether or not such delays are foreseeable, shall be non-compensable. The Town shall act reasonably in granting extensions of time to the Architect. All extensions to the time for performance shall be authorized only by written Change Order executed by the Town and Architect. In no event shall the Architect be entitled to any other compensation or recovery of any damages under or pursuant to this subparagraph in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration.

9.8 Audit and Inspection Rights and Retention of Records by Architect. The Town shall have the right to audit the books, records and accounts of Architect that are related to this Continuing Contract. Architect shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Continuing Contract. Architect 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 Continuing Contract 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 termination or expiration of this Continuing Contract, unless Architect is notified in writing by Town of the need to extend the retention period. Such retention of such records and documents shall be at Architect'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 Architect's records, Architect shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Architect. 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, Architect shall respond to the reasonable inquiries of successor architects, if any, and allow successor architects to receive working papers relating to matters of continuing significance. In addition, Architect shall provide a complete copy of all working papers including electronic files to the Town, prior to final payment by the Town under this Continuing Contract.

9.9 Performance During Disputes. Notwithstanding anything contained in this Continuing Contract to the contrary, in the event of any dispute noticed in writing between the Town and the Architect, the Architect and, if applicable, its consultants will continue to provide services on the Projects under this Continuing Contract pursuant to the terms of this Continuing Contract so long as the Architect receives payment for the matter(s) not in dispute.

9.10 Town's Review of Documents. Review and approval of documents or submittals by the Town shall be for general design compliance and approval of such submittals shall not relieve the Architect of any responsibility or liability hereunder.

9.11 Entire Agreement. This Continuing Contract is deemed effective only upon execution by both parties. Additionally, this written Continuing Contract represents the entire and integrated agreement between the Town and the Architect and supersedes all prior negotiations or agreements, either written or oral. This Continuing Contract may be amended only if agreed to by both parties, in writing. Pursuant to Florida Statutes, Section 287.055, this Continuing Contract shall have no time limitation, however, it may be terminated in accordance with Sections 7 and 8 hereof.

9.12 Invalid Provisions. Any term or provision of this Continuing Contract found to be invalid under any applicable Statute or rule of law shall be deemed omitted, and the remainder of this Continuing Contract shall remain in full force and effect.

9.13 Non-Discrimination. During the performance of this contract, the Architect agrees to remain in full compliance with State and Federal laws pertaining to the hiring and firing of all employees including, but not limited 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 in all solicitations will ensure that all applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

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

(4) The contractor will include the portion of the sentence immediately preceding paragraph (1) 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 equal opportunity 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.

9.14 Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

9.15 Access to Records. The following access to records requirements applies to this contract:

(1) The Architect agrees to provide Town, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the Town and the Architect acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

9.16 Sovereign Immunity. Nothing in this Continuing Contract is intended nor shall it be construed or interpreted to waive or modify the Town's Sovereign Immunity defense or any other of the Town's immunities and limitations on liability as provided for in Florida law and statutes, as now worded or as may hereafter be amended and all Florida case law interpreting same.

9.17 No Third Party Beneficiaries. This Continuing Contract 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 Continuing Contract shall be deemed or construed to create or confer any benefit, right or cause of action for any third party or entity.

9.18 Funding. The obligation of Town for payment to Architect for services is limited by Florida law 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.

9.19 Manner of Performance. Architect agrees to perform its services in a professional manner and in accordance with all applicable Local, State, County, and Federal laws, rules,

ordinances, regulations and codes. Architect agrees that the services provided shall be provided by employees that are educated, trained, experienced, certified, and licensed in all areas encompassed within their designated duties. Architect agrees to furnish to Town any and all documentation, certification, authorization, license, permit, or registration currently required by applicable laws, rules, and regulations. Architect 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 Continuing Contract. Failure of Architect to comply with this paragraph shall constitute a material breach of this Continuing Contract.

9.20 Public Records. The Town is subject to Chapter 119, Florida Statutes, the "Public Records Law." No claim of confidentiality or proprietary information in all or any portion of a response will be honored unless a specific exemption from the Public Records Law exists, and it is cited in the response. An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed. Architect understands that 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. Architect's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Continuing Contract by Town.

9.21 Public Entity Crimes. In accordance with the Public Entity Crimes Act (Section 287.133, Florida Statutes), a person or affiliate who has been placed on the convicted vendor list maintained by the State of Florida Department of General Services following a conviction for a public entity crime may not submit a proposal on a contract with Town, may not be awarded or perform services as an engineer, contractor, supplier, or subcontractor, under a contract with Town, and may not conduct business with Town for a period of **thirty six (36) months** from the date of being placed on the convicted vendor list. Violation of this section by Architect shall result in Town's immediate termination of this Continuing Contract.

9.22 Changes and Modification of Continuing Contract. Town and Architect may request changes that would increase, decrease or otherwise modify the scope of services to be provided under this Continuing Contract. Such changes only become part of this Continuing Contract and increase, decrease or otherwise modify the services under this Continuing Contract if evidenced by a written Change Order executed by Town and Architect, with the same formality and of equal dignity associated with the original execution of the Continuing Contract.

9.23 False Claims. The Architect acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

9.24 No Waiver of Rights. Neither the Town's review, approval or payment for any of the services required under this Continuing Contract shall be construed to operate as a waiver of any of Town's rights under this Continuing Contract or of any causes of action arising out Architect's performance of the services under this Continuing Contract, and Architect shall be and remain liable to the Town for all damages to the Town caused by the Architect's negligent or improper performance of any of the services furnished under this Continuing Contract, irrespective of the Town's review, approval or payment for any of the services under this Continuing Contract.

