

## **RESOLUTION 2019 –058**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, ACCEPTING THE SELECTION AND NEGOTIATION COMMITTEE'S RECOMMENDATION AND AWARDING CONTINUING CONTRACTS TO CRAVEN THOMPSON AND ASSOCIATES, INC., KEITH AND ASSOCIATES, INC., AND BAXTER AND WOODMAN, INC. FOR PROFESSIONAL SURVEYING SERVICES; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on June 12, 2019, the Town advertised a Request for Letters of Interest (RLI) # 19-004 for Continuing Contracts for Professional Surveying Services; and

**WHEREAS**, on July 15, 2019, the Town received thirteen (13) responses to its advertisement; and

**WHEREAS**, on July 31, 2019, after hearing presentations from the five (5) shortlisted firms, the Town's selection and Negotiation Committee has recommended that the Town enter into contracts with three (3) selected firms to have available options when seeking such services; and

**WHEREAS**, the three selected firms are Craven Thompson and Associates, Inc. Keith and Associates, Inc., and Baxter and Woodman, Inc. for Professional Surveying Services under the terms and conditions set forth therein.

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

**Section 1.** The above-referenced recitals are true and correct and are incorporated herein by reference.

**Section 2.** The Town Council hereby approves the Selection and Negotiation Committee's selection of Craven Thompson and Associates, Inc., Keith and Associates, Inc., and Baxter and Woodman, Inc. for Professional Surveying Services as outlined in the Request for Letters of Interest attached hereto.

**Section 3.** The Town Council hereby approves awarding a Continuing Contract with Craven Thompson and Associates, Inc., Keith and Associates, Inc., and Baxter and Woodman, Inc. for Professional Surveying Services as set for in Composite Exhibit "A" which has been attached hereto and has been incorporated herein by reference.

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

**Section 5.** This Resolution shall be effective immediately upon its adoption.

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

Ranches, Florida, this 12<sup>th</sup> day of September, 2019, on a motion by

C/M Schroeder and seconded by C/M Hartmann.

McKay

Yes

Ayes

4

Jablonski

Yes

Nays

0

Fisikelli

Absent

Absent

0

Hartmann

Yes

Abstaining

0

Schroeder

Yes

ATTEST:

Doug McKay  
Doug McKay, Mayor

Russell Muñiz  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to legal Form and Correctness

Keith M. Poliakoff  
Keith M. Poliakoff, Esq., Town Attorney  
35847632.1



**EXHIBIT "A"**  
**AGREEMENT**  
**BETWEEN THE**  
**TOWN OF SOUTHWEST RANCHES**  
**AND**  
**KEITH AND ASSOCIATES, INC.**  
**FOR**  
**A CONTINUING CONTRACT FOR PROFESSIONAL SURVEYING SERVICES**  
**RLI No. 19-004**

AGREEMENT FOR  
CONTINUING CONTRACT FOR  
PROFESSIONAL SURVEYING SERVICES

This Continuing Contract for Professional Surveying Services ("CONTINUING CONTRACT") is made and entered into this 12<sup>th</sup> day of September 2019, by and between the Town of Southwest Ranches, Florida, hereinafter referred to as "TOWN", and Keith and Associates, Inc., Inc a Florida Corporation licensed as an Authorized Professional Surveying Company with the State of Florida under License LB6860, hereinafter referred to as "SURVEYOR".

WITNESSETH:

RECITALS:

WHEREAS, the TOWN has provided notice of the desired professional services and pursuant to RLI No. 19-004, and adhered to the selection process pursuant to and in accordance with the Consultants' Competitive Negotiation Act, Florida Statute, 287.055 and the TOWN's Procurement Code; and,

WHEREAS, the TOWN desires to engage the SURVEYOR to perform certain professional surveying services in accordance with this CONTINUING CONTRACT, as permitted by the Consultants' Competitive Negotiation Act; and,

WHEREAS, the SURVEYOR desires to provide such professional surveying services in accordance with this CONTINUING CONTRACT; and,

WHEREAS, the TOWN represents that it has the authority to engage the SURVEYOR for the services set forth in RLI 19-004, this CONTINUING CONTRACT, and as approved by the TOWN's Resolution No. 2019-058.

NOW, THEREFORE, in consideration of the premises and the mutual benefits which will accrue to the parties hereto in carrying out the terms of this CONTINUING CONTRACT, it is mutually understood and agreed as follows:

The above Recitals are true and correct and are incorporated herein and made a part of this CONTINUING CONTRACT.

**ARTICLE 1 - DESCRIPTION OF PROFESSIONAL SERVICES**

1.1 Standard of Care. All services rendered by SURVEYOR and its consultants pursuant

to this Continuing Contract will be performed in accordance with the standard of professional skill and care required for surveyors and other professionals retained to assist with, from commencement to finish of surveying services of the projects contemplated by this Continuing Contract; provided, however, that no work shall be performed unless and until a written work authorization is executed and the TOWN has issued a Notice to Proceed as to any of the projects. SURVEYOR will perform all services consistent with the interests of the TOWN and in accordance with the requirements of the State of Florida. SURVEYOR agrees to timely perform its services so as not to delay the projects under this CONTRACT, time being of the essence, and as set forth in the Notice to Proceed. The projects ("Project" or "Projects") which may be assigned to SURVEYOR, and subject of a Notice to Proceed, are those listed in RLI No. 19-004, which RLI is incorporated herein by reference.

1.1.1 Points of Contact.

The TOWN's Designated Point of Contact (or "Representative") shall be:

Rod Ley, Town Engineer Tel:  
954-434-0008

**Email: rlay@southwestranches.org**

The SURVEYOR's Designated Point of Contact shall be:

Surveyor's Name

Attn: Lee Powers, PSM

Tel: 954-788-3400

Email: LPowers@KeithHeam.com

1.1.2 Licensing and Other Obligations of Surveyor. The SURVEYOR will provide appropriate documentation to the TOWN to demonstrate that it and all of its consultants are properly licensed to perform all services relative to this Continuing Contract.

1.1.2.1 A consultant is a person or entity who the SURVEYOR has retained and who the SURVEYOR will pay to perform any of the services described in this Continuing Contract. Reasonable funds for such payment have been included as part of SURVEYOR's compensation under this Continuing Contract.

1.1.2.2 The SURVEYOR shall be responsible to the TOWN for the acts and omissions of its employees, consultants, sub-consultants and their respective employees, or persons performing any of the services under this Continuing Contract.

1.1.2.3 The SURVEYOR shall have the sole obligation and responsibility to select, control and supervise all of its consultants. The SURVEYOR may not contract with anyone with whom the TOWN has a reasonable objection. Contracts between the

SURVEYOR and the consultants shall require each consultant to be bound to the SURVEYOR for all obligations and responsibilities which the SURVEYOR, by this Continuing Contract assumes toward the TOWN. This provision also applies to substitute consultants hired during the course of this Continuing Contract to replace existing consultants in accordance with this Continuing Contract. The SURVEYOR shall retain responsibility for coordination of any consultants engaged by the SURVEYOR to provide services under this Continuing Contract and will likewise coordinate its services with those consultants retained by the TOWN. The TOWN agrees that all communications of the TOWN with the SURVEYOR's consultants will be made through the SURVEYOR's Representative, unless such consultants have also been retained by the TOWN.

1.1.2.4 The SURVEYOR and its consultants will perform, without expense to the TOWN, such services as may be required to correct or remedy any negligent act, error or omission of the SURVEYOR or its consultants.

1.1.2.5 The SURVEYOR shall be responsible to the TOWN for the acts and omissions of its employees, consultants, sub-consultants and their respective employees or persons performing any of the services under this Agreement.

1.1.2.6 The SURVEYOR shall have the sole obligation and responsibility to select, control, payment and supervision of all of its consultants.

1.1.3 Conflicts of Interest. The SURVEYOR shall not engage in any activity, or accept any employment, receive any monetary compensation, interest or contribution that could create the appearance of impropriety or compromise the SURVEYOR's professional judgment with respect to this Continuing Contract.

## **ARTICLE 2 - TOWN-PROVIDED ITEMS**

2.1 The TOWN's list of project requirements shall be provided to the SURVEYOR and shall be utilized by the SURVEYOR to prepare the Project Program.

2.2 The TOWN shall provide SURVEYOR with accurate and complete information. No information derived from the TOWN shall relieve the SURVEYOR from any risk or from fulfilling all terms of the Contract. The SURVEYOR shall be responsible for any additional investigations required to fulfill all the terms of the Contract.

2.3 Service Work Authorization and Notice to Proceed. For all services covered under this Continuing Contract, SURVEYOR shall be required to obtain an approved written Work Authorization and a written "Notice to Proceed" by the Town Administrator or his authorized representative, in advance of providing any such services to the Town. The written Work Authorization shall specify in detail the nature of the services requested, the lump sum or not to exceed cost to the TOWN for same (with actual cost to be fully

substantiated by SURVEYOR upon completion), and the time frame for completion. All services performed by SURVEYOR without a written authorization from the TOWN shall be performed at SURVEYOR's sole cost and expense.

