

**RESOLUTION NO. 2023-010**

**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 HP CONSULTANTS, INC. FOR THE UBIQUITOUS SERVICES CONTAINED WITHIN ITS RESPONSE TO THE TOWN'S REQUEST FOR LETTERS OF INTEREST RELATING TO GEOTECHNICAL ENGINEERING 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 HP Consultants, Inc. for Geotechnical Engineering Services; and

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

**WHEREAS**, in the event that such services exceed the thresholds stated within the Town's Procurement Code, 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 HP Consultants, Inc. for Geotechnical Engineering Services as outlined in HP Consultants, 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 HP Consultants, 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 17 day of November 2022 on a motion by

Jim Jablonski and seconded by Jim Allbritton.

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  
1001.161.01

**CONTINUING CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES**

This Continuing Contract for Professional Engineering Services ("CONTINUING CONTRACT") is made and entered into this 17<sup>th</sup> day of November, 2022, by and between the Town of Southwest Ranches, Florida, hereinafter referred to as "TOWN", and HP Consultants Inc. a Florida Corporation licensed as an Authorized Professional Engineering Company, with the State of Florida under License NO. 9509, and hereinafter referred to as "CONSULTANT".

WITNESSETH:

RECITALS:

WHEREAS, the TOWN has provided notice of the desired professional services and pursuant to RFQu No. 22-013, and adhered to the selection process pursuant to and in accordance with the Consultants' Competitive Negotiation Act, Florida Statute, 287.055 and the TOWN's Procurement Code; and,

WHEREAS, the TOWN desires to engage the CONSULTANT to perform certain professional CONTINUING CONTRACT SERVICES in accordance with this CONTINUING CONTRACT, as permitted by the Consultants' Competitive Negotiation Act; and,

WHEREAS, the CONSULTANT desires to provide such professional CONTINUING CONTRACT SERVICES in accordance with this CONTINUING CONTRACT; and,

WHEREAS, the TOWN represents that it has the authority to engage the CONSULTANT for the services set forth in RFQU 22-013, this CONTINUING CONTRACT, and as approved by the TOWN's Resolution No. 2023-010.

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**

Standard of Care. All services rendered by CONSULTANT and its sub-consultants pursuant to this Continuing Contract will be performed in accordance with the standard of professional skill and care required for CONSULTANTS and other professionals retained to assist with, from commencement to finish of CONTINUING CONTRACT services of the projects contemplated by this Continuing Contract; provided, however, that no work shall be performed unless and until a written work authorization is executed and the

TOWN has issued a Notice to Proceed as to any of the projects. CONSULTANT 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. CONSULTANT 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 CONSULTANT, and subject of a Notice to Proceed, are those listed in RFQu 22-013, which 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@southwestbranches.org or his designee.**

The CONSULTANT's Designated Point of Contact shall be:

**Kumbhojkar Arvind S, Principal, 305-775-4300 (cell) 954-278-6388 (office)  
hpconsultantsinc@earthlink.net**

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

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

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

1.1.2.3 The CONSULTANT shall have the sole obligation and responsibility to select, control and supervise all its sub-consultants. The CONSULTANT may not contract with anyone with whom the TOWN has a reasonable objection. Contracts between the CONSULTANT and the sub-consultants shall require each sub-consultant to be bound to the CONSULTANT for all obligations and responsibilities which the CONSULTANT, by this

Continuing Contract assumes toward the TOWN. This provision also applies to substitute sub-consultants hired during this Continuing Contract to replace existing sub-consultants in accordance with this Continuing Contract. The CONSULTANT shall retain responsibility for coordination of any sub-consultants engaged by the CONSULTANT to provide services under this Continuing Contract and will likewise coordinate its services with those sub-consultants retained by the TOWN. The TOWN agrees that all communications of the TOWN with the CONSULTANT's sub-consultants will be made through the CONSULTANT's Representative unless such sub-consultants have also been retained by the TOWN.

1.1.2.4 The CONSULTANT and its sub-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 CONSULTANT or its sub-consultants.

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

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

1.1.3 Conflicts of Interest. The CONSULTANT 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 CONSULTANT's professional judgment with respect to this Continuing Contract.

