



# Southwest Ranches Town Council

REGULAR MEETING  
Agenda of June 8, 2023

Southwest Ranches Council Chambers  
7:00 PM Thursday

13400 Griffin Road  
Southwest Ranches, FL 33330

<b><u>Mayor</u></b> Steve Breitkreuz	<b><u>Town Council</u></b> Bob Hartmann Gary Jablonski	<b><u>Town Administrator</u></b> Andrew D. Berns, MPA	<b><u>Town Attorney</u></b> Keith M. Poliakoff, J.D.
<b><u>Vice Mayor</u></b> Jim Allbritton	David Kuczenski, Esq.	<b><u>Town Financial Administrator</u></b> Emil C. Lopez, CPM	<b><u>Assistant Town Administrator/Town Clerk</u></b> Russell C. Muniz, MPA

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (954) 434-0008 for assistance no later than four days prior to the meeting.

1. **Call to Order/Roll Call**
2. **Pledge of Allegiance**

### **Presentations**

3. **Proclamation Presented By Council Member Kuczenski - Jewish American Heritage Month - May 2023**

4. **Public Comment**

- All Speakers are limited to 3 minutes.
- Public Comment will last for 30 minutes.
- All comments must be on non-agenda items.
- All Speakers must fill out a request card prior to speaking.
- All Speakers must state first name, last name, and mailing address.
- Speakers will be called in the order the request cards were received.
- Request cards will only be received until the first five minutes of public comment have concluded.

5. **Board Reports**
6. **Council Member Comments**
7. **Legal Comments**
8. **Administration Comments**

### **Resolutions**

9. **A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AUTHORIZING THE ISSUANCE OF AN EXTENSION TO ITS EMERGENCY LINE OF CREDIT REVOLVING NOTE, AUTHORIZING THE ISSUANCE OF A TAXABLE NOTE, AND INCREASING THE MAXIMUM PRINCIPAL AMOUNT THEREOF FROM \$10,000,000 TO \$20,000,000; AUTHORIZING THE TOWN TO ENTER INTO AN AGREEMENT EXTENDING AND AMENDING LINE OF CREDIT AGREEMENT WITH TD BANK, N.A.;**

**AND PROVIDING AN EFFECTIVE DATE.**

- 10. A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN AGREEMENT WITH SUN UP ENTERPRISES, INC IN THE AMOUNT OF TWO HUNDRED THIRTY-THREE THOUSAND THREE HUNDRED SIXTY-NINE DOLLARS AND ZERO CENTS (\$233,369.00) TO COMPLETE THE TOWN HALL PARKING LOT DRAINAGE AND RESURFACING PROJECT; APPROVING A BUDGET AMENDMENT TO THE FISCAL YEAR 2022-2023 TOWN BUDGET; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY, TO ENTER INTO AN AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**
- 11. A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AMENDING RESOLUTION 2023-045 TO CORRECT AN OWNERSHIP ERROR WITHIN THE WATER AND SEWER SERVICES AGREEMENT; CONSENTING TO THE CITY OF COOPER CITY PROVIDING WATER SERVICES TO 12550 LURAY ROAD, REAL PROPERTY LYING WITHIN THE TOWN OF SOUTHWEST RANCHES, FLORIDA; PROVIDING THAT NO FURTHER EXPANSION OF SERVICE SHALL BE PERMITTED WITHOUT THE EXPLICIT WRITTEN CONSENT OF THE TOWN; PROVIDING FOR A CERTIFIED COPY OF THIS RESOLUTION TO BE FURNISHED TO THE CITY OF COOPER CITY; AND PROVIDING AN EFFECTIVE DATE.**

**12. Adjournment**

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

**Proclamation**  
**JEWISH AMERICAN HERITAGE MONTH**  
**May 2023**

**Whereas**, this month, we celebrate the enduring heritage of Jewish Americans, whose values, culture, and contributions have shaped our character as a Nation. For generations, the story of the Jewish people – one of resilience, faith, and hope in the face of adversity, prejudice and persecution – has been woven into the fabric of our Nation’s story. It has driven us forward in our ongoing march for justice, equality, and freedom as we recommit to upholding the principles of our Nation’s founding and realizing the promise of America for all Americans; and

**Whereas**, for centuries, Jewish refugees fleeing oppression and discrimination abroad have sailed to our shores in search of sanctuary. Early on, they fought for religious freedom, helping define one of the bedrock principles upon which America was built. Union soldiers celebrated Passover in the midst of the Civil War. Jewish suffragists fought to expand freedom and justice. And Jewish faith leaders linked arms with giants of the Civil Rights Movement to demand equal rights for all; and

**Whereas**, Jewish Americans continue to enrich every part of American life as educators and entrepreneurs, athletes and artists, scientists and entertainers, public officials and activists, labor and community leaders, diplomats and military service members, public health heroes, and more; and

**Whereas**, there is also a dark side to the celebrated history of the Jewish people – a history marked by genocide, pogrom, and persecution – with a through line that continues in the record rise of antisemitism today. We have witnessed violent attacks on synagogues, bricks thrown through windows of Jewish businesses, swastikas defacing cars and cemeteries, Jewish students harassed on college campuses, and Jews wearing religious attire beaten and shot on streets. Antisemitic conspiracy theories are rampant online, and celebrities are spouting antisemitic hate; and

**Whereas**, these acts are unconscionable and despicable. They carry with them terrifying echoes of the worst chapters in human history. Not only are they a strike against Jews, but they are also a threat to other minority communities and a stain on the soul of our Nation. Antisemitic incidents remind us that hate never truly goes away – it only hides until it is given just a little oxygen. It is our obligation to ensure that hate can have no safe harbor in America and to protect the sacred ideals enshrined in our Constitution: religious freedom, equality, dignity, and respect. That is the promise of America; and

**Whereas,** the Town will not remain silent in the face of this antisemitic venom, vitriol, and violence; and

**Whereas,** the federal government is developing the first national strategy to counter antisemitism that outlines comprehensive actions the Federal Government will undertake and that reflects input from over a thousand Jewish community stakeholders, faith and civil rights leaders, State and local officials, and more. This strategy will help combat antisemitism online and offline, including in schools and on campuses; improve security to prevent antisemitic incidents and attacks; and build cross-community solidarity against antisemitism and other forms of hate; and

**Whereas,** governance alone cannot root out antisemitism and hate. All Americans – including business and community leaders, educators, students, athletes, entertainers, and influencers – must help confront bigotry in all its forms. We must each do our part to put an end to antisemitism and hatred and create a culture of respect in our workplaces, schools, and homes and across social media; and

**Whereas,** this Jewish American Heritage Month, let us join hands across faiths, races, and backgrounds to make clear that evil, hate, and antisemitism will not prevail. Let us honor the timeless values, contributions, and culture of Jewish Americans, who carry our Nation forward each and every day. And let us rededicate ourselves to the sacred work of creating a more inclusive tomorrow, protecting the diversity that defines who we are as a Town and as a Nation, and preserving the dignity of every human being – here at home and around the world.

**NOW, THEREFORE, BE IT PROCLAIMED** by the Town Council of Southwest Ranches, the month of proclaim May 2023 as Jewish American Heritage Month. We call upon all Americans to learn more about the heritage and contributions of Jewish Americans and to observe this month with appropriate programs, activities, and ceremonies.

**Dated this 8<sup>th</sup> Day of June, 2023**

\_\_\_\_\_  
**STEVE BREITKREUZ, MAYOR**



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

(954) 434-0008 Town Hall  
(954) 434-1490 Fax

Town Council  
Steve Breitkreuz, *Mayor*  
Jim Allbritton, *Vice Mayor*  
Bob Hartmann, *Council Member*  
Gary Jablonski, *Council Member*  
David Kuczenski, Esq., *Council Member*

Andrew D. Berns, MPA, *Town Administrator*  
Keith M. Poliakoff, JD, *Town Attorney*  
Russell Muniz, MPA, *Assistant Town Administrator/Town Clerk*  
Emil C. Lopez, CPM, *Town Financial Administrator*

## COUNCIL MEMORANDUM

**TO:** Honorable Mayor Breitkreuz and Town Council  
**VIA:** Andrew D. Berns, Town Administrator  
**FROM:** Emil C. Lopez, Town Financial Administrator  
**DATE:** 5/25/2023  
**SUBJECT:** TD Bank Emergency Line of Credit

### Recommendation

It is recommended that the Town Council approves an extension to the existing TD Bank emergency line of credit (LOC) in the amount of \$20 million.

### Unanimous Vote of the Town Council Required?

No

### Strategic Priorities

- A. Sound Governance
- B. Enhanced Resource Management
- C. Reliable Public Safety
- D. Improved Infrastructure

### Background

On August 25, 2010, the Town entered into a revolving line of credit (LOC) agreement with Community Bank of Broward (CBB-now known as Centennial Bank) in an amount not to exceed \$3,000,000. Subsequently, on June 20th, 2013, the Town renewed with CBB but increased its LOC to \$4,500,000. The LOC is for expenditures of extraordinary, nonrecurring items which the Town desires or needs to undertake subsequent to and as a result of a natural, technological, or civil emergency. As collateral, the Town currently covenants to budget and appropriate in its annual budget from legally available non-ad valorem revenues in each fiscal

year sufficient moneys to pay the outstanding principal and/or interest on the note. This LOC expired in June 2018.

In anticipation to the expiration of the Centennial Bank LOC and based on past directives received from Town Council and its desire for debt avoidance, whenever possible, and to further research the least financial impact, the Town entered on May 23, 2018, into an LOC agreement for five (5) years with TD Bank in an amount not to exceed \$10 million with an option to extend the LOC agreement for an additional five (5) years. The renewal of the LOC will enable the Town to mitigate a portion of the damages that may potentially affect the Town as a result of a natural, technological, or civil emergency as well as damages not covered by Federal or States agencies. For this reason and as per the Town Council directives, the Town is exercising the option to extend the existing TD Bank LOC for an additional five (5) years with similar terms as the original LOC but for an amount not to exceed \$20 million.

### **Fiscal Impact/Analysis**

The line of credit amount will affect the overall fiscal impact from an annual maintenance cost when not in use (\$4,000) as well as from total interest expense perspective, if and when utilized. The fiscal year 2023 impact is for bank fees (\$37,500) and bank council fees (\$12,000). Funds to cover this expense were budgeted within account 001-3900-519-99100.

### **Staff Contact:**

Emil C. Lopez, Town Financial Administrator

### **ATTACHMENTS:**

Description	Upload Date	Type
Resolution - TA Approved	6/2/2023	Resolution
Extension and Amendment of LOC Agreement	6/2/2023	Exhibit
Draw Certificate	6/2/2023	Exhibit
Note - LOC	6/2/2023	Exhibit

**RESOLUTION NO. 2023-\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDIA, AUTHORIZING THE ISSUANCE OF AN EXTENSION TO ITS EMERGENCY LINE OF CREDIT REVOLVING NOTE, AUTHORIZING THE ISSUANCE OF A TAXABLE NOTE, AND INCREASING THE MAXIMUM PRINCIPAL AMOUNT THEREOF FROM \$10,000,000 TO \$20,000,000; AUTHORIZING THE TOWN TO ENTER INTO AN AGREEMENT EXTENDING AND AMENDING LINE OF CREDIT AGREEMENT WITH TD BANK, N.A.; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council of the Town of Southwest Ranches, Florida (the “Town”) previously entered into a Line of Credit Agreement (the “Agreement”) with TD Bank, N.A. (the “Bank”), providing for the issuance of a not to exceed \$10,000,000 Emergency Line of Credit Revolving Note (the “Note”); and

**WHEREAS**, the Town has requested that the Bank extend the Agreement and the maturity of the Note from May 23, 2023 to May 23, 2028, as provided in Section 16 of the Note, to increase the not to exceed amount of the Note from \$10,000,000 to \$20,000,000 and to authorize the issuance of a taxable note for draws that cannot be issued on a tax-exempt basis; and

**WHEREAS**, the Bank has agreed to such request.

**NOW, THEREOFRE, BE IT RESOLVED**, by the Town Council of the Town of Southwest Ranches, Florida.

**SECTION 1. ADOPTION OF RECITALS.** The above-referenced recitals are true and correct, and are incorporated herein by reference.

**SECTION 2. AUTHORITY FOR RESOLUTION.** This Resolution is adopted pursuant to the provisions of Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the Town of Southwest Ranches, Florida, and other applicable provisions of law (the “Act”). The Town has ascertained and hereby determined that the enactment of this Resolution is necessary to carry out the powers, purposes and duties expressly provided in the Act, that each and every matter and thing as to which provision has been made herein is necessary in order to carry out and effectuate the purposes of the Town in accordance with the Act and to carry out and effectuate the plan and purpose of the Act, and that the powers of the Town are herein exercised in accordance with the provisions of the Act and in furtherance of the purposes of the Town.

**SECTION 3. AUTHORIZATION OF AGREEMENT EXTENDING AND AMENDING LINE OF CREDIT AGREEMENT AND FIRST AMENDMENT TO NOTE.** Subject and pursuant to the provisions of this Resolution, the Town is hereby

authorized to enter into the Agreement Extending and Amending Line of Credit Agreement (the “Extension Agreement”) in substantially the form attached hereto as Exhibit “A,” and the First Amendment to Note and Taxable Note are hereby authorized to be issued as provided in the Extension Agreement.

