

**RESOLUTION NO. 2012 - 016**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA APPROVING THE SELECTION AND NEGOTIATION COMMITTEE'S SELECTION OF KENNETH R. FIELDS FOR THE POSITION OF TOWN ADMINISTRATOR; APPROVING AN AGREEMENT WITH KENNETH R. FIELDS FOR THE POSITION OF TOWN ADMINISTRATOR, WHICH ESTABLISHES THE SCOPE, COMPENSATION AND BENEFITS FOR HIS SERVICES; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO ENTER INTO THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on September 14, 2011, in furtherance of the Town's Procurement Code, the Town published a legal advertisement for request for letters of interest (RLI) seeking qualified candidates for the position of Town Administrator; and

**WHEREAS**, on October 14, 2011, the Town received twelve (12) qualified responses to its request for letters of interest; and

**WHEREAS**, on October 20, 2011, the Town's Selection and Negotiation Committee ("SNC"), at a publicly advertised meeting, reviewed and short-listed six (6) candidates for further consideration; and

**WHEREAS**, on October 25, 2011, and October 26, 2011, the Town's SNC, at a publicly advertised meeting, interviewed the short-listed candidates; and

**WHEREAS**, on November 1, 2011, after careful consideration, the Town's SNC, at a publicly advertised meeting, selected Kenneth R. Fields for the position of Town Administrator; and

**WHEREAS**, the Town Council approves the SNC's selection and is desirous of entering into the agreement, as presented, with Kenneth R. Fields for Town Administrative Services.

**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 Selection and Negotiation Committee's selection of Kenneth R. Fields for the position of Town Administrator.

**Section 3:** The Town Council hereby approves the Agreement, attached hereto as Exhibit "A", between the Town of Southwest Ranches and Kenneth R. Fields for the position of Town Administrator.

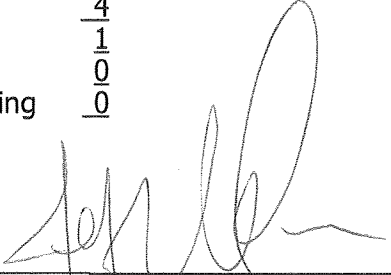
**Section 4:** The Town Council hereby authorizes the Mayor and Town Attorney to enter into an Agreement in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions and/or deletions which they deem necessary to effectuate the intent of this Resolution.

**Section 4:** This Resolution shall become effective immediately upon its adoption.

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 8<sup>th</sup> day of December, 2011, on a motion by Council Member Fisikelli and seconded by Vice Mayor McKay.

Nelson	<u>YES</u>
McKay	<u>YES</u>
Breitkreuz	<u>NO</u>
Fisikelli	<u>YES</u>
Jablonski	<u>YES</u>


Ayes	<u>4</u>
Nays	<u>1</u>
Absent	<u>0</u>
Abstaining	<u>0</u>

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

ATTEST:

  
\_\_\_\_\_  
Erika Gonzalez-Santamaria, CMC, Town Clerk

Approved as to Form and Correctness:

  
\_\_\_\_\_  
Keith M. Poliakoff, Town Attorney  
ACTIVE: 3582454\_1

**AGREEMENT**  
**BETWEEN**  
**THE TOWN OF SOUTHWEST RANCHES**  
**AND**  
**KENNETH R. FIELDS**

This AGREEMENT (the "Agreement") entered into this 15<sup>th</sup> day of December 2011, between the TOWN OF SOUTHWEST RANCHES, a Florida municipal corporation created and existing under the laws of the State of Florida, (the "Town"), and Kenneth R. Fields, an individual ("Administrator").

**WHEREAS**, the Town's Charter provides for the Council-Administrator form of government; and

**WHEREAS**, the office of the Town Administrator has the responsibility to supervise the administrative activity of the Town and to provide for the coordination of such activities; and

**WHEREAS**, The Town desires to employ the services of Kenneth R. Fields as Town Administrator of the Town of Southwest Ranches, to fulfill the responsibilities of the office as specified in the Town Charter; and

**WHEREAS**, Administrator desires to accept employment as Town Administrator of the Town of Southwest Ranches; and

**WHEREAS**, Town and Administrator wish to formalize the terms of appointment as Town Administrator.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

**1) Employment.**

Town hereby agrees to employ Kenneth R. Fields as Town Administrator of the Town of Southwest Ranches to perform the duties specified in the Charter of the Town of Southwest Ranches (the "Charter"), as may be amended from time to time, and those Specified Services described in Exhibit "A", and to perform other legally permissible and proper duties and functions as the Council shall assign from time to time, including but not limited to those duties customarily performed by municipal administrators in the state of Florida. The Town Administrator shall devote his full time professional employment to the Town of Southwest Ranches and will not accept any outside employment without the express knowledge and consent of the Town Council (the "Council"), which shall be obtained at a public meeting as an agenda item. The Administrator shall perform his duties under this Agreement, in accordance with the standards and duties as set forth in the Charter, as may be amended from time to time, and in

conformity with the International City Manager Association's ("ICMA") Code of Ethics, as may be amended from time to time.

**2) Term.**

A) Administrator shall serve as Town Administrator commencing on December 15<sup>th</sup>, 2011 ("Commencement Date") through December 31, 2016.

B) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of Administrator at any time, subject only to the provisions set forth in Section 4 of this Agreement.

C) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Administrator to resign at any time from his position, subject only to the provisions set forth in Section 5 of this Agreement.

