

RESOLUTION NO. 2011-059

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA APPROVING AN AGREEMENT WITH FLORIDA ENGINEERING AND DEVELOPMENT, CORPORATION, FOR ONE HUNDRED FORTY SIX THOUSAND NINE HUNDRED TWENTY-SEVEN DOLLARS AND TEN CENTS (\$146,927.10) TO PROVIDE A CONTINUING CONTRACT ON ROADWAY PAVING AND DRAINAGE IMPROVEMENTS; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town desires to re-pave and to repair several Town roads; and

WHEREAS, the Town also desires to improve drainage associated with some of the Town's roadways; and

WHEREAS, the Town advertised a Request For Bids on March 21, 2011 for a continuing contract for roadway paving and drainage improvement services; and

WHEREAS, bids were received by the Town on April 13, 2011 at 11:00 A.M.; and

WHEREAS, there were nine (9) competitive bids received for the services requested; and

WHEREAS, Florida Engineering and Development, Corp., has provided the lowest-priced responsive and responsible bid; and

WHEREAS, the Town of Southwest Ranches desires to enter into a continuous services Agreement with Florida Engineering and Development, Corp. for roadway paving and drainage improvement services, under the terms and conditions set forth hereinafter.

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 Florida Engineering and Development, Corp., providing a continuing services contract for roadway paving and drainage improvement services in the amount of One Hundred Forty-Six Thousand Nine Hundred Twenty-Seven Dollars and Ten Cents (\$146,927.10), in substantially the same form as that attached hereto as Exhibit "A".

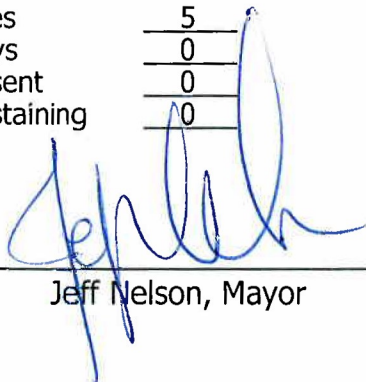
Section 3. The Town Council hereby authorizes the Mayor, Town Administrator, and Town Attorney to enter into the Agreement in substantially the same form as that attached hereto as Exhibit "A," and to make such modifications, additions, and/or deletions which they deem necessary and proper to effectuate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

Section 4. 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 12th day of May, 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:



Juanita Romance, Interim Town Clerk

Approved as to Form and Correctness:



Keith M. Poliakoff, Town Attorney
ACTIVE: 3361949_1

**AGREEMENT
BETWEEN THE**

TOWN OF SOUTHWEST RANCHES

AND

**FLORIDA ENGINEERING AND DEVELOPMENT
CORP.**

FOR

**CONTINUING CONTRACT ON ROADWAY PAVING
AND DRAINAGE IMPROVEMENTS**

AGREEMENT FOR

THIS IS AN AGREEMENT (“Agreement”) made and entered into on this 25 day of May, 2011 by and between the Town of Southwest Ranches, a Municipal Corporation of the State of Florida, (hereinafter referred to as “Town”) and Florida Engineering and Development Corp. (hereinafter referred to as “Contractor”).

WHEREAS, on March 21, 2011, in furtherance of the Town’s Procurement Code, the Town published an Invitation for Bids (IFB) seeking qualified contractors to enter into a continuing contract based on unit costs to repave certain roads and construct drainage pipes and structures in the Town limits; and

WHEREAS, bids were received by the TOWN on April 13, 2011 at 11:00 A.M.; and

WHEREAS, there were nine (9) competitive bids received for the services requested; and

WHEREAS, the TOWN has adopted Resolution No. 2011- 059 at a public Town Council meeting approving the award and has selected Florida Engineering and Development Corp. , as CONTRACTOR for the Project.

WHEREAS, the Town is desirous of entering into agreement with Florida Engineering and Development Corp. for roadway paving and drainage improvements pursuant to the terms set forth below.

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 The above recitals are true and correct and incorporated herein as if set forth in full hereunder.
- 1.2 The Contract Documents consist of this Agreement as modified by executed Work Authorizations (as defined below) and executed Change Orders (as defined below) and the following exhibits which are attached to this Agreement and made a part of it by this reference:
 - Exhibit “A”** – Scope of Work as set forth in the IFB and Contractor’s Bid including Unit Prices;
 - Exhibit “B”** – Work Authorization Form (Attachment D from IFB)

To the extent of any conflict among the Contract Documents, the more stringent criteria shall govern over the less stringent criteria and the terms of the Agreement, as it may be modified by executed Work Authorizations and executed Change Orders, shall govern over the terms of the referenced exhibits.

