

RESOLUTION NO. 2011 – 009

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA APPROVING AN AGREEMENT WITH INDUSTRIAL DIVERS CORP., INC., FOR \$29,100 (TWENTY-NINE THOUSAND ONE HUNDRED DOLLARS) TO PROVIDE THE UNDERWATER INSTALLATION OF ALUMINUM SLUICE GATES; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on February 10, 2010, pursuant to Resolution No. 2010-035, the Town Council approved the Memorandum of Agreement with South Florida Water Management District; and

WHEREAS, part of this Memorandum of Agreement requires the installation of aluminum sluice gates; and

WHEREAS, the Town Council believes it is in the best interest of the Town to contract with professional firm to perform the services relating to the installation of the aluminum sluice gates; and

WHEREAS, on August 24, 2010, the Town advertised an Invitation For Bid; and

WHEREAS, on September 8, 2010, the Town received two bids in response to the advertisement; and

WHEREAS, Industrial Divers Corp., Inc., has provided the lowest-priced responsive and responsible bid; and

WHEREAS, the Town of Southwest Ranches desires to enter into an Agreement with Industrial Divers Corp., for the installation of underwater aluminum sluice gates, under the terms and conditions set forth herein.

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 the Agreement between the Town of Southwest Ranches and Industrial Divers Corp., Inc., providing for the installation of underwater aluminum sluice gates as outlined in the Invitation for Bid in

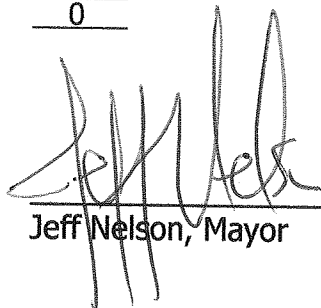
the amount of \$29,100, as attached hereto and incorporated herein by reference as Exhibit "A".

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

Section 4. That this Resolution shall become effective immediately upon its adoption.


PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 3rd day of November 2010 on a motion by Council Member Breitkreuz and seconded by Council Member McKay.

Nelson	<u>AYE</u>	Ayes	<u>5</u>
Fisikelli	<u>AYE</u>	Nays	<u>0</u>
Breitkreuz	<u>AYE</u>	Absent	<u>0</u>
Jablonski	<u>AYE</u>	Abstaining	<u>0</u>
McKay	<u>AYE</u>		



Jeff Nelson, Mayor

Attest:



Debra Doré-Thomas, CMC, Town Clerk

Approved as to Form and Correctness:



Keith M. Poliakoff, J.D., Town Attorney
ACTIVE: 3098275_1

EXHIBIT "A"

Invitation for Bid Submission

by

Industrial Divers Corp., Inc.

Industrial Divers Corp. Inc

original

BID PROPOSAL FORM

Re: Underwater Installation of Aluminum Sluice Gates – Bid # 10-015

The item descriptions are provided for the limited purposes set forth in this IFB and may not include all items and materials needed to complete the work. It is the bidder's responsibility to satisfy itself as to the requirements of the project and in order to submit full and complete pricing.

In the event of any discrepancy between the bidder's unit pricing and the Grand Total Bid Price amount, the Grand Total Bid Price shall control.

The undersigned hereby declares that he has examined the Contract Documents and fully familiarized himself with the said Documents and also any Local, State, County, and Federal laws pertaining to this project.

The undersigned, as Bidder, hereby declares that the only person or persons interested in the bid as Principal or Principals is or are named herein and that no other person than herein mentioned has any interest in this Bid or in the Agreement to be entered into; that this Bid is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud.

The Bidder shall furnish prices for all bid items. Failure to do so may render the Bid invalid and cause its rejection.

The Town reserves the right to award the work in whole or in part based upon the Total Price for each item number.

The undersigned hereby proposes to furnish all labor, equipment, materials, and bonds necessary to complete the work in strict accordance with the Contract Documents, schedules and plans, and all addendums, if issued, for the prices shown on the next page.

Work shall be completed within 30 days of the Award of Contract.

[Continued on next page]

10 Pages Total

STATE OR COUNTY: Broward Co. FLORIDA

LICENSE TYPE: Broward Co Occupational License
(Attach copy of license)

LICENSE LIMITATIONS, IF ANY: N/A
(Attach a separate sheet, if necessary)

LICENSEE SIGNATURE: Robert P. Galletta

LICENSEE NAME: INDUSTRIAL DIVERS CORP

BIDDER'S SIGNATURE: Robert P. Galletta

BIDDER'S NAME: INDUSTRIAL DIVERS CORP

BIDDER'S ADDRESS: 2640 Arbor Dr. Ft. Lauderdale, FL 33312

BIDDER'S PHONE NUMBER: Office: 954-523-2906 Cell: 954-931-9245

ADDENDUM ACKNOWLEDGMENT (if necessary):

The Bidder has received Addendum No _____ dated _____.

