

RESOLUTION NO. 2014-063

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN AGREEMENT WITH WHITELEAF LLC DBA TRAFFIC SOLUTIONS IN THE AMOUNT OF \$111,553.57 FOR STRIPING AND SIGNAGE IMPROVEMENTS IN COUNTRY ESTATES ALONG SW 185TH WAY, 186TH AVENUE, AND 188TH AVENUE; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town held several public workshops with the community to address ongoing resident concerns relating to speeding and traffic volume; and

WHEREAS, the Town hired a traffic engineering consultant to evaluate and to make recommendations on the road and traffic conditions along SW 185th Way, 186th Avenue, and 188th Avenue; and

WHEREAS, the Town Council believes it is in the best interest of the Town to contract with a professional firm to perform services relating to this project; and

WHEREAS, the Town advertised Invitation for Bid (IFB) # 14-003 for Traffic Calming, Signage, and Markings Improvements for SW 185th Way, 186th Avenue, and 188th Avenue; and

WHEREAS, on May 14, 2014, the Town received one bid in response to the advertisement; and

WHEREAS, the Town decided to re-advertise the bid as Invitation for Bid (IFB) #14-006; and

WHEREAS, on August 15, 2014 the Town received two responses to the advertised Invitation for Bid (IFB) # 14-006 for the Traffic Calming, Signage, and Markings Improvements for SW 185th Way, 186th Avenue, and 188th Avenue; and

WHEREAS, Whiteleaf LLC DBA Traffic Solutions has provided the lowest responsive and responsible bid; and

WHEREAS, it has been determined to be in the public's best interest to award the bid to Whiteleaf LLC DBA Traffic Solutions; and

WHEREAS, the Town of Southwest Ranches desires to enter into an Agreement with Whiteleaf LLC DBA Traffic Solutions for the traffic calming improvement project at

SW 185 Way, SW 186 Avenue and SW 188 Avenue 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 an Agreement between the Town of Southwest Ranches and Whiteleaf LLC DBA Traffic Solutions to provide the striping and signage for the traffic calming improvement project located on SW 185 Way, SW 186 Avenue, and SW 188 Avenue, as outlined in the Invitation for Bid (IFB) #14-006, in the amount of \$111,553.57 as attached hereto as Exhibit "A".

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

[Signatures on Following Page]

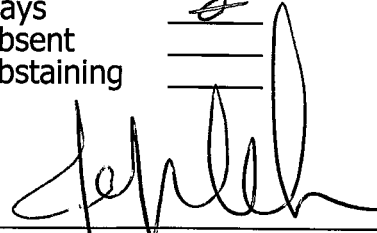
PASSED AND ADOPTED by the Town Council of the Town of Southwest

Ranches, Florida, this 30th day of September, 2014 on a motion by

C/m Breitkreuz and seconded by C/m McKay.

Nelson af
Jablonski af
Breitkreuz af
Fiskelli af
McKay af

Ayes 5
Nays 0
Absent
Abstaining



Jeff Nelson, Mayor

Attest:

Russell Muñiz
Russell Muñiz, MMC, Town Clerk

Approved as to Form and Correctness:

Keith Poliakoff
Keith Poliakoff, Town Attorney

111870095.1

ATTACHMENT “A”

AGREEMENT

BETWEEN THE

TOWN OF SOUTHWEST RANCHES

AND

WHITELEAF, LLC dba TRAFFIC SOLUTIONS

FOR

TRAFFIC CALMING, SIGNAGE, and MARKINGS IMPROVEMENT
for SW 185th WAY, 186th AVENUE and 188th AVENUE

IFB No. 14-006

AGREEMENT FOR: IFB No. 14-006 Re-Issue Traffic Calming, Signage, and Markings Improvements for SW 185th Way, 186th Avenue, and 188th Avenue

THIS IS AN AGREEMENT ("Agreement") made and entered into on this 30th day of September 2014 by and between the Town of Southwest Ranches, a Municipal Corporation of the State of Florida, (hereinafter referred to as "TOWN") and Whiteleaf, LLC dba Traffic Solutions (hereinafter referred to as "Contractor").

WHEREAS, the TOWN desires to select a contractor for the purpose of Traffic Calming, Signage, and Markings Improvements for SW 185th Way, 186th Avenue, and 188th Avenue ("Project"); and

WHEREAS, the TOWN advertised an Invitation for Bids, IFB No. 14-006 on June 17, 2014, ("IFB"); and

WHEREAS, two (2) bids were received by the TOWN on August 15, 2014; and

WHEREAS, the TOWN has adopted Resolution No. 2014 - 063 at a public meeting of the Town Council approving the recommended award and has selected Whiteleaf LLC dba Traffic Solutions for award of the Project.

