

**RESOLUTION NO. 2002-30**

**A RESOLUTION OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A MEMORANDUM OF UNDERSTANDING STUDY WITH THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (SFWMD) FOR THE USE AND MAINTENANCE OF A MIXED USE REGIONAL RECREATIONAL AND OPEN SPACE RECREATIONAL TRAIL SYSTEM ALONG THE C-11 CANAL; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO EXECUTE SAID AGREEMENT; PROVIDING AN EFFECTIVE DATE THEREFOR.**

**WHEREAS**, a Memorandum Of Understanding is expressly made subject to the statutory authority of SFWMD and Town of Southwest Ranches; and

**WHEREAS**, the Town and SFWMD acknowledge the desire to pursue various recreational activities for passive recreational activities including walking, jogging, hiking, and equestrian use; and

**WHEREAS**, the Town desires to develop and maintain a comprehensive mixed use recreational and open space recreational trail "loop" system to serve the recreational community; and

**WHEREAS**, the Town intends to utilize the Memorandum Of Understanding in order to complete the application and be considered for grant awards from the Florida Recreation Development Assistance Program (FRDAP).


**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 approves the Memorandum Of Understanding, attached as Exhibit "A," between the Town and the South Florida Water Management District, for the use and maintenance of a mixed use regional recreational and open space recreational trail system along the C-11 canal.


**Section 3:** 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 14th day of February 2002.




Mecca Fink, Mayor

Attest:

  
Arielle Haze Tyner, Town Clerk

Approved as to Form and Correctness:

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

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**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN THE**  
**SOUTH FLORIDA WATER MANAGEMENT DISTRICT,**  
**AND THE**  
**TOWN OF SOUTHWEST RANCHES**

This Memorandum of Understanding ("MOU") is entered into on, February 14, 2002, between the "Parties," the South Florida Water Management District, a public corporation of the State of Florida, (**the DISTRICT**) and the Town of Southwest Ranches, a municipal corporation of the State of Florida, (**the TOWN**).

**WITNESSETH THAT:**

WHEREAS, the **DISTRICT** is a public corporation of the State of Florida, created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Florida Statutes to include entering into contracts and agreements with public agencies, private corporations or other persons; and

WHEREAS, this **MOU** is expressly made subject to the District's statutory authority and responsibility to manage water resources on a regional and localized basis, either through regulation or through management and control of dikes, dams, canals and other facilities or lands of the District. This **MOU** does not confer any rights thereunder to third parties.

WHEREAS, the District acknowledges the desire by the public to pursue various recreational activities and offers no objection to the lands being used for passive recreational activities including walking, jogging, hiking, bicycling, fishing nature appreciation and equestrian use; and

WHEREAS, the District allows such passive recreational activities provided the activities are compatible with the resource preservation and other goals of the District, including environmental suitability but does not warrant that these lands or any lands or rights of way are suitable for the uses proposed by the Town; and

WHEREAS, the Town desires to develop and maintain a comprehensive mixed-use regional recreational and open space recreational Trail "Loop" system to serve the surrounding equestrian community, bicyclists, joggers and neighborhood residents; and

WHEREAS, in order to obtain grants from the state to develop such facilities the Town is required to obtain certain rights from the District to fulfill the grant conditions; and

WHEREAS, the Governing Board of the **DISTRICT**, at its March 14, 2002 meeting, has authorized entering into this **MOU** with the **TOWN**.

NOW, THEREFORE, the District and the Town, for and in consideration of the mutual covenants, obligations, and responsibilities cited herein, do covenant and agree as follows:

## ARTICLE 1 – LIMITS TO AUTHORITY

1.1 It is understood and acknowledged that the **TOWN** ability to participate in this **MOU** is limited to the development and maintenance of a comprehensive mixed-use regional recreational and open space recreational Trail “Loop” system to serve the surrounding equestrian community, bicyclists, joggers and neighborhood residents.

1.2 The legal description of the land to be developed is stated in “Exhibit A”, attached hereto and made an integral part hereof by reference.

1.3 This **MOU** grants the Town only those rights and privileges specified herein. This **MOU** does not confer to the Town the authority to contract, subcontract, or assign with third parties any aspect of the responsibilities assumed by the Town under this **MOU** without prior approval of the District. More specifically, the Town does not obtain authority to lease, license or otherwise grant or convey the Property; any portion thereof, access thereto, or rights thereunder to third parties.

1.4 Responsibilities of the District are as follows:

- a. Review the preliminary and final design of the proposed new trails and approve the design in writing prior to trail construction.
- b. Advise the Town of any discovered damage to trails and the need for any trail repair, restoration, realignment, or closure.
- c. Publicize and approve any emergency closure as soon as reasonable possible and re-opening of trails.
- d. Advise the Town of any land management activities or restrictions over and above routine maintenance activities that may affect the trails.
- e. The District must approve all grant compliance requirements prior to the Town seeking grant funding from the state of Florida.
- f. Should the Town seek Recreational Trails Program funding, and should a portion of the funding be requested for a portion of the trail to be located upon the District’s lands or rights of way, the District shall agree to the compliance requirements, including dedication of land, as stated in Exhibit “B,” Chapter 62S-2, F.A.C., attached hereto and made a part of this **MOU**.