### **ARTICLE 3- FEES**

3.1 Subject to the TOWN's issuance of a "Notice to Proceed" and individual written work orders, the TOWN shall pay the SURVEYOR the total compensation for the Project(s), in accordance with the total fee indicated in a Project fee schedule executed by both the TOWN and Surveyor, and which will be developed based upon the approved Rate and Fee Schedule. SURVEYOR's total compensation includes all fees, costs and expenses that may be incurred by the SURVEYOR to complete the design and construction administration of the Project, including, but not limited to, all professional services provided by or through the SURVEYOR, drawings, calculations and other documents, travel expenses and all other costs or expenses, for or related to the Project, as well as the time for performance. A Notice to Proceed shall not be issued by the TOWN until a Project fee schedule has been fully executed. Additionally, SURVEYOR shall not perform any services without individual written work orders which may be required to be provided by the Town Administrator, and in accordance with this Continuing Contract. Hourly rates for SURVEYOR's consultants shall also be in accordance with the Rate and Fee Schedule.

3.2 Payment on account of services rendered, shall be made monthly, based on the percentage of completion of the Project, upon presentation of the SURVEYOR's invoice for same, along with a partial waiver and release from SURVEYOR indicating a release of all claims, including, but not limited to, equitable liens, through the last elate of services rendered and included in the invoice. Should any portion of the invoice be in dispute, other portions, if any, that are not in dispute or not deemed, by the TOWN, to be funds likely necessary to be put towards the issue in dispute, shall be paid per the terms of this Continuing Contract. Any billing concerns shall be submitted in writing by the TOWN to the SURVEYOR describing the disputed portion of the invoice in detail for discussion and resolution.

3.3 Payment on account of undisputed amounts of the Surveyor's Total Compensation shall be made within thirty (30) days of invoice elate or as otherwise provided by Section 218.73, Florida Statute.

3.4 Payments due to SURVEYOR which remain unpaid for thirty (30) days after the due date provided herein, shall bear interest at the statutory rate provided by Section 218.74, Florida Statute.

3.5 Payment for the SURVEYOR' s services will be made in accordance with the local government Prompt Payment Act, Section 218.73, Florida Statute.

3.6 Purchasing Card (PCARD) Acceptance: The method of payment (check/credit card) is at the Town's sole option. The Town may choose to compensate vendors for goods and/or services via a Town Purchasing Card (PCARD). No other costs or services shall be billed to the Town, and without limiting the generality of the foregoing, vendor shall not impose any service charge or fee, penalty, or other exaction of any kind against payments rendered by the PCARD. Payments made by PCARD shall be accepted on a "same as cash" basis.

#### **ARTICLE 4 - CHANGE ORDERS**

4.1 Definition of Change. Change in the services to be performed by the SURVEYOR, or the SURVEYOR's consultants, may only be accomplished after execution of this Continuing Contract, without invalidating the Continuing Contract, by mutual agreement and execution of a written Change Order. SURVEYOR assumes all risks and responsibilities for performing all services on behalf of the TOWN for the amount determined in accordance with Article 3. The TOWN shall not be liable for any cost increases that may arise during the performance of services. Any adjustments to the services must be by written Change Order issued in accordance with the terms and conditions of this Continuing Contract. To the extent that SURVEYOR proceeds to perform additional services in excess of those services described in an executed Notice to Proceed that has been signed by the Town Administrator without an executed written Change Order issued in accordance with this Continuing Contract, such services shall be at SURVEYOR's own risk at no charge to TOWN.

#### **ARTICLE 5 - OWNERSHIP OF DOCUMENTS**

5.1 Drawings, specifications and other documents, including those in electronic form, prepared by the SURVEYOR and the SURVEYOR's consultants are Instruments of Service. The SURVEYOR and the SURVEYOR's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. The TOWN shall have the right to use the Instruments of Service. The TOWN's right of use in accordance with this Paragraph specifically authorizes the TOWN to utilize the Instruments of Service to complete the Project as well as to perform alterations, repair and additions to the Project. This right of use applies even if this Agreement is terminated. In that event, the TOWN will be entitled to continue to utilize the Instruments of Service and shall have the unrestricted right to use, reproduce and to make derivative works of the Instruments of Service to complete the Project as long as the TOWN has paid SURVEYOR for all fees associated only with the preparation of the Instruments of Service in accordance with this Continuing Contract. Should this Continuing Contract be terminated, SURVEYOR and its consultants will continue to own the copyright to these Instruments of Service in accordance with this Continuing Contract. However, the TOWN will, through an irrevocable, perpetual, royalty-free license, have the exclusive right to use the



Instruments of Service, without restriction or limitation, to construct the buildings and improvements relative to this Project as well as repair, maintain or construct future additions to the Project. Upon the TOWN's request, the SURVEYOR and its consultants will furnish to the TOWN, copies, including reproducible copies, electronic data and computer files of the Drawings and Specifications and other Instruments of Service.

5.2 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the TOWN's or SURVEYOR's rights.

5.3 SURVEYOR represents and warrants to TOWN that it is the owner of all Instruments of Service prepared by itself and has the sole authority to grant TOWN use provisions of these Instruments of Service in accordance with this Agreement. With respect to Instruments of Service for the Project owned by SURVEYOR's consultants, SURVEYOR, in its agreement with such consultants to provide services for this Project, shall cause such consultants to grant to the TOWN the same use provisions as are included herein.

#### **ARTICLE 6 - TERM OF CONTRACT**

6. The continuing contract for professional surveying services shall have an initial three (3) years term, with three (3), two (2) year extensions. An extension shall be by mutual agreement by both parties. A contract extension may be approved by the Town Administrator.

#### **ARTICLE 7 - TERMINATION**

7.1 Termination by Town for Convenience. This Continuing Contract may be terminated by the Town for convenience upon at least thirty days' written notice to the SURVEYOR. Under such conditions, SURVEYOR will only be entitled to receive compensation for services rendered that are specifically within the services for which the Town Administrator has, in writing, authorized SURVEYOR to proceed and only up through the date that is no later than thirty days after the date written notice for such termination for convenience is issued by the TOWN to SURVEYOR. SURVEYOR will be able to recover for its work performed; actual cost and expenses; and fair and reasonable sums for overhead and profit for work performed. Upon receipt of a notice of termination for convenience by the TOWN, the SURVEYOR will initiate all reasonable steps to mitigate further expenses from accruing. No other compensation and/or damages will be due SURVEYOR from the TOWN pursuant to this Paragraph.

7.2 Default by SURVEYOR. In addition to defaults resulting from the SURVEYOR's failure to strictly comply with any term, condition, or agreement set forth herein, the SURVEYOR shall be in default under this Continuing Contract if:

- A. The SURVEYOR ceases to carry the insurance required hereunder or the insurance is cancelled.
- B. A default should occur in the performance of any consultant or contractor employed by the SURVEYOR and not corrected by SURVEYOR or another replacement consultant or contractor employed by SURVEYOR within ten (10) days after notice from the TOWN.
- C. The SURVEYOR fails to maintain all permit-related documents and make such documents available to the TOWN upon reasonable request.
- D. The SURVEYOR fails to timely (30 days) pay any consultant or contractor employed by the SURVEYOR.  
Notwithstanding the foregoing, SURVEYOR shall have the right to contest disputed invoices in good faith, without being in default of this Continuing Contract, but will bond off or cause to be satisfied of record any liens that may be recorded erroneously in connection therewith within ten (10) days of the date of recording of such lien.
- E. The SURVEYOR fails to correct any error or material inconsistency in its or its consultants Drawings and Specifications or other Instruments of Service within ten (10) days after such error or material inconsistency is reported to the SURVEYOR.
- F. The SURVEYOR fails to perform its obligations under this Continuing Contract in a timely and expeditious manner within ten (10) days after notice from the TOWN.

7.3 TOWN'S Compensation for Default by SURVEYOR. In the event of termination due to the fault of the SURVEYOR under this Continuing Contract, the TOWN shall be compensated for all reasonable costs and expenses including reasonable attorneys' fees and costs incurred in connection with replacing the SURVEYOR hereunder, in reviewing, analyzing, or enforcing the TOWN's rights hereunder or in connection with a replacement surveyor and the completion of the SURVEYOR's services hereunder. This is not intended to limit the TOWN's rights or ability to recover damages in the event of a breach by the SURVEYOR under this Continuing Contract. Additionally, the TOWN shall have the right to use the SURVEYOR's Drawings, Specifications and other Instruments of Service in the event of a default by the SURVEYOR, regardless of the payment status for such Instruments of Service.