- 1.3 Upon execution of this Agreement, the Contractor agrees to perform the duties and responsibilities as defined and described in the Contract Documents (hereinafter referred to as "Work").
- 1.4 Contractor's Work shall be provided to Town based solely upon written requests provided by the Town Administrator or designee in advance of Contractor providing any of the Work ("Work Authorizations"). The form of Work Authorization is attached to and made a part of this Agreement as **Exhibit "B"**. In general, the Work shall include, but shall not be limited to, pavement repairs and construction, drainage improvements such as culverts and ditches, guard rails and swales, all as more specifically described in **Exhibit "A"**. Work performed by the Contractor without an executed Work Authorization shall be performed at Contractor's sole cost and expense and Contractor shall not be entitled to receive any compensation from the Town for such Work.
- 1.5 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.

Section 2: Term of this Agreement and Agreement Time

- 2.1 Town and Contractor agree that Contractor shall perform Work under this Agreement within the time set forth in the Work Authorization for such Work. Time is of the essence in the performance of the Work.
- 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.

Section 3: Compensation & Method of Payment

- 3.1 Contractor shall render all Work to the Town under the Agreement pursuant to executed Work Authorizations and each Work Authorization Price shall be determined by utilizing the unit prices at the quoted prices stipulated in the portion of **Exhibit "A"** consisting of the Contractor's Bid and Town shall pay Contractor for completion of the Work in accordance with the Contract Documents at said price stipulated in the Work Authorization.
- 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 amount defined in a Work Authorization Price, Contractor shall pay such excesses 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 a Work Authorization Price 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 and the Work Authorization under which it was authorized. Upon verification by Town that the invoiced Work has been performed in accordance with this Agreement and the Work Authorization under which it was authorized, Town shall have thirty (30) days thereafter to pay said invoice.
- 3.4 Town shall pay each Work Authorization Price to Contractor in accordance with the procedures set forth in Chapter 218.70, Florida Statutes, "Local Government Prompt Pay Act." Progress payment applications may be submitted by Contractor to Town for partial completion of the Work under a Work Authorization, but no more often than once monthly, for the period ending at the end of the month. Each payment application must be accompanied by supporting documentation and other information reasonably requested by Town, including but not limited to a Partial Release of Lien in the form set forth in Chapter 713.20, Florida Statutes. Each progress payment shall be reduced by 10% retainage. The final retainage on a Work Authorization shall be released after completion of the Work under such Work Authorization and Town's receipt of acceptable reports and other documentation including certification of payment to subcontractors, if any, and a Final Release of Lien in the form set forth in Chapter 713.20, Florida Statutes.
- 3.5 A final payment request under a Work Authorization must be accompanied by written notice from Contractor that the entire Work for the agreed roadway(s) in such Work Authorization was completed. The Town will make a final inspection and notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. The Town may refuse payment if (a) the Work is defective or completed Work has been damaged requiring correction or replacement, (b) the Town has been required to correct defective Work or complete Work in accordance with the Work Authorization, or (c) because claims have been made against the Town on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling the Town to a set-off against the amount due. No payment will be made for Work performed by the Contractor to replace defective work; for work which is not shown or ordered in a Work Authorization; for work which is outside the limits shown or ordered in a Work Authorization; or additional work performed by Contractor without prior written approval of Town.

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 and Bonds

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. Failure of Contractor to fully and satisfactorily comply with the Town's insurance and bonding requirements set forth herein will constitute a material breach of this Agreement.

6.2 All Insurance Policies shall be issued by companies that (a) are authorized to transact business and issue insurance 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-VII or better per A.M. Best's Key Rating Guide, latest edition.

6.3 All Insurance Policies shall name and endorse the following as additional insureds:

Town of Southwest Ranches
Attn: Charles H. Lynn, AICP, Town Administrator

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 of Chapter 44, Florida Statutes, which shall include employer's liability insurance. 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 One Million Dollars (\$1,000,000) 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 and Two Million Dollars (\$2,000,000) general aggregate. 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 coverage 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, personal injury and explosion, collapse and underground (X-C-U). Personal injury coverage shall include coverage that has the employee and contractual exclusions removed. The policy shall also include an endorsement in which the insurer acknowledges and accepts that Contractor may be utilizing volunteers in addition to employees on the Project.

