

RESOLUTION NO. 2011 – 037

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA APPROVING A SOLE SOURCE AGREEMENT WITH SCOTT BURTON, D/B/A/ GEOWEB CONSULTING SERVICES TO PROVIDE PROFESSIONAL CONSULTING SERVICES FOR REDISTRICTING THE TOWN OF SOUTHWEST RANCHES IN ACCORDANCE WITH SECTION 2.04 (b) OF THE TOWN'S CHARTER AND WAIVING THE TOWN'S PROCUREMENT PROCEDURES; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 2010 Census has been completed and the U.S. Census Bureau will be releasing the 2010 Census Redistricting Data in the near future; and

WHEREAS, the 2010 Census data may have an impact on the Town's voting districts, and as such this data will be used to ensure fair and accurate representation of the Town's citizens within each district; and

WHEREAS, in accordance with Section 2.04(b) of the Town's Charter, the Town is required to review its district boundaries following the release of the centennial census data; and

WHEREAS, based on the professional qualifications and prior experience with the Town's 2000 Census Redistricting Data, the Town has decided to waive its customary procurement procedures, and to sole source this project to Scott Burton d/b/a GeoWeb Consulting Services; and

WHEREAS, the Town and Scott Burton d/b/a GeoWeb Consulting Services are desirous of formalizing their relationship through a formal Agreement.

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

Section 1. The recitals above 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 Scott Burton d/b/a GeoWeb Consulting Services in substantially the same form as that attached hereto as Exhibit "A", for Professional Consulting Services relating to the review and the analysis of the 2010 Census data and its potential impact on the Town's voting districts.

Section 3. The Town hereby agrees to waive its procurement procedures and to sole source this Contract as Scott Burton d/b/a GeoWeb Consulting due to his direct familiarity with the Town as a direct result of his work with the Town relating to the 2000 Census Districting Process.

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

Section 5. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 10th day of March 2011, on a motion by Council Member McKay and seconded by Vice Mayor Fisikelli.

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 Poliakoff, Town Attorney

ACTIVE: 3252412_1

AGREEMENT BETWEEN THE TOWN OF SOUTHWEST RANCHES
AND
SCOTT BURTON, D/B/A GEOWEB CONSULTING SERVICES. TO PROVIDE
PROFESSIONAL CONSULTANT SERVICES FOR REVIEWING AND
RECOMMENDING A REDISTRICTING PLAN
FOR THE TOWN OF SOUTHWEST RANCHES

THIS AGREEMENT, made and entered into by and between the TOWN OF SOUTHWEST RANCHES, a municipal corporation of the State of Florida, hereinafter referred to as "TOWN" and SCOTT BURTON D/B/A GEOWEB CONSULTING SERVICES, hereinafter referred to as "CONSULTANT".

WITNESSETH:

WHEREAS, the 2010 Census has been completed and the U.S. Census Bureau will be releasing the 2010 Census Redistricting Data in the near future; and

WHEREAS, the 2010 Census data may have an impact on the Town's voting districts, and as such this data will be used to ensure fair and accurate representation of the Town's citizens within each district; and

WHEREAS, in accordance with Section 2.04(b) of the Town's Charter, the Town is required to review its district boundaries following the release of the centennial census data; and

WHEREAS, based on the professional qualifications and prior experience with the Town's 2000 Census Redistricting Data, the Town has decided to waive its customary procurement procedures, and to sole source this project to Scott Burton d/b/a GeoWeb Consulting Services; and

WHEREAS, the Town and Scott Burton d/b/a GeoWeb Consulting Services are desirous of formalizing their relationship through a formal Agreement.

NOW, THEREFORE, in consideration of the mutual promises and representations set forth herein, the parties mutually agrees as follows:

Section 1: **Scope of Services**

Upon execution of this Agreement, CONSULTANT shall immediately commence its review of the current voting districts and available Census Data, and if appropriate make redistricting recommendations to the TOWN. CONSULTANT shall perform its work in accordance with the scope of services and requirements of the TOWN. The services to be performed hereunder by CONSULTANT shall be undertaken and completed in such sequence as to assure the expeditious completion and to carry out the purposes of this Agreement. Consultant understands and agrees that time is of the

essence. All services required hereunder shall be completed in a timely manner CONSULTANT shall attend such meetings as may be required by the TOWN, including meetings with the Town Council, and public meetings in order to develop an updated methodology and present its recommendations to the Town Council, and shall assist the TOWN in its Redistricting Plan.