1.5 Responsibilities of the Town (as administered by the Town of Southwest Ranches Parks and Recreation Department) are as follows:

- a. Obtain any additional real property rights or interest which may be necessary to satisfy the provisions of Chapter 62S-2 F.A.C.
- b. With District review and approval develop policies for managing the twenty five (25) mile comprehensive mixed-use recreational trail system including that seven (7) mile portion to be located within the rights of way listed on Exhibit “A”.
- c. Provide law enforcement and policing to enforce the Town’s trail policies.
- d. Develop and maintain project area identified in Exhibit “A” for public safety and

enjoyment while protecting natural resources.

- e. Provide to the District an itemized cost accounting of any expenditure for improvements within the right of way that may be subject to the provisions of Chapter 62S-2 F.A.C.
- f. Provide trail markers along the trails and informational signage at trailheads and other access points. Said markers and signage shall be located outside of District access, maintenance and staging areas.
- g. Not erect, install or plant any aboveground encroachment without prior District approval. In determining the acceptability of a proposed encroachment, the District's decision shall be final.
- h. Realign existing guard railing and fencing to improve suitability for use, with prior District approval.
- i. Close and mark accordingly those portions of the trail that may become inappropriate for public use.
- j. Enforce FDEP policies and rules within the project area.
- k. Seek, obtain or otherwise commit funding for development and maintenance of facilities of the project area.
- l. Should funding be obtained through state grant sources, coordinate application process with the District.
- m. Not charge a use fee or other fee for any portion of the trail located on the District rights of way listed on Exhibit "A".
- n.. Acknowledge that the District has priority use of the canal rights of way and shall not interfere with District access, construction, repair, replacement or maintenance activities.

1.6 Responsibilities of all Parties are as follows:

- a. The parties agree that the specific operating policies relating to the proposed new outdoor recreation facilities (for example: times of use, physical areas of use, enforcement of use regulations) are not addressed in this **MOU**. The parties shall enter into future agreements, or amend this **MOU** or other existing agreements, as may be necessary, to implement specific operating policies.
- b. Work together to cooperatively develop trail marking system that is effective in keeping the equestrian community, bicyclists, joggers and neighborhood residents on designated trails, conveys important trail and location information, minimizes impact to natural resources, and is aesthetically harmonious.
- c. All parties will operate according to the roles and responsibilities defined herein and will cooperatively and mutually support and assist each other in carrying out these duties.
- d. The parties acknowledge that this **MOU** is intended to operate within the terms and conditions of the aforementioned Operation of Recreational Development Agreement entered into between the District and the FDEP.
- e. Any amendments or supplements to this **MOU** will not be effective unless they are in writing and signed by all parties.

## **ARTICLE 2 – TOPICS OF AFFILIATION**

2.1 This **MOU** grants the **TOWN** only those rights and privileges specified herein. This **MOU** does not confer to the **TOWN** the authority to contract, subcontract, or assign with third parties any aspect of the responsibilities assumed by the **TOWN** under this **MOU** without prior approval of the

**DISTRICT.** More specifically, the **TOWN** does not obtain authority to lease, license or otherwise grant or convey the Property; any portion thereof, access thereto, or rights thereunder to third parties.

2.2 The **DISTRICT** wishes to retain the limitation on liability afforded it under Chapter 373.1395 Florida Statutes, the Town shall not charge any fees to use the **DISTRICT'S** lands or canal and levee rights of way described in Exhibit "A," attached hereto and made a part of this **MOU**. (The District does not waive its sovereign immunity in any respect.).

2.3 The **TOWN** assumes any all risks of personal injury, bodily injury and property damage attributed to the negligent acts or omissions of the **TOWN** and the officers, employees, servants, and agents thereof. The **TOWN**, as a corporation of the State of Florida that is self-funded for liability insurance, or has liability insurance, both public and property, with such protection being applicable to the **TOWN** officers, employees, servants and agents while acting within the scope of their employment with the **TOWN**. The **TOWN** and the **DISTRICT** further agree that nothing contained herein shall be construed or interpreted as (1) denying to the either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes, or (4) a waiver of limitation of liability protection as provided in Section 373.1395, Florida Statutes.

2.4 The **DISTRICT** is the owner of, or holds a lesser real property interest in, the lands situated within Broward County, Florida more specifically described in Exhibit "A" hereto.

2.5 These lands were obtained by the **DISTRICT** to serve the purposes of flood protection, water supply, protection of the C-11 basin and other water resources, and wildlife habitat.

2.6 Each party shall be responsible for respective costs associated with carrying out the responsibilities delineated herein.

### **ARTICLE 3 - PROJECT MANAGEMENT**

3.1 The Project Manager for the **DISTRICT** is Margaret McPherson, at 201 S. Andrews Avenue, Fort Lauderdale, Florida 33301, telephone (941) 713-3200, Ext. 4984. The Project Manager for the **TOWN** is John Canada, at 6589 S.W. 160<sup>th</sup> Avenue, Southwest Ranches, Florida 33331, telephone (951) 434-0008.

