

RESOLUTION NO. 2004-83

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA APPROVING THE SELECTION OF EARTH ADVISORS, INC. FOR MITIGATION DETERMINATION AND PERMITTING; APPROVING AN AGREEMENT WITH EARTH ADVISORS, INC. FOR SAID SERVICES; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT NOT TO EXCEED \$38,400; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Earth Advisors, Inc. ("Earth Advisors") has been successfully included within the Broward County Environmental Services Library; and

WHEREAS, the Broward County Environmental Services Library provides a listing of consultants who have satisfied the County's procurement criteria; and

WHEREAS, the Broward County Environmental Services Library may be used by the Town for the selection of an environmental consultant; and

WHEREAS, an environmental consultant is needed to provide wetlands determinations for the Sheridan site and the Frontier Trails site, as well as to assist the Town in permitting the Frontier Trails site; and

WHEREAS, the Town further endeavors to utilize an environmental consultant to maximize the use of the Sheridan site, which will help to shorten the negotiation timeframe with the School Board; and

WHEREAS, upon review of the County's procurement matrix, and based upon cost and its familiarity with the Town's projects, the Town believes that it is in the best interest of the Town to select Earth Advisors, Inc. to provide environmental services to the Town.

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. Based upon the utilization of Broward County's Environmental Services Library, and review of the County's matrix, the Town Council hereby approves the selection of Earth Advisor's Inc., for mitigation determination at the Sheridan site and the Frontier Trails site and to assist the Town in permitting the Frontier Trails site.

Section 3. The Town Council of the Town of Southwest Ranches hereby approves the Agreement, attached hereto as Exhibit "A," between the Town of Southwest Ranches and Earth Advisors, Inc., for mitigation determination and permitting consulting services for an amount not to exceed Thirty Eight Thousand Four Hundred Dollars (\$38,400).

Section 4. The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into an Agreement in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions and or deletions which they deem necessary and proper to effectuate the intent of this Resolution.

Section 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 10th day of June 2004, on a motion by Vice Mayor Knight and seconded by Council Member Maines.

Fink	<u>Y</u>	Ayes	<u>4</u>
Knight	<u>Y</u>	Nays	<u> </u>
Blanton	<u>A</u>	Absent or	
Maines	<u>Y</u>	Abstaining	<u>1</u>
Nelson	<u>Y</u>		

Mecca Fink
Mecca Fink, Mayor

ATTEST:

Shari Canada
Shari Canada, Town Clerk

Approved as to Form and Correctness:

Gary A. Poliakoff
Gary A. Poliakoff, J.D., Town Attorney
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Res 2004-83

AGREEMENT

BETWEEN

TOWN OF SOUTHWEST RANCHES

AND

EARTH ADVISORS, INC.

FOR

**MITIGATION DETERMINATION AND INITIAL PERMIT
DETERMINATION**

**MITIGATION DETERMINATION AND INITIAL PERMIT
DETERMINATION**

THIS IS AN AGREEMENT made and entered into by and between the Town of Southwest Ranches, a municipal corporation of the State of Florida, hereinafter referred to as "Town" and Earth Advisors, Inc., a Florida Corporation, hereinafter referred to as "Consultant."

WHEREAS, at the April 28, 2004 Town Council workshop, the Council reviewed the proposed elements and costs for the development of future Town parks; and

WHEREAS, it is estimated that 54 acres of land located within the Town's various parks will be used as wetlands, creating the need for mitigation; and

WHEREAS, the South Florida Water Management District (SFWMD) has offered the Town up to \$235,000 in funding for the permitting, delineation and coordination of the Town's wetland sites; and

WHEREAS, The South Florida Water Management District (SFWMD) would like to have the Town become the model for mitigation solutions; and

WHEREAS, over thirty times in the past nine months, Earth Advisors, Inc. has demonstrated its ability to assist the Town in the development of the environmental elements of the Town's grants, including initial details, cost estimates, graphics and meetings; and

WHEREAS, Earth Advisors, Inc. has been successfully included within the Broward County Environmental Services Library, which provides a listing of consultants who have satisfied the County's procurement criteria; and

WHEREAS, upon review of the County's procurement matrix, and based upon cost and its familiarity with the Town's projects, the Town believes that it is in the best interest of the Town to select Earth Advisors, Inc. to provide environmental services to the Town; and

WHEREAS, aside from providing assistance on the Sheridan site and the Frontier Trails site, Earth Advisors Inc.'s services will help to shorten the negotiation timeframe with the School Board; and

WHEREAS, the Town and Earth Advisor's Inc., mutually desire to enter into this Agreement.

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

Section 1: **SCOPE OF SERVICE**

Upon execution of this Agreement, the Consultant shall immediately commence services by coordinating with the Town Administrator, per Exhibit "A," Scope of Services ("Services").

Section 2: **COMPENSATION**

2.1 The Town and Consultant agree that this Agreement will not exceed Thirty Seven Thousand Eight Hundred Dollars (\$37,800), including all reimbursable expenses.

2.2 Prior to the commencement of any work shown in the Scope of Services, Town and Consultant shall specifically agree in an executed writing as to the specific work to be performed and the cost allocation for each particular task. Consultant shall not receive any compensation for work performed without written authorization signed by the Town.

2.3 Method of Payment: Town and Consultant agree that payment will be provided weekly, subject to the delivery of an invoice and a weekly performance report to the Town Administrator. Said payment will be made within ten (10) working days of receipt and the Town Administrator's approval of the invoice and weekly performance report.

Section 3: **TERM**

Town and Consultant agree that this Agreement shall be for a period of sixty (60) days, commencing upon its approval by Town. Based upon mutual agreement by both parties, this Agreement may be extended for optional periods, however, any increase in payment must be approved by the Town Council.

