

RESOLUTION NO. 2008 – 011

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA APPROVING AN INDEPENDENT CONTRACTOR AGREEMENT WITH ELBERT WRAINS FOR ASSISTANT TOWN ADMINISTRATOR SERVICES, WHICH ESTABLISHES THE SCOPE, COMPENSATION AND BENEFITS FOR HIS SERVICES; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO ENTER INTO THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 27, 2007, the Town approved the fiscal year 2007-2008 budget, which allocated funds for a part-time Acting Assistant Town Administrator until such time as the position can be fully funded; and

WHEREAS, on November 15, 2005, the Town of Southwest Ranches entered into an agreement with New Community Strategies, Inc. (NCS) for Internal Audit Services; and

WHEREAS, on April 12, 2007, the Town Council approved an extended agreement for NCS for Interim Financial Administration Services; and

WHEREAS, Elbert Wrains has been the individual assigned to this position by NCS; and

WHEREAS, in addition to his financial expertise, Elbert Wrains has had previous administrative experience in several municipalities; and

WHEREAS, the Town is desirous of retaining Elbert Wrains and entering into an independent contractor agreement for Acting Assistant Town Administrator Services; and

WHEREAS, Elbert Wrains is intimately familiar with the Town's daily affairs and it is in the Town's best interest to retain his services as the Assistant Town Administrator.

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 Independent Contractor Agreement with Elbert Wrains for Assistant Town Administrator Services.

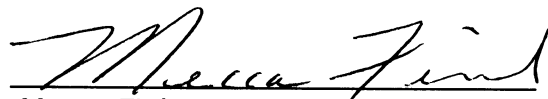
Section 3: The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into an Agreement in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions and/or deletions which they deem necessary to effectuate the intent of this Resolution.

Section 4: This Resolution shall become effective immediately upon its adoption.

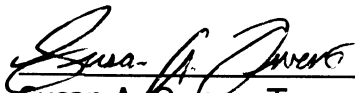
PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 1ST day of November, 2007, on a motion by Council Member Aster Knight and seconded by Vice Mayor Don Maines.

Fink	<u>Y</u>
Maines	<u>Y</u>
Breitkreuz	<u>Y</u>
Knight	<u>Y</u>
Nelson	<u>Y</u>

Ayes	<u>5</u>
Nays	<u>0</u>
Absent	<u>0</u>
Abstaining	<u>0</u> <i>20</i>


Mecca Fink, Mayor

ATTEST:


Susan A. Owens, Town Clerk

Approved as to Form and Correctness:

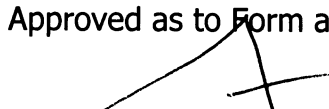

Gary A. Poliakoff, J.D., Town Attorney
FTL_DB: 1078972_1

Exhibit A

AGREEMENT

BETWEEN

TOWN OF SOUTHWEST RANCHES

AND

**ELBERT WRAINS, D/B/A GOVERNMENT FINANCIAL
CONSULTANTS**

FOR

ASSISTANT TOWN ADMINISTRATOR SERVICES

THIS IS AN AGREEMENT made and entered into by and between the Town of Southwest Ranches, municipal corporation of the State of Florida, hereinafter referred to as "Town" and Elbert Wrains, hereinafter referred to as "Consultant"

WHEREAS, on September 27, 2007, the Town approved the fiscal year 2007-2008 budget, which allocated funds for a part-time Acting Assistant Town Administrator until such time as the position can be fully funded; and

WHEREAS, on November 15, 2005, the Town of Southwest Ranches entered into an agreement with New Community Strategies, Inc. (NCS) for Internal Audit Services; and

WHEREAS, on April 12, 2007, the Town Council approved an extended agreement for NCS for Interim Financial Administration Services; and

WHEREAS, Elbert Wrains has been the individual assigned to this position by NCS; and

WHEREAS, in addition to his financial expertise, Elbert Wrains has had previous administrative experience in several municipalities; and

WHEREAS, the Town is desirous of retaining Elbert Wrains and entering into an independent contractor agreement for Acting Assistant Town Administrator Services.

WHEREAS, Elbert Wrains is intimately familiar with the Town's daily affairs and is desirous of entering into an independent contractor agreement for Acting Assistant Town Administrator Services.