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

Section 1: Scope of Services

- 1.1 The Contractor agrees to perform the duties and responsibilities set forth herein and as defined and described in and/or reasonably inferable Exhibit "A-1" attached to this Agreement and made a part of it by this reference (hereinafter referred to as "Work"). This Agreement, as well as all Exhibits, the IFB, the Contractor's Bid, including all forms attached thereto, and all addenda, specifications, drawings and plans, shall be hereinafter collectively referred to as the "Contract Documents" and incorporated herein by reference. To the extent of any conflict among the Contract Documents, the more stringent criteria relative to the Contractor's performance of the Work shall govern over the less stringent criteria.
- 1.2 All Work rendered pursuant to this Agreement by Contractor shall be performed in strict accordance with the applicable standard of care for persons or entities performing similar work in Broward County, Florida. Contractor shall perform the Work in strict accordance with the requirements of this Agreement, all of the other Contract Documents, good construction practices for this type of Work performed in Broward County, Florida and all applicable codes, ordinances, rules, laws and regulations governing the Work, including, but not limited to, the Florida Building Code, along with Broward County Amendments to it.
- 1.3 Contractor acknowledges that it has visited the location of the Work and informed itself of the conditions that exist at the site, including conditions of the facilities and difficulties attending

the execution of the Work and such existing site and local conditions have been accounted for within the Agreement Sum (as defined below). Furthermore, all costs for the proper disposal of excess material generated on site in the performance of the Work have likewise been included and accounted for within the Contract Price (as defined below).

- 1.4 Contractor, in addition to any manufacturer's warranty for materials or equipment, hereby warrants that its Work and all materials will be free of defects and deficiencies for a period of one year(s) from the Final Completion Date (as defined below). If any defects or deficiencies arise within the warranty period, the Contractor shall correct the defect or deficiency at no cost to the TOWN. Nothing herein shall be construed as a waiver, limitation or release of any right or remedy that the TOWN may have for breach of this Agreement, which rights are cumulative and in no way limited by the warranty.

Section 2: Term of this Agreement and Agreement Time

- 2.1 TOWN and Contractor agree that Contractor shall perform all Work under this Agreement for a period of forty-five (45) days or such longer period as may be agreed to by the parties, or otherwise required to achieve Final Completion of the Work.
- 2.2 TOWN shall have the ability to terminate this Agreement as provided in "Section 18: Termination."
- 2.3 No Damages for Delay - Contractor shall not be entitled to any claim for damages against TOWN on account of hindrance or delays from any cause whatsoever. If, however, Contractor is delayed in the prosecution of the Work occasioned by an act of God, or by act or omission on the part of the TOWN, or due to changes ordered in the Work by TOWN which expand the scope and costs of the Work, such act, hindrance, or delay shall only entitle Contractor to receive an extension of time as its sole and exclusive remedy, and Contractor hereby waives any and all other claims against TOWN for damages for such hindrance or delay.
- 2.4 Time being of the essence, TOWN and Contractor agree that Contractor shall perform all Work under this Agreement and achieve Substantial Completion of the Work within thirty (30) calendar days beginning on the date of issuance of the building permit for the Work (the effective date of the Notice to Proceed) as stated in the Notice to Proceed, subject to appropriate extensions of time as provided in this Agreement ("Substantial Completion Date"). Contractor shall achieve Final Completion of the Work within fifteen (15) calendar days of Substantial Completion or no later than forty-five (45) days of the issuance of the Notice to Proceed, whichever date occurs first ("Final Completion Date").
 - 2.4.1 Substantial and Final Completion:
 - 2.4.1.1 Substantial Completion of the Work at the Project shall be defined as the date upon which the last of all of the following events have occurred:

- (i) All necessary approvals have been issued with respect to the Work by the appropriate governmental authorities;
- (ii) Restoration of all utilities to operation that have been affected during performance of the Work;
- (iii) All Work has been completed (except for “punch list” items of Work, if any); and
- (iv) The TOWN’s engineer/architect of record for the project, Clete Saunier, has issued its written acceptance of the Work performed by Contractor and executed and delivered to the TOWN a Certificate of Substantial Completion.

2.4.1.2 Final Completion is defined as the date when all punch list items have been completed as evidenced by the issuance of a written Certification of Final Completion by the Town’s design professional for this Project, and all other conditions precedent to Final Completion as outlined below have been satisfied:

Contractor shall:

- (i) Deliver to the TOWN all warranties, final certifications and similar documentation to confirm that all necessary approvals have been issued with respect to the Work by the appropriate governmental authorities;
- (ii) Complete all Punch List items of Work;
- (iii) Remove temporary facilities from the site, along with construction tools and similar elements;
- (iv) Complete final clean-up including repair, replace and restore any items damaged by Contractor as a consequence of performing Work;
- (v) Deliver to the TOWN confirmation that all permits have been closed; and
- (vi) Confirm that the TOWN’s engineer/architect of record for the Project, Clete Saunier, has issued its written acceptance of the Work performed by Contractor and executed and delivered to the Town a Certificate of Final Completion.

2.4.2 Given that the parties agree that time is of the essence with respect to this Agreement and any breach of same shall go to the essence hereof, and Contractor, in agreeing to achieve Substantial Completion and Final Completion the Work within the time herein mentioned, has taken into consideration and made allowances for all hindrances and delays incident to its Work.

