

**RESOLUTION NO. 2011 – 008**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN INTER-LOCAL AGREEMENT BETWEEN THE TOWN OF SOUTHWEST RANCHES AND THE SOUTH BROWARD DRAINAGE DISTRICT RELATING TO A PILOT PROJECT TO HELP ENSURE THE TOWN'S WATER QUALITY AND TO HELP REDUCE FLOODING WITHIN THE TOWN; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO THE INTER-LOCAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Southwest Ranches (Town) entered into a Memorandum of Understanding ("MOU") with the South Florida Water Management District ("SFWMD"), the South Broward Drainage District ("SBDD"), and the Department of Agriculture and Consumer Services ("DACS") to help ensure the Town's water quality and to help reduce flooding within the Town; and

**WHEREAS**, the MOU enacts a pilot project to study the water quality and discharge as it relates to the SBDD's S9/S10 Basin and it also attempts to alleviate some of the Town's flooding by modifying the operating schedule for the C-12, C-13, and C-13A Canals; and

**WHEREAS**, this pilot project involves the installation of a drainage culvert, headwall, fencing, sluice gates, motors, and a telemetry system; and

**WHEREAS**, SBDD has an existing telemetry system in place that operates all the District's facilities. This system is operated by Data Flow Systems, which is a sole source provider to SBDD for the SCADA system that operates the District's facilities. As such, SBDD is responsible for the purchase and installation of any new telemetry system within the District. The telemetry system includes the RTU/control box, water level recorder (PAT), electrical, and security fencing; and

**WHEREAS**, the Town would like to enter into an inter-local agreement with the SBDD to purchase and to install the telemetry system. The Town will reimburse the District for the related approved costs.

**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 agrees to enter into an inter-local agreement, in substantially the same form as that attached hereto as Exhibit "A", with the South Broward Drainage District as it relates to a pilot project to help ensure the Town's water quality and to help reduce flooding within the Town.

**Section 3:** The Town Council of the Town of Southwest Ranches hereby authorizes the Mayor, Town Administrator, and Town Attorney to enter into an inter-local 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 become effective immediately upon its adoption.


**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 3<sup>rd</sup> day of November, 2010, on a motion by Council Member McKay, seconded by Council Member Jablonski.

Nelson	<u>AYE</u>
Fisikelli	<u>AYE</u>
Breitkreuz	<u>AYE</u>
Jablonski	<u>AYE</u>
McKay	<u>AYE</u>

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

  
\_\_\_\_\_  
Jeff Nelson, Mayor

ATTEST:

  
\_\_\_\_\_  
Debra Doré-Thomas, CMC, Town Clerk

Approved as to Form and Correctness:

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

ACTIVE: 3094317\_1

INTERLOCAL AGREEMENT

Between

SOUTH BROWARD DRAINAGE DISTRICT

And

TOWN OF SOUTHWEST RANCHES

Relating to

DESIGN, PURCHASE AND INSTALLATION OF A TELEMTRY SYSTEM AND  
RELATED EQUIPMENT FOR DRAINAGE IMPROVEMENTS LOCATED AT THE  
DISTRICT'S CANAL NO. 12, CANAL NO. 13 AND CANAL NO. 13A

THIS IS AN INTERLOCAL AGREEMENT (the "Agreement") made and entered into by and between the South Broward Drainage District, an independent special district created pursuant to Chapter 98-524, Laws of Florida, as amended (hereinafter referred to as "District") and the Town of Southwest Ranches, a not-for-profit Florida municipality formed pursuant to Chapter 2000-475, Laws of Florida, (hereinafter referred to as "Town") and hereinafter collectively referred to as "the Parties"

WITNESSETH:

**WHEREAS**, the District is charged with the responsibility of effecting drainage and water management within its geographical boundaries and within its area of jurisdiction in Broward County, Florida; and

**WHEREAS**, pursuant to Chapter 373, Florida Statutes, and the rules promulgated thereunder, the Town, the District, South Florida Water Management District and the State of Florida Department of Agriculture and Consumer Services have entered into a Memorandum of Agreement ("MOA") by mutual agreement for a pilot project to investigate revisions to the water management system operations and water quality improvements within the District's S9/S10 Basin; and

**WHEREAS**, the Town has determined that it will be beneficial to the Town and District if the Town were to construct culverts and gated control structures hereinafter referred to as "Facilities" at locations within the District's Canal No. 12, Canal No. 13 and Canal No. 13A; and

**WHEREAS**, the Parties have determined that for the purpose of controlling and operating the Facilities to be constructed by the Town, that the District will integrate into the Facilities a telemetry system for the purpose of operating and controlling the gated control structure portion of the Facilities; and

**WHEREAS**, the telemetry system upon completion will be integrated into the District's existing telemetry system; and

**WHEREAS**, it is in the best interest of the public that the Parties join

together under the terms and conditions of this Agreement to complete the installation of the telemetry system at or about the same time as the Town completes the Facilities; and

**WHEREAS**, upon completion of the Facilities, and approval of said Facilities by the District, the Town will deliver ownership of the Facilities to the District. Upon said delivery and acceptance by the District, the District will assume responsibility for maintenance and operation of the Facilities; and

**WHEREAS**, for the purpose of this Agreement, the design, construction and construction management related to the installation of the telemetry system and related equipment, including fencing shall be described as the "Project" and shall include those items stated in Exhibit "A" to this Agreement which is attached hereto and incorporated herein in its entirety.