**3) Salary.**

Town agrees to pay Administrator for his services rendered hereto based on an annual salary of One Hundred Forty Thousand Dollars (\$140,000.00), payable in equal installments on the first and fifteenth day of each month, or the nearest business day thereto, or on such other regular pay schedule as the Administrator may determine for all Town employees. Town may, at its own option, increase the base salary and/or benefits of the Administrator in such amounts and to such extent as the Council may determine that is desirable to do so based on the Administrator's Annual Performance Review, set forth in Section 15 of this Agreement, upon a super majority vote of the Town Council. In addition to reviewing the Administrator's performance, the Council may also consider adjustments to the Administrator's salary based on the cost of living index by a simple majority vote of the Town Council. In the event the Town Council chooses to reduce Administrator's salary, and in the event Administrator does not agree to such reduction, said reduction shall be considered a termination by the Town as specified in Section 4 below.

**4) Termination and Severance Pay.**

A. In the event Administrator is terminated from the Town's employment without cause and provided that the Administrator is willing and able to perform his duties under this Agreement, then in that event, Town agrees to pay Administrator a Severance Benefit as follows:

1. In the event Administrator is terminated without cause prior to the expiration of the Term specified in Section 2(A), Administrator shall be paid for any unused balance of paid time off days, based on Administrator's then current salary calculated as a per diem basis, and in addition, shall receive a severance payment as follows: (i) if terminated in the first 90 days from the Commencement Date, a severance payment equal to two (2) weeks salary, (ii) if terminated between the 91<sup>st</sup> and 365<sup>th</sup> day from the Commencement Date, a severance payment equal to one (1) months salary; (iii) if terminated between the 366<sup>th</sup> and 730<sup>th</sup> day from the Commencement Date two (2) months salary, if terminated after the 731<sup>st</sup> day from the Commencement Date, a

severance payment equal to four (4) months salary. The payment for any unused balance of paid time off days plus the severance payment shall be known as the "Severance Benefit". For purposes of this Section, Severance Benefit shall be based upon the salary specified in Section 3 in effect on the date of termination. Severance Benefit payments shall be paid to Administrator in two equal installments. The first installment shall be paid on the date Administrator ceases to perform services for the Town, and the second installment shall be paid thirty (30) days thereafter.

B. In the event Administrator is terminated from the Town's employment with cause for having been adjudicated guilty in a court of competent jurisdiction of a felony, Town shall have no obligation to pay any Severance Benefit, or any other benefit that may have been owed as a result of Administrator's termination.

C. In the event Administrator is terminated from the Town's employment with cause for one of the acts enumerated below, Town and Administrator agree that Administrator shall receive no Severance Benefit.

The following acts shall give rise to termination with cause:

1. Any reassignment of Administrator by the Council to another position for which he is qualified and able to perform, without change to benefits or pay, which is not accepted by Administrator.

2. Administrator has been found to have violated the Town's Procurement Code, and/or Sections 2.02 and 3.08(c) of the Town's Charter, which specifically requires Administrator to obtain the Mayor and Town Attorney's signature on any purchase order or agreement in excess of the amount specified in the Town's Procurement Code.

3. A willful breach of any of the provisions contained within this Agreement.

4. A violation of the Town's Personnel Manual.

D. Sections A-C above represent the maximum amount, including any other benefits that may claimed to be owed, in the event of termination.

## **5) Resignation.**

A. Unless both parties agree in writing to the contrary, with the exception of resignation for sudden illness of Administrator or his immediate family, Administrator shall provide the Town with a minimum of ninety (90) days written notice of resignation. Upon receipt of any such resignation, the Town may immediately terminate Administrator's services and shall not be required to pay any Severance Benefit. In the event of resignation, with the exception of Administrator's salary, Administrator shall immediately forgo any additional benefit stated herein. In the event Administrator fails to give the Town the required notice delineated above, Administrator agrees that the Town will be damaged, and such damages may be computed by a court of competent jurisdiction.

**6) Disability.**

If the Administrator is unable to perform his duties for a period of four (4) successive weeks beyond any unused paid time off, or for thirty (30) working days over a one hundred and twenty (120) working day period excluding any paid time off, Town at its sole option may terminate this Agreement for cause and shall not be required to pay any Severance Benefit specified herein.

**7) Professional Development.**

A. The Town agrees to pay the registration and travel expenses of the Administrator for appropriate professional and official travel, meetings, and occasions adequate to continue the professional development of the Administrator, and to adequately pursue necessary official and other functions of the Town. The Town agrees to pay for registration and travel expenses for Administrator's attendance at appropriate annual meetings, including but not limited to, the Florida League of Cities, the annual ICMA conference, the annual Florida City Managers Conference ("FCCMA"), the Broward County City Manager's Conference(s), and Broward Days. All such professional development expenses shall be subject to prior Council approval in the Town's budget.

B. The Town agrees to provide in the annual budget and to pay for appropriate annual dues for professional association memberships directly related to the administration of the Town including but not limited to ICMA, FCCMA and Broward County City Manager's Conference.

**8) Paid Time Off.**

No more than five (5) paid time off days shall be taken during the first six (6) months of this Agreement. From June 15, 2012 through December 31, 2012, Administrator may take an additional fifteen (15) paid time off days. Administrator shall be allowed to take twenty (20) paid time off days for calendar year 2013. Each calendar year thereafter, Administrator shall be allowed to take twenty five (25) paid time off days. Paid time off shall be calculated commencing on January 1 each year and terminating on December 31. Any days not utilized by December 31 shall be lost and shall not transfer to the next year. Further, Administrator shall not receive any additional compensation for days not utilized. Paid time off shall include sick, personal, and vacation days. Any days missed in excess of the paid time off days specified herein may be taken without compensation, provided Administrator receives the formal approval of the Town Council.