## ARTICLE 8 - MISCELLANEOUS PROVISIONS

8.1 Governing Law, Jurisdiction, Venue and Attorney's Fees. In the event of any action, litigation, or proceedings of any type regarding or relating to performance of this Continuing Contract, the prevailing party shall be entitled to recover its reasonable costs, expert's fees and attorney's fees at all hearing, trial, bankruptcy, and appellate levels. All disputes pursuant to this Continuing Contract shall be first subject to mediation in Broward County with a mutually agreeable Florida Supreme Court Certified Mediator who is knowledgeable in the rendering of professional surveying services for construction projects similar to the projects under this Continuing Contract. Failing resolution by mediation, any litigation shall be filed in a court of competent jurisdiction and the sole and exclusive venue shall be in Broward County, Florida. This Continuing Contract shall be governed by the laws of the State of Florida. Mediation shall be conducted within sixty (60) days of either Party's written request. The parties shall share, 50/50, the cost of the mediator.

### 8.2 Waiver of Right to Jury Trial

**BY ENTERING INTO THIS CONTINUING CONTRACT, SURVEYOR 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 CONTINUING CONTRACT.**

8.3 Insurance Coverages and Minimum Amounts. SURVEYOR shall secure and maintain, at its own expense, and keep in effect during the full period of the Continuing Contract and at least one (1) year beyond its completion a policy or policies of insurance, which must include the following coverages and minimum limits of liability:

8.3.1 Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.

8.3.2 Worker's Compensation and Employer's Liability Insurance for all employees of the SURVEYOR engaged in services under the Contract in accordance with the laws of the State of Florida. SURVEYOR hereby agrees to be responsible for the employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

8.3.3 (Comprehensive) Commercial General Liability Insurance with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence. Coverage shall specifically include the following minimum limits not less than those required for Bodily Injury Liability and

Property Damage at \$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability annual aggregate:

1. Premises and Operations;
2. Independent Contractors;
3. Products and Completed Operations;
4. Broad Form Property Damage;
5. Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract;
6. Personal Injury Coverage with employment and contractual exclusions removed and deleted, and;
7. Explosion, collapse, underground coverage (X-C-U)

8.3.4 Comprehensive Automobile Liability Insurance. for all owned, non-owned and hired automobiles and other vehicles used by SURVEYOR in the performance of services pursuant to this Contract with the following minimum limits of liability: \$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence.

8.3.5 Aggregate Limits. Commercial General Liability shall be \$2,000,000.

**\*All insurance policies shall name and endorse the following as "Additional Named Insureds":**

TOWN OF SOUTHWEST RANCHES  
Attn: Andrew D. Berns, Town Administrator.  
13400 Griffin Road.  
Southwest Ranches, FL 33330

**\*The additional named insured endorsement shall be reflected on the Certificate of Insurance.**

All insurance shall be issued by companies rated "A-" or better per A.M. Best's Key Rating Guide, latest edition and authorized to issue insurance in the State of Florida. It shall be the responsibility of the vendor and insurer to notify the Town Administrator of cancellation, lapse, or material modification of any insurance policies insuring the vendor, which relate to the activities of such vendor and the Town.

**All notifications shall be in writing, and shall be submitted to the Town Administrator within thirty (30) days prior to cancellation of such policies. This requirement shall be reflected on the Certificate of Insurance.**

Bidders are required to submit a list of claims presently outstanding and claims within the past ten (10) years against their liability coverage. This information must be listed on the form provided and signed by the agent of the insurance carrier. If no outstanding claims exist, a statement of this fact must be signed by the agent of the insurance carrier.

Failure to fully and satisfactorily comply with the Town's insurance and bonding requirements set forth herein will authorize the Town Administrator to implement a rescission or cancellation of the Bid award within thirty (30) days of awarding. The Bidder hereby holds the Town harmless and agrees to indemnify Town and covenants not to file a Bid protest or sue the Town by virtue of such cancellation or rescission.

84 Indemnification. To the fullest extent permitted by Florida Statute, Section 725.08, SURVEYOR shall indemnify, hold harmless the TOWN, its officers, agents and employees, harmless from any and all claims, damages, losses, liabilities and expenses, direct, indirect or consequential arising out of or alleged to have arisen out of or in consequence of the negligence, recklessness or intentional wrongful conduct of the SURVEYOR or its subcontractors, agents, officers, employees or independent contractors pursuant to the Continuing Contract, specifically including but not limited to those caused by or arising out of negligent act, omission, or default of the SURVEYOR and/or its subcontractors, agents, or employees in the performance of the operations or services under the Continuing Contract.

#### 8.4.1 Errors and Omissions:

The SURVEYOR to the extent of its failure to perform in accordance with the standard of care set forth in this Agreement, is responsible for the professional quality, technical accuracy, completeness, performance and coordination of all Work required under this Agreement (including the Work performed by sub-consultants and Subcontractors), within the specified time period and specified cost. The SURVEYOR shall perform the Work utilizing the skill, knowledge and judgment ordinarily possessed and used by a proficient SURVEYOR with respect to the disciplines required for the performance of the Work in the State of Florida. The SURVEYOR is responsible for, and represents that the Work conforms to TOWN'S requirements as set forth in this Agreement. The SURVEYOR shall be and remain liable to the TOWN for all damages to the TOWN caused by the SURVEYOR'S negligent acts, recklessness, intentionally wrongful conduct or errors or omissions in the performance of the Work. In addition to all other rights and remedies, which the TOWN may have, the SURVEYOR shall, at its expense, re-perform the services to correct any deficiencies, which result from the SURVEYOR'S failure to perform in accordance with the above standards. The TOWN shall notify the SURVEYOR in writing of any deficiencies and shall approve the method and timing of the corrections. Neither the TOWN'S inspection, review, approval or acceptance of, nor payment for, any of the Work required under this Agreement shall be construed to relieve the SURVEYOR or any sub-consultant or subcontractor of its obligations and responsibilities under this Agreement, nor constitute a waiver of any of the TOWN'S rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The SURVEYOR and its sub-consultants and Subcontractors shall be and remain liable to the TOWN in accordance with applicable

law for all damages to TOWN caused by any failure of the SURVEYOR or its sub-consultants and Subcontractors to comply with the terms and conditions of this Agreement or by the SURVEYOR'S or Sub-consultants' or Subcontractors' misconduct, recklessness, unlawful acts, negligent acts, errors or omissions in the performance of this Agreement. With respect to the performance of Work by sub-consultants and Subcontractors, the SURVEYOR shall, in approving and accepting such Work, ensure the professional quality, completeness, and coordination of sub-consultant's and subcontractor's Work.

85 Patent and Copyright Indemnification. SURVEYOR agrees to indemnify, defend, save and hold harmless the TOWN, its officers, agents and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other such work in connection with the performance of the Continuing Contract.

86 Successors and Assigns. This Continuing Contract is binding upon the parties hereto, their successors and assigns and replaces, provided, however, neither party shall assign or transfer any interest in this Continuing Contract without the written consent of the other party.

87 No Damage for Delays by TOWN. SURVEYOR's sole remedy for any (i) delay in the commencement, prosecution, or completion of its services, (ii) hindrance or obstruction in performance of its services, (iii) loss of productivity, or (iv) other similar claims (collectively referred to in this subparagraph as "delays"), whether or not such delays are foreseeable, shall be non-compensable. The TOWN shall act reasonably in granting extensions of time to the SURVEYOR. All extensions to the time for performance shall be authorized only by written Change Order executed by the TOWN and SURVEYOR. In no event shall the SURVEYOR be entitled to any other compensation or recovery of any damages under or pursuant to this subparagraph in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration.

88 Audit and Inspection Rights and Retention of Records by SURVEYOR. The TOWN shall have the right to audit the books, records and accounts of SURVEYOR that are related to this Continuing Contract. SURVEYOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Continuing Contract. SURVEYOR 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 Continuing Contract for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statute), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of

three (3) years after termination or expiration of this Continuing Contract, unless SURVEYOR is notified in writing by Town of the need to extend the retention period. Such retention of such records and documents shall be at SURVEYOR's sole expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by TOWN to be applicable to SURVEYOR's records, SURVEYOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by SURVEYOR. 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, SURVEYOR shall respond to the reasonable inquiries of success or surveyors, if any, and allow successor surveyors to receive working papers relating to matters of continuing significance. In addition, SURVEYOR shall provide a complete copy of *all* working papers including electronic files to the TOWN, prior to final payment by the TOWN under this Continuing Contract.

89 Performance During Disputes. Notwithstanding anything contained in this Continuing Contract to the contrary, in the event of any dispute noticed in writing between the TOWN and the SURVEYOR, the SURVEYOR and, if applicable, its consultants will continue to provide services on the Projects under this Continuing Contract pursuant to the terms of this Continuing Contract so long as the SURVEYOR receives payment for the matter(s) not in dispute.