- 2.4.3 Liquidated Damages (“LD’s”) – In the event Contractor does not achieve completion of the Work as defined in Paragraph 2.4.1 above, in whole or in part due to its own fault, the parties hereto acknowledge that any delay beyond the scheduled Completion Dates may cause grave injury and damage to the TOWN by virtue of locating, moving to and paying rent for temporary quarters, loss of use, extension of overhead costs, additional costs of design professionals and otherwise. Accordingly, the calculation of the actual damages to the TOWN would be uncertain and difficult if not impossible to determine. Consequently, if the Contractor has not achieved Substantial Completion of the Work or Final Completion of the Work within the time periods above and has not obtained a written time extension from TOWN for such delay(s), time being of the essence, then the parties hereto agree that as liquidated delay damages, and not as a penalty, the Contractor shall pay to the TOWN an amount equal to **\$100.00** for each day or portion thereof, that the date of Substantial Completion or Final Completion is later than the scheduled Substantial Completion Date set forth above. Contractor shall be entitled to an extension of time and relief from liquidated damages to the extent that additional out of scope work authorized by the TOWN in accordance with a properly executed Change Order affects the critical path of the Contractor’s Project schedule. All such liquidated damage amounts, if any, shall be paid by Contractor to TOWN weekly, immediately upon each such failure of Contractor to comply with the scheduled Substantial Completion Date, as set forth above. In the event that the Contractor fails to make any one or more of the payments to TOWN as required under this Paragraph, the TOWN shall have the right to deduct any and all such amounts from any amounts due or to become due to Contractor under this Agreement.

Section 3: Compensation & Method of Payment

- 3.1 Contractor shall render all Work to the Town under the Agreement for the total not to exceed lump sum price of one hundred eleven thousand, five hundred fifty-three Dollars and fifty-seven cents (\$111,553.57) (“Contract Price”).
- 3.2 In no event shall TOWN be liable for any cost increases or price escalations associated with labor or materials that may arise during the performance of the Work, regardless of any delays in the Work, whether occasioned by TOWN or Contractor, or both. In the event the cost of the Work exceeds the amounts set forth and included in the Contract Price, Contractor shall pay such excess from its own funds and TOWN shall not be required to pay any part of such excess. The only exception shall be any adjustments to the Contract Price pursuant to any written Change Order duly executed by TOWN and Contractor in accordance with the terms and conditions of this IFB and the Contract, and with the same formality and of equal dignity associated with the original execution of the Contract.
- 3.3 TOWN and Contractor agree that payment under the Agreement will be subject to (a) the delivery of an appropriate invoice by Contractor to TOWN, and (b) verification by TOWN that the Work is acceptable and has been performed in strict accordance with the Agreement. Upon verification by TOWN that the invoiced Work has been satisfactorily performed in strict accordance with the Agreement, TOWN shall have thirty (30) days thereafter to pay said invoice, or such undisputed portion as TOWN shall determine in its sole discretion.

- 3.4 Each invoice must be accompanied by supporting documentation and other information reasonably requested by TOWN, including, but not limited to a Partial Release of Lien in the form set forth in Section 713.20, Florida Statutes. Reference herein to Chapter 713, Florida Statutes is for convenience, and shall not be construed as a waiver of sovereign immunity or authority for imposition of liens against public property. Subject to the provisions of Section 218.735, Florida Statutes, each progress payment shall be reduced by 10% retainage. The final retainage will be released after Final Completion of the Project, and after TOWN's receipt of acceptable reports and other project-close out documentation required by the Contract Documents, including but not limited to certification of Contractor's payment to all lower-tiered subcontractors and suppliers providing labor, materials or services on the project, but no earlier than 30 days of the Contractor's last progress payment request.
- 3.5 A final payment invoice must be accompanied by written notice from Contractor that the entire Work is completed. The TOWN's engineer/architect of record will make a final inspection and notify Contractor in writing with a punch list of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete the punch list and remedy deficiencies. Contractor's obligation to perform and complete the Work in strict accordance with the Contract Documents shall be absolute. The TOWN may refuse payment if (a) the Work is defective or completed Work has been damaged requiring correction or replacement, (b) the TOWN has been required to correct defective Work or complete Work in accordance with the Contract Documents, or (c) because claims have been made against the TOWN on account of Contractor's performance or furnishing of the Work or liens or claims have been filed or asserted in connection with the Work or there are other items entitling the TOWN to a set-off against the amount due. No payment will be made for Work performed by the Contractor to replace defective work; for work which is not shown or ordered in accordance with the Contract Documents; or additional work performed by Contractor without prior written approval of TOWN.

Section 4: Assignment

No assignment of this Agreement or of the Work hereunder by Contractor shall be valid without the express written consent of TOWN, which may be given or withheld, in TOWN's sole discretion. All Work to be performed pursuant to this Agreement shall be performed by the Contractor, and no Work shall be subcontracted to other parties or firms without the written consent and approval of the TOWN Administrator.

Section 5: Contractor's Responsibility for Safety

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

bearing on the safety of persons and property in order to provide protection from damage injury or loss.