Section 2: Compensation:

The TOWN agrees to pay the CONSULTANT the total not to exceed the sum of Nine-Thousand Five Hundred Thousand Dollars (\$9,500.00), which shall include Six (6) Workshop Meetings and Two (2) Council Meetings. Any additional Council Meetings will be billed at a rate of Three Hundred Dollars (\$300.00) per Council Meeting.

The fee shall be payable as follows:

Twenty Five Percent (25%) upon execution of this Agreement

Twenty Five (25%) upon completion of CONSULTANT'S review and submittal of recommended updates

Fifty Percent (50%) upon final review and approval by the Town Council

The Town agrees to pay Consultant the fees described above. If Consultant is requested to perform work beyond those Services listed above then such request shall be in writing signed by both parties and shall specifically provide the scope of the work to be performed and the compensation for same. All additional work performed prior to receiving written approval, shall be performed at Consultant's sole cost and expense.

Section 3: Termination:

Notwithstanding any other provision of this Agreement, this Agreement is terminable at will by the TOWN. Notice of Termination shall be provided in accordance with the "NOTICES" section of this Agreement. The TOWN may terminate this Agreement upon thirty (30) days written notice. In the event that this Agreement is terminated, CONSULTANT shall solely be paid for any Work performed up to the date of termination and CONSULTANT shall not be entitled to any additional compensation, of any kind or in any amount, from TOWN as a result of being terminated. CONSULTANT specifically waives any and all rights to seek any additional sums or damages from TOWN due to being terminated other than CONSULTANT's sole right to be paid for any Work performed up to the date this Agreement is terminated. Upon termination, CONSULTANT shall immediately refrain from performing further Work for the TOWN or incurring additional expenses.

Section 4: Professional Assurances:

CONSULTANT shall perform all services under this Agreement in accordance with the standard of care used by similar professionals in Broward County, Florida, under similar circumstances and shall exercise a reasonable degree of skill and care, as determined by the degree of skill and care ordinarily employed by others of the same profession.

Section 5: General Indemnification: To the fullest extent permitted by law, CONSULTANT shall indemnify, defend, and hold harmless the TOWN, its officers, agents and employees, from and against any and all claims, damages, losses, liability and expenses, direct, indirect or consequential including, but not limited to reasonable costs and attorney's fees, at all tribunal levels, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of CONSULTANT and persons employed or utilized by CONSULTANT in performance of the contract. In the event that the TOWN is a party to any claim, threatened claim, action, legal proceeding or lawsuit, borne as a result of this Agreement or as a result of CONSULTANT'S methodology or proposed fee, CONSULTANT agrees to indemnify, defend, and protect the TOWN, its officers, agents, and employees harmless from and against any and all costs, losses, liabilities and expenses where the Town would be required to reply and/or defend. Town and Consultant agree that 1% of the compensation due to Consultant from Town pursuant to this Agreement is offered and accepted as sufficient separate consideration for Consultant's agreement to indemnify Town and Town's officers, agents, and employees as provided for in this paragraph.

Section 6: Notices:

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

If to Town:

Charles H. Lynn, AICP, Town Administrator
6589 SW 160 Avenue
Southwest Ranches, FL 33331

With a copy to:

Keith M. Poliakoff, Town Attorney
3111 Stirling Road
Fort Lauderdale, FL 33312

If to Consultant:

GeoWeb Consulting Services
Attn: Scott Burton
1564 SW 29 Avenue
Fort Lauderdale, FL 33312

Section 7: **Relationship:**

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

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

Section 8: **Audit Right and Retention of Records:**

TOWN shall have the right to audit the books, records, computer records, electronic stored data, and accounts of CONSULTANT that are related to this Agreement. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. CONSULTANT 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, of a minimum period of five (5) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period of 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 CONSULTANT's records, CONSULTANT shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirements of either federal or state law shall be violated by CONSULTANT. 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.