810 TOWN's Review of Documents. Review and approval of documents or submittals by the TOWN shall be for general design compliance and approval of such submittals shall not relieve the SURVEYOR of any responsibility or liability hereunder.

811 Entire Agreement. This Continuing Contract is deemed effective only upon execution by both parties. Additionally, this written Continuing Contract represents the entire and integrated agreement between the TOWN and the SURVEYOR and supersedes all prior negotiations or agreements, either written or oral. This Continuing Contract may be amended only if agreed to by both parties, in writing. Pursuant to Florida Statute, Section 287.055, this Continuing Contract shall have no time limitation, however, it may be terminated in accordance with Sections 6 and 7 hereof.

812 Invalid Provisions. Any term or provision of this Continuing Contract found to be invalid under any applicable Statute or rule of Law shall be deemed omitted, and the remainder of this Continuing Contract shall remain in full force and effect.

813 Non-Discrimination. SURVEYOR shall not discriminate against any client, employee or applicant for employment because of race, gender, age, color, religion, sex, national origin, physical or mental disability, marital status or medical status.

SURVEYOR shall take affirmative action to ensure that applicants, subcontractors, independent contractors, and employees are treated without discrimination in regard to their race, gender, color, religion, sex, national origin, disability, or medical status. SURVEYOR shall comply with all applicable sections of the Americans with Disabilities Act. SURVEYOR agrees that compliance with this Article constitutes a material condition to this Continuing Contract, and that it is binding upon the SURVEYOR, its successors, transferees, and assignees for the period during which any services are provided. SURVEYOR further assures that all consultants and subcontractors and independent contractors are not in violation of the terms of this Section of the Continuing Contract.

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

8.15 NO Third Party Beneficiaries. This Continuing Contract 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 Continuing Contract shall be deemed or construed to create or confer any benefit, right or cause of action for any third party or entity.

8.16 Funding. The obligation of TOWN for payment to SURVEYOR for services is limited by Florida law 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.

8.17 Manner of Performance. SURVEYOR agrees to perform its services in a professional manner and in accordance with all applicable Local, State, County, and Federal laws, rules, ordinances, regulations and codes. SURVEYOR agrees that the services provided shall be provided by employees that are educated, trained, experienced, certified, and licensed in all areas encompassed within their designated duties. SURVEYOR agrees to furnish to TOWN any and all documentation, certification, authorization, license, permit, or registration currently required by applicable laws, rules, and regulations. SURVEYOR 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 Continuing Contract. Failure of SURVEYOR to comply with this paragraph shall constitute a material breach of this Continuing Contract.

8.18 Public Records. The TOWN is subject to Chapter 119, Florida Statutes, the "Public Records Law." No claim of confidentiality or proprietary information in all or any



portion of a response will be honored unless a specific exemption from the Public Law exists and is cited in the response. An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed. Firm 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.

SURVEYOR agrees to maintain public records in SURVEYOR's possession or control in connections with SURVEYOR's performance under this agreement and to provide the public with access to public records in accordance with the record maintenance, production and codes requirement set forth in Chapter 119, Florida Statutes, or as otherwise required by law. SURVEYOR shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law. SURVEYOR's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this agreement by TOWN.

819 Public Entity Crimes. In accordance with the Public Entity Crimes Act, Section 287.133, Florida Statute, a person or affiliate who has been placed on the convicted vendor list maintained by the State of Florida Department of General Services following a conviction for a public entity crime may not submit a proposal on a contract with TOWN, may not be awarded or perform services as a surveyor, contractor, supplier, or subcontractor, under a contract with TOWN, and may not conduct business with TOWN for a period of **thirty six (36) months** from the date of being placed on the convicted vendor list. Violation of this section by SURVEYOR shall result in TOWN's immediate termination of this Continuing Contract.

820 Changes and Modification of Continuing Contract. TOWN and SURVEYOR may request changes that would increase, decrease or otherwise modify the scope of services to be provided under this Continuing Contract. Such changes only become part of this Continuing Contract and increase, decrease or otherwise modify the services under this Continuing Contract if evidenced by a written Change Order executed by TOWN and SURVEYOR, with the same formality and of equal dignity associated with the original execution of the Continuing Contract.

821 No Waiver of Rights. Neither the TOWN's review, approval or payment for any of the services required under this Continuing Contract shall be construed to operate as a waiver of any of TOWN's rights under this Continuing Contract or of any causes of action arising out SURVEYOR's performance of the services under this Continuing Contract, and SURVEYOR shall be and remain liable to the TOWN for all damages to the TOWN caused by the SURVEYOR's negligent or improper performance of any of the services furnished under this Continuing Contract, irrespective of the TOWN's review, approval or payment for any of the services under this Continuing Contract. The rights and remedies of the TOWN provided for under this Continuing Contract are in addition to all other rights and remedies provided to TOWN by law.

822 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.

823 Time is of the Essence. Time is of the essence for all of SURVEYOR's obligations under this Continuing Contract.

824 Days. The terms "days" as referenced in this Continuing Contract shall mean consecutive calendar days, unless specifically stated to be "work days."

825 Equal Opportunity Employment.

A. SURVEYOR will take affirmative action to ensure that employees are treated equally during employment, without regard to their race, religion, gender, color or, national origin. Such action must include, but not be limited to the following: employment upgrading; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SURVEYOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause included in section 8.18 of this Continuing Contract.

B. SURVEYOR shall comply with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor Regulations (41 CFR Part 60).

C. SURVEYOR shall comply with Copeland Anti-Kickback Act (18 USC 874), as supplemented in Department of Labor Regulations (29 CFR Part 3).

D. SURVEYOR shall comply with the Contract Work Hours and Safety Standards Act (40 US 327-330), as supplemented by Department of Labor Regulations (29 CFR Part 5).

826 Notice. Notices shall be given by Certified Mail (RRR), recognized overnight delivery service with tracking receipt, or hand delivery or courier with signed receipt. Notices shall be given to the following addresses:

**AS TO TOWN:**  
Andrew D. Berns  
Town Administrator

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

**With a copy to the Town Attorney:**

Keith M. Poliakoff  
Saul Ewing Arnstein & Lehr, LLP  
200 East Las Olas Blvd.  
Suite 1000  
Fort Lauderdale, FL 33301  
Philadelphia, PA 19102

**AS TO SURVEYOR:**

Lee Powers, PSM  
KEITH  
301 E. ATLANTIC Blvd.  
Pompano Beach, FL 33060  
954-788-3400

827 Independent Contractor. SURVEYOR is an independent contractor of TOWN under this Continuing Contract. In providing services, neither SURVEYOR 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 services rendered under this Continuing Contract shall be exclusively and solely those of SURVEYOR. This Continuing Contract shall not constitute or make the TOWN and SURVEYOR a partnership or joint venture.

828 Conflicts. Neither SURVEYOR nor its employees shall have or hold any continuing or frequently, recurring employment or contractual relationship that is substantially antagonistic or incompatible with Surveyor's loyal and conscientious exercise of judgment related to its performance under this Continuing Contract.

A. SURVEYOR agrees that none of its officers or employees shall, during the term of this Continuing Contract, 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, SURVEYOR 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 SURVEYOR or any other persons from representing themselves in any action or in any administrative or legal proceeding.

B. In the event SURVEYOR is permitted to utilize consultants or subcontractors to

perform any services required by this Continuing Contract, SURVEYOR agrees to prohibit such consultants or subcontractors, by written contract, from having any conflicts within the meaning of this Section.

829 Contingency Fee. SURVEYOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for SURVEYOR, to solicit or secure this Continuing Contract 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 SURVEYOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Continuing Contract. For a breach or violation of this provision, TOWN shall have the right to terminate this Continuing Contract without liability and, at its discretion, to deduct from the Continuing Contract price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

830 Materiality and Waiver of Breach. TOWN and SURVEYOR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Continuing Contract and, therefore, is a material term hereof. TOWN's failure to enforce any provision of this Continuing Contract shall not be deemed a waiver of such provision or modification of this Continuing Contract. A waiver of any breach of a provision of this Continuing Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Continuing Contract.

831 Joint Preparation. The TOWN and SURVEYOR 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 Continuing Contract 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 than the other.

832 Drug-Free Workplace. SURVEYOR shall maintain a drug-free workplace.

833 Headings. Headings are for convenience of reference only and shall not be considered in any interpretation of this Continuing Contract.

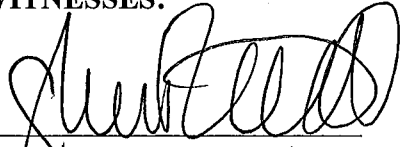
834 Binding Authority. Each person 'Signing this Continuing Contract on behalf of either party individually warrants that he or she has full legal power to execute this Continuing Contract on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Continuing Contract.

