



# Southwest Ranches Town Council

**REGULAR MEETING**  
Agenda of April 26, 2018

Southwest Ranches Council Chambers  
**7:00 PM Thursday**

13400 Griffin Road  
Southwest Ranches, FL 33330

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|--|--|---|--|
| <b><u>Mayor</u></b><br>Doug McKay            | <b><u>Town Council</u></b><br>Steve Breitkreuz<br>Gary Jablonski | <b><u>Town Administrator</u></b><br>Andrew D. Berns                         | <b><u>Town Attorney</u></b><br>Keith M. Poliakoff, J.D.                            |
| <b><u>Vice Mayor</u></b><br>Freddy Fisikelli | Denise Schroeder   | <b><u>Town Financial<br/>Administrator</u></b><br>Martin Sherwood, CPA CGFO | <b><u>Assistant Town<br/>Administrator/Town Clerk</u></b><br>Russell C. Muniz, MMC |

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In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (954) 434-0008 for assistance no later than four days prior to the meeting.

- 1. Call to Order/Roll Call**
- 2. Pledge of Allegiance**
- 3. 2018 Legislative Session Update - Senator Lauren Book & Representative Richard Stark**
- 4. Public Comment**
  - All Speakers are limited to 3 minutes.
  - Public Comment will last for 30 minutes.
  - All comments must be on non-agenda items.
  - All Speakers must fill out a request card prior to speaking.
  - All Speakers must state first name, last name, and mailing address.
  - Speakers will be called in the order the request cards were received.
  - Request cards will only be received until the first five minutes of public comment have concluded.
- 5. Board Reports**
- 6. Council Member Comments**
- 7. Legal Comments**
- 8. Administration Comments**

## **Ordinance - 1st Reading**

- 9. AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, VACATING, CLOSING AND ABANDONING A PORTION OF UNIMPROVED RIGHT-OF-WAY RECORDED AS THE WEST 20 FEET OF TRACTS 13 THROUGH 16, LESS THE SOUTH 40 FEET OF TRACT 16, EVERGLADE SUGAR & LAND CO. SUBDIVISION OF SECTION 34, TOWNSHIP 50 SOUTH, RANGE 40 EAST, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 152, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; GENERALLY LOCATED AT THE 13800 BLOCK OF STIRLING ROAD MIDWAY**

BETWEEN HANCOCK ROAD AND HOLATEE TRAIL AND EXTENDING 1,280.75 FEET NORTH OF STIRLING ROAD; AUTHORIZING THE PREPARATION AND EXECUTION OF EFFECTUATING DOCUMENTS; PROVIDING INSTRUCTIONS TO THE TOWN CLERK; PROVIDING FOR RECORDATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE. {Second Reading to be held on May 10, 2018}

10. AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA AMENDING THE CODE OF ORDINANCES OF THE TOWN OF SOUTHWEST RANCHES BY AMENDING ARTICLE III, CHAPTER 22, OF THE CODE, ENTITLED CABLE TELEVISION; AMENDING SECTION 22-88 OF THE CODE BY PROVIDING THAT A CERTIFICATEHOLDER AS DEFINED IN SECTION 610.103(1)(4), FLORIDA STATUTES, SHALL COMPLY WITH THE TOWN OF SOUTHWEST RANCHES COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE, ARTICLE II, CHAPTER 22, SECTIONS 22.18-22.31 OF THE TOWN CODE, FOR PLACING OR MAINTAINING A CABLE SYSTEM OR FACILITIES IN THE TOWN PUBLIC RIGHTS-OF-WAY; REPEALING AND REPLACING ARTICLE II, CHAPTER 22, SECTIONS 22.19 – 22.31, ENTITLED “PLACEMENT OF FACILITIES IN RIGHTS-OF-WAY,” WITH NEW SECTIONS 22.18-22.27 AND CREATING THE TOWN OF SOUTHWEST RANCHES COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING REQUIREMENT OF A PERMIT; PROVIDING APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR A PERFORMANCE BOND; PROVIDING FOR CONSTRUCTION METHODS; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR FEES AND TAXES; PROVIDING ENFORCEMENT REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR REPEAL OF ZONING IN PROGRESS; AND PROVIDING AN EFFECTIVE DATE. {Second Reading to be held on May 10, 2018}

#### Resolutions

11. A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A CHANGE ORDER WITH ADVANCED MODULAR STRUCTURES, INC. IN THE AMOUNT OF FOURTEEN THOUSAND FIVE HUNDRED THIRTY-ONE DOLLARS AND ZERO CENTS (\$14,531.00) TO UPGRADE THE ELECTRICAL WORK FOR THE FIRE MODULAR PROJECT AT 17220 GRIFFIN ROAD AND TO REMOVE AN EXISTING CANOPY; APPROVING A FISCAL YEAR 2017-2018 BUDGET AMENDMENT; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ISSUE A PURCHASE ORDER; AND PROVIDING FOR AN EFFECTIVE DATE.
12. A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN AGREEMENT WITH THOMAS M. SQUARINI SERVICES, LLC FOR POLICE CIVILIAN

**COORDINATOR SERVICES; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

- 13. A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AUTHORIZING A NEW EMERGENCY LINE OF CREDIT NOTE IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$\_\_\_\_\_, TO PROVIDE FINANCING TO MEET RECOVERY COSTS RELATING TO A DECLARED STATE OF EMERGENCY AFFECTING THE TOWN AND COSTS RELATED THERETO; COVENANTING TO REPAY SUCH NOTE FROM REIMBURSEMENTS RECEIVED BY THE TOWN FROM FEMA AND THE STATE OF FLORIDA, AND COVENANTING TO BUDGET AND APPROPRIATE FUNDS, FROM LEGALLY AVAILABLE NON-AD VALOREM REVENUES; AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT, LOAN NOTE AND SUCH OTHER LOAN DOCUMENTS DEEMED NECESSARY; TO REPAY SUCH NOTE; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**
- 14. A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, ENACTING A ZONING IN PROGRESS FOR WIRELESS SERVICE FACILITIES AND PERSONAL WIRELESS SERVICE FACILITIES, AS DEFINED IN SECTION 365.172 F.S. AND 47 U.S.C. §332(c)(7)(C)(ii); ADDING INTO THE ZONING IN PROGRESS THE INSTALLTION OF FIBER FOR BACKHAUL, WITHIN THE TOWN'S RIGHTS-OF-WAY; DIRECTING TOWN STAFF TO DEFER THE ACCEPTANCE AND PROCESSING OF DEVELOPMENT APPLICATIONS AND PROHIBITING THE ISSUANCE OF BUILDING PERMITS, DEVELOPMENT ORDERS, OR LOCAL BUSINESS TAX RECEIPTS UNTIL THE EARLIER OF THE DATE THE TOWN ADOPTS ITS CODE REVISIONS OR DECEMBER 31, 2018; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**Discussion**

- 15. Amendment to Ground Lease with Helen Homes of Weston Development, LLC**
- 16. Approval of Minutes**
  - a. March 8, 2018 Regular Meeting**
- 17. Adjournment**

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY

LAW.





**Town of Southwest Ranches**  
**13400 Griffin Road**  
**Southwest Ranches, FL 33330-2628**

**(954) 434-0008 Town Hall**  
**(954) 434-1490 Fax**

**Town Council**  
**Doug McKay, Mayor**  
**Steve Breitkreuz, Vice Mayor**  
**Freddy Fisikelli, Council Member**  
**Gary Jablonski, Council Member**  
**Denise Schroeder, Council Member**

**Andrew D. Berns, Town Administrator**  
**Keith M. Poliakoff, JD, Town Attorney**  
**Russell Muniz, Assistant Town Administrator/Town Clerk**  
**Martin D. Sherwood, CPA, CGMA, CGFO, Town Financial Administrator**

## **COUNCIL MEMORANDUM**

**TO:** Honorable Mayor McKay and Town Council  
**VIA:** Andrew D. Berns, Town Administrator  
**FROM:** Jeff Katims  
**DATE:** 4/26/2018  
**SUBJECT:** Ordinance Vacating Unimproved Right-of-Way

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### **Recommendation**

Staff finds that the subject right-of-way is not needed for any public purpose, and that approving the request for vacation is not in conflict with the health, safety and welfare of Town residents.

Council may deny the request, defer the request to seek additional information, approve the request, or approve the request with conditions.

### **Strategic Priorities**

A. Sound Governance

### **Background**

Petitioner is applying to vacate half of a 40-foot section of unimproved right-of-way that extends 1,280.75 feet north from Stirling Road. The right-of-way contains numerous fence, hedge and tree encroachments, and is not used to access abutting properties.

### **Fiscal Impact/Analysis**

N/A

**Staff Contact:**

Jeff Katims, AICP, CNU-A

**ATTACHMENTS:**

| Description                                     | Upload Date | Type            |
|---|-------------|-----------------|
| Staff Report                                    | 4/3/2018    | Backup Material |
| Ordinance Vacating Unimproved ROW - TA Approved | 4/20/2018   | Ordinance       |
| Aerial Location & Notification Map              | 4/3/2018    | Exhibit         |
| Detailed Location Map                           | 4/3/2018    | Exhibit         |

**TOWN OF SOUTHWEST RANCHES  
TOWN COUNCIL AGENDA REPORT**

April 26, 2018

- SUBJECT:** Vacation of platted right-of-way, VC-27-18
- LOCATION:** Generally located in the 13800 block of Stirling Road, midway between Hancock Road and Holatee Trail.
- Legally described as the west 20 feet of tracts 13 through 16, less the south 40 feet of tract 16, Everglade Sugar & Land Co. Subdivision of Section 34, Township 50 South, Range 40 East, according to the plat thereof as recorded in Plat Book 1, Page 152, of the Public Records of Dade County, Florida. Said lands situate lying and being in the Town of Southwest Ranches, Broward County, Florida. Containing 25,615 square feet (0.588 acres) more or less.
- PETITIONER:** Paragon Homes of South Florida, Inc.  
5240 S. University Drive, Suite 102  
Davie, FL 33328
- OWNER/  
APPLICANT:** Neisha Zaffuto, Trustee  
13851 Stirling Road  
Southwest Ranches, FL 33330
- LAND USE PLAN  
DESIGNATION:** Rural Ranches (1 DU / 2.0 net or 2.5 gross acres)
- ZONING:** RR – Rural Ranches
- EXHIBITS:** Staff report, Ordinance, aerial photograph, mail notice map, and sketch and legal description of right-of-way to be vacated

**BACKGROUND AND ANALYSIS**

Application summary: The Petitioner is applying to vacate the east half of a 40-foot section of right-of-way that extends 1,280.75 feet north from Stirling Road (“subject right-of-way”), as shown on the attached location map. (Note: the legal description states “west 20 feet,” but this is in reference to the tracts from which the right-of-way was derived. The other half of the right-of-way would be described as the “east 20 feet” of the applicable tracts to the west.)

Origin of subject right-of-way: The subject right-of-way is part of a corridor that was dedicated in 1912 by the original plat of this portion of Sunshine Ranches, and extends from Stirling Road to East Palomino Drive (“subject corridor”). Other rights-of-way that now comprise most north-south streets in Sunshine Ranches were also dedicated by plats that were recorded in the early

years of the 20<sup>th</sup> Century, when horse and buggy was just beginning to give way to the automobile. These north-south streets used today have been widened over time to accommodate higher traffic volumes, companion drainage canals and to comply with modern engineering standards.

Suitability of subject right-of-way: The subject corridor is not of sufficient width to accommodate a standard street, which typically requires at least 50 feet. There are segments that are as wide as 60 feet because of piecemeal dedications obtained by Broward County, but the majority of the corridor is 40 feet in width. Additionally, two, 300-foot segments have been reduced to 20 feet in width, one of which is located one-tenth of a mile north of the subject segment, and the other of which is located immediately south of East Palomino Drive.

Unlike the other platted north-south alignments in Sunshine Ranches, the subject corridor remains unimproved for a public purpose, and has been encroached upon by abutting property owners' fences, formal hedges and trees.

Acknowledgments and notification: Since the petitioner seeks to vacate only the east half of the right-of-way abutting the applicant/owner's property, the owners of properties to the west were not required to join the petition. Nevertheless, the petitioner tried unsuccessfully to obtain the signatures of such property owners. Staff sent mail notice three weeks before the hearing to the owners of all properties located between Hancock Road and Holatee Trail north of Stirling Road and south of East Palomino Drive. Additionally, the petitioner posted the required sign notice on Stirling Road at the site of the vacation request, and the Town will have published newspaper notice in advance of both first and second readings of the ordinance, as applicable.

The petitioner obtained letters of no objection from all applicable utilities, including South Broward Drainage District.

Public purpose analysis: A review of property ownership patterns indicates that vacating the subject right-of-way would not create any landlocked parcels. All parcels have existing, improved access to a public street, or the ability to obtain same in the case of undeveloped properties under the same ownership as abutting parcels that have public street frontage. While there are several tracts abutting the subject right-of-way that are of sufficient size and dimension for further subdivision, any new lots can be accessed through private streets, shared driveways or flag lots extending off of Hancock, Holatee, Stirling, or East Palomino. Existing subdivided parcels have access from shared driveways or streets such as SW 50<sup>th</sup> Manor, SW 52<sup>nd</sup> Place, SW 56<sup>th</sup> Manor, SW 138<sup>th</sup> Terrace, and Bella Ranch Lane.

The subject corridor and the subject right-of-way do not appear to serve any public purpose, as there are no properties that are currently accessed from the subject corridor, no portion of the subject corridor in between East Palomino Drive and Stirling Road is improved with a travel surface, and as previously stated, fences and substantial vegetation obstruct the use of the corridor throughout its length.

## **RECOMMENDATION**

Staff finds that the subject right-of-way is not needed for any public purpose, and that the vacation request will not otherwise be in conflict with the health, safety and welfare of Town residents.

1. The Council could choose to deny this application.
2. The Council could table this item to seek additional information.
3. The Council could choose to approve this item.
4. The Council could choose to approve this item with conditions.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, VACATING, CLOSING AND ABANDONING A PORTION OF UNIMPROVED RIGHT-OF-WAY RECORDED AS THE WEST 20 FEET OF TRACTS 13 THROUGH 16, LESS THE SOUTH 40 FEET OF TRACT 16, EVERGLADE SUGAR & LAND CO. SUBDIVISION OF SECTION 34, TOWNSHIP 50 SOUTH, RANGE 40 EAST, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 152, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; GENERALLY LOCATED AT THE 13800 BLOCK OF STIRLING ROAD MIDWAY BETWEEN HANCOCK ROAD AND HOLATEE TRAIL AND EXTENDING 1,280.75 FEET NORTH OF STIRLING ROAD; AUTHORIZING THE PREPARATION AND EXECUTION OF EFFECTUATING DOCUMENTS; PROVIDING INSTRUCTIONS TO THE TOWN CLERK; PROVIDING FOR RECORDATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Paragon Homes of South Florida, Inc. ("Petitioner") seek to vacate the right-of-way described in Exhibit "A" hereto on behalf of Neisha Zaffuto, Trustee of NNJZ Revokable Trust; and

**WHEREAS**, the Town Council of the Town of Southwest Ranches, Florida ("Town Council") finds that the unimproved subject right-of-way is not used to access adjoining properties; and

**WHEREAS**, the Town Council finds that all properties adjoining the subject right-of-way have alternate means of access; and

**WHEREAS**, the Town Council finds that the subject right-of-way does is not needed for any public purpose, and that the vacation request will not otherwise be in conflict with the health, safety, and welfare of Town residents.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:**

**Section 1. ADOPTION OF RECITALS.** The foregoing recitals are true and correct and are incorporated herein by reference.

**Section 2. RIGHT-OF-WAY VACATION.** The Town Council hereby authorizes the vacation and abandonment of the right of way described in Exhibit "A," which is attached hereto and made a part hereof.

**Section 3. EFFECTUATION.** The Town Attorney, Town Administrator and Mayor are hereby authorized to prepare and execute any and all documents necessary to effectuate the intent of this Ordinance.

**Section 4. RECORDATION.** The Town Clerk is hereby directed to record a copy of this Ordinance in the Public Records of Broward County, Florida.

**Section 5. CONFLICT.** All ordinances or parts of Ordinances, Resolutions, or parts of Resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

**Section 6. SEVERABILITY.** If any word, phrase, clause, sentence, or section of this Ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

**Section 7. EFFECTIVE DATE.** This Ordinance shall be effective immediately upon its adoption.

**[Signatures on Following Page]**

**PASSED ON FIRST READING** this \_\_ day of \_\_\_\_, 2018 on a motion made by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_.

**PASSED ON SECOND READING** this this \_\_ day of \_\_\_\_, 2018 on a motion made by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_.

McKay \_\_\_\_\_  
Fisikelli \_\_\_\_\_  
Breitkreuz \_\_\_\_\_  
Jablonski \_\_\_\_\_  
Schroeder \_\_\_\_\_

Ayes \_\_\_\_\_  
Nays \_\_\_\_\_  
Absent \_\_\_\_\_  
Abstaining \_\_\_\_\_

\_\_\_\_\_  
Doug McKay, Mayor

Attest:

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

\_\_\_\_\_  
Keith Poliakoff, Town Attorney

114847529.1



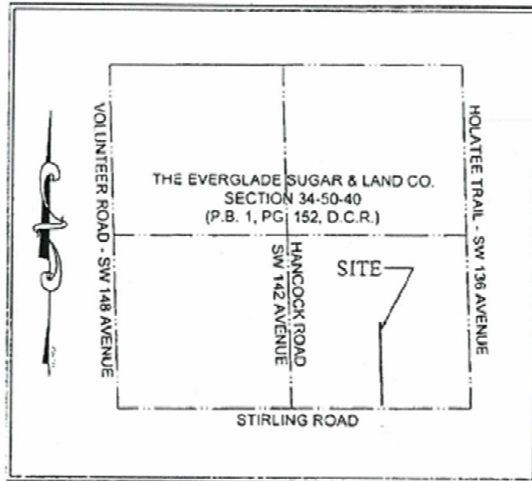
**EXHIBIT 'A'**

*SKETCH AND DESCRIPTION*

**LEGAL DESCRIPTION:**

THE WEST 20 FEET OF TRACTS 13 THROUGH 16, LESS THE SOUTH 40 FEET OF TRACT 16, THE EVERGLADE SUGAR & LAND CO. SUBDIVISION OF SECTION 34, TOWNSHIP 50 SOUTH, RANGE 40 EAST, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 152, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA.

SAID LANDS SITUATE LYING AND BEING IN BROWARD COUNTY, FLORIDA. CONTAINING 25,615 SQUARE FEET (0.588 ACRES) MORE OR LESS



LOCATION MAP - NOT TO SCALE

**NOTES:**

- 1) Bearings shown hereon are based on the South line of Tract 16 with an assumed bearing N 89°43'23" E.
- 2) This Sketch and Description is not valid without the signature and original raised seal of a Florida Licensed Surveyor and Mapper.
- 3) The undersigned and David & Gerchar, Inc., make no representations or guarantees as to the information reflected hereon pertaining to easements, rights-of-way, setback lines, agreements and other matters, and further, this instrument is not intended to reflect or set forth all such matters. Such information should be obtained and confirmed by others through appropriate title verification. Lands shown hereon were not abstracted for rights-of-way and/or easements of record.
- 4) This Sketch and Description consists of two (2) sheets and is not complete without all sheets.

THIS IS NOT A SKETCH OF SURVEY

SHEET 1 OF 2

| REVISIONS | DATE | BY | CKD | FB/PG |
|-----------|------|----|-----|-------|
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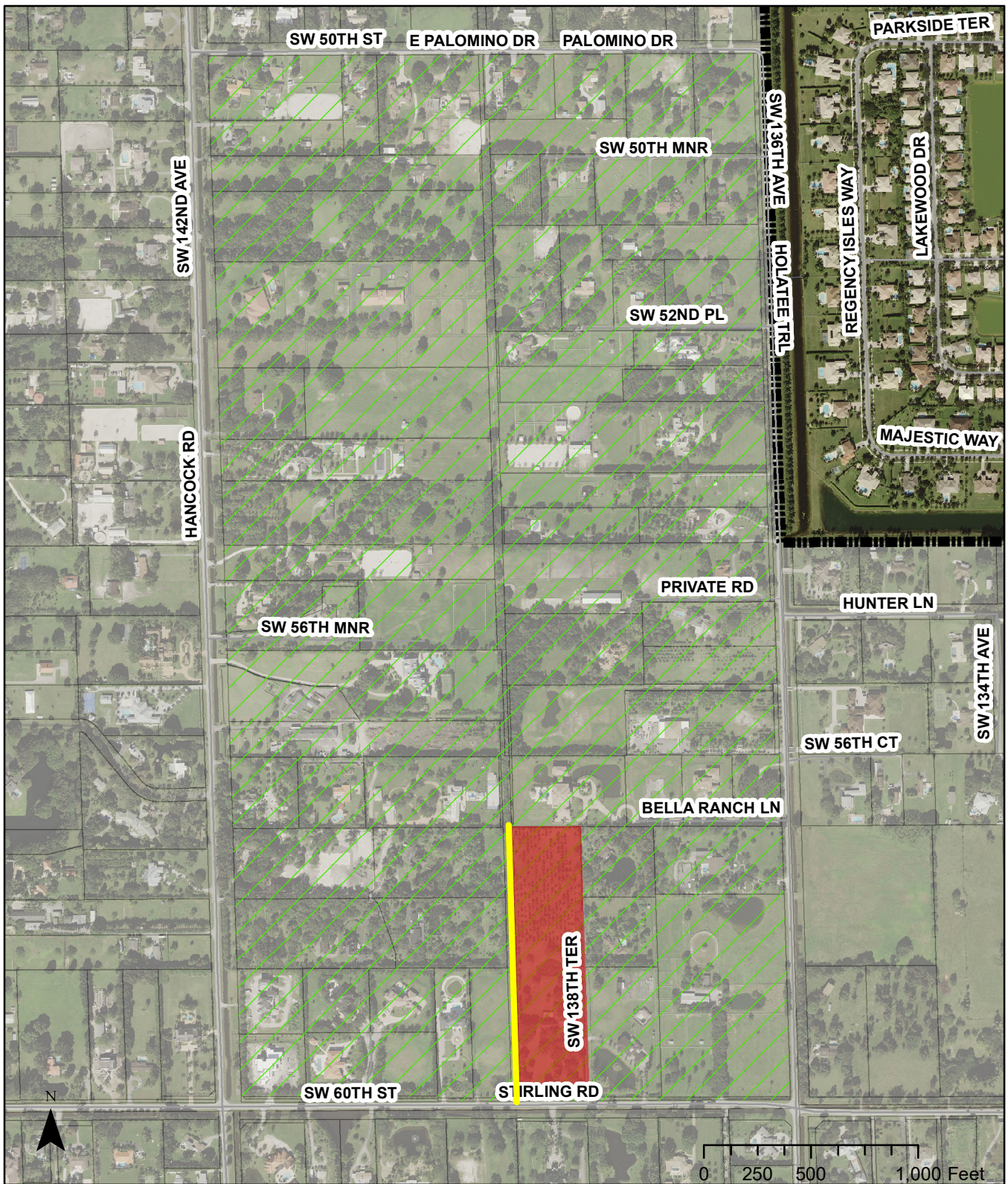
*R/W TO BE  
VACATED*

|  |  |   |  |
|--|--|---|--|
| THEODORE J. DAVID FOR THE FIRM<br>PROFESSIONAL SURVEYOR AND MAPPER<br>FLORIDA REGISTRATION NO. 8821<br>DAVID & GERCHAR, INC. LB#6935 | SCALE: N/A<br>FB/PG: N/A<br>DRAWN BY: RRM<br>CKD. BY: TD | JOB NO: 17-018 SKETCH & DESCRIPTIONS<br>CAD. FILE: F:\dwg\17-jobs\17-018\sketch and descriptions<br>DATE: 9/19/17<br>PROJ. FILE: 17-018 | <b>DAVID &amp;<br/>GERCHAR, INC.</b><br>SURVEYORS AND MAPPERS<br>12750 N.W. 40th Street, Bay 1<br>Coral Springs, Florida 33065<br>(954) 340-4025 • tcd@davidandgerchar.com |
|--|--|---|--|

**EXHIBIT 'A'**







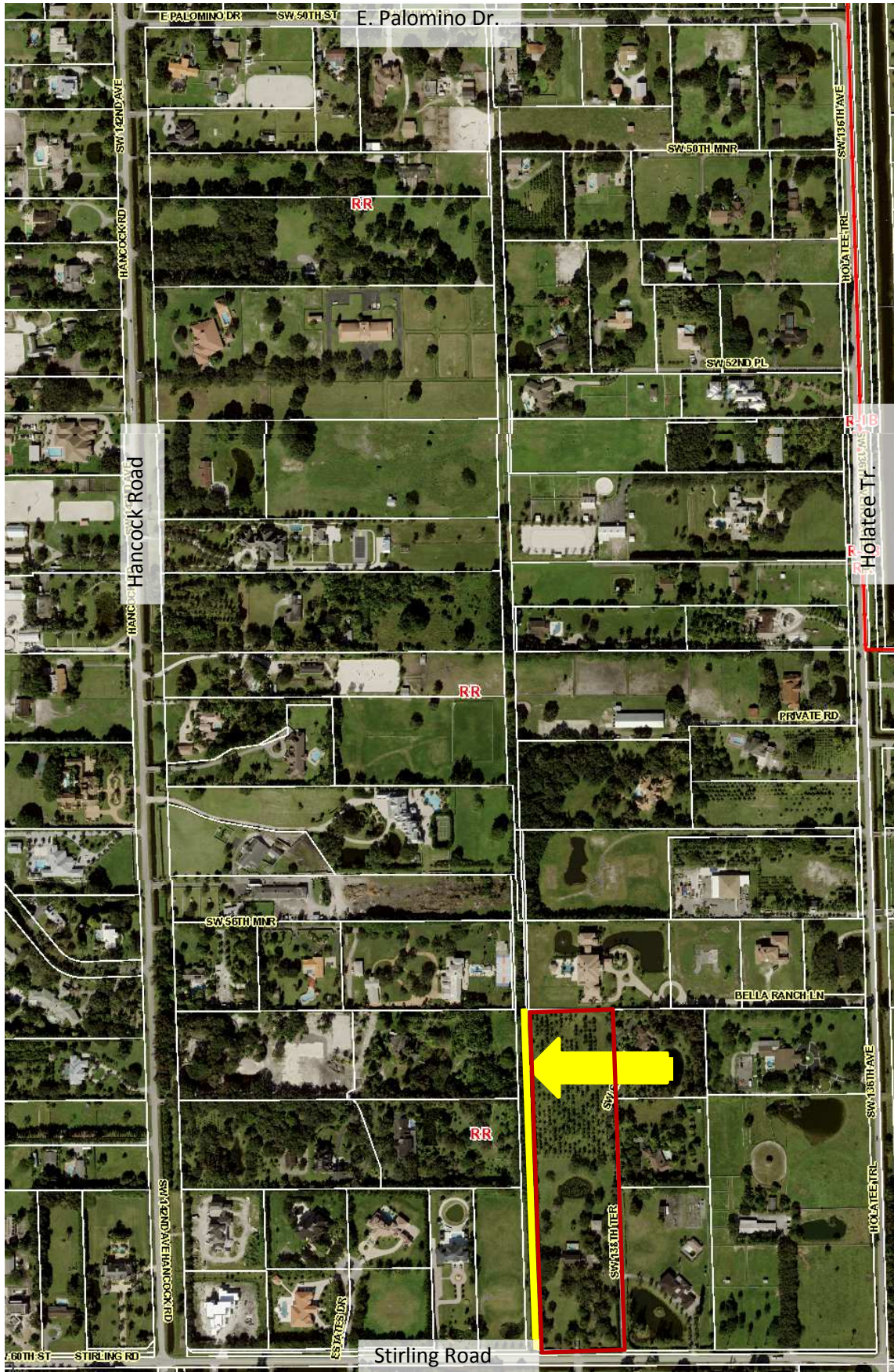
**Legend**

- Subject Parcel (13851 Stirling Road)
- Notification Parcels
- Southwest Ranches Boundary
- Southwest Ranches Parcels
- Right of Way To Be Vacated

**Vacation Request**  
**Application No. VC-27-18**  
**13851 Stirling Road**



LOCATION MAP  
VC-27-18







**Town of Southwest Ranches**  
13400 Griffin Road  
Southwest Ranches, FL 33330-2628

**(954) 434-0008 Town Hall**  
**(954) 434-1490 Fax**

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**Martin D. Sherwood, CPA, CGMA, CGFO, Town Financial Administrator**

## **COUNCIL MEMORANDUM**

**TO:** Honorable Mayor McKay and Town Council  
**VIA:** Andrew D. Berns, Town Administrator  
**FROM:** Keith Poliakoff, Town Attorney  
**DATE:** 4/26/2018  
**SUBJECT:** Telecommunications Ordinance

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### **Recommendation**

Town Council consideration for a motion to approve the ordinance.

### **Strategic Priorities**

A. Sound Governance

### **Background**

In 2017, the Florida Legislature enacted and the Governor approved the Advanced Wireless Infrastructure Deployment Act, codified in Subsection 337.401(7), Florida Statutes ("the Act"). The Act creates new requirements and allowances for local governments relating to the installation of utility poles in the public rights-of-way to collocate small wireless facilities, and the placement and maintenance of small wireless facilities and micro wireless facilities in the public rights-of-way.

The Act provides that a local government may adopt by ordinance objective design standards requiring a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements, objective design standards requiring a new utility pole intended to support the collocation of small wireless facilities that replace an existing facility to be of substantially similar design, material, and color, and reasonable spacing requirements concerning the location of ground-mounted equipment.

The Act also provides that a local government may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipal liability, and municipal warranties provided such provisions are reasonable and nondiscriminatory.

The Town of Southwest Ranches staff periodically reviews Town Ordinances and makes recommendations to the Town Commission to revise its Ordinances. Staff has determined it is the Town's intent to implement the Act.

The Town enacted Resolution 2017-055 on August 10, 2017 to impose a moratorium to allow Town staff to undertake a study of the appropriate regulatory requirements for wireless service facilities and personal wireless service facilities as defined in Section 365.172 F.S. and 47 U.S.C 3332 ( C)(7(C )(ii) within the Towns rights-of-way.

Staff has determined amending the Telecommunications Ordinance will promote and protect the general health, safety and welfare of the residents of the Town of Southwest Ranches by regulating the siting of communications facilities and utility poles within the public rights-of-way. This Ordinance accommodates the growing needs and demand for communications services.

This Ordinance seeks to address expressly new communications facilities and technologies, while also protecting, preserving, and maintaining the public safety and aesthetic characters of areas where such public rights-of-way exist. It is the Town's intent to exercise its authority over the placement and maintenance of communications facilities in its rights-of-way to the full extent consistent with applicable state and federal law. It is the Town's further intent to treat each such communications services provider in a reasonable, nondiscriminatory, and competitively neutral manner in exercising such authority.

This Ordinance has been reviewed by the Comprehensive Plan Advisory Board and was unanimously approved by the Board on April 19, 2018. Staff has reviewed the regulations set forth in this Ordinance and has determined that such regulations are consistent with the Town's plans.

### **Fiscal Impact/Analysis**

The Town elected to increase the Communications Services Tax rate in lieu of collecting permit fees from providers of communications services.

### **Staff Contact:**

Keith Poliakoff, Town Attorney

### **ATTACHMENTS:**

| Description                      | Upload Date | Type      |
|----------------------------------|-------------|-----------|
| Telecomm Ordinance - TA Approved | 4/20/2018   | Ordinance |

**SOUTHWEST RANCHES, FLORIDA**  
**Broward County, Florida**

**ORDINANCE 2018-\_\_**

**AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA AMENDING THE CODE OF ORDINANCES OF THE TOWN OF SOUTHWEST RANCHES BY AMENDING ARTICLE III, CHAPTER 22, OF THE CODE, ENTITLED CABLE TELEVISION; AMENDING SECTION 22-88 OF THE CODE BY PROVIDING THAT A CERTIFICATEHOLDER AS DEFINED IN SECTION 610.103(1)(4), FLORIDA STATUTES, SHALL COMPLY WITH THE TOWN OF SOUTHWEST RANCHES COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE, ARTICLE II, CHAPTER 22, SECTIONS 22.18-22.31 OF THE TOWN CODE, FOR PLACING OR MAINTAINING A CABLE SYSTEM OR FACILITIES IN THE TOWN PUBLIC RIGHTS-OF-WAY; REPEALING AND REPLACING ARTICLE II, CHAPTER 22, SECTIONS 22.19 – 22.31, ENTITLED “PLACEMENT OF FACILITIES IN RIGHTS-OF-WAY,” WITH NEW SECTIONS 22.18-22.27 AND CREATING THE TOWN OF SOUTHWEST RANCHES COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING REQUIREMENT OF A PERMIT; PROVIDING APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR A PERFORMANCE BOND; PROVIDING FOR CONSTRUCTION METHODS; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR FEES AND TAXES; PROVIDING ENFORCEMENT REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR REPEAL OF ZONING IN PROGRESS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Town of Southwest Ranches (“Town”) staff periodically reviews Town Ordinances and makes recommendations to the Town Council to revise its Ordinances; and

**WHEREAS**, the Town Council of the Town of Southwest Ranches has determined that the following amendments promote and protect the general health, safety and welfare of the residents of the Town of Southwest Ranches by regulating the siting of communications facilities and utility poles within the public rights-of-way; and,



**WHEREAS**, this Ordinance accommodates the growing needs and demand for communications services; and,

**WHEREAS**, this Ordinance seeks to address expressly new communications facilities and technologies, while also protecting, preserving, and maintaining the public safety and aesthetic characters of areas where such public rights-of-way exist; and,

**WHEREAS**, Section 337.401, Florida Statutes, addresses *inter alia*, the authority of local governments to regulate the placement and maintenance of communications facilities in the public rights-of-way; and,

**WHEREAS**, rules and regulations imposed by a local government relating to communications service providers that desire to place or maintain communications facilities in its rights-of-way must be generally nondiscriminatory and competitively neutral; and,

**WHEREAS**, Section 337.401(3)(g), Florida Statutes, provides that a local government may not use its authority over the placement of facilities in its rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or Federal Communications Commission, including, but not limited to, the operations, systems, qualifications, services, service quality, service territory, and prices of a provider of communications services; and,

**WHEREAS**, Chapter 610, Florida Statutes, addresses the provision of cable and video service in Florida, and provides in Section 610.102, that the Florida Department of State is the franchising authority for a state-issued franchise for the provision of cable or video service and that a municipality or county may not grant a new franchise for the provision of cable or video service within its jurisdiction; and

**WHEREAS**, Section 610.114(2), Florida Statutes, provides: “Notwithstanding any other provision of law, a municipality ... may require the issuance of a permit in accordance with and subject to s. 337.401 to a certificateholder that is placing and maintaining facilities in or on a public right-of-way in the municipality or county. In accordance with s. 337.402, the permit may require the permitholder to be responsible, at the permitholder’s expense, for any damage resulting from the issuance of such permit and for restoring the public right-of-way to its original condition before installation of such facilities. The terms of the permit shall be consistent with construction permits issued to other providers of communications services placing or maintaining communications facilities in a public right-of-way;” and

**WHEREAS**, in 2017, the Florida Legislature enacted and the Governor approved the Advanced Wireless Infrastructure Deployment Act, codified in Subsection 337.401(7), *Florida Statutes* (“the Act”); and

**WHEREAS**, the Act creates new requirements and allowances for local governments relating to the installation of utility poles in the public rights-of-way to collocate small wireless

facilities, and the placement and maintenance of small wireless facilities and micro wireless facilities in the public rights-of-way; and

**WHEREAS**, the Act provides that a local government may adopt by ordinance objective design standards requiring a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements, objective design standards requiring a new utility pole intended to support the collocation of small wireless facilities that replace an existing facility to be of substantially similar design, material, and color, and reasonable spacing requirements concerning the location of ground-mounted equipment; and

**WHEREAS**, the Act also provides that a local government may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipal liability, and municipal warranties provided such provisions are reasonable and nondiscriminatory; and

**WHEREAS**, it is the Town's intent to implement the Act; and

**WHEREAS**, it is the Town's intent to exercise its authority over the placement and maintenance of communications facilities in its rights-of-way to the full extent consistent with applicable state and federal law; and,

**WHEREAS**, it is the Town's further intent to treat each such communications services provider in a reasonable, nondiscriminatory, and competitively neutral manner in exercising such authority; and,

**WHEREAS**, the Town's rights-of-way are essential for the travel of persons and the transport of goods throughout the Town and are a unique and physically limited resource requiring proper management by the Town in order to ensure public safety, maximize efficiency, minimize costs to Town taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications facilities in the rights-of-way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety and general welfare; and,

**WHEREAS**, the Town elected to increase the Communications Services Tax rate in lieu of collecting permit fees from providers of communications services; and,

**WHEREAS**, a duly noticed public hearing as required by law was held by the Town Council of the Town of Southwest Ranches, at which public hearing all residents and interested persons were given an opportunity to be heard.