Section 9: **Subcontracting:**

All substantive work to be performed pursuant to the terms of this Agreement shall be performed by CONSULTANT, and no work shall be subcontracted to other parties or firms by CONSULTANT without the prior written consent of the TOWN, which consent may be unreasonably withheld. CONSULTANT shall ensure that all subcontractors or sub-consultants performing any Work under this Agreement are bound in writing to all of the terms and conditions of this Agreement.

Section 10: **Ownership Rights:**

CONSULTANT agrees that this Agreement shall constitute a "work made for hire" and that all documents, programs, work product and documentation (hereinafter referred to as "Documentation") prepared by CONSULTANT pursuant to this Agreement shall be the property of TOWN, and CONSULTANT hereby assigns all of that Documentation to Town.

Section 11: **Nondiscrimination:**

11.1 CONSULTANT shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. CONSULTANT shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CONSULTANT shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

11.2 CONSULTANT's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin.

Section 12: **Entire Agreement:**

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

Section 13: **Construction:**

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

Section 14: **Further Assurances:**

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

Section 15: **Counterparts:**

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

Section 16: **No Amendment or Waiver:**

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

Section 17: **Severability**

In the event any term or provision of this Agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed to be in full force and effect.

Section 18: **Resolution of Disputes:**

18.1 To prevent litigation, it is agreed by the parties hereto that Town Administrator shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Agreement and

fulfillment of 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 CONSULTANT 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 unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence.

18.2 To further prevent litigation, the parties shall endeavor to resolve any and all claims arising from this Contract by mediation. A request for mediation shall be filed, in writing, with the other party to the Contract. To the extent litigation is permitted under this Contract, the request shall be made prior to the filing of a legal or equitable proceeding, which shall not be filed prior to the outcome of mediation which will be completed within sixty (60) consecutive calendar days from the date a request for mediation is submitted to the other party unless the parties agree to an extension. The statute of limitations of any claim shall be tolled from the date mediation is requested until completed. To the extent the parties cannot mutually select a mediator, within fifteen (15) consecutive calendar days, from the date a request for mediation has been submitted, either party can request the American Arbitration Association to appoint a mediator with experience to serve as mediator. The mediator selected to serve shall be certified by the Florida Supreme Court. The mediation shall be conducted in Broward County, Florida.

Section 19: Applicable Law & Venue; Waiver of Jury Trial:

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the exclusive jurisdiction and venue of an appropriate Court of competent jurisdiction in the Seventeenth Judicial Circuit of Broward County, Florida.

BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND TOWN HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

Section 20: Enforcement; Costs; Attorney Fees:

The TOWN and CONSULTANT are the beneficiaries of this Agreement and as such, may enforce this Agreement by action at law or in equity. In the event of any litigation between the TOWN and CONSULTANT resulting from and/or arising out of this

Agreement, it is hereby acknowledged and agreed that the prevailing party shall be entitled to recover any and all reasonable attorney's fees and costs from the non-prevailing party in any such litigation, including attorneys fees and costs incurred at the trial level and on appeal.

Section 21: **Representation of Authority:**

The individuals executing this Agreement on behalf of any entity do hereby represent and warrant that they are, on the date of this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of their principal.

Section 22: **Non Exclusivity of Services:**

CONSULTANT may perform for other clients similar or identical to those services contemplated under this Agreement, subject to applicable confidentiality and ethical obligations of CONSULTANT. In the event TOWN desires an level of exclusivity or other limitations on CONSULTANT's services to its other clients, TOWN and CONSULTANT shall confer regarding the scope of requested exclusivity or other limitations and the additional compensation to be paid to CONSULTANT for the requested exclusivity or other limitations on providing similar or identical services shall be confirmed in writing signed by both parties and shall expressly state such provision shall supersede this Section 20. No fiduciary or agency obligations shall be created as a result of any exclusivity obligations or other limitations on CONSULTANT's services to other clients.