Section 6: Insurance

- 6.1 Throughout the term of this Agreement and for all applicable statutes of limitation periods, Contractor shall maintain in full force and affect all of the insurance coverages as set forth in this Section 6.
- 6.2 All Insurance Policies shall be issued by companies that (a) are authorized to transact business in the State of Florida, (b) have agents upon whom service of process may be made in Broward County, Florida, and (c) have a rating of A or better in accordance with A.M. Best's Key Rating Guide.
- 6.3 All Insurance Policies shall name and endorse the following as additional insured:
Town of Southwest Ranches.
- 6.4 All Insurance Policies shall be endorsed to provide that (a) Contractor's Insurance is primary to any other Insurance available to TOWN or any other additional insured with respect to claims covered under the policy and (b) Contractor's insurance applies separately to each insured against who claims are made or suit is brought, and (c) that the inclusion of more than one insured shall not operate to increase the Insurer's limit of liability. Self-insurance by Contractor shall not be acceptable as providing any of the required insurance coverages required in this Agreement.
- 6.5 If the Contractor fails to submit the required insurance certificate(s) in the manner prescribed with the executed Agreement submitted to the TOWN at the time of execution of this Agreement, Contractor shall be deemed in default, and the Agreement shall be rescinded and/or terminated for cause effectively immediately. Contractor hereby waives any prior written notice of rescission and/or termination under this paragraph.
- 6.6 Contractor shall carry the following minimum types of Insurance:
 - A. **WORKER'S COMPENSATION:** Worker's Compensation Insurance is to apply to all employees in compliance with the "Workers' Compensation Law" of the State of Florida (Chapter 440, Florida Statutes) and all applicable federal laws. Contractor shall carry Worker's Compensation Insurance with the statutory limits, which shall include employer's liability insurance with a limit of not less than **Two Hundred Thousand Dollars (\$200,000)** for each accident, and **Two Hundred Thousand Dollars (\$200,000)** for each disease. Policy(ies) must be endorsed with waiver of subrogation against TOWN.
 - B. **BUSINESS AUTOMOBILE LIABILITY INSURANCE:** Contractor shall carry business automobile liability insurance with minimum limits of **One Million Dollars (\$1,000,000)** per occurrence, combined single limits bodily injury liability and property damage. The policy must be no more restrictive than the latest edition of the

business automobile liability policy without restrictive endorsements, as filed by the Insurance Services Office, and must include all owned vehicles and all hired or non-owned vehicles.

- C. **COMMERCIAL GENERAL LIABILITY:** Contractor shall carry Commercial General Liability Insurance with limits of not less than **One Million Dollars (\$1,000,000)** per occurrence combined single limit for bodily injury and property damage and not less than Two Million Dollars (\$2,000,000) in the aggregate. The insurance policy must include coverage that is no more restrictive than the latest edition of the commercial general liability policy, without restrictive endorsements as filed by the Insurance Service Office, and the policy must include coverages for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, personal injury and explosion, collapse and underground (X-C-U). Personal injury coverage shall include coverage that has the employee and contractual exclusions removed.

- 6.7 Contractor shall provide TOWN with a copy of the Certificates of Insurance or endorsements evidencing the types of Insurance and coverages required by this Section 6 prior to beginning the performance of any Work under this Agreement and, at any time thereafter, upon request by TOWN.
- 6.8 Contractor's Insurance Policies shall be endorsed to provide TOWN with at **least thirty (30) calendar days prior written notice of cancellation, non-renewal, restrictions, or reduction in coverages or limits.** Notice shall be sent to:

Town of Southwest Ranches
13400 Griffin Road
Southwest Ranches, Florida 33330

And

Keith M. Poliakoff, J.D.
Arnstein & Lehr
200 East Las Olas Boulevard
Suite 1700
Fort Lauderdale, Florida 33301

- 6.9 If Contractor's Insurance policy is a "claims-made" policy, then Contractor shall maintain such Insurance Coverage for a period of the later of five (5) years after the expiration or termination of the Agreement or any extensions or renewals of the Agreement or five (5) years after Final Completion of the Work. Applicable coverages may be met by keeping the policies in force, or by obtaining an extension of coverage commonly known as a reporting endorsement of tail coverage.

- 6.10 If any of Contractor's Insurance policies include a general aggregate limit and provides that claims investigation or legal defense costs are included in the general aggregate limit, the general aggregate limit that is required shall be at least five (5) times the occurrence limits specified above in this Section 6.
- 6.11 The Contractor shall not commence operations, and/or labor to complete any of the Work pursuant to this Agreement until certification or proof of insurance issued directly by the insurance company underwriting department, detailing terms and provisions of coverage, has been received and approved by the TOWN.
- 6.12 If any of Contractor's initial insurance expires prior to the completion of the Work, renewal copies of Policies shall be furnished to TOWN at least thirty (30) days prior to the date of their expiration, and TOWN shall be an additional named insured by endorsement on all of Contractor's renewal policies.
- 6.13 **UPON EXECUTION OF THIS AGREEMENT, CONTRACTOR SHALL SUBMIT TO TOWN COPIES OF ITS CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES REQUIRED HEREIN AND SPECIFICALLY PROVIDING THE ENDORSEMENT TO THE POLICIES THAT SHOWS THE TOWN OF SOUTHWEST RANCHES IS AN ADDITIONAL NAMED INSURED OR ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND CONTRACTOR'S WORK UNDER THE AGREEMENT.**
- 6.14 The official title of the owner is Town of Southwest Ranches. This official title shall be used in all insurance policies and documentation.
- 6.15 All required insurance policies shall preclude any insurer's or underwriter's rights of recovery or subrogation against TOWN with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.
- 6.16 Contractor shall ensure that any company issuing insurance to satisfy the requirements contained in this Agreement agrees that they shall have no recourse against TOWN for payment or assessments in any form on any policy of insurance.
- 6.17 The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which TOWN is named as an additional named insured shall not apply to TOWN in any respect. TOWN shall use its best efforts to provide written notice of occurrence within thirty (30) working days after TOWN's actual notice of such event, but failure to do so shall not impair or adversely affect any claims by TOWN under such policy.
- 6.18 Notwithstanding any other provisions of this Agreement, Contractor's obligation to maintain all required insurance as specified in this Section of the Agreement shall survive the expiration or termination of this Agreement.