**SECTION 4. NOTES NOT TO BE GENERAL INDEBTEDNESS OF THE TOWN.** The Note, as amended by the First Amendment to Note (the “Tax-Exempt Note”), and the Taxable Note (collectively with the Tax-Exempt Note, the “Notes”) are special obligations of the Town and are payable solely in the manner and to the extent set forth in this Resolution. There are hereby pledged for the payment of the principal of, and premium if any, and interest on, the Notes in accordance with the terms and the provisions of this Resolution, the Pledged Revenues. The Notes shall not be or constitute a general obligation of the Town within the meaning of the Constitution of the State of Florida but shall be payable from and secured solely by the Town’s pledge of the Pledged Revenues (as defined in the Agreement), and by the covenant of the Town to budget and appropriate Legally Available Non-Ad Valorem Revenues (as defined in the Agreement) in the manner and to the extent herein, in the Line of Credit Agreement and in the Notes provided. No Holder shall ever have the right to compel the exercise of the ad valorem taxing power of the Town or taxation in any form on any real or personal property to pay the Notes or the interest thereon, nor shall any Holder be entitled to payment of such principal or interest from any other funds of the Town other than the Pledged Revenues or Legally Available Non-Ad Valorem Revenues, all in the manner and to the extent herein, in the Line of Credit Agreement and in the Notes provided. The Holders shall have no lien upon any real or tangible personal property of the Town.

**SECTION 5. AWARD OF FIRST AMENDMENT TO NOTE AND TAXABLE NOTE BY NEGOTIATED SALE.** Because of the nature of the First Amendment to Note and the Taxable Note, the maturity of the First Amendment to Note and the Taxable Note and the prevailing market conditions, the negotiated sale of the First Amendment to Note and the Taxable Note to the Bank on the terms set forth in the form of Extension Agreement, First Amendment to Note and Taxable Note attached hereto, is hereby found to be in the best interest of the Town.

**SECTION 6. MODIFICATION, AMENDMENT OR SUPPLEMENT.** This Resolution may be modified, amended or supplemented by the Town from time to time prior to the Town entering into the Extension Agreement. Thereafter, no modification, amendment or supplement of this Resolution, or of any resolution amendatory hereof or supplemental hereto, may be made without the written consent of the Bank.

**SECTION 7. GENERAL AUTHORITY.** The Governing Body hereby authorizes the Mayor, Town Administrator or Town Financial Administrator, Town Attorney and Town Clerk to execute such other documents as may be necessary to effect the borrowing contemplated by this Resolution.

**SECTION 8. BANK QUALIFIED BONDS.** The Governing Body hereby authorizes the Town Administrator and Town Financial Administrator to designate any



draw on the Tax-Exempt Note, as a “bank qualified obligation” within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

**SECTION 9. SAVINGS CLAUSE.** If any section, paragraph, sentence, clause or phrase of this Resolution shall, for any reason, be held to be invalid or unenforceable, that decision shall not affect the validity of the remaining sections, paragraphs, sentences, clauses or phrases of this Resolution.

**SECTION 10. CONFLICTS.** All resolutions or parts thereof which conflict herewith are, to the extent of such conflict, superseded and repealed.

**SECTION 11. EFFECTIVE DATE.** This Resolution shall be effective immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this \_\_\_\_ day of June, 2023 on a motion by \_\_\_\_\_ and seconded by \_\_\_\_\_.

Breitkreuz	_____	Ayes	_____
Allbritton	_____	Nays	_____
Hartmann	_____	Absent	_____
Jablonski	_____	Abstaining	_____
Kuczenski	_____		

ATTEST:

\_\_\_\_\_  
Steve Breitkreuz, Mayor

\_\_\_\_\_  
Russell C. Muniz, Assistant Town Administrator/Town Clerk

APPROVED AS TO FORM and Correctness:

\_\_\_\_\_  
Keith M. Poliakoff, J.D., Town Attorney  
1001.2333.01

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**EXHIBIT "A"**

**FORM OF AGREEMENT EXTENDING AND AMENDING  
LINE OF CREDIT AGREEMENT**

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## **AGREEMENT EXTENDING AND AMENDING LINE OF CREDIT AGREEMENT**

This Agreement made and entered into as of June \_\_, 2023, by and between the Town of Southwest Ranches, a Florida municipal corporation (the “Town”) and TD Bank, N.A., a national banking association (the “Bank”), extending and amending that certain Line of Credit Agreement between the Town and the Bank dated May 23, 2018 (the “Line of Credit Agreement”).

**WHEREAS**, the Bank and the Town previously entered into the Line of Credit Agreement, pursuant to which the Town issued its Emergency Line of Credit Revolving Note in the maximum principal amount of \$10,000,000 (the “Note”) for the purpose of establishing an emergency line of credit; and

**WHEREAS**, Section 16 of the Line of Credit Agreement provides that the Bank may extend the Line of Credit Agreement for a period not to exceed five (5) years in duration, by written request of the Town delivered to the Bank at least one (1) year prior to the Maturity Date of May 23, 2023; and

**WHEREAS**, the Town did so notify the Bank, and in addition requested that the maximum principal amount of the Note be increased from \$10,000,000 to \$20,000,000, and to authorize the issuance of a taxable note for draws that cannot be issued on a tax-exempt; and

**WHEREAS**, in connection therewith, in order to evidence said extension and increase, Town shall execute a First Amendment to Note (the “First Amendment to Note”) in the form attached as Exhibit “A” hereto and a Taxable Note (as described herein) in an aggregate combined principal amount not to exceed Twenty Million Dollars (\$20,000,000.00); and

**WHEREAS**, the Town and the Bank further desire to amend the Line of Credit Agreement as set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein set forth and other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, the parties do hereby agree as follows:

**SECTION 1. REINSTATEMENT AND EXTENSION OF LINE OF CREDIT AGREEMENT.** The Line of Credit Agreement and the Note are hereby reinstated. The current Maturity Date of the Note is hereby extended to May 23, 2028.

**SECTION 2. INCREASE IN MAXIMUM AMOUNT AVAILABLE TO BE OUTSTANDING ON NOTES.** The maximum amount that can be outstanding on the Notes \$20,000,000.

**SECTION 3. AMENDMENTS TO LINE OF CREDIT AGREEMENT.**

A. Section 2 of the Line of Credit Agreement is hereby amended in its entirety to read as follows:

**SECTION 2. ISSUANCE OF NOTES.** Subject and pursuant to the provisions of the Resolution, two notes to be known as “Town of Southwest Ranches, Florida, Emergency Line of Credit Note” (as amended by the First Amendment to Note, the “Tax-Exempt Note”) and as Town of Southwest Ranches, Florida, Taxable Emergency Line of Credit Note (the “Taxable Note” and, collectively with the Tax-Exempt Note, the “Notes”), are hereby authorized to be issued in an aggregate combined principal amount not to exceed Twenty Million Dollars (\$20,000,000.00) for the purpose of financing Costs of the Project and the refunding of the Refunded Note. The Town agrees not to use the proceeds of the Notes for any other purpose without the written approval of the Bank. The Bank agrees to make advances on the Notes from time to time, but only upon compliance by the Town with the provisions hereof.

B. Section 3 of the Line of Credit Agreement is hereby amended in its entirety to read as follows:

**SECTION 3. DESCRIPTION OF NOTES.**

(a) The Tax-Exempt Note shall be issued in one (1) typewritten certificate, shall be dated the Dated Date and shall mature on May 23, 2028 (the “Maturity Date”). Draws will be permitted to be made on the Tax-Exempt Note from time to time during the Draw Period, up to an aggregate maximum principal amount of \$20,000,000 when combined with draws on the Taxable Note, in accordance with Section 11 hereof.

If, at the time of a draw on the Tax-Exempt Note the Bank is provided with an opinion to the effect that the draw is a “bank qualified obligation” within the meaning of Section 265(b)(3) of the Code, the Tax-Exempt Note shall bear interest at the “bank qualified” variable rate calculated as follows:

80.25% x (Prime Rate - one hundred twenty-five basis points [1.25%]).

If, at the time of a draw on the Tax-Exempt Note the Bank is not provided with such opinion to the effect that the draw is a “bank qualified obligation, the Tax-

Exempt Note shall bear interest at the “non-bank qualified” variable rate calculated as follows:

81.50% x (Prime Rate - one hundred twenty-five basis points [1.25%]).

(b) The Taxable Note shall be issued in one (1) typewritten certificate, shall be dated the Dated Date and shall mature on May 23, 2028 (the “Maturity Date”). Draws will be permitted to be made on the Taxable Note from time to time during the Draw Period, up to an aggregate maximum principal amount of \$20,000,000 when combined with draws on the Tax-Exempt Note, in accordance with Section 11 hereof. The Taxable Note shall bear interest at the variable rate calculated as follows:

Prime Rate - one hundred twenty-five basis points [1.25%].

(c) The interest rate on each of the Notes shall be adjusted on the 1st day of each month to the rate computed as of the last Business Day of the previous month, with such rate to be adjusted as provided in the form of Note attached as Exhibit “A” and Exhibit “B” hereto and Exhibit “A” to the Line of Credit Agreement. Accrued interest on the Notes shall be payable, based on the amount drawn by the Town from time to time pursuant to this Line of Credit Agreement, on the first day of each February, May, August and November, beginning on November 1, 2023. Principal of the Notes shall be due and payable at maturity. Interest on the Notes shall be calculated on the basis of a 360 day year and will be paid in arrears for the actual number of days elapsed. Details of the Notes, including provisions for adjusting the rate on the Tax-Exempt Note if the Tax-Exempt Note is not a “qualified tax exempt obligation” under Section 265 (b) of the Code, shall be as provided in the form of Tax-Note attached as Exhibit “A” to the Line of Credit Agreement .

The Notes shall be in registered form, contain substantially the same terms and conditions as set forth in Exhibit “A” hereto, shall be payable in lawful money of the United States of America, and the principal thereof, interest thereon and any other payments thereunder shall be payable by check, wire, draft or bank transfer to the Holder at such address as may be provided in writing by such Holder to the Town Clerk. So long as the Notes shall remain outstanding, the Town shall maintain and keep books for the registration and transfer of the Notes. The Notes may be assigned as provided in the form of Note attached as Exhibit “A” hereto.

C. The following paragraph is added to Section 8 of the Line of Credit Agreement:

Prior to the incurrence of additional debt secured by or payable from the Legally Available Non-Ad Valorem Revenues, and unless waived by the Holder, the

sum of (i) “A” minus “C” minus “B”, shall be at least 150% of the maximum annual debt service on all debt (including all long-term financial obligations appearing on the Town’s most recent Annual Comprehensive Financial Report (“ACFR”) and including the additional debt proposed to be issued) secured by or payable from the Legally Available Non-Ad Valorem Revenues, including any debt payable from one or several specific revenue sources and including the amounts then drawn and outstanding on the Notes.

In addition, the Town will not issue any additional debt secured by or payable from a covenant to budget and appropriate unless (i) no Event of Default exists hereunder, (ii) any such additional debt secured by or payable from a covenant to budget and appropriate will be on a parity with the Notes, with no preference as to any particular issuance of debt, and (iii) the other covenants of the Town contained herein will continue to be met.

If ten percent (10%) or more of the principal amount of any additional debt of the Town, whether bearing interest at a fixed or variable interest rate matures during any one Fiscal Year, annual debt service on such debt shall be determined assuming such debt is amortized over twenty-five (25) years on an approximately level debt service basis.

As used in this Section 8: “A” means the average of total Legally Available Non-Ad Valorem Revenues of the Town during the prior two (2) Fiscal Years; “B” means total as valorem revenues of the Town during the prior Fiscal Year; and “C” means the amount of the Town’s general government and public safety expenses as reported in the Town’s ACFR during the prior Fiscal Year that is not covered by ad valorem revenues.

For purposes of the foregoing test, maximum annual debt service on any outstanding variable rate debt will be assumed to bear interest at one percent (1%) per annum over the then applicable variable rate for the month preceding the date of calculation, and maximum annual debt service on any additional variable rate debt proposed to be issued will be assumed to bear interest at one percent (1%) per annum over the actual variable interest rate borne by such debt on the date of issuance of such debt.

D. Section 11 of the Line of Credit Agreement is hereby amended in its entirety to read as follows:

**SECTION 11. PROCEDURE FOR MAKING DRAWS ON THE NOTE.**



(a) Draw Limitations. The total combined principal amount outstanding on the Notes shall never exceed \$20,000,000. The initial draw on the Note was made on May 23, 2018 in the amount of \$3,731,225.40 (which has been repaid in full as of the date hereof). Subsequent draws on the Notes shall be at least \$100,000. The initial draw on the Note was used to pay Costs of the Project and to refund the Refunded Note. Subsequent draws shall be used only to pay Costs of the Project.

(b) Conditions to Draws. Prior to a draw on the Notes, the Town shall provide Bank with the following:

- (i) a Draw Certificate of the Town in the form attached hereto as Exhibit “C,” including any required attachments or exhibits;
- (ii) such other documents as may be required by the Bank and its counsel. Such documents may include, but are not limited to, IRS Form 8038-G and a Federal Tax Certificate to be executed by the Town.

The draw shall be made against the Taxable Note unless the Town and the Bank are provided with an opinion of bond counsel acceptable to the Bank (which may be counsel to the Bank), in form and substance acceptable to the Bank, to the effect that the interest on the draw is exempt from tax for federal income tax purposes, and whether the draw qualifies as a “tax exempt obligation” within the meaning of Section 265(b)(3)(B) of the Code. In such case the draw shall be made against the Tax Exempt Note.

Each Draw Certificate shall be signed on behalf of the Town by either the Mayor, the Town Administrator or the Town Financial Administrator.