### **ARTICLE 4 - TERMINATION AND NOTICE**

4.1 This **MOU** may be terminated by the District for cause such as breach of this agreement or failure to maintain the project area. If this **MOU** is terminated, the Town shall restore the District's lands and rights of way to the condition that existed prior to its use as a trail. Termination shall be effective ninety (90) days after the date of written notice. Should the Town default or breach this agreement any reimbursement or grant moneys or locating of other suitable trail site(s) pursuant to 62S-2 F.A.C. shall be the responsibility of the Town.

4.2 This **MOU** automatically terminates when all the terms and conditions of Chapter 62S-2,

F.A.C. have been met, including maintenance of the facility/project for the required period under the grant.

4.3 Termination notice or any other notice related to this **MOU** will be satisfied by sending notice by certified U.S. mail to the following addresses of the parties:

As to the District:  
c/o Procurement Department  
South Florida Water Management District  
3301 Gun Club Road  
West Palm Beach, Florida 33416

As to the Town of Southwest Ranches:  
c/o John Canada, Town Administrator  
6589 S.W. 160<sup>th</sup> Avenue  
Southwest Ranches, Florida 33331

All correspondence to the **DISTRICT** under this **MOU** shall reference the **DISTRICT'S** Contract Number **C-13205**.

#### **ARTICLE 5 - STANDARDS OF COMPLIANCE**

5.1 The parties to this **MOU** assure that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this **MOU**.

5.2 The **TOWN**, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this **MOU**. The **DISTRICT** undertakes no duty to ensure such compliance, but will attempt to advise the **TOWN**, upon request, as to any such laws of which it has present knowledge.

#### **ARTICLE 6 - RELATIONSHIP BETWEEN THE PARTIES**

6.1 The parties to this **MOU** are independent entities and are not employees or agents of the other parties. Nothing in this **MOU** shall be interpreted to establish any relationship other than that of independent entities, between the **DISTRICT** and **TOWN**, their employees, agents, subcontractors, or assigns, during or after the term of this **MOU**.

#### **ARTICLE 7 - MAINTENANCE OF RECORDS**

The parties to this **MOU** shall maintain records and the other party shall have inspection and audit rights as follows:

A. Maintenance of Records: Each party shall maintain all financial and non-financial records and reports directly or indirectly related to this **MOU**. Such records shall be maintained and made available for inspection for a period of five years from the expiration or termination date of this **MOU**.

B. Examination of Records: Each party or its designated agent shall have the right to examine in

accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **MOU**. Such examination may be made only within five years from the expiration or termination date of this **MOU** and upon reasonable notice, time and place.

Records which relate to any litigation, appeals or settlements of claims arising from performance under this **MOU** shall be made available until a final disposition has been made of such litigation, appeals or claims.

## **ARTICLE 8 - GENERAL PROVISIONS**

8.1 In the event any provisions of this **MOU** shall conflict, or appear to conflict, the **MOU**, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.

8.2 Should any term or provision of this **MOU** be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **MOU**, to the extent that the **MOU** shall remain operable, enforceable and in full force and effect to the extent permitted by law.

8.3 Notwithstanding any provisions of this **MOU** to the contrary, the parties shall not be held liable for any failure or delay in the performance of this **MOU** that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but this **MOU** shall otherwise remain in effect.

8.4 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **MOU** by the parties shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this **MOU**. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this **MOU** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

8.5 This **MOU** states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this **MOU**.

8.6 This **MOU** may be amended only with the written approval of the parties hereto through a duly executed amendment.

8.7 The **TOWN** recognizes that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind **DISTRICT** in a contractual relationship unless they have been reduced to writing and signed by an authorized **DISTRICT** representative. This **MOU** shall



inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

8.8 Any dispute arising under this MOU which cannot be readily resolved shall be submitted jointly to the signatories of this MOU with each party agreeing to seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative disputes resolution mutually acceptable to the parties. A joint decision of the signatories, or their designees, shall be the disposition of such dispute.

ARTICLE 9 - APPLICABLE LAW

This MOU, and any work performed hereunder, is subject to the Laws of the United States and, where otherwise applicable, the Laws of the State of Florida. Nothing in this MOU will bind any of the parties to perform beyond their respective authority, nor does this MOU alter the legal rights and remedies which the respective parties would otherwise have, under law or at equity.

IN WITNESS WHEREOF, the parties or their duly authorized representative hereby executive this MOU on the date first written above.

Legal Form Approved  
SFWMD Office Of Counsel

SOUTH FLORIDA WATER MANAGEMENT DISTRICT,  
BY ITS GOVERNING BOARD

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

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

SFWMD Procurement Approved  
BY: \_\_\_\_\_  
DATE: \_\_\_\_\_

Frank Hayden, Director of Procurement

THE TOWN SOUTHWEST RANCHES

By: Mecca Fink  
Mayor Mecca Fink

By: John Canada  
John Canada, Town Administrator

ATTEST:  
Arielle Haze Tynor  
Arielle Haze Tynor, Town Clerk

Approved As To Form and Correctness:

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