Section 4: **INDEMNIFICATION**

To the extent permitted by law, Consultant, shall defend, save harmless and indemnify Town and its officers, and employees from liabilities, damages, losses and costs including but not limited to reasonable attorneys' fees at all tribunal levels, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Consultant and other persons employed or utilized by the Consultant arising out of the Consultant's acts or omissions while providing all Services pursuant to this Agreement.

Section 5: **TERMINATION**

This Contract may be terminated by either party upon immediate written notice by the party that elects to terminate. In the event that this Agreement is terminated, Consultant shall be paid for any Services performed to the date this Agreement is terminated. Upon being notified of Town's election to terminate, Consultant shall refrain from performing further Services or incurring additional expenses.

Section 6: **RELATIONSHIP**

The Consultant shall perform all of the services enumerated in this Agreement solely as an independent contractor, and not as an employee of the Town. The Consultant, as directed by the Town Administrator, shall be responsible for directing its efforts to the manner and means of accomplishing the work to be performed hereunder by Consultant, pursuant to good and workmanlike practices. The priority, order, performance of services or safety practices shall not affect Consultant's status as an independent contractor and shall not relieve Consultant of the obligations assumed under this Agreement.

Section 7: **SUBCONTRACTING**

All substantive work to be performed pursuant to the terms of this Agreement shall be performed by Consultant, and no work shall be subcontracted to other parties or firms by Consultant without the prior consent of the Town Administrator.

Section 8: **OWNERSHIP RIGHTS**

All work performed and materials created under this Agreement shall be considered work product and shall be the exclusive intellectual property of Town.

Section 9: **ENTIRE AGREEMENT**

This Agreement incorporates and includes all prior negotiations and understandings applicable to the matters contained herein. The parties agree that this Agreement constitutes the entire understanding and agreement between the parties and supersedes previous Agreements and representations whether written or oral.

Section 10: **CONSTRUCTION**

This Agreement has been a joint effort of the parties, and the resulting documents, solely as a matter of judicial construction, shall not be construed more severely against one of the parties than the other.

Section 11: **FURTHER ASSURANCES**

Town and Consultant agree to execute, acknowledge, and deliver, and cause to be done, executed, acknowledged, and delivered, all such further documents and perform such acts as shall be requested of it to carry out this Agreement and give effect hereto solely consistent with applicable Federal, State and local laws, rules or regulations. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

Section 12: **COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute the same Agreement.

Section 13: **NO AMENDMENT OR WAIVER**

This Agreement may not be changed, altered, or modified except by an instrument in writing signed by all parties from whom enforcement of such change would be sought.

Section 14: **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 or be construed to be in full force and effect.

Section 15: **PROFESSIONAL ASSURANCE**

Consultant shall provide the highest degree of professional environmental specialties.

Section 16: **NOTICE**

Whenever either party desires to give notice unto the other, such notice must be in writing, return receipt requested, addressed to the party to whom it is intended at the place specified. For the present the parties designate the following as the respective places for giving of notice:

If to Town:

John Canada, Town Administrator
6589 S. W. 160 Ave.
Southwest Ranches, Fl. 33331

If to Consultant:

Earth Advisors, Inc.
Attn: John Harris, President
1109 North 21 Ave., Suite 109
Hollywood, Fl. 33020

Section 17: **APPLICABLE LAW & VENUE; WAIVER OF JURY TRIAL**

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction and venue of an appropriate Court of competent jurisdiction of the Seventeenth Judicial Circuit of Broward County, Florida. **BY ENTERING INTO THIS CONTRACT, CONSULTANT AND TOWN HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF OR RELATING TO THIS PROJECT.**

Section 18: **ENFORCEMENT; COSTS**

The Town and Consultant are the beneficiaries of this Agreement and as such, may enforce this Agreement by action at law or in equity. The prevailing party in any

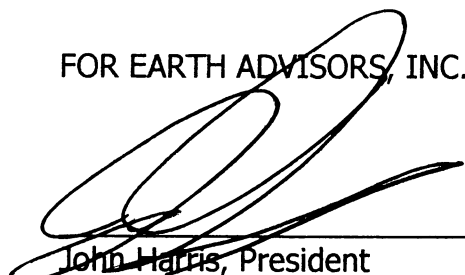
such action shall be entitled to reasonable attorneys' fees and costs at all tribunal levels.

IN WITNESS THEREOF, THE PARTIES HERETO HAVE MADE AND EXECUTED THIS agreement on the respective dates under each signature: TOWN OF SOUTHWEST RANCHES through its TOWN COUNCIL, signing by and through its Mayor, authorized to execute same by Council action on the 11th of June, 2004 and EARTH ADVISORS, INC., through its President, John Harris.

FOR EARTH ADVISORS, INC.

WITNESS:

Lee H.
Catrina A. Canada


John Harris, President

FOR TOWN OF SOUTHWEST RANCHES

Mecca Fink
Mecca Fink, Mayor

John Canada
John Canada, Town Administrator

Attest:

Shari Canada
Shari Canada
Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

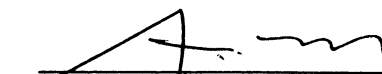

Gary Poliakoff, Town Attorney
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Exhibit "A"

Scope of Services

The proposed scope of work includes, but will not be limited to, the following tasks:

Mitigation Determination and Initial Permit Determination

Tasks will include, but not be limited to, the following:

- 1) Wetland delineation with tree survey and environmental features assessment for Sheridan Street site
- 2) Wetland delineation with tree survey and environmental features assessment for Frontier Trails site
- 3) Environmental permits at initial level of 30% of application submittals
- 4) Preparation and follow up for funding allocation from SFWMD