

**RESOLUTION NO. 2009 - 003**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA APPROVING AN AGREEMENT WITH LATITUDE 26 DESIGNS, INC. TO PROVIDE PUBLICATION AND GRAPHIC DESIGN SERVICES TO THE TOWN OF SOUTHWEST RANCHES; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on April 16, 2008, in furtherance of the Town's Procurement Code, the Town published a request for proposals seeking qualified firms for Publication and Graphic Design Services; and

**WHEREAS**, on May 12, 2008, the Town received three (3) responses to its request for proposals; and

**WHEREAS**, on June 5, 2008, the Town's Selection and Negotiation Committee ("SNC"), at a publicly advertised meeting, reviewed and ranked the three (3) responses; and

**WHEREAS**, the Town's SNC recommended and the Town Council approved the selection of Latitude 26 Designs, Inc., a Florida Corporation (hereinafter referred to as "Latitude 26") as the Town's top ranked vendor for publication and graphic design services; and

**WHEREAS**, the Town and Latitude 26 are desirous of formalizing its relationship through a formal Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Southwest Ranches, Florida:

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

**Section 2.** The Town Council hereby approves an Agreement between the Town of Southwest Ranches and Latitude 26 Designs, Inc., in substantially the same form as that attached hereto as Exhibit "A", for Publication and Graphic Design Services.

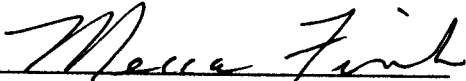
**Section 3.** The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into an Agreement in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions and/or deletions which they deem necessary and proper to effectuate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

**Section 4.** This Resolution shall take effect immediately upon its adoption.

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 2<sup>nd</sup> day of October, 2008, on a motion by Vice Mayor Jeff Nelson and seconded by Council Member Steve Breitkreuz.

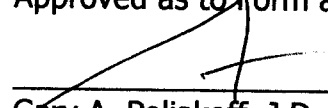
Fink	<u>Y</u>	Ayes	<u>3</u>
Nelson	<u>Y</u>	Nays	<u>0</u>
Breitkreuz	<u>Y</u>	Absent	<u>2</u>
Knight	<u>ABSENT</u>	Abstaining	<u>0</u>
Maines	<u>ABSENT</u>		

ATTEST:

  
\_\_\_\_\_  
Mecca Fink, Mayor

  
\_\_\_\_\_  
Susan A. Owens, CMC, Town Clerk

Approved as to Form and Correctness:

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

FTL\_DB: 1139248\_1

**AGREEMENT  
BETWEEN THE  
TOWN OF SOUTHWEST RANCHES  
AND  
LATITUDE 26 DESIGNS, INC.  
FOR  
PUBLICATION & GRAPHIC DESIGN SERVICES**

**THIS IS AN AGREEMENT** (“Agreement”) made and entered into on this \_\_\_\_\_ day of October, 2008 by and between the Town of Southwest Ranches, a Municipal Corporation of the State of Florida, (hereinafter referred to as “Town”) and Latitude 26 Designs, Inc., a Florida Corporation (hereinafter referred to as “Latitude 26”, unless otherwise stated).

**WHEREAS**, on April 16, 2008, in furtherance of the Town’s Procurement Code, the Town published a request for proposals seeking qualified firms for Publication and Graphic Design Services; and

**WHEREAS**, on May 12, 2008, the Town received three (3) responses to its request for proposals; and

**WHEREAS**, on June 5, 2008, the Town’s Selection and Negotiation Committee (“SNC”), at a publicly advertised meeting, reviewed and ranked the three (3) responses; and

**WHEREAS**, the Town’s SNC recommended and the Town Council approved the selection of Latitude 26 as the Town’s top ranked vendor for publication and graphic design services; and

**WHEREAS**, the Town and Latitude 26 are desirous of formalizing its relationship through this Agreement.

**NOW THEREFORE**, in consideration of the foregoing premises and the mutual terms and conditions herein, the Town and Latitude 26 hereby agree as follows:

**Section 1: Scope of Services**

- 1.1 The Scope of Services shall be as delineated in the request for proposal (“RFP”) for Publication and Graphic Design Services, as attached hereto as Exhibit “A”, which is explicitly incorporated into this Agreement by reference.
- 1.2 Upon execution of this Agreement, Latitude 26 shall perform work on an as needed basis to provide publication and graphic design services as it mainly relates to the publication of the Town’s monthly newsletter “The Southwest Rancher” in accordance with Latitude 26’s response to the RFP and the Town’s publication and graphic design needs (hereinafter referred to as the “Work”).
- 1.3 Latitude 26’s Work shall be provided to the Town based solely upon written requests provided by the Town Administrator or designee in advance of Latitude 26 providing any of the Work to the Town.
- 1.4 All work and services rendered by Latitude 26 pursuant to this Agreement shall be performed in accordance with the applicable standard of care for persons or entities performing these types of services for local governments in Broward

County, Florida. Latitude 26 shall perform such services in accordance with all applicable codes, ordinances, rules, laws and regulations governing the Work and the providing of services under this Agreement.