## **ARTICLE 2 - TOWN-PROVIDED ITEMS**

2.1 The TOWN's list of project requirements shall be provided to the CONSULTANT and shall be utilized by the CONSULTANT to prepare the Project Program.

2.2 The TOWN shall provide CONSULTANT with accurate and complete information. No information derived from the TOWN shall relieve the CONSULTANT from any risk or from fulfilling all terms of the Contract. The CONSULTANT shall be responsible for any additional investigations required to fulfill all the terms of the Contract.

2.3 Service Work Authorization and Notice to Proceed. For all services covered under this Continuing Contract, CONSULTANT shall be required to obtain an approved written Work Authorization and a written "Notice to Proceed" by the Town Administrator or his authorized representative, in advance of providing any such services to the Town. The written Work Authorization shall specify in detail the nature of the services requested, the lump sum or not to exceed cost to the TOWN for same (with actual cost to be fully substantiated by CONSULTANT upon completion), and the time frame for completion. All services performed by CONSULTANT without a written authorization from the TOWN shall be performed at CONSULTANT's sole cost and expense.

## ARTICLE 3- FEES

3.1 Subject to the TOWN's issuance of a "Notice to Proceed" and individual written work orders, the TOWN shall pay the CONSULTANT 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 CONSULTANT, and which will be developed based upon the approved Rate and Fee Schedule. CONSULTANT's total compensation includes all fees, costs and expenses that may be incurred by the CONSULTANT to complete the design and construction administration of the Project, including, but not limited to, all professional services provided by or through the CONSULTANT, 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, CONSULTANT shall not perform any services without individual written work orders which may be required to be provided by the Town Administrator, and in accordance with this Continuing Contract. Hourly rates for CONSULTANT's sub-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 CONSULTANT's invoice for same, along with a partial waiver and release from CONSULTANT 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 CONSULTANT describing the disputed portion of the invoice in detail for discussion and resolution.

3.3 Payment on account of undisputed amounts of the CONSULTANT's Total Compensation shall be made within twenty (20) days of invoice receipt or as otherwise provided by Section 218.735(9), Florida Statute.

3.4 Payments due to CONSULTANT which remain unpaid for twenty (20) days after the invoice receipt and that have not been rejected (meet contract requirements), shall bear interest at the statutory rate of 2% as provided by Section 218.74(9), Florida Statute.

3.5 Payment for the CONSULTANT's services will be made in accordance with the Local Government Prompt Payment Act, Section 218.73, Florida Statute.

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). 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 CONSULTANT, or the CONSULTANT's sub-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. CONSULTANT 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 CONSULTANT 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 CONSULTANT'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 CONSULTANT and the CONSULTANT's sub-consultants are Instruments of Service. The CONSULTANT and the CONSULTANT's sub-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 CONSULTANT 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, CONSULTANT and its sub-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 CONSULTANT and its sub-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 CONSULTANT's rights.

5.3 CONSULTANT 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 CONSULTANT's sub-consultants, CONSULTANT, in its agreement with such sub-consultants to provide services for this Project, shall cause such sub-consultants to grant to the TOWN the same use provisions as are included herein.

## **ARTICLE 6 - TERM OF CONTRACT**

6. The continuing contract for professional CONTINUING CONTRACT services shall have a term of five (5) years, with 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**

7.1 Termination by Town for Convenience. This Continuing Contract may be terminated by the Town for convenience upon at least thirty days' written notice to the CONSULTANT. Under such conditions, CONSULTANT 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 CONSULTANT 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 CONSULTANT. CONSULTANT will be able to recover for its work performed; actual cost and expenses; and fair and reasonable sums for overhead and profit for work performed. Upon receipt of a notice of termination for convenience by the TOWN, the CONSULTANT will initiate all reasonable steps to mitigate further expenses from accruing. No other compensation and/or damages will be due CONSULTANT from the TOWN pursuant to this Paragraph

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

- A. The CONSULTANT ceases to carry the insurance required hereunder or the insurance is cancelled.
- B. A default should occur in the performance of any sub-consultant or contractor employed by the CONSULTANT and not corrected by CONSULTANT or another replacement sub-consultant or contractor employed by CONSULTANT within ten (10) days after notice from the TOWN.
- C. The CONSULTANT fails to maintain all permit-related documents and make such documents available to the TOWN upon reasonable request.
- D. The CONSULTANT fails to timely (30 days) pay any sub-consultant or contractor employed by the CONSULTANT.