**NOW, THEREFORE**, in consideration of the mutual terms, conditions, promises and covenants hereinafter set forth the District and Town agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein as if fully set forth.
2. District and Town shall participate in the design and construction of the Project as set forth in this Agreement.
3. The Town shall include in the design of its facilities accommodation for the design and incorporation of the Project as provided by the District.
4. District shall prepare or cause to be prepared construction plans and specifications as necessary to construct the Project and to provide construction management services for the Project. The Town shall provide the District with site plans, surveys and back ground drawings for the Facilities in AutoCad format. In addition, the Town shall assist District in the preparation of construction plans and specifications for the Project to the fullest extent reasonably practical.
5. District shall apply for all required permits from the applicable permitting agencies.
6. Town acknowledges that Town has received a permit from South Florida Water Management District for construction of the Facilities and the Project which permit shall be assigned to the District to the extent required.
7. District shall provide Town with reasonable access to the construction area for the Town to observe and inspect the Project.

8. Town agrees to pay the District for all expenses incurred by the District associated with construction of the Project which includes those items described in Exhibit "A" to this Agreement. Said amount is currently estimated at \$129,037.48. District shall submit invoices for the work completed, monthly or as agreed to by the District and Town for payment of the work provided and equipment purchased by the District. Any additional cost and expenses of any type over and above the estimated amount must be approved by the Town and District by way of an amendment to this Agreement as stated in Paragraph 18. All invoices submitted by the District shall be paid within thirty (30) calendar days of receipt by the Town.
9. The effective date of this Agreement shall be the date it is fully executed by both Parties and shall terminate upon completion of the Project or as provided herein. For the purpose of this Agreement, the Project shall be considered complete upon final inspection and acceptance by the Town Administrator following which the Town shall within thirty (30) days of receipt of a final invoice reimburse the District for all remaining unpaid expenses associated with the Project.
10. Any change in the scope of services to this contract shall be accomplished by written amendment executed by the Parties in accordance with Paragraph 18 below.
11. Either Party shall be entitled to cancel this Agreement upon breach of this Agreement by the other Party. If either Party is of the opinion that the other Party has breached this contract, the aggrieved Party shall notify the other Party of the breach and allow the breaching Party thirty (30) days within which to cure the breach, failing which this Agreement shall be considered terminated and the District shall be entitled to payment for all expenses incurred by the District up to the date of the termination, including any and all expenses which are necessary in order for the District to secure the Project site(s) and to complete all work which has commenced.
12. The Town acknowledges that payment of the expenses incurred by the District under this Agreement are expected to be reimbursed or paid to Town pursuant to a grant from the South Florida Water Management District. Notwithstanding the aforesaid grant, in the event the Town does not receive sufficient funds to pay for all work and monies expended by the District in completing the Project, the Town shall remain directly liable for all expenses incurred by the District associated with the Project including those over and above the amount of any grant monies the Town may receive.

13. The District agrees to keep the Town reasonably informed as to the status of the Project.
14. The Town acknowledges that upon completion of the Project that all portions of the Project including, but not limited to, the telemetry system and its associated appurtenances, motors associated therewith and fences constructed under this Agreement shall be the sole property of the District and shall be maintained by the District in perpetuity.
15. To the extent permitted by law, District agrees to indemnify, hold harmless and defend the Town, its officers, agents and employees, from any and all liabilities, damages or claims, related to property loss, bodily injury or death, including attorney fees through all appeals, resulting from the works contemplated by, and the performance of, this Agreement, including but not limited to the construction of the Project. Provided, however, that such indemnification shall not extend to any claim related to or brought challenging the Town's authority to enter into this Agreement or to provide the payment to the District.
16. Upon execution of this Agreement, or as soon as practical thereafter, but, in any event, prior to commencement of any work related to the Project, the District shall submit to the Town's Certificate(s) of Insurance evidencing the required coverages set forth in this Paragraph 16. The Certificates of Insurance shall not only name the types of policies provided, but shall also specifically refer to this Agreement and shall state that such insurance is as required by Paragraph 16 and its subparts of this Agreement. District shall not commence work under this Agreement until after District has obtained all of the minimum insurance herein described and the policies of such insurance detailing the provisions of coverage have been received and approved by the Town. District shall not permit any contractor to begin work until after the insurance required in this Agreement, to cover any contractor, has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, then in that event, District shall furnish, at least thirty (30) calendar days prior to expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage and extension thereunder is in effect. District shall not continue to perform the services required by this Agreement or allow its contractor(s) to continue to perform under the contractor(s) contract unless all required insurance remains in full force and effect.