The rights and remedies of the Town provided for under this Continuing Contract are in addition to all other rights and remedies provided to Town by law.

9.25 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.

9.26 Time is of the Essence. Time is of the essence for all of Architect's obligations under this Continuing Contract.

9.27 Days. The terms "days" as referenced in this Continuing Contract shall mean consecutive calendar days, unless specifically stated to be "work days."

9.28 Equal Opportunity Employment.

A. Architect will take affirmative action to ensure that employees are treated equally during employment, without regard to their race, religion, gender, color or national origin. Such action must 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. Architect shall agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause included in section 9.13 of this Continuing Contract.

B. Architect shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor Regulations (41 CFR Part 60).

C. Architect shall comply with Copeland Anti-Kickback Act (18USC 874), as supplemented in Department of Labor Regulations (29 CFR Part 3).

D. Architect shall comply with the Contract Work Hours and Safety Standards Act (40 US 327-330), as supplemented by Department of Labor Regulations (29 CFR Part 5).

9.29 Notice. Notices shall be given by Certified Mail (RRR), recognized overnight delivery service with tracking receipt, or hand delivery or courier with signed receipt. Notices shall be given to the following addresses:

AS TO TOWN:

Andrew D. Berns
Town Administrator
Town of Southwest Ranches
13400 Griffin Road
Southwest Ranches, FL 33330

AS TO ARCHITECT:

R.E. Chisholm Architects, Inc.
3501 Griffin Rd
Ft Lauderdale FL 33312

With a copy to the Town Attorney:

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

9.30 Independent Contractor. Architect is an independent contractor of Town under this Continuing Contract. In providing services, neither Architect 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 services rendered under this Continuing Contract shall be exclusively and solely those of Architect. This Continuing Contract shall not constitute or make the Town and Architect a partnership or joint venture.

9.31 Conflicts. Neither Architect nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Architect's loyal and conscientious exercise of judgment related to its performance under this Continuing Contract.

A. Architect agrees that none of its officers or employees shall, during the term of this Continuing Contract, 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, Architect 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 Architect or any other persons from representing themselves in any action or in any administrative or legal proceeding.

B. In the event Architect is permitted to utilize consultants or subcontractors to perform any services required by this Continuing Contract, Architect agrees to prohibit such consultants or subcontractors, by written contract, from having any conflicts within the meaning of this Section.

9.32 Contingency Fee. Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Architect, to solicit or secure this Continuing Contract 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 Architect, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Continuing Contract. For a breach or violation of this provision, Town shall have the right to terminate this Continuing Contract without liability and, at its discretion, to deduct from the Continuing Contract price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

9.33 Materiality and Waiver of Breach. Town and Architect agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Continuing Contract and, therefore, is a material term hereof. Town's failure to enforce any

provision of this Continuing Contract shall not be deemed a waiver of such provision or modification of this Continuing Contract. A waiver of any breach of a provision of this Continuing Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Continuing Contract.

9.34 Joint Preparation. The Town and Architect 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 Continuing Contract has been their joint effort. The language agreed to herein expresses 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.

9.35 Drug-Free Workplace. Architect shall maintain a drug-free workplace.

9.36 Headings. Headings are for convenience of reference only and shall not be considered in any interpretation of this Continuing Contract.

9.37 Binding Authority. Each person signing this Continuing Contract on behalf of either party individually warrants that he or she has full legal power to execute this Continuing Contract 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 Continuing Contract.

9.38 Truth-in-Negotiation Certificate. Signature of this Continuing Contract by Architect 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 Continuing Contract are accurate, complete, and current at the time of contracting.

9.39 Scrutinized Companies. Pursuant to Florida Statute Sec. 287.135, Contractor certifies that the company is not participating in a boycott of Israel. Contractor also certifies that Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Syria or Cuba.

9.40 E-Verify

“E-Verify system” means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

Effective January 1, 2021, public and private employers, contractors and subcontractors will begin required registration with, and use of, the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security’s E-Verify System to verify the employment eligibility of:

a) All persons employed by Contractor to perform employment duties within Florida during the term of the contract; and

b) All persons (including sub-vendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the Town. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the Town of Southwest Ranches.

Should Vendor become the successful Contractor awarded for the above-named project, by entering into this Agreement, the Contractor becomes obligated to comply with the provisions of § 448.095, FL. Statutes, as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees; and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a Subcontractor knowingly violates the statute, the Subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract by the Town for a period of 1 year after the date of termination. By signing below, the Vendor acknowledges these terms shall be an integral part of its bid and the Contract.

[SIGNATURE ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have made and executed this Continuing Contract on the respective dates under each signature: R.E. Chisholm Architects, Inc. and the Town of Southwest Ranches, signing by and through its Mayor duly authorized to execute same by Council action on the 12th day of OCTOBER 2022.

WITNESSES:

Paula Bravo

Lorena Menicucci

ARCHITECT:

R.E. Chisholm Architects, Inc.

By: [Signature]

Robert E. Chisholm, FAIA, NCARB , Principal

12th day of OCTOBER 2022

WITNESSES:

[Signature]

[Signature]

TOWN OF SOUTHWEST RANCHES

By: [Signature]
Steve Breitzkreuz, Mayor

13th day of Oct 2022

WITNESSES:

Danielle Caban

[Signature]

By: [Signature]
Andrew D. Berns, Town Administrator

13th day of Oct 2022

ATTEST:

[Signature]
Russell Muñiz, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
Keith M. Poliakoff, J.D., Town Attorney
1001.171.01