The Bidder has received Addendum No _____ dated _____.

The Bidder has received Addendum No _____ dated _____.

The Bidder has received Addendum No _____ dated _____.

By: INDUSTRIAL DIVERS CORP.
Name of Corporation

2640 Arbor Drive

Ft. Lauderdale, FL 33312
Address of Corporation

James J. Guen
Signature of President

By: FRANCES M. GALLETTA
President

(If the Bidder is a Corporation, affix corporate seal)

WHEN PRINCIPAL IS A CORPORATION:

Signed, sealed and delivered

in the presence of:

Rocco P. Galletta
Witness Signature

Rocco P. Galletta
Witness Print Name

Mark King
Witness Signature

MARK KING
Witness Print Name

By: Industrial Divers Corp Inc.
Corporation

2640 Arbor Drive
Street Address

FT. Lauderdale, FL 33312
City & State, Zip Code

By: Francis Gaer
President

FRANCES M GALLETTA
Print Name

(CORPORATE SEAL)

ATTEST:

Rocco P. Galletta
Secretary

(SURETY SEAL)

ATTEST:

Rocco P. Galletta
Secretary

(Surety shall provide evidence of signature authority, i.e. a certified copy of Power of Attorney)

Prior Experience and References:

Project Name and General Description of the Work:

Installation of Double 72" slide Gates at Two Culvert sites

Client Name: South Broward Drainage District

Address: 6591 Southwest 160th Ave. Southwest Ranches, FL 33331

Contact Person: Joe Certain / Luis Ochoa

Contact Person Tel. No.: 954-275-1756

Project Name and General Description of the Work:

Military Canal Pump Station Rehabilitation Homestead Air Reserve Base

Client Name: D&J Machinery / US Army Corps of Engineers

Address: 728 E. Trinidad Ave. Clewiston, FL 33440-3924

Contact Person: Douglas Rogers / Mac Wimbish

Contact Person Tel. No.: 863-597-8009 cell / 601-497-5868

Project Name and General Description of the Work:

Pump Station Bypass Pipe with slide gate installation

Client Name: Coral Springs Improvement District

Address: 10300 N.W. 11th Manor Coral Springs, FL 33071

Contact Person: Randy Frederick

Contact Person Tel. No.: 954-796-6658 office 954-796-6669 cell

Project Name and General Description of the Work:

9-Tideflex Check Valve Installations in ICWW culvert outfall pipes

Client Name: City of Delray Beach Public Works

Address: 434 So. Swinton Ave Delray Beach, FL 33444

Contact Person: Harold Bellinger

Contact Person Tel. No.: 561-243-7309 Office ; 561-573-5831 cell

BROWARD COUNTY LOCAL BUSINESS TAX RECEIPT

115 S. Andrews Ave., Rm. A-100, Ft. Lauderdale, FL 33301-1895 – 954-831-4000

VALID OCTOBER 1, 2010 THROUGH SEPTEMBER 30, 2011

DBA:
Business Name: INDUSTRIAL DIVERS CORP
Owner Name: GALLETTA FRANCES
Business Location: 2817 SW 2 AVE
 FT LAUDERDALE
Business Phone: 954-523-2906

Receipt #: 329-12516
Business Type: ALL OTHERS (DIVING SERVICE)
Business Opened: 02/23/1981
State/County/Cert/Reg:
Exemption Code: NONEXEMPT

Rooms Seats Employees Machines Professionals
5

		For Vending Business Only					
		Number of Machines:		Vending Type:			
Tax Amount	Transfer Fee	NSF Fee	Penalty	Prior Years	Collection Cost	Total Paid	
33.00	0.00	0.00	0.00	0.00	0.00	33.00	

THIS RECEIPT MUST BE POSTED CONSPICUOUSLY IN YOUR PLACE OF BUSINESS

**THIS BECOMES A TAX RECEIPT
 WHEN VALIDATED**

This tax is levied for the privilege of doing business within Broward County and is non-regulatory in nature. You must meet all County and/or Municipality planning and zoning requirements. This Business Tax Receipt must be transferred when the business is sold, business name has changed or you have moved the business location. This receipt does not indicate that the business is legal or that it is in compliance with State or local laws and regulations.