**9) General Expenses.**

A. Town recognizes that certain expenses of a non-personal and job related nature are incurred by the Administrator, and hereby agrees to reimburse the Administrator for said general

expenses upon receipt of a duly executed expense voucher or receipt, which must be approved in writing by the Town's Mayor for any expense less than Two Hundred and Fifty Dollars (\$250.00), and by a majority of the Council for any expense greater than Two Hundred and Fifty Dollars (\$250.00). The amount of the general expenses paid by the Town shall be approved by the Council during the annual budget process or at other such times as appropriate that will be submitted by the Administrator to the Council for action. Copies of all reimbursable expense vouchers approved by the Mayor shall be provided to the Town Council within five (5) business days of the Mayor's approval.

B. Administrator will be utilizing his personal automobile in the course of his performance. Administrator, subject to the Mayor's approval, which shall be in accordance with the financial thresholds set forth in Paragraph A above, may seek reimbursement for tolls and parking costs associated with official Town business, but Administrator shall not be provided any mileage reimbursement, or any other automotive reimbursements not specified herein. Any tolls incurred as a result of Administrator's drive to or from the Town from or to his personal place of residence shall not be subject to reimbursement. Copies of all reimbursable expenses approved by the Mayor shall be provided to the Town Council within five (5) business days of the Mayor's approval.

C. Administrator will be utilizing his personal cellular telephone in the course of his performance and as a result shall not receive any reimbursement for the cost of such usage. The Town shall reimburse Administrator, and shall pay all costs related to Administrator's purchase and utilization of a laptop computer or iPad2, including the network fee(s). The Town, subject to the Mayor's approval, which shall be in accordance with the financial thresholds set forth in Paragraph A above, shall reimburse Administrator for all applications necessary for the operation of the Town. Within thirty (30) days of the conclusion of Administrator's services, Administrator shall be given the right, in Administrator's sole discretion, to either refund to the Town the then reasonable value, as determined by the Town's Financial Administrator, of the laptop computer or iPad2, including the Town reimbursed applications, in which case Administrator shall own the laptop computer or iPad2, including any Town reimbursed applications, free and clear, or Administrator can return the laptop computer or iPad2, including any Town reimbursed applications, to the Town. All public records that may be saved to the device shall be conveyed to the Town prior to purchase. Copies of all reimbursable expenses approved by the Mayor shall be provided to the Town Council within five (5) business days of the Mayor's approval.

D. The Town, subject to the Mayor's approval, which shall be in accordance with the financial thresholds set forth in Paragraph A above, shall provide the Administrator with any other reasonable and appropriate office supplies, materials, desktop computer, software, and equipment with which to conduct the business of the Town. Copies of all reimbursable expenses approved by the Mayor shall be provided to the Town Council within five (5) business days of the Mayor's approval.

#### **10) Life Insurance & Survivors' Benefits.**

Town, in Administrator's sole discretion, shall either reimburse Administrator, or shall purchase a new life insurance policy for Administrator, in an amount not to exceed Two

Thousand Five Hundred Dollars (\$2,500) annually, for the actual cost of a life insurance policy sought to equal Administrator's then current salary. Nothing provided herein shall prohibit Administrator from providing his own additional funds to increase the policy terms or limits. Said policy may be transmittable, at Administrator's sole cost and expense, upon the conclusion of this Agreement. In the event of the death of the Administrator, his surviving spouse, registered domestic partner or dependents shall be entitled to payment of all of his unused paid time off days based on the Town Administrator's then current salary.

**11) Benefit Participation & Retirement Account.**

A. The Administrator shall be entitled to receive any additional benefits or may participate in any programs provided to other employees of the Town, at the option, and sole cost and expense, of the Administrator.

B. The Town shall make a monthly contribution on behalf of the Administrator to a ICMA Retirement Corporation Deferred Compensation 457 Plan, or similar retirement plan, in an amount equivalent to twelve percent (12%) of Administrators salary as specified in Section 3 above, not including benefits or any bonus.

**12) Indemnification.**

To the extent permitted by law, the Town shall defend, save harmless, and indemnify the Administrator against any action, claim, demand or other legal action, whether groundless or otherwise arising directly or indirectly out of the Administrator's duties or position with the Town. The aforesaid indemnification only applies to the extent that the costs, expenses or damages exceed monies covered by insurance. Notwithstanding the aforesaid, Town shall not be obligated to indemnify or save harmless Administrator from claims of any nature arising out of the malfeasance of Administrator, his agents or employees, intentional torts, or from injury or property damage caused by the intentional misconduct of Administrator, its agents or employees. This indemnification provision shall survive the termination of this Agreement.

**13) Surety Bond/Insurance.**

In furtherance of Section 3.05 of the Town's Charter, the Administrator shall furnish a surety bond or surety insurance for approval of the Town Council, in such amount as is determined by the Council. The premium of the bond shall be paid by the Town.

**14) Monthly Reports.**

Administrator shall provide the Council and the Town Attorney with a monthly report in a format determined by the Town Administrator, but which format may be modified by a majority vote of the Town Council. Said monthly report shall provide, but shall not be limited to such items as a budget summary (as provided by the Financial Administrator), capital projects



summary, personnel issues, and other matters that the Town Administrator deems necessary and proper in any given month.

**15) Annual Performance Review.**

A. By December 31<sup>st</sup> of each year, Administrator shall place on an agenda Administrator's performance review. Said review and evaluation shall be consistent with the stated goals and objectives referred to in paragraph B below. After conducting its formal review, if a majority of the Council believes that the Administrator has exceeded its expectations, the Council may, in its sole discretion, offer the Administrator an annual bonus or other benefit.