**WHEREAS**, the Town Council has reviewed the regulations set forth in this Ordinance and has determined that such regulations are consistent with the Town's plans.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA THAT:**

**SECTION 1.** The foregoing WHEREAS clauses are ratified and incorporated as the legislative intent of this Ordinance.

**SECTION 2.** That Article III, Chapter 22, of the Code of Ordinances of the Town of Southwest Ranches, entitled Cable Television, is hereby amended as follows<sup>1</sup>:

**Section 22-52. - Name and scope.**

This article shall be known as the Town of Southwest Ranches Cable Television Ordinance. It shall be applicable to all cable television franchises issued, extended, or renewed on or after the passage of the ordinance from which this article is derived. Notwithstanding any provision of this article, a cable television franchise issued pursuant to this article shall only grant a franchisee the limited authority to offer cable services and shall not grant a franchisee the authority to provide telecommunications services. The provisions of this Article III, Chapter 22 of the Code of the Town of Southwest Ranches, shall not apply to the extent inconsistent with Chapter 610, Florida Statutes, which provides in Section 610.102, F.S., that the Florida Department of State is the franchising authority for a state-issued franchise for the provision of cable or video service and that a municipality may not grant a new franchise for the provision of cable or video service within its jurisdiction. The provisions of Chapter 610, Florida Statutes, shall apply to the provision of cable service or video service in the Town.

~~Section 22-76. – Permanent-Performance and payment bond~~

~~The franchisee and the licensee shall, within thirty (30) days of the effective date of an initial franchise or license granted under this article or within thirty (30) days of the granting of the transfer or a renewal of a franchise or license existing prior to this article, furnish to the town a performance and payment bond or an irrevocable letter of credit issued by a state bank or a federally insured lending institution in the amount as currently established or as hereafter adopted by resolution of the town council from time to time. The performance and payment bond or letter of credit shall be used to guarantee the compliance with performance requirements and payment of all sums which may become due to the town under this article. The performance and payment bond or letter of credit shall be maintained in the full amount specified herein throughout the term of the franchise or license and for one (1) year after the franchise or license expires or is terminated, without reduction or allowances for any amounts which are withdrawn or paid pursuant to this article. A certificateholder as defined in Section 610.103(1)(4), Florida Statutes, shall comply with the Town’s requirements for a performance bond as may be required pursuant to Section 22.23 of the Town Code, as it may be amended.~~

~~Section 22-88. - Work in the right-of-way.~~

A certificateholder as defined in Section 610.103(1)(4), Florida Statutes, shall comply with the Town of Southwest Ranches Communications Rights-of-Way Ordinance, Article II, Chapter 22, Sections 22.18-22.31 of the Town Code as it may be amended, for placing or maintaining a cable system or facilities in the Town public rights-of-way, including but not limited to, the

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<sup>1</sup> Language to be deleted is indicated with a strikethrough and language to be added is underlined.

requirements to have an effective registration pursuant to Section 22.20 and to obtain a permit pursuant to Section 22.21.

~~(a) All materials, installations, and construction in any right-of-way or easement under the town's jurisdiction shall be in accordance with the minimum standards.~~

~~(b) A franchisee or licensee must obtain any required permits before causing any damage or disturbance to public rights-of-way, easements or thoroughfares as a result of its construction or operations and must restore to its former condition such property in a manner approved by the town. If such restoration is not satisfactorily performed within a reasonable time, the town, after prior notice to a franchisee or licensee, may cause the repairs to be made at the expense of the franchisee or licensee. All additional or reoccurring repairs required as a result of the unsatisfactory work may also be made at the expense of a franchisee or licensee.~~

~~(c) A franchisee or licensee granted permission to install and operate cable television systems in the town shall provide at least seven (7) days prior notice to the residents of an area that construction crews will be installing or providing planned maintenance to the cable in the area by mail or through the placement of notices on the front doorknobs of the residents in the area, with such notices providing the name and telephone number of a franchisee or licensee.~~

~~(d) All vehicles utilized by a franchisee or licensee in the construction of the cable system shall be clearly marked providing the name and telephone number of a franchisee or licensee, and, if applicable, an occupational license. All personnel employed by a franchisee or licensee in the construction of the system shall possess identification providing the employee's name and name and telephone number of a franchisee or licensee.~~

~~(e) A franchisee or licensee must use Sunshine State One-Call of Florida, Inc., prior to any excavation and give notification of planned excavation or demolition activities. Only certified contractors may be utilized for the construction.~~

~~(f) All new pedestals, amplifiers and power supplies installed or worked on by a franchisee or licensee shall be marked with the name of a franchisee or licensee. A franchisee or licensee will make all reasonable efforts to ensure that all existing pedestals, amplifiers and power supplies shall be marked during the normal course of business.~~

~~(g) All underground crossings of paved roadways shall be made by the bore and jack method, if possible.~~

~~— (h) A franchisee or licensee installing and operating a cable television system in the town rights-of-way, except in the event of an emergency, shall provide at least seven (7) days (or such shorter period as the town may approve) prior notice to the residents of the affected area, as determined by the town, when construction crews will be performing construction or maintenance that will block a travel lane used by residents of the affected right-of-way for more than two (2) hours. Such notification shall be by mail or through the placement of notices on the front doorknobs of the residences in the affected areas, with such notices providing the name and telephone number of a franchisee or licensee.~~

#### **Section 22-100. - Service to public buildings.**

The Town reserves its rights pursuant to Section 610.112, Florida Statutes, with respect to requesting service for public schools K-12, public libraries, and local governmental buildings.

~~(a) Within a reasonable amount of time, but at least within ninety (90) days following the request, a franchisee shall be required to provide basic and expanded basic services, with converter or other necessary equipment to the first outlet within each town building, without installation or monthly charge; provided that such buildings are passed by and within five hundred (500) feet of a franchisee's existing distribution system and are owned by the town or occupied by a governmental entity for predominantly educational or governmental use. Such services shall be provided by means of a single drop extending to the facility. Such single drop may be internally extended by the governmental entity without cost to, or responsibility of a franchisee, subject to the condition that all such internal distribution shall meet all FCC requirements relative to signal leakage. At the request of the town, a franchisee shall extend its distribution system or install the additional service outlets in such facilities and shall charge only its time and material costs for such installations and monthly service charges for additional outlets as applicable.~~

~~(b) A franchisee shall provide basic and expanded basic services to all public schools and other elementary, secondary and college level institution within the town at no charge for the installation or monthly charges, and the franchisee may not include this expense as an external cost to be passed on to subscribers. A franchisee shall provide each cable connected school materials for teachers that explain the educational applications of the franchisee's services and programming.~~

~~(c) A franchisee shall provide basic service and service tiers to all social service facilities at no charge for the installation or monthly charges and the operator may not include this expense as an external cost to be passed on to the consumer. Such service facilities shall include, but not be limited to, the public safety building and the equestrian park. A franchisee shall provide all social service facility personnel with materials that explain related applications of the franchisee's services and programming.~~

~~(d) Where basic and expanded basic services already are provided to the buildings set forth in subsections (a) through (c) of this section, a subsequent franchisee shall provide the town with a capital grant in an amount which represents what it would cost to fulfill the obligations of subsections (a) through (c) of this section. Such capital cost shall not be passed through to subscribers.~~

**Section. 22-101. - Public, noncommercial, educational, and government access channels and support.**

The Town reserves its rights pursuant to Section 610.109, Florida Statutes, with respect to requesting public, educational and governmental access channels.

~~(a) Unless otherwise provided in a franchise agreement, a franchisee shall provide and maintain at least one (1) specially designated noncommercial, educational and government access channel for use by the town. The availability to individual town agencies of the government access channel for town produced programs shall be determined on a first come, nondiscriminatory basis. Meetings of the town council shall be given priority over other town-produced programs on the government access channel or channels, unless otherwise~~

~~specifically authorized by prior written approval of the town manager. Unless otherwise provided in a franchise agreement, all town council meetings shall be cablecast in real-time by a franchisee throughout the town.~~

~~(b) Public service announcements, a town produced live or taped program, including, but not limited to, meetings of the town council and any noncommercial, educational, and government programming, will take precedence over franchisee's programming when a request is made to air these items by the town manager. Such programming shall include an unlimited number of town produced programs per month, with cablecasting of each program at least twice weekly, during viewing hours of 8:00 a.m. to 10:00 p.m., on Monday through Sunday. Town produced programs, which are comprised of meetings of the town council, shall also be cablecast live in their entirety and shall be re-cablecast at least five (5) times before the next town meeting. On or prior to the effective date of a franchise or license, a franchisee or licensee shall provide written notification to the town staff of the required recording format and appropriate lead time needed to cablecast town produced programming. Proof of such airing of a town produced program may be required, and shall be provided by a franchisee or licensee, upon request by the town manager subject to federal preemption. The terms of this subsection may be altered in a franchise agreement.~~

~~(c) At those time segments during which no signals are required to be transmitted over the specially designated noncommercial, educational, and government access channels, a franchisee may utilize such channel for any purpose consistent with the provisions of this article.~~

~~(d) A franchisee will endeavor to provide that the signal of each channel required in the basic service tier shall be received at designated places on the subscriber's channel selector as prescribed by the town manager.~~

~~(e) A franchisee shall designate a specific cable channel location as determined by the town administrator for the use of the noncommercial educational government access channel by January 1, 2004, or earlier if possible. If a franchisee's or licensee's cable programming service offers at least one hundred (100) analog or digital channels and if the town administrator or his designee so directs a franchisee in writing, a franchisee shall provide and maintain, without charge, a second specially designated government access channel for the town's use and programming.~~

~~(f) A franchisee shall provide such equipment, facilities and technical support as the town council may determine is useful for the production and cable casting of programming on the educational and government access channel.~~

**SECTION 2.** That Article II, Chapter 22, Sections 22.18-22.31 of the Code of Ordinances of the Town of Southwest Ranches is hereby repealed in its entirety and replaced as follows:

## **22.18 COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY.**

This article shall be known and may be cited as the "Town of Southwest Ranches Communications Rights-of-Way Ordinance."

**(a) Intent and purpose; Applicability; Authority to Implement.**

It is the intent of the Town to promote the public health, safety and general welfare by: providing for the placement and maintenance of communications facilities in the public rights-of-way within the Town; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including the United States and Florida Constitutions, F.S. § 337.401, as it may be amended, the Town's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996, the Spectrum Act, FCC regulations, and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement and maintenance of communications facilities in the public rights-of-way by all communications services providers after the effective date of this section; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the Town shall be governed by and shall comply with all applicable federal and state laws.

**(b) Applicability.**

1. Persons seeking to place or maintain communications facilities on private property or other property to which the Town, Broward County, Broward County School Board, Central Broward Water Control District, South Broward Drainage District, State of Florida, or federal government has a fee simple or leasehold interest in real property, not within and exclusive of the public rights-of-way, located within the jurisdictional boundaries of the Town shall comply with the applicable provisions of Article 40 of the Land Development Code, to the extent it applies, unless such property is addressed expressly in this Ordinance. This Ordinance is not applicable to communication facilities outside the public rights-of-way. Pursuant to this Ordinance, a person may be authorized to place or to maintain small wireless facilities, micro wireless facilities, or utility poles for collocation of small wireless facilities in the public rights-of-way. Wireless support structures, telecommunications towers and other wireless facilities, including but not limited to an antenna that is not part of a small wireless facility or micro wireless facility, shall not be allowed to be placed or maintained in the public rights-of-way, to the extent not inconsistent with applicable law. This Ordinance shall not apply to wireless facilities owned by the Town, a person, or electric cooperative, to the extent such facilities are utilized on an internal, non-commercial basis.
2. This Ordinance implements the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), F.S. In the event the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), is repealed, amended, or overturned by a court of competent jurisdiction, or preempted by applicable federal law, in whole or in part, provisions of this Ordinance may no longer apply, in which case pending and future



applications for small wireless facilities or utility poles intended to support the collocation of small wireless facilities in the public rights-of-way, will be governed by applicable law. In addition, permits issued pursuant to this Ordinance may be suspended or revoked, and facilities installed pursuant to permits issued pursuant to this Ordinance or without permits as authorized by this Ordinance may be required to be removed at the facility owner's expense, to the extent consistent with applicable law.

3. To the extent any provision of this Ordinance conflicts with the Code of Ordinances or Land Development Code of the Town of Southwest Ranches, this Ordinance shall control.
4. Reservation of rights.
  - a. The Town reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.
  - b. This Ordinance shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this Ordinance, and shall apply to all existing communications facilities placed in the public rights-of-way prior to the effective date of this Ordinance, to the full extent permitted by state and federal law. An existing registrant pursuant to the Town Code shall comply with this Ordinance by the earlier of the following: ninety (90) days from the effective date of this Ordinance, the renewal of a registration as required herein, or prior to submitting an application for a permit.

- (c) Authority to implement Ordinance. The Town Administrator is authorized to adopt, to modify, and to repeal rules and regulations to carry out the intent and purposes of this Ordinance.

**22.19 Definitions.** For the purposes of this Section, the following terms, phrases, words and derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined in this Section or in any permit that may be granted pursuant to this Section shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. 151 *et seq.*, as amended (collectively the "Communications Act"), and if not defined in the Communications Act, as defined by Florida Statutes; and, if not defined by Florida Statutes, as defined in the Town Code, and if not defined in the Town Code, shall be construed to mean the common and ordinary meaning.

**ABANDONMENT OR ABANDONED.** The cessation of all uses of a communications facility for a period of one hundred eighty (180) or more consecutive days provided this term shall not include the cessation of all use of a communications facility within a physical structure where the



physical structure continues to be used for some purpose or use accessory to the communications facility. By way of example, cessation of all use of a cable within a conduit, where the conduit continues to be used for some purpose or use accessory to the communications facility, shall not be *Abandonment* of a communications facility. A wireless infrastructure provider's failure to have a wireless service provider provide service through a small wireless facility collocated on a utility pole within nine (9) months after the application is approved in accordance with Section 337.401(7)(j), F.S., shall constitute abandonment. The terms Abandonment or Abandoned are not intended to include a dropped line from a potential or existing customer in the event the communications services provider, communications facility provider, or pass-through provider reasonably anticipates future use of the dropped line.

***ABUT.*** When used in conjunction with a lot or parcel of land or public right-of-way, means a lot or parcel of land or public right-of-way that shares all or a part of a common lot line or boundary line with another lot or parcel of land or public right-of-way.

***ADJACENT PROPERTIES OR PROPERTIES ADJACENT.*** (i) Those lots or parcels of land that abut another lot or parcel of land or public right-of-way that is contiguous to a communications facility site or proposed site and (ii) the lots or parcels of land or public right-of-way that would be contiguous to lots or parcels or public rights-of-way but for an intervening local or collector roadway.

***ANTENNA.*** Communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

***APPLICABLE CODES.*** Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, including expressly the Florida Building Code, National Electrical Code, National Electrical Safety Code, 2010 Florida Department of Transportation Utility Accommodation Manual, the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as may be amended. and Town codes or ordinances adopted to implement Section 337.401(7), Florida Statutes, including but not limited to this Ordinance. The term includes objective design standards adopted by Town ordinance that may require a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by Town ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements; however, such design standards may be waived by the Town upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense.

***APPLICANT.*** A wireless provider who submits an application for a permit to locate a communications facility or utility pole within the public rights-of-way or any person who submits an application for a permit or request pursuant to this Ordinance.

**APPLICATION.** A request submitted by an applicant to the Town for a permit to collocate small wireless facilities or for any request pursuant to this Ordinance.

**AS-BUILT PLANS.** A set of final and complete drawings in a format as specified by the Town submitted upon completion of a project, signed and sealed by professional surveyor or mapper as defined in Section 472.005, F.S., that reflect all changes made during the construction process, and show the exact dimensions, geometry and location of all elements of the work completed under the permit.

**AUTHORITY.** The Town to the extent it has jurisdiction and control of the rights-of-way of any public road. The term does not include the Department of Transportation rights-of-way under the jurisdiction and control of the department, which are excluded from this Section.

**AUTHORITY UTILITY POLE.** A utility pole owned by the Town in the public right-of-way. The term does not include a utility pole owned by a municipal electric utility, a utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within:

- (a) A retirement community that:
  - (i) Is deed restricted as housing for older persons as defined in Section 760.29(4)(b), Florida Statutes.
  - (ii) Has more than 5,000 residents; and
  - (iii) Has underground utilities for electric transmission or distribution.

**BELOW-GRADE COMMUNICATIONS FACILITY.** A communications facility, including manholes or access points, that are entirely contained below grade within the public rights-of-way.

**CLEAR ZONE.** The roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, recoverable slope, non-recoverable slope, clear runout area, or combination thereof. The width of the clear zone is dependent upon the traffic volumes and speeds, and on the roadside geometry.

**COLLOCATION OR COLLOCATE.** To install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

**COMMUNICATIONS FACILITY or FACILITY or SYSTEM.** Any permanent or temporary plant, equipment and property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, wireless facilities, wireless support structure, wireline backhaul facilities, small wireless facilities, micro wireless facility, and other equipment or pathway placed or maintained or to be placed or maintained in the public rights-of-way of the

Town and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer communications services. A utility pole intended for collocation of a small wireless facility shall be considered a facility or for purposes of this Section to the extent not inconsistent with a valid franchise agreement with the Town or applicable law.

**COMMUNICATIONS SERVICES.** The transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, including wireless services, regardless of the protocol used for such transmission or conveyance, and shall also include cable service and video service as defined in F.S. §§610.103(1) and (11).

**COMMUNICATIONS SERVICES PROVIDER.** Any person making available or providing communications services through the placement or maintenance of a communications facility in public rights-of-way, or a wireless infrastructure provider.

**COMMUNICATIONS SERVICES TAX.** The local communications services tax authorized to be levied and collected by counties and municipalities upon communication service providers for communications services, pursuant to Section 202.19, F.S. as amended.

**CONSOLIDATED PERMIT APPLICATION.** A single permit application that would otherwise require individual permit applications for the collocation of between two (2) and thirty (30) small wireless facilities to existing structures within the public rights-of-way.

**FCC.** The Federal Communications Commission.

**FLORIDA BUILDING CODE.** The Florida Building Code promulgated under Chapter 553, Florida Statutes and includes the applicable amendments thereto as both may be amended from time to time.

**FLORIDA GREENBOOK.** The latest edition of the Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance of Streets and Highways.

**FORCE MAJEURE EVENT.** A cause or event not within a person's control that shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within a person's control, and thus not constituting a force majeure event for purposes of this Ordinance, shall include, without limitation, the financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of person's directors, officers, employees, contractors or agents.

**GRAFFITI.** Any inscriptions, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any communications facility whether or not authorized by the registrant of the communications facility. A wrap shall not be considered graffiti.

**HISTORIC PROPERTY.** Any prehistoric or historic district, site, building, object or other real or personal property, of historical, architectural or archaeological value. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, engineering works, treasure troves, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, or culture of the Town.

**HOMEOWNERS' ASSOCIATION.** An incorporated association whose members consist of owners of single family homes or condominium units that manage or control property owned by the association.

**IN PUBLIC RIGHTS-OF-WAY or IN THE PUBLIC RIGHTS-OF-WAY.** In, on, over, under or across the public rights-of-way.

**LOT.** A designated parcel of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed, or built upon as a unit.

**MICRO WIRELESS FACILITY.** A small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

**ORDINANCE OR SECTION.** This Ordinance or Section.

**PARCEL.** Any piece of real property that has a single parcel identification number assigned to it by the Broward County Property Appraiser.

**PASS-THROUGH PROVIDER.** Any person who places or maintains a communications facility in the public rights-of-way and who does not remit taxes imposed by the Town pursuant to Chapter 202, F.S., as amended. A pass-through provider can also be a wireless infrastructure provider as defined herein, and/or an owner of a communications facility pursuant to this Section.

**PERMIT.** The public right-of-way permit that must be obtained before a person may construct in the public right-of-way and shall include, but not be limited to, right-of-way engineering and construction permits issued by the Town.

**PERSON.** Shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, but shall not include the Town.

**PLACE OR MAINTAIN or PLACEMENT OR MAINTENANCE or PLACING OR MAINTAINING.** To erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications services provider that owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, is **PLACING OR MAINTAINING** the facilities. To the extent required by

applicable law, a party providing service only through resale or only through use of a third party's unbundled network elements is not **PLACING OR MAINTAINING** the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way is not **PLACING OR MAINTAINING** facilities in the public rights-of-way.

**PSC.** The Florida Public Service Commission.

**PUBLIC RIGHTS-OF-WAY.** A public right-of-way, public easement, highway, street, bridge, tunnel, waterway, dock, wharf, court, lane, path, or alley, or any other way for which the Town is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface. **PUBLIC RIGHTS-OF-WAY** shall not include private property. **PUBLIC RIGHTS-OF-WAY** shall not include any real or personal Town property except as described above, and shall not include Town parks, buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the **PUBLIC RIGHTS-OF-WAY**.

**REGISTRANT or FACILITY OWNER.** A communications services provider or other person that has registered with the Town in accordance with the provisions of this section.

**REGISTRATION and REGISTER.** The process described in this section whereby a communications services provider provides certain information to the Town.

**SHROUD.** A covering or enclosure of equipment associated with a small wireless facility, other than the antenna, collocated on an existing structure or wireless support structure.

**SIGNAGE.** Any display of characters, ornamentation, letters or other display such as, but not limited to, a symbol, logo, picture, or other device used to attract attention, or to identify, or as an advertisement, announcement, or to indicate directions, including the structure or frame used in the display. The term Signage shall not include identification of the owner and contact information of the wireless facility provider or utility pole, or identification of wires, cables, etc. necessary to aid in safety or hazard work or maintenance or repair work of the communications facility.

**SMALL WIRELESS FACILITY.** A wireless facility that meets the following qualifications:

- (a) Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
- (b) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

**STEALTH DESIGN.** A method of camouflaging any tower, antenna or other communications

facility, including, but not limited to, supporting electrical or mechanical equipment, or utility pole which is designed to enhance compatibility with the surrounding neighborhood and be as visually unobtrusive as possible.

***SURROUNDING NEIGHBORHOOD.*** The area within a five hundred (500) foot radius of a communications facility site or proposed communications facility site.

***TOWN.*** The Town of Southwest Ranches, Florida, a municipal corporation of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

***TOWN ADMINISTRATOR.*** The Town of Southwest Ranches, FL, Town Administrator or his/her designee.

***UTILITY.*** Any person or entity that is a local exchange carrier or an electric, gas, water, steam or other public utility, and who owns or operates appurtenant facilities or equipment that is situated with the public rights-of-way for transmission of such utility's goods, commodities or services.

***UTILITY POLE.*** A pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless an authority grants a waiver for such pole.

***WIRELESS FACILITY.*** Equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

- (a) The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
- (b) Wireline backhaul facilities; or
- (c) Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

***WIRELESS INFRASTRUCTURE PROVIDER.*** A person who has been certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

***WIRELESS PROVIDER.*** A wireless infrastructure provider or a wireless services provider.

***WIRELESS SERVICES.*** Any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

**WIRELESS SERVICES PROVIDER.** A person who provides wireless services.

**WIRELESS SUPPORT STRUCTURE.** A freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

**WRAP.** An aesthetic covering depicting artistic or scenic imagery. Imagery in a wrap may not contain any advertising.

**22.20 Registration For Placing Or Maintaining Communications Facilities in the Public Right-Of-Way.**

- (a) All persons, including, but not limited to a communications services provider, pass-through provider, or wireless infrastructure provider, seeking to place or maintain a communications facility, backhaul facility, utility pole for collocation of a small wireless facility, or small wireless facility in public rights-of-way in the Town pursuant to this Ordinance shall first register with the Town in accordance with this subsection before being eligible to receive a permit. Subject to the terms and conditions prescribed in this subsection and approval of a permit, a registrant may place or maintain a communications facility in public rights-of-way. A communications services provider, pass-through provider, or wireless infrastructure provider with an existing communications facility in the public rights-of-way of the Town as of the effective date of this section has ninety (90) days from the effective date of this section to comply with the terms of this subsection, including, but not limited to obtaining an effective registration, or be in violation thereof.
  
- (b) Requirements for an effective registration. A person that desires to place or maintain a communications facility, backhaul facilities and an infrastructure provider that seeks to apply to install a utility pole for collocation of a small wireless facility in the public rights-of-way in the Town shall file an original registration, along with two complete copies with the Town Administrator that shall include the following information:
  - (1) Name of the registrant;
  - (2) Name, address and telephone number of the registrant’s primary contact person in connection with the registration and name, address, telephone number and email addresses of the registrant’s primary contact person in the event of an emergency or issue involving its facilities, which shall be monitored 24 hours per day, 7 days per week.
  - (3) The type of communications services that the registrant provides or intends to provide within the Town (if more than one, state all that apply), or, if none, indicate that the registrant is a communications facility provider,

wireless infrastructure provider, or pass-through provider, as the case may be, and whether the registrant currently remits or intends to remit Communications Services Tax, as authorized in Ch. 202, F.S.;

- (4) Evidence of the insurance coverage required under this section;
- (5) Acknowledgment that registrant has received and reviewed a copy of this Ordinance;
- (6) A copy of the registrant's certificate of authorization, public convenience and necessity, or other similar certification or licenses issued by the PSC, the Florida Department of State, the FCC, or other federal authority. A copy of federal or state certification authorizing the registrant to provide communications services, if any;
- (7) If the registrant is a corporation, proof of authority to do business in the State of Florida, including the number of the corporate certification; and
- (8) A security fund in accordance with this section.

(c) Insurance.

- (1) Registrant shall provide, pay for and maintain satisfactory to the Town, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the state of Florida and having a rating in Best's Insurance Guide of A or better, or having a rating acceptable to the Town. All liability policies shall provide that the Town is an additional insured in the endorsement. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the Town annually. Thirty-days advance written notice by registered or certified mail must be given to the Town of any cancellation, intent not to renew, or reduction in the policy coverages. In addition to the certificate of insurance, the registrant shall provide a copy of the insurance policy, if requested by the Town.
- (2) The limits of coverage of insurance required shall be not less than the following:
  - i. Worker's compensation and employer's liability. Insurance employer's liability: Florida statutory requirements.
  - ii. Comprehensive general liability. Bodily injury and property damage: \$3,000,000 combined single limit each occurrence. Said coverage shall not exclude contractual liability, products/completed operations, independent or contractors.
  - iii. Automobile liability. Bodily injury and property damage: \$3,000,000 combined single limit each accident.



- iv. Umbrella or excess liability. Registrant may satisfy the minimum limits required above for either commercial general liability, business auto liability and employer's liability coverage under umbrella or excess liability. The umbrella or excess liability shall have an aggregate limit not less than the highest "each occurrence" limit for commercial general liability, business auto liability or employer's liability. The Town shall be specifically endorsed as an "additional insured" on the umbrella or excess liability, unless the certificate of insurance states the umbrella or excess liability provides coverage on a "follow-form" basis.
  - v. Self-insurance. Registrant may satisfy the insurance requirements and conditions of this division under a self-insurance plan and/or retention if acceptable to the Town in its sole discretion based on the Town's evaluation of the registrant's ability to comply with the Town Code. Registrant agrees to notify the Town, and/or indicate on the certificate(s) of insurance when self-insurance is relied upon or when a self-insured retention meets or exceeds \$100,000. The Town reserves the right, but not the obligation, to request and review a copy of the registrant's most recent annual report or audited financial statement, which the registrant agrees to furnish for the purpose of determining the registrant's financial capacity self-insure.
- (3) Right to review. Town, by and through its risk manager, reserves the right to review, modify, reject or accept any required policies of insurance or self-insurance, including limits, coverages, or endorsements herein from time to time throughout the life of this division. Town reserves the right, but not the obligation, to review and reject any insurer or self-insurer providing coverage because of its poor financial condition or failure to operate legally.
  - (4) This section shall not be construed to affect in any way the Town's rights, privileges and immunities as set forth in F.S. §768.28. Insurance under this division shall run continuously with the presence of the registrant's facilities in the public rights-of-way, and any termination or lapse of such insurance shall be a violation of this division and subject to the remedies as set forth herein. Notwithstanding the foregoing, the Town may, in its sole discretion, require increased or decreased levels of insurance.
- (d) Security fund. For an effective registration, a registrant shall file with the Town, for Town approval, a security fund in the amount of twenty five thousand dollars (\$25,000), in the form of a cash deposit or irrevocable letter of credit. Any cash deposit shall be held in a separate, non-interest bearing account. The letter of credit shall be issued by a financial institution within Broward County and shall be in a form and issued by a financial institution acceptable to the Town Attorney. The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon the registrant

by the provisions of this section, including but not limited to requirements to restore the public rights-of-way and guarantee such restoration, remove any abandoned communications facilities, pay appropriate compensation to the Town, and pay for any damage to Town or other facilities in the public rights-of-way. Should the Town draw upon the security fund, the Town shall promptly notify the registrant, and the registrant shall promptly restore the cash deposit and/or letter of credit, as may be necessary, to the full amount. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this Section, subject to provisions for notice in Chapter 20, Article 3, Section 20-54, as it may be amended, there shall be recoverable, jointly and severally from the principal and surety of the security fund, including a letter of credit, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. The cash deposit and instruments of the security fund shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. A registrant may request that the Town return the security fund or approve the cancellation of the security fund upon the expiration of a registrant's obligations pursuant to the Town Code and in no event while a registrant maintains any obligations with respect to facilities in the public rights-of-way.

- (e) **Review of Registration.** The Town shall review the information submitted by the registration applicant. If the applicant submits information in accordance with this subsection 22.20, the Town shall notify the applicant of the effectiveness of registration in writing. If the Town determines that the information has not been submitted in accordance with this subsection, the Town shall notify the applicant in writing of the non-effectiveness of registration, and reasons for the non-effectiveness. The Town shall so notify an applicant within 30 days after receipt of registration information from the applicant. A notice of non-effectiveness of a registration shall not preclude an applicant from reapplying or filing subsequent applications for registration under the provisions of this Section.
- (f) **Regulations Applicable to Registrations.**
  - (1) A registration shall not convey any title, equitable or legal, in the public rights-of-way. Registration under this section governs only the placement or maintenance of communications facilities in public rights-of-way. To the extent not inconsistent with applicable law, registration does not excuse a communications services provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the Town's or another person's facilities. Within 30 days of any change in the information required to be submitted by a registrant, a registrant shall provide updated information to the Town.
  - (2) Registration shall be nonexclusive. Registration shall not establish any right or priority to place or maintain a communications facility in any

particular area in public rights-of-way within the Town. Registrations are expressly subject to any future amendment to or replacement of this section, and further subject to any additional Town ordinances, as well as any applicable state or federal laws.

- (3) Unregistered use of public rights of way. To the extent that a communications services provider, wireless infrastructure provider or pass-through provider with facilities in the public rights-of-way, is not registered as required herein, said person shall register with the Town pursuant to this Section within ninety (90) days from the effective date of this Ordinance. No new permits shall be issued to unregistered persons with communications facilities within the public rights-of-way and such persons may be subject to the enforcement remedies.
- (4) Registration renewal. A registrant shall renew its registration with the Town by March 1, of even-numbered years in accordance with the registration requirements in this Section, as may be amended, except that a registrant that initially registers during the even-numbered year when renewal would be due, or the odd-numbered year immediately preceding such even-numbered year, shall not be required to renew until the next even-numbered year. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the Town restricting the issuance of additional permits until the communications services provider has complied with the registration requirements of this section. An existing registrant pursuant to the Town Code shall comply with this Ordinance by the earlier of the following: ninety (90) days from the effective date of this Ordinance, the renewal of a registration as required herein, or prior to submitting an application for a permit.
- (5) Indemnification. A registrant shall, at its sole cost and expense, indemnify, hold harmless and defend the Town, its officials, boards, members, agents and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the Town arising out of the placement or maintenance of its communications system or facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this section. This provision includes, but is not limited to, the Town's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. Town agrees to notify the registrant, in writing, within a reasonable time of Town receiving notice, of any issue it determines may require indemnification. Nothing in this division shall prohibit the Town from participating in the defense of any litigation by its own counsel and at its own cost, if in the Town's reasonable belief there exists or may exist a conflict, potential conflict or appearance

of a conflict. Nothing contained in this Section shall be construed or interpreted:

- i. as denying to either party any remedy or defense available to such party under the laws of the state of Florida;
  - ii. as consent by the Town to be sued; or
  - iii. as a waiver of sovereign immunity beyond the waiver provided in F.S. §768.28, as it may be amended.
- (6) A registrant may cancel a registration upon written notice to the Town that the registrant will no longer place or maintain any communications facilities in public rights-of-way, and will no longer need to obtain permits to perform work in the public rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.
- (7) Liens. No liens shall apply to public rights-of-way or Town property as a result of the placement or maintenance of a registrant's facilities in the public rights-of-way or on a Town utility pole. Any liens on a registrant's facilities shall be subordinate to the rights of the Town pursuant to this Ordinance. In the event any liens are filed on the Town property or public rights-of-way, the registrant shall discharge such lien at its expense within ten (10) days of receiving notice, or the Town may discharge such lien, and charge such costs plus reasonable attorney's fees to registrant.
- (8) A registrant shall pay any personal property or other taxes or assessments that may be imposed on the registrant's facilities placed or maintained in the public rights-of-way or on the Town's property including a utility pole as a result of a registrant's collocation on a Town utility pole. A registrant shall reimburse the Town for taxes paid by the Town as a result of a registrant's facilities being placed or maintained in the public rights-of-way or on a Town-owned utility pole.
- (9) Reports and records.
  - (a) Upon reasonable request, a registrant shall provide the following documents to the Town as received or filed:
    - i. Any pleadings, petitions, notices, and documents, which may directly impact the obligations under this Ordinance and which are reasonably necessary for the Town to protect its interests under this Ordinance.
    - ii. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.
  - (b) The Town shall keep any documentation, books and records of the registrant confidential to the extent required under Florida Statutes.