Section 7: Copyrights and Patent Rights

Contractor warrants that there has been no violation of copyrights or patent rights in manufacturing, producing, and/or selling the item(s) ordered or shipped as a result of this Agreement; and Contractor hereby agrees to indemnify, defend and hold harmless Town, its employees, agents, or servants, from and against any and all liability, loss, or expense resulting from any such violation, including attorney's fees and costs (at both the trial and appellate levels).

Section 8: Laws and Regulations

Contractor agrees to abide by all applicable Federal, State, County, and local laws, rules, regulations, ordinances and codes in performing all Work under this Agreement.

Section 9: Taxes and Costs

All federal, state and local taxes relating to the Contractor's Work under this Agreement and, similarly, all costs for licenses, permits, or certifications to perform the Work under this Agreement shall be paid by the Contractor.

Section 10: Indemnification

To the fullest extent permitted by Florida law, including Florida Statutes, Section 725.06, the Contractor shall indemnify, defend and hold harmless the TOWN, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees (at both the trial and appellate levels), to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor, and persons employed or utilized by the Contractor in the performance of the Contract, and anyone else for whose actions Contractor is responsible. Notwithstanding any other provisions of this Agreement, the Contractor's duty to indemnify and hold the TOWN harmless shall survive the termination or expiration of this Agreement.

Section 11: Non-discrimination

Contractor shall not discriminate against any client, employee or applicant for employment because of race, gender, age, color, religion, sex, national origin, physical or mental disability, and marital status. Contractor shall take affirmative action to ensure that applicants, subcontractors, Independent Contractors, and employees are treated without discrimination in regard to their race, gender, age, color, religion, sex, national origin, physical or mental disability, or marital status. Contractor shall comply with all applicable sections of the Americans with Disabilities Act. Contractor agrees that compliance with this Section 11 constitutes a material condition to this Agreement, and that it is binding upon the Contractor, its successors, transferees, and assignees for the period during which any Work is provided. Contractor further assures that all subcontractors and independent contractors are not in violation of the terms of this Section of the Agreement.

Section 12: Sovereign Immunity

Nothing in this Agreement is intended nor shall it be construed or interpreted to waive or modify the Town's Sovereign Immunity defense or any other of the Town's immunities and limitations on liability as provided for in the Florida Statutes, as now worded or as may hereafter be amended, and all Florida case law interpreting same.

Section 13: Prevailing Party Attorneys' Fees

In the event either party to this Agreement incurs legal fees, legal expenses or costs to enforce the terms of this Agreement on trial or on appeal at all levels, the prevailing party shall be entitled to recover the reasonable costs of such action so incurred, including, without limitation, reasonable attorney's fees and costs and expert witness fees and costs incurred.

Section 14: No Third Party Beneficiaries

This Agreement is solely for the benefit of the parties hereto, and is not entered into for the benefit of any other person or entity. Nothing in this Agreement shall be deemed or construed to create or confer any benefit, right or cause of action for any third party or entity.

Section 15: Funding

The obligation of TOWN for payment to Contractor for the Work is limited to the availability of funds appropriated in a current fiscal period, and continuation of any contractual relationship into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

Section 16: Manner of Performance

Contractor agrees to perform its Work in a professional manner and in accordance with all applicable Local, State, County, and Federal laws, rules, ordinances, regulations and codes. Contractor agrees that the Work provided shall be provided by employees that are educated, trained, experienced, certified, and licensed in all areas encompassed within their designated duties. Contractor agrees to furnish to TOWN any and all documentation, certification, authorization, license, permit, or registration currently required by applicable laws, rules, and regulations. Contractor further certifies that it and its employees will keep all licenses, permits, registrations, authorizations, or certifications required by applicable laws or regulations in full force and effect during the term of this Agreement and any applicable warranty period. Failure of Contractor to comply with this Section 16 shall constitute a material breach of this Agreement.

Section 17: 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 Records Law exists and it is cited in the response.

An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed. Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to TOWN's contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the TOWN and the public to all documents subject to disclosures under applicable law. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation and/or termination of this Agreement by TOWN. To the extent that Contractor 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 as part of the IFB process, Contractor shall keep and maintain the security sensitive information as confidential and exempt from public disclosures as required by Florida Statutes.

Section 18: Termination

The Agreement may be terminated upon the following events:

- A. **Termination by Mutual Agreement.** In the event the parties mutually agree in writing, this Agreement may be terminated on the terms and dates stipulated therein.
- B. **Termination for Convenience.** This Agreement may be terminated for Convenience by TOWN upon TOWN providing Contractor with **thirty (30) calendar day's** written notice of TOWN's intent to terminate this Agreement for Convenience. In the event that this Agreement is terminated by TOWN for Convenience, Contractor shall be paid ONLY for Work properly performed and approved by the TOWN as of the date this Agreement is terminated and **no other compensation or damages shall be paid to or recovered by Contractor in any legal proceeding against TOWN, including but not limited to consequential damages of any kind including lost profits on Work not yet performed by Contractor.** Upon being notified of Town's election to terminate for convenience, Contractor shall immediately cease performing any further Work or incurring additional expenses. Contractor acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by TOWN, the adequacy of which is hereby acknowledged by Contractor, is given as specific consideration to Contractor for TOWN's right to terminate this Agreement for Convenience.
- C. **Termination for Cause.** In the event of a material breach by Contractor, TOWN shall provide Contractor written notice of its material breach. Contractor shall thereafter have **thirty (30) days** from the date of its receipt of such notification to cure such material breach. If Contractor does not cure the material breach within that time period, TOWN may terminate this Agreement effective immediately thereafter. Material breaches shall include, but are not limited to Contractor's:
 - (1) Violations of governing standards, violations of state or federal laws, violation of TOWN's policies and procedures;
 - (2) Performing defective work;

- (3) Failure to adhere to the Project schedule where no approve time extension has been granted by TOWN;
- (4) Failure to supply enough sufficiently skilled workers;
- (5) Abandonment of the Work;
- (6) Any violation of any of the terms and conditions of this Agreement.