(c) Repayment of Draws. Each draw shall be repaid no later than the Maturity Date.

(d) Reborrowing. The Town shall be permitted to reborrow amounts that have been drawn and repaid, so long as an Event of Default has not occurred that has not been cured.

(e) Honor of Draw Request. The Bank will review each draw request to satisfy itself that the proceeds of the draw will be used for a purpose permitted hereunder. Assuming that to be the case, the Bank will honor each draw request within three (3) Business Days of receipt thereof.

E. Section 17 of the Line of Credit Agreement is hereby amended in its entirety to read as follows:

**SECTION 17. BANK CALL DATE.** The Bank, in its sole discretion, shall have the option of requiring the Town to prepay the Notes in full on May 23, 2026

(the “Bank Call Date”). The Bank shall exercise such option by providing the Town with written notice of such option. Such written notice can only be given on or prior to February 22, 2026. If this right is exercised, the Town shall prepay the Notes in full no later than the Bank Call Date.

**SECTION 4. APPROVAL OF FIRST AMENDMENT TO NOTE AND TAXABLE NOTE.** The Town approves and authorizes the execution of the First Amendment to Note in the form attached hereto as Exhibit “A.” The First Amendment to Note shall modify the Tax-Exempt Note consistent with the changes to the Line of Credit Agreement made by this Agreement, effective as of May 23, 2023. The First Amendment to Note shall be executed in same manner as provided in Section 4 of the Line of Credit Agreement for the execution of the Tax-Exempt Note, and shall be affixed to the Tax-Exempt Note. Future amendments to the Tax-Exempt Note, if approved, shall be in substantially the same form.

The Town approves and authorizes the execution of the Taxable Note in the form attached hereto as Exhibit “B.” The Taxable Note shall be consistent with this Agreement. The Taxable Note shall be executed in same manner as provided in Section 4 of the Line of Credit Agreement for the execution of the Tax-Exempt Note. Future amendments to the Taxable Note, if approved, shall be in substantially the same form.

**SECTION 5. PAYMENT OF FEES.** In consideration for the Bank extending and increasing the line of credit and Notes as provided herein, the Town agrees to pay the Bank a fee of \$37,500.00. Said fee is in lieu of and not in addition to the \$25,000 renewal bank extension fee provided in Section 16, of the Line of Credit Agreement. In addition, the Town shall pay the fees of Greenspoon Marder LLP, counsel to the Bank, in an amount not to exceed \$12,000.

**SECTION.6. NO ADVISORY OR FIDUCIARY RELATIONSHIP.** In connection with all aspects of each transaction contemplated hereunder (including in connection with any amendment, waiver or other modification hereof or of the Notes), the Town acknowledges and agrees, that: (a) (i) the Town has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, (ii) the Town is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the Notes, (iii) the Bank is not acting as a municipal advisor or financial advisor to the Town, and (iv) the Bank has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act to the Town with respect to the transactions contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Bank has provided other services or is currently providing other services to the Town on other matters); (b) (i) the Bank is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Town or any other person and (ii) the Bank has no obligation to the Town, with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the Notes; and (c) the Bank may be engaged in a broad range of transactions that involve interests that differ from those of the Town, and the Bank

has no obligation to disclose any of such interests to the Town. This Agreement and the Notes are entered into pursuant to and in reliance upon the bank exemption and/or the institutional buyer exemption provided under the municipal advisor rules of the Securities and Exchange Commission, Rule 15Ba1-1 *et seq*, to the extent that such rules apply to the transactions contemplated hereunder.

**SECTION 6. AGREEMENT TO REMAIN IN FULL FORCE AND EFFECT.** The Line of Credit Agreement shall remain in full force and effect, as extended and amended hereby.

**SECTION 7. EFFECTIVE DATE.** This Agreement Extending and Amending Line of Credit Agreement shall take effect immediately upon its execution by the parties hereto.

Entered into this \_\_\_ day of June, 2023.

**TOWN OF SOUTHWEST RANCHES**

By: \_\_\_\_\_  
STEVE BREITKREUZ, MAYOR

ATTEST:

\_\_\_\_\_  
Russell C. Muniz, Town Clerk

By: \_\_\_\_\_  
EMIL LOPEZ, TOWN  
FINANCIAL ADMINISTRATOR

Approved as to form and correctness

\_\_\_\_\_  
Keith M. Poliakoff, J.D. Town Attorney

TD BANK, N.A.

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

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

Title: \_\_\_\_\_

1001.236.01

EXHIBIT A

FORM OF FIRST AMENDMENT TO NOTE

REGISTERED  
No. R- 1

REGISTERED  
Not to exceed  
\$20,000,000.00

UNITED STATES OF AMERICA  
STATE OF FLORIDA  
TOWN OF SOUTHWEST RANCHES  
EMERGENCY LINE OF CREDIT REVOLVING NOTE

The Emergency Line of Credit Revolving Note, dated May 23, 2018 (the “Note”) issued by the Town of Southwest Ranches, Florida (the “Town”) and held by TD Bank, N.A. (the “Bank”), is modified as follows:

1. The Maturity Date is extended from May 23, 2023 to May 23, 2028.
2. The combined not to exceed amount of this Note and the Town’s Taxable Emergency Line of Credit Revolving Note is \$20,000,000.

IN WITNESS WHEREOF, the Town of Southwest Ranches, Florida has issued this First Amendment to Note and has caused the same to be executed by the manual signature of the Mayor and attested by the manual signature of the Town Clerk and its corporate seal or a facsimile thereof to be affixed or reproduced hereon, all as of the \_\_\_ day of June, 2023.

TOWN OF SOUTHWEST RANCHES, FLORIDA

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

Consented to this \_\_\_\_ day of June, 2023

TD BANK, N.A.

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

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

Title: \_\_\_\_\_

EXHIBIT B

FORM OF TAXABLE NOTE

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EXHIBIT C

FORM OF DRAW CERTIFICATE

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## **DRAW CERTIFICATE**

The undersigned officer of the Town of Southwest Ranches, Florida, (the “Town”) DOES HEREBY CERTIFY THAT:

1. This certificate is being provided to TD Bank, N.A. (the “Bank”) in accordance with Resolution No. 2018-053, adopted by the Town on April 26, 2018 (the “Resolution”) and Resolution No. 2023-\_\_\_, adopted by the Town on June 8, 2023 (collectively, the “Resolution”) by and Section 11(b) of that certain Line of Credit Agreement dated May 23, 2018 between the Town and the Bank, as amended by an Agreement Extending and Amending Line of Credit Agreement dated June 8, 2023 (collectively, the “Agreement”), in order to permit the Town to make a draw on either the Tax Exempt Note or the Taxable Note (each as defined in the Agreement), which Notes have has been issued in the aggregate combined principal amount not to exceed \$20,000,000 (the “Notes”).

2. The Town hereby requests a draw on the [Taxable] [Tax Exempt] (circle one) Note in the amount of \$\_\_\_\_\_. The proceeds of this draw will be used to pay Costs of the Project (as defined in the Agreement). For this to be a draw on the Tax Exempt Note, an opinion of nationally recognized bond counsel must be attached hereto. For the draw to be a “bank qualified obligation,” the opinion must include an opinion to that effect.

3. The Town is, on the date of this certificate, existing and in good standing as a municipal corporation of the State of Florida, and as such has all requisite power and authority to issue debt and to carry on its business as now being conducted.

4. As of the date of this certificate, the undersigned is the duly elected and serving Town Administrator of the Town, as such is authorized to execute this certificate on behalf of the Town.

5. No Event of Default has occurred under the Agreement and no event has occurred and is continuing under the provisions of the Agreement which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default thereunder.

6. To the best knowledge of the undersigned, the Town is not in violation of any existing law, court or administrative regulation, decree or order and is not in default in the performance of any material obligations to be performed by the Town under any agreement, indenture, lease or other instrument to which the Town is subject or by which it or any of its assets are bound, which would materially adversely affect the ability of the Town to comply with the terms of the Agreement.

7. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body, pending or, to the knowledge of the undersigned, threatened against or affecting the Town, (a) restraining or enjoining the issuance or delivery of the Note; (b) contesting or questioning in any way the terms and provisions of the Agreement or the Note; or (c) in any manner questioning the proceedings and authority under which the Note

was issued or affecting the validity of the same or the security therefore, or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Agreement or would materially affect the ability of the Town to comply with the terms of the Agreement or the Note.

8. Neither the existence of the Town nor the title of the present officials or members to their respective offices are being contested and no authority or proceedings for the issuance of the Note have been modified, repealed, revoked or rescinded.

9. The Town has duly performed all of its obligations under the Agreement. All representations and warranties of the Town contained in the Agreement are true and correct as of the date hereof as if made on this date.

10. The undersigned does not, and to the best knowledge of the undersigned no member of the Governing Body of the Town has or holds any employment or contractual relationship with the Bank, except as fully and fairly disclosed in compliance with the provisions of Section 112.31 43, Florida Statutes.

11. There has been no material adverse change in the financial position of the Town, as presented in its financial audit for its fiscal year ended September 30, 202\_, since the date of such audit. All of the financial information provided by the Town to the Bank is accurate and correct as of the date hereof.

WITNESS my hand and the corporate seal of the Town this \_\_\_\_ day of \_\_\_\_\_, 202\_.

**TOWN OF SOUTHWEST RANCHES,  
FLORIDA**

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

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

Title: \_\_\_\_\_

[SEAL]

1001.2334.01

REGISTERED  
No. TR- 1

REGISTERED  
Not to exceed  
\$20,000,000.00

UNITED STATES OF AMERICA  
STATE OF FLORIDA  
TOWN OF SOUTHWEST RANCHES  
TAXABLE EMERGENCY LINE OF CREDIT REVOLVING NOTE

Interest Rate:

Maturity Date:

Dated Date:

Variable, as provided below

May 23, 2028

June \_\_, 2023

REGISTERED OWNER:

TD BANK, N.A.

MAXIMUM PRINCIPAL AMOUNT:

TWENTY MILLION DOLLARS (\$20,000,000)

KNOW ALL MEN BY THESE PRESENTS, that the Town of Southwest Ranches, Florida, a municipal corporation of the State of Florida (hereinafter called the "Town") for value received, hereby promises to pay to the Registered Owner identified above, or to registered assigns or legal representatives, but solely from the revenues hereinafter mentioned, on the dates hereinafter provided, the Principal Amount identified above, and to pay, solely from such revenues, interest on the Principal Amount remaining unpaid from time to time, at the interest rate or rates per annum set forth herein (the "Note Rate"), until the entire Principal Amount has been repaid. Principal of and interest on this Note will be paid by bank wire, check, draft or bank transfer delivered to the Registered Owner hereof at such address as may be provided in writing by the Registered Owner to the Town no later than the close of business on the fifth Business Day (as defined in the hereinafter described Line of Credit Agreement), next preceding each interest payment date (the "Record Date").

This Note shall bear interest at a variable rate calculated as follows:

Prime Rate - one hundred twenty-five basis points [1.25%].

The interest rate shall be adjusted on the first day of each month to the rate computed as of the last Business Day of the previous month.

"Prime Rate" means the rate quoted in the Wall Street Journal from time to time as the "prime rate," or, if the Wall Street Journal ceases publication or ceases to quote a "prime rate," such alternate interest rate as shall, in the reasonable opinion of the Registered Owner, approximate such rate. Interest on this Note shall be calculated on the basis of a 360 day year and will be paid in arrears for the actual number of days elapsed.

Payments of accrued interest will be due on the first day of each February, May, August and November, beginning on November 1, 2023, based on the amount drawn hereon and repaid by the Town from time to time pursuant to the Line of Credit Agreement between the Town and TD Bank, N.A. dated May 23, 2018, as amended by the Agreement Amending and Extending Line of Credit Agreement between the Town and TD Bank, N.A., dated June 8, 2023 (collectively, the “Line of Credit Agreement”). The outstanding principal of this Note and any accrued and unpaid interest shall be payable on the Maturity Date.

Each date when principal and/or interest on this Note is due is a “Payment Date.” If any Payment Date is not a Business Day, the payment otherwise due on such Payment Date shall be due on the preceding Business Day.

Any payment of principal of or interest on this Note not paid within fifteen (15) days of when due shall be assessed a late charge equal to six percent (6%) of the overdue payment.

This Note, along with the Town’s Emergency Line of Credit Revolving Note, as amended by a First Amendment to Note (collectively, the Tax-Exempt Note”) is issued in the combined aggregate principal amount not to exceed \$20,000,000, pursuant to the authority of and in full compliance with the Constitution and laws of the State of Florida, including particularly Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the Town (collectively, the “Act”), and Resolution No. 2023-\_\_\_, adopted by the Town Council on June 8, 2023, as amended and supplemented (the “Resolution”).

This Note and the interest hereon are secured by the Pledged Revenues (as defined in the Line of Credit Agreement). This Note and the interest hereon are further secured by the Town’s covenant to budget and appropriate in each Fiscal Year from its Legally Available Non-Ad Valorem Revenues, sufficient moneys to pay the principal of and interest on the Note, until this Note has been paid in full. Reference is hereby made to the Line of Credit Agreement for the provisions, among others, relating to the terms and security for the Note, the custody and application of the proceeds of the Note, the rights and remedies of the Registered Owner of the Note and the limitations thereon, and the extent of and limitations on the Town’s rights, duties and obligations, to all of which provisions the Registered Owner hereof for himself and his successors in interest assents by acceptance of this Note. All terms used herein in capitalized form, unless otherwise defined herein, shall have the meanings ascribed thereto in the Line of Credit Agreement.