- (10) Termination of Registration. The Town may terminate a registration if:
- (a) A federal or state authority suspends, denies, or revokes a registrant's certification or license required to provide communications services;
  - (b) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice;
  - (c) The registrant abandons its facilities in the public rights-of-way; or
  - (d) The registrant commits substantive and material violations of any of the provisions of applicable codes including but not limited to this Ordinance.
- (11) Notice of intent to terminate. Prior to termination, the Town shall notify the registrant with a written notice setting forth all matters pertinent to the proposed termination action, including the reason therefore. The registrant shall have thirty (30) days after receipt of such notice within which to address or to eliminate the reasons or within which to present a plan, satisfactory to the Town, to accomplish the same and to take such steps as are necessary to render every portion of the facilities remaining in the public rights-of-way of the Town safe. If the plan is rejected by the Town, the Town shall provide written notice of such rejection within fifteen (15) days of receipt of the plan to the registrant and shall make a final determination as to termination of the registration and the terms and conditions relative thereto.
- (12) Post termination action. In the event of termination, following any appeal period, the former registrant shall: (a) in accordance with the provisions of this section and as may otherwise be provided under state law, notify the Town of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in the public rights-of-way; or (b) provide the Town with an acceptable plan for removal or disposition of its communications facilities in the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal. If a registrant fails to comply with this subsection, the communications facilities are deemed to be abandoned and the Town may exercise any remedies or rights it has at law or in equity as well as the Town's remedies pursuant to this section, including but not limited to, utilize or allow other persons to utilize the registrant's facilities. The obligations of the registrant hereunder shall survive the termination of a registration. A registrant that has its registration terminated by the Town under this section may reapply for registration one (1) year after the

termination date of the prior registration, unless otherwise permitted to reapply at the sole discretion of the Town.

- (13) When removal not authorized or required. In the event of termination of a registration, this section does not authorize the Town to cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the communications facilities holds a valid certification or license with the governing federal or state agency, if required, for the provision of such service, and is registered with the Town, if required.
- (14) Transfer or control, sale or assignment of assets. If a registrant transfers, sells or assigns its registration or its facilities in the public rights-of-way, incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this section. Written notice of any such transfer, sale or assignment shall be provided to the Town within 20 days of the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, and is in compliance with the provisions of this Section, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, or has an effective registration that is not in compliance with this Section as it may have been amended, then the transferee, buyer or assignee shall register as provided in this Section within 60 days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the appropriate Town officials that the transferee, buyer or assignee is the new applicant.
- (15) Pledges in trust or mortgages of the registrant may be made to any person with notice to the Town. Any mortgage, pledge, lease or other encumbrance on the communications facilities shall be subject and subordinate to the rights of the Town under this section and applicable law.
- (16) Town makes no warranties or representations regarding the fitness, suitability or availability of public rights-of-way for the registrant's communications facilities, and any performance of work or costs incurred by registrant or provision of services shall be at registrant's sole risk. Nothing in this section shall affect the Town's authority to add, vacate or abandon public rights-of-way, and the Town makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.
- (17) Conditional use of public rights-of-way.
  - (a) In the event registrant desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or non-utility services to existing or potential consumers or resellers, by providing any other services other than the provision

of communications service, or for providing any other use to existing or potential consumers, a registrant shall seek such additional and separate authorization from the Town for such activities as may be required by applicable law.

- (b) To the extent that any person or registrant leases or otherwise uses the facilities of a person that is duly registered or otherwise authorized to place or maintain facilities in the public rights-of-way of the Town, such person or registrant shall make no claim, nor assert any right which will impede the lawful exercise of the Town's rights, including requiring the removal of such facilities from the public rights-of-way of the Town, regardless of the effect on registrant's ability to place or maintain its own communications facilities in public rights-of-way of the Town.

**22.21 Requirement of a Permit.**

- (a) In accordance with applicable law, Town ordinances, codes and regulations, including this section, a right-of-way use permit issued by the Town shall be required for a communications services provider, communications facility provider or a pass-through to place or to maintain a communications facility in the public rights-of-way unless otherwise exempt pursuant to this section. An effective registration shall be a condition of obtaining a permit. Notwithstanding an effective registration, permitting requirements shall continue to apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met. A registrant shall not commence to place or to maintain a communications facility in the public rights-of-way until all applicable permits have been issued by the Town or other appropriate authority. Registrant shall comply with all Town requirements for issuing permits, including reasonable rules or regulations governing the placement or maintenance of a communications facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The Town may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual permits or may impose lesser requirements.
- (b) Limited Exceptions to Permit Requirement.
  - (1) A registrant shall be allowed to perform emergency maintenance within the public rights-of-way without first obtaining a permit or providing a performance bond. The term EMERGENCY shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. A registrant shall provide prompt notice to the Town of the placement or maintenance of a communications facility in the public rights-of-way in the event of an emergency and, within fifteen (15) days of completing the emergency maintenance, apply for a permit if such activity required a permit under this Section.

- (2) A registrant shall be allowed to perform routine maintenance within the public rights-of-way if such proposed routine maintenance does not involve excavation, construction, or disruption to transportation in the public rights-of-way. In the case of routine maintenance, a registrant shall provide reasonable advance written notice to the Town identifying the areas where such maintenance will occur, scope of maintenance, date(s) and duration of work to be performed. If routine maintenance requires the closure of the public rights-of-way, a permit shall be required.
  - (3) A permit shall not be required for replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size.
  - (4) A registrant shall be allowed to place or to maintain a service drop within the public rights-of-way without first obtaining a permit if such proposed work does not involve excavation, construction, or the temporary closure of the public rights-of-way.
  - (5) A permit shall not be required for the installation, placement, maintenance, or replacement of Micro Wireless Facilities that are suspended on cable strung between Existing Utility Poles in the public rights-of-way, in compliance with applicable codes by or for a communications services provider authorized to occupy the public rights-of-way and who is remitting Communications Services Tax under Chapter 202, Florida Statutes. Prior to placing a micro wireless facility in the public rights-of-way pursuant to this subsection, at least thirty (30) days prior to commencing said work, the registrant shall submit a certification of the micro wireless facility's dimensions to the Town for review. If the micro wireless facility's dimensions exceed the dimensions for to constitute a micro wireless facility, the registrant shall not be authorized to place such facility in the public rights-of-way.
- (c) The Town Administrator may cause an immediate stop work order where any permitted or unpermitted construction or other work in the public rights-of-way poses a serious threat to the health, safety or welfare of the public until such serious threat has been abated. Failure to comply with such order may subject a registrant, and its agents, employees, and contractors as applicable to appropriate enforcement remedies as set forth in this Ordinance and applicable law.

#### **22.22 Permit Application Requirements and Review Procedures.**

- (a) Pre-application meeting. To minimize issues related to a permit application, prior to submitting materials for a permit application, a registrant shall conduct a pre-submittal meeting with the Town to discuss the registrant's plans and network goals for placing or maintaining facilities in the public rights-of-way. The Town shall undertake efforts to accommodate a registrant's request for a pre-application



meeting within ten (10) business days of a request. At a registrant's request, the Town, in its sole discretion, may waive the requirement of a pre-application meeting for good cause based on the scope of the proposed permit and registrant's compliance with this section. In no event shall the requirement of a pre-application meeting be waived for a consolidated permit.

- (b) As part of any permit application to place or maintain any facility pursuant to this Ordinance in the public rights-of-way, a registrant or a registrant's agent or contractor shall provide a permit application that sets forth, at a minimum, the following:
  - (1) If the applicant for the permit is not the registrant, a statement of authority by the registrant for the applicant to act on behalf of the registrant is required. In addition, if the applicant is a contractor, the contractor's license or registration confirming the contractor's authority to perform construction in the Town, the contractor's insurance in the forms and amounts required in subsection 22.20(c) herein naming the Town as an additional insured, and statements as to whether the contractor has any open permits with the Town, and if so, the permit identification number or information.
  - (2) Confirmation that the applicant engaged in a pre-application meeting or such meeting was waived by the Town and that the applicant has an effective registration with the Town.
  - (3) Engineering plan. An engineering plan signed and sealed by a Florida Registered Professional Engineer, or prepared by a person who is exempt from such registration requirements as provided in F.S. § 471.003, that includes the following:
    - (a) For new facilities to be located that are not proposed to be collocated on existing facilities in the public rights-of-way, an American Land Title Association (ALTA) survey demonstrating that the proposed location of the facility or utility pole is within the public rights-of-way, unless waived by the Town in its sole discretion, pursuant to an applicant's attestation that the proposed facility is located within the public rights-of-way;
    - (b) The type of proposed facility, location of the proposed facility, and the dimensions, height, footprint, stealth design, and concealment features of the proposed facility;
    - (c) The Global Positioning System (GPS) coordinates of the proposed facility. The GPS coordinates shall be based on the reading from a handheld mobile GPS unit set to Datum NAD 83 or WGS84. GPS coordinates based on Google Earth or similar application may be used where areas of shading occur due to overhead canopy. GPS Coordinates shall be provided in decimal degrees at a six (6) decimal point precision;

- (d) Whether the proposed facility is proposed within a location subject to restrictions pursuant to this Ordinance;
  - (e) Distances between the proposed facility and the edge of nearby pavement, sidewalks, driveways, ramps, the nearest residential properties, nearby drainage systems, trees, ground-mounted equipment, nearby structures in the public rights-of-way, underground utilities and other above-grade and below-grade structures and utilities located within the public rights-of-way;
  - (f) For new communications facilities, within a fifty (50) foot radius, a sketch showing pavement, sidewalks, driveways, ramps, trees, below-grade utilities, and other above-grade and below-grade structures and facilities located within the public rights-of-way;
  - (g) Sufficient specificity demonstrating compliance with applicable codes, the Florida Building Code, most current edition, specifically including but not limited to terms of compliance with the High Velocity Zone Criteria specified therein, the 2010 Florida Department of Transportation Utility Accommodation Manual, as applicable; National Electrical Code, the National Electrical Safety Code and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as may be amended;
  - (h) The routes of all transmission and distribution lines to be placed or maintained in the public rights-of-way in connection with the proposed facility (such lines may be subject to separate permit requirements);
  - (i) Certification that the proposed facility will not materially interfere with the safe operation of traffic control equipment;
  - (j) Certification that the proposed facility will not interfere with sight lines or clear zones for transportation, pedestrians, or public safety purposes or result in the public rights-of-way being inconsistent with the Florida Greenbook;
  - (k) Certification that the proposed facility will not materially interfere with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement; and
  - (l) Other engineering information that may be requested by the Town.
- (4) Trees or landscaping to be removed or impacted upon the placement or maintenance of the proposed facility.
  - (5) Photographic or video documentation of the pre-construction condition of the public rights-of-way in the area to be affected by the installation of the proposed facility.
  - (6) Description of installation or construction. A description of the method by which the facility will be installed and/or modified (i.e. anticipated

construction methods or techniques).

- (7) Temporary sidewalk closure plan. The applicant shall provide a temporary sidewalk closure plan, if appropriate, to accommodate placement or maintenance of the facility.
- (8) Temporary maintenance of traffic (MOT) plan. The applicant shall provide a temporary traffic lane closure and maintenance of traffic (MOT) plan, if appropriate, to accommodate placement or maintenance of the facility. Temporary sidewalk closure plan. The applicant shall provide a temporary sidewalk closure plan, if appropriate, to accommodate placement or maintenance of the facility.
- (9) Restoration plan and estimated cost of restoration of the public rights-of-way. A restoration plan and a good faith estimate of the cost of restoration of the public rights-of-way. Such good faith estimate shall be accepted by the Town unless the Town determines such estimated costs are not representative of the actual costs of the restoration of the public rights-of-way. Estimates of the cost to restore the public rights-of-way shall include all costs necessary to restore the public rights-of-way to its original condition. Such good faith estimate may include, but shall not be limited to, costs to restore the paving, curbs/gutters, sidewalks, multi-purpose trails, and landscaping. All planted or naturally occurring shrubbery or vegetation, including sod, damaged or destroyed during work in the public rights-of-way shall be replaced. Tree or landscaping removal shown on the permit shall not be considered damage or impairment to be restored to the original condition provided the applicant complies with the approved mitigation plan, if any.
- (10) Timetable for construction or installation. The timetable for construction, placement or maintenance of the proposed facility or each phase thereof.
- (11) Indemnification. A statement shall be included with the permit application that by execution of the application and by applying for the permit, the applicant shall be bound to the Town with respect to the indemnification provisions set forth in subsection 22.20(f)(5) herein.
- (12) Airport airspace protection. If applicable, the applicant shall confirm compliance with Chapter 333, F.S. and all State and federal laws and regulations pertaining to airport airspace protections.
- (13) Attestation. For applications by a wireless infrastructure provider or its contractor for the placement or maintenance of a utility pole in the public rights-of-way for collocation of a small wireless facility, the applicant shall provide an attestation by an officer of the registrant that a small wireless facility will be collocated on the utility pole and will be used by a wireless services provider to provide communication service within nine (9) months

after the date the application is approved.

- (14) Pole attachment agreement. If applicable for the proposed facility, the applicant shall provide a copy of a fully executed valid pole attachment agreement between the owner of the utility pole and registrant. In lieu of providing the complete pole attachment agreement between the owner of the utility pole and registrant, the applicant may provide the first page of such agreement and the signature page or a notarized letter of authorization from the owner of the utility pole, providing adequate identifying information, acceptable to the Town, and indicating the registrant is authorized to install its facility on the identified utility pole.
- (15) Information regarding height limitations. For an application for a new utility pole to support the collocation of a small wireless facility, the applicant shall provide information regarding the heights of other utility poles located in the same public rights-of-way as of July 1, 2017, measured from grade in place within five hundred (500) feet of the proposed location of the utility pole. If there is no utility pole within five hundred (500) feet of the proposed utility pole as of July 1, 2017, the applicant shall so certify.
- (16) If the permit application includes a backup power supply, information to demonstrate that the backup power supply and proposed fuel storage satisfies the applicable provisions of the Town Code and the Florida Building Code.
- (17) In addition to the requirements herein, as part of any permit application to place or maintain a small wireless facility in the public rights-of-way, the applicant shall provide the following:
  - (a) Documentation to the satisfaction of the Town from a Florida Registered Professional Engineer, or prepared by a person who is exempt from such registration requirements as provided in F.S. §471.003, that the structure and foundation of the utility pole intended to support the collocation of the small wireless facility can support the additional load of the proposed small wireless facility consistent with the requirements of the Florida Building Code;
  - (b) Certification and description by the applicant to the satisfaction of the Town how the proposed small wireless facility complies with the objective design standards set forth in this Ordinance.
  - (c) Accurate photo simulations of the proposed small wireless facility and if applicable, as collocated on the utility pole.
- (18) Applicable permit fees including reimbursement for Town consultants, to the extent not inconsistent with applicable law.
- (19) Consolidated permit application and single application for multiple locations. A registrant may submit a single application to place or to maintain multiple Facilities in the public rights-of-way, where it would be

more efficient for the registrant and the Town to address multiple facilities in one permit application. An applicant seeking to collocate multiple small wireless facilities may file a consolidated permit application and receive a single permit for the collocation of up to 30 small wireless facilities. The application must include the information required for an application each for all proposed small wireless facilities. In addition, prior to applying for a consolidated permit, the applicant must engage in a pre-application meeting with the Town to discuss all proposed small wireless facilities. If the application includes multiple small wireless facilities, the Town may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

- (20) To the extent not inconsistent with applicable law, such additional information requested by the Town reasonably necessary for the permit application.

(c) Application Review and Procedures.

- (1) Review procedures for applications for small wireless facilities or for utility poles for collocation of small wireless facilities. Time periods within this subsection 22.22(d) may be extended for the period of time impacted by a force majeure event or by a declared State of Emergency by the Town or Governor of the State that impacts the Town (“force majeure extension”). If an applicant opposes a force majeure extension pursuant to this subsection, it shall notify the Town within 24 hours of such extension becoming effective or the applicant shall be deemed to have consented to the extension.

- (a) Unless extended by mutual consent of the applicant and Town, within 14 days after receiving an application, the Town Administrator will notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the Town will specifically identify the missing information. An application is deemed complete if the Town fails to provide notification to the applicant within 14 days.

(b) Negotiation Process.

- (1) Unless extended by mutual consent of the applicant and the Town, or pursuant to a force majeure extension, within 14 days after the date of filing the application, the Town may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative Town utility pole or support structure or may place a new utility pole. The Town and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after

the date of the request.

- (2) At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the Town of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application.
  - (3) If an agreement is not reached, the applicant must notify the Town of such nonagreement and the Town must grant or deny the original application within 90 days after the date the application was filed unless extended by mutual consent of the applicant and Town. Failure of the applicant to so notify the Town as required herein shall be deemed to constitute the applicant's consent to the Town's alternative location. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.
- (c) The Town processes all applications on a nondiscriminatory basis. Unless the Town and the applicant engage in negotiations as provided above, the Town will approve or deny the application and will notify the applicant by electronic mail whether the application is approved or denied within 60 days after the receipt of a completed application.
- (d) Extension of time. If the Town and the applicant do not engage in negotiations, the applicant and Town may mutually agree to extend the 60-day application review period. The Town shall grant or deny the application at the end of the extended period.
- (e) The Town may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:
- (1) Materially interferes with the safe operation of traffic control equipment;
  - (2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
  - (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
  - (4) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual; or

- (5) Fails to comply with applicable codes.
- (f) Cure Procedure.
    - (1) If the application is denied, the Town will specify the basis for the denial, including the specific code provisions on which the denial was based, on the day the Town denies the application.
    - (2) The applicant may cure the deficiencies identified by the Town and resubmit the application within 30 days after the notice of denial is sent.
    - (3) If an attempt to cure is made by the applicant, the Town will approve or deny the revised application within 30 days after receipt of the revised application. If the applicant revises any information in the application other than to address expressly the deficiencies identified by the Town, the applicant shall submit a new application.
    - (4) The Town's second and subsequent reviews of revised applications will be limited to the deficiencies cited in the denial notice.
  - (g) A permit issued pursuant to an approved application shall remain in effect for one (1) year unless otherwise extended, suspended, or revoked by the Town pursuant to this Ordinance. If a small wireless facility or utility pole is installed without a permit pursuant to applicable state or federal law, the applicant shall nevertheless be required to have an effective registration, comply with development standards and provide the performance bond required in this Ordinance prior to performing construction.
  - (h) A permit from the Town constitutes authorization to undertake only certain activities in the public rights-of-way in accordance with this section, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.
- (2) Review procedures for applications for all other communications facilities. The Town shall review and process applications for other communications facilities consistent with applicable law.
  - (3) Suspension and revocation of permits.
    - (a) The Town may order the suspension of placement and maintenance work under a permit and ultimately may suspend or revoke any

permit, in the event of a material breach of the terms and conditions of any applicable codes including but not limited to this Ordinance, State and federal laws and regulations, or any condition of the permit. A material breach by the permittee may include, but is not limited to:

- (1) The violation of any material provision of the permit or applicable codes;
- (2) An evasion or attempt to evade any material provision of the permit or the perpetration or attempt to perpetrate any fraud or deceit upon the Town;
- (3) Any material misrepresentation of fact in the process of permittee's request for a permit or Registration;
- (4) The failure to maintain the required performance bond, security fund or insurance;
- (5) The failure to properly restore the Public Rights-of-way;
- (6) The failure to correct within the specified time an order issued by the Town
- (7) The failure to Register, renew a registration, or provide notice of transfer in accordance with this Section;
- (8) The failure to relocate or remove facilities pursuant to this Section and Sections 337.402, 337.403 and 337.404, F.S., as amended;
- (9) Conducting work in the public rights-of-way without a permit, if required.

(b) If the Town determines that a registrant has committed a substantial breach of a term or condition of the permit or violation of applicable codes including but not limited to this Ordinance, the Town shall make a written demand upon the registrant to remedy such violation. The demand shall state that the continued violation(s) may be cause for suspension or revocation of the permit. Further, the Town may place additional or revised permit conditions on the permit following a substantial breach. In addition, the Town may refuse to issue new permits and may deny an application for a new permit to a registrant that has materially violated any provisions of a permit or applicable codes including but not limited to this Ordinance, until such time as the registrant cures the violation to the satisfaction of the Town, including paying any damages, costs or penalties that may have been assessed.

(c) Within thirty (30) days of receiving notification of the breach, the permittee shall contact the Town and provide a plan, acceptable to the Town. The Town shall provide additional time as reasonably necessary for a permittee to establish an acceptable plan taking into account the nature and scope of the alleged breach. The permittee's failure to so contact the Town, or the permittee's failure to submit



an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for revocation or suspension of the permit. A final determination to suspend or to revoke a permit may be appealed in accordance with the procedures set forth in this Ordinance. Nothing herein shall affect the Town's ability to take immediate action or to cause a registrant to take immediate action pursuant to this Ordinance or applicable law to address any condition that threatens the health, safety or welfare of persons or property.

- (d) If a permit is revoked, the permittee shall reimburse the Town for the Town's reasonable costs, including restoration costs, administrative costs, and the cost of collection. These cost may also be deducted from the registrant's security fund in the Town's discretion.
- (e) The Town may cause an immediate stop work order where the construction poses a serious threat to the health, safety or welfare of the public until such time as such serious threat has been abated.

(4) Requests for waivers.

- (a) Nothing in this Ordinance shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of public rights-of-way by communications service providers, communications facility providers or pass-through providers, in violation of federal or state law.
- (b) A waiver may be granted by the Town in those circumstances where a competitively neutral use of the public rights-of-way is impaired by strict application of the requirements of this Ordinance.
- (c) A request for a waiver shall be filed either prior to or contemporaneously with the permit application. The request for waiver shall contain each provision for which a waiver is sought. A request for a waiver shall include the following information:
  - (1) A detailed explanation, with supporting engineering by a Florida licensed engineer or other data, as to why a waiver from the requirements of this Ordinance is required to allow the applicant to have nondiscriminatory and competitively neutral use of the public rights-of-way, including a detailed explanation addressing the relevant engineering criteria;
  - (2) Nature and characteristics of the surrounding neighborhood;
  - (3) Any special conditions and circumstances affecting the

proposed site which prevent compliance with the Ordinance or subsection for which a waiver is being sought;

- (4) If applicable, topography, tree coverage and foliage in the immediate surrounding area of the proposed facility or within the surrounding neighborhood;
  - (5) Design of the proposed facility with particular reference to achieving compatibility with the surrounding neighborhood and other structures in the public rights-of-way and eliminating adverse visual impacts;
  - (6) If the proposed waiver is compliant with the Americans With Disabilities Act, 42 U.S.C. Sec. 12101, *et seq.*, and applicable codes;
  - (7) Any other information the Town may reasonably require to process the request for waiver.
- (d) The Town shall grant or deny a request for a waiver within forty-five (45) days after receiving the request for waiver or time frame under applicable law unless the applicant and Town consent to an extension. In granting any waiver, the Town may impose conditions to the extent the Town determines such conditions are necessary to minimize any adverse effects of the proposed facility on the surrounding neighborhood or to protect the health, safety and welfare of the public.
- (e) Should a request for waiver, and ultimately a permit, be denied by the Town, the denial of the waiver may be appealed with an appeal of the permit denial in accordance with this Ordinance.
- (f) Appeals. Final, written decisions of a designee of the Town Administrator, including but not limited to, a decision suspending, revoking, or denying a permit, denying a registration, denying a renewal of a registration, suspending or terminating a registration or denying a request for a waiver, or imposing costs or a fine, are subject to appeal to the Town Administrator. An appeal must be filed with the Town Administrator within thirty (30) days of the date of the final, written decision to be appealed. An applicant shall waive any appeal that is not timely filed as set forth herein. The Town Administrator shall hear or may appoint a hearing officer to consider the appeal. The decision on appeal shall be based on the information submitted previously to the Town and no new information shall be considered. Subject to a force majeure extension, the hearing shall occur within 30 days of the receipt of

the appeal, unless waived by the applicant, and a written decision shall be rendered within 20 days of the hearing. An appeal from a decision of the Town Administrator or a hearing officer may be appealed to the Town Council within 30 days, by filing a written notice of appeal with the Town Clerk and providing copies to the Town Manager and the Town Attorney. Any appeal not timely filed shall be waived. The notice of appeal shall state the decision which is being appealed, the grounds for appeal, a brief summary of the relief which is sought, and shall be accompanied by a nonrefundable fee to be established by administrative order of the Town Manager. The Town Council may affirm, modify or reverse the decision of the Town Manager or hearing officer. The Town Manager shall notify any party who has filed a written request for such notification of the date when the matter will be presented to the Town Council. Nothing contained herein shall preclude the Town Council from seeking additional information prior to rendering a final decision. The decision of the Town Council shall be by resolution and a copy of the decision shall be forwarded to the Town Manager and the appealing party. Within the time prescribed by the appropriate Florida Rules of Appellate Procedure, a party aggrieved by a decision of the Town Council may appeal an adverse decision to the Circuit Court In And For Broward County or applicable federal district court. The party making the appeal shall be required to pay to a fee to be established by administrative order of the Town Manager, to defray the costs of preparing the record on appeal.

### **22.23 Performance bond.**

- (a) Prior to the issuance of any permit in accordance with this Ordinance, or performing any work in the public rights-of-way, either pursuant to a permit or without a permit if authorized by applicable law except in the case of an emergency pursuant to subsection 22.21(b)(1), a registrant shall establish in the Town's favor a performance bond to secure the restoration of the public rights-of-way, and to ensure the registrant's faithful performance of the construction or other work in the public rights-of-way, in accordance with applicable sections of the Town Code. The performance bond must name the Town as obligee and be conditioned upon the full and faithful compliance by the registrant with all requirements, duties, and obligations imposed by the permit and provisions of this section during and through completion of the placement or maintenance project. The performance bond shall be in an amount as determined by the Town Administrator based on the estimated costs of the restoration of the public rights-of-way. No performance bond is required if the estimated costs of the restoration of the public rights-of-way is less than one thousand dollars (\$1,000) provided the registrant has a fully replenished security fund on file with the Town. For wireless facilities, including wireless facilities where the application has been deemed approved pursuant to this

Ordinance, the performance bond shall be in an amount of the estimated costs of the restoration of the public rights-of-way following installation or removal of such facility, but in no event shall be less than five thousand dollars (\$5,000). For a consolidated permit, the registrant shall provide a performance bond based on the amount of the total costs of the restoration of the public rights-of-way for all small wireless facilities to be collocated on utility poles within the public rights-of-way, but in no event shall be less than ten thousand dollars (\$10,000). The minimum amount of the performance bond for a new or replaced utility pole or small wireless facility over six (6) cubic feet shall be twenty-five thousand (\$25,000) dollars. The bond shall be issued by a surety licensed to operate in Florida having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the Town Attorney and may be administratively accepted by the Town Administrator.

- (b) In the event a registrant subject to such a performance bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit or Town code, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.
- (c) The performance bond must be issued as non-cancelable and shall provide the following: "This bond may not be canceled, or allowed to lapse, until 60 days after receipt by the Town, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
- (d) The performance bond shall be for a term of not less than one-year after the anticipated date of the later of completion of construction, restoration and Town inspection. In the event the term of any performance bond expires, or is reasonably expected to expire, prior to one-year after the completion of construction, restoration and Town inspection, the registrant shall immediately obtain, pay for, and file with the Town a replacement performance bond. No less than one-year after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant may request that the Town remove the requirement to continue the performance bond. Notwithstanding, the Town may require a new bond for any subsequent work performed in the public rights-of-way.
- (e) The rights reserved by the Town with respect to any performance bond established pursuant to this division are in addition to all other rights and remedies the Town may have under this Ordinance, or at law or equity, and no action, proceeding or exercise of a right with respect to the performance bond will affect any other right the Town may have.

**22.24 Construction Methods for Placing or Maintaining Communications Facilities in Public Rights-of-Ways.**

- (a) A registrant shall place and maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable codes. All safety practices required by applicable codes or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities, including but not limited to, Chapter 33 of the Florida Building Code. Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way, and shall take all reasonable steps to safeguard work site areas.
- (b) In connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. Ch. 556, as it may be amended. In the event of any conflicts with existing utilities or utility service laterals, the proposed location of the communications facility will be adjusted, not the utility.
- (c) To the extent non inconsistent with applicable codes, underground cables, where required, shall have consistent alignment parallel with the edge of pavement, a thirty-six-inch (36") depth of cover for the paved portion of roadways, a twenty-four-inch (24") to thirty-inch (30") depth of cover in all areas except the paved portion of roadways, and shall have a two-foot (2') horizontal clearance from underground utilities and their appurtenances.
- (d) Grounding rods and pull boxes. The grounding rod may not extend above the top of the public right-of-way or sidewalk and must be placed in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit. All pull boxes shall be vehicle load bearing, comply with applicable codes and FDOT Standard specification 635 and be listed on the FDOT Approved Products List. A concrete pad shall be installed around all pull boxes not located in the sidewalk. No new or replacement pull boxes shall be located in pedestrian ramps.
- (e) The Town may require the use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way. The registrant shall be solely liable for the displacement, damage or destruction of any property, irrigation system, utility, or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. The Town may issue such rules and regulations concerning the method for placement or maintenance of a communications facility in public rights-of-way as may be consistent with this section and other applicable codes and standards. The provisions of this subsection are not intended to prevent the use of any method of construction not specifically prescribed by this subsection, provided that any such method has been approved by the Town.
- (f) In an effort to minimize adverse impacts and disruption in the public rights-of-way

and to other municipal improvements, the Town may require a communications services provider to coordinate the placement or maintenance of its facilities with any work, construction, installation in or repairs of the subject public rights-of-way or other facilities therein, that is occurring or is scheduled to occur within a reasonable time from the date(s) requested in the communications services provider's permit application. The Town may require a registrant to alter reasonably its placement or maintenance schedule as necessary to minimize disruptions and disturbance in the public rights-of-way. The Town may provide a more definite time frame based on specific Town construction or maintenance schedules. Within the public rights-of-way, every communications services provider shall make space available in its trench and/or conduit to other communications services providers consistent with the federal requirements of 47 U.S.C. §224. Every communications services provider shall utilize existing conduits, pathways and other facilities whenever possible, and shall not place or maintain any new, different, or additional poles, conduits, pathways or other facilities, whether in the public rights-of-way or on privately-owned property, until written approval is obtained from the Town or other appropriate governmental authority, and, where applicable, from the private property owner.

- (g) Trees. A registrant shall not prune, remove or materially damage trees during placement or maintenance of communications facilities, small wireless facilities, micro wireless facility, or utility poles in the public rights-of-way without complying with Chapter 10, Article II, Tree Preservation, of the Town Code, as it may be amended. A registrant shall obtain at its expense any permit that may be required pursuant to Section 10-27 of the Town Code. Tree removal or pruning is not permitted within the public rights-of-way to increase signal strength or to provide a line-of-sight for wireless facilities. Landscaping may only be damaged or removed during placement or maintenance of communications facilities pursuant to a permit issued by the Town. The Town may require that any landscaping or trees so removed shall be replaced or mitigated in accordance with the approved restoration plan.
- (h) Restoration of public rights-of-way. A registrant shall, at its own expense, restore the public rights-of-way to at least its original condition before such work in public rights-of-way was initiated, subject to the Town's satisfaction upon inspection. Registrant shall warrant its restoration for a period of 12 months after completion of such restoration. If the registrant fails to make such restoration within 30 calendar days after completion of construction, or such other time as may be required by the Town, the Town may, after written notice to the registrant, perform such restoration using Town employees, agents or contractors, and charge all costs of the restoration to the registrant in accordance with F.S. § 337.402, as it may be amended, and require reimbursement within 30 days after the submission of the invoice by the Town to the registrant.
- (i) Limits on excavation. To avoid continual disruption and degradation to the public rights-of-way, an area of the public rights-of-way that has been subject to excavation and restored shall not be subject to re-excavation until at least two years

following the completion of such restoration, to the extent not inconsistent with applicable law, unless waived by the Town. Registrants seeking to place communications facilities in the public rights-of-way through excavation are strongly encouraged to contact other registrants and communications services providers to coordinate the placement of communications facilities in the public rights-of-way.

- (j) Any communications facilities heretofore or hereafter placed upon, under, over, or along any public rights-of-way that is found by the Town to be unreasonably interfering in any way with the convenient, safe or continuous use or the maintenance, improvement, extension or expansion of such public rights-of-way shall, upon thirty (30) days' written notice to the registrant or its agent, be removed or relocated by such registrant at its own expense except as explicitly provided under F.S. § 337.403. The Town may waive or extend the time within which a registrant shall remove or relocate a communications facility for good cause shown.
- (k) Removal or relocation at the direction of the Town of a registrant's communications facility in public rights-of-way shall be governed by the provisions of F.S. §§ 337.403 and 337.404, as they may be amended. Subject to F.S. § 337.403, whenever an order of the Town requires such removal or change in the location of any communications facility from the public rights-of-way, and the facility owner fails to remove or charge the same at its own expense to conform to the order within the time stated in the notice, the Town may proceed to cause the communications facility to be removed. The expense thereby incurred except as provided in F.S. §337.403(1)(a)—(c), shall be paid out of any money available therefor, and such expense shall be charged against the registrant of the communications facility and levied, collected and paid to the Town.
- (l) Subject to F.S. §337.403, whenever it shall be necessary for the Town to remove or relocate any communications facility, the registrant of the communications facility shall be given notice of such removal or relocation and an order requiring the payment of the costs thereof, and shall be given reasonable time, which shall not be less than twenty (20) nor more than thirty (30) days in which to appear before the Town Council to contest the reasonableness of the order. Should the registrant not appear, the determination of the cost to the registrant shall be final, in accordance with F.S. § 337.404.
- (m) A final order of the Town shall constitute a lien on any property of the registrant and may be enforced by filing an authenticated copy of the order in the office of the clerk of the circuit court of the county wherein the registrant's property is located and/or by drawing upon the registrant's security fund and/or performance bond.
- (n) The Town retains the right and privilege to cut or move any communications facilities located within the public rights-of-way of the Town, as the Town may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Town shall attempt to notify the

registrant of the communications facility, if known, prior to cutting or removing a communications facility and shall notify the registrant of the communications facility, if known, after cutting or removing a facility.