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 Services**

Upon execution of this Agreement, the Consultant shall immediately commence operations as Assistant Town Administrator for the Town. Consultant shall provide services as specifically delineated in writing by the Town Administrator in a project description order, pursuant to the terms and conditions of this Agreement. Said order shall also specify a not to exceed fee for the specified

project. The not to exceed fee may be exceeded if approved in writing by the Town Administrator.

Section 2: **Compensation**

2.1 Compensation is to be paid at a rate of \$55 per hour, by the Town for completed services provided by Consultant on a fee-per-job basis as set forth in project description order.

2.2 Consultant shall submit an invoice specifically delineating the hours and work performed by the first and fifteen day of each month. Town agrees that payment will be provided within ten (10) business days of the Town Administrator's receipt and approval of an invoice in acceptable form. Payment may be withheld for failure of Consultant to comply, in whole or in part, with any term, condition, or requirement of this Agreement.

2.3 Consultant shall incur the principal expenses related to the services, and the Town shall only reimburse the Consultant for those expenses specifically set forth in writing in the project description order, prior to the expense being incurred.

2.4 The Town shall not reimburse Consultant for vehicular use, lodging, and travel expenses unless otherwise provided and agreed upon in the project description order.

Section 3: **Term**

Town and Consultant agree that the Term of this Agreement shall commence upon the execution of this Agreement by both parties and shall continue until the earlier of completion of the projects contemplated by this Agreement, or upon termination.

Section 4: **Office Space**

Town and Consultant agree that the Consultant maintains a separate business with his own work facility, equipment, materials, or similar accommodations and that the Town does not guarantee that office space within the Town Hall will be available to Consultant. The Town, however, recognizes that Consultant can assist the Town Administrator in performing the duties assigned, by having a physical presents in Town Hall and therefore, it will attempt to provide an office space, if possible. The Town will further attempt to provide a computer and

access to the Town's internet and intranet communications, as approved by the Town Administrator.

Section 5: **Termination**

Either party may terminate this Agreement with or without cause by written notice, sent by U.S. Certified Mail, Return Receipt Requested, to the other party at the address set forth in Section 7 hereof, effective ten (10) days after the delivery of said notice. In the event of termination Consultant shall solely be paid for any Work performed up to the date of termination and Consultant shall not be entitled to any additional compensation, of any kind or in any amount, from Town as a result of being terminated. Consultant specifically waives any and all rights to seek any additional sums or damages from Town due to being terminated other than Consultant's sole right to be paid for any Work performed up to the date this Agreement is terminated. Upon termination, Consultant shall immediately refrain from performing further Work for the TOWN or incurring additional expenses.

Section 6: **Indemnification, Liability & Insurance**

6.1 To the fullest extent permitted by law Consultant shall indemnify, and hold harmless the Town and the Town's officers and employees from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees and costs at all tribunal levels, including but not limited to, the trial level and all appeals, to the extent caused by the malfeasance, negligence, recklessness, or wrongful misconduct of Consultant and persons employed or utilized by Consultant in the performance of the Work pursuant to this Agreement. Nothing herein is intended to serve as a waiver of sovereign immunity by the Town to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter, whether arising out of this Agreement or any other contract.

6.2 Consultant shall also indemnify the Town and clients of the Town against all liability and loss in connection with, and shall assume full responsibility for, payment of the federal, state and local taxes or contributions imposed or required under any unemployment insurance, social security and income tax laws, with respect to the Consultant's employees engaged in performance of this Agreement.

6.3 Comprehensive General Liability Insurance: Consultant to provide comprehensive general liability insurance with minimum limit of coverage of One

Million (\$1,000,000) Dollars per occurrence. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include coverage for:

- (a) Premises and/or Operations;
- (b) Independent Contractors;
- (c) Broad Form Property;
- (d) Contractual;
- (e) Personal injury; and
- (f) Products/Completed.

6.3 Automobile Liability Insurance, Consultant to provide automobile liability insurance to cover any auto with a limit of coverage of at least three hundred thousand (\$300,000) dollars per occurrence.

6.4 Consultant shall provide to Town a certificate of Insurance and a copy of required insurance policies as required by this Section.