In the event that TOWN elects to terminate Contractor for cause as provided for in this Section 18, and TOWN's termination for cause is later determined by a court of competent jurisdiction to be improper, or in any other way wrongful or in breach of this Agreement, the termination shall automatically be deemed converted to a termination for convenience and Contractor shall be paid solely in accordance with subparagraph (B) of this Section 18.

D. Termination for Lack of Funds. In the event the funds to finance the Work under this Agreement become unavailable, Town may provide Contractor with thirty (30) days written notice of termination. Nothing in this Agreement shall be deemed or construed to prevent the parties from negotiating a new Agreement in this scenario. In the event that TOWN elects to terminate Contractor for lack of funds as provided for in this paragraph, and Town's termination for lack of funds is later determined by a court of competent jurisdiction to be improper, or in any other way wrongful or in breach of this Agreement, the termination shall automatically be deemed converted to a termination for convenience and Contractor shall be paid solely in accordance with subparagraph (B) of this Section 18.

E. Immediate Termination by Town. TOWN, in its sole discretion, may terminate this Agreement immediately and without prior written notice upon the occurrence of any of the following events:

1. Contractor's violation of the Public Records Act;
2. Contractor's insolvency, bankruptcy or receivership;
3. Contractor's violation or non-compliance with Section 11 of this Agreement;
4. Contractor's failure to maintain any Insurance required by Section 6 of this Agreement;
- or
5. Contractor's violation of Section 19 of this Agreement.

Section 19: Public Entity Crimes Information Statement

Pursuant to Florida Statutes, Section 287.133: "A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list." Violation of this section by Contractor shall result in Town's immediate termination of this Agreement.

Section 20: Use of Awarded Bid by Other Governmental Units

Contractor agrees that this Agreement may be utilized by other governmental entities or units to provide the specified services. TOWN does not become obligated in any way, to pay for or become, in any way, responsible or liable for Contractor's provision of Work or services to any other governmental agency or unit.

Section 21: Change Orders, Modification of Agreement, and Construction Change Directives

Town and Contractor may request changes that would increase, decrease or otherwise modify the Scope of Work to be provided under this Agreement and/or the Completion Dates. Such changes only become part of this Agreement and increase, decrease or otherwise modify the Work, Contract Price, or Completion Dates under this Agreement if evidenced by a written Change Order executed by Town and Contractor, with the same formality and of equal dignity associated with the original execution of the Agreement. In the event the TOWN and Contractor dispute the amount of any adjustment in the Contract Price or Completion Dates, or both, resulting from any change(s) in the Work, the TOWN may nonetheless direct the Contractor in writing to proceed with the change(s) by issuing a Construction Change Directive. Upon receipt of a Construction Change Directive, Contractor shall diligently prosecute the Work described therein and shall otherwise continue its performance of the Work under this Agreement without work stoppage or delay due to the dispute. The subject of a Construction Change Directive may be the basis for a Change Order if later agreed to by the TOWN and Contractor.

Section 22: No Waiver of Rights

Neither the TOWN's review, approval or payment for any of the Work required under this Agreement shall be construed to operate as a waiver of any of TOWN's rights or remedies under this Agreement or of any causes of action arising out Contractor's performance of the Work under this Agreement, and Contractor shall be and remain liable to the TOWN for all damages to the TOWN caused by the Contractor's negligent or improper performance of any of the Work furnished under this Agreement, irrespective of the TOWN's review, approval or payment for any of the Work under this Agreement. The rights and remedies of the TOWN provided for under this Agreement are in addition to all other rights and remedies provided to TOWN by law or in equity.

Section 23: Jurisdiction and Venue

The exclusive venue and jurisdiction for any litigation arising from or relating to the Agreement shall be in a court of competent jurisdiction in the 17th Judicial Circuit in and for Broward County, Florida. This Agreement shall be governed by the substantive laws of the State of Florida.

Section 24: WAIVER OF RIGHT TO JURY TRIAL

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

Section 25: Gender

Wherever the context shall so require, all words herein in the masculine gender shall be deemed to include the feminine, and all words herein in the feminine gender shall be deemed to include the masculine. All singular words shall include the plural, and all plural words shall include the singular.

Section 26: Time is of the Essence; Liquidated Damages

Time is of the essence for all of Contractor's obligations under this Agreement. The Town will be entitled to Liquidated Damages as set forth at Section 2.4.3.

Section 27: Days

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

Section 28: Written Mutual Agreement

This Agreement is binding upon the parties hereto, their successors and assigns and replaces, and supersedes any and all prior agreements, promises, representations or understandings between the parties hereto whether written or oral with respect to the subject matter hereof.

Section 29: No Amendment or Waiver

This Agreement may not be changed, altered or modified except by an instrument in writing signed by all parties hereto, with the same formality and of equal dignity as the execution of this Agreement prior to the initiation of any Work reflecting such change.