- (o) The Town shall have the right to make such inspections of facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this Ordinance. The Town shall have access without charge to any manholes or handholes at any time, of a communications services provider in which the Town has facilities, provided the Town has given such provider reasonable prior notice so that such provider can have trained personnel present when the accesses such manholes. Notwithstanding the foregoing, the Town, in the proper exercise of its municipal police powers and duties with respect to the public rights-of-way, shall have access to all manholes and handholes without charge of such provider. In the event the Town determines that a violation exists with respect to registrant's placement or maintenance of facilities in the public rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the Town will provide registrant no less than three days written notice setting forth the violation and requesting correction.
- (p) Following the completion of construction to place a new or replace an existing communications facility in the public rights-of-way, the registrant shall promptly provide revised plans and "as-builts" upon completion of any installation or construction. The plans shall be in a digitized format, showing the two-dimensional location of the facilities, based on the Town's geographical database or other format acceptable to the Town. The registrant shall provide such plans at no cost to the Town. The Town shall maintain the confidentiality of such plans and any other information provided in accordance with F.S. §202.195, as it may be amended.
- (q) The Town reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the Town in public rights-of-way occupied by the registrant. To the extent not inconsistent with applicable law, a registrant shall allow Town facilities to be collocated within Town's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and Town and may be subjected to other Town rights-of-way requirements. The Town further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation or width of the public rights-of-way within the limits of the Town and within said limits as same may from time to time be altered.
- (r) A registrant shall, on the request of any person holding a permit issued by the Town, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given



not less than 30-days advance written notice to arrange for such temporary relocation. If the Town requests a temporary raising or lowering of a facility for a public purpose, the Town shall not be charged for the temporary raising or lowering of the facility.

- (s) This Ordinance does not authorize a person to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.
- (t) **Abandonment.** Upon determination by a registrant or communications services provider that one or more of its communications facilities in the public rights-of-way is to be abandoned, the provider shall notify the Town no later than ninety (90) days from such determination, or no later than thirty (30) days following such abandonment, whichever is sooner. The Town may independently establish that a communications facility has been abandoned. In reaching such determination, the Town may request documentation and/or affidavits from the communications services provider or registrant regarding the active use of the facility. If the provider or registrant fails to provide the requested documentation within thirty (30) days, a rebuttable presumption shall exist that the provider or registrant has abandoned the communications facility. Any small wireless facility, micro wireless facility, utility pole for collocation of a small wireless facility, or other communications facility installed within the public rights-of-way that is abandoned shall be removed by the registrant or communications services provider at its expense within thirty (30) days of receipt of notice from the Town. Failure to remove an abandoned facility within the thirty (30) days' period shall be deemed to be the registrant's or communications provider's consent for the Town to remove the facility at the registrant's or provider's expense or for the Town to allow another person to remove the facility at the registrant's or provider's expense. The communications services provider or registrant shall be responsible for all damage to the public rights-of-way and any facilities or utilities damaged as a result of such removal, and shall restore the public rights-of-way as required in this subsection. If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility. Notwithstanding the foregoing, if the facility is attached to an existing structure that has an independent function such as a light pole, intersection signal, pedestrian signal, utility pole or the like, said abandonment of the facility requires removal of the facility only and does not require the removal of the existing structure.

**22.25 Development And Objective Design Standards for the Placement Or Maintenance Of Communications Facilities In The Public-Rights-Of-Way.**

- (a) Terms and conditions for collocation on town utility poles.
  - (1) The Town shall not enter into an exclusive arrangement with any person for the right to attach equipment to Town utility poles. The Town reserves the

right to enter into agreements for collocation on Town utility poles in its discretion.

- (2) Reservation of space on a town utility poles. The Town may reserve space on Town utility poles for future public safety uses. However, a reservation of space may not preclude collocation of a small wireless facility. If replacement of the Town utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use. The replaced pole shall continue to be owned by the Town.
- (3) The rate to collocate a small wireless facility on a Town utility pole shall be one-hundred fifty dollars (\$150) per pole annually, or the highest rate authorized by applicable law. This amount shall not be deducted from any fees or taxes that may be due to the Town. The fee shall be paid upon the Town's issuance of a permit to collocate a small wireless facility on a Town utility pole and annually thereafter.
- (4) Agreements between the Town and wireless providers that were in effect on July 1, 2017, and that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on Town utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and terms established under this Ordinance for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.
- (5) For a Town utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. §224 and implementing regulations. The good faith estimate of the Town for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.
- (6) For a Town utility pole that does not support an aerial facility used to provide communications services or electric service, the Town shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, the Town may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. If pole

replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The Town may not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the Town .

- (7) The Town may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications services providers other than wireless services providers for similar work and may not include any consultant fee or expense.
  - (8) A collocation of a small wireless facility on a Town utility pole shall comply with all applicable codes including this Ordinance, and shall not compromise the Town utility pole's finish, functionality, or structural integrity particularly with respect to vulnerability to high velocity wind conditions.
  - (9) A collocation of a small wireless facility on a Town utility pole shall not affect the Town's ability to remove or to replace the pole in its sole discretion. Within thirty (30) days after receiving notification that the Town intends to remove or to replace the utility pole, the registrant shall remove its collocated small wireless facility at its cost.
- (b) Location context and public safety regulations. A proposed communications facility shall comply with the following location context requirements for public safety unless waived by the Town.
- (1) A registrant shall comply with and abide by all applicable provisions of the state law and Town ordinances, applicable codes and regulations and applicable provisions of federal statutes, FCC regulations and PSC regulations in placing or maintaining a communications facility in the public rights-of-way. Wireless facilities shall be considered to be structures under the Florida Building Code, Building Risk Category IV, Structures, Chapter 16 Section 1620 – 1621, High Velocity Hurricane Zone Area.
  - (2) All communications facilities shall be placed and maintained so as not to interfere with, create any safety hazard, or create a visual obstruction to the traveling public's the use of the public rights-of-way or the use of bicycle lanes or multipurpose trails.
  - (3) For public safety purposes, aboveground communications facilities,

including but not limited to, small wireless facilities, micro wireless facilities and utility poles for collocation of small wireless facilities, shall not be placed or maintained on multipurpose trails.

- (4) Communications facilities shall be placed between the property line and the edge of pavement line of a street and shall not be located within a clear zone.
- (5) All communications facilities shall be placed and maintained so as not to cause unreasonable interference with the rights and convenience of property owners who abut any of the public rights-of-way. By way of example, the placement or maintenance of a communications facility in the public rights-of-way shall not cause excessive noise to adjacent properties, shall not impede ingress and egress to adjacent properties, materially block views from or into a business or residence, or materially block visibility of address or other signage on abutting properties.
- (6) A registrant shall not place or maintain its communications facilities to interfere, displace, damage or destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the Town or any other person's facilities lawfully occupying the public rights-of-way of the Town.
- (7) The Town may prohibit or limit the placement of new or additional communications facilities within the public rights-of-way if there is insufficient space to accommodate all of the requests to place and maintain facilities in that area of the public rights-of-way, to safely accommodate additional installations at any location, for the protection of or access to existing facilities or utilities in the public rights-of-way, or to accommodate Town plans for public improvements, other approved capital improvements projects as part of the Town Comprehensive Plan or budget, or projects the Town determines are in the public interest. The Town's Transportation and Surface Drainage and Ongoing Rehabilitation program constitutes a public improvement program pursuant to this subsection where the placement of facilities may not be allowed in certain locations of the public rights-of-way or facilities may be required to be removed pursuant to notice by the Town Administrator to accommodate this program.
- (8) Facilities to be installed underground.
  - (a) All facilities shall be subject to the Town's non-discriminatory undergrounding requirements that prohibit above-ground structures in the public rights-of-way. All communications facilities shall be placed underground, to the extent that utilities other than fire hydrants, including electric and communications utilities, are required to be located underground. To the extent required by applicable PSC rules and regulations or court order, a registrant shall install its facilities underground. Additionally, a registrant shall

endeavor to place all facilities underground unless prevented from doing so by existing technology or by the physical characteristics of the installation location.

- (b) A permit from the Town does not create any right to place or to maintain utility poles for the collocation of small wireless facilities or collocated wireless facilities including small wireless facilities on utility poles when electric and communications utilities in the location of the proposed facility are required to be installed underground.
- (c) Wireline fiber or coaxial backhaul facilities for small wireless facilities shall be installed underground consistent with applicable codes, unless waived by the Town.
- (d) Small wireless facilities and utility poles intended to support the collocation of a small wireless facility in the public rights-of-way shall not be placed in locations subject to the Town's nondiscriminatory undergrounding requirements that prohibit aboveground utilities in the public rights-of-way. Any such requirements may be waived by the Town. For purposes of this subsection, adoption of a final resolution by the Town Council shall constitute an undergrounding requirement over any area of the public rights-of-way. This subsection does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that if the Town notifies the registrant of the micro wireless facility that aerial communications or electric distribution utilities will be converted to underground utilities, the registrant shall remove its micro wireless facility at its expense within the time frame required by the Town. In addition, no utility poles for the collocation of small wireless facilities, micro wireless facilities, small wireless facilities, or collocated small wireless facilities on utility poles shall be placed in a location in the public rights-of-way where the Town Council has determined that existing above ground electric and communications utilities in such location should be removed and relocated underground. The presence of small wireless facilities or micro wireless facilities shall not be a basis not to comply with the Town's requirements to convert above ground utilities to underground. To comply with the Town's undergrounding requirements, a registrant shall remove its small wireless facilities, micro wireless facilities, and utility poles for collocation of small wireless facilities at its expense within 60 days of being notified by the Town that such facilities must be removed. The Town shall have the right to remove such facilities at the registrant's expense if the registrant fails to do so.

- (9) Prohibition against placement in violation of OSHA or NESC or NERC rules and regulations. Communications facilities, including but not limited to small wireless facilities and utility poles for the collocation of small wireless facilities shall not be placed in a location which violates rules and regulations set by Occupational Safety and Health Administration or the National Electrical Safety Code or the North American Electric Reliability Corporation standards. By way of example and not limitation, a small wireless facility or utility pole intended to support the collocation of a small wireless facility may not be placed within a ten (10) foot radius of an electric distribution facility or within a twenty (20) foot radius of an electric transmission line.
- (10) No communications facilities, including but not limited to small wireless facilities or utility poles for the collocation of small wireless facilities shall be placed or maintained in any location that is subject to or that would interfere with the Town's master tertiary drainage plan, adopted by Resolution 2005-008, as it may be amended, unless waived by the Town.
- (11) Prohibition against placement within a location subject to homeowners' association restrictions. Small wireless facilities shall not be placed in a location subject to covenants, restrictions, articles of incorporation, or bylaws of a homeowners' association unless specifically authorized by the homeowners' association. For purposes of this subsection, a location in a public right-of-way that abuts parcels within a homeowners' association on both sides of its width shall be considered a location subject to covenants, restrictions, articles of incorporation, or bylaws of such homeowners' association. This subsection shall not apply to limit the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facility.
- (12) Placement in relation to adjacent uses of property and building facades thereon. Where parking and/or loading spaces are not permitted between a building façade and the corresponding property line (i.e. front façade and front property line, side street façade and side street property line) by design standard, or such spaces do not exist in those locations on existing properties, new communication facilities and new utility poles for collocation of small wireless facilities shall be placed in-line with the common, interior side lot lines and shall not be placed in-line with the front/principal façade of a residence, place of business, or any other principal use building located on property that abuts the public-right-of-way.
- (13) Placement within a scenic or gateway corridor. Unless otherwise authorized by a franchise agreement or for public safety purposes, no new wireless

facilities, small wireless facilities or new utility poles for collocation of small wireless facilities shall be placed within a designated scenic or gateway corridor, as described in the Town Comprehensive Plan, as it may be amended.

- (14) A structure granted a permit and installed pursuant to this Section shall comply with Chapter 333, F.S., and federal regulations pertaining to airport airspace protections.
- (15) Historic preservation. This Ordinance does not limit the Town's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement such laws. Communications facilities shall not be collocated on nor interfere with historic property or landmark that may be within or adjacent to the public rights-of-way unless waived by the Town. Small wireless facilities, utility poles for the collocation of small wireless facilities and micro wireless facilities shall not be located in a manner that would impact negatively historic property unless waived by the Town. Historic properties may be so designated as being listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, a property within a National Register-listed district, or individually listed in the Town Register of Historic Places, pursuant to Town ordinance.

(c) Objective design standards.

- (1) Intent and purpose. Small wireless facilities in the public rights-of-way and utility poles installed or repurposed in the public rights-of-way for collocation of small wireless facilities shall be designed in such a manner to maximize compatibility with the surrounding neighborhood and to minimize any negative visual impact on the surrounding neighborhood. The objective design standards contained in this Ordinance regulating the location context, color, stealth design, and concealment of the proposed small wireless facility shall apply, unless waived by the Town.
- (2) Applicants shall not place or maintain signage on communications facilities, including small wireless facilities or utility poles for collocation of small wireless facilities, in public rights-of-way, unless otherwise required by federal or State law, provided; however, existing structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law.
- (3) A small wireless facility shall not have any type of lighted signal, lights, or illuminations unless required by applicable codes, local codes or

regulations, a permit issued by the Town, or state and federal laws and regulations or as permitted by the Town.

- (4) Stealth design for new or replaced utility poles for collocation of small wireless facilities. All proposed new or replaced utility poles for collocation of small wireless facilities shall meet the design standards contained in this subsection unless waived by the Town.
  - (a) A replaced or restructured utility pole to accommodate the collocation of a small wireless facility shall be located substantially in the same location as the original utility pole.
  - (b) The replaced or restructured utility pole shall be substantially similar in finish, design and composition as the original pole being replaced, unless the Town requires a different design, color or composition to be consistent with Town standards for new utility poles.
  - (c) Unless waived by the Town, the height for a new utility pole or replaced utility pole installed pursuant to this Ordinance shall not exceed the height of the tallest existing utility pole as of July 1, 2017, in the same right-of-way, measured from grade, in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet in the same public right-of-way as of July 1, 2017, the height shall be limited to 50 feet measured from grade. Height shall include only the height of the utility pole and shall not include any light, antennas, masts or other attachments to the utility pole. This subsection does not authorize the installation of a new utility pole for collocation of a small wireless facility if the proposed location is subject to the Town's location context regulations.
  - (d) A new utility pole shall be designed to blend in with other utility poles in the same block or vicinity of the public rights-of-way. By way of example, if existing utility poles in the same area of the public rights-of-way are light poles, the new utility pole should be designed consistent with such light poles and to the extent consistent with location context regulations, equidistant between existing poles. Unless waived by the Town, any such stealth utility pole for collocation of a small wireless facility shall function in the same manner as the facility it is intended to resemble in compliance with the Town Code, at the expense of the registrant. A new utility pole shall not contain any functioning light unless allowed by the Town consistent with the Town Code or required by applicable law..
  - (e) The design of the base of a new or replaced utility pole shall match



the base of adjacent utility poles within the public rights-of-way.

- (f) The color finish of a new utility pole shall be faux wood grain similar to the color finish of utility poles depicted on the Town's website to the extent technically feasible and not inconsistent with applicable codes.
  - (g) If there are no existing utility poles adjacent to or in close proximity to a proposed new utility pole for collocation, the new utility pole shall be a Louis Poulsen Nyhavn Park Pole, or substantially similar to such pole, which can be described in greater detail by the Town Administrator. Alternatively, the proposed new utility pole shall be designed as a round, metal non-fluted pole, not to exceed twelve (12) inches in diameter with the pole base to be installed beneath the finished grade.
- (5) Stealth design for collocation of small wireless facilities.
- (a) Wires, cables, conduit, and equipment to be collocated on a utility pole shall be within the utility pole or if not possible to being installed within the utility pole, covered with a shroud. No exposed wires or cables are permitted. Painted or unpainted conduit shall not be attached to the outside of a utility pole. A small wireless facility and shroud to be collocated on a utility pole that has a faux wood grain finish in accordance with subsection 4(f) above, shall have the same faux wood grain finish to the extent not inconsistent with applicable codes.
  - (b) If the utility pole for the proposed collocation of a small wireless facility is a light pole, a street light fixture substantially similar in design to the existing street light fixture shall be used to camouflage the small wireless facility such as through replacement of the cobra head with a new cobra head containing the small wireless facility, or a side-mounted light may be replaced with a substantially similarly designed side mounted light containing the small wireless facility. Unless consistent with the design of the utility pole, a small wireless facility shall not be collocated on a mast of a utility pole. In no event shall a small wireless facility be collocated on the mast of a pole that serves as a traffic signal pole. Any street light fixture installed by the registrant shall be maintained in good working order by the registrant at its cost.
  - (c) Slim design shall be used wherein the top mounted antenna does not exceed the diameter of the supporting utility pole by more than twelve (12) inches at the level of the antenna attachment, and side

mounted enclosures, if any, do not extend more than thirty (30) inches beyond the exterior dimensions of the existing structure, repurposed structure or utility pole at the level of antenna attachment measured from the edge of the pole to the outermost surface of the antenna.

- (d) Maximum height restrictions. A small wireless facility, including any attached antennas, shall not exceed ten (10) feet above the existing structure, repurposed structure or utility pole upon which the small wireless facility is to be collocated. A small wireless facility in the public rights-of-way shall not be used for the attachment of any communications facilities or fiber other than the equipment included within the small wireless facility.
- (6) Small wireless facilities not collocated on utility poles or existing structures.
- (a) Ground-mounted small wireless facilities greater than 6 cu. ft. in dimension shall be located within a ten (10) foot radius of the existing structure or utility pole for the collocated small wireless facility. Pursuant to Section 337.401(7)(b)(2), F.S., ground mounted equipment for a small wireless facility is to be reasonably spaced at least 200 feet from other ground mounted equipment in the public rights-of-way, unless waived by the Town.
  - (b) The ground-mounted small wireless facility shall be architecturally designed and of the same materials and color finish to resemble other at-grade public rights-of-way infrastructure such as waste receptacles or utility facilities in the public rights-of-way, except as provided in subsection (c) herein.
  - (c) To the extent not inconsistent with applicable codes, at the Town's direction, ground mounted small wireless facilities shall be enclosed in a wrap that has been approved by the Town's Rural Public Arts and Design Advisory Board. The registrant shall maintain the wrap in good condition at its sole cost and expense.
  - (d) To the extent not inconsistent with applicable codes, at the Town's direction the registrant owner of a ground mounted small wireless facility in the public rights-of-way shall conceal the facility with landscaping and plantings. Landscaping and plantings pursuant to this subsection shall be subject to the Town's approval and be maintained by the registrant at its sole cost and expense consistent with Article 75, Landscaping Requirements of the Town Unified Land Development Code, as it may be amended, for so long as the small wireless facility remains in the public rights-of-way.

- (e) The Town Administrator is authorized to create a manual showing figures of acceptable and unacceptable designs for facilities to be placed or maintained in the public rights-of-way.
- (7) Development standards for communications facilities other than small wireless facilities and utility poles for collocation of small wireless facilities.
- (a) Dimensional limits. No communications facility located aboveground, excluding utility poles, having exterior dimensions greater than four feet high, by four and one-half feet long, by two and one-half feet wide, or having a total volume exceeding 45 cubic feet, shall be granted a permit for construction or installation nor shall be constructed within the corporate limits of the Town on any public rights-of-way unless:
    - (1) The communication service provider can properly demonstrate in its permit application for placement of communication facilities in the public rights-of-way that strict compliance with the dimensional limits in this subsection will prevent the communications service provider from installing, constructing, maintaining, or providing its communications network; and
    - (2) The communication service provider demonstrates in its permit application that the proposed communications facilities it desires to construct which exceeds the dimensional limits set forth above in this subsection are necessary to provide adequate capacity to meet the requirements of the applicant at a specific location, or that said limits are otherwise technologically infeasible at the location, and that the proposed equipment the service provider desires to utilize is of the minimum size available to meet the requirements of the applicant's communications network; and
    - (3) The communications service provider demonstrates in its permit application that the proposed communications facilities are located and composed in a manner to minimize adverse impacts to abutting properties and the surrounding neighborhood and does not create a hazard by impairment of visibility to motorists or pedestrians at the proposed site and does not negatively impact or violate location and other regulations contained in this Ordinance: and
    - (4) The communications facilities proposed by the

communications provider does not otherwise create a hazard to the public health, safety and welfare

- (b) Notice to residential areas. Whenever a communications service provider subject to this subsection (7) submits a permit application to locate communications equipment which exceeds the dimensional limits in this subsection within residentially-zoned districts in the Town, the applicant shall provide notice by posting an 18" x 24" sign, satisfactory to the Town, at the proposed location advising residents that they may review the permit application at the Town and provide their comments to the Town. The sign shall be posted a minimum of 14 days prior to any decision being made on the permit application to allow adequate time for input by residents and so as not to unduly delay the processing of any application.

**22.26. Fees and Taxes for Access to Public Rights-of-Way.**

- (a) A registrant that places or maintains communications facilities in the public rights-of-way shall be required to pay fees and taxes as required by applicable law and ordinances of the Town, including this Ordinance.
- (b) Pass-through providers shall pay to the Town on an annual basis an amount equal to five hundred dollars (\$500.00) per linear mile or portion thereof of communications facilities placed and/or maintained in the public rights-of-way. The amounts charged pursuant to this Ordinance shall be based on the linear miles of public rights-of-way or portion thereof, where communications facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers.
- (c) The Town shall discontinue charging pass-through provider fees to a person that has ceased being a pass-through provider. any annual amounts charged shall be reduced for a prorated portion of any 12-month period during which the pass-through provider remits communications services taxes imposed by the Town pursuant to Chapter 202, F.S., as amended.
- (d) The initial amount of pass-through provider fees shall be paid prior to issuance of a permit to a pass-through provider based on the facilities authorized to be installed in the public rights-of-way pursuant to the permit. The amount due may be modified based upon the as-builts submitted by the pass-through provider. Subsequent annual payments of pass-through provider fees shall be due and payable on March 1 of each year. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one (1) percent per month from the date due until paid. The acceptance of any payment required hereunder by the Town shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the Town may have for additional sums due and payable. All fee payments shall

be subject to audit by the Town, and assessment or refund if any payment is found to be in error. If such audit results in an assessment by and an additional payment to the Town, such additional payment shall be subject to interest at the rate of one (1) percent per month until the date payment is made.

- (e) If the payments required by this Section are not made within ninety (90) days after the due date, the Town may withhold the issuance of any permits to the registrant until the amount past due is paid in full, in addition to any other remedies available pursuant to this Ordinance and applicable law, including but not limited to drawing upon a registrant's security fund and/or performance bond.
- (f) To the extent consist with applicable law, the Town shall not charge fees for registrations and permits pursuant to this Ordinance.

**22.27. Enforcement Remedies.**

- (a) Nothing in this Ordinance shall affect or limit the remedies the Town has available under applicable law. In addition to any other remedies available at law, including but not limited to F.S. §§166.0415(municipalities) and Ch. 162, (municipalities and counties), or equity or provided in this section, the Town may apply any one or combination of the following remedies in the event a registrant violates this Ordinance, or applicable local law or order related to the public rights-of-way.
- (b) In addition to the Town's ability to terminate a registration pursuant to Section 22.20(f) or to deny, suspend or revoke permits pursuant to Section 22.22(d), the failure to comply with the provisions of this Ordinance or other law applicable to occupants of the public rights-of-way may result in imposition of penalties to be paid by the responsible person to the Town in an amount of not less than \$250.00 per day or part thereof that the violation continues. A registrant's or person's failure to obtain a permit before commencing work, except where a permit is not required pursuant to this Ordinance, may result in imposition of penalties to be paid to the Town in an amount pursuant to the Town Code and applicable law, per day or part thereof that the violation continues.
- (c) In addition to or instead of any other remedy, the Town may seek legal or equitable relief from any court of competent jurisdiction.
- (d) Before imposing a fine, the Town shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the person shall have 30 days to either:
  - ii. Cure the violation to the Town's satisfaction, and the Town shall make good faith reasonable efforts to assist in resolving the violation; or
  - iii. File an appeal with the Town to contest the alleged violation pursuant to this Section, which shall govern such appeal. If no appeal is filed and if the

violation is not cured within the 30-day period, the Town may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.

- (e) In determining which remedy or remedies are appropriate, the Town or hearing officer shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required to prevent further violations, and such other matters as the Town or hearing officer determines are appropriate to the public interest.
- (f) Failure of the Town to enforce any requirements of this Ordinance shall not constitute a waiver of the Town's right to enforce that violation or subsequent violations of the same type, or to seek appropriate enforcement remedies.
- (g) In any proceeding before the Town where there exists an issue with respect to a registrant's performance of its obligations pursuant to this Ordinance, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this Ordinance. The Town may find a registrant that does not demonstrate compliance with the terms and conditions of this Ordinance in default and apply any one or combination of the remedies otherwise authorized by this Section.
- (h) *Force majeure*. In the event a registrant's performance of or compliance with any of the provisions of this Ordinance is prevented by a *force majeure* cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such registrant uses all practicable means to cure or correct any such inability to comply expeditiously.

**SECTION 4.** The provisions of this ordinance shall be included and incorporated in the Southwest Ranches Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Southwest Ranches Code.

**SECTION 5.** If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

**SECTION 6.** All ordinances or parts of ordinances inconsistent or in conflict herewith are hereby repealed to the extent of any conflict. Any moratorium, zoning in progress, or other temporary abatement on the Town accepting or processing applications for permits for wireless facilities in the public rights-of-way is hereby repealed upon the effective date of this Ordinance.

**SECTION 7.** This Ordinance shall become effective immediately upon the date of its adoption herein.

**PASSED ON FIRST READING** this 26<sup>TH</sup> day of April , 2018 on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**PASSED ON SECOND READING** this \_\_\_ day of \_\_\_\_\_, 2018 on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

McKay \_\_\_\_\_  
Fisikelli \_\_\_\_\_  
Breitkreuz \_\_\_\_\_  
Jablonski \_\_\_\_\_  
Schroeder \_\_\_\_\_

Ayes \_\_\_\_\_  
Nays \_\_\_\_\_  
Absent \_\_\_\_\_  
Abstaining \_\_\_\_\_

\_\_\_\_\_  
Doug McKay, Mayor

Attest:

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

\_\_\_\_\_  
Keith Poliakoff, Town Attorney114849027.1



**Town of Southwest Ranches**  
**13400 Griffin Road**  
**Southwest Ranches, FL 33330-2628**

**(954) 434-0008 Town Hall**  
**(954) 434-1490 Fax**

**Town Council**  
**Doug McKay, Mayor**  
**Steve Breitkreuz, Vice Mayor**  
**Freddy Fisikelli, Council Member**  
**Gary Jablonski, Council Member**  
**Denise Schroeder, Council Member**

**Andrew D. Berns, Town Administrator**  
**Keith M. Poliakoff, JD, Town Attorney**  
**Russell Muniz, Assistant Town Administrator/Town Clerk**  
**Martin D. Sherwood, CPA, CGMA, CGFO, Town Financial Administrator**

## **COUNCIL MEMORANDUM**

**TO:** Honorable Mayor McKay and Town Council  
**VIA:** Andrew D. Berns, Town Administrator  
**FROM:** Rod Ley, Town Engineer  
**DATE:** 4/26/2018  
**SUBJECT:** Approval of a Change Order to Advanced Modular Structures Inc. to Upgrade the Electrical Service at the Fire Modular Buildings and Remove a Canopy

---

### **Recommendation**

To place this item on the agenda for Council consideration and of a change order to the Advanced Modular Structures Inc. agreement to upgrade the electrical service for the Fire Department modular building and removal of the canopy.

### **Strategic Priorities**

- A. Sound Governance
- B. Enhanced Resource Management
- C. Reliable Public Safety
- D. Improved Infrastructure

### **Background**

The existing fire modular buildings located at 17220 Griffin Road have exceeded their life expectancy. As per Section 14.4 of the Public Safety Agreement with the Town of Davie, the Town must replace both fire station modular buildings with a single structure that follows the Florida Building Code.

On December 14, 2017, pursuant to Resolution 2018-022, the Town entered into an



agreement with Advanced Modular, Inc. in the amount of two hundred fifty thousand six hundred twenty-five dollars and zero cents (\$250,625) to complete the purchase and installation of the modular and to remove the existing two (2) structures. The agreement assumed utilizing the existing electrical connections. However, during permitting it was determined there is an issue with the size of the existing electrical service supporting the new load. The following needs to be done.

- a) Upgrade existing 300A service to a 500A service
- b) Use existing conduits to the FPL pole to the south of the site to pull the up-graded feeder wires
- c) Provide a new meter can and 500A main disconnect panel
- d) Remove the existing 200A panel and disconnects and provide breakers in the new panel and a junction box to feed the existing canopy outlets, well pumps and fire well pump using the existing conduits and wire
- e) The load on the new service is 420A so the existing service needs to be up-graded.

The cost for the additional electric work described above is \$12,656.00

Additionally, the site plan has been developed and the northernmost canopy must be removed in order to accommodate the larger modular. The cost to remove and dispose of the canopy is \$1,875. Therefore, the total change order is \$14,531.

### **Project Recap to Date:**

#### **SOURCE OF FUNDING:**

FY 2018 Adopted Budget \$216,315  
Resolution 2018-022: Advanced Modular Contract \$ 44,570  
Resolution 2018-038: Temporary Housing \$ 33,843  
Change Order \$ 14,531  
TOTAL \$309,259

#### **USE OF FUNDING:**

Disposal of Existing and Install New Modular \$260,885  
Temporary Housing and Associated Costs \$ 33,843  
Change Order \$ 14,531  
TOTAL \$309,259

### **Fiscal Impact/Analysis**

In accordance with the Town Charter and the budget adopted in Ordinance 2017-015, a FY 2017-2018 Budget amendment totaling fourteen thousand five hundred thirty-one dollars and zero cents (\$14,531.00) enabling the partial utilization of Restricted Fire Control Fund Balance within the General Fund is necessary.

Since funding is originally budgeted and available in the Fiscal Year 2018 Capital Projects Fund Expenditures account #301-5300-522-62150 (Buildings – Fire Control Modu-lars) a FY 2018 budget adjustment, from restricted Fire Control Fund Balance within the General Fund to

the Capital Projects Fund will be necessary in the above purchase sce-nario in amount of fourteen thousand five hundred thirty-one dollars and zero cents (\$14,531.00) as follows:

**GENERAL FUND:**

Revenue: Appropriated Fund Balance # 001-000-399-39900 \$14,531

Expenditure: Transfer to Capital Projects Fund #001-3900-581-91301 \$14,531

**CAPITAL PROJECT FUND:**

Revenue: Transfer from General Fund #301-000-381-38101 \$14,531

Expenditure: Buildings – Fire Control Modulars #301-5300-522-62150 \$14,531

**Staff Contact:**

Rod Ley, Town Engineer

**ATTACHMENTS:**

| Description                                  | Upload Date | Type       |
|--|-------------|------------|
| Fire Station Change Order Reso - TA Approved | 4/20/2018   | Resolution |
| Exhibit A - Change Order                     | 4/17/2018   | Exhibit    |

## **RESOLUTION 2018 - XXX**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A CHANGE ORDER WITH ADVANCED MODULAR STRUCTURES, INC. IN THE AMOUNT OF FOURTEEN THOUSAND FIVE HUNDRED THIRTY-ONE DOLLARS AND ZERO CENTS (\$14,531.00) TO UPGRADE THE ELECTRICAL WORK FOR THE FIRE MODULAR PROJECT AT 17220 GRIFFIN ROAD AND TO REMOVE AN EXISTING CANOPY; APPROVING A FISCAL YEAR 2017-2018 BUDGET AMENDMENT; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ISSUE A PURCHASE ORDER; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the existing fire modular buildings located at 17220 Griffin Road have exceeded their life expectancy; and

**WHEREAS**, on June 8, 2017, pursuant to Resolution 2017-046, the Town approved an agreement with the Town of Davie for public safety services; and

**WHEREAS**, as per Section 14.4 of the Public Safety Agreement with the Town of Davie, the Town must replace both fire station modular buildings with a single structure that conforms with the Florida Building Code and has a minimum of 2,200 square feet of living space for use by the Town of Davie plus additional square footage that may be required for the Town of Southwest Ranches Volunteer Fire Department (VFD); and

**WHEREAS**, on December 14, 2017, pursuant to Resolution 2018-022, the Town entered into an agreement with Advanced Modular, Inc. in the amount of two hundred fifty thousand six hundred twenty-five dollars and zero cents (\$250,625.00) to complete the purchase and installation of the modular and to remove the existing two (2) structures; and

**WHEREAS**, the contract with Advanced Modular Inc. assumed the existing electrical service would be usable; and

**WHEREAS**, during the permitting phase it was determined that the existing 300-amp service needs to be upgraded to a 500-amp service; and

**WHEREAS**, the electrical upgrade costs twelve thousand six hundred and fifty-six dollars and zero cents (\$12,656.00); and

**WHEREAS**, the site plan determined the northernmost canopy must be removed; and

**WHEREAS**, the cost to remove and dispose of the canopy is one thousand eight hundred seventy-five dollars and zero cents (\$1,875.00); and

**WHEREAS**, the project is specifically named in the Capital Projects Fund of the adopted Fiscal Year 2017 – 2018 Town Budget; and

**WHEREAS**, funds are not available in the Fiscal Year 2018 Capital Projects Fund Expenditures account #301-5300-522-62150 (Buildings – Fire Control Modular) in the amount of fourteen thousand five hundred thirty-one dollars and zero cents (\$14,531.00); and

**WHEREAS**, a Fiscal Year 2018 budget amendment, from restricted Fire Control Fund Balance within the General Fund to the Capital Projects Fund will be necessary in the amount of fourteen thousand five hundred thirty-one dollars and zero cents (\$14,531.00); and

**WHEREAS**, it has been determined to be in the public’s best interest to issue this change order; and

**WHEREAS**, the Town of Southwest Ranches desires to issue a purchase order 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 a change order in the amount of fourteen thousand five hundred thirty-one dollars and zero cents (\$14,531.00) with Advanced Modular, Inc. to upgrade the electrical service and remove an existing canopy; and

**Section 3.** In accordance with the Town Charter and the budget adopted in Ordinance 2017-015, a FY 2017-2018 budget amendment totaling Fourteen Thousand Five Hundred Thirty-One Dollars and Zero Cents (\$14,531.00) enabling the partial utilization of Restricted Fire Control Fund Balance within the General Fund (a \$484,719 unaudited balance at 9/30/2017) is necessary. Since funding is originally budgeted and available in the Fiscal Year 2018 Capital Projects Fund Expenditures account #301-5300-522-62150 (Buildings – Fire Control Modulares) a FY 2018 budget adjustment, from restricted Fire Control Fund Balance within the General Fund to the Capital Projects Fund will be necessary in the above purchase scenario in amount of Fourteen Thousand Five Hundred Thirty-One Dollars and Zero Cents (\$14,531.00) as follows:

GENERAL FUND:

Revenue: Appropriated Fund Balance # 001-000-399-39900 \$14,531

Expenditure: Transfer to Capital Projects Fund #001-3900-581-91301 \$14,531

CAPITAL PROJECT FUND:

Revenue: Transfer from General Fund #301-000-381-38101 \$14,531

Expenditure: Buildings – Fire Control Modulares #301-5300-522-62150 \$14,531

**Section 4.** The Town Council hereby authorizes the Mayor, Town Administrator, and Town Attorney to issue a purchase order for work performed as outlined in the quote attached hereto as Exhibit "A" and to make such modifications, additions, and/or deletions which they deem necessary and proper to effectuate the intent of this Resolution.