835 Truth-in-Negotiation Certificate. Signature of this Continuing Contract by SURVEYOR 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 Continuing Contract are accurate, complete, and current at the time of contracting.


**[SIGNATURE ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: KEITH, and the TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the 19<sup>th</sup> day of August 2019.

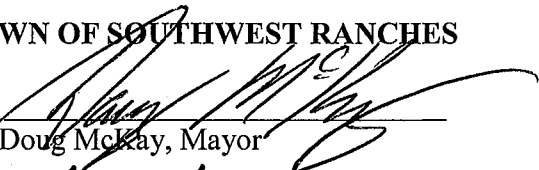
WITNESSES:

  
Marlene White

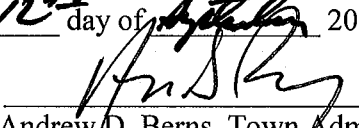
CONTRACTOR:

By:  Lee Powers  
Director of Surveying and Mapping (title)  
19<sup>th</sup> day of August 2019

TOWN OF SOUTHWEST RANCHES

By:   
Doug McKay, Mayor

12<sup>th</sup> day of September 2019

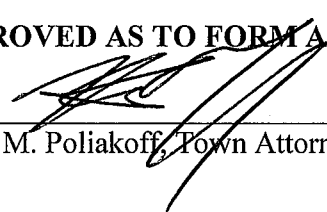
By:   
Andrew D. Berns, Town Administrator

12<sup>th</sup> day of September 2018

ATTEST:

  
Russell Mufiz, Assistant Town Administrator/Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

  
Keith M. Poliakoff, Town Attorney



**EXHIBIT "A"**  
**AGREEMENT**  
**BETWEEN THE**  
**TOWN OF SOUTHWEST RANCHES**  
**AND**  
**BAXTER & WOODMAN, INC.**  
**FOR**  
**A CONTINUING CONTRACT FOR PROFESSIONAL SURVEYING SERVICES**  
**RLI No. 19-004**

AGREEMENT FOR  
CONTINUING CONTRACT FOR  
PROFESSIONAL SURVEYING SERVICES

This Continuing Contract for Professional Surveying Services ("CONTINUING CONTRACT") is made and entered into this 12<sup>th</sup> day of September 2019, by and between the Town of Southwest Ranches, Florida, hereinafter referred to as "TOWN", and Baxter & Woodman, Inc. a Florida Corporation licensed as an Authorized Professional Surveying Company with the State of Florida under License LB8175, hereinafter referred to as "SURVEYOR".

WITNESSETH:

RECITALS:

WHEREAS, the TOWN has provided notice of the desired professional services and pursuant to RLI No. 19-004, and adhered to the selection process pursuant to and in accordance with the Consultants' Competitive Negotiation Act, Florida Statute, 287.055 and the TOWN's Procurement Code; and,

WHEREAS, the TOWN desires to engage the SURVEYOR to perform certain professional surveying services in accordance with this CONTINUING CONTRACT, as permitted by the Consultants' Competitive Negotiation Act; and,

WHEREAS, the SURVEYOR desires to provide such professional surveying services in accordance with this CONTINUING CONTRACT; and,

WHEREAS, the TOWN represents that it has the authority to engage the SURVEYOR for the services set forth in RLI 19-004, this CONTINUING CONTRACT, and as approved by the TOWN's Resolution No. 2019-058.

NOW, THEREFORE, in consideration of the premises and the mutual benefits which will accrue to the parties hereto in carrying out the terms of this CONTINUING CONTRACT, it is mutually understood and agreed as follows:

The above Recitals are true and correct and are incorporated herein and made a part of this CONTINUING CONTRACT.

**ARTICLE 1 - DESCRIPTION OF PROFESSIONAL SERVICES**

1.1 Standard of Care. All services rendered by SURVEYOR and its consultants pursuant



to this Continuing Contract will be performed in accordance with the standard of professional skill and care required for surveyors and other professionals retained to assist with, from commencement to finish of surveying services of the projects contemplated by this Continuing Contract; provided, however, that no work shall be performed unless and until a written work authorization is executed and the TOWN has issued a Notice to Proceed as to any of the projects. SURVEYOR will perform all services consistent with the interests of the TOWN and in accordance with the requirements of the State of Florida. SURVEYOR agrees to timely perform its services so as not to delay the projects under this CONTRACT, time being of the essence, and as set forth in the Notice to Proceed. The projects ("Project" or "Projects") which may be assigned to SURVEYOR, and subject of a Notice to Proceed, are those listed in RLI No. 19-004, which RLI is incorporated herein by reference.

1.1.1 Points of Contact.

The TOWN's Designated Point of Contact (or "Representative") shall be:

Rod Ley, Town Engineer Tel:

954-434-0008

**Email:** [rley@southwestranches.org](mailto:rley@southwestranches.org)

The SURVEYOR's Designated Point of Contact shall be:

Surveyor's Name

Attn: Tom English

Tel: 954-666-5462

Email: [tenglish@baxterwoodman.com](mailto:tenglish@baxterwoodman.com)

1.1.2 Licensing and Other Obligations of Surveyor. The SURVEYOR will provide appropriate documentation to the TOWN to demonstrate that it and all of its consultants are properly licensed to perform all services relative to this Continuing Contract.

1.1.2.1 A consultant is a person or entity who the SURVEYOR has retained and who the SURVEYOR will pay to perform any of the services described in this Continuing Contract. Reasonable funds for such payment have been included as part of SURVEYOR's compensation under this Continuing Contract.

1.1.2.2 The SURVEYOR shall be responsible to the TOWN for the acts and omissions of its employees, consultants, sub-consultants and their respective employees, or persons performing any of the services under this Continuing Contract.

1.1.2.3 The SURVEYOR shall have the sole obligation and responsibility to select, control and supervise all of its consultants. The SURVEYOR may not contract with anyone with whom the TOWN has a reasonable objection. Contracts between the

SURVEYOR and the consultants shall require each consultant to be bound to the SURVEYOR for all obligations and responsibilities which the SURVEYOR, by this Continuing Contract assumes toward the TOWN. This provision also applies to substitute consultants hired during the course of this Continuing Contract to replace existing consultants in accordance with this Continuing Contract. The SURVEYOR shall retain responsibility for coordination of any consultants engaged by the SURVEYOR to provide services under this Continuing Contract and will likewise coordinate its services with those consultants retained by the TOWN. The TOWN agrees that all communications of the TOWN with the SURVEYOR's consultants will be made through the SURVEYOR's Representative, unless such consultants have also been retained by the TOWN.

1.1.2.4 The SURVEYOR and its consultants will perform, without expense to the TOWN, such services as may be required to correct or remedy any negligent act, error or omission of the SURVEYOR or its consultants.

1.1.2.5 The SURVEYOR shall be responsible to the TOWN for the acts and omissions of its employees, consultants, sub-consultants and their respective employees or persons performing any of the services under this Agreement.

1.1.2.6 The SURVEYOR shall have the sole obligation and responsibility to select, control, payment and supervision of all of its consultants.

1.1.3 Conflicts of Interest. The SURVEYOR shall not engage in any activity, or accept any employment, receive any monetary compensation, interest or contribution that could create the appearance of impropriety or compromise the SURVEYOR's professional judgment with respect to this Continuing Contract.

## **ARTICLE 2 - TOWN-PROVIDED ITEMS**

2.1 The TOWN's list of project requirements shall be provided to the SURVEYOR and shall be utilized by the SURVEYOR to prepare the Project Program.

2.2 The TOWN shall provide SURVEYOR with accurate and complete information. No information derived from the TOWN shall relieve the SURVEYOR from any risk or from fulfilling all terms of the Contract. The SURVEYOR shall be responsible for any additional investigations required to fulfill all the terms of the Contract.

2.3 Service Work Authorization and Notice to Proceed. For all services covered under this Continuing Contract, SURVEYOR shall be required to obtain an approved written Work Authorization and a written "Notice to Proceed" by the Town Administrator or his authorized representative, in advance of providing any such services to the Town. The written Work Authorization shall specify in detail the nature of the services requested, the lump sum or not to exceed cost to the TOWN for same (with actual cost to be fully

substantiated by SURVEYOR upon completion), and the time frame for completion. All services performed by SURVEYOR without a written authorization from the TOWN shall be performed at SURVEYOR's sole cost and expense.

### **ARTICLE 3- FEES**

3.1 Subject to the TOWN's issuance of a "Notice to Proceed" and individual written work orders, the TOWN shall pay the SURVEYOR the total compensation for the Project(s), in accordance with the total fee indicated in a Project fee schedule executed by both the TOWN and Surveyor, and which will be developed based upon the approved Rate and Fee Schedule. SURVEYOR's total compensation includes all fees, costs and expenses that may be incurred by the SURVEYOR to complete the design and construction administration of the Project, including, but not limited to, all professional services provided by or through the SURVEYOR, drawings, calculations and other documents, travel expenses and all other costs or expenses, for or related to the Project, as well as the time for performance. A Notice to Proceed shall not be issued by the TOWN until a Project fee schedule has been fully executed. Additionally, SURVEYOR shall not perform any services without individual written work orders which may be required to be provided by the Town Administrator, and in accordance with this Continuing Contract. Hourly rates for SURVEYOR's consultants shall also be in accordance with the Rate and Fee Schedule.