Mailing Address:

GALLETTA FRANCES
 2640 ARBOR DR
 FORT LAUDERDALE, FL 33312

Receipt #04B-09-00008916
Paid 07/08/2010 33.00

2010 - 2011

EXHIBIT "B"

Agreement with
Industrial Divers Corp., Inc.

**AGREEMENT
BETWEEN THE
TOWN OF SOUTHWEST RANCHES
AND
INDUSTRIAL DIVERS CORP. INC.
FOR
UNDERWATER INSTALLATION OF ALUMINUM
SLUICE GATES
Bid # 10 – 015**

**AGREEMENT FOR UNDERWATER
INSTALLATION OF SLUICE GATES**

THIS IS AN AGREEMENT (“Agreement”) made and entered into on this ____ day of September, 2010 by and between the Town of Southwest Ranches, a Municipal Corporation of the State of Florida, (hereinafter referred to as “Town”) and Industrial Divers Corp. Inc., a Florida corporation (hereinafter referred to as “Contractor”).

WHEREAS, the Town advertised an Invitation for Bid for Underwater Installation of Aluminum Sluice Gates; and

WHEREAS, Contractor submitted a bid which was determined by the Town to be the lowest responsive and responsible bid received; and

WHEREAS, Contractor has represented to the Town that it is ready, willing and able to perform all work required and as specified in the Invitation for Bid.

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

Section 1: Scope of Services

- 1.1 Upon execution of this Agreement, the Contractor agrees to perform the duties and responsibilities as defined and described in **Attachment “A”** attached hereto to this Agreement (hereinafter referred to as “Work”).
- 1.2 Contractor’s Work shall be provided to Town based solely upon Notices(s) to Proceed issued by the Town Administrator or designee in advance of Contractor providing any of the Work. The terms and conditions of the Invitation for Bid and Contractors Bid dated as of September 8, 2010 are incorporated herein by reference. In the event of any conflict between this Agreement and the documents incorporated herein by reference, the more stringent requirement that affords the Town the greater degree of protection shall control.
- 1.3 All Work rendered pursuant to this Agreement by Contractor shall be performed in accordance with the applicable standard of care for persons or entities performing similar work for local governments in Broward County, Florida. Contractor shall perform the Work in accordance with the requirements of this Agreement and all applicable codes, ordinances, rules, laws and regulations governing the Work, including, but not limited to, those of the South Broward Drainage District.

Section 2: Term of this Agreement and Agreement Time

- 2.1 Town and Contractor agree that Contractor shall perform all Work under this Agreement for Improvements.
- 2.2 Town shall have the ability to terminate this Agreement as provided in “Section 18: Termination.”

- 2.3 Contractor shall not be entitled to any claim for damages against Town on account of hindrance or delays from any cause whatsoever. If, however, Contractor 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 Contractor to receive an extension of time as its sole and exclusive remedy.
- 2.4 Town and Contractor agree that Contractor shall perform all Work under this Agreement within **30 calendar days** of the Town's issuance of a Notice to Proceed. Notices to Proceed shall be issued by the Town on an item number basis, and as described in the Invitation for Bid.

Section 3: Compensation & Method of Payment

- 3.1 Contractor shall render all Work to the Town under the Agreement for the total not to exceed sum of **Twenty Nine Thousand One Hundred and 00/100 (\$29,100.00) Dollars** ("Agreement Sum"). Individual items, subject of a Notice to Proceed, shall be invoiced and paid for in accordance with the unit pricing set forth in Contractor's bid.
- 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, Contractor 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 Contractor in accordance with the terms and conditions of this Agreement, and with the same formality and of equal dignity associated with the original execution of this Agreement.
- 3.3 Town and Contractor agree that payment under this Agreement will be subject to (a) the delivery of an appropriate invoice by Contractor to Town, and (b) verification by Town 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 Contractor 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 the Contractor, and no Work shall be subcontracted to other parties or firms without the written consent and approval of the Town Administrator.

Section 5: Contractor's Responsibility for Safety

- 5.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work provided pursuant to the Agreement in order to prevent, inter alia, damage, injury or loss to (a) all employees performing the Work and all other persons who may be affected thereby, (b) all the Work and all materials and equipment to be incorporated therein and (c) other property at the site or adjacent thereto. Contractor shall timely provide all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority or other authority with jurisdiction bearing on the safety of persons and property in order to provide protection from damage injury or loss.