**Section 5.** 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 \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ on a motion by \_\_\_\_\_ and seconded by \_\_\_\_\_.

McKay \_\_\_\_\_  
Fisikelli \_\_\_\_\_  
Breitkreuz \_\_\_\_\_  
Jablonski \_\_\_\_\_  
Schroeder \_\_\_\_\_

Ayes \_\_\_\_\_  
Nays \_\_\_\_\_  
Absent \_\_\_\_\_  
Abstaining \_\_\_\_\_

\_\_\_\_\_  
Doug McKay, Mayor

Attest:

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

\_\_\_\_\_  
Keith Poliakoff, Town Attorney

# Change Order

**Number:** 1

Advanced Modular Structures, Inc.  
1911 N.W. 15th Street  
Pompano Beach, FL 33069  
(954) 960-1550  
(954) 960-0747 Fax

**To:** Town of SW Ranches  
**Contract for:** (1) 48x60 Modular Unit  
**Project Name/Number:** 530153

You are directed to make the following changes in this contract:

|   |             |
|---|-------------|
| Remove and Dispose of Existing Awning                         | \$1,875.00  |
| Upgrade Existing Electrical Service from 300 Amps to 500 Amps | \$12,656.00 |

|   |              |
|---|--------------|
| <b>The Original Contract Sum:</b>                         | \$252,625.00 |
| <b>Net Change by Previously Authorized Change Orders:</b> | 0            |
| <b>Net Contract Sum Prior to this Change Order:</b>       | 0            |
| <b>The Contract Sum Increased by this Change Order:</b>   | \$14,531.00  |
| <b>The New Contract Sum including this Change Order:</b>  | \$267,156.00 |

**Owner:**  
Town of SW Ranches

**Contractor:**  
Advanced Modular Structures, Inc.

\_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# Change Order

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**Town of Southwest Ranches**  
**13400 Griffin Road**  
**Southwest Ranches, FL 33330-2628**

**(954) 434-0008 Town Hall**  
**(954) 434-1490 Fax**

**Town Council**  
**Doug McKay, Mayor**  
**Steve Breitkreuz, Vice Mayor**  
**Freddy Fisikelli, Council Member**  
**Gary Jablonski, Council Member**  
**Denise Schroeder, Council Member**

**Andrew D. Berns, Town Administrator**  
**Keith M. Poliakoff, JD, Town Attorney**  
**Russell Muniz, Assistant Town Administrator/Town Clerk**  
**Martin D. Sherwood, CPA, CGMA, CGFO, Town Financial Administrator**

## **COUNCIL MEMORANDUM**

**TO:** Honorable Mayor McKay and Town Council  
**VIA:** Andrew D. Berns, Town Administrator  
**FROM:** Keith Poliakoff, Town Attorney  
**DATE:** 4/26/2018  
**SUBJECT:** Agreement with Tommy Squarini - PCC

---

### **Recommendation**

Town Council consideration for a motion to approve the resolution.

### **Strategic Priorities**

A. Sound Governance

C. Reliable Public Safety

### **Background**

On June 8, 2017, pursuant to Resolution No. 2017-046, the Town of Davie ("Davie") and The Town of Southwest Ranches ("TOWN") entered into an Agreement to provide for the delivery of emergency medical, fire protection, fire & life safety, fire prevention, and police services. On April 12, 2018, pursuant to Resolution No. 2018-048, the TOWN amended the Agreement to eliminate Davie's requirement to provide one Community Service Aid (C.S.A.), and instead to allow the Town to directly hire one Police Civilian Coordinator (P.C.C.). The Town Council has found that the need for administrative support for a Police Civilian Coordinator (P.C.C.) has exceeded the current need for the Community Service Aid (C.S.A.) duties and requirements.

In accordance with the terms of the Agreement, the TOWN has selected, and Davie has agreed to the selection of, the Town's currently assigned C.S.A., Thomas M. Squarini, to serve as the Town's new P.C.C., as an independent contractor through his company



TSS. TSS and the TOWN desire to enter into an Agreement for the provision of Police Civilian Coordinator Services.

**Fiscal Impact/Analysis**

Compensation for the agreement is set at \$50,000 annually.

**Staff Contact:**

Russell Muniz, Assistant Town Administrator/Town Clerk

**ATTACHMENTS:**

| Description                                   | Upload Date | Type       |
|---|-------------|------------|
| Thomas Squarini PCC Reso - TA Approved        | 4/20/2018   | Resolution |
| Thomas Squarini Agreement - Rev - TA Approved | 4/20/2018   | Agreement  |

**RESOLUTION NO. 2018 - \_\_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN AGREEMENT WITH THOMAS M. SQUARINI SERVICES, LLC FOR POLICE CIVILIAN COORDINATOR SERVICES; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on June 8, 2017, pursuant to Resolution No. 2017-046, the Town of Davie ("Davie") and The Town of Southwest Ranches ("TOWN") entered into an Agreement to provide for the delivery of emergency medical, fire protection, fire & life safety, fire prevention, and police services; and

**WHEREAS**, on April 12, 2018, pursuant to Resolution No. 2018-048, the TOWN amended the Agreement to eliminate Davie's requirement to provide one Community Service Aid (C.S.A.), and instead to allow the Town to directly hire one Police Civilian Coordinator (P.C.C.); and

**WHEREAS**, the Town Council has found that the need for administrative support for a Police Civilian Coordinator (P.C.C.) has exceeded the current need for the Community Service Aid (C.S.A.) duties and requirements; and

**WHEREAS**, in accordance with the terms of the Agreement, the TOWN has selected, and Davie has agreed to the selection of, the Town's currently assigned C.S.A., Thomas M. Squarini, to serve as the Town's new P.C.C., as an independent contractor through his company TSS;

**WHEREAS**, TSS and the TOWN desire to enter into an Agreement for the provision of Police Civilian Coordinator Services;

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:**

**SECTION 1. ADOPTION OF RECITALS.** The foregoing recitals are true and correct, and are incorporated herein by reference.

**SECTION 2.** The Town Council hereby approves the Agreement, attached hereto as Exhibit "A", between the Town of Southwest Ranches and Thomas M. Squarini Services, LLC for Police Civilian Coordinator Services.

**SECTION 3.** The Town Council hereby authorizes the Mayor, Town Administrator, and Town Attorney to enter into an agreement in substantially the same form as that attached

hereto as Exhibit "A" and to make such modifications, additions and/or deletions which they deem necessary to effectuate the intent of this Resolution.

**SECTION 4. EFFECTIVE DATE.** This Resolution shall be effective immediately upon its adoption.

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, this 26<sup>th</sup> day of April 2018, on a motion by \_\_\_\_\_, seconded by

\_\_\_\_\_.

McKay \_\_\_\_\_  
Fisikelli \_\_\_\_\_  
Breitkreuz \_\_\_\_\_  
Jablonski \_\_\_\_\_  
Schroeder \_\_\_\_\_

Ayes \_\_\_\_\_  
Nays \_\_\_\_\_  
Absent \_\_\_\_\_  
Abstaining \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Doug McKay, Mayor

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to legal Form and Correctness

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

114849013.1

AGREEMENT

BETWEEN

THOMAS M. SQUARINI SERVICES, LLC

And

TOWN OF SOUTHWEST RANCHES

Providing for

POLICE CIVILIAN COORDINATOR SERVICES

This Agreement is made by and between Thomas M. Squarini Services, LLC, a Florida Limited Liability Company (hereinafter referred to as "TSS"), and the TOWN OF SOUTHWEST RANCHES, a municipal corporation of the State of Florida (hereinafter referred to as "TOWN").

WHEREAS, on June 8, 2017, pursuant to Resolution No. 2017-046, the Town of Davie ("Davie") and The Town of Southwest Ranches ("TOWN") entered into an Agreement to provide for the delivery of emergency medical, fire protection, fire & life safety, fire prevention, and police services; and

WHEREAS, on April 12, 2018, pursuant to Resolution No. 2018-048, the TOWN amended the Agreement to eliminate Davie's requirement to provide one Community Service Aid (C.S.A.), and instead to allow the Town to directly hire one Police Civilian Coordinator (P.C.C.); and

WHEREAS, the Town Council has found that the need for administrative support for a Police Civilian Coordinator (P.C.C.) has exceeded the current need for the Community Service Aid (C.S.A.) duties and requirements; and

WHEREAS, in accordance with the terms of the Agreement, the TOWN has selected, and Davie has agreed to the selection of, the Town's currently assigned C.S.A., Thomas M. Squarini, to serve as the Town's new P.C.C., as an independent contractor through his company TSS;

WHEREAS, TSS and the TOWN desire to enter into an Agreement for the provision of Police Civilian Coordinator Services by TSS under the terms and conditions set forth hereinafter;

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions set forth herein, and other good and valuable consideration, TSS and TOWN do hereby agree as follows:

ARTICLE I  
BACKGROUND, PURPOSE AND INTENT

- 1.1 The above recitals are true and correct and incorporated herein as if set forth in full hereunder.
- 1.2 It is the purpose and intent of this Agreement for TSS to provide Police Civilian Coordinator Services.
- 1.3 The TOWN and TSS find that the method of delivery of Police Civilian Coordinator Services set forth in this Agreement is in the best interest of the public and can be best accomplished through coordination of the provisions of such services as set forth herein.

ARTICLE 2  
SCOPE OF SERVICES

- 2.1 TSS agrees to provide Police Civilian Coordinator Services pursuant to Exhibit "A" attached (hereinafter referred to as "Scope of Services", "Services", or "Work").
- 2.2 TOWN hereby appoints TSS for Police Civilian Coordinator Services and authorizes it to perform the required duties, as requested by the TOWN pursuant to Exhibit "A" attached hereto and made a part thereof.
- 2.3 TSS shall provide one P.C.C. to service the TOWN for a minimum total of forty (40) hours per week.
- 2.4 As it relates to this Agreement, TSS designates Thomas M. Squarini as its P.C.C. TSS may not remove Mr. Squarini as the TOWN'S P.C.C. without the consent of the TOWN and Davie.
- 2.5 TSS shall be available upon request for staff support services and shall be available to attend meetings of the Town Council or its boards as directed by the Town Administrator.
- 2.6 TSS shall dress in a professional manner in a uniform paid for by TSS, but approved by the Town Administrator, which shall clearly identify TSS as the TOWN'S P.C.C.

- 2.7 TSS shall maintain daily office hours within Town Hall. Unless extended, reduced, or modified in writing by the Town Administrator, the office hours shall be between 8:30 a.m. to 5:00 p.m. Monday through Friday, excluding Town designated holidays.
- 2.8 Upon prior written approval by the Town Administrator, TSS may allow Thomas M. Squarini to take ten (10) personal days off each year. During those days this position may be left unfilled. If the position is left unfilled for more than ten (10) days each year, the compensation set forth in Article 4 below shall be prorated accordingly.

ARTICLE 3  
TERM OF AGREEMENT

- 3.1 This Agreement shall become effective on June 1, 2018 (the Effective Date), and shall continue in full force and effect for sixty (60) months, with extensions to be approved by the TOWN and TSS, unless earlier terminated in accordance with paragraph 3.2 hereof.
- 3.2 Notwithstanding any other provision of this Agreement, this Agreement is terminable at will by either party, with or without cause. Notice of termination shall be provided in accordance with the "NOTICE" section of this Agreement. Either party may terminate this Agreement upon providing sixty (60) days written notice. In the event that this Agreement is terminated, TSS shall solely be paid for any Work performed up to the date of termination and TSS shall not be entitled to any additional compensation, of any kind or in any amount, from TOWN as a result of being terminated. TSS specifically waives any and all rights to seek any additional sums or damages from TOWN due to being terminated other than TSS' sole right to be paid for any Work performed up to the date this Agreement is terminated. Upon termination, TSS shall immediately refrain from performing further Work for the TOWN or incurring additional expenses.
- 3.3 In the event of termination or expiration of this Agreement, TSS and TOWN shall cooperate in good faith in order to effectuate a smooth and harmonious transition from TSS to such other person or entity designated by the TOWN, who will assume Police Civilian Coordinator Services, including the transfers to the TOWN of all files and records in possession of TSS which relate to the TOWN.

ARTICLE 4  
COMPENSATION

- 4.1 TSS shall provide Police Civilian Coordinator Services, as described in Exhibit "A", to the TOWN for an Annual Fee of Fifty Thousand Dollars (\$50,000), which shall be paid in monthly installments in the amount of Four Thousand One Hundred and Sixty Six Dollars and Sixty Six Cents (\$4,166.66).
- 4.2 TSS shall submit an invoice for its work performed by the tenth day of each month. TOWN and TSS agree that payment will be provided within thirty (30) business days of the Town's receipt and approval of an invoice in an acceptable form. Payment may be withheld for failure of TSS to comply, in whole or in part, with any term, condition, or requirement of this Agreement.
- 4.3 Any monies which are the subject of a dispute regarding this Agreement and which are not paid when claimed to be due, shall not be subject to interest.
- 4.4 TOWN and TSS agree that the cost of miscellaneous supplies associated with the operational and procedural requirements of performing Police Civilian Coordinator Services for the TOWN shall be included in the Annual Fee and shall not be billed separately to the TOWN. Such items include, but are not limited to, vehicle(s), uniforms, office supplies, computer equipment, and the like.
- 4.5 TOWN agrees to provide TSS, with an identification card, business card, and P.C.C. badge and, as needed, TSS may share Davie's office space, which contains an office phone for local telephone call, a dedicated phone line, office desk, Davie's computer system, and use of office equipment, postage, copies, informational handouts, and any long distance phone calls concerning TSS' investigations or notifications.
- 4.6 Tax Liability. As an independent contractor, TSS may receive a 1099 IRS Tax Form from the TOWN in accordance with IRS regulations. If necessary, the TOWN shall be responsible for withholding taxes and/or other applicable federal deductions. TSS shall be responsible for accounting and paying all applicable taxes for compensation received pursuant to this Agreement.
- 4.7 TSS Expenses. Any travel expenditures and/or administrative fees incurred by TSS in performance of its services under this Agreement, including but not limited to training and educational expenses incurred by TSS, shall be borne solely by TSS.

ARTICLE 5  
INDEMNIFICATION, LIABILITY & INSURANCE

- 5.1 To the fullest extent permitted by law TSS shall indemnify, and hold harmless the TOWN and the TOWN'S officers, agents, and employees from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees and costs at all tribunal levels, including but not limited to, the trial level and all appeals, to the extent caused by the malfeasance, negligence, recklessness, or wrongful misconduct of TSS and persons employed or utilized by TSS in the performance of the Work pursuant to this Agreement. TOWN and TSS agree that 1% of the compensation due to TSS from TOWN pursuant to this Agreement is offered and accepted as sufficient separate consideration for TSS'S agreement to indemnify TOWN and TOWN'S officers and employees as provided for in this paragraph. This specific consideration for TSS'S agreement to indemnify is already incorporated in the rate agreed to between TOWN and TSS. TSS agrees to be fully responsible for acts and omissions of their respective agents or employees. Nothing herein is intended to serve as a waiver of sovereign immunity by the TOWN to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter, whether arising out of this Agreement or any other contract.
- 5.2 Without limiting any of the other obligations or liabilities of TSS, TSS shall provide, pay for, and maintain in force all insurance specified herein. The TOWN shall be named as an additional insured of all the insurance policies to be acquired by TSS for the Work provided by TSS pursuant to this Agreement and shall also be identified as the certificate holder on all certificates of insurance. The insurance required by this Agreement shall be written by a company licensed in Florida and the company must reasonably be acceptable to the TOWN. The insurance required by this Section shall also cover all Work performed by TSS'S employees, independent contractors, subcontractors and/or subconsultants pursuant to this Agreement. This insurance shall be primary and other insurance of the TOWN shall not be contributory. The insurance coverages to be acquired and maintained by TSS are as follows:
- 5.3 Workers' Compensation Insurance, if required, to apply to employees in compliance with the "Worker's Compensation Law" of the State of Florida; and
- 5.4 Comprehensive General Liability Insurance: TSS to provide comprehensive general liability insurance with minimum limit of coverage of Five Hundred Thousand (\$500,000) Dollars per occurrence. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General



Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include coverage for:

- (a) Premises and/or Operations;
  - (b) Independent Contractors;
  - (c) Broad Form Property;
  - (d) Contractual;
  - (e) Personal injury; and
  - (f) Products/Completed.
- 5.5 Automobile Liability Insurance, TSS to provide automobile liability insurance to cover any auto with a limit of coverage of at least Two Hundred and Fifty Thousand (\$250,000) Dollars per occurrence.
- 5.6 TSS shall provide to TOWN a certificate of Insurance and a copy of required insurance policies as required by this Section. All certificates and endorsements required herein shall state that TOWN shall be given thirty (30) days' notice prior to expiration or cancellation of said policy.
- 5.7 If the initial insurance expires prior to the completion of the Work, renewal copies of Policies shall be furnished at least thirty (30) days prior to the date of their expiration.

ARTICLE 6  
RELATIONSHIP

- 6.1 TSS shall perform all of the Work enumerated in this Agreement solely as an independent contractor, and not as an employee of the TOWN. TSS shall be responsible for directing its efforts to the manner and means of accomplishing the Work to be performed hereunder by TSS.
- 6.2 Neither TSS nor TOWN intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.
- 6.3 Independent Contractor. TSS is an independent contractor under this Agreement. Services provided by TSS pursuant to this Agreement shall be

subject to the supervision of TSS. In providing such services, neither TSS nor its agents shall act as officers, employees, or agents of the TOWN. No partnership, joint venture, or other joint relationship is created hereby. TOWN does not extend to TSS or TSS' agents any authority of any kind to bind the TOWN or the Town of Davie, in any respect whatsoever. Accordingly, TSS shall not attain, nor be entitled to, any rights or benefits of the TOWN, nor shall any rights be generally afforded to classified or unclassified employees. TSS further understands that Florida Worker's Compensation benefits available to employees of the TOWN are NOT available to TSS or to any employee or agent of TSS.

ARTICLE 7  
AUDIT RIGHT AND RETENTION OF RECORDS

- 7.1 TOWN shall have the right to audit the books, records, computer records, electronic stored data, and accounts of TSS that are related to this Agreement. TSS shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. TSS shall preserve and make available, at reasonable times for examination and audit by TOWN, all financial records, supporting documents, statistical records and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes) if applicable, or, if the Florida Public Records Act is not applicable, of a minimum period of five (5) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period of five (5) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by TOWN to be applicable to TSS's records, TSS shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirements of either federal or state law shall be violated by TSS. 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.

ARTICLE 8  
REPORTS

- 8.1 On Friday of each week TSS shall provide the Town Administrator, the Town Attorney, the Town Council, and the Town Clerk with a report delineating the week's activity. Said report shall be provided to the TOWN through an electronic medium, in a form and format acceptable by the Town Administrator.

ARTICLE 9  
SUBCONTRACTING

- 9.1 All substantive work to be performed pursuant to the terms of this Agreement shall be performed by TSS. No work shall be subcontracted to other parties, firms, or individuals by TSS.

ARTICLE 10  
OWNERSHIP RIGHTS

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

ARTICLE 11  
NONDISCRIMINATION

- 11.1 TSS 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. TSS 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, TSS shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.
- 11.2 TSS'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.

ARTICLE 12  
ENTIRE AGREEMENT

- 12.1 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.

ARTICLE 13  
CONSTRUCTION

- 13.1 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.

ARTICLE 14  
FURTHER ASSURANCES

- 14.1 TOWN and TSS 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.

ARTICLE 15  
COUNTERPARTS

- 15.1 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.

ARTICLE 16  
NO AMENDMENT OR WAIVER

- 16.1 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.

ARTICLE 17  
SEVERABILITY

- 17.1 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.

ARTICLE 18  
PROFESSIONAL ASSURANCES

- 18.1 TSS shall perform all services under this Agreement in accordance with the highest standard of care used by similar professional code enforcement officers 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.

ARTICLE 19  
NOTICE

- 19.1 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  
Andrew Berns, Town Administrator  
13400 Griffin Road  
Southwest Ranches, FL 33330

And

Keith M. Poliakoff, Esq.  
Saul Ewing Arnsstein & Lehr, LLP  
200 East Las Olas Boulevard  
Suite 1000  
Ft. Lauderdale, FL 33301

For TSS:

Thomas M. Squarini Services, LLC  
Attn: Thomas M. Squarini, Manager  
14820 Archer Hall Street  
Davie, FL 33331

ARTICLE 20  
RESOLUTION OF DISPUTES

- 20.1 To prevent litigation, it is agreed by the parties hereto that TOWN Administrator shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Agreement and fulfillment of this Agreement as to the character, quality, amount and value of any work done and materials furnished, or proposed, to be done or furnished under or, by reason of, the Agreement. The Town Administrator's decision shall be reduced to writing and a copy furnished to TSS within a reasonable time following submission to the TOWN of the question, claim, difficulty or dispute as referenced above. The TOWN Administrator's decision shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence.
- 20.2 To further prevent litigation, the parties shall endeavor to resolve any and all claims arising from this Contract by mediation. A request for mediation shall be filed, in writing, with the other party to the Contract. To the extent litigation is permitted under this Contract, the request shall be made prior to the filing of a legal or equitable proceeding, which shall not be filed prior to the outcome of mediation which will be completed within sixty (60) consecutive calendar days from the date a request for mediation is submitted to the other party unless the parties agree to an extension. The statute of limitations of any claim shall be tolled from the date mediation is requested until completed. To the extent the parties cannot mutually select a mediator, within fifteen (15) consecutive calendar days, from the date a request for mediation has been submitted, either party can request the American Arbitration Association to appoint a mediator with experience to serve as mediator. The mediator selected to serve shall be

certified by the Florida Supreme Court. The mediation shall be conducted in Broward County, Florida.

ARTICLE 21  
APPLICABLE LAW & VENUE; WAIVER OF JURY TRIAL

- 21.1 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, TSS 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.**

ARTICLE 22  
ENFORCEMENT; ATTORNEY'S FEES

- 22.1 The TOWN and TSS 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 TSS 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 attorney's fees and costs incurred at the trial level and on appeal.

ARTICLE 23  
REPRESENTATION OF AUTHORITY

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

ARTICLE 24  
SURVIVABILITY

- 24.1 ARTICLE 5 of this Agreement entitled "INDEMNIFICATION, LIABILITY & INSURANCE"; ARTICLE 7 of this Agreement entitled "AUDIT RIGHT AND RETENTION OF RECORDS"; ARTICLE 10 of this Agreement entitled "OWNERSHIP RIGHTS"; ARTICLE 14 of this Agreement entitled "FURTHER ASSURANCES"; ARTICLE 20 of this Agreement entitled "RESOLUTION OF DISPUTES"; ARTICLE 21 of this Agreement entitled "APPLICABLE LAW & VENUE; WAIVER OF JURY TRIAL"; and ARTICLE 22 of this Agreement entitled "ENFORCEMENT; ATTORNEY'S FEES" shall survive the termination, cancellation, or expiration of this Agreement for any reason whatsoever.

ARTICLE 25  
COMPLIANCE WITH LAWS

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

ARTICLE 26  
MISCELLANEOUS

- 26.1 Performance: TSS represents that all persons performing the services required under this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth herein in a skillful and respectable manner.
- 26.2 Materiality and Waiver of Breach: TSS and TOWN agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

Either party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

- 26.3 Conflicts: Neither party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially



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

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

- 26.4 Public Records: The TOWN is subject to Chapter 119, Florida Statutes, "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 Law exists and is cited in the response. An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed. TSS acknowledges 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.

To the extent that TSS has been provided access to or has received security sensitive information, as defined by Florida Statutes, Section 119.071 and/or has executed a Confidential Information Acknowledgement and Agreement, Volunteer shall keep and maintain the security sensitive information as confidential and exempt from public disclosures as required by Florida Statutes.

TSS agrees to keep and maintain public records required by the Town to perform the service in TSS' possession or control in connection with TSS' performance under this Agreement, and upon the request from the TOWN's custodian of public records, to provide the TOWN with a copy of the requested records or allow the records to be inspected or copied within a reasonable amount of time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. TSS shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term

and following completion of the Agreement if the TSS does not transfer the records to the TOWN.

Upon completion of the Agreement, TSS agrees, at no cost to TOWN, to transfer to the TOWN all public records in possession of the TSS or keep and maintain public records required by the TOWN to perform the service. If TSS transfers all public records to the TOWN upon completion of the Agreement, TSS shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If TSS keeps and maintains public records upon completion of the Agreement, TSS shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the TOWN, upon request from the TOWN's custodian of public records, in a format that is compatible with the information technology system of the TOWN.

TSS's failure or refusal to comply with the provisions of this section shall result in the immediate termination for cause of the Agreement by the TOWN.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: Thomas M. Squarini Services, LLC through its Manager Thomas M. Squarini, authorized to execute same, and TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the 26<sup>th</sup> day of April, 2018.

WITNESSES:

\_\_\_\_\_  
  
\_\_\_\_\_

TSS, INC.

By: \_\_\_\_\_  
Thomas M. Squarini, Manager

\_\_\_\_ day of April, 2018

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

TOWN OF SOUTHWEST RANCHES

By: \_\_\_\_\_  
Doug McKay, Mayor

\_\_\_\_ day of April, 2018

ATTEST:

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Keith M. Poliakoff, J.D  
Town Attorney

114848882.1

## **EXHIBIT "A"**

### **POLICE CIVILIAN COORDINATOR SERVICES**

- Handle walk-in police related issues
- Draft police reports & answers basic law enforcement questions
- Serve as a liaison between the residents and the Town of Davie Police Department
- Provide weekly reports to the Town
- Fingerprint services
- Pull and print Town police reports
- Assist Town at Board and Council Meetings, as needed
- Coordinate Davie Police attendance at Council and Code Enforcement meetings
- Operate Davie Police radio to transmit and to receive messages
- Route non-emergency calls for service placed to Town Hall
- Operate Davie Police computer system, copiers, and other office equipment
- Access criminal database and Department of Motor Vehicle Records
- VIN identification
- Respond to resident calls within twenty-four (24) business hours
- Issue Parking Tickets when requested
- Other duties that may be assigned by the TOWN from time to time



Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, FL 33330-2628

(954) 434-0008 Town Hall  
(954) 434-1490 Fax

Town Council  
Doug McKay, *Mayor*  
Steve Breitkreuz, *Vice Mayor*  
Freddy Fisikelli, *Council Member*  
Gary Jablonski, *Council Member*  
Denise Schroeder, *Council Member*

Andrew D. Berns, *Town Administrator*  
Keith M. Poliakoff, *JD, Town Attorney*  
Russell Muniz, *Assistant Town Administrator/Town Clerk*  
Martin D. Sherwood, *CPA, CGMA, CGFO, Town Financial Administrator*

### COUNCIL MEMORANDUM

**TO:** Honorable Mayor McKay and Town Council  
**VIA:** Andrew D. Berns, Town Administrator  
**FROM:** Martin D. Sherwood, Town Financial Administrator  
**DATE:** 4/26/2018  
**SUBJECT:** SERIES 2018 EMERGENCY LINE OF CREDIT AGREEMENT

#### Recommendation

It is recommended that Council approve the attached resolution accepting a tax-exempt, bank qualified five-year agreement with a bank call option on the third anniversary of loan closing date, with TD Bank N.A. in either the amounts of \$6.5 or \$10 million, respectively. Please refer to **EXHIBIT A** representing terms and conditions of credit extended from TD Bank, N.A. ("TD Bank") both dated March 20<sup>th</sup>, 2018.

After discussions and assistance with the Florida Municipal Loan Council ("FMLC"), and the Florida Association of Counties ("FAC"), Town Staff solicited inquiries from financial institutions but only received three formal responses. Subsequently, the Town retained the professional financial advisory firm, PFM Financial Advisors LLC (PFM) to analyze each of the respondents' terms and conditions, also dated March 20<sup>th</sup>, 2018 (**EXHIBIT B**) who concurred with Staff that TD Bank with an interest rate @ 80.25% of prime rate with either a minus 150 or minus 125 spread for the \$6.5 or \$10 million LOC, respectively was the most favorable to the Town based on both a current rate and an 18-year (2000-2018) historical average basis.

#### Strategic Priorities

- A. Sound Governance
- B. Enhanced Resource Management

- C. Reliable Public Safety
- D. Improved Infrastructure
- E. Cultivate a Vibrant Community

**Background**

On August 25, 2010, the Town entered into a revolving line of credit (LOC) agreement with Community Bank of Broward (CBB-now known as Centennial Bank) in an amount not to exceed \$3,000,000. Subsequently, on June 20th, 2013, the Town renewed with CBB but increased its LOC to \$4,500,000. The LOC is for expenditures of extraordinary, nonrecurring items which the Town desires or needs to undertake subsequent to and as a result of a natural, technological or civil emergency. As collateral, the Town currently covenants to budget and appropriate in its annual budget from legally available non-ad valorem revenues in each fiscal year sufficient moneys to pay the outstanding principal and/or interest on the note. As of March 16<sup>th</sup>, 2018, the Town has drawn upon the renewed LOC in the amount of \$1,536,380 with interest at the prime rate minus 25bp (presently 4.5% net), representing expenditures paid from Hurricane Irma from inception to January 20<sup>th</sup>, 2018. This LOC is due to expire on June 30, 2018.

Historically, the Town has suffered economic damages by four major Hurricanes; Frances (2004), Katrina (2005), Wilma (2005), and most recently Irma (2017), and received (or is estimated to receive in the case of Irma \$4,162,500 of \$4,500,000) of total damages, Federal and State financial assistance, as follows:

|         | <u>Frances</u>   | <u>Katrina</u>     | <u>Wilma</u>        | <u>Irma(estimated)</u> |
|---------|------------------|--------------------|---------------------|------------------------|
| Federal | \$398,057(90%)   | \$1,083,885(100%)  | \$11,372,717(100%)  | \$3,937,500(75%-100%)  |
| State   | 21,579(5%)       | N/A                | N/A                 | 225,000(2.5%-7.5%)     |
| Total.  | <u>\$419,636</u> | <u>\$1,083,885</u> | <u>\$11,372,717</u> | <u>\$4,162,500</u>     |

For the future, it is impossible to predict the amount of economic damages the Town will incur, as well as the amount of federal and/or state assistance that will be considered reimbursable, especially in the wake of the Town’s current support of (but lack of expedient financial assistance for) Private Property Debris Removal (PPDR). Accordingly, the renewal of the LOC will enable the Town to mitigate a portion of the damages potentially not covered by federal or state agencies or for its lack of a designated committed emergency General Fund Fund Balance.

As previously mentioned, a detailed narrative and graphic analysis of all the respondent offers was performed by PFM and is provided on the attached Exhibit B. Based upon past directives received by Council and the Town’s continual desire for debt avoidance, whenever possible, further Staff discussion concentrates on the lowest LOC interest rate alternative: a **Tax Exempt, Bank Qualified** issuance and which has been recommended for Council approval.

Accordingly, the Tax Exempt, Bank Qualified proposal from TD Bank as summarized and graphed by PFM on page 4-5 of Exhibit B “all-in” costs has been ranked as the lowest cost,

utilizing a current rate and ranked lowest utilizing an 18-year historical average indexing factor based on the prime interest rate, and is therefore the most favorable, whether either a \$6.5 million or \$10 million LOC is adopted at 2.41% or 2.61% for current rate or 2.67% or 2.87% for historical average rate, respectively. These recommended rates for Council approval are significantly lower (*over 43% lower!*) than our current Centennial LOC rate (prime rate minus 25bp).

### **Loan Capacity/Debt Covenant**

As of September 30, 2017, the Town has \$11,381,983 in long-term debt liabilities of which \$558,423 is due to be paid within our current fiscal year of 2017-2018. Although large in total amount, it is critical to note that \$7,750,000 (or over 68%) of debt was attributable to the recent acquisition of 23 acres within the Town boundaries necessary for the economic, long-term sustainability for the Town and was deemed manageable. Obviously, the need to add to debt during even a declared state of emergency becomes a strain but necessary and only temporary as reimbursement from Federal and State governments are relatively assured.

The Town's debt service anti-dilution covenants under its Series 2011, 2013 and 2016 are also coincidentally with TD Bank, whom has run a compliance analysis of both \$6.5 million and \$10 million LOC scenarios. Accordingly, we have been assured by TD Bank that presently, if the Town is in need to draw fully in either scenario, there is sufficient excess coverage for both the test of the prior two-year average of non-ad valorem revenues as well as our maximum additional bond test. However, the most important factor to consider is if the Council chooses the \$10 million LOC option it would reach our maximum additional debt capacity (i.e. \$21,381,983 representing \$11,381,983 per above + \$10,000,000 LOC) and not allow the Town to increase its borrowing capacity moving forward without TD Banks prior consent including a debt covenant restructuring or potentially volunteering to elect to lower its LOC below \$10 million.

### **Fiscal Impact/Analysis**

Obviously, the amount of LOC selected will affect the overall fiscal impact from an annual maintenance cost as well as from total interest expense perspective, if and when utilized. The amount budgeted in the Town's Debt Service Fund strictly for upfront loan fees and expenses for this line of credit (not interest or principal) within the current fiscal year 2017-2018 was \$65,000. Upon subtracting for bond counsel opinion and our in-house legal debt issuance costs of \$7,500 in total pertaining to our \$1.3 million draw of our existing \$4.5 million Centennial Bank line of credit, \$57,500 is therefore remaining and available. The recommended new TD upfront loan fee would be \$15,000 or \$25,000 for \$6.5 million or \$10 million, respectively. Additional bond counsel, in-house legal and financial advisory expenses may comprise up to \$22,500 in total. Ultimately, any LOC upfront cost savings will be able to be applied to the total additional Hurricane Irma interest expense incurred within the Town's Debt Service Fund during FY 2017-2018. Starting the second year and continuing each year thereafter, a \$4,000-line maintenance fee is due unless 20% of the LOC amount is utilized (i.e. \$1.3 or \$2.0 million for \$6.5 or \$10 million, respectively).

Further, upon loan closing for the LOC during late May of this year, it is planned that the total



new TD Bank LOC amount of Hurricane Irma disaster expenditures remitted from inception to April 30<sup>th</sup> (approximately \$3,500,000) will become outstanding and will be first utilized to pay off the existing Centennial Bank LOC, resulting in significant interest savings until the Town receives its share of the federal and state reimbursement which is pledged to repay TD Bank upon receipt.