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

- 2.1 Town and Latitude 26 agree that Latitude 26 shall perform all work under this Agreement for a term of one (1) year, with both parties having the option to renew this Agreement by mutual written agreement on an annual basis. Provided that the compensation remains the same, said extension(s) shall not require further approval of the Town Council.
- 2.2 Town shall have the ability to terminate this Agreement as provided in “Section 17: Termination” herein.
- 2.3 Latitude 26 shall not be entitled to any claim for damages against Town on account of hindrance or delays from any cause whatsoever.
- 2.4 If Latitude 26 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 Latitude 26 to receive an extension of time as its sole and exclusive remedy.
- 2.5 Following Latitude 26’s receipt of a Purchase Requisition for Work generated by the Town Administrator or designee, Latitude 26 shall perform all Work under this Agreement within a timeframe mutually agreed upon by both Town and Latitude 26. In the event that Latitude 26 completes the Work before the end of the date or time indicated for completion on the Work Term, Latitude 26 is not entitled to any additional payment from Town other than the Agreement Sum, as defined in Section 3 of this Agreement.

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

- 3.1 Latitude 26 shall render all work to the Town under the Agreement at the prices quoted as delineated within the RFP.
- 3.2 Town shall not be liable for any cost increases or escalation associated with labor or materials 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 herein of the Agreement Sum, Latitude 26 shall pay such excess from its own funds, and Town shall not be required to pay any part of such excess. The only exception shall be any adjustments to the Agreement Sum pursuant to any written Change Order duly executed by Town and Latitude 26 in accordance with the terms and conditions of this Agreement, and with the same formality and of equal dignity as delineated in Section 1.3 above.

- 3.3 Town and Latitude 26 agree that payment under this Agreement will be subject to (a) the delivery of an appropriate invoice by Latitude 26 to Town, and (b) verification by the Town Administrator or designee that the Work has been performed in accordance with this Agreement. Upon verification by Town that the invoiced Work has been performed in accordance with this Agreement, Town shall have thirty (30) days thereafter to pay said invoice.

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

No assignment of this Agreement or of the Work hereunder by Latitude 26 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 Latitude 26, and no Work shall be subcontracted to other parties or firms without the written consent and approval of the Town Administrator.

#### **Section 5: Copyrights and Patent Rights**

Latitude 26 warrants that there has been no violation of copyrights or patent rights in manufacturing, producing, and/or selling the item(s) ordered or shipped as a result of its Work; and Latitude 26 agrees to indemnify and hold harmless Town, its employees, agents, or servants, its employees, agents, or servants against any and all liability, loss, or expense resulting from any such violation.

#### **Section 6: Insurance**

- 6.1 Throughout the term of this Agreement and for all applicable statutes of limitation periods, Latitude 26 shall maintain in full force and effect all of the insurance coverages as set forth in this Section.
- 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 Best's rating of A-VI or better.
- 6.3 All Insurance Policies shall name and endorse the following as additional insureds:
- The Town of Southwest Ranches.**
- 6.4 All Insurance Policies shall be endorsed to provide that (a) Latitude 26'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) Latitude 26'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 Latitude

26 shall not be acceptable as providing any of the required insurance coverages required in this Agreement.

- 6.5 If Latitude 26 fails to submit the required insurance certificate in the manner prescribed with the executed Agreement submitted to the Town at the time of execution of this Agreement, Latitude 26 shall be deemed in default, and the Agreement shall be rescinded. Under such circumstances, Latitude 26 may be prohibited from submitting future bids to Town, and shall not be entitled to any payments from Town.
- 6.6 Latitude 26 shall carry the following minimum types of Insurance:
- A. (If required by law) **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. Latitude 26 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 accident, 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**: Latitude 26 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**: Latitude 26 shall carry Commercial General Liability Insurance with limits of not less than **One Million Dollars (\$1,000,000)** per occurrence combined single limit for bodily injury and property damage. 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, 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, and personal injury. Personal injury coverage shall include coverage that has the employee and contractual exclusions removed.