B. By July 31<sup>st</sup>, 2012, and by February 28<sup>th</sup> of each calendar year thereafter, Administrator shall place on an agenda an item in which the Council and the Administrator shall define generally attainable goals and performance objectives that they determine necessary for the proper operation of the Town of Southwest Ranches and shall further establish a relative priority among those various goals and objectives. Said goals and objectives shall be reduced by the Town Administrator to writing within thirty (30) days.

C. Failure to schedule either Section A. or B. on an agenda, within the timeframes specified herein, shall be deemed grounds for immediate termination with cause.

**17) Hours of Operation.**

The Administrator shall insure that the Town is open for business during such hours as are set forth, from time to time, by the Town Council, and shall be readily available, if necessary, during such hours. The Administrator is expected to be readily available during all business hours and at all Town Council Meetings and Workshops.

**18) Town Holidays.**

The Town shall be closed in accordance with the Town's annual holiday schedule, which is established by December of each calendar year by the Town Council.

**19) Ownership Rights**

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

**20) Nondiscrimination & Public Entity Crime Act**

A. Administrator 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. Administrator 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, Administrator shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

B. Administrator'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.

C. Public Entity Crime Act. Administrator represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to Town, may not submit a bid on a contract with Town for the construction or repair of a public building or public work, may not submit bids on leases of real property to Town, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with Town, and may not transact any business with Town in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from Town's competitive procurement activities. In addition to the foregoing, Administrator further represents that there has been no determination, based on an audit, that he committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that he has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Administrator has been placed on the convicted vendor list. Administrators shall execute the attached Non-Collusive Affidavit as evidence of compliance with the requirements of paragraph (2)(a) of Section 287.133, Florida Statutes, governing Public Entity Crimes.

## **21) 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.

## **22) Construction.**

This Agreement has been a joint effort of the parties, and the resulting documents, solely as a matter of judicial construction, shall not be construed more severely against one of the parties than the other.

**23) Further Assurances.**

Town and Administrator 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.

**24) 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.

**25) 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.

**26) 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.

**27) Professional Assurances.**

Administrator shall perform all services under this Agreement in accordance with the highest standard of care used by similar professional municipal administrators 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. Administrator represents that it has 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.

**28) Notice.**

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present the parties designate the following as the respective places for giving of notice:

For TOWN:

Town of Southwest Ranches  
Attn: Jeff Nelson, Mayor  
13400 Griffin Road  
Southwest Ranches, FL 33330

And

Keith M. Poliakoff, Town Attorney  
Becker & Poliakoff, P.A.  
3111 Stirling Rd.  
Ft. Lauderdale, FL 33312

For Administrator:

Kenneth R. Fields  
1064 SW 9<sup>th</sup> Ave  
Boca Raton, FL 33486

Or such other address as the parties may designate to each other in writing from time-to-time.

**29) Resolution of Disputes.**

In an effort to prevent litigation, the parties shall endeavor to resolve any and all claims arising from this Agreement by mediation. A request for mediation shall be filed, in writing, with the other party to the Agreement. To the extent litigation is permitted under this Agreement, the request for mediation 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

**30) 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, ADMINISTRATOR 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.**

**31) Enforcement; Attorney's Fees.**

The Town and Administrator 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 Administrator 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

**32) Compliance with Laws.**

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

**33) Miscellaneous.**

A. Materiality and Waiver of Breach: Administrator 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.

B. Administrator warrants and represents that he has not employed or retained any company or person, to solicit or secure this Agreement and that he has not paid or agreed to pay any person, company, corporation, individual or firm, 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.

C. With the exception of what has been set forth in Section 1 above, Administrator warrants and represents that by December 15, 2011, Administrator's sole employer shall be the Town of Southwest Ranches. Administrator further warrants and represents that he will disclose any conflict of interest, perceived or otherwise, with any current or future vendor or employee that may be hired by the Town.

D. ~~Drug-Free Workplace.~~ Administrator shall endeavor to maintain a drug-free workplace and shall institute a drug-free workplace policy.

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

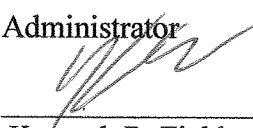
F. Truth-in-Negotiation Certificate. Signature of this Agreement by Administrator shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

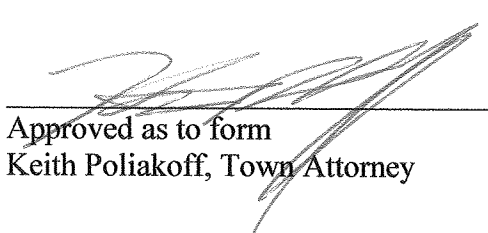
**IN WITNESS OF THE FOREGOING**, the parties have set their hands and seal the day and year first written above.