Notwithstanding the foregoing, CONSULTANT 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 CONSULTANT fails to correct any error or material inconsistency in its or its sub-consultants Drawings and Specifications or other Instruments of Service within ten (10) days after such error or material inconsistency is reported to the CONSULTANT.
- F. The CONSULTANT fails to perform its obligations under this Continuing Contract in a timely and expeditious manner within ten (10) days after notice from the TOWN.

7.3 TOWN'S Compensation for Default by CONSULTANT. In the event of termination due to the fault of the CONSULTANT 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 CONSULTANT hereunder, in reviewing, analyzing, or enforcing the TOWN's rights hereunder or in connection with a replacement CONSULTANT and the completion of the CONSULTANT 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 CONSULTANT under this Continuing Contract. Additionally, the TOWN shall have the right to use the CONSULTANT 's Drawings, Specifications, and other Instruments of Service in the event of a default by the CONSULTANT, regardless of the payment status for such Instruments of Service.

## **ARTICLE 8 - MISCELLANEOUS PROVISIONS**

8.1 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 hearings, trials, 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 CONTINUING CONTRACT 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.

8.2 Waiver of Right to Jury Trial

**BY ENTERING INTO THIS CONTINUING CONTRACT, CONSULTANT 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.**

8.3 Insurance Coverages and Minimum Amounts. CONSULTANT 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:

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

8.3.2 Worker's Compensation and Employer's Liability Insurance for all employees of the CONSULTANT engaged in services under the Contract in accordance with the laws of the State of Florida. CONSULTANT 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.

8.3.3 (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)

8.3.4 Comprehensive Automobile Liability Insurance. for all owned, non-owned and hired automobiles and other vehicles used by CONSULTANT 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.

8.3.5 Aggregate Limits. 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.**

CONSULTANT 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.

84 Indemnification. To the fullest extent permitted by Florida Statute, Section 725.08, CONSULTANT shall indemnify, hold harmless the TOWN, its officers, agents and employees, harmless from any and all claims, damages, losses, liabilities and expenses, direct, indirect or consequential arising out of or alleged to have arisen out of or in consequence of the negligence, recklessness or intentional wrongful conduct of the CONSULTANT or its sub-consultants, 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 CONSULTANT and/or its sub-consultants, agents, or employees in the performance of the operations or services under the Continuing Contract.

#### 8.4.1 Errors and Omissions:

The CONSULTANT 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 CONSULTANT shall perform the Work utilizing the skill, knowledge and judgment ordinarily possessed and used by a proficient CONSULTANT with respect to the disciplines required for the

performance of the Work in the State of Florida. The CONSULTANT is responsible for and represents that the Work conforms to TOWN'S requirements as set forth in this Agreement. The CONSULTANT shall be and remain liable to the TOWN for all damages to the TOWN caused by the CONSULTANT'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 CONSULTANT shall, at its expense, re-perform the services to correct any deficiencies, which result from the CONSULTANT'S failure to perform in accordance with the above standards. The TOWN shall notify the CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT or its sub-consultants and Subcontractors to comply with the terms and conditions of this Agreement or by the CONSULTANT'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 CONSULTANT shall, in approving and accepting such Work, ensure the professional quality, completeness, and coordination of sub-consultant's and subcontractor's Work.

85 Patent and Copyright Indemnification. CONSULTANT 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.

86 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.

87 No Damage for Delays by TOWN. CONSULTANT'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. TOWN shall act reasonably in granting extensions of time to the CONSULTANT. All extensions to the time for performance shall be authorized only by written Change Order executed by the TOWN and CONSULTANT. In no event shall the CONSULTANT 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.

88 Audit and Inspection Rights and Retention of Records by CONSULTANT. The TOWN shall have the right to audit the books, records and accounts of CONSULTANT that are related to this Continuing Contract. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Continuing Contract. CONSULTANT 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 Statute), 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 CONSULTANT is notified in writing by Town of the need to extend the retention period. Such retention of such records and documents shall be at CONSULTANT'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 CONSULTANT's records, CONSULTANT shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT. 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, CONSULTANT shall respond to the reasonable inquiries of success or CONSULTANTS, if any, and allow successor CONSULTANTS to receive working papers relating to matters of continuing significance. In addition, CONSULTANT 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.