Notwithstanding the foregoing, in no event shall the interest rate payable on this Note in any year exceed the maximum rate permitted by law.

**THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE A GENERAL DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN, OR A DEBT OR PLEDGE OF THE FAITH AND CREDIT OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL, LEGISLATIVE OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED BY THE REGISTERED OWNER OF THIS NOTE THAT SUCH REGISTERED OWNER SHALL NEVER HAVE THE RIGHT, DIRECTLY OR INDIRECTLY, TO REQUIRE OR COMPEL THE**

EXERCISE OF THE AD VALOREM TAXING POWER OF THE TOWN OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF FLORIDA OR TAXATION IN ANY FORM ON ANY REAL OR PERSONAL PROPERTY FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS NOTE OR FOR THE PAYMENT OF ANY OTHER AMOUNTS PROVIDED FOR IN THE RESOLUTION.

It is further agreed between the Town and the Registered Owner of this Note that this Note and the indebtedness evidenced hereby shall not constitute a lien upon the Project, or any part thereof, or any other tangible personal property of or in the Town. Neither the members of the governing body of the Town nor any person executing this Note shall be liable personally on this Note by reason of its issuance.

This Note shall be and have all the qualities and incidents of negotiable instruments under the law merchant and the Uniform Commercial Code of the State of Florida, subject to the provisions for registration of transfer contained herein and in the Resolution.

The principal amount of this Note may be prepaid, in whole or in part at any time without premium or penalty, and under certain circumstances described in the Line of Credit Agreement are required to be prepaid. Amounts repaid may be reborrowed in accordance with the terms of the Line of Credit Agreement.

This Note may be assigned by the owner of this Note, or any assignee or successor-in-interest thereto. Such assignment shall only be effective, and the Town obligated to pay such assignee, upon delivery to the Town Clerk of a written instrument or instruments of assignment in the form provided herein, duly executed by the owner of this Note or by his attorney-in-fact or legal representative, containing written instructions as to the details of assignment of this Note, along with the social security number or federal employer identification number of such assignee. In all cases of an assignment of this Note the Town shall at the earliest practical time in accordance with the provisions of the Line of Credit Agreement enter the change of ownership in the registration books; provided, however, the written notice of assignment must be received by the Town Clerk no later than the close of business on the fifth Business Day prior to a Payment Date in order to carry the right to receive the interest and principal payment due on such Payment Date. The Town may conclusively rely on the authenticity of any Form of Assignment delivered to it in accordance with this paragraph. The Town may charge the owner of this Note for the registration of every such assignment hereof an amount sufficient to reimburse it for any tax, fee or any other governmental charge required (other than by the Town) to be paid with respect to the registration of such assignment, and may require that such amounts be paid before any assignment of this Note shall be effective.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen, and to be performed precedent to and in the issuance of this Note exist, have happened and have been performed in regular and due form and time as required by the laws and Constitution of the State of Florida applicable hereto, and that the issuance of the Note does not violate any constitutional or statutory limitation or provision.

IN WITNESS WHEREOF, the Town of Southwest Ranches, Florida has issued this Note and has caused the same to be executed by the manual signature of the Mayor and attested by the manual signature of the Town Clerk and its corporate seal or a facsimile thereof to be affixed or reproduced hereon, all as of the \_\_\_\_ day of June, 2023.

TOWN OF SOUTHWEST RANCHES, FLORIDA

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

1001.2335.01



**FORM OF ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Note in the books kept by the Town for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

NOTICE: The signature of this assignment must correspond with the name as it appears upon the within Note in every particular, or any change whatever.

\_\_\_\_\_  
SOCIAL SECURITY NUMBER OR  
FEDERAL IDENTIFICATION NUMBER  
OF ASSIGNEE

[Form of Abbreviations]

The following abbreviations, when used in the inscription on the face of the within Note, shall be construed as though they were written out in full according to the applicable laws or regulations.

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with the right of survivorship and not as tenants in common

UNIFORM TRANS MIN ACT - \_\_\_\_\_ Custodian for \_\_\_\_\_ (Cust.) (Minor) under Uniform Transfers to Minors Act of \_\_\_\_\_ (State).

Additional abbreviations may also be used  
though not in the above list.

Name and address of assignee for payment and notice purposes

Notice: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Payment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Assignee: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

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

(954) 434-0008 Town Hall  
(954) 434-1490 Fax

Town Council  
Steve Breitkreuz, *Mayor*  
Jim Allbritton, *Vice Mayor*  
Bob Hartmann, *Council Member*  
Gary Jablonski, *Council Member*  
David Kuczenski, Esq., *Council Member*

Andrew D. Berns, MPA, *Town Administrator*  
Keith M. Poliakoff, JD, *Town Attorney*  
Russell Muniz, MPA, *Assistant Town Administrator/Town Clerk*  
Emil C. Lopez, CPM, *Town Financial Administrator*

## COUNCIL MEMORANDUM

**TO:** Honorable Mayor Breitkreuz and Town Council  
**VIA:** Andrew Berns, Town Administrator  
**FROM:** Emily Aceti, Community Services Manager  
**DATE:** 6/8/2023  
**SUBJECT:** Contract Award to Sun Up Enterprises Inc. for Town Hall Parking Lot Improvements

---

### Recommendation

Town Council consideration for a motion to approve the resolution.

### Unanimous Vote of the Town Council Required?

No

### Strategic Priorities

- A. Sound Governance
- B. Enhanced Resource Management
- D. Improved Infrastructure

### Background

The Town of Southwest Ranches elected to participate in the DAC Pilot program for its Hurricane Irma Direct Administrative Costs. Therefore, in February 2019, the Town requested to use these funds on a project to resurface, reshape, and provide drainage improvements to create a safer Town Hall parking lot. The parking lot floods even after minor rain events, which has created potholes and uneven pedestrian pathway surfaces. Because the parking lot serves a critical facility, the Town desires to mitigate the potential flood issues before the next disaster. In November 2022 FEMA approved the project (PW-8596 DR 4337).

Once engineered drawings were rendered, the Town advertised the Town Hall Parking Lot Drainage and Resurfacing Project (IFB 23-005) on April 19, 2023. The Town received six (6) responses on May 22, 2023.

<b>Bidder</b>	<b>Bid Amount</b>
Sun Up Enterprises, Inc	\$233,369.00
J&D Concrete Works Corp	\$268,689.29
HG Construction Development & Investment Inc.	\$276,010.96
Florida Blacktop Inc.	\$296,786.30
Huurr Homes LLC	\$301,439.00
R & D Paving LLC	\$335,278.00

After reviewing the bids, it was determined that Sun Up Enterprises, Inc was the lowest responsible and responsive bidder in accordance with the terms of this IFB and the Town's Procurement Code.

The work will include but, is not limited to milling and resurfacing at various depths as depicted on the plans, asphalt overlay, limerock and roadway reconstruction, thermoplastic traffic striping, reflective pavement markers, glass beading, signage, brush clearing, swale regrading and site restoration. The Town will utilize the stabilized grass parking during construction. Pedestrian access to the building will always be maintained.

The Substantial Completion of the Project shall occur no later than sixty (60) calendar days from date of issuance of the Notice to Proceed, and Final Completion shall occur no later than ninety (90) calendar days from date of issuance of the Notice to Proceed. As per the funding stipulations with FEMA and the State of Florida, the Town has until October 1, 2023 to complete the improvements.

**Fiscal Impact/Analysis**

The Town budgeted \$180,000 in the FY 2022-2023 budget for this project. This Irma Excess DAC project was obligated in full by FEMA for \$198,923.76. This money was funded at 90% Federal share, 5% State share and 5% Town share. The Town issued a purchase order to Kimley Horn and Associates for design plans and construction oversight totaling \$14,535.

However, Sun Up Enterprises, Inc's bid totals \$233,369. Therefore, a budget amendment utilizing unassigned Fund balance (Reserves) to the Fiscal Year 2022-2023 Town Budget is required as follows:

Capital Fund

Expenditure Increase:

Capital Project roadway maintenance (301-5300-539-62140)                      \$58,927

Revenues Increase

Transfer from General Fund (301-0000-381-38101)                      \$58,927

General Fund

Revenue Increase:  
Appropriated Fund Balance (001-0000-399-39900) \$58,927

Expenditure Increase:  
Transfer to Capital Fund (001-3900-581-91301) \$58,927

**Staff Contact:**

Rod Ley, P.E., Public Works Director  
Emily Aceti, Community Services Manager  
Emil C. Lopez, Town Financial Administrator  
Venessa Redman, Senior Budget and Procurement Officer

**ATTACHMENTS:**

Description	Upload Date	Type
Resolution - TA Approved	5/26/2023	Resolution
Exhibit A - Agreement (unsigned)	5/26/2023	Agreement

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## RESOLUTION NO.

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN AGREEMENT WITH SUN UP ENTERPRISES, INC. IN THE AMOUNT OF TWO HUNDRED THIRTY-THREE THOUSAND THREE HUNDRED SIXTY-NINE DOLLARS AND ZERO CENTS (\$233,369.00) TO COMPLETE THE TOWN HALL PARKING LOT DRAINAGE AND RESURFACING PROJECT; APPROVING A BUDGET AMENDMENT TO THE FISCAL YEAR 2022-2023 TOWN BUDGET; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY, TO ENTER INTO AN AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Southwest Ranches elected to participate in the DAC Pilot program for its Hurricane Irma Direct Administrative Costs; and

**WHEREAS**, in February 2019, the Town requested to use these funds on a project to resurface, reshape, and provide drainage improvements to create a safer Town Hall parking lot; and

**WHEREAS**, in November 2022, the Irma Excess DAC project was obligated in full by FEMA for One Hundred Ninety-Eight Thousand Nine Hundred Twenty-Three Dollars and Seventy-Six Cents (\$198,923.76); and

**WHEREAS**, this money is funded at 90% Federal share, 5% State share and 5% Town share; and

**WHEREAS**, on April 19, 2023, the Town advertised the Town Hall Parking Lot Drainage and Resurfacing Project (IFB 23-005); and

**WHEREAS**, the Town received six (6) responses on May 22, 2023; and

**WHEREAS**, after reviewing the bids, it was determined that Sun Up Enterprises, Inc. was the lowest responsible and responsive bidder in accordance with the terms of this IFB and the Town's Procurement Code; and

**WHEREAS**, Sun Up Enterprises, Inc.'s proposal totals Two Hundred Thirty-Three Thousand Three Hundred Sixty-Nine Dollars and Zero Cents (\$233,369.00); and

**WHEREAS**, the Town budgeted One Hundred Eighty Thousand Dollars and Zero Cents (\$180,000.00) for this project;

**WHEREAS**, a budget amendment is required to complete the project in Fiscal Year 2022-2023; 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 an agreement with Sun Up Enterprises, Inc. in the amount of Two Hundred Thirty-Three Thousand Three Hundred Sixty-Nine Dollars and Zero Cents (\$233,369.00) for the Town Hall Parking Lot Drainage and Resurfacing Project in substantially the same form as that attached hereto as Exhibit "A."

**Section 3.** The Town Council hereby approves a budget amendment utilizing unassigned Fund balance (Reserves) to the Fiscal Year 2022-2023 Town Budget as follows:

Capital Fund

Expenditure Increase:	
Capital Project roadway maintenance (301-5300-539-62140)	\$58,927
Revenues Increase	
Transfer from General Fund (301-0000-381-38101)	\$58,927

General Fund

Revenue Increase:	
Appropriated Fund Balance (001-0000-399-39900)	\$58,927
Expenditure Increase:	
Transfer to Capital Fund (001-3900-581-91301)	\$58,927

**Section 4.** The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into an agreement and to sign any and all documents 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 \_\_\_\_\_ day of \_\_\_\_\_ 2023 on a motion by

\_\_\_\_\_ and seconded by \_\_\_\_\_.

Breitkreuz \_\_\_\_\_  
Allbritton \_\_\_\_\_  
Hartmann \_\_\_\_\_  
Jablonski \_\_\_\_\_  
Kuczenski \_\_\_\_\_

Ayes \_\_\_\_\_  
Nays \_\_\_\_\_  
Absent \_\_\_\_\_  
Abstaining \_\_\_\_\_

\_\_\_\_\_  
Steve Breitkreuz, Mayor

Attest:

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

\_\_\_\_\_  
Keith Poliakoff, Town Attorney  
1001.2331.01

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**EXHIBIT A - AGREEMENT**



**AGREEMENT**

**BETWEEN THE**

**TOWN OF SOUTHWEST RANCHES**

**AND**

**SUN UP ENTERPRISES, INC.**

**FOR**

**“IFB 23-005 TOWN HALL PARKING LOT DRAINAGE AND RESURFACING  
PROJECT”**

**AGREEMENT FOR  
“IFB 23-005 TOWN HALL PARKING LOT DRAINAGE AND RESURFACING  
PROJECT”**

THIS IS AN AGREEMENT (“Agreement” or “Contract”) made and entered into on this \_\_\_\_ day of \_\_\_\_\_ 2023 by and between the Town of Southwest Ranches, a Municipal Corporation of the State of Florida, (hereinafter referred to as “Town”) and **SUN UP ENTERPRISES, INC.** (hereinafter referred to as “Contractor”).

**WHEREAS**, the Town desires to complete **IFB 23-005** (“Project”); and

**WHEREAS**, the Town advertised an Invitation for Bids, IFB No. 23-005 on April 19, 2023 (“IFB”); and

**WHEREAS**, 6 bids were received by the Town on May 22, 2023; and

**WHEREAS**, the Town has adopted Resolution No. 2023- \_\_\_\_ at a public meeting of the Town Council approving the recommended award and has selected **SUN UP ENTERPRISES, INC.** for award of the Project.