16.1 All of the policies of insurance required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or

renewal refused until at least thirty (30) calendar days written notice has been given to Town by certified mail.

16.2 Except for the insurance referenced in Section 16.3 below which shall be maintained as stated therein, the District shall procure and maintain at its own expense and keep in force until all work is completed and accepted by District, a policy or policies of insurance which must include the following coverage and minimum limits of liability:

16.2.1 Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers' Liability Act and the Homes Act. Employer's Liability Insurance shall be provided with a minimum of One Hundred Thousand and xx/100 dollars (\$100,000.00) per accident. District agrees to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

16.2.2 Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the District in the performance of the work with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence

16.2.3 Comprehensive General Liability Insurance (occurrence form) with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence

Coverage must be offered in the insurance carrier's least restrictive available form and shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

- 16.2.3.1 Premises and Operations;
- 16.2.3.2 Independent Contractor;
- 16.2.3.3 Product and Completed Operations Liability;
- 16.2.3.4 Broad Form Property Damage;

- 16.2.3.5 Broad Form Contractual Coverage applicable to the Contract and confirming the indemnification and hold harmless agreement in this Contract;
- 16.2.3.6 Personal Injury Coverage with Employment and Contractual Exclusion Deleted; and
- 16.2.3.7 Explosion, collapse, underground coverage (XC-U)

16.3 District shall maintain the Products/Completed Operations Liability Insurance for a period of at least one (1) year after final payment for the Project and furnish Town with evidence of continuation of such insurance at final payment.

16.4 The required insurance coverage shall be issued by an insurance company or companies authorized and licensed to do business in the State of Florida, with the following minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.

16.5 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against the 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, other than due to negligence by the Town.

16.6 The District shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they shall have no recourse against the Town for payment or assessments in any form on any policy of insurance.

16.7 The District shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance herein described and the same has been approved by the Town Administrator, which response shall be provided within two business days after said documentation is provided.

16.8 The District agrees to perform the work under this Agreement as an independent District, and not as a sub-District, agent or employee of the Town.

16.9 District shall require each of its contractors or sub-contractors of any tier engaged in connection with the Project to maintain the insurance required pursuant to this Agreement, for



each category, and District shall provide verification thereof to the Town upon request of Town.

16.10 Following notice and a reasonable period of time to cure, violation of the terms of this Paragraph and its subparts shall constitute a breach of this Agreement, and Town, in its sole discretion, may cancel this Agreement and all rights, title and interest of the District shall thereupon cease and terminate.

16.11 **Town's Liability and Insurance:** Town shall not be responsible for purchasing and maintaining any insurance to protect the interests of District, contractors or others performing the work of the District. The Town and the District specifically reserve all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Section 768.28, Florida Statutes and Section 95.11, Florida Statutes.

17. District shall require all contractors and subcontractors performing any of the contemplated work, as a part of their contracts, to have and to maintain all professional licenses required; to indemnify, hold harmless and defend the Town, its officers, agents and employees, from any and all liabilities, damages or claims, related to property, bodily injury or death, including attorney fees through all appeals, resulting from construction of the Project; to provide a public entity crime statement as required by Section 287.133 (3)(a), Florida Statutes; and to certify that all agents, employees or other personnel on site have not been convicted of any felony or of any misdemeanor involving violence or theft.
18. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
19. All notices provided by one party to the other shall be in writing and shall be effected by hand delivery, facsimile or U.S. Mail, certified and return receipt requested, and addressed as follows:

As to Town: Charles H. Lynn, AICP, Town Administrator  
Town of Southwest Ranches  
6589 Southwest 160<sup>th</sup> Avenue  
Southwest Ranches, Florida 33331

With a copy to: Keith Poliakoff, Esquire  
Becker & Poliakoff, P.A.  
3111 Stirling Road  
Fort Lauderdale, Florida 33312

As to District: Kevin M. Hart, P.E., District Director  
South Broward Drainage District  
6591 SW 160 Avenue  
Southwest Ranches, Florida 33331

With a copy to: Douglas R. Bell, Esquire  
800 E. Broward Boulevard  
Suite 505  
Fort Lauderdale, Florida 33301