TOWN OF SOUTHWEST RANCHES

  
Jeff Nelson, Mayor

Administrator

  
Kenneth R. Fields

  
Approved as to form  
Keith Poliakoff, Town Attorney

Witness

Witness

ACTIVE: 3604213\_1

## **EXHIBIT "A"**

### **Specified Services**

#### **Administration**

- Attend all regular and special Town meetings
- Attend all meetings requested by Council
- Attend other meetings for the betterment of Town
- Attend meetings to obtain information beneficial for Town
- Provide analysis of recommended policies and actions
- Provide administrative policies and procedures
- Manage Town services efficiently and effectively
- Manage and administer all contracts approved by the Town
- Manage and acquire grants
- Manage all Town policies, ordinances and resolutions

#### **Work in Conjunction with Town Attorney Concerning the Following:**

- Keep the Town Attorney informed as to all matters that warrant legal input or exposes the Town to potential liability
- Obtain Town Attorney's signature on all contracts
- Copy Town Attorney on all correspondences with any governmental entity or on correspondences pertaining to legal issues
- Provide Town Attorney with drafts of all procurements for approval prior to publication

#### **Work in Conjunction with the Town's Financial Administrator to Prepare the Following:**

- Prepare annual and manage budget and 5-year capital program
- Prepare all necessary annual financial statements
- Prepare annual State CAFR reports
- Provide all financial and accounting activities
- Provide monthly financial report
- Provide financial advisory services
- Provide for collection of revenue due
- Manage and implement bond issues
- Manage investments of resources
- Manage risk management program

#### **Purchasing**

- Provide all purchasing and acquisition activities
- Provide negotiated agreements for services
- Provide procurement policies and procedures
- Prepare various types of purchasing methods, such as, RFP's, RLI's, RFQ's and bids
- Manage and assist in evaluation and selection of vendors

## **Communication**

- Maintain high level of communication and input to Council
- Maintain open and accessible relationship with residents
- Maintain, update and upgrade website, newsletter and other communications
- Manage progressive computer system
- Create excellent local and state relationships

ACTIVE: 3604213\_1



RECORD  
COPY

**AGREEMENT**  
**BETWEEN**  
**THE TOWN OF SOUTHWEST RANCHES**  
**AND**  
**KENNETH R. FIELDS**

This AGREEMENT (the "Agreement") entered into this 15<sup>th</sup> day of December 2011, between the TOWN OF SOUTHWEST RANCHES, a Florida municipal corporation created and existing under the laws of the State of Florida, (the "Town"), and Kenneth R. Fields, an individual ("Administrator").

**WHEREAS**, the Town's Charter provides for the Council-Administrator form of government; and

**WHEREAS**, the office of the Town Administrator has the responsibility to supervise the administrative activity of the Town and to provide for the coordination of such activities; and

**WHEREAS**, The Town desires to employ the services of Kenneth R. Fields as Town Administrator of the Town of Southwest Ranches, to fulfill the responsibilities of the office as specified in the Town Charter; and

**WHEREAS**, Administrator desires to accept employment as Town Administrator of the Town of Southwest Ranches; and

**WHEREAS**, Town and Administrator wish to formalize the terms of appointment as Town Administrator.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

**1) Employment.**

Town hereby agrees to employ Kenneth R. Fields as Town Administrator of the Town of Southwest Ranches to perform the duties specified in the Charter of the Town of Southwest Ranches (the "Charter"), as may be amended from time to time, and those Specified Services described in Exhibit "A", and to perform other legally permissible and proper duties and functions as the Council shall assign from time to time, including but not limited to those duties customarily performed by municipal administrators in the state of Florida. The Town Administrator shall devote his full time professional employment to the Town of Southwest Ranches and will not accept any outside employment without the express knowledge and consent of the Town Council (the "Council"), which shall be obtained at a public meeting as an agenda item. The Administrator shall perform his duties under this Agreement, in accordance with the standards and duties as set forth in the Charter, as may be amended from time to time, and in

conformity with the International City Manager Association's ("ICMA") Code of Ethics, as may be amended from time to time.

**2) Term.**

A) Administrator shall serve as Town Administrator commencing on December 15<sup>th</sup>, 2011 ("Commencement Date") through December 31, 2016.

B) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of Administrator at any time, subject only to the provisions set forth in Section 4 of this Agreement.

C) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Administrator to resign at any time from his position, subject only to the provisions set forth in Section 5 of this Agreement.

**3) Salary.**

Town agrees to pay Administrator for his services rendered hereto based on an annual salary of One Hundred Forty Thousand Dollars (\$140,000.00), payable in equal installments on the first and fifteenth day of each month, or the nearest business day thereto, or on such other regular pay schedule as the Administrator may determine for all Town employees. Town may, at its own option, increase the base salary and/or benefits of the Administrator in such amounts and to such extent as the Council may determine that is desirable to do so based on the Administrator's Annual Performance Review, set forth in Section 15 of this Agreement, upon a super majority vote of the Town Council. In addition to reviewing the Administrator's performance, the Council may also consider adjustments to the Administrator's salary based on the cost of living index by a simple majority vote of the Town Council. In the event the Town Council chooses to reduce Administrator's salary, and in the event Administrator does not agree to such reduction, said reduction shall be considered a termination by the Town as specified in Section 4 below.

**4) Termination and Severance Pay.**

A. In the event Administrator is terminated from the Town's employment without cause and provided that the Administrator is willing and able to perform his duties under this Agreement, then in that event, Town agrees to pay Administrator a Severance Benefit as follows:

1. In the event Administrator is terminated without cause prior to the expiration of the Term specified in Section 2(A), Administrator shall be paid for any unused balance of paid time off days, based on Administrator's then current salary calculated as a per diem basis, and in addition, shall receive a severance payment as follows: (i) if terminated in the first 90 days from the Commencement Date, a severance payment equal to two (2) weeks salary, (ii) if terminated between the 91<sup>st</sup> and 365<sup>th</sup> day from the Commencement Date, a severance payment equal to one (1) months salary; (iii) if terminated between the 366<sup>th</sup> and 730<sup>th</sup> day from the Commencement Date two (2) months salary, if terminated after the 731<sup>st</sup> day from the Commencement Date, a

severance payment equal to four (4) months salary. The payment for any unused balance of paid time off days plus the severance payment shall be known as the "Severance Benefit". For purposes of this Section, Severance Benefit shall be based upon the salary specified in Section 3 in effect on the date of termination. Severance Benefit payments shall be paid to Administrator in two equal installments. The first installment shall be paid on the date Administrator ceases to perform services for the Town, and the second installment shall be paid thirty (30) days thereafter.