Section 30: Severability

In the event any term or provision of this Agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed to be in full force and effect. In case any one or more of the provisions of this Agreement shall be determined by appropriate judicial authority to be invalid, illegal or unenforceable, in any respect, the validity of the remaining provisions of this Agreement shall be in no way affected, prejudiced, or disturbed thereby.

Section 31: Resolution of Disputes; Florida Statutes, Chapter 558, F.S. Not Applicable

To prevent litigation, it is agreed by the parties hereto that TOWN Administrator shall solely decide all questions, claims, difficulties and disputes of, whatever nature, which may arise relative to this Agreement, including but not limited to, Contractor's fulfillment of its obligations under this Agreement as to the character, quality, amount and value of any Work done and materials furnished, or proposed, to be done or furnished, under or by reason of, the Agreement. Further, to the extent required or permitted by the agreement between the TOWN and its design professional(s) for this Project, the design professional(s) shall have access to the Work, the right to conduct testing or inspections, to reject non-conforming work, and to review pay applications. The TOWN Administrator's decision shall be reduced to writing, and a copy furnished to the Contractor within a reasonable time following submission to the TOWN of the question, claim, difficulty or dispute as referenced above. The TOWN Administrator's decision shall be final and conclusive unless Contractor provides TOWN with written notice of its objection within seven (7) days after receipt of the TOWN Administrator's decision. Provided that Contractor timely furnishes written notice of its objection, the parties shall endeavor to resolve their disputes through mediation with an agreed upon mediator within sixty (60) days thereafter. The parties shall equally split the cost of mediation. In the event the parties cannot agree to a mediator or the procedures of mediation, the parties shall submit the dispute for mediation through the American Arbitration Association ("AAA"), pursuant to the AAA mediation rules governing construction disputes. Venue for mediation shall be in Broward County, Florida. Attendance at mediation shall be a condition precedent to litigation, and any action filed in violation of this paragraph shall, upon motion of a party, be stayed pending the completion of mediation. Additionally, the parties understand and agree that Florida Statutes, Chapter 558, does not apply to this Agreement or the Work, and that the parties hereby "opt out" of the procedures set forth at Chapter 558, Florida Statutes.

Section 32: Notice

Whenever either party desires to give notice to the other, such notice must be in writing by certified or registered mail, postage prepaid, return receipt requested, hand delivery, or facsimile transmission prior to 5:00 p.m. on the date of transmission (e.d.t. or e.s.t. as applicable), or via overnight express courier service. For the present, the parties designate the following individuals as the respective parties and places for the giving of notice:

If to Town:

Town of Southwest Ranches
Town Administrator
13400 Griffin Road
Southwest Ranches, Florida 33330

With a copy to:

Keith M. Poliakoff, J.D.
Arnstein & Lehr
200 East Las Olas Boulevard
Suite 1700
Fort Lauderdale, Florida 33301

If to Contractor:

Whiteleaf LLC dba Traffic Solutions
3001 Industrial Avenue 3
Fort Pierce, Florida 34946

Section 33: Miscellaneous

- A. **Ownership of Documents.** Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement by Contractor and all persons or entities employed or otherwise retained by Contractor are and shall remain the property of TOWN. In the event of termination of this Agreement for any reason, any reports, photographs, surveys and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of TOWN and shall be delivered by Contractor to the TOWN Administrator within seven (7) days of termination of this Agreement for any reason. Any compensation due to Contractor shall be withheld until all documents are received by TOWN as provided herein.
- B. **Audit and Inspection Rights and Retention of Records.** Town shall have the right to audit the books, records and accounts of Contractor that are related to this Agreement. Contractor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

Contractor shall preserve and make available, at reasonable times for examination and audit by Town, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of the later of three (3) years after termination or expiration of this Agreement, or Final Completion of the Work, unless Contractor is notified in writing by Town of the need to extend the retention period. Such retention of such records and documents shall be at Contractor's sole expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or the three (3) year period, whichever is later, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by TOWN to be applicable to Contractor's records, Contractor shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for TOWN's disallowance and recovery of any payment upon such entry.

In addition, Contractor shall respond to the reasonable inquiries of successor Contractors and allow successor Contractors to receive working papers relating to matters of continuing significance.

In addition, Contractor shall provide a complete copy of all working papers to the TOWN, prior to final payment by the TOWN under this Agreement.

- C. **Independent Contractor.** Contractor is an independent contractor of TOWN under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees or agents of the TOWN. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to the Work and services rendered under this Agreement shall be exclusively and solely those of Contractor. This Agreement shall not constitute or make TOWN and Contractor a partnership or joint venture.
- D. **Conflicts.** Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Agreement.

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

In the event Contractor is permitted to utilize subcontractors to perform any services required by this Agreement, Contractor agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this paragraph D of Section 33.

- E. **Contingency Fee.** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, TOWN shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Contract Price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- F. **Materiality and Waiver of Breach.** TOWN and Contractor agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this

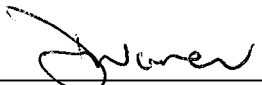
Agreement and, therefore, is a material term hereof. TOWN's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification or continuing waiver of the terms of this Agreement.