**Staff Contact:**

Martin Sherwood, Town Financial Administrator  
Carol C. Kalliche, Assistant Town Attorney

**ATTACHMENTS:**

| Description  | Upload Date | Type       |
|--|-------------|------------|
| Emergency LOC Reso - TA Approved                                 | 4/20/2018   | Resolution |
| TD Bk 2018 Emergency LOC \$6.5MM and \$10MM Term Sheet-EXHIBIT A | 4/17/2018   | Resolution |
| PFM SERIES 2018 EMERGENCY LOC SUMMARY MEMO-EXHIBIT B             | 4/17/2018   | Resolution |

**RESOLUTION NO. 2018-\_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AUTHORIZING A NEW EMERGENCY LINE OF CREDIT NOTE IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$\_\_\_\_\_, TO PROVIDE FINANCING TO MEET RECOVERY COSTS RELATING TO A DECLARED STATE OF EMERGENCY AFFECTING THE TOWN AND COSTS RELATED THERETO; COVENANTING TO REPAY SUCH OUTSTANDING PORTION OF THE NOTE FROM REIMBURSEMENTS RECEIVED BY THE TOWN FROM FEMA AND THE STATE OF FLORIDA, AND COVENANTING TO BUDGET AND APPROPRIATE FUNDS, FROM LEGALLY AVAILABLE NON-AD VALOREM REVENUES; AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT, LOAN NOTE AND SUCH OTHER LOAN DOCUMENTS DEEMED NECESSARY; TO REPAY SUCH NOTE; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**WHEREAS**, the Town has an existing Emergency Line of Credit ("LOC") with Centennial Bank ("CB") (f/k/a Community Bank of Broward) in the maximum principal amount of \$4,500,000.00, and which matures on June 30, 2018; and

**WHEREAS**, the Town Council has determined that it is appropriate and necessary to obtain a new LOC to pay off the outstanding interest and principal due on the CB LOC and to provide financing to meet recovery costs relating to a declared state of emergency; and

**WHEREAS**, TD Bank, N.A. submitted Commitment Letters to the Town dated March 20<sup>th</sup>, 2018 to provide for a new LOC, which is attached hereto and made a part hereof and marked Exhibit "A" (the "Commitment Letters"); and

**WHEREAS**, the Town desires to approve a new lower interest index LOC with TD Bank, N.A. in the amount of \$\_\_\_\_\_ and upon the terms set forth in this Resolution.

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

**SECTION 1. ADOPTION OF RECITALS.** The above-referenced recitals are true and correct, and are incorporated herein by reference.

**SECTION 2. DEFINITIONS.** As used herein, unless the context otherwise requires:

“Act” means, as applicable, Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the Town of Southwest Ranches, Florida, and other applicable provisions of law.

“Bank” means TD Bank, N.A., the initial purchaser of the Note, and its successors and assigns.

“Code” means the Internal Revenue Code of 1986, as amended, including the applicable regulations of the Department of the Treasury (including applicable final regulations, temporary regulations and proposed regulations), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings) and applicable court decisions.

“Costs of the Project” means with respect to the Project, all items of cost authorized by the Act, including the costs of issuance of the Note.

“Dated Date” means the date of issuance of the renewal Note.

“Disaster” means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by Broward County, the Town, the Governor of the State of Florida, or the President of the United States.

“Draw Period” means date beginning on the effective date of the line of Credit Agreement and expiring on \_\_\_\_\_.

“FEMA” means the Federal Emergency Management Agency.

“FEMA Proceeds” means all amounts received by the Town from FEMA for Costs of the Project.

“Governing Body” means the Town Council of the Town, or its successor in function.

“Legally Available Non-Ad Valorem Revenues” means all revenues of the Town derived from any source whatsoever, (Carol: good that you did not include utility taxes here) other than ad valorem taxation on real and personal property, which are legally available to make the payments of principal and interest on the Note, but only after provision has been made by the Town for payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Town, or which are legally mandated by applicable law.

“Maturity Date” means five (5) years with a Bank call option on the 3<sup>rd</sup> anniversary of loan date. \_\_\_\_\_.

“Mayor” means the Mayor of the Town or, in the Mayor’s absence, the Vice-Mayor, or such other persons as may be duly authorized to act on the Mayor’s behalf.

"Note" means the Town's Emergency Line of Credit Note, authorized to be issued by the Town in the aggregate principal amount not to exceed \$\_\_\_\_\_.

"Noteholder" or "Holder" means the registered owner (or its authorized representative) of the Note.

"Pledged Revenues" means the FEMA Proceeds and the State Proceeds.

"Project" means expenditures for extraordinary, nonrecurring items the Town desires or needs to undertake subsequent to and as a result of a Disaster, and costs related thereto.

"Renewal" means at least one (1) year prior to maturity date via a Bank Letter at the Banks sole discretion with identical terms and conditions and to be construed as a modification to the current LOC .

"Resolution" means this Resolution, as same may from time to time be amended, modified or supplemented.

"State" means the State of Florida, Department of Emergency Management.

"State Proceeds" means all amounts received by the Town from the State Department of Emergency Management or any other agency or division thereof for Costs of the Project.

"Town" means the Town of Southwest Ranches, a Florida municipal corporation, or its successor.

"Town Administrator" means the Town Administrator or other Chief Executive Officer of the Town.

"Town Clerk" means the Town Clerk or any Deputy Town Clerk.

"Town Financial Administrator" means the Town Financial Administrator or other Chief Financial Officer of the Town.

**SECTION 3. AUTHORITY FOR RESOLUTION.** This Resolution is enacted pursuant to the provisions of the Act. The Town has ascertained and hereby determined that enactment of this Resolution is necessary to carry out the powers, purposes and duties expressly provided in the Act, that each and every matter and thing as to which provision is made herein is necessary in order to carry out and effectuate the purposes of the Town in accordance with the Act and to carry out and effectuate the plan and purpose of the Act, and that the powers of the Town herein exercised are in each case exercised in accordance with the provisions of the Act and in furtherance of the purposes of the Town.

**SECTION 4. RESOLUTION TO CONSTITUTE CONTRACT.** In consideration of the purchase and acceptance of the Note by those who shall hold the same from time to time, the provisions of this Resolution shall be a part of the contract of the Town with the Holder, and shall be deemed to be and shall constitute a contract between

the Town and the Holder from time to time of the Note. The pledge made in this Resolution and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Town shall be for the benefit, protection and security of the Holder of the Note in accordance with the terms hereof.

**SECTION 5. LINE OF CREDIT AGREEMENT.** The Mayor and the Town Administrator or Town Financial Administrator are hereby authorized to execute and deliver a Line of Credit Agreement on behalf of the Town, and the Town Clerk is authorized to place the Town's seal thereon and attest thereto, the form and content of which shall be approved by the Town Administrator or Town Financial Administrator and Town Attorney as they may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Town.

**SECTION 6. AUTHORITY FOR ISSUANCE OF NOTE.** Subject and pursuant to the provisions hereof and of the Line of Credit Agreement, a note to be known as "Town of Southwest Ranches, Florida, Emergency Line of Credit Series 2018 Note" is hereby authorized to be issued in an aggregate principal amount not to exceed \_\_\_\_\_ Million Dollars (\$\_\_\_\_\_ ) for the purpose of financing the Costs of the Project.

**SECTION 7. DESCRIPTION OF NOTE.** The Note shall be issued in one (1) typewritten certificate, shall be dated the Dated Date thereof and shall mature not later than the Maturity Date. Draws will be permitted to be made on the Note from time to time in accordance with the Line of Credit Agreement, up to the maximum principal amount of \$\_\_\_\_\_. The Note shall bear interest, based on the principal amount outstanding from time to time, at the rate set forth in the Line of Credit Agreement, which such rate to be adjusted as set forth therein. The outstanding principal of and unpaid and accrued interest on the Note shall be payable on the Maturity Date or earlier redemption. No prepayment penalty during the term of the facility.

**SECTION 8. PLEDGE OF PLEDGED REVENUES; COVENANT TO BUDGET AND APPROPRIATE.** The outstanding portion of the Note shall be secured by, and the Town hereby grants to the Holders, a lien on and pledge of all the Pledged Revenues, as more particularly set forth in the Line of Credit Agreement. To the extent the Pledged Revenues are not sufficient to repay the outstanding portion of the Note when due, the Town covenants to budget and appropriate Legally Available Non-Ad Valorem Revenues in such amount as may be necessary to repay the outstanding portion of the Note when due, as more particularly set forth in the Line of Credit Agreement.

**SECTION 9. NOTE NOT TO BE GENERAL INDEBTEDNESS OF THE TOWN.** The Note shall not be or constitute a general obligation or indebtedness of the Town within the meaning of the Constitution of Florida, but shall be payable from and

secured solely by the Town's pledge of the Pledged Revenues and by the covenant of the Town to budget and appropriate Legally Available Non-Ad Valorem Revenues, in the manner and to the extent herein for the outstanding portion of the note, in the Line of Credit Agreement and in the Note provided. No Holder shall ever have the right to compel the exercise of the ad valorem taxing power of the Town or taxation in any form on any real or personal property to pay the Note or the interest thereon, nor shall any Holder be entitled to payment of such principal and interest from any funds of the Town other than the Pledged Revenues or Legally Available Non-Ad Valorem Revenues, all in the manner and to the extent herein, in the Line of Credit Agreement and in the Note provided. The Holders shall have no lien upon any real or tangible personal property of the Town.

**SECTION 10. AWARD OF NOTE BY NEGOTIATED SALE.** Because of the nature of the Note, the maturity of the Note and the prevailing market conditions, the negotiated sale of the Note to the Bank in substantial accordance with the Commitment Letters, which letter is attached hereto as Exhibit "A", is hereby found to be in the best interests of the Town; provided, however, that the provisions of this Resolution and the Line of Credit Agreement shall control to the extent of any conflict with the Commitment Letter.

**SECTION 11. BANK QUALIFIED ISSUE.** The Town hereby designates the Note to be a "qualified tax-exempt obligation" within the meaning of Section 265(b) of the Code unless, as to the calendar year in which the Note is issued, the Town cannot reasonably anticipate on the date of issuance of the Note that the amount of tax-exempt obligations (other than obligations not taken into account for purposes of determining the Town's status as a "qualified small issuer") will not exceed the maximum amount permitted under Section 265(b) of the Code for such calendar year.

**SECTION 12. MODIFICATION, AMENDMENT OR SUPPLEMENT.** This Resolution may be modified, amended or supplemented by the Town from time to time prior to the Town entering into the Line of Credit Agreement. Thereafter, no modification, amendment or supplement of this Resolution, or of any resolution amendatory hereof or supplemental hereto, may be made without the consent in writing of the Holder.

**SECTION 13. GENERAL AUTHORITY.** The Governing Body hereby authorizes the Mayor, Town Administrator or Town Financial Administrator, Town Attorney and Town Clerk to execute such other documents as may be necessary to effect the borrowing contemplated by this Resolution.

**SECTION 14. SAVINGS CLAUSE.** If any section, paragraph, sentence, clause or phrase of this Resolution shall, for any reason, be held to be invalid or unenforceable, such decision shall not affect the validity of the remaining sections, paragraphs, sentences, clauses or phrase of this Resolution.

**SECTION 15. CONFLICTS.** All resolutions or parts thereof which conflict herewith are, to the extent of such conflict, superseded and repealed.

**SECTION 16. EFFECTIVE DATE.** This Resolution shall be effective immediately upon its adoption.

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this \_\_\_\_ day of April, 2018 on a motion by \_\_\_\_\_ and seconded by \_\_\_\_\_.

McKay \_\_\_\_\_  
Fisikelli \_\_\_\_\_  
Breitkreuz \_\_\_\_\_  
Jablonski \_\_\_\_\_  
Schroeder \_\_\_\_\_

Ayes \_\_\_\_\_  
Nays \_\_\_\_\_  
Absent \_\_\_\_\_  
Abstaining \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Doug McKay, Mayor

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

\_\_\_\_\_  
Keith Poliakoff, J.D., Town Attorney  
114847490.1

**TD BANK, N.A. ("BANK")**  
**TERMS AND CONDITIONS OF CREDIT ACCOMMODATION DATED**  
**MARCH 20TH, 2018 (\$6.5MM EXPOSURE)**

**THIS IS A STATEMENT OF PRELIMINARY TERMS AND CONDITIONS AND NOT A COMMITMENT TO LEND. ALL CREDIT ACCOMMODATIONS ARE SUBJECT TO FORMAL CREDIT UNDERWRITING AND APPROVAL.**

1. Loan.

- (a) Borrower(s): Town of Southwest Ranches, Florida
- (b) Guarantor: N/A
- (c) Facility: Taxable Or Tax Exempt Credit Facility (the "Emergency Line of Credit")
- (d) Purpose: Credit Facility to be used for **qualified expenses** related to natural disasters such as hurricanes and other emergencies. Proceeds under this Facility can be also used to repay the balance outstanding under the Town's existing Emergency Line of Credit Facility with Centennial Bank.

This Facility shall replace the Town's existing Emergency Line of Credit Facility with Centennial Bank

- (e) Amount: **Up to \$6,500,000 ("Series 2016 Note")**
- (f) Collateral: The payment of the principal of and interest on the Facility shall be secured by a pledge of Town to budget & appropriate from the Non-Ad valorem revenues, by amendment if required, for the ongoing debt service payment under the Loan (Pledged Revenues).
- (g) Maturity: Five (5) years with a Bank Call Option on the 3<sup>rd</sup> anniversary of Loan Closing Date.
- Facility can be renewed at final maturity via a Bank Letter at the Bank's sole discretion, at least one (1) year prior to maturity.
- (h) Repayment Terms: "Interest-Only" to be paid quarterly during term of Emergency Facility. Periodic principal repayments that coincide with Borrower's receipt of reimbursement payments by FEMA and/or other State Agencies will be required. Otherwise, all unpaid principal shall be due at maturity.

**Bank Call Option**: Credit Facility will be subject to a Bank Call Option on the 3<sup>rd</sup> anniversary of Facility Closing Date whereby Bank can put back Note on Borrower at the Bank's sole discretion under a 180-day Bank Advance Notice.



(i) Interest Rate:


**INDICATIVE FLOATING RATE**

**Taxable Rate:** Indicative Floating Rate for the Credit Facility Term duration is (1-Month LIBOR + 1.50%) for an "All-In" Rate of **3.09%**; OR (WSJ Prime – 1.50%) "All-In" Rate of **3.00%** depending on Borrower's preference.

**Tax Exempt Rate(s):**

**Bank Qualified--** Indicative Floating Rate for the Credit Facility Term duration is 80.25% of (1-Month LIBOR + 1.50%) for an "All-In" Rate of **2.48%**; OR 80.25% (WSJ Prime – 1.50%) "All-In" Rate of **2.43%** depending on Borrower's preference.

**Non-Bank Qualified –** Indicative Floating Rate for the Credit Facility Term duration is 81.50% of (1-Month LIBOR + 1.50%) for an "All-In" Rate of **2.52%**; OR 81.50% of (WSJ Prime – 1.50%) "All-In" Rate of **2.45%** depending on Borrower's preference.

*S/B 2.4%*  


(j) Prepayment Premium:

**No prepayment penalty during the Term of the Facility.**

(k) Default Rate of Interest:

The "default rate of interest" shall be six (6) percentage points in excess of the prime rate of interest upon the occurrence of the event of default.

(l) Late Charges:

If any payment due the Bank is more than fifteen (15) days overdue, a late charge of six percent (6%) of the overdue payment shall be assessed.

(m) Event of Default:

Events of default will include but not be limited to the following:

- a. Breach of representation or warranties
- b. Violation of covenants
- c. Bankruptcy or insolvency.
- d. Final non-appealable judgement against the Town in the amount of \$10,000,000
- e. Payment default

2. Fees and Expenses:

The Borrower shall pay to the Bank on demand any and all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, court costs, litigation and other expenses) incurred or paid by the Bank in connection with the loan. The Town's legal counsel will provide documentation associated with this transaction. Documentation will be subject to the review and approval of the Lender and the Lender's counsel. The Town agrees to pay all legal fees and expenses of the lender associated with the review and closing of this transaction, which costs may be paid with proceeds of the Loan.

Bank Loan Fee: One-Time Credit Facility Set Up Fee of \$15,000.

During the second year of Facility and annually thereafter, Credit Facility will be subject to an annual maintenance fee of \$4,000 which shall be waived by Bank whenever average annual outstanding balance amounts to at least 20% of Facility Amount.

3. Legal Opinions:

Prior to closing, there shall be delivered to the Bank an opinion of Borrower's Counsel acceptable to the Bank covering matters customary for a transaction of this type and nature and which shall, without limitation, opine that: (1) the Borrower is duly formed; (2) all loan documents have been validly authorized and executed by and on behalf of the Borrower, if any; (3) all loan documents are valid, binding, enforceable in accordance with their terms and do not violate any legal requirements, including without limitation, organizational documents, laws and material agreements; and (4) and an opinion of Bond Counsel that the Credit Facility is Bank Qualified or Non-Bank Qualified Tax-Exempt (if applicable).

4. Financial Reporting:

a) Borrower(s) shall furnish the following financial reports:

| <u>Type of Report(s)</u>     | <u>Frequency</u> | <u>Due Date</u>   |
|------------------------------|------------------|---|
| Audited Financial Statements | Annually         | Within 210 days after the end of the Town's fiscal year |
| Annual Budget                | Annually         | Within 60 days after its adoption                       |

b) The Bank reserves the right to request additional financial information (i.e. notices from FEMA on pending reimbursement claims) to supplement or verify certain financial assumptions or verify the creditworthiness of the Borrower.

5. Other Conditions:

- a. No Material Adverse Change to the Borrower prior to closing.
- b. Borrower agrees to have all loan payments be settled via auto debit through a TD Bank Account.
- c. Borrower agrees to an initial one-time advance of at least \$2,000,000 within the first 90 days of Facility Closing date to refund the Town's for FEMA reimbursable emergency expenses incurred in relation to Hurricane Irma. Such expenses should be reflected as part of active pending claims reimbursement application(s) with FEMA and/or other Federal and State Agencies.
- d. Borrower agrees to provide any supporting document that may be required so Bank can qualify the Facility as a Community Loan extended to support the Town's needs in times of emergency.

- e. Borrower and Bank to agree as to what type of supporting document will need to be presented by Borrower as part of Requisition Advance Request under the Facility.
- f. Borrower shall comply with all laws applicable to its operations.
- g. Borrower covenants and agrees that documents will include language stipulating that the Loan Facility and all existing and future debt secured by the Pledged Revenues of the Town will be on parity with no preference given to any particular issuance.
- h. The implementation of certain terms, conditions, covenants or other non-material changes to the proposed Credit Accommodation required as part of the Bank's formal credit approval shall be deemed an approval in substantially the form outlined in this proposed Credit Accommodation.
- i. All legal matters and documentation to be executed in connection with the contemplated proposed Credit Accommodation shall be satisfactory in form and substance to the Bank and counsel to the Bank.
- j. The Bank shall not be required to enter into the proposed Credit Accommodation until the completion of all due diligence inquiries, receipt of approvals from all requisite parties and the execution and receipt of all necessary documentation reasonably acceptable to the Bank and its counsel. Furthermore, certain assumptions are made for this proposal which, if altered, could affect the overall credit approval and or terms of the proposed Credit Accommodation.
- k. All other standard terms & conditions including acceleration rights during an event of default.
- l. Patriot Act Notice. Lender is subject to the requirements of USA Patriot Act (Title III of Pub. L. 107-56) (signed into law October 26, 2001)) (the "Act"), and hereby notifies the Borrower and Guarantor (if any) that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower and Guarantor, which information includes the names and address of the Borrower and Guarantor and other information that will allow Lender to identify the Borrower and Guarantor in accordance with the Act.

**TD BANK, N.A. ("BANK")**  
**TERMS AND CONDITIONS OF CREDIT ACCOMMODATION DATED**  
**MARCH 20TH, 2018 – (\$10MM EXPOSURE)**

**THIS IS A STATEMENT OF PRELIMINARY TERMS AND CONDITIONS AND NOT A COMMITMENT TO LEND. ALL CREDIT ACCOMMODATIONS ARE SUBJECT TO FORMAL CREDIT UNDERWRITING AND APPROVAL.**

1. Loan.

- (a) Borrower(s): Town of Southwest Ranches, Florida
- (b) Guarantor: N/A
- (c) Facility: Taxable Or Tax Exempt Facility (the "Emergency Line of Facility")
- (d) Purpose: Credit Facility to be used for **qualified expenses** related to natural disasters such as hurricanes and other emergencies. Proceeds under this Facility can also be used to repay the balance outstanding under the Town's existing Emergency Line of Credit Facility with Centennial Bank.

This Facility shall replace the Town's existing Emergency Line of Credit Facility with Centennial Bank

- (e) Amount: **Up to \$10,000,000 ("Series 2016 Note")**
- (f) Collateral: The payment of the principal of and interest on the Facility shall be secured by a pledge of Town to budget & appropriate from the Non-Ad valorem revenues, by amendment if required, for the ongoing debt service payment under the Loan (Pledged Revenues).
- (g) Maturity: Five (5) years with a Bank Call Option on the 3<sup>rd</sup> anniversary of Loan Closing Date.

Facility can be renewed at maturity via a Bank Letter at the Bank's sole discretion, at least one (1) year prior to maturity.

- (h) Repayment Terms: "Interest-Only" to be paid quarterly during term of Emergency Facility. Periodic principal repayments that coincide with Borrower's receipt of reimbursement payments by FEMA and/or other State Agencies will be required. Otherwise, all unpaid principal shall be due at maturity.

**Bank Call Option:** Credit Facility will be subject to a Bank Call Option on the 3<sup>rd</sup> anniversary of Facility Closing Date whereby Bank can put back Note on Borrower at the Bank's sole discretion under a 180-day Bank Advance Notice.

- (i) Interest Rate: **INDICATIVE FLOATING RATE**  
**Taxable Rate:** Indicative Floating Rate for the Credit Facility Term duration is (1-Month LIBOR + 1.75%) for an "All-In" Rate of **3.34%**; OR (WSJ Prime – 1.25%) "All-In" Rate of **3.25%** depending on Borrower's preference.  
**Tax Exempt Rate(s):**  
**Bank Qualified--** Indicative Floating Rate for the Credit Facility Term duration is 80.25% of (1-Month LIBOR + 1.75%) for an "All-In" Rate of **2.68%**; OR 80.25% (WSJ Prime – 1.25%) "All-In" Rate of **2.61%** depending on Borrower's preference.  
**Non-Bank Qualified –** Indicative Floating Rate for the Credit Facility Term duration is 81.50% of (1-Month LIBOR + 1.75%) for an "All-In" Rate of **2.72%**; OR 81.50% of (WSJ Prime – 1.25%) "All-In" Rate of **2.65%** depending on Borrower's preference.
- (j) Prepayment Premium: **No prepayment penalty during the Term of the Facility.**
- (k) Default Rate of Interest: The "default rate of interest" shall be six (6) percentage points in excess of the prime rate of interest upon the occurrence of the event of default.
- (l) Late Charges: If any payment due the Bank is more than fifteen (15) days overdue, a late charge of six percent (6%) of the overdue payment shall be assessed.
- (m) Event of Default: Events of default will include but not be limited to the following:
- a. Breach of representation or warranties
  - b. Violation of covenants
  - c. Bankruptcy or insolvency.
  - d. Final non-appealable judgement against the Town in the amount of \$10,000,000
  - e. Payment default

2. Fees and Expenses:

The Borrower shall pay to the Bank on demand any and all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, court costs, litigation and other expenses) incurred or paid by the Bank in connection with the loan. The Town's legal counsel will provide documentation associated with this transaction. Documentation will be subject to the review and approval of the Lender and the Lender's counsel. The Town agrees to pay all legal fees and expenses of the lender associated with the review and closing of this transaction, which costs may be paid with proceeds of the Loan.

Bank Loan Fee: One-Time Credit Facility Set Up Fee of \$25,000.

During the second year of Facility and annually thereafter, Credit Facility will be subject to an annual maintenance fee of \$4,000 which shall be waived by Bank whenever average annual outstanding balance amounts to at least 20% of Facility Amount.

3. Legal Opinions:

Prior to closing, there shall be delivered to the Bank an opinion of Borrower Counsel acceptable to the Bank covering matters customary for a transaction of this type and nature and which shall, without limitation, opine that: (1) the Borrower is duly formed; (2) all loan documents have been validly authorized and executed by and on behalf of the Borrower, if any; (3) all loan documents are valid, binding, enforceable in accordance with their terms and do not violate any legal requirements, including without limitation, organizational documents, laws and material agreements; and (4) and an opinion of Bond Counsel that the Credit Facility is Bank Qualified or Non-Bank Qualified Tax-Exempt (if applicable).

4. Financial Reporting:

a) Borrower(s) shall furnish the following financial reports:

| <u>Type of Report(s)</u>     | <u>Frequency</u> | <u>Due Date</u>   |
|------------------------------|------------------|---|
| Audited Financial Statements | Annually         | Within 210 days after the end of the Town's fiscal year |
| Annual Budget                | Annually         | Within 60 days after its adoption                       |

b) The Bank reserves the right to request additional financial information (i.e. notices from FEMA on pending reimbursement claims) to supplement or verify certain financial assumptions or verify the creditworthiness of the Borrower.

5. Other Conditions:

- a. No Material Adverse Change to the Borrower prior to closing.
- b. Borrower agrees to have all loan payments be settled via auto debit through a TD Bank Account.
- c. Borrower agrees to an initial one-time advance of at least \$2,000,000 within the first 90 days of Facility Closing date to refund the Town's for FEMA reimbursable emergency expenses incurred in relation to Hurricane Irma. Such expenses should be reflected as part of active pending claims reimbursement application(s) with FEMA and other Federal and State Agencies.
- d. Borrower agrees to provide any supporting document that may be required so Bank can qualify the Facility as a Community Loan extended to support the Town's needs in times of emergency.
- e. Borrower and Bank to agree as to what type of supporting document will need to be presented by Borrower as part of Requisition Advance Request under the Facility.

- f. Borrower shall comply with all laws applicable to its operations.
- g. Borrower covenants and agrees that documents will include language stipulating that the Loan Facility and all existing and future debt secured by the Pledged Revenues of the Town will be on parity with no preference given to any particular issuance.
- h. The implementation of certain terms, conditions, covenants or other non-material changes to the proposed Credit Accommodation required as part of the Bank's formal credit approval shall be deemed an approval in substantially the form outlined in this proposed Credit Accommodation.
- i. All legal matters and documentation to be executed in connection with the contemplated proposed Credit Accommodation shall be satisfactory in form and substance to the Bank and counsel to the Bank.
- j. The Bank shall not be required to enter into the proposed Credit Accommodation until the completion of all due diligence inquiries, receipt of approvals from all requisite parties and the execution and receipt of all necessary documentation reasonably acceptable to the Bank and its counsel. Furthermore, certain assumptions are made for this proposal which, if altered, could affect the overall credit approval and or terms of the proposed Credit Accommodation.
- k. All other standard terms & conditions including acceleration rights during an event of default.
- l. Patriot Act Notice. Lender is subject to the requirements of USA Patriot Act (Title III of Pub. L. 107-56) (signed into law October 26, 2001)) (the "Act"), and hereby notifies the Borrower and Guarantor (if any) that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower and Guarantor, which information includes the names and address of the Borrower and Guarantor and other information that will allow Lender to identify the Borrower and Guarantor in accordance with the Act.



March 20, 2018

## Memorandum – Line of Credit Summarization

**To:** Town of Southwest Ranches, Florida  
**From:** PFM Financial Advisors LLC  
**Re:** Proposed Line of Credit

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PFM Financial Advisors LLC (“PFM”) is providing this memorandum to the Town of Southwest Ranches, Florida (the “Town”) in order to deliver a summary of the bids received for the Town’s emergency line of credit request (the “Line”). The Town will use proceeds of the Line for expenses related to damage caused during the 2017 hurricane season. We anticipate that the Town will use this summary in order to further inform your decision to move forward with the proposal you find to be the most suitable for your needs.

### Executive Summary

Due to the fact that the Town’s existing emergency line of credit was set to expire June 30, 2018, Town management began seeking proposals in October of 2017 for an emergency line of credit that would allow the town to draw necessary funds for Hurricane Irma recovery needs beyond the expiration of the line. The Line will be payable from and secured by a pledge to covenant and appropriate non-ad valorem revenues of the Town. During January through February 2018, the Town received three (3) proposals from banking institutions who regularly provide lines of credit to governmental entities. The Town then forwarded these proposals to PFM for additional review, comment, and interest rate ranking based on the underlying indices that will determine the cost of the line. A summary of these responses is provided in the appendix following this memorandum.

### Summary of Bank Proposals

For the following summaries, PFM assumes that the tax-exempt proposals will be considered bank qualified. As a refresher, a bank qualified obligation is one from an issuer that issues no more than \$10 million in tax-exempt bonds during any calendar year. Hence, this analysis assumes that the Town does not expect to issue more than \$10 million of tax-exempt debt during the calendar year, and will not issue more than \$10 million of tax-exempt debt in any year during which the bank qualified line is in place. One other note is that although none of the banks mentioned a bank counsel fee amount, PFM estimates that the fee can range from \$5,000 - \$10,000, based on prior experience with similar transactions, and would be an additional responsibility of the Town.

One item to note is that two of the three banks proposed the option of using a LIBOR index rate, in addition to proposing a rate based on the Prime Rate index. The LIBOR rate is scheduled to be discontinued in 2021, and as of yet there is no agreed-upon replacement for the index. Thus, it is possible that during the lifetime of the Line, the Town





may need to renegotiate terms with the selected lender after the expiration of LIBOR. In a scenario where the Town and the lender are unable to come to an agreement, the Town may be compelled to undergo another competitive process to secure a new Line.

#### BB&T

BB&T's proposal included both a tax-exempt and a taxable interest rate proposal, based on 1-Month LIBOR and the Prime Rate, respectively. The interest rates provided were the highest of the three proposals sent to PFM. BB&T proposed for a three year and five year line of credit, although the five year line included a bank option to call the line at the end of three years, whereby BB&T can put request full payment from the Town. BB&T also mentioned being open to a three-year renewal of the line after two years. This renewal would charge an unutilized fee in addition to the interest rate on the utilized portion of the loan. As far as terms and conditions, we found BB&T's proposal to be reasonable and without overly restrictive provisions. It also included an upfront loan fee of \$20,000 (or \$13,000 if the Line amount is reduced to \$6,500,000), which was flagged as the only item of note.

#### Centennial Bank ("Centennial")

Centennial's proposal was solely for a tax-exempt Line, using a Prime Rate index for interest rate calculation. The interest rate provided was in between BB&T and TD Bank's proposals. Centennial proposed for a five year Line, with a possibility of a five-year renewal at maturity, *at the bank's sole discretion*. Centennial's provisions required the Town to maintain their primary depository relationship with Centennial, and that the Town should not incur debt with other financial institutions without consent. These terms could be challenging if the Town wants to maintain full autonomy over its future debt issuance and depository practices. Additionally, Centennial has proposed a one-time upfront loan fee of \$50,000 (or \$32,500 if the Line amount is reduced to \$6,500,000), with no annual fee thereafter.

#### TD Bank ("TD")

TD's proposal included both a tax-exempt and a taxable interest rate proposal, with an interest rate based on 1-Month LIBOR and the Prime Rate for both options. The interest rate provided were the lowest rates provided by the three proposing entities. Similar to Centennial, TD provided for a five year Line, although this is strongly caveated by the included bank option to call the line at the end of three years, whereby TD can put request full payment from the Town. TD has agreed to a line extension at maturity via a bank letter at TD's sole discretion, with that extension serving as an additional modification to the current line of credit to avoid establishing an entirely new facility.

In addition to the put option mentioned above, TD also provided terms for late charges, events of default (including acceleration of debt during an event of default), an upfront loan fee of \$25,000 (or \$15,000 if the Line amount is reduced to \$6,500,000), and the requirement that the Town draw at least \$2,000,000 within 90 days of closing. This nullifies a line maintenance fee that TD Bank had in their proposal, which accrued interest after the first year unless the outstanding balance on the Line was at least 20% of the



pfm

total issued amount. However, the unutilized fee would be \$4,000 annually if there is not at least 20% of the total line drawn.

#### Analysis of Proposed Interest Rate Indices and Credit Spreads

In the section below, PFM has performed additional review of the underlying interest rate indices proposed by the banks. In order to provide the Town with additional context for the bank proposals and likely interest cost differentials, PFM utilized a historical analysis of the underlying interest rate indices and proposed spreads, ranking the proposals by their average interest rate since 2000. As you will find in the following tables and charts, the Prime Rate and 1-Month LIBOR largely move in tandem with each other. However, there could be differentials in the future borrowing costs when you review the historical performance of the indices<sup>1</sup>. For instance, on page 4 you can see that BB&T's tax-exempt index of 79% of LIBOR + 183.75 bps has had the highest average interest cost since 2000. Conversely, TD's tax-exempt proposal of 80.25% of Prime – 150.00 would have been the most cost effective. Centennial's proposal was roughly in-line with the interest rates proposed by BB&T, with their tax-exempt BQ index of Prime – 170.00 falling in the middle of the historical average of the interest rates proposed by BB&T. The same summary results can be found on page 6 for the non-bank qualified proposals and page 8 for the taxable proposals, and all summary tables are listed from lowest to highest average interest rate for comparison purposes.

As stated previously, the analysis before you relies solely on historical performance of the various indices (and proposed credit spreads). These can be considered reasonable proxy rates for the future performance of the various line options, however should not be considered as the *only* potential outcomes as the historical results don't guarantee future performance. In addition to the underlying expectations around borrowing costs, PFM further recommends that the Town review any potentially burdensome language with the Town's attorney and/or bond counsel in order to ensure that the terms are consistent with prior practice. In our view, we would generally not suggest that the Town should accept overly restrictive covenants such as broad bank consents, early put features (unless planned for), acceleration, or depository requirements.

We anticipate that this memorandum will be used to help inform the Town in reaching a conclusion regarding the most cost-effective proposal, and subsequently the Town's choice for a line of credit provider. To that end, please contact us should you have any further questions regarding this memorandum.

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<sup>1</sup> Analysis is provided for context only. Historical results do not necessarily indicate future performance.