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

**Section 1: Scope of Services**

- 1.1 Upon execution of this Agreement, the Contractor agrees to perform the duties and responsibilities as defined herein and in the IFB to which this Agreement is EXHIBIT “A” and which is made a part hereof by this reference (“Work”). This Agreement, as well as all Exhibits, the IFB, the Contractor’s Bid, including all forms attached thereto, and all addenda, specifications, drawings, and plans, shall be hereinafter collectively referred to as the “Contract Documents” and incorporated herein by reference. To the extent of any conflict among the Contract Documents, the more stringent criteria relative to the Contractor’s performance of the Work shall govern over the less stringent criteria.
- 1.2 All Work rendered pursuant to this Agreement by Contractor shall be performed in accordance with the applicable standard of care for persons or entities performing similar work in Broward County, Florida. Contractor shall perform the Work in strict accordance with the requirements of this Agreement, all of the Contract Documents, good construction practices for this type of Work performed in Broward County, Florida and all applicable codes, ordinances, rules, laws, and regulations governing the Work, including, but not limited to, the Florida Building Code, along with Broward County Amendments to it.
- 1.3 By submitting its Bid and entering into this Agreement, Contractor represents that it has visited the location of the Work and informed itself of the conditions that exist at the site, including conditions of the facilities and difficulties associated with the execution of the Work. The existing site conditions have been accounted for within the Contract Price. Furthermore, all costs for the proper disposal of excess material generated on site in the

performance of the Work have likewise been included and accounted for within the Contract Price.

- 1.4 Contractor, in addition to any manufacturer's warranty for materials or equipment, hereby warrants that its work will be free of defects and deficiencies for a period of one year from the Final Completion Date. If any defects or deficiencies arise within the warranty period, the Contractor shall correct the defect or deficiency at no cost to the Town. Nothing herein shall be construed as a waiver, limitation, or release of any right or remedy that the Town may have for breach of this Agreement, which rights are cumulative and in no way limited by the warranty.

## **Section 2: Term of this Agreement and Agreement Time**

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

### **“IFB 23-005 TOWN HALL PARKING LOT DRAINAGE AND RESURFACING PROJECT”**

- 2.2 Town shall have the ability to terminate this Agreement as provided in “Section 18: Termination.”
- 2.3 Contractor shall not be entitled to any claim for damages against Town on account of hindrance or delays from any cause whatsoever. If, however, Contractor is delayed in the prosecution of the Work occasioned by an act of God, or by act or omission on the part of the Town, or due to changes ordered in the Work by Town which expand the scope and costs of the Work, such act, hindrance, or delay shall only entitle Contractor to receive an extension of time as its sole and exclusive remedy for such hindrance or delay and Contractor waives any and all other claims against Town.
- 2.4 Contractor shall be instructed to commence the Work by written instruction in the form of a Purchase Order issued by the Procurement and Budget Officer. The Notice to Proceed and Purchase Order will not be issued until Contractor's submission to Town of all required documents and after execution of this Contract by both Parties. Preliminary work, including submission of a project schedule, schedule of values, submittals, submittal schedule, and other documents required for permitting, and performance of work that does not require permits, shall commence within ten (10) days after the date of the Notice to Proceed. Contractor shall have ten (10) days after receipt of signed and sealed contract Drawings from Consultant to apply for construction permits to the applicable permitting authority. Except for the reimbursement of permit application fees as may be provided in the Contract Documents, Contractor shall not be entitled to compensation of any kind.
- 2.5 Time being of the essence, Town and Contractor agree that Contractor shall perform all Work under this Agreement and achieve substantial completion of the Work within **sixty (60) calendar days of the date of the Notice to Proceed**, subject to appropriate extensions of time as provided in this Agreement (“Substantial Completion Date”).

Substantial Completion of the Work at the Project shall be defined as the date upon which the last of all the following events have occurred:

- (i) All necessary approvals have been issued with respect to the Work by the appropriate governmental authorities;

- (ii) Restoration of all utilities to operation that have been affected during performance of the Work;
- (iii) All Work has been completed; and
- (iv) The Town's engineer/architect of record for the Project, Town of Southwest Ranches Drainage Improvements, has issued its written acceptance of the Work performed by Contractor and executed and delivered to the Town a Certificate of Substantial Completion.

2.6 Upon failure of Contractor to obtain Substantial Completion within the deadline stated in Section 2.5, as extended by any approved time extensions, Contractor shall pay to Town the sum of two hundred Dollars (\$200.00) for each day after the deadline for Substantial Completion, as extended by any approved time extensions, until Substantial Completion is obtained. After Substantial Completion, should Contractor fail to complete the remaining Work within the deadline stated in Section 2.5, as extended by approved time extensions thereof, Contractor shall pay to Town the sum of two hundred Dollars (\$200.00) for each day after the deadline for Final Completion, as extended by any approved extensions, until Final Completion is obtained. These amounts are not penalties but are liquidated damages to Town for its inability to obtain full beneficial occupancy and/or use of the Project. Liquidated damages are hereby fixed and agreed upon between the Parties based on (1) a mutual recognition of the impossibility of precisely ascertaining the amount of damages that will be sustained by Town as a consequence of Contractor's failure to timely obtain Substantial Completion; and (2) both Parties' desire to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of Contractor to complete this Contract on time. These liquidated damages shall apply separately to each portion of the Project for which a deadline for completion is given.

2.7 **Liquidated/Delay Damages** ("LD's") – In the event Contractor does not achieve Substantial Completion of the Work as defined in Paragraph 2.5 above, the parties acknowledge that any delay beyond the scheduled Substantial Completion Date may cause grave injury and damage to the Town by virtue of locating, moving to, and paying rent for temporary quarters, loss of use, extension of overhead costs, additional costs of design professionals and otherwise. The liquidated damages shall be paid by Contractor to Town weekly, immediately upon each such failure of Contractor to comply with the scheduled Substantial Completion Date. In the event that the Contractor fails to make timely payments to Town, the Town shall have the right to deduct liquidated damages from monies due or to become due to Contractor.

Final Completion of the Work shall be achieved no later than 30 calendar days from Substantial Completion or within **ninety (90)** days from the date of issuance of the Notice to Proceed, whichever occurs first. Final Completion Date is defined as the date when all punch list items have been completed as evidenced by the issuance of a written Certification of Final Completion by the Town's design professional for this Project, and all other conditions precedent to Final Completion as outlined below have been satisfied:

Contractor shall:

- (i) Deliver to the Town all warranties, final certifications, and similar documentation to confirm that all necessary approvals have been issued for the Work by the appropriate governmental authorities;
- (ii) Complete all Punch List items of Work;
- (iii) Remove temporary facilities from the site, along with construction tools and similar elements;
- (iv) Complete final clean-up including repair, replace and restore any items damaged by Contractor as a consequence of performing Work;
- (v) Deliver to the Town confirmation that all permits have been closed; and
- (vi) Confirm that the Town's engineer/architect of record for the Project, Town of Southwest Ranches Drainage Improvements, has issued written acceptance of the Work performed and executed and delivered to the Town a Certificate of Final Completion.

2.8 Contractor shall reimburse Town, in addition to liquidated damages, for all costs incurred by Consultant in administering the construction of the Project beyond the completion dates specified above, as extended by any approved time extensions. Consultant construction administration costs shall be in the amounts set forth in the contract between Town and Consultant, a copy of which is available upon request of the Contract Administrator. All such costs shall be deducted from the monies due Contractor for performance of Work under this Contract by means of unilateral credit Change Orders issued by Town as costs are incurred by Consultant and agreed to by Town.

2.9 Additionally, Contractor acknowledges that, among other damages the Town may suffer from Contractor's delays, the Town may be required to forfeit payment of, or may be required to make reimbursement for, grant monies from the Broward Surtax if the Project is not timely completed. Accordingly, Contractor hereby agrees to indemnify and hold Town harmless from and against any forfeitures or losses of such grant monies resulting from Contractor's delays. Contractor acknowledges and agrees that Town, at its sole option, may elect to recover from Contractor its actual damages, including the actual loss of such grant monies, in lieu of assessing liquidated damages, where such actual losses exceed the amount of liquidated damages. Section 2.7 shall survive termination of this Agreement pursuant to Sections 18C or 18E herein, or other termination for cause.

**Section 3: Compensation & Method of Payment**

3.1 Contractor shall render all Work to the Town under the Agreement for a total, not to exceed, **\$233,369.00** Dollars ("Contract Price").

3.2 Town shall not be liable for any cost increases or escalation associated with labor, services, materials, equipment, or any other costs that may arise during the performance of the Work. In the event, the cost of the Work exceeds the amounts defined in Section 3.1, Contractor shall pay such excess from its own funds and Town shall not be liable for any excess. The only exception shall be adjustments to the Contract Price pursuant to written Change Orders, duly executed by Town and Contractor in accordance with the terms and conditions

of this Agreement and with the same formality and dignity afforded the original Agreement.

- 3.3 Town and Contractor agree that payment will be subject to (a) the delivery of an invoice by Contractor to the Town once every 30 days, and (b) confirmation by Town, that the Work included in the invoice, has been performed in accordance with this Agreement. Upon verification by Town that the invoiced Work has adequately been performed, Town shall have thirty (30) days thereafter to pay the invoice.
- 3.4 Each invoice must be accompanied by all supporting documentation and other information reasonably requested by Town, including, but not limited to a Partial Release of Lien or Final Release of Lien as appropriate and in compliance with forms set forth in Chapter 713.20, Florida Statutes. Reference herein to Chapter 713, Florida Statutes is for convenience, and shall not be construed as a waiver of sovereign immunity or authority for imposition of liens against public property. Each progress payment shall be reduced by 5% retainage. Subject to other requirements of the Contract Documents, retainage shall be released after final completion of the Work and Town's receipt of acceptable reports and other documentation including certification of payment to subcontractors, if any, and a Final Release of Lien form set forth in Section 713.20, Florida Statutes, as well as satisfaction of the conditions included in Section 3.5 of this Agreement.
- 3.5 A final payment invoice must be accompanied by written notice from Contractor that the Work is complete. The Town's engineer/architect will make a final inspection and provide a punch list to Contractor of all portions of the work they deem to be incomplete or defective. Contractor shall immediately take such measures as are necessary to complete the punch list and remedy the deficiencies. Contractor's obligation to perform and complete the Work in strict accordance with the Contract Documents shall be absolute. The Town may refuse payment if (a) the Work is defective or damaged requiring correction or replacement, (b) it becomes necessary for the Town to correct defective Work, or (c) liens, claims, or other items have been asserted against the Town in connection with Contractor's performance of the Work entitling the Town to a set-off the amount due. No payment will be made for Work performed by the Contractor to replace defective work, for work which is not shown or ordered in the Contract Documents, or additional work performed by Contractor without prior written approval of Town.

#### **Section 4: Assignment**

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

#### **Section 5: Contractor's Responsibility for Safety**

- 5.1 Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work provided in order to prevent damage, injury or loss to (a) employees performing the Work and all other persons who may be affected thereby, (b) all the Work, materials and equipment to be incorporated therein and (c) other property at the site or adjacent thereto. Contractor shall comply with



all applicable laws, ordinances, rules, regulations, and orders, of any authority with jurisdiction regarding the safety of persons and property, in order to provide protection from damage, injury, or loss.

## **Section 6: Insurance**

- 6.1 Throughout the term of this Agreement and during applicable statute of limitation periods, Contractor shall maintain, in full force and affect, all of insurance coverages required within the Agreement and IFB.
- 6.2 All Insurance Policies shall be issued by companies that (a) are authorized to transact business in the State of Florida, (b) have agents upon whom service of process may be made in Broward County, Florida, and (c) have a rating of “A-” or better in accordance with A.M. Best’s Key Rating Guide.
- 6.3 All Insurance Policies shall name and endorse the following as an additional named insured:
- Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330-2628
- 6.4 All Insurance Policies shall be endorsed to provide that (a) Contractor’s Insurance is primary to any other Insurance available to Town or any other additional insured with respect to claims covered under the policy and (b) Contractor’s insurance applies separately to each insured, against who claims are made or suit is brought, and (c) that the inclusion of more than one insured shall not operate to increase the Insurer’s limit of liability. Self-insurance by Contractor shall not be acceptable for providing the required insurance coverages of this Agreement.
- 6.5 If the Contractor fails to submit the required insurance certificate, in the manner prescribed within the executed Agreement, at the time of execution of this Agreement, Contractor shall be deemed in default, and the Agreement shall be cancelled or rescinded without liability of the Town.
- 6.6 Contractor shall carry the following minimum types of Insurance:
- A. **WORKER’S COMPENSATION**: Worker’s Compensation Insurance is to apply to all employees in compliance with the “Workers’ Compensation Law” of the State of Florida and all applicable federal laws. Contractor shall carry Worker’s Compensation Insurance with the statutory limits, which shall include employer’s liability insurance with a limit of not less than **Five Hundred Thousand Dollars (\$500,000)** for each incident, and **Five Hundred Thousand Dollars (\$500,000)** for each disease. Policy(ies) must be endorsed with waiver of subrogation against Town.
- B. **BUSINESS AUTOMOBILE LIABILITY INSURANCE**: Contractor shall carry business automobile liability insurance with minimum limits of **Five Hundred Thousand Dollars (\$500,000)** per occurrence, combined single limits bodily injury liability and property damage. The policy must be no more restrictive than the latest edition of the business automobile liability policy without restrictive

endorsements, as filed by the Insurance Services Office, and must include all owned vehicles and all hired or non-owned vehicles.