B. In the event Administrator is terminated from the Town's employment with cause for having been adjudicated guilty in a court of competent jurisdiction of a felony, Town shall have no obligation to pay any Severance Benefit, or any other benefit that may have been owed as a result of Administrator's termination.

C. In the event Administrator is terminated from the Town's employment with cause for one of the acts enumerated below, Town and Administrator agree that Administrator shall receive no Severance Benefit.

The following acts shall give rise to termination with cause:

1. Any reassignment of Administrator by the Council to another position for which he is qualified and able to perform, without change to benefits or pay, which is not accepted by Administrator.

2. Administrator has been found to have violated the Town's Procurement Code, and/or Sections 2.02 and 3.08(c) of the Town's Charter, which specifically requires Administrator to obtain the Mayor and Town Attorney's signature on any purchase order or agreement in excess of the amount specified in the Town's Procurement Code.

3. A willful breach of any of the provisions contained within this Agreement.

4. A violation of the Town's Personnel Manual.

D. Sections A-C above represent the maximum amount, including any other benefits that may claimed to be owed, in the event of termination.

## **5) Resignation.**

A. Unless both parties agree in writing to the contrary, with the exception of resignation for sudden illness of Administrator or his immediate family, Administrator shall provide the Town with a minimum of ninety (90) days written notice of resignation. Upon receipt of any such resignation, the Town may immediately terminate Administrator's services and shall not be required to pay any Severance Benefit. In the event of resignation, with the exception of Administrator's salary, Administrator shall immediately forgo any additional benefit stated herein. In the event Administrator fails to give the Town the required notice delineated above, Administrator agrees that the Town will be damaged, and such damages may be computed by a court of competent jurisdiction.

**6) Disability.**

If the Administrator is unable to perform his duties for a period of four (4) successive weeks beyond any unused paid time off, or for thirty (30) working days over a one hundred and twenty (120) working day period excluding any paid time off, Town at its sole option may terminate this Agreement for cause and shall not be required to pay any Severance Benefit specified herein.

**7) Professional Development.**

A. The Town agrees to pay the registration and travel expenses of the Administrator for appropriate professional and official travel, meetings, and occasions adequate to continue the professional development of the Administrator, and to adequately pursue necessary official and other functions of the Town. The Town agrees to pay for registration and travel expenses for Administrator's attendance at appropriate annual meetings, including but not limited to, the Florida League of Cities, the annual ICMA conference, the annual Florida City Managers Conference ("FCCMA"), the Broward County City Manager's Conference(s), and Broward Days. All such professional development expenses shall be subject to prior Council approval in the Town's budget.

B. The Town agrees to provide in the annual budget and to pay for appropriate annual dues for professional association memberships directly related to the administration of the Town including but not limited to ICMA, FCCMA and Broward County City Manager's Conference.

**8) Paid Time Off.**

No more than five (5) paid time off days shall be taken during the first six (6) months of this Agreement. From June 15, 2012 through December 31, 2012, Administrator may take an additional fifteen (15) paid time off days. Administrator shall be allowed to take twenty (20) paid time off days for calendar year 2013. Each calendar year thereafter, Administrator shall be allowed to take twenty five (25) paid time off days. Paid time off shall be calculated commencing on January 1 each year and terminating on December 31. Any days not utilized by December 31 shall be lost and shall not transfer to the next year. Further, Administrator shall not receive any additional compensation for days not utilized. Paid time off shall include sick, personal, and vacation days. Any days missed in excess of the paid time off days specified herein may be taken without compensation, provided Administrator receives the formal approval of the Town Council.

**9) General Expenses.**

A. Town recognizes that certain expenses of a non-personal and job related nature are incurred by the Administrator, and hereby agrees to reimburse the Administrator for said general

expenses upon receipt of a duly executed expense voucher or receipt, which must be approved in writing by the Town's Mayor for any expense less than Two Hundred and Fifty Dollars (\$250.00), and by a majority of the Council for any expense greater than Two Hundred and Fifty Dollars (\$250.00). The amount of the general expenses paid by the Town shall be approved by the Council during the annual budget process or at other such times as appropriate that will be submitted by the Administrator to the Council for action. Copies of all reimbursable expense vouchers approved by the Mayor shall be provided to the Town Council within five (5) business days of the Mayor's approval.

B. Administrator will be utilizing his personal automobile in the course of his performance. Administrator, subject to the Mayor's approval, which shall be in accordance with the financial thresholds set forth in Paragraph A above, may seek reimbursement for tolls and parking costs associated with official Town business, but Administrator shall not be provided any mileage reimbursement, or any other automotive reimbursements not specified herein. Any tolls incurred as a result of Administrator's drive to or from the Town from or to his personal place of residence shall not be subject to reimbursement. Copies of all reimbursable expenses approved by the Mayor shall be provided to the Town Council within five (5) business days of the Mayor's approval.