- 6.7 Latitude 26 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 the performance of any Work under this Agreement and, at any time thereafter, upon request by Town.
- 6.8 Latitude 26'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  
Bert Wrains, Acting Town Administrator  
6589 SW 160th Avenue  
Southwest Ranches, Florida 33331**

**and**

**Keith M. Poliakoff, Esq.  
Becker & Poliakoff, P.A.  
3111 Stirling Road  
Fort Lauderdale, Florida 33312**

- 6.9 If Latitude 26's Insurance policy is a "claims-made" policy, then Latitude 26 shall maintain such Insurance Coverage for a period of five (5) years after the expiration or termination of the Agreement or any extensions or renewals of the Agreement. Applicable coverages may be met by keeping the policies in force, or by obtaining an extension of coverage commonly known as a reporting endorsement of tail coverage.
- 6.10 In any of Latitude 26's Insurance policies includes 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 no more than five (5) times the occurrence limits specified above in this article.
- 6.11 Latitude 26 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, detailing terms and provisions of coverage, has been received and approved by the Town.
- 6.12 If any of Latitude 26'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 listed as an additional named insured on all of Latitude 26's renewal policies.
- 6.13 **UPON EXECUTION OF THIS AGREEMENT, LATITUDE 26 SHALL SUBMIT TO TOWN COPIES OF ITS CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES REQUIRED HEREIN AND SPECIFICALLY PROVIDING THAT THE TOWN OF SOUTHWEST RANCHES IS AN ADDITIONAL NAMED INSURED OR**



**ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND LATITUDE 26'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 Latitude 26 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 of Town's actual notice of such event.
- 6.18 Notwithstanding any other provisions of this Agreement, Latitude 26's obligation to maintain all required insurance as specified in this Section of the Agreement shall survive the expiration or termination of this Agreement.

**Section 7: Laws and Regulations**

Latitude 26 agrees to abide by all applicable Federal, State, County, and local laws, rules, regulations, ordinances and codes in performing all Work under this Agreement.

**Section 8: Taxes and Costs**

All federal, state and local taxes relating to Latitude 26'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 Latitude 26.

**Section 9: Indemnification**

To the fullest extent permitted by law, Latitude 26 shall indemnify and hold harmless the Town, its agents and employees from and against all liabilities, claims, damages, losses, costs and expenses, including but not limited to reasonable attorneys' fees and costs at all trial and appellate levels arising out of or resulting from the performance of the Work, provided that any such liability, claim, damage, loss, cost or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is

caused by any negligent, reckless, intentional act, omission, or other wrongful act of Latitude 26, or any subcontractor, material or equipment supplier, or anyone directly or indirectly employed by any of them. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity on the part of Latitude 26 to Town or which may otherwise exist as to any other person described in this paragraph. In any and all claims against the Town, or any of their agents or employees by any employee of Latitude 26, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited, in any way, by any limitation on the amount or type of damages, compensation or benefits payable by or for Latitude 26 or any subcontractor and/or supplier under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. The foregoing indemnity from Latitude 26 shall be applicable to all losses, damages, expenses or claims for damage or injury to any person or property, resulting from Latitude 26's negligence, recklessness or other intentional or otherwise wrongful misconduct of Latitude 26, and persons employed or utilized by Latitude 26 relating to the performance of Work as described in the Agreement. The indemnification as provided in this paragraph shall be subject to a monetary limitation of **One Million (\$1,000,000.00) Dollars** per occurrence, the amount of which both the Town and Latitude 26 each acknowledge bears a reasonable commercial relationship to the Agreement. Latitude 26 shall promptly remedy all damage or loss to any property caused by Latitude 26, or any subcontractor, material or equipment, supplier or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The foregoing obligations of Latitude 26 are in addition to its other obligations running in favor of Town under this Agreement. Notwithstanding any other provisions of this Agreement, Latitude 26's duty to indemnify and defend Town as set forth in proposal shall survive the termination or expiration of this Agreement.

#### **Section 10: Non-discrimination**

Latitude 26 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, marital status or medical status. Latitude 26 shall take affirmative action to ensure that applicants, subcontractors, Independent Contractors, and employees are treated without discrimination in regard to their race, gender, color, religion, sex, national origin, disability, or medical status. Latitude 26 shall comply with all applicable sections of the Americans with Disabilities Act. Latitude 26 agrees that compliance with this Article constitutes a material condition to this Agreement, and that it is binding upon Latitude 26, its successors, transferees, and assignees for the period during which any Work is provided. Latitude 26 further assures that all subcontractors and independent contractors are not in violation of the terms of this Section of the Agreement.