C. **COMMERCIAL GENERAL LIABILITY:** Contractor shall carry Commercial General Liability Insurance with limits of not less than **Five Hundred Thousand Dollars (\$500,000)** per occurrence combined single limit for bodily injury and property damage, and not less than **One Million Dollars (\$1,000,000)** in the aggregate. The insurance policy must include coverage that is no more restrictive than the latest edition of the commercial general liability policy, without restrictive endorsements as filed by the Insurance Service Office (ISO), and the policy must include coverages for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, personal injury and explosion, collapse and underground (X-C-U). Personal injury coverage shall include coverage that has the employee and contractual exclusions removed. The ISO form of the policy must be acceptable to the Town.

6.7 Contractor shall provide Town with a copy of the Certificates of Insurance or endorsements evidencing the types of Insurance and coverages required by this Section prior to beginning Work under this Agreement and, at any time thereafter, upon request by Town.

6.8 Contractor's Insurance Policies shall be endorsed to provide Town with at least thirty (30) calendar days prior written notice of cancellation, non-renewal, restrictions, or reduction in coverages or limits. Notice shall be sent to:

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

And

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

6.9 Contractor's Commercial General Liability Insurance policy shall be on an "occurrence" basis only and shall not be a "claims-made" policy.

6.10 If any of Contractor's Insurance policies include a general aggregate limit and provides that claims investigation or legal defense costs are included in the general aggregate limit, the general aggregate limit that is required shall be at least five (5) times the occurrence limits specified above in this article.

6.11 The Contractor shall not commence operations, and/or labor to complete any of the Work pursuant to this Agreement until certification or proof of insurance issued directly by the insurance company underwriting department or insurance agent, detailing terms, and provisions of coverage, has been received and approved by the Town.

- 6.12 If any of Contractor’s initial insurance expires prior to the completion of the Work, renewal copies of Policies shall be furnished to Town at least thirty (30) days prior to the date of their expiration, and Town shall be an additional named insured by endorsement on all of Contractor’s renewal policies.
- 6.13 **UPON EXECUTION OF THIS AGREEMENT, CONTRACTOR SHALL SUBMIT TO TOWN COPIES OF ITS CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES REQUIRED HEREIN AND SPECIFICALLY PROVIDING THE ENDORSEMENT TO THE POLICIES THAT SHOWS THE TOWN OF SOUTHWEST RANCHES IS AN ADDITIONAL NAMED INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND CONTRACTOR’S WORK UNDER THE AGREEMENT.**
- 6.14 The official title of the owner is Town of Southwest Ranches. This official title shall be used in all insurance policies and documentation.
- 6.15 All required insurance policies shall preclude any insurer’s or underwriter’s rights of recovery or subrogation against Town with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.
- 6.16 Contractor shall ensure that any company issuing insurance to satisfy the requirements contained in this Agreement agrees that they shall have no recourse against Town for payment or assessments in any form on any policy of insurance.
- 6.17 The clauses “Other Insurance Provisions” and “Insured Duties in the Event of an Occurrence, Claim or Suit” as it appears in any policy of insurance in which Town is named as an additional named insured shall not apply to Town in any respect. Town shall use its best efforts to provide written notice of occurrence within thirty (30) working days after Town’s actual notice of such event.
- 6.18 Notwithstanding any other provisions of this Agreement, Contractor’s obligation to maintain all required insurance as specified in this Section of the Agreement shall survive the expiration or earlier termination of this Agreement.

**Section 7: Copyrights and Patent Rights**

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

**Section 8: Laws and Regulations**

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

**Section 9: Taxes and Costs**

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

**Section 10: Indemnification**

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

**Section 11: Non-discrimination**

Contractor shall not discriminate against any client, employee, or applicant for employment because of race, gender, age, color, religion, sex, national origin, physical or mental disability, or marital status. Contractor shall take affirmative action to ensure that applicants, subcontractors, Independent contractors, and employees are treated without discrimination in regard to their race, gender, age, color, religion, sex, national origin, physical or mental disability, or marital status. Contractor shall comply with all applicable sections of the Americans with Disabilities Act. Contractor agrees that compliance with this Article constitutes a material condition to this Agreement, and that it is binding upon the Contractor, its successors, transferees, and assigns for the period which Work is provided. Contractor further assures that all subcontractors and independent contractors are not in violation of the terms of this Section of the Agreement.

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

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

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

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

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

furnish information.

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

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

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

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

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

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

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

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

The applicant further agrees that it will refrain from entering into any contract or contract

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

### **Section 12: Sovereign Immunity**

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

### **Section 13: Prevailing Party Attorneys' Fees**

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

### **Section 14: No Third-Party Beneficiaries**

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

### **Section 15: Funding**

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

### **Section 16: Manner of Performance**

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

### **Section 17: Public Records**

The Town is subject to Chapter 119, Florida Statutes, "Public Records Law." No claim of confidentiality or proprietary information in any portion of a response will be honored unless a

specific exemption from the Public Law exists and is cited in the response. An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed. Contractor acknowledges the public shall have access at all reasonable times, to all documents and information pertaining to Town's contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the Town and the public to all documents subject to disclosures under applicable law.

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

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

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

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

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

## **Section 18: Termination**

The Agreement may be terminated upon the following events:

- A. **Termination by Mutual Agreement.** In the event the parties mutually agree in writing, this Agreement may be terminated on the terms and dates stipulated therein.
- B. **Termination for Convenience.** This Agreement may be terminated for Convenience by Town upon Town providing Contractor with **thirty (30) calendar day's** written notice of Town's intent to terminate this Agreement for Convenience. In the event that this Agreement is terminated by Town for Convenience, Contractor shall be paid ONLY for Work performed and approved by the Town as of the date of this Agreement is terminated, plus any direct and reasonable expense sustained up to the date of receipt of the written notice. In no event, shall Town be liable for consequential damages, including but not limited to, lost profits on Work not yet performed, and no other compensation or damages other than as set forth in this Section shall be paid to or recovered by Contractor in any legal proceeding against Town. Upon being notified of Town's election to terminate, Contractor shall immediately cease performing any further Work or incurring additional expenses. Contractor acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by Town, the adequacy of which is hereby acknowledged by Contractor, is given as specific consideration to Contractor for Town's right to terminate this Agreement for Convenience.
- C. **Termination for Cause.** In the event of a material breach by Contractor, Town shall provide Contractor written notice of its material breach. Contractor shall thereafter have fourteen (14) days from the date of its receipt of such notification to cure such material breach. If Contractor does not cure the material breach within that time period, Town may terminate this Agreement immediately. Material breaches shall include, but are not limited to, Contractor's violations of governing standards, failure to carry out the work in strict accordance with the Contract Documents, failure to supply sufficient work forces, violations of state or federal laws, violation of Town's policies and procedures, or violation of any of the terms and conditions of this Agreement. In the event that Town elects to terminate Contractor for cause as provided for in this Section, and Town's termination for cause is later determined by a court of competent jurisdiction to be improper, or in any other way wrongful or in breach of this Agreement, the termination will be automatically deemed converted to one for Convenience, and Contractor shall solely be paid and Contractor's damages are solely limited to the compensation Contractor would be entitled to pursuant to subparagraph (B) of this Section.
- D. **Termination for Lack of Funds.** In the event the funds to finance the Work under this Agreement become unavailable, Town may provide Contractor with thirty (30) days written notice of termination. Nothing in this Agreement shall be deemed or construed to prevent the parties from negotiating a new Agreement in this scenario. In the event that Town elects to terminate Contractor for lack of funds as provided for in this Section, and Town's termination for lack of funds is later determined by a court of competent jurisdiction to be improper, or in any other way wrongful or in breach of this Agreement, the termination will be automatically deemed converted to one for Convenience, and Contractor shall solely be paid and Contractor's damages are solely limited to the compensation Contractor would be entitled to pursuant to subparagraph (B) of this Section.



**E. Immediate Termination by Town.** In addition to any other grounds stated herein, Town, in its sole discretion, may terminate this Agreement immediately upon the occurrence of any of the following events:

1. Contractor's violation of the Public Records Act;
2. Contractor's insolvency, bankruptcy or receivership;
3. Contractor's violation or non-compliance with Section 11 of this Agreement;
4. Contractor's failure to maintain any Insurance required by Section 6 of this Agreement; or
5. Contractor's violation of Section 19 of this Agreement.

### **Section 19: Public Entity Crimes Information Statement**

Pursuant to Florida Statutes, Section 287.133: "A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list." Violation of this section by Contractor shall result in Town's immediate termination of this Agreement.

### **Section 20: Use of Awarded Bid by Other Governmental Units**

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

### **Section 21: Change Orders and Modification of Agreement**

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

### **Section 22: No Waiver of Rights**

Neither the Town's review, approval or payment for any of the Work required under this Agreement shall be construed to operate as a waiver of any of Town's rights under this Agreement or of any causes of action arising out Contractor's performance of the Work under this Agreement, and Contractor shall be and remain liable to the Town for all damages to the Town caused by the Contractor's negligent or improper performance of any of the Work furnished under this Agreement, irrespective of the Town's review, approval or payment for any of the Work under

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

**Section 23: Jurisdiction and Venue**

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

**Section 24: WAIVER OF RIGHT TO JURY TRIAL**

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

**Section 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.

**Section 26: Time is of the Essence; Liquidated Damages**

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

**Section 27: Days**

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

**Section 28: Written Mutual Agreement**

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

**Section 29: No Amendment or Waiver**

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

**Section 30: Severability**

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

**Section 31: Resolution of Disputes; Florida Statutes, Chapter 558 Not Applicable**

To prevent litigation, it is agreed by the parties hereto that Town Administrator shall solely decide all questions, claims, difficulties and disputes of, whatever nature, which may arise relative to this Agreement, including but not limited to, Contractor’s fulfillment of its obligations under this Agreement as to the character, quality, amount and value of any Work done and materials furnished, or proposed, to be done or furnished, under or by reason of, the Agreement. Further, to the extent required or permitted by the agreement between the Town and its design professional for this Project, the design professional shall have access to the Work, the right to conduct testing or inspections, to reject non-conforming work, and to review pay applications. The Town Administrator’s decision shall be reduced to writing, and a copy furnished to the Contractor within a reasonable time following submission to the Town of the question, claim, difficulty, or dispute as referenced above. The Town Administrator’s decision shall be final and conclusive. Additionally, the parties understand and agree that Florida Statutes, Chapter 558 does not apply to this Agreement or the Work, and that the parties hereby “opt out” of the procedures set forth at Chapter 558.

**Section 32: Notice**

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

If to Town:

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

With a copy to:

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

If to Contractor:

Sun Up Enterprises, Inc.  
16641 Waters Edge Dr.  
Weston, FL 33326

**Section 33: Miscellaneous**

- A. Ownership of Documents.** Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement by Contractor and all persons or entities employed or otherwise retained by Contractor are and shall remain the property of Town. In the event of termination of this

Agreement for any reason, any reports, photographs, surveys and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of Town and shall be delivered by Contractor to the Town Administrator within seven (7) days of termination of this Agreement for any reason. Any compensation due to Contractor shall be withheld until all documents are received by Town as provided herein.

- B. Audit and Inspection Rights and Retention of Records.** Town shall have the right to audit the books, records and accounts of Contractor that are related to this Agreement. Contractor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

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

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

- C. Independent Contractor.** Contractor is an independent contractor of Town under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees, or agents of the Town. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to the Work and services rendered under this Agreement shall be exclusively and solely those of Contractor. This Agreement shall not constitute or make Town and Contractor a partnership or joint venture.

- D. Conflicts.** Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Agreement. Contractor agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against Town in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her

expert opinion, which is adverse or prejudicial to the interests of Town in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude Contractor or any other persons from representing themselves in any action or in any administrative or legal proceeding.

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

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

**IN WITNESS WHEREOF**, the parties have made and executed this Agreement on the respective dates under each signature: **SUN UP ENTERPRISES, INC.**, and the TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the \_\_\_\_ day of \_\_\_\_\_ 2023.

**WITNESSES:**

\_\_\_\_\_  
\_\_\_\_\_

**CONTRACTOR:**

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_ (title)  
\_\_\_\_ day of \_\_\_\_\_ 2023

**TOWN OF SOUTHWEST RANCHES**

By: \_\_\_\_\_  
Steve Breitkreuz, Mayor  
\_\_\_\_ day of \_\_\_\_\_ 2023

By: \_\_\_\_\_  
Andrew D. Berns, Town Administrator  
\_\_\_\_ day of \_\_\_\_\_ 2023

**ATTEST:**

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

**APPROVED AS TO FORM AND CORRECTNESS:**

\_\_\_\_\_  
Keith M. Poliakoff, Town Attorney  
1001.2323.01



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

(954) 434-0008 Town Hall  
(954) 434-1490 Fax

Town Council  
Steve Breitkreuz, *Mayor*  
Jim Allbritton, *Vice Mayor*  
Bob Hartmann, *Council Member*  
Gary Jablonski, *Council Member*  
David Kuczenski, Esq., *Council Member*

Andrew D. Berns, MPA, *Town Administrator*  
Keith M. Poliakoff, JD, *Town Attorney*  
Russell Muniz, MPA, *Assistant Town Administrator/Town Clerk*  
Emil C. Lopez, CPM, *Town Financial Administrator*

## COUNCIL MEMORANDUM

**TO:** Honorable Mayor Breitkreuz and Town Council  
**VIA:** Andrew D Berns, Town Administrator  
**FROM:** Debra Ruesga, Deputy Town Clerk  
**DATE:** 6/8/2023  
**SUBJECT:** Amended Resolution for 12550 Luray Road Water and Sewer Services Agreement

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### Recommendation

To place this item on agenda for Council consideration and approval.