**REVOLVING LINE OF CREDIT PROPOSALS - TAX-EXEMPT, BANK QUALIFIED**

**Summary of Estimated All-In Costs of Alternatives, Ranked Lowest to Highest Interest Rate**

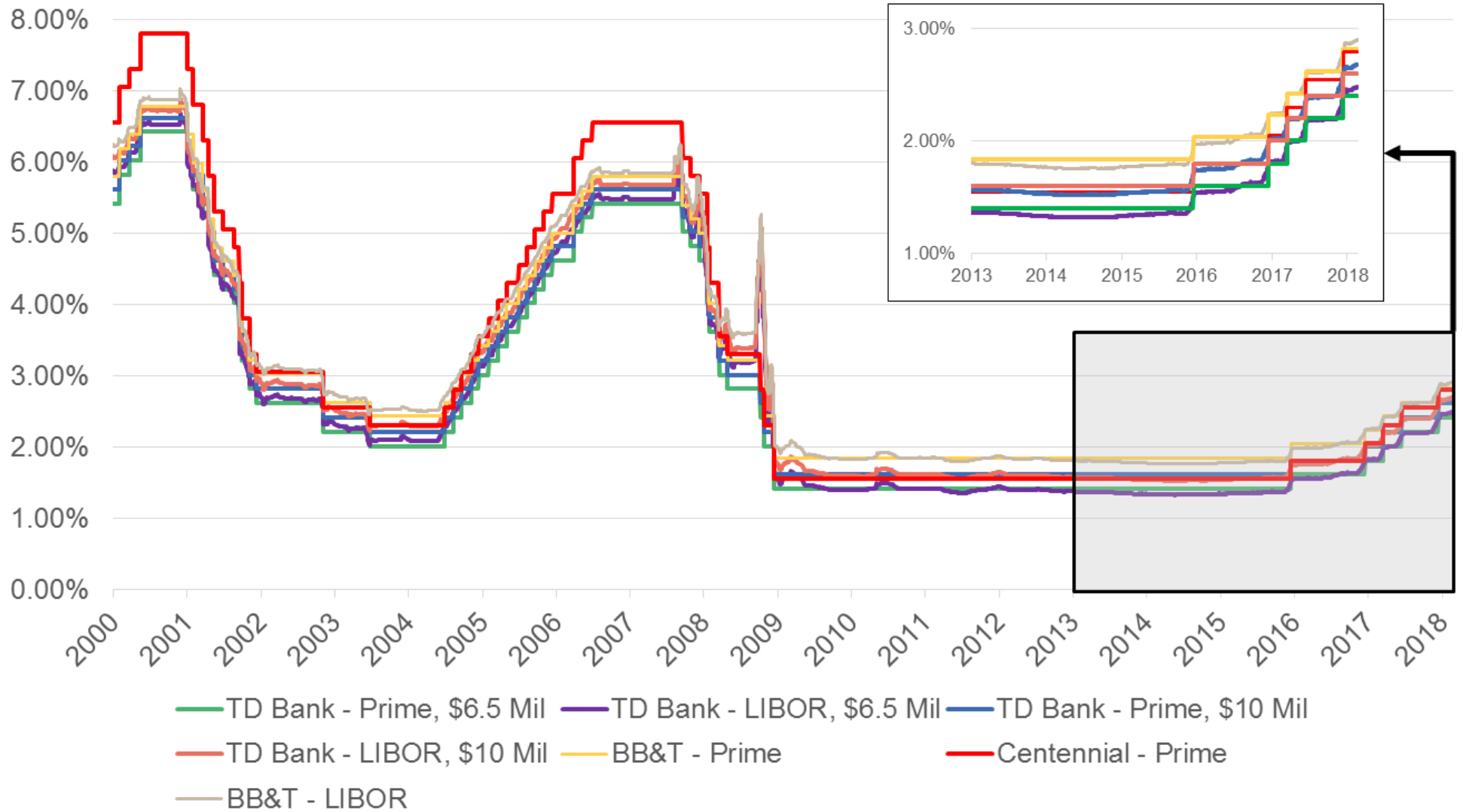
| Proposer                    | TD Bank  |                                  |                          |                                  | Centennial Bank  |                              | BB&T  |  |
|-----------------------------|--|----------------------------------|--------------------------|----------------------------------|--|------------------------------|---|--|
| <b>Security Term</b>        | CB&A / Non-Ad Valorem<br>5 Years (with 3 Year Put)   |                                  |                          |                                  | CB&A / Non-Ad Valorem<br>5 Years   |                              | CB&A / Non-Ad Valorem<br>3 Years / 5 Years                                |  |
| <b>Par Amount</b>           | 6,500,000  |                                  | 10,000,000               |                                  | 6,500,000 / 10,000,000   |                              | 6,500,000 / 10,000,000  |  |
| <b>Ongoing Costs</b>        |  |                                  |                          |                                  |  |                              |   |  |
| Indexing                    | 80.25% of Prime - Spread   | 80.25% of 1-Month LIBOR + Spread | 80.25% of Prime - Spread | 80.25% of 1-Month LIBOR + Spread | Prime Rate - Spread  | 79% of Prime + Spread + .06% | 79% of 1-Month LIBOR + Spread + .06%                                      |  |
| Liquidity/LOC Spread (bps)  | 150.00   | 150.00                           | 125.00                   | 175.00                           | 170.00   | 100.00                       | 200.00  |  |
| Unutilized Fee              | See notes  | See notes                        | See notes                | See notes                        | -  | .10% for future renewals     | .10% for future renewals  |  |
| Assumed Floating Rate Index | 4.50%  | 1.60%                            | 4.50%                    | 1.60%                            | 4.50%  | 4.50%                        | 1.60%   |  |
| <b>Current Rate</b>         | <b>2.41%</b>   | <b>2.48%</b>                     | <b>2.61%</b>             | <b>2.68%</b>                     | <b>2.80%</b>   | <b>2.83%</b>                 | <b>2.90%</b>  |  |
| Upfront Loan Fee            | \$15,000   | \$15,000                         | \$25,000                 | \$25,000                         | \$32,500 / \$50,000  | \$13,000 / \$20,000          | \$13,000 / \$20,000   |  |
| <b>Notes</b>                | Bank Counsel fee not provided<br>Put option after 3 years<br>Line maintenance fee of \$4,000 starting second year of line; stops once line balance hits 20% of facility amount |                                  |                          |                                  | Bank Counsel fee not provided<br>No further debt without consent<br>Required depository relationship |                              | Bank Counsel fee not provided<br>5 year term has put option after 3 years |  |

**Tax-Exempt Bank Qualified Historical Rate Summary, Ranked Lowest to Highest Average Rate**

| Proposer                       | TD                   | TD                   | TD                   | TD                   | BB&T                   | Centennial             | BB&T                   |
|--------------------------------|----------------------|----------------------|----------------------|----------------------|------------------------|------------------------|------------------------|
| Index/Spread                   | 80.25% of Prime Rate | 80.25% 1-Month LIBOR | 80.25% of Prime Rate | 80.25% 1-Month LIBOR | 79% of Prime Rate      | Prime Rate             | 79% 1-month LIBOR      |
| Par Amount                     | 6,500,000            | 6,500,000            | 10,000,000           | 10,000,000           | 6,500,000 / 10,000,000 | 6,500,000 / 10,000,000 | 6,500,000 / 10,000,000 |
| Tax Status                     | Tax-Exempt           | Tax-Exempt           | Tax-Exempt           | Tax-Exempt           | Tax-Exempt             | Tax-Exempt             | Tax-Exempt             |
| Spread                         | -150.00              | 150.00               | -125.00              | 175.00               | -100.00                | -170.00                | 183.75                 |
| Current Rate                   | 2.41%                | 2.48%                | 2.61%                | 2.68%                | 2.83%                  | 2.80%                  | 2.90%                  |
| <b>Average Rate Since 2000</b> | <b>2.67%</b>         | <b>2.73%</b>         | <b>2.87%</b>         | <b>2.93%</b>         | <b>3.08%</b>           | <b>3.12%</b>           | <b>3.15%</b>           |
| Maximum Rate                   | 6.42%                | 6.68%                | 6.62%                | 6.88%                | 6.78%                  | 7.80%                  | 7.03%                  |
| Minimum Rate                   | 1.40%                | 1.32%                | 1.61%                | 1.52%                | 1.84%                  | 1.55%                  | 1.76%                  |



### Tax-Exempt Bank Qualified Historical Rate Comparison





**REVOLVING LINE OF CREDIT PROPOSALS - TAX-EXEMPT, NON-BANK QUALIFIED**

**Summary of Estimated All-In Costs of Alternatives, Ranked Lowest to Highest Interest Rate**

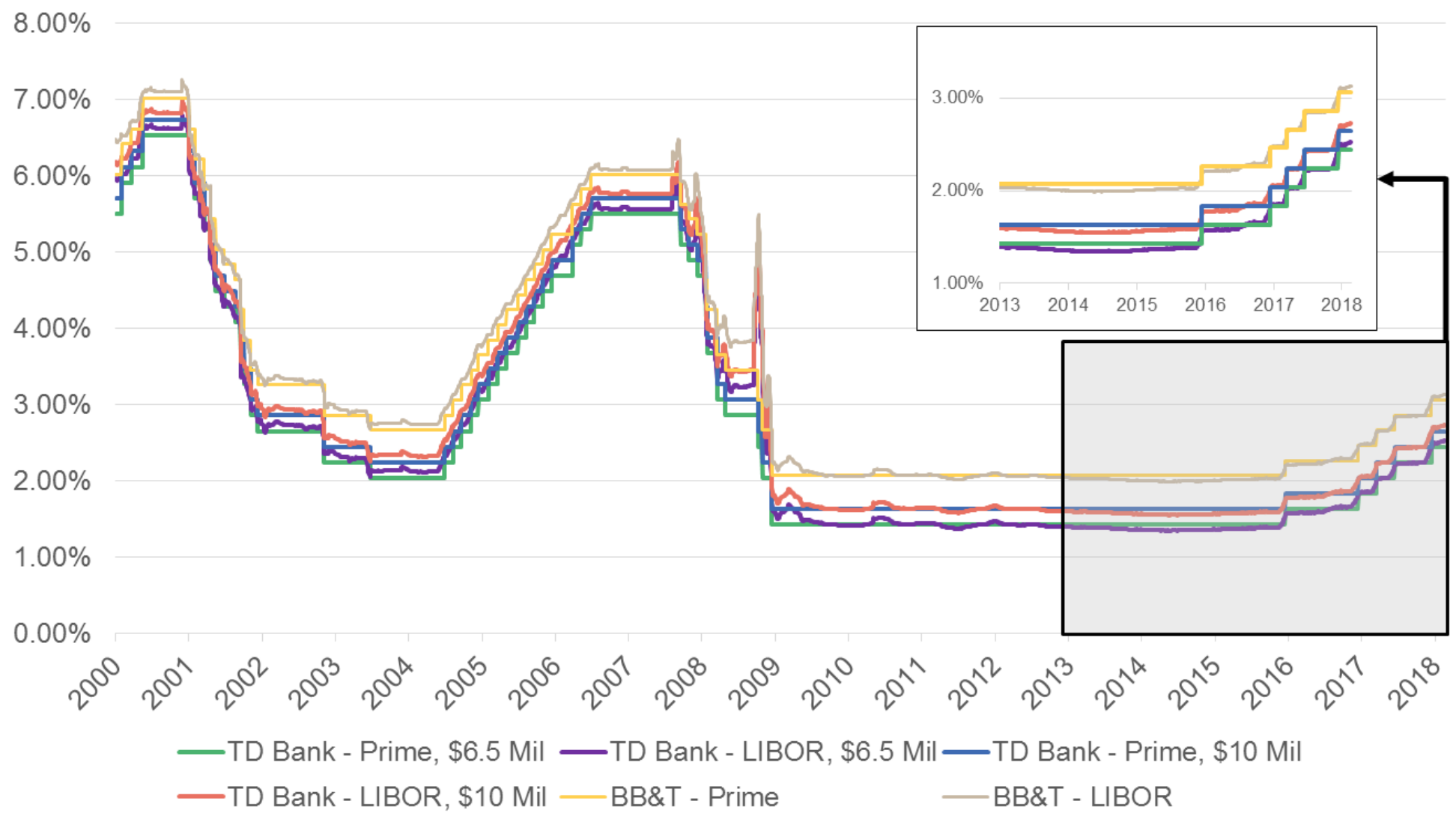
| Proposer                    | TD Bank  |                                  |                          |                                  | BB&T  |                                      |
|-----------------------------|--|----------------------------------|--------------------------|----------------------------------|---|--------------------------------------|
| <b>Security Term</b>        | CB&A / Non-Ad Valorem<br>5 Years (with 3 Year Put)   |                                  |                          |                                  | CB&A / Non-Ad Valorem<br>3 Years / 5 Years  |                                      |
| <b>Par Amount</b>           | 6,500,000  |                                  | 10,000,000               |                                  | 6,500,000 / 10,000,000  |                                      |
| <b>Ongoing Costs</b>        |  |                                  |                          |                                  |   |                                      |
| Indexing                    | 81.50% of Prime - Spread   | 81.50% of 1-Month LIBOR + Spread | 81.50% of Prime - Spread | 81.50% of 1-Month LIBOR + Spread | 79% of Prime + Spread + .29%  | 79% of 1-Month LIBOR + Spread + .29% |
| Liquidity/LOC Spread (bps)  | 150.00   | 150.00                           | 125.00                   | 175.00                           | 100.00  | 200.00                               |
| Unutilized Fee              | See notes  | See notes                        | See notes                | See notes                        | .10% for future renewals  | .10% for future renewals             |
| Assumed Floating Rate Index | 4.50%  | 1.60%                            | 4.50%                    | 1.60%                            | 4.50%   | 1.60%                                |
| <b>Current Rate</b>         | <b>2.45%</b>   | <b>2.52%</b>                     | <b>2.65%</b>             | <b>2.73%</b>                     | <b>3.06%</b>  | <b>3.13%</b>                         |
| Upfront Loan Fee            | \$15,000   | \$15,000                         | \$25,000                 | \$25,000                         | \$13,000 / \$20,000   | \$13,000 / \$20,000                  |
| <b>Notes</b>                | Bank Counsel fee not provided<br>Put option after 3 years<br>Line maintenance fee of \$4,000 starting second year of line; stops once line balance hits 20% of facility amount |                                  |                          |                                  | Bank Counsel fee not provided<br>5 year term has put option after 3 years<br>5 year term has put option after 3 years |                                      |

**Tax-Exempt Bank Non-Qualified Historical Rate Summary, Ranked Lowest to Highest Average Rate**

| Proposer                       | TD                   | TD                   | TD                   | TD                   | BB&T                   | BB&T                   |
|--------------------------------|----------------------|----------------------|----------------------|----------------------|------------------------|------------------------|
| Index/Spread                   | 81.50% of Prime Rate | 81.50% 1-Month LIBOR | 81.50% of Prime Rate | 81.50% 1-Month LIBOR | 79% of Prime Rate      | 79% 1-month LIBOR      |
| Par Amount                     | 6,500,000            | 6,500,000            | 10,000,000           | 10,000,000           | 6,500,000 / 10,000,000 | 6,500,000 / 10,000,000 |
| Tax Status                     | Tax-Exempt           | Tax-Exempt           | Tax-Exempt           | Tax-Exempt           | Tax-Exempt             | Tax-Exempt             |
| Spread                         | -150.00              | 150.00               | -125.00              | 175.00               | -100.00                | 183.75                 |
| Current Rate                   | 2.45%                | 2.52%                | 2.65%                | 2.73%                | 3.06%                  | 3.13%                  |
| <b>Average Rate Since 2000</b> | <b>2.71%</b>         | <b>2.78%</b>         | <b>2.91%</b>         | <b>2.98%</b>         | <b>3.31%</b>           | <b>3.38%</b>           |
| Maximum Rate                   | 6.52%                | 6.78%                | 6.72%                | 6.99%                | 7.01%                  | 7.26%                  |
| Minimum Rate                   | 1.43%                | 1.34%                | 1.63%                | 1.55%                | 2.07%                  | 1.99%                  |



### Tax-Exempt Non-Bank Qualified Historical Rate Comparison





**REVOLVING LINE OF CREDIT PROPOSALS - TAXABLE**

**Summary of Estimated All-In Costs of Alternatives, Ranked Lowest to Highest Interest Rate**

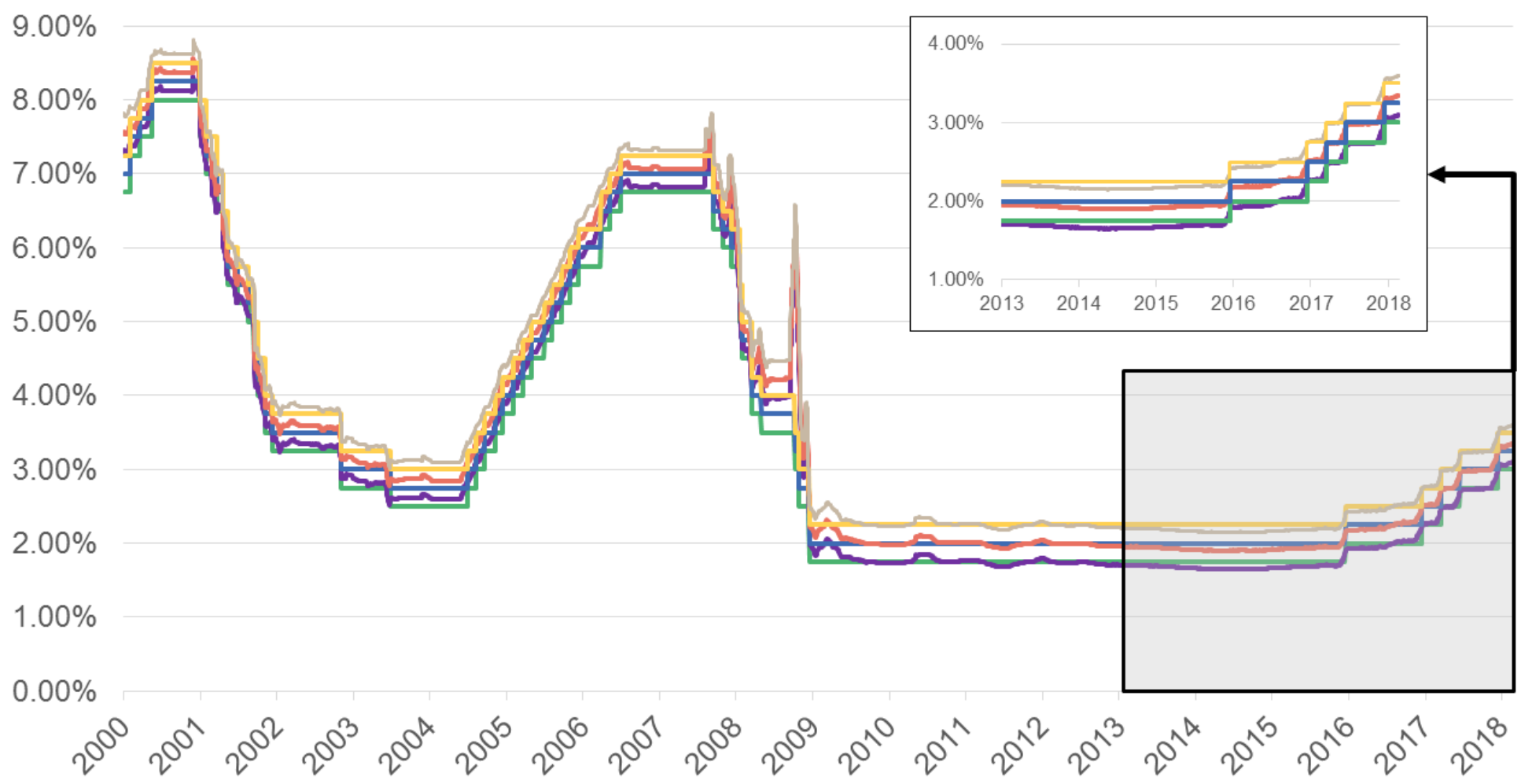
| Proposer                           | TD Bank  |              |                 |              | BB&T  |                          |
|------------------------------------|--|--------------|-----------------|--------------|---|--------------------------|
| <b>Security</b>                    | CB&A / Non-Ad Valorem  |              |                 |              | CB&A / Non-Ad Valorem   |                          |
| <b>Term</b>                        | 5 Years (with 3 Year Put)  |              |                 |              | 3 Years / 5 Years   |                          |
| <b>Par Amount</b>                  | 6,500,000  |              | 10,000,000      |              | 6,500,000 / 10,000,000  |                          |
| <b>Ongoing Costs</b>               | 1-Month LIBOR +  |              | 1-Month LIBOR + |              | 1-Month LIBOR +   |                          |
| Indexing                           | Prime - Spread   | Spread       | Prime - Spread  | Spread       | Prime - Spread  | 1-Month LIBOR + Spread   |
| Liquidity/LOC Spread (bps)         | 150.0  | 150.0        | 125.0           | 175.0        | 100.0   | 200.0                    |
| Unutilized Fee                     | See notes  | See notes    | See notes       | See notes    | .10% for future renewals  | .10% for future renewals |
| <i>Assumed Floating Rate Index</i> | 4.50%  | 1.60%        | 4.50%           | 1.60%        | 4.50%   | 1.60%                    |
| <b>Current Rate</b>                | <b>3.00%</b>   | <b>3.10%</b> | <b>3.25%</b>    | <b>3.35%</b> | <b>3.50%</b>  | <b>3.60%</b>             |
| Upfront Loan Fee                   | \$15,000   | \$15,000     | \$25,000        | \$25,000     | \$13,000 / \$20,000   | \$13,000 / \$20,000      |
| <b>Notes</b>                       | Bank Counsel fee not provided<br>Put option after 3 years<br>Line maintenance fee of \$4,000 starting second year of line; stops once line balance hits 20% of facility amount |              |                 |              | Bank Counsel fee not provided<br>5 year term has put option after 3 years |                          |
|                                    |  |              |                 |              | Bank Counsel fee not provided<br>5 year term has put option after 3 years |                          |

**Taxable Historical Rate Summary, Ranked Lowest to Highest Average Rate**

| Proposer                       | TD           |               | TD           |               | BB&T                   |                        |
|--------------------------------|--------------|---------------|--------------|---------------|------------------------|------------------------|
| Index/Spread                   | Prime Rate   | 1-Month LIBOR | Prime Rate   | 1-Month LIBOR | Prime Rate             | 1-Month LIBOR          |
| Par Amount                     | 6,500,000    | 6,500,000     | 10,000,000   | 10,000,000    | 6,500,000 / 10,000,000 | 6,500,000 / 10,000,000 |
| Tax Status                     | Taxable      | Taxable       | Taxable      | Taxable       | Taxable                | Taxable                |
| Spread                         | -150.00      | 150.00        | -125.00      | 175.00        | -100.00                | 200.00                 |
| Current Rate                   | 3.00%        | 3.10%         | 3.25%        | 3.35%         | 3.50%                  | 3.60%                  |
| <b>Average Rate Since 2000</b> | <b>3.32%</b> | <b>3.41%</b>  | <b>3.57%</b> | <b>3.66%</b>  | <b>3.82%</b>           | <b>3.91%</b>           |
| Maximum Rate                   | 8.00%        | 8.32%         | 8.25%        | 8.57%         | 8.50%                  | 8.82%                  |
| Minimum Rate                   | 1.75%        | 1.65%         | 2.00%        | 1.90%         | 2.25%                  | 2.15%                  |



### Taxable Historical Rate Comparison



- TD Bank - Prime, \$6.5 Mil
- TD Bank - LIBOR, \$6.5 Mil
- TD Bank - Prime, \$10 Mil
- TD Bank - LIBOR, \$10 Mil
- BB&T - Prime
- BB&T - LIBOR





**Town of Southwest Ranches**  
**13400 Griffin Road**  
**Southwest Ranches, FL 33330-2628**

**(954) 434-0008 Town Hall**  
**(954) 434-1490 Fax**

**Town Council**  
**Doug McKay, Mayor**  
**Steve Breitkreuz, Vice Mayor**  
**Freddy Fisikelli, Council Member**  
**Gary Jablonski, Council Member**  
**Denise Schroeder, Council Member**

**Andrew D. Berns, Town Administrator**  
**Keith M. Poliakoff, JD, Town Attorney**  
**Russell Muniz, Assistant Town Administrator/Town Clerk**  
**Martin D. Sherwood, CPA, CGMA, CGFO, Town Financial Administrator**

## **COUNCIL MEMORANDUM**

**TO:** Honorable Mayor McKay and Town Council  
**VIA:** Andrew D. Berns, Town Administrator  
**FROM:** Emily Aceti, Community Services Manager  
**DATE:** 4/26/2018  
**SUBJECT:** Extending Zoning In Progress for Wireless Facilities

---

### **Recommendation**

A motion to approve the resolution.

### **Strategic Priorities**

- A. Sound Governance
- B. Enhanced Resource Management

### **Background**

The Town enacted Resolution 2017-012 on November 10, 2016 to impose a 180-day moratorium to allow Town staff to undertake a study of the appropriate regulatory requirements for wireless service facilities and personal wireless service facilities as defined in Section 365.172 F.S. and 47 U.S.C. §332 (c)(7)(C)(ii) within the Town's rights-of-way. The Town enacted Resolution 2017-055 on August 10, 2017 to extend the moratorium to allow Town staff more time.

While reviewing the regulatory requirements the Town Administrator, Town Attorney and the Town's professional planning staff desire more time to study regulatory requirements for wireless service facilities, personal wireless service facilities, and fiber installation for backhaul in the Town's rights-of-way and identify zoning and land use regulations throughout the Town.

The Zoning in Progress will allow Town staff to defer the acceptance and processing of

development applications for wireless service facilities, personal wireless service facilities and fiber installation for backhaul within the Town's rights-of-way and extends the prohibition on the issuance of any building permits, local business tax receipts, or development orders for wireless service facilities and personal wireless service facilities associated therewith within the Town for an additional period of one hundred eighty (180) days.

**Fiscal Impact/Analysis**

N/A

**Staff Contact:**

Keith Poliakoff, Town Attorney

**ATTACHMENTS:**

| Description              | Upload Date | Type       |
|--------------------------|-------------|------------|
| Resolution - TA Approved | 4/24/2018   | Resolution |

**RESOLUTION NO. 2018- 0**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, ENACTING A ZONING IN PROGRESS FOR WIRELESS SERVICE FACILITIES AND PERSONAL WIRELESS SERVICE FACILITIES, AS DEFINED IN SECTION 365.172 F.S. AND 47 U.S.C. §332(c)(7)(C)(ii); ADDING INTO THE ZONING IN PROGRESS THE INSTALLTION OF FIBER FOR BACKHAUL, WITHIN THE TOWN'S RIGHTS-OF-WAY; DIRECTING TOWN STAFF TO DEFER THE ACCEPTANCE AND PROCESSING OF DEVELOPMENT APPLICATIONS AND PROHIBITING THE ISSUANCE OF BUILDING PERMITS, DEVELOPMENT ORDERS, OR LOCAL BUSINESS TAX RECEIPTS UNTIL THE EARLIER OF THE DATE THE TOWN ADOPTS ITS CODE REVISIONS OR DECEMBER 31, 2018; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council enacted Resolution 2017-012 on November 10, 2016 to impose a 180 day moratorium to allow Town staff to undertake a study of the appropriate regulatory requirements for wireless service facilities and personal wireless service facilities as defined in Section 365.172 F.S. and 47 U.S.C. §332 (c)(7)(C)(ii) within the Town's rights-of-way; and

**WHEREAS**, on August 10, 2017, pursuant to Resolution 2017-055, the Town Council extended this Resolution through December 31, 2017; and

**WHEREAS**, despite the fact that the zoning in progress ended nearly 4 months ago, there has not been a single application for a wireless service facility; and

**WHEREAS**, now that the Town Council is about to adopt revised regulatory requirements for wireless service facilities, the Town needs to reenact its zoning in progress to prohibit the issuance of any building permits, local business tax receipts, or development orders for wireless service facilities and personal wireless service facilities associated therewith until the earlier of the date the Town adopts its Code revisions or December 31, 2018; and

**WHEREAS**, the Town Council deems it timely and in the best interest of the Town and its residents to finalize its review and revision of the Town's regulations regarding wireless service facilities, personal wireless service facilities, and fiber installation for backhaul throughout the Town within the Town's rights-of-way.

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

**Section 1.** The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and incorporated herein by this reference.

**Section 2.** The Town Council hereby approves a zoning in progress and issues a moratorium until the earlier of the date the Town adopts its Code revisions or December 31, 2018, deferring the acceptance and processing of development applications for wireless service facilities, personal wireless service facilities, and fiber installation for backhaul, and prohibiting the issuance of building permits and development orders for wireless service facilities and personal wireless service facilities as defined in Section 365.172 F.S. and 47 U.S.C. §332 (c)(7)(C)(ii), within the Town's rights-of-way.

**Section 3.** The Zoning in Progress shall cease the earlier of the date the Town adopts its Code revisions or December 31, 2018.

**Section 4.** The Town Council hereby authorizes and directs the appropriate Town Officials to do all things necessary and expedient to effectuate the intent of this Resolution.

**Section 5.** All Resolutions inconsistent or in conflict herewith shall be and are hereby repealed insofar as there is conflict or inconsistency.

**Section 6.** If any section, sentence, clause, or phrase of this Resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.

**Section 7.** This Resolution shall become effective upon its passage and adoption by the Town Council.

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest

Ranches, Florida, this 26<sup>th</sup> day of April, 2018 on a motion by

Vice Mayor Breitkreuz and seconded by Council Member Fisikelli.

McKay \_\_\_\_\_  
Fisikelli \_\_\_\_\_  
Breitkreuz \_\_\_\_\_  
Jablonski \_\_\_\_\_  
Schroeder \_\_\_\_\_

Ayes \_\_\_\_\_  
Nays \_\_\_\_\_  
Absent \_\_\_\_\_  
Abstaining \_\_\_\_\_

Attest:

\_\_\_\_\_  
Doug McKay, Mayor

\_\_\_\_\_  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

\_\_\_\_\_  
Keith Poliakoff, Town Attorney

## GROUND LEASE

This Ground Lease (the "Lease"), dated as of the \_\_\_\_\_ day of April, 2018, by and between **Town of Southwest Ranches, a Florida municipal corporation** ("Landlord"), and **Helen Homes of Weston Development, L.L.C.**, a Florida limited liability company ("Tenant").

### WITNESSETH

In consideration of Ten Dollars (\$10.00), other good and valuable consideration, and the mutual covenants contained herein, and intending to be legally bound hereby, Landlord and Tenant hereby agree with each other as follows:

#### Section 1. Premises.

Landlord hereby leases and lets to Tenant, and Tenant hereby takes and hires from Landlord, upon and subject to the terms, conditions, covenants and provisions hereof, that portion of real property located on the southeast corner of Griffin Road and S.W. 163<sup>rd</sup> Avenue (16290 Griffin Road), Town of Southwest Ranches, Broward County, Florida, which is more particularly described on Exhibit "A", attached hereto and made a part hereof (hereinafter referred to as the "Premises").

#### Section 2. Term.

The term of this Lease will be for one year commencing on the Possession Date (the "Commencement Date"), and ending on the date which is one (1) year following the "Possession Date" (as hereafter defined) ("Expiration Date"). The Possession Date shall be the earlier of the (a) the date that Landlord grants to Tenant the right to enter the Premises for the purposes allowed under Section 5 below; or (b) the date that the Landlord confirms to Tenant that the conditions set forth in Section 6 have been satisfied. Notwithstanding any language to the contrary contained herein, in no event shall the Possession Date be more than ninety (90) days from the date of the execution of this Agreement.

If Tenant shall hold the Premises after the expiration of the Term hereof, such holding over shall be deemed to have created a tenancy from month to month upon the terms contained herein, but otherwise terminable on thirty (30) days' notice by either party to the other.

#### Section 3. As-Is.

Landlord will deliver the Premises to Tenant "As-Is", in its condition as of the Date of this Lease. Tenant acknowledges and agrees that neither Landlord nor its agents have made any representations to Tenant about the condition of the Premises or any promises to alter, repair or improve the Premises.

#### Section 4. Payment

In consideration for Landlord agreeing to Lease the Premises to Tenant subject to the terms and conditions of this Lease, and as a benefit to the general public, Tenant agrees to donate to Landlord up to 600 loads of clean fill dirt for the Landlord's use in the construction and development of a portion of a public park located within the parcel of land known as Southwest Meadows Sanctuary, located in the Town of Southwest Ranches, Broward County, Florida (the "Park"), but only to the extent that Tenant has delivered such clean fill dirt to the Premises prior to the expiration or termination of the Lease. Tenant agrees to remove without cost or expense to Landlord any portion of the clean fill dirt that Landlord cannot use for the development and development of the Park.

#### Section 5. Use of Premises.

Tenant is in the process of developing a senior assisted living facility upon the property located at 16025 Emerald Estates Drive, Weston, Broward County, Florida (the "Project"). In connection with the development of the Project, Tenant will need to store up to 1200 loads of clean fill dirt ("Fill") for the Project and Tenant's sole use of the Premises shall be to store the Fill. The Fill will be placed in the area designated on Exhibit A-1 and the Fill shall not be piled higher than 20 feet in height on the Premises



and it shall not be compacted. Tenant agrees that it shall not store anything other than the Fill on the Premises, No vehicles or equipment shall be stored on the Premises, except for equipment that may be temporarily needed while the fill is being delivered and removed. If no activity is occurring at the Premises no equipment or vehicles shall be located on the Premises. Tenant also acknowledges that the Premises, which are located within a public park, will continue to be open to the public during the term of this Lease.

**Section 6. Improvements, Alterations, Surrender.**

(a) Tenant shall, at its own cost and expense, proceed diligently to attempt to obtain any permits necessary to construct the Entrance and to store the Fill on the Premises. Landlord shall cooperate with and assist Tenant in obtaining such permits.

(b) (i) Prior to placing the Fill on the Premises, Tenant shall complete Environmental Assessments for the Premises and for the Fill that Tenant plans to store on the Premises, and Tenant shall provide copies of said reports to Landlord. Landlord acknowledges and confirms that it has received, reviewed and approved the Environmental Assessment reports prepared by \_\_\_\_\_ under Project No. \_\_\_\_\_ issued April \_\_, 2018 (the "EA Reports". Accordingly, Landlord confirms that the conditions set forth in this subsection 6(b)(i) have been completed and satisfied.

(ii) At the time that Tenant surrenders the Premises to Landlord, Tenant shall provide Landlord with an updated Environmental Site Assessment Report for the Premises. In the event that the environmental condition of the Premises has materially and adversely changed as a result of the Fill storage, Tenant, at its sole cost and expense shall be required to remediate any such change within one hundred and twenty (120) days from the date of the updated Environmental Site Assessment Report.

(c) Prior to placing the Fill on the Premises, Tenant shall construct a demucked and road rockered entrance in the area depicted on Exhibit "A" (the "Entrance") for trucks to access the Premises to deliver the loads of Fill. Said access shall only be from Griffin Road in accordance with the plat requirements. Tenant shall furnish Landlord with the names and addresses of all contractors entering the Premises on behalf of Tenant together with copies of all construction contracts and proof of insurance, which shall name the Town as an additional insured. The Entrance shall be completed at such time and in such manner as Landlord may from time to time reasonably designate, and only by contractors or mechanics approved by Landlord, which approval shall not be unreasonably withheld, and whose work will not cause or threaten to cause disharmony or interference with Landlord or with the operation of the Park. Upon the surrender of the Premises, Tenant shall ask the Town if the Town wishes to keep the Entrance. If the Town elects to have the Entrance removed. Tenant must remove the Entrance, return the Premises to its original condition and remove all evidence of the roadway. Tenant shall provide Landlord with a performance bond in the amount of \$50,000 to provide the Landlord with assurance that Tenant shall remove the Entrance at the time of Tenant's surrender of the Premises.

(d) Tenant shall, at all times during the Term of this Lease, and at its own cost and expense, keep and maintain or cause to be kept and maintained in good repair and good condition (ordinary wear and tear excepted), all improvements and landscaping at any time erected on the Premises, and shall use all reasonable precautions to prevent waste, damage or injury and Tenant shall comply with all governmental requirements in connection with the Premises and all improvements and landscaping with respect thereto.

(e) Tenant shall only access the Premises Monday through Friday from 7:00 a.m. through 5:00 p.m.

**Section 7. Requirements of Public Authority.**

During the Term of this Lease, Tenant shall, at its own cost and expense, promptly observe and comply with all laws, ordinances, requirements, orders, directives, rules and regulations of the Federal, State, County and Municipal Governments and of all other governmental authorities affecting the Premises or any part thereof, whether the same are in force on the Commencement Date or may in the future be passed, enacted or directed, and Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed



because of the failure of Tenant to comply with the covenants of this Section; provided, however, that nothing in this Section shall impose any liability on Tenant in connection with any costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of any failure by Landlord to comply with its obligations under this Lease or because of any conditions in existence prior to the Commencement Date.