3.2 Payment on account of services rendered, shall be made monthly, based on the percentage of completion of the Project, upon presentation of the SURVEYOR's invoice for same, along with a partial waiver and release from SURVEYOR indicating a release of all claims, including, but not limited to, equitable liens, through the last date of services rendered and included in the invoice. Should any portion of the invoice be in dispute, other portions, if any, that are not in dispute or not deemed, by the TOWN, to be funds likely necessary to be put towards the issue in dispute, shall be paid per the terms of this Continuing Contract. Any billing concerns shall be submitted in writing by the TOWN to the SURVEYOR describing the disputed portion of the invoice in detail for discussion and resolution.

3.3 Payment on account of undisputed amounts of the Surveyor's Total Compensation shall be made within thirty (30) days of invoice date or as otherwise provided by Section 218.73, Florida Statute.

3.4 Payments due to SURVEYOR which remain unpaid for thirty (30) days after the due date provided herein, shall bear interest at the statutory rate provided by Section 218.74, Florida Statute.

3.5 Payment for the SURVEYOR's services will be made in accordance with the local government Prompt Payment Act, Section 218.73, Florida Statute.

3.6 Purchasing Card (PCARD) Acceptance: The method of payment (check/credit card) is at the Town's sole option. The Town may choose to compensate vendors for goods and/or services via a Town Purchasing Card (PCARD). No other costs or services shall be billed to the Town, and without limiting the generality of the foregoing, vendor shall not impose any service charge or fee, penalty, or other exaction of any kind against payments rendered by the PCARD. Payments made by PCARD shall be accepted on a "same as cash" basis.

#### **ARTICLE 4 - CHANGE ORDERS**

4.1 Definition of Change. Change in the services to be performed by the SURVEYOR, or the SURVEYOR's consultants, may only be accomplished after execution of this Continuing Contract, without invalidating the Continuing Contract, by mutual agreement and execution of a written Change Order. SURVEYOR assumes all risks and responsibilities for performing all services on behalf of the TOWN for the amount determined in accordance with Article 3. The TOWN shall not be liable for any cost increases that may arise during the performance of services. Any adjustments to the services must be by written Change Order issued in accordance with the terms and conditions of this Continuing Contract. To the extent that SURVEYOR proceeds to perform additional services in excess of those services described in an executed Notice to Proceed that has been signed by the Town Administrator without an executed written Change Order issued in accordance with this Continuing Contract, such services shall be at SURVEYOR's own risk at no charge to TOWN.

#### **ARTICLE 5 - OWNERSHIP OF DOCUMENTS**

5.1 Drawings, specifications and other documents, including those in electronic form, prepared by the SURVEYOR and the SURVEYOR's consultants are Instruments of Service. The SURVEYOR and the SURVEYOR's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. The TOWN shall have the right to use the Instruments of Service. The TOWN's right of use in accordance with this Paragraph specifically authorizes the TOWN to utilize the Instruments of Service to complete the Project as well as to perform alterations, repair and additions to the Project. This right of use applies even if this Agreement is terminated. In that event, the TOWN will be entitled to continue to utilize the Instruments of Service and shall have the unrestricted right to use, reproduce and to make derivative works of the Instruments of Service to complete the Project as long as the TOWN has paid SURVEYOR for all fees associated only with the preparation of the Instruments of Service in accordance with this Continuing Contract. Should this Continuing Contract be terminated, SURVEYOR and its consultants will continue to own the copyright to these Instruments of Service in accordance with this Continuing Contract. However, the TOWN will, through an irrevocable, perpetual, royalty-free license, have the exclusive right to use the

Instruments of Service, without restriction or limitation, to construct the buildings and improvements relative to this Project as well as repair, maintain or construct future additions to the Project. Upon the TOWN's request, the SURVEYOR and its consultants will furnish to the TOWN, copies, including reproducible copies, electronic data and computer files of the Drawings and Specifications and other Instruments of Service.

5.2 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the TOWN's or SURVEYOR's rights.

5.3 SURVEYOR represents and warrants to TOWN that it is the owner of all Instruments of Service prepared by itself and has the sole authority to grant TOWN use provisions of these Instruments of Service in accordance with this Agreement. With respect to Instruments of Service for the Project owned by SURVEYOR's consultants, SURVEYOR, in its agreement with such consultants to provide services for this Project, shall cause such consultants to grant to the TOWN the same use provisions as are included herein.

## **ARTICLE 6 - TERM OF CONTRACT**

6. The continuing contract for professional surveying services shall have an initial three (3) years term, with three (3), two (2) year extensions. An extension shall be by mutual agreement by both parties. A contract extension may be approved by the Town Administrator.

## **ARTICLE 7 - TERMINATION**

7.1 Termination by Town for Convenience. This Continuing Contract may be terminated by the Town for convenience upon at least thirty days' written notice to the SURVEYOR. Under such conditions, SURVEYOR will only be entitled to receive compensation for services rendered that are specifically within the services for which the Town Administrator has, in writing, authorized SURVEYOR to proceed and only up through the date that is no later than thirty days after the date written notice for such termination for convenience is issued by the TOWN to SURVEYOR. SURVEYOR will be able to recover for its work performed; actual cost and expenses; and fair and reasonable sums for overhead and profit for work performed. Upon receipt of a notice of termination for convenience by the TOWN, the SURVEYOR will initiate all reasonable steps to mitigate further expenses from accruing. No other compensation and/or damages will be due SURVEYOR from the TOWN pursuant to this Paragraph.

7.2 Default by SURVEYOR. In addition to defaults resulting from the SURVEYOR's failure to strictly comply with any term, condition, or agreement set forth herein, the SURVEYOR shall be in default under this Continuing Contract if:

- A. The SURVEYOR ceases to carry the insurance required hereunder or the insurance is cancelled.
- B. A default should occur in the performance of any consultant or contractor employed by the SURVEYOR and not corrected by SURVEYOR or another replacement consultant or contractor employed by SURVEYOR within ten (10) days after notice from the TOWN.
- C. The SURVEYOR fails to maintain all permit-related documents and make such documents available to the TOWN upon reasonable request.
- D. The SURVEYOR fails to timely (30 days) pay any consultant or contractor employed by the SURVEYOR.  
Notwithstanding the foregoing, SURVEYOR shall have the right to contest disputed invoices in good faith, without being in default of this Continuing Contract, but will bond off or cause to be satisfied of record any liens that may be recorded erroneously in connection therewith within ten (10) days of the date of recording of such lien.
- E. The SURVEYOR fails to correct any error or material inconsistency in its or its consultants Drawings and Specifications or other Instruments of Service within ten (10) days after such error or material inconsistency is reported to the SURVEYOR.
- F. The SURVEYOR fails to perform its obligations under this Continuing Contract in a timely and expeditious manner within ten (10) days after notice from the TOWN.

7.3 TOWN'S Compensation for Default by SURVEYOR. In the event of termination due to the fault of the SURVEYOR under this Continuing Contract, the TOWN shall be compensated for all reasonable costs and expenses including reasonable attorneys' fees and costs incurred in connection with replacing the SURVEYOR hereunder, in reviewing, analyzing, or enforcing the TOWN's rights hereunder or in connection with a replacement surveyor and the completion of the SURVEYOR's services hereunder. This is not intended to limit the TOWN's rights or ability to recover damages in the event of a breach by the SURVEYOR under this Continuing Contract. Additionally, the TOWN shall have the right to use the SURVEYOR's Drawings, Specifications and other Instruments of Service in the event of a default by the SURVEYOR, regardless of the payment status for such Instruments of Service.

## ARTICLE 8 - MISCELLANEOUS PROVISIONS

8.1 Governing Law, Jurisdiction, Venue and Attorney's Fees. In the event of any action, litigation, or proceedings of any type regarding or relating to performance of this Continuing Contract, the prevailing party shall be entitled to recover its reasonable costs, expert's fees and attorney's fees at all hearing, trial, bankruptcy, and appellate levels. All disputes pursuant to this Continuing Contract shall be first subject to mediation in Broward County with a mutually agreeable Florida Supreme Court Certified Mediator who is knowledgeable in the rendering of professional surveying services for construction projects similar to the projects under this Continuing Contract. Failing resolution by mediation, any litigation shall be filed in a court of competent jurisdiction and the sole and exclusive venue shall be in Broward County, Florida. This Continuing Contract shall be governed by the laws of the State of Florida. Mediation shall be conducted within sixty (60) days of either Party's written request. The parties shall share, 50/50, the cost of the mediator.