C. Administrator will be utilizing his personal cellular telephone in the course of his performance and as a result shall not receive any reimbursement for the cost of such usage. The Town shall reimburse Administrator, and shall pay all costs related to Administrator's purchase and utilization of a laptop computer or iPad2, including the network fee(s). The Town, subject to the Mayor's approval, which shall be in accordance with the financial thresholds set forth in Paragraph A above, shall reimburse Administrator for all applications necessary for the operation of the Town. Within thirty (30) days of the conclusion of Administrator's services, Administrator shall be given the right, in Administrator's sole discretion, to either refund to the Town the then reasonable value, as determined by the Town's Financial Administrator, of the laptop computer or iPad2, including the Town reimbursed applications, in which case Administrator shall own the laptop computer or iPad2, including any Town reimbursed applications, free and clear, or Administrator can return the laptop computer or iPad2, including any Town reimbursed applications, to the Town. All public records that may be saved to the device shall be conveyed to the Town prior to purchase. Copies of all reimbursable expenses approved by the Mayor shall be provided to the Town Council within five (5) business days of the Mayor's approval.

D. The Town, subject to the Mayor's approval, which shall be in accordance with the financial thresholds set forth in Paragraph A above, shall provide the Administrator with any other reasonable and appropriate office supplies, materials, desktop computer, software, and equipment with which to conduct the business of the Town. Copies of all reimbursable expenses approved by the Mayor shall be provided to the Town Council within five (5) business days of the Mayor's approval.

#### **10) Life Insurance & Survivors' Benefits.**

Town, in Administrator's sole discretion, shall either reimburse Administrator, or shall purchase a new life insurance policy for Administrator, in an amount not to exceed Two

Thousand Five Hundred Dollars (\$2,500) annually, for the actual cost of a life insurance policy sought to equal Administrator's then current salary. Nothing provided herein shall prohibit Administrator from providing his own additional funds to increase the policy terms or limits. Said policy may be transmittable, at Administrator's sole cost and expense, upon the conclusion of this Agreement. In the event of the death of the Administrator, his surviving spouse, registered domestic partner or dependents shall be entitled to payment of all of his unused paid time off days based on the Town Administrator's then current salary.

**11) Benefit Participation & Retirement Account.**

A. The Administrator shall be entitled to receive any additional benefits or may participate in any programs provided to other employees of the Town, at the option, and sole cost and expense, of the Administrator.

B. The Town shall make a monthly contribution on behalf of the Administrator to a ICMA Retirement Corporation Deferred Compensation 457 Plan, or similar retirement plan, in an amount equivalent to twelve percent (12%) of Administrators salary as specified in Section 3 above, not including benefits or any bonus.

**12) Indemnification.**

To the extent permitted by law, the Town shall defend, save harmless, and indemnify the Administrator against any action, claim, demand or other legal action, whether groundless or otherwise arising directly or indirectly out of the Administrator's duties or position with the Town. The aforesaid indemnification only applies to the extent that the costs, expenses or damages exceed monies covered by insurance. Notwithstanding the aforesaid, Town shall not be obligated to indemnify or save harmless Administrator from claims of any nature arising out of the malfeasance of Administrator, his agents or employees, intentional torts, or from injury or property damage caused by the intentional misconduct of Administrator, its agents or employees. This indemnification provision shall survive the termination of this Agreement.

**13) Surety Bond/Insurance.**

In furtherance of Section 3.05 of the Town's Charter, the Administrator shall furnish a surety bond or surety insurance for approval of the Town Council, in such amount as is determined by the Council. The premium of the bond shall be paid by the Town.

**14) Monthly Reports.**

Administrator shall provide the Council and the Town Attorney with a monthly report in a format determined by the Town Administrator, but which format may be modified by a majority vote of the Town Council. Said monthly report shall provide, but shall not be limited to such items as a budget summary (as provided by the Financial Administrator), capital projects

summary, personnel issues, and other matters that the Town Administrator deems necessary and proper in any given month.

**15) Annual Performance Review.**

A. By December 31<sup>st</sup> of each year, Administrator shall place on an agenda Administrator's performance review. Said review and evaluation shall be consistent with the stated goals and objectives referred to in paragraph B below. After conducting its formal review, if a majority of the Council believes that the Administrator has exceeded its expectations, the Council may, in its sole discretion, offer the Administrator an annual bonus or other benefit.

B. By July 31<sup>st</sup>, 2012, and by February 28<sup>th</sup> of each calendar year thereafter, Administrator shall place on an agenda an item in which the Council and the Administrator shall define generally attainable goals and performance objectives that they determine necessary for the proper operation of the Town of Southwest Ranches and shall further establish a relative priority among those various goals and objectives. Said goals and objectives shall be reduced by the Town Administrator to writing within thirty (30) days.

C. Failure to schedule either Section A. or B. on an agenda, within the timeframes specified herein, shall be deemed grounds for immediate termination with cause.

**17) Hours of Operation.**

The Administrator shall insure that the Town is open for business during such hours as are set forth, from time to time, by the Town Council, and shall be readily available, if necessary, during such hours. The Administrator is expected to be readily available during all business hours and at all Town Council Meetings and Workshops.

**18) Town Holidays.**

The Town shall be closed in accordance with the Town's annual holiday schedule, which is established by December of each calendar year by the Town Council.

**19) Ownership Rights**

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

**20) Nondiscrimination & Public Entity Crime Act**

A. Administrator 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. Administrator 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, Administrator shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

B. Administrator'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.

C. Public Entity Crime Act. Administrator represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to Town, may not submit a bid on a contract with Town for the construction or repair of a public building or public work, may not submit bids on leases of real property to Town, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with Town, and may not transact any business with Town in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from Town's competitive procurement activities. In addition to the foregoing, Administrator further represents that there has been no determination, based on an audit, that he committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that he has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Administrator has been placed on the convicted vendor list. Administrators shall execute the attached Non-Collusive Affidavit as evidence of compliance with the requirements of paragraph (2)(a) of Section 287.133, Florida Statutes, governing Public Entity Crimes.