#### **Section 8. Covenant Against Liens.**

(a) All persons to whom these presents may come are put on notice of the fact that Tenant shall never, under any circumstances, have the power to subject the interest of Landlord in the Premises to any mechanics' or materialmen's lien or liens of any kind. All persons who may hereafter, during the continuance of this Lease, furnish work, labor, services or materials to the Premises upon the request or order of Tenant, or any person claiming under, by or through Tenant, must look wholly to the interest of Tenant, and not to that of Landlord. If, because of any act or omission of Tenant, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Landlord or any portion of the Premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after notice from Landlord to Tenant of the filing thereof; and Tenant shall indemnify and save harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom. Tenant or its designees shall have the right to contest any such liens by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant or its designees shall conduct promptly at its own cost and expense, and free of any expense to Landlord). Notwithstanding the foregoing, Tenant shall promptly pay and remove all such liens if, at any time, the Premises or any part thereof shall then be subject to immediate forfeiture as a result of the nonpayment thereof.

(b) If, because of any act of Landlord in violation of the terms of this Lease, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Tenant or any portion of the Premises, Landlord shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after notice from Tenant to Landlord of the filing thereof; and Landlord shall indemnify and save harmless Tenant against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom. Landlord or its designees shall have the right to contest any such liens by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Landlord or its designees shall conduct promptly at its own cost and expense, and free of any expense to Tenant). Notwithstanding the foregoing, Landlord shall promptly pay and remove all such liens if, at any time, the Premises or any part thereof shall then be subject to immediate forfeiture as a result of the nonpayment thereof.

#### **Section 9. Assignment, Transfer and Subletting.**

Tenant shall not, without the prior written consent of Landlord, assign, transfer, license or sublease (in whole or in part or parts) this Lease or its rights hereunder (in whole or in part or parts).

#### **Section 10. Tenant's Insurance.**

(a) Tenant agrees that, from and after the Commencement Date, Tenant will carry at its sole cost and expense the following types of insurance, in the amounts specified and in the form hereinafter provided for, which shall name the Town as an additional insured:

1. Commercial general liability and property damage insurance covering the Premises and Tenant's use thereof against claims for personal injury or death and property damage occurring upon, in or about the Premises, such insurance to afford protection to the limit of not less than \$500,000.00 with respect to injury or death of any number of persons and property damage arising out of any one occurrence and \$1,000,000.00 in the aggregate, such insurance against property damage to the Premises to afford protection to the limit of not less than \$500,000.00 with respect to any one occurrence; and if Tenant uses any business vehicles such as delivery vehicles in connection with Tenant's operation of the Premises, auto liability insurance, such insurance to afford protection to the limit of not less than \$1,000,000.00 in respect of injury or death of any number of persons arising out of any one occurrence. The insurance coverage required under this Section shall, in addition, extend to any liability of Tenant arising



out of the indemnities provided for in Section 11.

(b) All policies of insurance provided for in this Section shall be issued in a form acceptable to Landlord by sound and reputable insurance companies with a general policyholder rating of not less than A- and a financial rating of Class VII as rated in the most currently available "Best's Insurance Reports" and qualified to do business in the state in which the Premises is located. Each such policy shall be issued in the name of Tenant and name Landlord and any other parties in interest from time to time designated in writing by notice by Landlord to Tenant as additional insured(s) and/or loss payee(s), as applicable. Said policies shall be for the mutual and joint benefit and protection of Landlord and Tenant and a certificate of insurance shall be delivered to Landlord upon or prior to delivery of possession of the Premises to Tenant and thereafter within thirty (30) days prior to the expiration of each such policy. Policies shall be made available to Landlord for review within ten (10) days of Landlord's written request. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. Tenant will give Landlord at least thirty (30) days' notice in writing in advance of any cancellation or lapse, or the effective date of any reduction in the amounts, of insurance. All such liability, property damage and other casualty policies shall be written as primary policies which do not contribute to any policies which may be carried by Landlord. All such liability and property damage policies shall contain a provision that Landlord (and any other parties in interest designated as additional insureds or loss payees thereunder), although named as an additional insured and/or loss payee, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its agents, contractors and employees by reason of the negligence of Tenant. Any insurance provided for in this Section may be effected by a policy of blanket insurance covering additional items or locations or insureds; provided, however, that (i) Landlord (and any other parties in interest from time to time designated in writing by notice by Landlord to Tenant) shall be named as an additional insured and/or loss payee thereunder as its interest may appear; (ii) the coverage afforded Landlord will not be reduced or diminished by reason of the use of such blanket policy of insurance; (iii) any such policy or policies (except any covering the risks referred to in this Section) shall specify therein (or Tenant shall furnish Landlord a written statement from the insurers under such policy specifying) the amount of the total insurance allocated to "tenant improvements and property" more specifically detailed in this Section; and (iv) the requirements set forth herein are otherwise satisfied.

(c) In addition to the types of insurance set forth in subsection (a) above, Tenant and Tenant's contractor shall carry workers' compensation insurance in compliance with applicable federal and state laws and with no less than statutory limits (providing a waiver of subrogation in favor of Landlord) and employer's liability insurance with limits of not less than \$500,000.00 per person or \$1,000,000.00 per accident or disease in the relevant jurisdiction.

(d) Tenant shall furnish to the Landlord, certificates of insurance (or a web-based insurance system) or endorsements evidencing the insurance coverages specified by this Section on or prior to the Effective Date of this Lease. The required certificates of insurance shall name the types of policies provided, refer specifically to this Lease, and state that such insurance is as required by this Lease. All policies of such insurance and renewals thereof shall insure the Landlord and Tenant as their interest may appear, and shall provide that the loss, if any, shall be adjusted with and payable to the Tenant and Landlord (as their interest may appear).

(e) Compliance with the foregoing requirements shall not relieve the Tenant of its liability and obligations under any other provision of this Lease.



## **Section 11. Indemnification and Waiver of Liability.**

Neither Landlord nor Landlord's indemnitees will be liable for and Tenant will indemnify and save harmless Landlord and Landlord's indemnitees from and against any and all liabilities, damages, claims, suits, costs (including costs of suit, attorneys' fees and costs of investigation), and actions of any kind, foreseen or unforeseen, arising or alleged to arise by reason of injury to or death of any person or damage to or loss of property, occurring on, in, or about the Premises, or by reason of any other claim whatsoever of any person or party, occasioned, directly or indirectly, wholly or partly: (a) by any act or omission on the part of Tenant or any Tenant representative; or (b) by any breach, violation or non-performance of any covenant of Tenant under this Lease. If any action or proceeding will be brought by or against Landlord or any Landlord indemnitee in connection with any such liability, claim, suit, cost, injury, death, or damage, Tenant, on notice from Landlord or any Landlord indemnitee, will defend such action or proceeding, at Tenant's expense, by or through attorneys reasonably satisfactory to Landlord or Landlord indemnitee. The provisions of this paragraph will apply to all activities of Tenant or any Tenant representative with respect to the Premises, whether occurring before or after execution of this Lease. Tenant's obligations under this paragraph will not be limited to the coverage of insurance maintained or required to be maintained by Tenant under this Lease. Neither Landlord nor any Landlord indemnitee will be liable in any manner to Tenant or any Tenant representative for any injury to or death of persons or for any loss of or damage to property, regardless of whether such loss or damage is occasioned by casualty, theft, or any other cause of whatsoever nature, unless such loss or damage is caused by the willful misconduct, or gross negligence of Landlord or any Landlord indemnitee. In no event will Landlord or any Landlord indemnitee be liable in any manner to Tenant or any Tenant representative as the result of the acts or omissions of Tenant or a Tenant representative and all liability therefore will rest with Tenant. All personal property upon the Premises will be at the risk of Tenant only, and neither Landlord nor any Landlord indemnitee will be liable for any damage or theft, whether or not due in whole or in part to the negligence, willful misconduct, or gross negligence of Landlord or any Landlord Indemnitee.

## **Section 12. Default by Tenant and Landlord's Remedies.**

(a) **Event of Default.** If any one or more of the following events will occur and be continuing beyond the period set forth in any default notice provided to be given, an Event or Events of Default will have occurred under this Lease:

(i) **Non-performance.** If Tenant fails to comply with any terms, covenants, conditions, or obligations of this Lease and such failure in compliance will continue for fifteen (15) days after the giving of notice by Landlord to Tenant specifying the failure, or, if such failure cannot with due diligence be remedied within fifteen (15) days, Tenant has not, in good faith commenced within the fifteen (15) day period to remedy such failure and continued diligently and continuously to prosecute the same to completion; or

(ii) **Abandonment.** If Tenant abandons the Premises.

(b) **Right to Terminate Lease and Reenter.** If there will occur an Event of Default, then Landlord may, in addition to any other remedy available to Landlord under this Lease or available under Requirements, at Landlord's option, on fifteen (15) days' notice to Tenant, declare this Lease terminated at the expiration of such fifteen (15) day period and Tenant quits and surrenders possession of the Premises, but Tenant will remain liable to Landlord according to this Lease, and upon Tenant's failure to surrender of possession, Landlord may reenter the Premises by summary proceeding or otherwise free from any estate or interest of Tenant.

(c) **Landlord's Right to Restore and Tenant's Liability for Expenses.** In the event that Landlord obtains possession by reentry, legal or equitable actions or proceedings or other lawful means as a result of an Event of Default by Tenant, Landlord will have the right, without the



obligation, to make repairs to the Premises required to restore them to the condition the same should be prior to the term of the Lease. Any of the foregoing action taken or not taken by Landlord will be without waiving any rights that Landlord may otherwise have pursuant to the terms of this Lease. Tenant will pay Landlord all legal and other expenses incurred by Landlord in terminating this Lease by reason of an Event of Default, in obtaining possession of the Premises, in making all repairs.

(e) **Right to Injunction.** In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Landlord will have the right of injunction and the right to invoke any remedy allowed at law or in equity as if reentry, summary proceedings, and other remedies were not provided. Mention in this Lease of any particular remedy will not preclude Landlord from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease, or otherwise.

**Section 13. Limitations on Landlord's Liability.** Notwithstanding any provision of this Lease to the contrary, Tenant agrees that it will look only to the value of the payment to Landlord, as consideration for this Lease, as set forth in Section 4 above. Tenant will not look to the property or assets of the Landlord or of any employees, officials, agents, or legal representatives of Landlord in seeking to enforce any obligations or liabilities whatsoever of Landlord under this Lease or to satisfy a judgment (or any other charge, directive or order) of any kind against Landlord, and in no event will any deficiency judgment be sought or obtained against Landlord. No person who is an employee, official, agent, or legal representative of Landlord will be personally liable for any obligations or liabilities of Landlord under this Lease.

**Section 14. Notices.** All notices, consents, demands, communications, or approvals required or permitted by this Lease will be in writing and will be delivered personally or delivered by certified or registered mail, return receipt requested, addressed as follows:

If to Landlord:                   TOWN OF SOUTHWEST RANCHES  
13400 Griffin Road  
Southwest Ranches, Florida 33330  
Attn.: Andy Berns, Town Administrator

If to Tenant:                   HELEN HOMES OF WESTON DEVELOPMENT, LLC  
10850 SW 113 Place  
Miami, FL 33176  
Attn: Oscar Roiz,  
Chief Financial Officer

Landlord and Tenant may, by notice given in the same manner set forth above, designate a different address to which subsequent notices will be sent. Notice will be deemed given when delivered, if delivered personally or the next business day if sent by reputable overnight delivery service that provides proof of delivery, or three (3) days after mailing if sent by certified or registered mail, return receipt requested.

**Section 15. Broker.** Each Landlord and Tenant each represents and warrants to the other that no real estate brokerage commission is payable to any person or entity in connection with the transaction contemplated hereby and each otherwise agrees to and does hereby indemnify and hold the other harmless against the payment of any other commission to any person or entity claiming by, through or under Landlord or Tenant, as applicable. This indemnification shall extend to any and all claims, liabilities, costs and expenses (including reasonable attorneys' fees and litigation costs) arising as a result of such claims.

**Section 16. Tenant's Right to Quiet Enjoyment.** Upon faithfully and fully performing the terms, conditions, and covenants of the Lease on Tenant's part to be performed, Tenant will peaceably and quietly have, hold and enjoy the Premises for the Lease term.

**Section 17. Miscellaneous.**

(a) **Validity of Lease.** The provisions of this Lease are severable. If any provision of the Lease is adjudged to be invalid or unenforceable by a court of competent jurisdiction, it will not affect the validity of any other provision of this Lease.

(b) **Non-waiver by Landlord.** The rights, remedies, options or elections of Landlord in this Lease are cumulative, and the failure of Landlord to enforce performance by Tenant of any provision of this Lease applicable to Tenant, or to exercise any right, remedy, option, or election, or the acceptance by Landlord of the annual fixed rent or additional rent from Tenant after any default by Tenant, in any one or more instances, will not act as a waiver or a relinquishment at the time or in the future, of Landlord of such provisions of this Lease, or of such rights, remedies, options, or elections, and they will continue in full force and effect.

(c) **Entire Agreement.** This Lease contains the entire agreement between the parties. No representative, agent, or employee of Landlord has been authorized to make any representations, warranties, or promises with respect to the letting, or to vary, alter, or modify the provisions of this Lease. No additions, changes, modifications, renewals, or extensions of this Lease will be binding unless reduced to writing and signed by both parties.

(d) **Effective Law.** This Lease will be governed by, construed, and enforced in accordance with the laws of the State of Florida without giving effect to its principles of conflicts of law. Landlord and Tenant waive their right to trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other, or with respect to any issue or defense, on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use and occupancy of the Premises, including summary proceedings and possession actions, and any emergency statutory or other statutory remedy.

(e) **Captions.** The captions of the paragraphs in this Lease and the Table of Contents are for reference purposes only and will not in any way affect the meaning or interpretation of this Lease.

(f) **Obligations Joint and Several.** If there is more than one party tenant, their obligations under this Lease are joint and several. If Tenant is a partnership, the obligations of Tenant under this Lease are joint and several obligations of each of the partners and of the partnership.

(g) **Counterparts.** This Lease may be executed in one or more counterparts, each of which will be an original, and all of which constitutes one and the same Lease.

(h) **Landlord's Performance of Tenant's Obligations.** The performance by Landlord of any obligation required of Tenant under this Lease will not be construed to modify this Lease, nor will it create any obligation on the part of Landlord with respect to any performance required of Tenant under this Lease, whether Landlord's performance was undertaken with the knowledge that Tenant was obligated to perform, or whether Landlord's performance was undertaken as a result of mistake or inadvertence.

(i) **Remedies and Rights Not Exclusive.** No right or remedy conferred upon Landlord will be considered exclusive of any other right or remedy, but will be in addition to every other right or remedy available to Landlord under this Lease or by law. Any right or remedy of Landlord may be



exercised from time to time, and as often as the occasion may arise. The granting of any right, remedy, option, or election to Landlord under this Lease will not impose any obligation on Landlord to exercise the right, remedy, option, or election.

(j) **Signature and Delivery by Landlord.** This Lease is of no force and effect unless it is signed by Landlord and Tenant, and a signed copy of this Lease delivered by Landlord to Tenant. The mailing, delivery or negotiation of this Lease by Landlord or Tenant or any agent or attorney of Landlord or Tenant prior to the execution and delivery of this Lease as set forth in this subparagraph will not be deemed an offer by Landlord or Tenant to enter into this Lease, whether on the terms contained in this Lease or on any other terms. Until the execution and delivery of this Lease as set forth in this subparagraph, Landlord or Tenant may terminate all negotiations and discussions of the subject matter of this Lease, without cause and for any reason, without recourse or liability.

(k) **Inspection, Length of Time of Tenant's Default.** Nothing in this Lease requires Landlord at any time to inspect the Premises to determine whether Tenant is in default of Tenant's obligations under this Lease. Any default by Tenant of the provisions of this Lease for any length of time, and whether Landlord has direct or indirect knowledge or notice of the default, is not a waiver of Tenant's default by Landlord, and Landlord has the right to declare Tenant in default, notwithstanding the length of time the default exists.

(l) **No Offer.** The submission of the Lease to Tenant will not be deemed an offer by Landlord to rent the Premises to Tenant, such an offer only being made by the delivery to Tenant of a Lease signed by Landlord.

(m) **Surrender.** Any other act or thing done by Landlord or any agent, employee or representative of Landlord will not be deemed to be an acceptance of a surrender of the Premises, excepting only an agreement in writing, signed by Landlord, accepting or agreeing to accept a surrender of the Premises.

(n) **Drafting Ambiguities; Interpretation.** In interpreting any provision of this Lease, no weight will be given to nor will any construction or interpretation be influenced by the fact that counsel for one of the parties drafted this Lease, each party recognizing that it and its counsel have had an opportunity to review this Lease and have contributed to the final form of this Lease.

(o) **References.** In all references to any persons, entities, or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of this Lease may require.

(p) **Binding Effect.** This Lease is binding upon and will inure to the benefit of the parties, their legal representatives, successors, and permitted assigns.

(q) **Time of the Essence.** Time is of the essence of this Lease. The term "Execution Date" shall be the date on which the last one of Landlord or Tenant has signed or initialed and delivered this Lease to the other party.

(r) **No Recordation.** Neither this Lease, nor any memorandum, affidavit, or other writing with respect to this Lease, will be recorded by Tenant or by anyone acting through, under or on behalf of Tenant, and recording in violation of this provision will make this Lease voidable at Landlord's election.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

LANDLORD:

**Town of Southwest Ranches**

By: \_\_\_\_\_ Name:  
Title: \_\_\_\_\_

TENANT:

**Helen Homes of Weston Development,  
LLC**, a Florida limited liability company

By: Jacob Stabom Name:  
Title: C.E.O.

**REGULAR MEETING MINUTES OF THE TOWN COUNCIL**  
**Southwest Ranches, Florida**

Thursday 7:00 PM

March 8, 2018

13400 Griffin Road

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Present:

Mayor Doug McKay

Vice Mayor Freddy Fisikelli

Council Member Steve Breitkreuz

Council Member Gary Jablonski

Council Member Denise Schroeder

Andy Berns, Town Administrator

Russell Muñiz, Assistant Town Administrator/Town Clerk

Martin D. Sherwood, Town Financial Administrator

Keith Poliakoff, Town Attorney

Regular Meeting of the Town Council of Southwest Ranches was held at 13400 Griffin Road in the Southwest Ranches Council Chambers. The meeting, having been properly noticed, was called to order by Mayor McKay at 7:05 PM. Attendance was noted by roll call and was followed by the Pledge of Allegiance.

Quasi Judicial Meeting

**3.** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING WAIVER OF PLAT APPLICATION NO. WP-20-18 TO SUBDIVIDE APPROXIMATELY 4.7 NET ACRES OF PROPERTY INTO TWO LOTS OF APPROXIMATELY 2.38 AND 2.32 NET ACRES, GENERALLY LOCATED ON THE NORTH SIDE OF LURAY ROAD, APPROXIMATELY 700 FEET WEST OF SW 130TH AVENUE; LEGALLY DESCRIBED AS THE SOUTH ½ OF TRACT 22 LESS THE SOUTH 40 FEET THEREOF IN SECTION 2, TOWNSHIP 51 SOUTH, RANGE 40 EAST, "EVERGLADES SUGAR AND LAND CO. SUBDIVISION", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 39, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, SAID LANDS NOW LYING, BEING AND SITUATE, IN BROWARD COUNTY, FLORIDA; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO PROPERLY EFFECTUATE THE INTENT OF THIS RESOLUTION; PROVIDING FOR RECORDATION; AND PROVIDING AN EFFECTIVE DATE.

The following motion was made by Council Member Breitkreuz, seconded by Vice Mayor Fisikelli, and passed by 5-0 call vote. The vote was as follows: Council Members Breitkreuz, Jablonski, Schroeder, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE RESOLUTION.

**4. Public Comment**

The following members of the public addressed the Town Council: David Kuczenski, Mary Gay Chaples.

**5. Board Reports**

None were presented.

## **6. Council Member Comments**

Council Member Jablonski invited everyone to attend Water Matters Day, March 10<sup>th</sup>, Saturday, from 9-3 PM at Tree Tops Park. Also, he reminded everyone to set their alarm clocks forward because of Daylight Savings time this weekend. He added that the State is considering the possibility of Daylight Savings time being permanent. He also announced that the Hazardous Materials event has been cancelled for this Saturday, and the next one is scheduled for May. He advised that on May 12<sup>th</sup>, from 7-9 PM the Schools and Education Advisory Board would be holding a fundraiser called Paint the Grain. Also, he advised that the Schools and Education Advisory Board would be having another Poker Night fundraiser on Thursday, May 15<sup>th</sup> at Landlubber's restaurant. He also advised Property Appraiser Marty Kiar would be at Town Hall at 4:30 PM to answer questions about property and agricultural exemptions. He also advised that there will be an Egg Hunt hosted by the Rolling Oaks Civic Association at the Barn on Saturday, March 24<sup>th</sup> at noon.

Council Member Schroeder spoke about last year's Pioneer Days' winner, Marvin Holt. He was honored and ecstatic to have been nominated. This year Newell Hollingsworth was nominated because he and his wife were supporters of the Town even before the Town had become a Town. There will be a parade in Cooper City where the Mayor and Council Member Schroeder will be attending with her grandchildren. After the parade they will be attending Water Matters Day. Council Member Schroeder spoke of incorrect information in the Sunshine Ranches Newsletter about bulk being allowed to be placed in someone else's property. She received an abundant number of phone calls and complaints and she would like the information to be corrected in the next newsletter. She advised that Town Administrator Berns was just a phone call away and could clarify any information if needed.

Council Member Breitzkreuz encouraged everyone to go to Water Matters Day at Tree Tops Park. He felt it was a great place to get a good education about the importance of water.

He also spoke about an increase in dumping and he believes that there are various things contributing to that. He added that in 2006, dumping was also a major issue because of the economy. He asked that if you see someone dumping please contact the police so that the police report can log it. Mayor McKay had a question about who would pay for this and Town Administrator Berns replied that it would be a case by case issue depending on what it is and where it is, but that the Town would dispatch the contractors at the Town's expense to pick up the dumping. Council Member Breitzkreuz recommended residents to take pictures.

He also had an update from the Drainage Board that the Fire Station out west was moving forward and that it was good that they will not use Country Estates Park.

Vice Mayor Fisikelli advised to be neighborly and to talk to neighbors that are new to Southwest Ranches and to help them with our rules and regulations because they don't know who we are and what we do. He helped his neighbor who is new to the neighborhood.



Mayor McKay also spoke about the Founder's parade in Cooper City. He advised everyone to attend Water Matters Day. Those who participate and get their card stamped, get to leave with a tree, plant, or flower. He was very appreciative of everyone for attending the meeting.

## **7. Legal Comments**

Town Attorney Poliakoff had good news about the Supreme Court of the State of Florida in reference to CCA case against the City of Pembroke Pines. The Court determined that Pembroke Pines was required as a matter of law to provide the site with water and sewer services. As a result, there is legal maneuvering going around but he will keep the Town posted of the motions that will be filed in the next couple of days. Also, he spoke about issues relating to the Fire Truck and trying to repair it. The out-of-state vendors and local vendors need to bridge the gap and get together and get the truck fixed. Broward County had a meeting of all city attorneys to discuss semi-automatic weapons, but nothing was determined except for two law firms that would like to represent Broward County in challenging the states regulations relating to firearms. He will report back as to what transpires. Mayor McKay wanted to know where we are about the barn property that should be owned by the Town. Town Attorney Poliakoff answered that it was being analyzed but that right now there is no real good answer.

He advised that the Town was working on getting our line of credit loan done to replace the current line which will be expiring and then getting back reimbursement from FEMA. However, the discussion of this matter at the public meeting on October 26, 2017 was not adequately reflected in the original minutes, so he respectfully asked for a motion and a second to amend such minutes.

The following motion was made by Council Member Breitzkreuz, seconded by Vice Mayor Fisikelli and passed by 5-0 roll call vote. The vote was as follows: Council Members Breitzkreuz, Jablonski, Schroeder, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO AMEND THE MINUTES OF OCTOBER 26, 2017 TO ACCURATELY REFLECT WHAT TRANSPIRED IN THAT MEETING.

Town Financial Administrator Sherwood added that the Town was operating under a declared state of emergency in accordance with our line of credit, the Town promised to repay such line of credit from reimbursements received from FEMA and the State of Florida, and that the Town agreed to covenant to budget an appropriate funding of debt service while the Town is waiting for reimbursements from FEMA and the State of Florida. In regards to the line of credit, the Town has spent approximately three million dollars to date and expects to spend another million dollars.

## **8. Administration Comments**

Town Administrator Berns was asked by Council Member Breitzkreuz to address the relocation of the Fire Station but since it was an agenda item, he asked if he could speak about that item when that item came up. Addressing concerns raised by Council Member Jablonski about the Hazardous Material event, he indicated that the Town was in the process of transitioning on the disposal from the contract the Town had with Sun Bergeron but there was a communication issue within that handoff from Sun Bergeron to Waste Pro that caused the problem. It was a glitch that will

not happen again. In addition, he announced some good news about the TSDOR project in Sunshine Ranches which will kick off March 12, 2018 and the Stirling Road Guardrail Project that was funded last year kicked off that week, with some drainage improvements.

**19. Town-wide Utility Vehicle Warranty Pricing**

Town Administrator Berns reminded Council about the lengthy discussion at the last meeting related to the purchase of the Town Pickup Truck. The numbers within that item which was approved by Council were actually a 5 year 100,000 mile warranty, instead of the 7 year warranty that was indicated. However, in order to purchase the 7 year 100,000 mile warranty, it would be an additional \$400.00. He asked the Council for approval.

The following motion was made by Council Member Breitreuz, seconded by Council Member Jablonski and passed by a 5-0 roll call vote. The vote was as follows: Council Members Breitreuz, Jablonski, Schroeder, Vice Mayor Fisikelli and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE RESOLUTION.

Resolutions

**9.** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A LEASE AGREEMENT AND A MAINTENANCE CONTRACT WITH TOSHIBA AMERICA BUSINESS SOLUTIONS, INC. FOR THREE (3) COPIER/PRINTER/SCANNERS; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE.

The following motion was made by Council Member Breitreuz, seconded by Council Member Schroeder, and passed by 5-0 roll call vote. The vote was as follows: Council Members Breitreuz, Jablonski, Schroeder, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE RESOLUTION.

**10.** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A PURCHASE ORDER IN THE AMOUNT OF SIXTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$68,500.00) WITH CRAVEN THOMPSON AND ASSOCIATES, INC. FOR SURVEYING SERVICES FOR PHASE FOUR OF THE TRANSPORTATION SURFACE AND DRAINAGE ONGOING REHABILITATION (TSDOR) ROADWAY IMPROVEMENTS; AUTHORIZING THE EXECUTION FOR THE PURCHASE ORDER; AND PROVIDING AN EFFECTIVE DATE.

The following motion was made by Council Member Breitreuz, seconded by Vice Mayor Fisikelli passed by 5-0 roll call vote. The vote was as follows: Council Members Breitreuz, Jablonski, Schroeder, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE RESOLUTION.

**11.** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A PURCHASE ORDER IN THE AMOUNT OF SIXTY-FOUR THOUSAND SIXTY-FIVE DOLLARS AND ZERO CENTS (\$64,065.00) WITH ERDMAN ANTHONY OF FLORIDA, INC. FOR ENGINEERING SERVICES FOR PHASE FOUR OF THE TRANSPORTATION SURFACE AND DRAINAGE ONGOING REHABILITATION (TSDOR) ROADWAY IMPROVEMENTS; AUTHORIZING THE EXECUTION OF THE PURCHASE ORDER; AND PROVIDING AN EFFECTIVE DATE.

The following motion was made by Council Member Breitzkreuz, seconded by Vice Mayor Fisikelli and passed by 5-0 roll call vote. The vote was as follows: Council Members Breitzkreuz, Jablonski, Schroeder, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE RESOLUTION.

**12.** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AND ACCEPTING A PUBLIC RIGHT OF WAY DEDICATION ALONG S.W. 130TH AVENUE; ACCEPTING THE PERPETUAL MAINTAINENANCE OBLIGATION OF SAID PUBLIC RIGHT-OF-WAY; INCORPORATING SAID RIGHT-OF-WAY INTO THE TRANSPORTATION AND DRAINAGE ONGOING REHABILITATION (TSDOR) CONSTRUCTION PROGRAM; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE PUBLIC RIGHT OF WAY DEDICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

The following motion was made by Council Member Breitzkreuz, seconded by Vice Mayor Fisikelli, and passed by 5-0 roll call vote. The vote was as follows: Council Members Breitzkreuz, Jablonski, Schroeder, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE RESOLUTION.

**13.** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, RESPECTFULLY REQUESTING THE BROWARD COUNTY METROPOLITAN PLANNING ORGANIZATION (MPO) TO AMEND THE LONG-RANGE TRANSPORTATION PLAN, TO WIDEN GRIFFIN ROAD FROM SW 184TH AVENUE TO US 27 TO A FOUR-LANE ROADWAY; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO EXECUTE ANY AND ALL DOCUMENTS DEEMED NECESSARY TO HELP EFFECTUATE THE AMENDMENT OF THE TRAFFICWAYS MAP; AND PROVIDING AN EFFECTIVE DATE.

The following motion was made by Council Member Breitzkreuz, seconded by Council Member Jablonski and passed by a 5-0 roll call vote. The vote was as follows: Council Members Breitzkreuz, Jablonski, Schroeder, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE RESOLUTION.

**14.** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, RESPECTFULLY REQUESTING THE BROWARD COUNTY METROPOLITAN PLANNING ORGANIZATION (MPO) TO AMEND ITS LONG-RANGE TRANSPORTATION PLAN TO INCLUDE BICYCLE LANES ON GRIFFIN ROAD FROM SW 184TH AVENUE TO US 27; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO EXECUTE ANY AND ALL DOCUMENTS DEEMED NECESSARY TO EFFECTUATE THE AMENDMENT OF THE TRAFFICWAYS MAP; AND PROVIDING AN EFFECTIVE DATE.

The following motion was made by Council Member Breitreuz, seconded by Council Member Jablonski and passed by a 4-1 roll call vote. The vote was as follows: Council Member Breitreuz, Jablonski, Vice Mayor Fisikelli, and Mayor McKay voting Yes. Council Member Schroeder voting No.

**MOTION:** TO APPROVE THE RESOLUTION.

**15.** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, RESPECTFULLY REQUESTING THAT THE BROWARD COUNTY METROPOLITAN PLANNING ORGANIZATION (MPO) AMEND ITS LONG-RANGE TRANSPORTATION PLAN TO INCLUDE INCREASING THE CAPACITY AND WIDENING THE WESTON ROAD BRIDGE AT GRIFFIN ROAD; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO EXECUTE ANY AND ALL DOCUMENTS DEEMED NECESSARY TO EFFECTUATE THE AMENDMENT OF THE TRAFFICWAYS MAP; AND PROVIDING AN EFFECTIVE DATE.

The following motion was made by Council Member Breitreuz, seconded by Council Member Jablonski and passed by a 5-0 roll call vote. The vote was as follows: Council Members Breitreuz, Jablonski, Schroeder, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE RESOLUTION.

**16.** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AUTHORIZING THE ISSUANCE OF A PURCHASE ORDER TO PLANET RV IN THE AMOUNT OF SIXTEEN THOUSAND FOUR HUNDRED DOLLARS AND ZERO CENTS (\$16,400.00) FOR THE RENTAL OF TWO (2) TRAVEL TRAILERS TO SERVE AS TEMPORARY HOUSING AND OTHER MISCELLANEOUS COSTS IN THE AMOUNT OF SEVENTEEN THOUSAND FOUR HUNDRED FORTY THREE DOLLARS AND ZERO CENTS (\$17,443.00) ASSOCIATED WITH THE RELOCATION OF BOTH THE TOWN OF DAVIE FIRE DEPARTMENT AND SOUTHWEST RANCHES VOLUNTEER FIRE RESCUE, INC.; APPROVING A BUDGET AMENDMENT IN THE TOTAL AMOUNT OF THIRTY THREE THOUSAND EIGHT HUNDRED FORTY THREE DOLLARS AND ZERO CENTS (\$33,843.00); AND PROVIDING AN EFFECTIVE DATE.

The following motion was made by Council Member Breitreuz, seconded by Vice Mayor Fisikelli, and passed by 5-0 roll call vote. The vote was as follows: Council Members Breitreuz, Jablonski, Schroeder, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE RESOLUTION SUBJECT TO REMOVING COUNTRY ESTATES PARK FROM THE RESOLUTION.

**17.** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, URGING THE FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA") TO CHANGE FEMA'S POLICY REQUIRING PRE-APPROVAL FOR DISASTER DEBRIS REMOVAL FROM PRIVATE ROADS AND TO TREAT DISASTER DEBRIS REMOVAL FROM PRIVATE ROADS IN RESIDENTIAL COMMUNITIES IN THE SAME MANNER AS PUBLIC ROADS FOR THE PURPOSE OF FEMA REIMBURSEMENT FOR DISASTER DEBRIS REMOVAL COSTS; DIRECTING THE TOWN CLERK TO DISTRIBUTE THE EXECUTED RESOLUTION TO CERTAIN AGENCIES AND EACH OF THE MUNICIPALITIES IN BROWARD COUNTY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

The following motion was made by Council Member Breitzkreuz, seconded by Council Member Jablonski and passed by a 5-0 roll call vote. The vote was as follows: Council Members Breitzkreuz, Jablonski, Schroeder, Vice Mayor Fisikelli, and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE RESOLUTION.

Discussion

**18.** Town Administrator/Town Financial Administrator Annual Review

Town Attorney Poliakoff explained that the Town Council agree that Town Administrator Berns, Assistant Town Administrator/Town Clerk Muniz, and Town Financial Administrator Sherwood did a wonderful job in 2017. They added sufficiently to the reserves of the Town, and that the Town was managed properly and as a result it was unanimous belief of the Council that the charter officials deserve some additional compensation for the incredible year that they had. The Town Council believe that the retirement benefits that were offered to the Town were lower than industry standards and as a result the Town Council desires to increase that number by 3% as a retirement benefit. Mr. Berns and Mr. Sherwood deserve their budgeted bonus amount of 5%. In lieu of a bonus, Mr. Muniz acknowledged that he agreed to add the 5% (\$5,000.00) to his salary for next year.

The following motion was made by Council Member Breitzkreuz, seconded by Vice Mayor Fisikelli and passed by a 5-0 roll call vote. The vote was as follows: Council Members Breitzkreuz, Jablonski, Schroeder, Vice Mayor Fisikelli and Mayor McKay voting Yes.

**MOTION:** TO APPROVE THE RESOLUTION.

**20. Adjournment** - Meeting was adjourned at 8:40 p.m.

*Respectfully submitted:*

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*Russell Muñiz, Assistant Town Administrator/Town Clerk*

*Adopted by the Town Council on  
this 26th day of April, 2018.*

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*Doug McKay, Mayor*

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

DRAFT