20. **APPLICABLE LAW AND VENUE:** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal issues arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Court of the 17th Judicial Circuit of Broward County, Florida, the venue site shall be Broward County, Florida and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereby waives any rights it may have to trial by jury of any such litigation. The prevailing party in any such litigation shall be entitled to an award of its reasonable attorney's fees and costs, at all tribunal levels, subject to the limitations of sovereign immunity.
21. It is the intent of the parties that the Town and District are independent contractors under this Agreement and that neither of the parties are the employee of the others for any purposes. Further, no party 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 party under this Agreement; thus, it is not the intent of the parties to create any rights or obligations in third parties.
20. If any provision of this Agreement or the application thereof to any person or situation shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall

not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

21. The Town represents it has the power and authority to enter into this Interlocal Agreement and to perform its obligations hereunder and that this Interlocal Agreement has been approved by all required action of its Town Council. The District represents that it has the power and authority to enter into this Interlocal Agreement and to perform its obligations hereunder and that this Interlocal Agreement has been approved by all required action of its Board.
22. Nothing herein shall be deemed to be or create a pledge of the District's full faith, credit or taxing power or as creating a general obligation of the District within the meaning of any constitutional or statutory provision or limitation.
23. This Interlocal Loan Agreement constitutes the entire agreement between the Parties hereto with respect to the matters covered herein. All prior negotiations, representations and agreements, whether oral or written, with respect thereto not incorporated herein are superseded by this Agreement.
24. In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless Town or District elect to terminate this Agreement pursuant to other provisions of this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.
25. Each party and its counsel have participated fully in review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to 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. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.
26. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement shall prevail and be given effect.

27. Multiple copies of this Agreement may be executed by the Parties, each of which, bearing original signatures, shall have the full force and effect of an original document.

IN WITNESS WHEREOF, the Parties hereto have executed this Interlocal Agreement on the dates hereinafter subscribed.

Passed and approved by the Town of Southwest Ranches this <sup>3rd day</sup> ~~17th~~ day of November, 2010.

Town of Southwest Ranches:

By: [Signature]  
Jeff Nelson, Mayor

By: [Signature]  
Charles H. Lynn, Town Administrator

Attest:  
By: [Signature]  
Debra Dore-Thomas, CMC, Town Clerk

LEGAL FORM APPROVED:  
By: [Signature]  
Keith Poliakoff, Town Attorney

Passed and approved by the Board of Commissioners of the South Broward Drainage District this 20<sup>th</sup> day of August, 2010.

South Broward Drainage District:

By: [Signature]  
Scott Hodges, District Chair

By: [Signature]  
Kevin M. Hart, P.E., District Director

Attest:  
By: [Signature]  
Robert E. Goggin, IV, District Secretary

LEGAL FORM APPROVED:  
By: [Signature]  
Douglas R. Bell, District Attorney

**Exhibit "A"**  
**Town of Southwest Ranches/SBDD**  
**Inter-Local Agreement**

<b>Item</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total</b>
<b>Canal 13 at Stirling Road - 66" CMP</b>			
Motors	2	\$ 7,155.00	\$ 14,310.00
Level Recorder	1	\$ 3,000.00	\$ 3,000.00
FP&L Power	1	\$ 692.04	\$ 692.04
Telemetry	1	\$ 13,290.88	\$ 13,290.88
Electrical Installation	1	\$ 9,535.00	\$ 9,535.00
Fence	1	\$ 1,900.00	\$ 1,900.00
		<b>Sub-Total</b>	<b>\$ 42,727.92</b>
<b>Canal 13A at Strlling Road - 84" RCP</b>			
Motor	1	\$ 9,475.00	\$ 9,475.00
Telemetry	1	\$ 13,290.88	\$ 13,290.88
Electrical Installation	1	\$ 6,621.00	\$ 6,621.00
		<b>Sub-Total</b>	<b>\$ 29,386.88</b>
<b>Canal 12 at SW 63rd Street - 60" RCP</b>			
Motor	1	\$ 7,074.00	\$ 7,074.00
Level Recorder	1	\$ 3,000.00	\$ 3,000.00
FP&L Power	1	\$ 692.04	\$ 692.04
Telemetry	1	\$ 13,701.00	\$ 13,701.00
Electrical Installation	1	\$ 10,961.00	\$ 10,961.00
Fence	1	\$ 2,100.00	\$ 2,100.00
		<b>Sub-Total</b>	<b>\$ 37,528.04</b>
Design, Permitting and Legal	1	\$ 11,500.00	\$ 11,500.00
Motor Start-up Services	1	\$ 1,750.00	\$ 1,750.00
		<b>O/A Sub-Total</b>	<b>\$ 122,892.84</b>
Contingency		5%	\$ 6,144.64
		<b>Total</b>	<b>\$ 129,037.48</b>