#### **Section 11: Sovereign Immunity**

Nothing in this Agreement is intended nor shall it be construed or interpreted to waive or modify the Town's Sovereign Immunity defense or any other of the Town's immunities

and limitations on liability as provided for in Florida Statutes, as now worded or as may hereafter be amended and all Florida case law interpreting same.

**Section 12: 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 at all levels, the prevailing party shall be entitled to recover the reasonable costs of such action so incurred, including, without limitation, reasonable attorney's fees, costs and expert witness fees incurred.

**Section 13: 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 14: Funding**

The obligation of Town for payment to Latitude 26 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 15: Manner of Performance**

Latitude 26 agrees to perform its Work in a professional manner and in accordance with all applicable Local, State, County, and Federal laws, rules, ordinances, regulations and codes. Latitude 26 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. Latitude 26 agrees to furnish to Town any and all documentation, certification, authorization, license, permit, or registration currently required by applicable laws, rules, and regulations. Latitude 26 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 of Latitude 26 to comply with this paragraph shall constitute a material breach of this Agreement.

**Section 16: Public Records**

The Town is subject to Chapter 119, Florida Statutes, the "Public Records Law." No claim of confidentiality or proprietary information in all or any portion of a response will be honored unless a specific exemption from the Public Records Law exists and it is cited in the response. An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed. Latitude 26 understands that 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. Latitude 26's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by Town.

### **Section 17: 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 Latitude 26 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, Latitude 26 shall be paid ONLY for Work performed and approved by the Town as of the date of this Agreement is terminated and no other compensation or damages shall be paid to or recovered by Latitude 26 in any legal proceeding against Town. Upon being notified of Town's election to terminate, Latitude 26 shall immediately cease performing any further Work or incurring additional expenses. Latitude 26 acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by Town, the adequacy of which is hereby acknowledged by Latitude 26, is given as specific consideration to Latitude 26 for Town's right to terminate this Agreement for Convenience.
- C. **Termination for Cause.** In the event of a material breach by Latitude 26, Town shall provide Latitude 26 written notice of its material breach ("Notice of Breach"). Latitude 26 shall thereafter have thirty (30) days from the date of its receipt of Town's Notice of Breach to cure such material breach. If Latitude 26 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, Latitude 26's violations of governing standards, 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 Latitude 26 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, Latitude 26 shall solely be paid for all Work, and Latitude 26's damages are solely limited to the compensation Latitude 26 would have received if terminated by Town for Convenience as described in 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 or other funding source

applicable, Town may provide Latitude 26 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 Latitude 26 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, Latitude 26 shall solely be paid for all Work, and Latitude 26's damages are solely limited to the compensation Latitude 26 would have received if terminated by Town for Convenience as described in subparagraph (B) of this Section.

E. **Immediate Termination by Town.** Town, in its sole discretion, may terminate this Agreement immediately upon the occurrence of any of the following events:

1. Latitude 26's violation of the Public Records Act;
2. Latitude 26's insolvency, bankruptcy or receivership;
3. Latitude 26's violation or non-compliance with Section 10 of this Agreement;
4. Latitude 26's failure to maintain any Insurance required by Section 6 of this Agreement; or
5. Latitude 26's violation of Section 18 of this Agreement.

### **Section 18: Public Entity Crimes**

In accordance with the Public Entity Crimes Act (Section 287.133, Florida Statutes), a person or affiliate who has been placed on the convicted vendor list maintained by the State of Florida Department of General Services following a conviction for a public entity crime may not submit a proposal on a contract with Town, may not be awarded or perform work as a Latitude 26, supplier, or subcontractors, under a contract with Town, and may not conduct business with Town for a period of **thirty six (36) months** from the date of being placed on the convicted vendor list. Violation of this section by Latitude 26 shall result in Town's immediate termination of this Agreement.

### **Section 19: Use of Agreement By Other Governmental Units**

Latitude 26 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 Latitude 26's provision of Work or services to any other governmental unit.

### **Section 20: Change Orders and Modification of Agreement**

Town and Latitude 26 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 Agreement Sum under this Agreement if evidenced by a written Change Order executed by Town and Latitude 26, with the same formality and of equal dignity as delineated in Section 1.3 above.

**Section 21: No Waiver of Rights**

Neither the Town's or Town's designee'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 Latitude 26's performance of the Work under this Agreement, and Latitude 26 shall be and remain liable to the Town for all damages to the Town caused by Latitude 26'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 22: 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, irrespective of conflicts of law analysis, shall be governed by the substantive laws of the State of Florida.