### Unanimous Vote of the Town Council Required?

No

### Strategic Priorities

A. Sound Governance

D. Improved Infrastructure

### Background

On April 27, 2023, the Town Council approved Resolution 2023-045, consenting to the City of Cooper City providing water services to 12550 Luray Road. The Water and Sewer Services Agreement with the City of Cooper City contained an ownership error. The prior agreement has since been corrected to reflect the proper owner, Emmaus Property Holdings LLC ("Owner"). Emmaus Property Holdings LLC ("Owner"). This Resolution solely corrects the property owner information contained in the previously approved water and sewer services agreement.

### Fiscal Impact/Analysis

None

**Staff Contact:**

Debra Ruesga, Deputy Town Clerk

**ATTACHMENTS:**

Description	Upload Date	Type
Amended Resolution - 12550 Luray Road - TA Approved	5/31/2023	Resolution
Corrected Water Agreement	6/1/2023	Backup Material



**RESOLUTION NO. 2023 - XXX**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AMENDING RESOLUTION 2023-045 TO CORRECT AN OWNERSHIP ERROR WITHIN THE WATER AND SEWER SERVICES AGREEMENT; CONSENTING TO THE CITY OF COOPER CITY PROVIDING WATER SERVICES TO 12550 LURAY ROAD, REAL PROPERTY LYING WITHIN THE TOWN OF SOUTHWEST RANCHES, FLORIDA; PROVIDING THAT NO FURTHER EXPANSION OF SERVICE SHALL BE PERMITTED WITHOUT THE EXPLICIT WRITTEN CONSENT OF THE TOWN; PROVIDING FOR A CERTIFIED COPY OF THIS RESOLUTION TO BE FURNISHED TO THE CITY OF COOPER CITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, On April 27, 2023, the Town Council approved Resolution 2023-045, consenting to the City of Cooper City providing water services to 12550 Luray Road. The Water and Sewer Services Agreement with the City of Cooper City contained an ownership error; and

**WHEREAS**, The prior agreement has since been corrected to reflect the proper owner, Emmaus Property Holdings LLC ("Owner"); and

**WHEREAS**, Emmaus Property Holdings LLC ("Owner"), has real property in the Town of Southwest Ranches, as described in Exhibit "A", attached hereto and incorporated herein by reference; and

**WHEREAS**, Owner is desirous of obtaining water services for the property, however, water services are not available from the Town of Southwest Ranches; and

**WHEREAS**, the City of Cooper City, a neighboring municipality, has capacity to provide this home with water services, and is willing to provide such services to the Owner; and

**WHEREAS**, the Owner is desirous of obtaining water services from the City of Cooper City, and has requested the Town's consent for the connection; and

**WHEREAS**, the Town of Southwest Ranches consents to the connection provided that no further expansion of service occurs without the specific written consent of the Town; and

**WHEREAS,** Owner agrees that they shall solely be responsible for all costs of connecting to the water facilities from the City of Cooper City, including all ongoing costs of water and maintenance of the utility connections.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AS FOLLOWS:**

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

**Section 2:** The Town of Southwest Ranches, Florida hereby consents to the City of Cooper City providing water services to 12550 Luray Road, provided that no further expansion of service shall be permitted without the explicit written consent of the Town.

**Section 3.** A certified copy of this Resolution shall be provided to the City of Cooper City.

**Section 4.** Effective Date. This Resolution shall become effective immediately upon its adoption.

**[SIGNATURES ON THE NEXT PAGE]**

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

Ranches, Florida, this \_\_\_\_ day of June, 2023 on a motion by

\_\_\_\_\_ and seconded by \_\_\_\_\_.

Breitkreuz \_\_\_\_\_  
Allbritton \_\_\_\_\_  
Hartmann \_\_\_\_\_  
Jablonski \_\_\_\_\_  
Kuczenski \_\_\_\_\_

Ayes \_\_\_\_\_  
Nays \_\_\_\_\_  
Absent \_\_\_\_\_  
Abstaining \_\_\_\_\_

\_\_\_\_\_  
Steve Breitkreuz, Mayor

Attest:

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

\_\_\_\_\_  
Keith Poliakoff, Town Attorney  
1001.2332.01

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**WATER AND SEWER SERVICE AGREEMENT**  
**FOR INDIVIDUAL OR COMMERCIAL CUSTOMER**

(Residential - Outside the City)

**FOR:** Emmaus Property Holdings LLC  
\_\_\_\_\_  
(NAME OF OWNER)

**LOCATION:** 12550 Luray Road, Southwest Ranches, FL 33330  
\_\_\_\_\_

**THIS AGREEMENT** effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is made and entered into by and between:

**THE CITY OF COOPER CITY**, a municipal corporation of the State of Florida, hereinafter referred to as the “CITY,” the Town of Southwest Ranches, a municipal corporation of the State of Florida, hereinafter referred to as the “TOWN,” and Emmaus Property Holdings LLC, an individual/ or commercial customer with a property address of 12550 Luray Road, hereinafter referred to as the “OWNER.” CITY, TOWN, and OWNER may hereinafter be collectively referred to as the “Parties.”

**WITNESSETH:**

**WHEREAS**, CITY is the owner and operator of a water treatment plant and sewage treatment plant, together with water distribution and sewage collection facilities known as COOPER CITY WATER AND SEWER SYSTEM; and

**WHEREAS**, OWNER controls certain real property in Broward County, Florida, as shown and described in Exhibit “A” attached hereto and made a part of hereof; and all references made in this Agreement to PROPERTY shall refer specifically to OWNER’S PROPERTY described in Exhibit “A” attached; and

**WHEREAS**, the PROPERTY is located in the TOWN; and

**WHEREAS**, OWNER desires to procure water or sewage disposal service from CITY for the PROPERTY; and

**WHEREAS**, Section 19-142 of the CITY’s Code of Ordinances authorizes the CITY to provide water distribution service outside of the CITY’s municipal boundaries, subject to Ch. 180, F.S., and the terms and conditions set forth in the CITY Code; and

**WHEREAS**, Section 180.19, F.S., authorizes a municipality to provide water or sewer services outside of its corporate limits and in another municipality, subject to the terms and conditions as may be agreed upon between such municipalities and the owner of the property receiving such service; and

**WHEREAS**, the Parties desire to enter into an agreement setting forth the mutual understandings and undertaking regarding the furnishing of said water and sewer services for the PROPERTY; and

{00509773.3 3451-0000000}

Revised 04/22

**WHEREAS**, the Cooper City Commission has approved this Agreement and has authorized the proper CITY officials to execute this Agreement by motion passed at a regular City Commission meeting on \_\_\_\_\_, 20\_\_\_\_; and

**WHEREAS**, the Town Council has approved this Agreement and has authorized the proper Town officials to execute this Agreement by motion passed at a regular Council meeting on \_\_\_\_\_, 20\_\_\_\_.

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings of CITY and OWNER and other good and valuable considerations, these parties covenant and agree with each other as follows:

**PART I - DEFINITIONS**

- A. The term OWNER shall refer to the Contracting Party in this Agreement who has an ownership interest in the PROPERTY.
- B. The term EQUIVALENT RESIDENTIAL CONNECTION, referred to in this Agreement as ERC, is defined for nonresidential / commercial customers in Section 19-72 of the CITY’s Code of Ordinances, as may be amended from time to time.
- C. The term PROPERTY refers to the real property described in Exhibit “A” attached to and incorporated into this Agreement.
- D. The term CITY COMMISSION shall refer to the City of Cooper City Commission.

**PART II - OWNER’S OBLIGATIONS**

A. CONTRIBUTION PAYMENTS FROM OWNER

The contribution charges (both water and sewer) shall be calculated according to rates set by Resolution of the City Commission. In addition to all rates, fees and charges otherwise imposed on consumers within the City, in accordance with Section 180.191, F.S., and Section 19-142 of the City Code, the OWNER shall pay to the CITY a surcharge equal to twenty-five percent (25%) of all charges for services provided under this Agreement. This surcharge payment shall be due and payable along with payment for all services provided by this Agreement.

Payment of the contribution charges are a condition precedent to the execution of this Agreement. The contribution charges applicable for this Agreement are summarized as follows:

CONTRIBUTION (WATER)

Non-Residential 8 # ERC's @ \$1,370.89 Per ERC, plus meter installation \$1,015.00, plus deposit \$480.00, and 25% surcharge \$3,115.53 for a total of \$15,577.65  
Total ERC's 8 (WATER)

CONTRIBUTION (SEWER)

Non-Residential .....# \_\_\_\_\_ ERC's @ \_\_\_\_\_ Per ERC  
Total ERC's \_\_\_\_\_ (SEWER)

OWNER has paid to CITY the sum of Fifteen Thousand Five Hundred and Seventy Seven dollars and sixty five cents

\$15,577.65 for THE CONTRIBUTION CHARGES DUE AT THE TIME THIS AGREEMENT IS APPROVED BY THE CITY COMMISSION.

**PART III. - MUTUAL COVENANTS**

A. EXCLUSIVE RIGHTS OF CITY

CITY shall have the exclusive right to furnish water distribution service or sewage collection service to consumers within the PROPERTY covered by this Agreement. Notwithstanding anything to the contrary, the CITY's duties and obligations, as set forth herein, shall be subject to the CITY having adequate water distribution service or sewage collection service capacity to serve the PROPERTY. The City shall have the sole authority and discretion to determine its water distribution service or sewage collection service capacity and its ability to serve the PROPERTY pursuant to this Agreement.

B. WELLS PROHIBITED EXCEPT FOR IRRIGATION

OWNER, Owner's successors and assigns, and the owners and occupants of buildings on OWNER'S PROPERTY shall not install or maintain any water wells except for irrigation purposes. These wells shall not be connected to any potable water system.

C. PROMULGATION OF REASONABLE RULES OF SERVICES

CITY shall have the right to promulgate, from time to time, rules and regulations relating to the furnishing of water distribution service and sewage collection service to consumers within the PROPERTY encompassed by this Agreement. Such rules and regulations may relate to, but are not limited to, rates, deposits, and connection charges and the right to discontinue services under certain conditions. OWNER hereby acknowledges and agrees that rates are subject to change at any time by CITY. The OWNER shall be subject to all local, state and federal ordinances, rules and regulations applicable to the services provided by the CITY, including, but not limited to, Chapter 19 and Chapter 25 of the CITY's Code of Ordinances, as may be amended from time to time.

D. CITY NOT LIABLE FOR OWNER’S OR CONSUMER’S PROPERTY

CITY shall not be liable or responsible for maintenance or operation of any pipes, pipelines, valves, fixtures or equipment on any of the properties of the customers, consumers or users on OWNER’S PROPERTY. In the event that CITY cannot provide sufficient water and sewer service as a result of the actions of any regulatory agency, then CITY’s sole obligation shall be to refund OWNER’s contribution charges as described in this Agreement.

E. OWNER’S RESPONSIBILITY

CITY shall provide one water line to the property and install a meter. Immediately upon installation of the meter, billing of base charges as well as applicable commodity charges will commence. OWNER is responsible to connect house lines to meter. The connections contemplated by this Agreement are for approved plans only, and the OWNER shall not permit the water line to be extended to service any location other than the Property without the expressed written consent of the CITY.

OWNER grants the CITY the right to access the property for purposes of inspecting and maintaining the meter and other utility infrastructure necessary for the City to provide service pursuant to this agreement.

F. EFFECTIVE DATE

Unless otherwise specified in this Agreement, this Agreement shall not be binding until fully executed, but once executed, it shall have a retroactive effect commencing from the date of the City Commission Meeting at which it was approved.

G. SYSTEM ON CONSUMER’S PROPERTY TO BE KEPT IN GOOD WORKING CONDITION

Each consumer of water distribution service or sewage collection service on OWNER’S PROPERTY shall keep all water pipes, service lines, connections and necessary fixtures and equipment on the premises occupied by said consumer, and within the interior lines of the lot occupied by the consumer in good order and condition. The sale of water by CITY to the consumer shall occur at the consumer’s side of the entire meter installation, but the obligation for the maintenance of the lines shall be as set forth above and applicable to CITY regulations.

H. DISCLAIMER

Any temporary cessations or interruptions of the furnishings of water and sewer service to the PROPERTY described herein, irrespective of duration, at any time caused by an Act of God, fires, strikes, casualties, accidents, power failures, necessary maintenance work, breakdowns, damage to equipment or mains, civil or military authority, riots or other cause beyond the control of CITY shall not constitute a breach of the provisions contained herein nor impose any liability upon CITY by OWNER, Owner’s successors and assigns.



I. SEVERABILITY

If and section, subsection, sentence, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining hereof.

J. RECORDING OF AGREEMENT

The provisions of this Agreement shall run with the land and be binding upon and inure to the benefits of successors to title to the property. This Agreement shall be recorded by CITY among the Public Records of Broward County, Florida, for the particular purpose of placing all owners or occupants of properties in OWNER'S PROPERTY connected to or to be connected to said water and sewer systems of CITY upon notice of each and every one of the provisions herein contained to the same extent and with the same force and effect as if said owners and occupants had joined with the parties to this Agreement in the execution thereof; and the acquisition or occupancy of real PROPERTY in OWNER'S PROPERTY connected to or to be connected to said water and sewer system of CITY shall be deemed conclusive evidence of the fact that the said owners or occupants have consented to and accepted the Agreement herein contained and have become bound thereby.