- G. Joint Preparation.** TOWN and Contractor both acknowledge that they have sought and received whatever competent advice and legal counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties over the other.
- H. Drug-Free Workplace.** Contractor agrees that it shall maintain a drug-free workplace.
- I. Headings.** Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.
- J. Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- K. Truth-in-Negotiation Certificate.** Signature of this Agreement by Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

THIS SECTION INTENTIONALLY LEFT BLANK

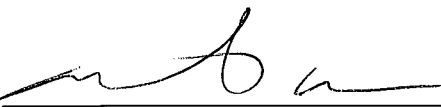
IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: TRAFFIC SOLUTIONS, and the TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the 10th day of SEPTEMBER 2014

WITNESSES:


DAVID WARNER - MANAGING MEMBER


CHRIS ROBBINS - OPERATION MANG.


CONTRACTOR:

By: 
MARTIN WARNER - MANAGING (title) MEMBER
10TH day of SEPTEMBER 2014

TOWN OF SOUTHWEST RANCHES

By: 
Jeff Nelson, Mayor

30th day of September 2014

By: 
Andrew D. Berns, Town Administrator

30th day of September 2014

ATTEST:


Russell Muñiz, MBA, MMC, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

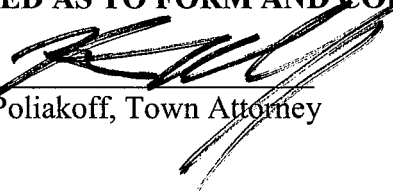

Keith M. Poliakoff, Town Attorney

EXHIBIT "A-1"

PROJECT SCOPE OF THE WORK

This project consists and includes all of the following:

GENERAL SPECIFICATIONS:

The item descriptions below are provided for the limited purposes set forth in this Invitation for Bid (IFB) and may not include all items and materials needed to complete the work. The Contractor shall furnish all labor, materials, equipment, and all else necessary to complete the project. Work shall be in strict accordance with applicable Florida Department of Transportation (FDOT) specifications. Descriptions provided for each item below are additional requirements and/or clarifications. The Contractor shall be responsible for costs incidental to the project, e.g., costs for insurance, dewatering and other permit fees, portable toilets (port-a-lets), on-site offices, safety measures, compliance with notification requirements of NPDES, Site restoration, etc.

Item No. 1 ENHANCED SPEED HUMP IMPROVEMENT

This item consists of modifying an existing speed hump to an enhanced speed hump that narrows the roadway over the existing hump. This item includes all work associated with the modification within the limits of the improvement, which is approximately 250 feet in length. The improvement includes, but is not limited to, the cutting and removal of the ends of an existing speed hump; constructing a concrete curb along the new edge to follow the profile of the existing hump, 6 inches above; removing all existing markings; removal of existing signs, if directed by the TOWN; cutting back any vegetation along the edge of the roadway; furnishing and installing new striping, markers, and signage. This item is paid on a lump sum per modification. At the discretion of the TOWN, an Enhanced Speed Hump Improvement may be replaced by a Speed Hump Improvement. The replacement shall be paid based on a quote herein for a similar Speed Hump Improvement.

Item No. 2 SPEED HUMP IMPROVEMENT

This item consists of modifying an existing speed hump to a speed hump with enhanced markings. There are no modifications to the existing asphalt. This item includes all Work associated with the modification within the limits of the improvement, which is approximately 250 feet in length. The improvement includes, but is not limited to, removing all existing markings; removal of existing signs, if directed by the TOWN; cutting back any vegetation along the edge of the roadway; furnishing and installing new striping, markers, and signage. This item is paid on a lump sum per modification.

Item No. 3 MAJOR INTERSECTION IMPROVEMENT

This item consists of the signage and markings improvements on the local road at their intersection with Sheridan Street and Griffin Road. The extent of the improvement is from the intersection to the first speed hump modification. The improvement includes, but is not limited to, removal and/or relocation of existing signs; cutting back of any vegetation from the roadway; and the furnishing and installation of new signage and markings. This item is paid on a lump sum per major intersection.

Item No. 4 LOCAL INTERSECTION MARKINGS

This item consists of improving all existing local intersections currently containing a stop sign. The improvement includes, but is not limited to, removal of existing markings; furnishing a new stop bar and 25 feet of double yellow line. This item is paid on a lump sum per side street intersection.

Item No. 5 LOCAL ROAD MARKINGS

This item includes the double yellow line, double markers, and white edge line for the segments of the local road that lie between speed hump modifications or intersection modifications, or not otherwise covered in another item. This improvement includes, but is not limited to, cutting back of any vegetation from the roadway; the furnishing of all striping and markers. This item is paid on a lump sum basis for each of the three local roadways in this project.

Item No. 6 EXISTING SIGN RESTORATION

This item consists of removal and either disposal or replacement of existing signage and the straightening of leaning sign posts. This item is paid based on a lump sum at the estimated number of signs affected as listed in the proposal. Any additional existing signs replaced, removed, or straightened, other than those covered by another pay item, will be paid based on the number of signs affected at the unit price listed in the proposal.

Item No. 7 MOBILIZATION AND DEMOBILIZATION

This item consists of all effort and costs associated with appearing at the project with manpower, equipment, and material at the project's commencing and all effort and costs associated with leaving the project at the project's overall completion. This item is paid on a one-time lump sum. If the project is temporarily suspended or otherwise phased and the Contractor is required to completely leave the project at the request of the TOWN, and to return at a later date, this item will be paid for the additional mobilization and demobilization. This item includes all clean-up and repairs from the work performed.