### 8.2 Waiver of Right to Jury Trial

**BY ENTERING INTO THIS CONTINUING CONTRACT, SURVEYOR 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 CONTINUING CONTRACT.**

8.3 Insurance Coverages and Minimum Amounts. SURVEYOR shall secure and maintain, at its own expense, and keep in effect during the full period of the Continuing Contract and at least one (1) year beyond its completion a policy or policies of insurance, which must include the following coverages and minimum limits of liability:

8.3.1 Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.

8.3.2 Worker's Compensation and Employer's Liability Insurance for all employees of the SURVEYOR engaged in services under the Contract in accordance with the laws of the State of Florida. SURVEYOR hereby agrees to be responsible for the employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

8.3.3 (Comprehensive) Commercial General Liability Insurance with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence. Coverage shall specifically include the following minimum limits not less than those required for Bodily Injury Liability and

Property Damage at \$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability annual aggregate:

1. Premises and Operations;
2. Independent Contractors;
3. Products and Completed Operations;
4. Broad Form Property Damage;
5. Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract;
6. Personal Injury Coverage with employment and contractual exclusions removed and deleted, and;
7. Explosion, collapse, underground coverage (X-C-U)

8.3.4 Comprehensive Automobile Liability Insurance, for all owned, non-owned and hired automobiles and other vehicles used by SURVEYOR in the performance of services pursuant to this Contract with the following minimum limits of liability: \$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence.

8.3.5 Aggregate Limits. Commercial General Liability shall be \$2,000,000.

**\*All insurance policies shall name and endorse the following as "Additional Named Insureds":**

TOWN OF SOUTHWEST RANCHES  
Attn: Andrew D. Berns, Town Administrator.  
13400 Griffin Road.  
Southwest Ranches, FL 33330

**\*The additional named insured endorsement shall be reflected on the Certificate of Insurance.**

All insurance shall be issued by companies rated "A-" or better per A.M. Best's Key Rating Guide, latest edition and authorized to issue insurance in the State of Florida. It shall be the responsibility of the vendor and insurer to notify the Town Administrator of cancellation, lapse, or material modification of any insurance policies insuring the vendor, which relate to the activities of such vendor and the Town.

**All notifications shall be in writing, and shall be submitted to the Town Administrator within thirty (30) days prior to cancellation of such policies. This requirement shall be reflected on the Certificate of Insurance.**

Bidders are required to submit a list of claims presently outstanding and claims within the past ten (10) years against their liability coverage. This information must be listed on the form provided and signed by the agent of the insurance carrier. If no outstanding claims exist, a statement of this fact must be signed by the agent of the insurance carrier.



Failure to fully and satisfactorily comply with the Town's insurance and bonding requirements set forth herein will authorize the Town Administrator to implement a rescission or cancellation of the Bid award within thirty (30) days of awarding. The Bidder hereby holds the Town harmless and agrees to indemnify Town and covenants not to file a Bid protest or sue the Town by virtue of such cancellation or rescission.

84 Indemnification. To the fullest extent permitted by Florida Statute, Section 725.08, SURVEYOR shall indemnify, hold harmless the TOWN, its officers, agents and employees, harmless from any and all claims, damages, losses, liabilities and expenses, direct, indirect or consequential arising out of or alleged to have arisen out of or in consequence of the negligence, recklessness or intentional wrongful conduct of the SURVEYOR or its subcontractors, agents, officers, employees or independent contractors pursuant to the Continuing Contract, specifically including but not limited to those caused by or arising out of negligent act, omission, or default of the SURVEYOR and/or its subcontractors, agents, or employees in the performance of the operations or services under the Continuing Contract.

#### 8.4.1 Errors and Omissions:

The SURVEYOR to the extent of its failure to perform in accordance with the standard of care set forth in this Agreement, is responsible for the professional quality, technical accuracy, completeness, performance and coordination of all Work required under this Agreement (including the Work performed by sub-consultants and Subcontractors), within the specified time period and specified cost. The SURVEYOR shall perform the Work utilizing the skill, knowledge and judgment ordinarily possessed and used by a proficient SURVEYOR with respect to the disciplines required for the performance of the Work in the State of Florida. The SURVEYOR is responsible for, and represents that the Work conforms to TOWN'S requirements as set forth in this Agreement. The SURVEYOR shall be and remain liable to the TOWN for all damages to the TOWN caused by the SURVEYOR'S negligent acts, recklessness, intentionally wrongful conduct or errors or omissions in the performance of the Work. In addition to all other rights and remedies, which the TOWN may have, the SURVEYOR shall, at its expense, re-perform the services to correct any deficiencies, which result from the SURVEYOR'S failure to perform in accordance with the above standards. The TOWN shall notify the SURVEYOR in writing of any deficiencies and shall approve the method and timing of the corrections. Neither the TOWN'S inspection, review, approval or acceptance of, nor payment for, any of the Work required under this Agreement shall be construed to relieve the SURVEYOR or any sub-consultant or subcontractor of its obligations and responsibilities under this Agreement, nor constitute a waiver of any of the TOWN'S rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The SURVEYOR and its sub-consultants and Subcontractors shall be and remain liable to the TOWN in accordance with applicable

law for all damages to TOWN caused by any failure of the SURVEYOR or its sub-consultants and Subcontractors to comply with the terms and conditions of this Agreement or by the SURVEYOR'S or Sub-consultants' or Subcontractors' misconduct, recklessness, unlawful acts, negligent acts, errors or omissions in the performance of this Agreement. With respect to the performance of Work by sub-consultants and Subcontractors, the SURVEYOR shall, in approving and accepting such Work, ensure the professional quality, completeness, and coordination of sub-consultant's and subcontractor's Work.

85 Patent and Copyright Indemnification. SURVEYOR agrees to indemnify, defend, save and hold harmless the TOWN, its officers, agents and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other such work in connection with the performance of the Continuing Contract.

86 Successors and Assigns. This Continuing Contract is binding upon the parties hereto, their successors and assigns and replaces, provided, however, neither party shall assign or transfer any interest in this Continuing Contract without the written consent of the other party.

87 No Damage for Delays by TOWN. SURVEYOR's sole remedy for any (i) delay in the commencement, prosecution, or completion of its services, (ii) hindrance or obstruction in performance of its services, (iii) loss of productivity, or (iv) other similar claims (collectively referred to in this subparagraph as "delays"), whether or not such delays are foreseeable, shall be non-compensable. The TOWN shall act reasonably in granting extensions of time to the SURVEYOR. All extensions to the time for performance shall be authorized only by written Change Order executed by the TOWN and SURVEYOR. In no event shall the SURVEYOR be entitled to any other compensation or recovery of any damages under or pursuant to this subparagraph in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration.

88 Audit and Inspection Rights and Retention of Records by SURVEYOR. The TOWN shall have the right to audit the books, records and accounts of SURVEYOR that are related to this Continuing Contract. SURVEYOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Continuing Contract. SURVEYOR 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 Continuing Contract for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statute), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of

three (3) years after termination or expiration of this Continuing Contract, unless SURVEYOR is notified in writing by Town of the need to extend the retention period. Such retention of such records and documents shall be at SURVEYOR's sole expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by TOWN to be applicable to SURVEYOR's records, SURVEYOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by SURVEYOR. 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, SURVEYOR shall respond to the reasonable inquiries of success or surveyors, if any, and allow successor surveyors to receive working papers relating to matters of continuing significance. In addition, SURVEYOR shall provide a complete copy of *all* working papers including electronic files to the TOWN, prior to final payment by the TOWN under this Continuing Contract.

89 Performance During Disputes. Notwithstanding anything contained in this Continuing Contract to the contrary, in the event of any dispute noticed in writing between the TOWN and the SURVEYOR, the SURVEYOR and, if applicable, its consultants will continue to provide services on the Projects under this Continuing Contract pursuant to the terms of this Continuing Contract so long as the SURVEYOR receives payment for the matter(s) not in dispute.

810 TOWN's Review of Documents. Review and approval of documents or submittals by the TOWN shall be for general design compliance and approval of such submittals shall not relieve the SURVEYOR of any responsibility or liability hereunder.

811 Entire Agreement. This Continuing Contract is deemed effective only upon execution by both parties. Additionally, this written Continuing Contract represents the entire and integrated agreement between the TOWN and the SURVEYOR and supersedes all prior negotiations or agreements, either written or oral. This Continuing Contract may be amended only if agreed to by both parties, in writing. Pursuant to Florida Statute, Section 287.055, this Continuing Contract shall have no time limitation, however, it may be terminated in accordance with Sections 6 and 7 hereof.