89 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 CONSULTANT, the CONSULTANT and, if applicable, its sub-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 CONSULTANT receives payment for the matter(s) not in dispute.

8.10 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 CONSULTANT of any responsibility or liability hereunder.

8.11 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 CONSULTANT 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 Statute, Section 287.055, this Continuing Contract may be terminated in accordance with Sections 6 and 7 hereof.

8.12 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.

8.13 Non-Discrimination. During the performance of this contract, the CONSULTANT 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.

8.14 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.

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

(1) The CONSULTANT 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 CONSULTANT 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.

8.16 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.

8.17 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.

8.18 Funding. The obligation of TOWN for payment to CONSULTANT 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.

8.19 Manner of Performance. CONSULTANT 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. CONSULTANT 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. CONSULTANT agrees to furnish to TOWN any and all documentation, certification, authorization, license, permit, or registration currently required by applicable laws, rules, and regulations. CONSULTANT 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 CONSULTANT to comply with this paragraph shall constitute a material breach of this Continuing Contract.

8.20 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 Law exists and is cited in the response. An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed. Firm 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.

CONSULTANT agrees to maintain public records in CONSULTANT's possession or control in connections with CONSULTANT's performance under this agreement and to provide the public with access to public records in accordance with the record maintenance, production and codes requirement set forth in Chapter 119, Florida Statutes, or as otherwise required by law. CONSULTANT shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law. CONSULTANT's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this agreement by TOWN.



821 Public Entity Crimes. In accordance with the Public Entity Crimes Act, Section 287.133, Florida Statute, 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 CONSULTANT, 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 CONSULTANT shall result in TOWN's immediate termination of this Continuing Contract.

822 Changes and Modification of Continuing Contract. TOWN and CONSULTANT 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 CONSULTANT, with the same formality and of equal dignity associated with the original execution of the Continuing Contract.

823 False Claims. The CONSULTANT 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.

824 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 CONSULTANT's performance of the services under this Continuing Contract, and CONSULTANT shall be and remain liable to the TOWN for all damages to the TOWN caused by the CONSULTANT'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.

825 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.

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

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

828 Equal Opportunity Employment.

A. CONSULTANT 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. CONSULTANT 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 8.13 of this Continuing Contract.

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

D. CONSULTANT 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).

829 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 ENGINEER:**

HP Consultants, Inc.  
4444 Inverrary Blvd,  
Lauderhill, Fl 33319

**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

830 Independent Contractor. CONSULTANT is an independent contractor of TOWN under this Continuing Contract. In providing services, neither CONSULTANT 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 CONSULTANT. This Continuing Contract shall not constitute or make the TOWN and CONSULTANT a

partnership or joint venture.

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

A. CONSULTANT 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, CONSULTANT 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 CONSULTANT or any other persons from representing themselves in any action or in any administrative or legal proceeding.

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

832 Contingency Fee. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, 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 CONSULTANT, 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.

833 Materiality and Waiver of Breach. TOWN and CONSULTANT 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.

834 Joint Preparation. The TOWN and CONSULTANT 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 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.

835 Drug-Free Workplace. CONSULTANT shall maintain a drug-free workplace.

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

837 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.

838 Truth-in-Negotiation Certificate. Signature of this Continuing Contract by CONSULTANT 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.

839 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.

840 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 these services, 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 Agreement on the respective dates under each signature: HP Consultants One, and the TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the 17 day of November 2022.

WITNESSES:

Sho unbhakar

CONSULTANT:

HP CONSULTANTS, INC.

By: A. S. Kumbhojkar  
Kumbhojkar Arvind S, Principal

\_\_\_ day of \_\_\_ 2022

WITNESSES:

V. Redman

TOWN OF SOUTHWEST RANCHES

By: [Signature]  
Steve Breitkreuz, Mayor

17<sup>th</sup> day of Nov 2022

V. REDMAN

WITNESSES:

Danielle Caban

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

17 day of Nov 2022

Danielle Caban

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]  
Keith M. Poliakoff, Town Attorney  
1001.191.01