Section 7: **Notices**

7.1 Any notices or other communications which may be required or desired to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, if sent by electronic means (e.g. email), if sent by overnight courier service (e.g. FedEx), or if mailed by United States Certified Mail Return Receipt Requested, postage prepaid, and addressed to the respective party at the address set forth in the beginning of this Agreement. Any notice so given, delivered or made by mail shall be deemed to have been duly given, delivered or made: (i) on the date the same is deposited in the United States Mail in the manner specified herein above, (ii) on the date of receipt if sent by overnight courier service as evidenced by the courier service air bill, (iii) if hand delivered, on the date of actual receipt of same by the party to whom the same is to be given, delivered or made, or (iv) on the date of receipt if sent by electronic email as evidenced by the read receipt for such email. Either party may change the address to which notices are to be sent to such party by written notice to the other party specifying such change of address.

7.2 All written correspondences shall be addressed as follows, unless a party otherwise gives notice to the other party of such other address:

If to Town:

Christopher J. Russo, Town Administrator
6589 S. W. 160 Avenue
Southwest Ranches, FL 33331

With a copy to:

Gary A. Poliakoff, J.D.
3111 Stirling Road
Fort Lauderdale, FL 33312

If to Consultant:

Elbert Wrains
3511 N.W. 5th Ave.
Oakland Park, FL 33309

Section 8: **Relationship**

8.1 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 as 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 effect Consultant's status as an independent contractor and shall not relieve Consultant of the obligations assumed under this Agreement.

8.2 Consultant expressly agrees to perform specific services or work for specific amounts of money and controls the means of performing the services or work.

8.3 Consultant is responsible for the satisfactory completion of work or services that he performs or agrees to perform, and is or could be held liable for failure to complete the work or services.

8.4 Consultant may realize a profit or suffer a loss in connection with performing work or services.

8.5 The Consultant holds or has applied for a federal employer identification number, unless the Consultant is a sole proprietor who is not required to obtain a federal employer identification number under state or federal requirements.

8.6 No agent, employee, servant or subcontractor of the Consultant shall be or shall be deemed to be the employee, agent, servant or subcontractor of the Town. None of the benefits provided by the Town to its employees, including but not limited to, workers' compensation benefits and unemployment and health insurance, are available from the Town to the Consultant or the employees, agents, servants, or subcontractors of the Consultant.

8.7 Consultant shall be solely and entirely responsible for his own acts and the acts of the Consultant's agents, employees, servants and subcontractors during the performance of this Agreement.

8.8 Neither Consultant nor Town intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

8.9 Consultant is not entitled to unemployment compensation from Town of Southwest Ranches, as Consultant is an independent contractor and lacks the status of an employee, as described in Fla. Sta. § 443.036(21). Consultant shall assume full responsibility for the contributions required under any unemployment compensation or social security laws with respect to Consultant's employees engaged in performance of this Agreement.

8.10 Consultant is not entitled to workers' compensation coverage from the Town, as the Consultant is an independent contractor and lacks the status of an employee, as described in Florida Statute § 440.02(14)(d). Consultant shall be responsible to provide workers' compensation coverage for the Consultant's employees and any other legally required benefit under applicable law.

8.11 Consultant and the Town recognize that due to the nature of the Consultant's association with the Town, the Consultant will have access to and may acquire confidential and proprietary information relating to the business, assets and operations of the Town (collectively, "Confidential Information"), including, without limiting the generality of the foregoing, (i) any and all notes, compilations, reports, data, studies, summaries and other material obtained, collected, or prepared by or for the Town, (ii) any and all other information concerning the business and affairs of the Town, however documented, and (iii) any and all trade secrets concerning the business and affairs of the Town, data, know-how, and ideas, past, current and planned, development, current and

anticipated customer requirements, customer lists or information, price lists, market studies, business plans, computer software and programs and any other information, however documented, of or relating to the business or affairs of the Town that is a trade secret. Consultant acknowledges that the Confidential Information is of central importance to the business of the Town and that disclosure of it to or its use by others would cause substantial loss to the Town. Consultant agrees to keep the Confidential Information confidential and shall not disclose any Confidential Information to any person, firm or corporation, or use the same in any other way except in connection with and to promote the business of the Town. Further, any and all data, written materials, records or documents made, collected, or obtained by the during the Term, or after the termination of this Agreement, concerning the business or affairs of the Town shall be the property of the Town, and will be promptly delivered by the Consultant to the Town upon the termination of the independent contractor relationship for any reason, or upon the written demand of any member of management of the Town.