Section 6: Insurance

- 6.1 Throughout the term of this Agreement and for all applicable statutes of limitation periods, Contractor 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.
City of Pembroke Pines
South Broward Drainage District
- 6.4 All Insurance Policies shall be endorsed to provide that (a) Contractor'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) Contractor'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 Contractor shall not be acceptable as providing any of the required insurance coverages required in this Agreement.
- 6.5 If the Contractor 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, Contractor shall be deemed in default, and the Agreement shall be rescinded.
- 6.6 Contractor shall carry the following minimum types of Insurance:
- A. **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. Contractor shall carry Worker's Compensation Insurance with the statutory limits, which shall include

employer's liability insurance with a limit of not less than **Two Hundred Thousand Dollars (\$200,000)** for each accident, and **Two Hundred Thousand Dollars (\$200,000)** for each disease. Policy(ies) must be endorsed with waiver of subrogation against Town.

B. **BUSINESS AUTOMOBILE LIABILITY INSURANCE:** Contractor 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:** Contractor 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 Contractor 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 Contractor'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
Town Administrator
6589 SW 160th Avenue
Southwest Ranches, Florida 33331

and

Steven B. Lesser, Esq.
Becker & Poliakoff, P.A.

3111 Stirling Road
Fort Lauderdale, Florida 33312

6.9 If Contractor's Insurance policy is a "claims-made" policy, then Contractor 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 Contractor'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 The Contractor 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 Contractor'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 an additional named insured by endorsement on all of Contractor's renewal policies.
- 6.13 **UPON EXECUTION OF THIS AGREEMENT, CONTRACTOR SHALL SUBMIT TO TOWN COPIES OF ITS CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES REQUIRED HEREIN AND SPECIFICALLY PROVIDING THE ENDORSEMENT TO THE POLICIES THAT SHOWS THE TOWN OF SOUTHWEST RANCHES, CITY OF PEMBROKE PINES, AND SOUTH BROWARD DRAINAGE DISTRICT ARE ADDITIONAL NAMED INSURED OR ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND CONTRACTOR'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 Contractor 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 after Town's actual notice of such event.

6.18 Notwithstanding any other provisions of this Agreement, Contractor'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: Copyrights and Patent Rights

Contractor 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 this bid; and Contractor 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 8: Laws and Regulations

Contractor 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 9: Taxes and Costs

All federal, state and local taxes relating to the Contractor'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 the Contractor.

Section 10: Indemnification

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Town of Southwest Ranches, City of Pembroke Pines, South Broward Drainage District, and their respective 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 the Contractor, 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 Contractor 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 the Contractor, 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 the Contractor 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 Contractor shall be applicable to all losses, damages, expenses or claims for damage or injury to any person or property, resulting from Contractor's negligence, recklessness or other intentional

or otherwise wrongful misconduct of Contractor, and persons employed or utilized by Contractor relating to the performance of Work as described in the Agreement. This indemnification provision is also incorporated by reference into Attachment "A" of this Agreement. The Contractor shall promptly remedy all damage or loss to any property caused by the Contractor, 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 the Contractor are in addition to its other obligations running in favor of Town under this Agreement. Notwithstanding any other provisions of this Agreement, the Contractor's duty to indemnify and defend Town, or other indemnitee hereunder, shall survive the termination or expiration of this Agreement.

Section 11: Non-discrimination

Contractor 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. Contractor 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. Contractor shall comply with all applicable sections of the Americans with Disabilities Act. Contractor agrees that compliance with this Article constitutes a material condition to this Agreement, and that it is binding upon the Contractor, its successors, transferees, and assignees for the period during which any Work is provided. Contractor further assures that all subcontractors and independent contractors are not in violation of the terms of this Section of the Agreement.

Section 12: 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 13: 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 and costs and expert witness fees and costs incurred.

Section 14: 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, except as may be specifically stated herein. 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, with the exception of the indemnification to be provided by the Contractor and as set forth at Section 10 of this Agreement.

Section 15: Funding

The obligation of Town for payment to Contractor 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 16: Manner of Performance

Contractor 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. Contractor 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. Contractor agrees to furnish to Town any and all documentation, certification, authorization, license, permit, or registration currently required by applicable laws, rules, and regulations. Contractor 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 Contractor to comply with this paragraph shall constitute a material breach of this Agreement.

Section 17: 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. Contractor 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. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by Town.

Section 18: 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 Contractor 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, Contractor 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 Contractor in any legal proceeding against Town. Upon being notified of Town's election to terminate, Contractor shall immediately cease performing any further Work or incurring additional expenses. Contractor acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by Town, the adequacy of which is hereby acknowledged by Contractor, is given as specific consideration to Contractor for Town's right to terminate this Agreement for Convenience.