**Section 23: WAIVER OF RIGHT TO JURY TRIAL**

**BY ENTERING INTO THIS AGREEMENT, LATITUDE 26 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 24: 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 25: Time is of the Essence**

Time is of the essence for the performance of all of Latitude 26's obligations under this Agreement.

**Section 26: Days**

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

### **Section 27: Entire Agreement; Written Mutual Agreement**

- 27.1 This Contract constitutes the entire agreement between the parties hereto. No change or modification of this Contract shall be valid unless in writing and signed by all parties hereto. No waiver of any provisions of this Contract shall be valid unless in writing and signed by the party against whom it is sought to be enforced. Further, the provisions, conditions, terms and covenants herein contained shall bind and the benefits and advantages shall inure to the respective successors, assigns, trustees, receivers and personal representatives of the parties hereto.
- 27.2 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.

### **Section 28: 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 29: 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 of so construed to be in full force and effect. 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 30: Resolution of Disputes**

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, Latitude 26'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. The Town Administrator's decision shall be reduced to writing, and a copy furnished to Latitude 26 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.

### **Section 31: 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.f.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:**

Bert Wrains, Acting Town Administrator  
6589 S. W. 160 Avenue  
Southwest Ranches, Florida 33331

**With a copy to:**

Keith M. Poliakoff, Esq.  
Becker & Poliakoff, P.A.  
3111 Stirling Road  
Fort Lauderdale, Florida 33312

**If to Latitude 26:**

Barbara Daniels  
Latitude 26, Inc  
2516 NE 21 Terrace  
Lighthouse Point, FL 33064  
(954) 786-1022  
(954) 786-1081 (fax)

**Section 32: Miscellaneous**

- A. **Ownership of Documents.** Unless otherwise provided by law, any and all intellectual property provided or created in connection with this Agreement by Latitude 26 and all persons or entities employed or otherwise retained by Latitude 26 are and shall remain the property of Town. In the event of termination of this Agreement for any reason, any designs, publications, photographs and other data and documents prepared by Latitude 26, whether finished or unfinished, shall become the property of Town and shall be delivered by Latitude 26 to the Town Administrator within seven (7) days of termination of this Agreement for any reason. Any compensation due to Latitude 26 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 Latitude 26 that are related to this Agreement. Latitude 26 shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

Latitude 26 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 five (5) years after termination or expiration of this Agreement, unless Latitude 26 is notified in writing by Town of the need to extend the retention period. Such retention of such records and documents shall be at Latitude 26's sole expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or five (5) 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 Latitude 26's records, Latitude 26 shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Latitude 26. 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, Latitude 26 shall respond to the reasonable inquiries of successors of Latitude 26, and allow successors of Latitude 26 to receive working papers relating to matters of continuing significance.

In addition, Latitude 26 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.** Latitude 26 is an independent contractor of Town in the performing of all Work and Services under this Agreement. All Work and Services provided by Latitude 26 pursuant to this Agreement shall be subject to the supervision of Latitude 26. In providing such services, neither Latitude 26 nor its agents shall act as officers, employees, representatives, 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 Latitude 26. This Agreement shall not constitute or make Town and Latitude 26 a partnership or joint venture.
- D. **Conflicts.** Neither Latitude 26 nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Latitude 26's loyal and conscientious exercise of judgment related to its performance under this Agreement.

Latitude 26 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, Latitude 26 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 Latitude 26 or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event Latitude 26 is permitted to utilize subcontractors to perform any services required by this Agreement, Latitude 26 agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this Section.

- E. **Contingency Fee.** Latitude 26 warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Latitude 26, 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 Latitude 26, 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 Latitude 26 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 Latitude 26 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 expresses 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.** Latitude 26 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 Latitude 26 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: LATITUDE 26 DESIGNS, INC., through Barbara Daniels and THE TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the \_\_\_\_ day of October, 2008.

**WITNESSES:**

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

**LATITUDE 26:**

LATITUDE 26 DESIGNS, INC.

By: \_\_\_\_\_  
 Barbara Daniels

\_\_\_\_ day of October, 2008

**TOWN:**

TOWN OF SOUTHWEST RANCHES

By: \_\_\_\_\_  
Mecca Fink, Mayor

\_\_\_\_ day of October, 2008

By: \_\_\_\_\_  
Bert Wrains,  
Acting Town Administrator

\_\_\_\_ day of October, 2008

**ATTEST:**

\_\_\_\_\_  
Susan A. Owens, CMC, Town Clerk

**APPROVED AS TO FORM AND CORRECTNESS:**

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

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