Such insurance shall not diminish Contractor's indemnification obligations hereunder. The insurance policy shall be issued by such company, in such forms and with such limits of liability and deductibles as are acceptable to the Town and shall be endorsed to be primary over any insurance which the Town may maintain.

- 6.7 Contractor shall provide Town with a copy of the Certificates of Insurance or endorsements evidencing the types of Insurance and coverage required by this Section and appropriately endorsed for contractual liability with the Town named as an additional insured by endorsement and listed as certificate holder, prior to beginning the performance of any Work under this Agreement and, at any time thereafter, upon request by Town. The Town reserves the right from time to time to change the insurance coverage and limits of liability required to be maintained by Contractor hereunder.
- 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 coverage or limits. Notice shall be sent to:

**Town of Southwest Ranches
Town Administrator and Risk Management Department
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 coverage 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 If 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 at least 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 IS AN 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.
- 6.19 **BOND.** The Contractor shall provide a performance and payment bond for the Project (the "Bond") that in all respects complies with the requirements and form set forth in Florida Statute §255.05. The Bond shall be in the amount of 100% of the Bid Price, guaranteeing to the Town the completion and performance of the Work pursuant to each Work Authorization as well as full payment of all suppliers, material men, laborers, or subcontractors employed for the Project. The Bond shall continue in effect as to the Town for five year(s) after substantial completion of the Work and as to suppliers, material men, laborers, or subcontractors for one year after substantial completion of the Work. Additionally, prior to commencement of the Work, Contractor shall ensure that the Bond is recorded in the public records of Broward County and provide the TOWN with evidence of such recording.

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

The Contractor shall indemnify and hold harmless the Town, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Agreement. Notwithstanding any other provisions of this Agreement, the Contractor's duty to indemnify and defend Town as set forth in proposal shall survive the termination or expiration of this Agreement.

This indemnification provision is incorporated by reference into **Exhibit "A"** 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. Nothing in this Agreement shall be deemed or construed to create or confer any benefit, right or cause of action for any third party or entity.

Section 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 seven (7) **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 thereafter. In the event that Town terminates 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 violation or non-compliance with Section 11 of this Agreement;
3. Contractor's failure to maintain any Insurance required by Section 6 of this Agreement; or
4. Contractor's violation of Section 19 of this Agreement.

Section 19: Public Entity Crimes Statement

Pursuant to Florida Statutes, Section 287.133: "A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 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 Work Authorization Price 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 of Southwest Ranches
Charles H. Lynn, AICP, Town Administrator
6589 S. W. 160 Avenue
Southwest Ranches, Florida 33331

With a copy to:

Steven B. Lesser, Esq.
Becker & Poliakoff, P.A.
3111 Stirling Road
Fort Lauderdale, Florida 33312

If to Contractor:

Florida Engineering and Development, Corp.
Attn.: Jose Vega
12076 N.W. 98 Avenue
Hialeah Gardens, FL 33018

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

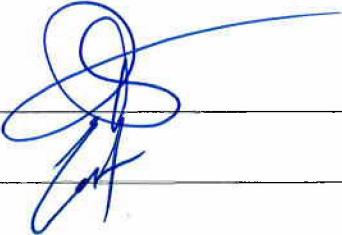
a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more 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: FLORIDA ENGINEERING AND DEVELOPMENT, CORP., and THE TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the 12th day of May, 2011.

WITNESSES:



CONTRACTOR:

By: 

Jose Vega, President
05 day of May 2011

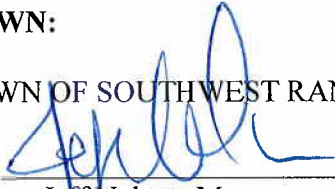
WITNESSES:



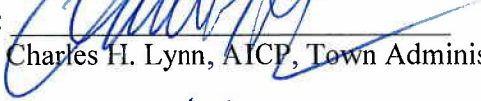


TOWN:

TOWN OF SOUTHWEST RANCHES

By: 

Jeff Nelson, Mayor
25 day of May 2011

By: 

Charles H. Lynn, AICP, Town Administrator
25 day of May 2011

ATTEST:



Juanita Romance, Interim Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:



Keith A. Poliakoff, Town Attorney

ACTIVE: S20572/077455:3359430_1