Section 23: **Reperformance of Services:**

If TOWN believes any of the services provided under this Agreement do not comply with the terms of this Agreement, TOWN shall promptly notify CONSULTANT to permit CONSULTANT an opportunity to investigate. If the services do not meet the applicable standard of care, it will promptly reperform the services at no additional cost to TOWN, including assisting TOWN in selecting remedial actions.

Section 24. **Survivability:**

Section 5 of this Agreement entitled "INSURANCE & INDEMNIFICATION"; Section 8 of this Agreement entitled "AUDIT RIGHT AND RETENTION OF RECORDS"; Section 10 of this Agreement entitled "OWNERSHIP RIGHTS"; Section 14 of this Agreement entitled "FURTHER ASSURANCES"; Section 18 of this Agreement entitled "RESOLUTION OF DISPUTES"; Section 19 of this Agreement entitled "APPLICABLE LAW & VENUE; WAIVER OF JURY TRIAL"; and Section 20 of this Agreement entitled "ENFORCEMENT; ATTORNEY'S FEES" shall survive the termination, cancellation, or expiration of this Agreement for any reason whatsoever.

Section 25. **Compliance With Laws:**

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

Section 26. **Miscellaneous:**

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

26.2 Materiality and Waiver of Breach: CONSULTANT and TOWN agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

Either party'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.

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

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

In the event CONSULTANT is permitted to utilize subcontractors to perform any services required by this Agreement, CONSULTANT agrees to prohibit such

subcontractors, by written contract, from having any conflicts within the meaning of this section.

26.4 CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, 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 CONSULTANT, 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.

26.5 Severance. 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 elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

26.6 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement.

26.7 Prior Agreements. This Agreement and its attachments constitute the entire Agreement between CONSULTANT and TOWN, and this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

26.8 Drug-Free Workplace. CONSULTANT shall maintain a drug-free workplace.

26.9 Multiple Originals. This Agreement may be fully executed in three (3) copies by all parties each of which, bearing original signatures, shall have the force and effect of an original document.

26.10 Headings. Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

26.11 Truth-in-Negotiation Certificate. Signature of this Agreement by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating

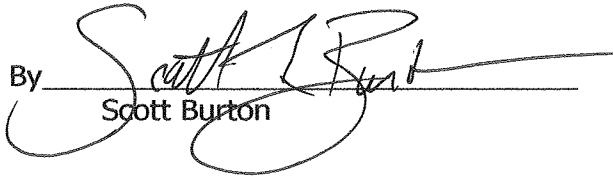
that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature GeoWeb Consulting Services, through Scott Burton, authorized to execute same, and TOWN OF SOUTHWEST RANCHES, signing by, and through its Mayor duly authorized to execute same by Council action on the 10th day of MARCH, 2011.

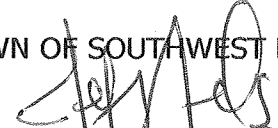
IN WITNESS WHEREOF, this Agreement is accepted and executed on the 10th day of MARCH, 2011.

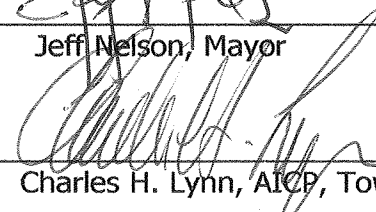
D/B/A GEOWEB CONSULTING SERVICES

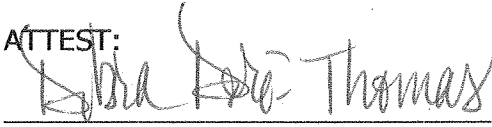
By: 
Scott Burton

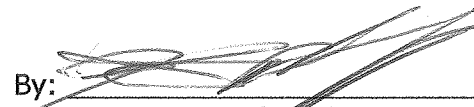
FOR TOWN OF SOUTHWEST RANCHES

TOWN OF SOUTHWEST RANCHES

By: 
Jeff Nelson, Mayor

By: 
Charles H. Lynn, AICP, Town Administrator

ATTEST:

Debra Doré-Thomas, CMC, Town Clerk

APPROVED AS TO FORM:

Keith M. Poliakoff, Town Attorney