## **21) 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.

## **22) Construction.**

This Agreement has been a joint effort of the parties, and the resulting documents, solely as a matter of judicial construction, shall not be construed more severely against one of the parties than the other.



**23) Further Assurances.**

Town and Administrator 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.

**24) 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.

**25) 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.

**26) 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.

**27) Professional Assurances.**

Administrator shall perform all services under this Agreement in accordance with the highest standard of care used by similar professional municipal administrators 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. Administrator represents that it has 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.

**28) Notice.**

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present the parties designate the following as the respective places for giving of notice:

For TOWN:

Town of Southwest Ranches  
Attn: Jeff Nelson, Mayor  
13400 Griffin Road  
Southwest Ranches, FL 33330

And

Keith M. Poliakoff, Town Attorney  
Becker & Poliakoff, P.A.  
3111 Stirling Rd.  
Ft. Lauderdale, FL 33312

For Administrator:

Kenneth R. Fields  
1064 SW 9<sup>th</sup> Ave  
Boca Raton, FL 33486

Or such other address as the parties may designate to each other in writing from time-to-time.

**29) Resolution of Disputes.**

In an effort to prevent litigation, the parties shall endeavor to resolve any and all claims arising from this Agreement by mediation. A request for mediation shall be filed, in writing, with the other party to the Agreement. To the extent litigation is permitted under this Agreement, the request for mediation 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

**30) 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, ADMINISTRATOR 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.**

**31) Enforcement; Attorney's Fees.**

The Town and Administrator 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 Administrator 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

**32) Compliance with Laws.**

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

**33) Miscellaneous.**

A. Materiality and Waiver of Breach: Administrator 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.

B. Administrator warrants and represents that he has not employed or retained any company or person, to solicit or secure this Agreement and that he has not paid or agreed to pay any person, company, corporation, individual or firm, 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.

C. With the exception of what has been set forth in Section 1 above, Administrator warrants and represents that by December 15, 2011, Administrator's sole employer shall be the Town of Southwest Ranches. Administrator further warrants and represents that he will disclose any conflict of interest, perceived or otherwise, with any current or future vendor or employee that may be hired by the Town.

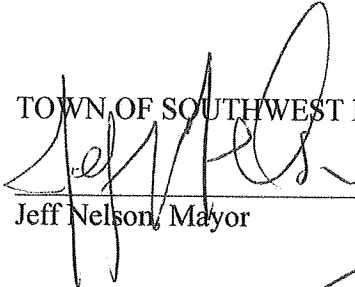
D. **Drug-Free Workplace.** Administrator shall endeavor to maintain a drug-free workplace and shall institute a drug-free workplace policy.

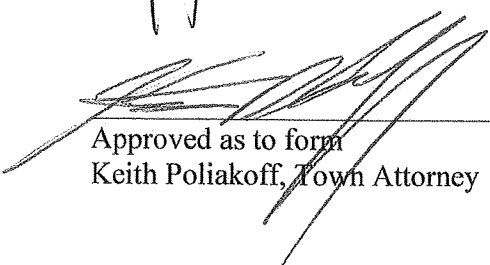
E. **Headings.** Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

F. **Truth-in-Negotiation Certificate.** Signature of this Agreement by Administrator shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

**IN WITNESS OF THE FOREGOING**, the parties have set their hands and seal the day and year first written above.

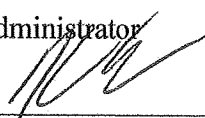
TOWN OF SOUTHWEST RANCHES

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

  
\_\_\_\_\_  
Approved as to form  
Keith Poliakoff, Town Attorney

ACTIVE: 3604213\_1

Administrator

  
\_\_\_\_\_  
Kenneth R. Fields

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

## **EXHIBIT "A"**

### **Specified Services**

#### **Administration**

- Attend all regular and special Town meetings
- Attend all meetings requested by Council
- Attend other meetings for the betterment of Town
- Attend meetings to obtain information beneficial for Town
- Provide analysis of recommended policies and actions
- Provide administrative policies and procedures
- Manage Town services efficiently and effectively
- Manage and administer all contracts approved by the Town
- Manage and acquire grants
- Manage all Town policies, ordinances and resolutions

#### **Work in Conjunction with Town Attorney Concerning the Following:**

- Keep the Town Attorney informed as to all matters that warrant legal input or exposes the Town to potential liability
- Obtain Town Attorney's signature on all contracts
- Copy Town Attorney on all correspondences with any governmental entity or on correspondences pertaining to legal issues
- Provide Town Attorney with drafts of all procurements for approval prior to publication

#### **Work in Conjunction with the Town's Financial Administrator to Prepare the Following:**

- Prepare annual and manage budget and 5-year capital program
- Prepare all necessary annual financial statements
- Prepare annual State CAFR reports
- Provide all financial and accounting activities
- Provide monthly financial report
- Provide financial advisory services
- Provide for collection of revenue due
- Manage and implement bond issues
- Manage investments of resources
- Manage risk management program

#### **Purchasing**

- Provide all purchasing and acquisition activities
- Provide negotiated agreements for services
- Provide procurement policies and procedures
- Prepare various types of purchasing methods, such as, RFP's, RLI's, RFQ's and bids
- Manage and assist in evaluation and selection of vendors

## **Communication**

- Maintain high level of communication and input to Council
- Maintain open and accessible relationship with residents
- Maintain, update and upgrade website, newsletter and other communications
- Manage progressive computer system
- Create excellent local and state relationships

ACTIVE: 3604213\_1