8.12 In the event of the Consultant's breach or threatened breach of this Confidentiality provision, the parties acknowledge that the Town will suffer irreparable harm and the Town will be entitled to an injunction restraining the Consultant from committing such breach. Nothing herein contained will be construed as prohibiting the Town from pursuing any other remedies available to it for such breach or threatened breach, including, without limitation, the recovery of money damages, and the Consultant shall pay any and all reasonable fees, disbursements, and other charges of the attorneys and collection agents, court costs, and all other costs of enforcement.

8.13 This provision shall survive the expiration or termination of this Agreement for any reason, and shall continue to be binding upon the Consultant and to inure to the benefit of the Town and its successors and assigns in accordance with their respective terms.

Section 9: **Right to Contract with Other Parties**

Nothing contained in this Agreement shall be deemed to restrict the Town's right to employ third persons as employees, or contract with other service providers as independent contractors to work in the trade on such terms as the Town and they may decide, nor to limit the Consultant's right to enter into similar agreements with other persons, corporations or entities.

Section 10: **Ownership Rights**

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

Section 11: **Rights of the Town**

In the performance of the work contemplated in this Agreement, the Consultant is an independent contractor with the authority to control and direct the performance of the details of the work. However, in order to secure satisfactory completion, the work contemplated in this Agreement must meet the approval of the Town and shall be subject to the Town's general right of inspection and supervision.

Section 12: **Rights and Duties of Consultant**

12.1 Consultant shall have sole control of the manner and means of performing the services under this contract, and shall complete it according to his or her own means and methods of work. Consultant shall direct and be responsible for the performance of the Consultant's own agents, employees, servants and subcontractors.

12.2 Consultant shall furnish, at the Consultant's own expense, all labor, materials, equipment, transportation and other items necessary to carry out the terms of this Agreement.

12.3 Consultant shall attain and retain any and all licenses and insurance as required by any federal, state, or local law for the performance of the services under this Agreement.

12.4 Consultant shall assume full responsibility to account for all federal, state, and local taxes for Consultant or Consultant's own employees engaged in the performance of this Agreement. Town of Southwest Ranches will issue IRS Form 1099 to Consultant for the proper accounting of payment for services.

Section 13: **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 14: **Construction**

This Agreement has been a joint effort of the parties, and the resulting documents shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The headings used in this Agreement are for convenience only and shall not be considered as part of this Agreement in any respect nor shall they in any way affect the substance of any provisions contained in this Agreement.

Section 15: **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 16: **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 17: **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 18: **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 19: **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. Venue for litigation concerning this Agreement shall be in Broward County, Florida.

BY ENTERING INTO THIS AGREEMENT, 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, THIS AGREEMENT.

Section 20: **Enforcement; Attorney's Fees & 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.

Section 21: **Compliance with Laws**

Consultant shall comply with all federal, state, and local laws, codes, ordinances, rules and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

Section 22: **Miscellaneous**

22.1 Performance: Consultant represents that all persons performing the services required under this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth herein in a skillful and respectable manner.

22.2 Materiality and Waiver of Breach: Consultant and Town 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.

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

The parties agree that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against the other in any legal or administrative proceeding related to performance under this Agreement in which he or she is not a party, unless compelled by court process. Further, the parties agree 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 the other party or in connection with any such pending or threatened legal or administrative proceeding related to the performance under this Agreement. The limitations of this section shall not preclude either party or any other persons from representing themselves in any action or in any administrative or legal proceeding related to the performance under this Agreement.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: Elbert Wrains, and TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the ____ day of _____, 2007.

WITNESSES:

Elbert Wrains, D/B/A
Government Finance Consultants

By: _____
Elbert Wrains

____ day of _____ 2007(SEAL)

TOWN OF SOUTHWEST RANCHES

By: _____
Mecca Fink, Mayor

_____ day of _____, 2007

By: _____
Christopher J. Russo, Town Administrator

ATTEST:

Susan A. Owens, Town Clerk

APPROVED AS TO FORM:

By: _____
Gary A. Poliakoff, J.D, Town Attorney