C. Termination for Cause. In the event of a material breach by Contractor, Town shall provide Contractor written notice of its material breach. Contractor shall thereafter have thirty (30) days from the date of its receipt of such notification to cure such material breach. If Contractor 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, Contractor'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 Contractor 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, Contractor shall solely be paid and Contractor's damages are solely limited to the compensation Contractor 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 Contractor 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 Contractor 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, Contractor shall solely be paid and Contractor's damages are solely limited to the compensation Contractor 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. Contractor's violation of the Public Records Act;
2. Contractor's insolvency, bankruptcy or receivership;
3. Contractor's violation or non-compliance with Section 11 of this Agreement;
4. Contractor's failure to maintain any Insurance required by Section 6 of this Agreement; or
5. Contractor's violation of Section 19 of this Agreement.

Section 19: 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 Contractor, 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 Contractor shall result in Town's immediate termination of this Agreement.

Section 20: Use of Awarded Bid By Other Governmental Units

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

Section 21: Change Orders and Modification of Agreement

Town and Contractor 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 Contractor, with the same formality and of equal dignity associated with the original execution of the Agreement.

Section 22: No Waiver of Rights

Neither the Town'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 Contractor's performance of the Work under this Agreement, and Contractor shall be and remain liable to the Town for all damages to the Town caused by the Contractor'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 23: 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 17th Judicial Circuit in and for Broward County, Florida. This Agreement shall be governed by the substantive laws of the State of Florida.

Section 24: WAIVER OF RIGHT TO JURY TRIAL

BY ENTERING INTO THIS AGREEMENT, CONTRACTOR 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 25: 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 26: Time is of the Essence

Time is of the essence for all of Contractor's obligations under this Agreement.

Section 27: Days

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

Section 28: Written Mutual Agreement

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 29: 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 30: 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. 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 31: 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, Contractor'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 the Contractor 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 32: 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:

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

With a copy to:

Steven B. Lesser, Esq.
3111 Stirling Road
Fort Lauderdale, Florida 33312

If to Contractor:

Industrial Divers Corp., Inc.
2640 S.W. 30th Terrace
Fort Lauderdale, Florida 33312

Section 33: Miscellaneous

- A. **Ownership of Documents.** Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement by Contractor and all persons or entities employed or otherwise retained by Contractor are and shall remain the property of Town. In the event of termination of this Agreement for any reason, any reports, photographs, surveys and other data and documents prepared by Contractor, whether finished or unfinished, shall become the

property of Town and shall be delivered by Contractor to the Town Administrator within seven (7) days of termination of this Agreement for any reason. Any compensation due to Contractor 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 Contractor that are related to this Agreement. Contractor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

Contractor 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 three (3) years after termination or expiration of this Agreement, unless Contractor is notified in writing by Town of the need to extend the retention period. Such retention of such records and documents shall be at Contractor's sole expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) 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 Contractor's records, Contractor shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor. 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, Contractor shall respond to the reasonable inquiries of successor Contractors and allow successor Contractors to receive working papers relating to matters of continuing significance.

In addition, Contractor 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.** Contractor is an independent contractor of Town under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees 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 Contractor. This Agreement shall not constitute or make Town and Contractor a partnership or joint venture.

- D. Conflicts.** Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially

antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Agreement.

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

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

- E. **Contingency Fee.** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, 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 Contractor, 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 Contractor 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 Contractor 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.** Contractor 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 Contractor 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.

THIS SECTION INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: INDUSTRIAL DIVERS CORP., INC., and THE TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the 17th day of November 2010.

WITNESSES:

CONTRACTOR:
INDUSTRIAL DIVERS CORP., INC.

By: Frances Galletta
Frances Galletta, President

14th day of Sept. 2010

WITNESSES:

TOWN:
TOWN OF SOUTHWEST RANCHES

By: Jeff Nelson
Jeff Nelson, Mayor

17th day of November 2010

By: Charles H. Lynn
Charles H. Lynn, AICP

Town Administrator

17th day of November 2010

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

Keith Poliakoff
Keith Poliakoff, Town Attorney

ATTACHMENT "A"

The Work of the Contract includes:

- Construction of drainage structures in accordance with approved plans, specifications and permit requirements; and
- All other construction activities that are directly and appropriately associated with achieving the project objectives or completing the project scope.

The Plans and Specifications are as follows:

Plan Sheet	Last Revision Date
1 Title Sheet	June 2010
4 Gate Locations in Canals 12 & 13	
5-6 Sluice Gate Details and Specifications in Canals 12, 13, & 13A	
8 SBDD Standard Detail Sheet	

ACTIVE: 3085738_1