K. HOLD HARMLESS PROVISION

It is mutually agreed that CITY shall be indemnified and held harmless by the OWNER from any and all liability for damages if CITY'S obligations under this Agreement cannot be fulfilled as a result of any ruling or order by any other governmental or regulatory agency having jurisdiction over the subject matter hereof; and in such event, this Agreement shall be null and void and unenforceable by either party regarding that portion of the OWNER'S PROPERTY for which CITY cannot perform its obligation.

L. ATTORNEY'S FEES FOR LITIGATION

The parties agree that in the event that it becomes necessary for any party to this Agreement to litigate in order to enforce its rights under the terms of this Agreement, then, and in that event, the prevailing party shall be entitled to receive from the non-prevailing party reasonable Attorney's fees and the costs of such litigation, including appellate proceedings.

M. OWNER'S COVENANT

The OWNER warrants to the CITY that OWNER holds legal and beneficial title to the PROPERTY which is the subject of this Agreement, or, in the event that the OWNER is a tenant at the PROPERTY, that the OWNER has the legal authority to enter into and execute this Agreement. OWNER individually warrants that he or she has full legal power to execute this Agreement, either in their individual capacity or on behalf of the entity first named above, and has authority to bind and obligate OWNER with respect to all requirements contained in this Agreement.

**PART IV - NOTICE**

Whenever either party desires to give notice to the other, it shall be given by written notice, sent by prepaid certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place specified as the place for giving of notice, which shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the request, the parties designate the following as the respective places for the giving of notice:

FOR THE CITY OF COOPER:

City Manager  
9090 S.W. 50<sup>th</sup> Place  
Cooper City, Florida 33328

FOR THE OWNER:

Emmaus Property Holdings LLC  
12550 Luray Road  
Southwest Ranches, FL 33330

*Hayden Amrozquita, registered agent for Emmaus property Holdings, LLC*

FOR THE TOWN OF Southwest Ranches:

13400 Griffin Road  
Southwest Ranches, FL 33330  
Attn: Andrew Berns, Town Administrator

Notice so addressed and sent by prepaid certified mail, with return receipt requested, shall be deemed given when it shall have been so deposited in the United States mail.

**PART V - ADDITIONAL PROVISIONS**

A. EXHIBITS

The following exhibits are attached, as part of this Agreement and are incorporated into this Agreement:

EXHIBIT "A" – Legal Description of PROPERTY

EXHIBIT "B" – A copy of the site plan of the PROPERTY reduced to 8 ½ by 14" page size.

**SIGNATURE PAGES FOLLOW**

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be executed on the day and year indicated below:

**CITY OF COOPER CITY:**

ATTEST:

BY: \_\_\_\_\_  
MAYOR GREG ROSS

\_\_\_\_\_

DATE: \_\_\_\_\_

CITY CLERK

Approved as to legal form:

BY: \_\_\_\_\_  
CITY MANAGER

\_\_\_\_\_  
CITY ATTORNEY

DATE: \_\_\_\_\_

STATE OF FLORIDA            )  
COUNTY OF BROWARD       ) SS

BEFORE ME personally appeared \_\_\_\_\_ to me well known and known to me to be the person (s) described in and who executed the foregoing instrument, and acknowledged to and before me that \_\_\_\_\_ executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC STATE OF FLORIDA

My commission expires:

OWNER: *Haydee Amezcua*  
BY: *Registered Agent for Emmanuel Prop Holdings*  
NAME: HAYDEE AMEZCUITA  
DATE: June 1, 2023

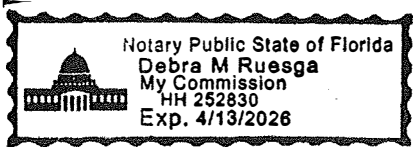
STAT EO FFLO RIDA )  
CO UNT Y O F BRO WA RD )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 1<sup>st</sup> day of June, 2023, by Haydee Amezcua, Registered Agent for Emmanuel Prop Holdings, Inc. (individual/ or business entity name), as O W N E R for said PRO PERT Y. He/she is personally known to me or has produced FL Driver License as identification.

WITNESS my hand and official seal, this 1<sup>st</sup> day of June, 2023.

*Debra M. Ruesga*  
NOTARY PUBLIC STATE OF FLORIDA

My commission expires:



**THE TOWN OF SOUTHWEST RANCHES**

ATTEST:

BY: \_\_\_\_\_  
STEVE BREITKREUZ

TITLE: MAYOR

\_\_\_\_\_  
CITY CLERK

DATE: \_\_\_\_\_

Approved as to legal form:

\_\_\_\_\_  
CITY ATTORNEY

STATE OF FLORIDA        )  
COUNTY OF BROWARD    ) SS

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (individual/ or business entity name), as OWNER for said PROPERTY. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC STATE OF FLORIDA

My commission expires:

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**2023 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT**

DOCUMENT# L18000165496

**Entity Name:** EMMAUS PROPERTY HOLDINGS, LLC

**Current Principal Place of Business:**

4700 SW 186TH AVE  
SOUTHWEST RANCHES, FL 33332

**Current Mailing Address:**

4700 SW 186TH AVE  
SOUTHWEST RANCHES, FL 33332

**FEI Number:** APPLIED FOR

**Certificate of Status Desired:** No

**Name and Address of Current Registered Agent:**

AMEZQUITA, HAYDEE E  
4700 SW 186TH AVE  
SOUTHWEST RANCHES, FL 33332 US

*The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.*

**SIGNATURE:** HAYDEE E. AMEZQUITA

03/14/2023

Electronic Signature of Registered Agent

Date

**Authorized Person(s) Detail :**

Title AMBR  
Name AMEZQUITA, HAYDEE E  
Address 4700 SW 186TH AVE  
City-State-Zip: SOUTHWEST RANCHES FL 33332

*I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.*

**SIGNATURE:** HAYDEE AMEZQUITA

PRESIDENT

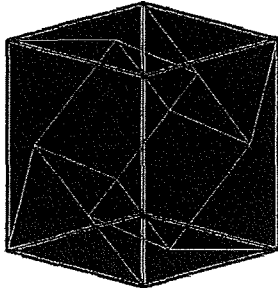
03/14/2023

Electronic Signature of Signing Authorized Person(s) Detail

Date

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## Exhibit A

### **Index Development Group (IDG)**

1622 Nw 36th

Miami, FL, 33142

(954) 376-9000

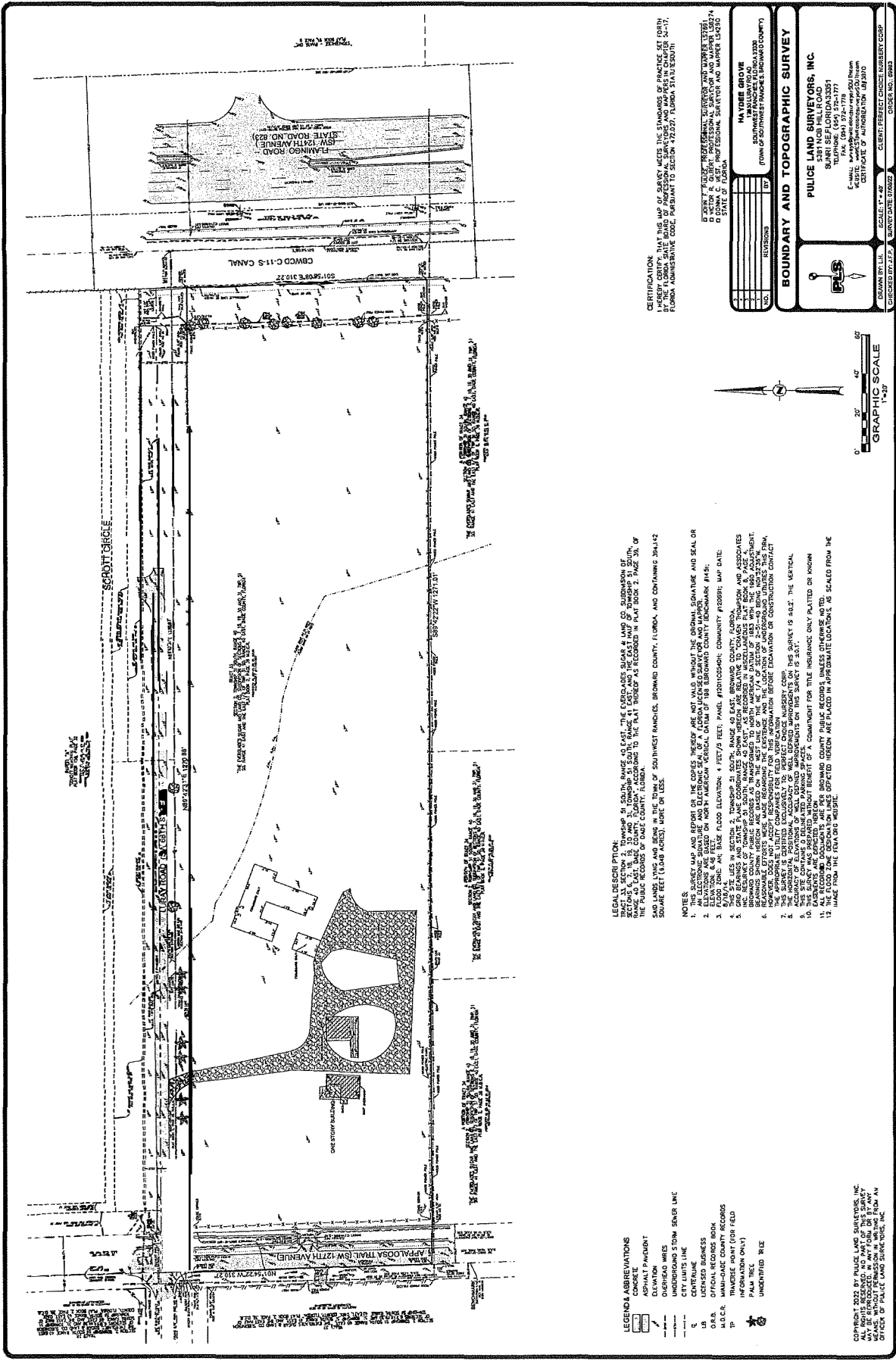
[NilArchitecture@gmail.com](mailto:NilArchitecture@gmail.com)

May 17, 2023

TRACT 33, SECTION 2, TOWNSHIP 51 SOUTH, RANGE 40 EAST, "THE EVERGLADES SUGAR & LAND CO. SUBDIVISION OF SECTIONS 6, 7, 18, 19, 30 AND 31, TOWNSHIP 51 SOUTH, RANGE 41 EAST, AND THE EAST HALF OF TOWNSHIP 51 SOUTH, RANGE 40 EAST, DADE COUNTY, FLORIDA", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 39, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA. SAID LANDS LYING AND BEING IN THE TOWN OF SOUTHWEST RANCHES, BROWARD COUNTY, FLORIDA, AND CONTAINING 394,142 SQUARE FEET (9.048 ACRES), MORE OR LESS.

Property ID: 5140.02.01.0230

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**CERTIFICATION**  
 I, JOHN T. POLICE, PROFESSIONAL SURVEYOR AND MAPPER (CERT. NO. 12051), DO HEREBY CERTIFY THAT THIS MAP WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A MEMBER IN GOOD STANDING OF THE FLORIDA STATE BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 461.17, FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 462.27, FLORIDA STATUTES.

POLICE LAND SURVEYORS, INC.	
5331 NOB HILL ROAD	BOCA RATON, FLORIDA 33433
TEL: (561) 974-1779	TEL: (561) 974-1779
FAX: (561) 974-1779	FAX: (561) 974-1779
EMAIL: JOHN@POLICESURVEYORS.COM	EMAIL: JOHN@POLICESURVEYORS.COM
WEBSITE: WWW.POLICESURVEYORS.COM	WEBSITE: WWW.POLICESURVEYORS.COM
CITY OF BOCA RATON	CITY OF BOCA RATON
TOWNSHIP OF BOCA RATON	TOWNSHIP OF BOCA RATON
COUNTY OF DADE	COUNTY OF DADE
STATE OF FLORIDA	STATE OF FLORIDA

**BOUNDARY AND TOPOGRAPHIC SURVEY**  
 DRAWN BY: J.T.P.  
 CHECKED BY: J.T.P.  
 SCALE: 1" = 40'  
 SURVEY DATE: 02/2022  
 CLIENT: PERFECT CHOICE INDEPENDENT CORP.  
 ORDER NO.: 10003

**LEGAL DESCRIPTION:**  
 PLATS 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

**NOTES**  
 1. THIS SURVEY MAP AND REPORT OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OR AN ELECTRONIC SIGNATURE AND ELECTRONIC SEAL OF A LICENSED SURVEYOR AND MAPPER.  
 2. THIS SURVEY MAP AND REPORT OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OR AN ELECTRONIC SIGNATURE AND ELECTRONIC SEAL OF A LICENSED SURVEYOR AND MAPPER.  
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**LEGEND OF ABBREVIATIONS**  
 CONCRETE  
 DRAINAGE  
 UNDERGROUND STORM SEWER LINE  
 CITY LIMITS LINE  
 UNDERGROUND BUSINESS  
 O.R.B. OFFICIAL RECORDS BOOK  
 M.D.C.R. MANHOLE COUNTY RECORDS  
 T.P. TRANSVERSE POINT (FOR FIELD)  
 PALM TREE  
 UNIDENTIFIED TREE

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