812 Invalid Provisions. Any term or provision of this Continuing Contract found to be invalid under any applicable Statute or rule of Law shall be deemed omitted, and the remainder of this Continuing Contract shall remain in full force and effect.

813 Non-Discrimination. SURVEYOR shall not discriminate against any client, employee or applicant for employment because of race, gender, age, color, religion, sex, national origin, physical or mental disability, marital status or medical status.

SURVEYOR shall take affirmative action to ensure that applicants, subcontractors, independent contractors, and employees are treated without discrimination in regard to their race, gender, color, religion, sex, national origin, disability, or medical status. SURVEYOR shall comply with all applicable sections of the Americans with Disabilities Act. SURVEYOR agrees that compliance with this Article constitutes a material condition to this Continuing Contract, and that it is binding upon the SURVEYOR, its successors, transferees, and assignees for the period during which any services are provided. SURVEYOR further assures that all consultants and subcontractors and independent contractors are not in violation of the terms of this Section of the Continuing Contract.

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

815 NO Third Party Beneficiaries. This Continuing Contract 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 Continuing Contract shall be deemed or construed to create or confer any benefit, right or cause of action for any third party or entity.

816 Funding. The obligation of TOWN for payment to SURVEYOR for services is limited by Florida law 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.

817 Manner of Performance. SURVEYOR agrees to perform its services in a professional manner and in accordance with all applicable Local, State, County, and Federal laws, rules, ordinances, regulations and codes. SURVEYOR agrees that the services provided shall be provided by employees that are educated, trained, experienced, certified, and licensed in all areas encompassed within their designated duties. SURVEYOR agrees to furnish to TOWN any and all documentation, certification, authorization, license, permit, or registration currently required by applicable laws, rules, and regulations. SURVEYOR 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 Continuing Contract. Failure of SURVEYOR to comply with this paragraph shall constitute a material breach of this Continuing Contract.

818 Public Records. The TOWN is subject to Chapter 119, Florida Statutes, the "Public Records Law." No claim of confidentiality or proprietary information in all or any

portion of a response will be honored unless a specific exemption from the Public Law exists and is cited in the response. An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed. Firm 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.

SURVEYOR agrees to maintain public records in SURVEYOR's possession or control in connections with SURVEYOR's performance under this agreement and to provide the public with access to public records in accordance with the record maintenance, production and codes requirement set forth in Chapter 119, Florida Statutes, or as otherwise required by law. SURVEYOR shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law. SURVEYOR's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this agreement by TOWN.

819 Public Entity Crimes. In accordance with the Public Entity Crimes Act, Section 287.133, Florida Statute, a person or affiliate who has been placed on the convicted vendor list maintained by the State of Florida Department of General Services following a conviction for a public entity crime may not submit a proposal on a contract with TOWN, may not be awarded or perform services as a surveyor, contractor, supplier, or subcontractor, under a contract with TOWN, and may not conduct business with TOWN for a period of **thirty six (36) months** from the date of being placed on the convicted vendor list. Violation of this section by SURVEYOR shall result in TOWN's immediate termination of this Continuing Contract.

820 Changes and Modification of Continuing Contract. TOWN and SURVEYOR may request changes that would increase, decrease or otherwise modify the scope of services to be provided under this Continuing Contract. Such changes only become part of this Continuing Contract and increase, decrease or otherwise modify the services under this Continuing Contract if evidenced by a written Change Order executed by TOWN and SURVEYOR, with the same formality and of equal dignity associated with the original execution of the Continuing Contract.

821 No Waiver of Rights. Neither the TOWN's review, approval or payment for any of the services required under this Continuing Contract shall be construed to operate as a waiver of any of TOWN's rights under this Continuing Contract or of any causes of action arising out SURVEYOR's performance of the services under this Continuing Contract, and SURVEYOR shall be and remain liable to the TOWN for all damages to the TOWN caused by the SURVEYOR's negligent or improper performance of any of the services furnished under this Continuing Contract, irrespective of the TOWN's review, approval or payment for any of the services under this Continuing Contract. The rights and remedies of the TOWN provided for under this Continuing Contract are in addition to all other rights and remedies provided to TOWN by law.

822 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.

823 Time is of the Essence. Time is of the essence for all of SURVEYOR's obligations under this Continuing Contract.

824 Days. The terms "days" as referenced in this Continuing Contract shall mean consecutive calendar days, unless specifically stated to be "work days."

825 Equal Opportunity Employment.

A. SURVEYOR will take affirmative action to ensure that employees are treated equally during employment, without regard to their race, religion, gender, color or, national origin. Such action must include, but not be limited to the following: employment upgrading; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SURVEYOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause included in section 8.18 of this Continuing Contract.

B. SURVEYOR shall comply with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor Regulations (41 CFR Part 60).

C. SURVEYOR shall comply with Copeland Anti-Kickback Act (18 USC 874), as supplemented in Department of Labor Regulations (29 CFR Part 3).

D. SURVEYOR shall comply with the Contract Work Hours and Safety Standards Act (40 US 327-330), as supplemented by Department of Labor Regulations (29 CFR Part 5).

826 Notice. Notices shall be given by Certified Mail (RRR), recognized overnight delivery service with tracking receipt, or hand delivery or courier with signed receipt. Notices shall be given to the following addresses:

**AS TO TOWN:**  
Andrew D. Berns  
Town Administrator

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

**With a copy to the Town Attorney:**

Keith M. Poliakoff  
Saul Ewing Arnstein & Lehr, LLP  
200 East Las Olas Blvd.  
Suite 1000  
Fort Lauderdale, FL 33301  
Philadelphia, PA 19102

**AS TO SURVEYOR:**

Louis D. Haussmann  
Executive Vice President/COO  
8678 Ridgefield Road  
Crystal Lake, IL 60014

827 Independent Contractor. SURVEYOR is an independent contractor of TOWN under this Continuing Contract. In providing services, neither SURVEYOR 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 services rendered under this Continuing Contract shall be exclusively and solely those of SURVEYOR. This Continuing Contract shall not constitute or make the TOWN and SURVEYOR a partnership or joint venture.

828 Conflicts. Neither SURVEYOR nor its employees shall have or hold any continuing or frequently, recurring employment or contractual relationship that is substantially antagonistic or incompatible with Surveyor's loyal and conscientious exercise of judgment related to its performance under this Continuing Contract.

A. SURVEYOR agrees that none of its officers or employees shall, during the term of this Continuing Contract, 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, SURVEYOR 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 SURVEYOR or any other persons from representing themselves in any action or in any administrative or legal proceeding.

B. In the event SURVEYOR is permitted to utilize consultants or subcontractors to

perform any services required by this Continuing Contract, SURVEYOR agrees to prohibit such consultants or subcontractors, by written contract, from having any conflicts within the meaning of this Section.

829 Contingency Fee. SURVEYOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for SURVEYOR, to solicit or secure this Continuing Contract 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 SURVEYOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Continuing Contract. For a breach or violation of this provision, TOWN shall have the right to terminate this Continuing Contract without liability and, at its discretion, to deduct from the Continuing Contract price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

830 Materiality and Waiver of Breach. TOWN and SURVEYOR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Continuing Contract and, therefore, is a material term hereof. TOWN's failure to enforce any provision of this Continuing Contract shall not be deemed a waiver of such provision or modification of this Continuing Contract. A waiver of any breach of a provision of this Continuing Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Continuing Contract.

831 Joint Preparation. The TOWN and SURVEYOR 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 Continuing Contract 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 than the other.

832 Drug-Free Workplace. SURVEYOR shall maintain a drug-free workplace.

833 Headings. Headings are for convenience of reference only and shall not be considered in any interpretation of this Continuing Contract.

834 Binding Authority. Each person 'Signing this Continuing Contract on behalf of either party individually warrants that he or she has full legal power to execute this Continuing Contract 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 Continuing Contract.



835 Truth-in-Negotiation Certificate. Signature of this Continuing Contract by SURVEYOR 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 Continuing Contract are accurate, complete, and current at the time of contracting.

**[SIGNATURE ON NEXT PAGE]**

**Town of Southwest Ranches  
Continuing Contract for Professional Surveying Services  
Baxter & Woodman, Inc. Rate Table**

| <b>Classification</b>              | <b>Hourly Rate</b> |
|------------------------------------|--------------------|
| Senior Engineer – Level III/IV     | \$168.00/hr        |
| Professional Surveyor PSM          | \$150.00/hr        |
| 2-Man Survey Crew                  | \$130.00/hr        |
| Engineer – Level I/II              | \$100.00/hr        |
| Senior Engineering CADD Technician | \$110.00/hr        |
| Clerical                           | \$80.00/hr         |

- Reimbursable Expenses – billed at direct costs
- Subconsultant Costs – billed with 10% markup
- Rates effective August 2019 through August 2020

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: Baxendale & Son, Inc. and the TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the 12<sup>th</sup> day of September 2019.

WITNESSES:

Barbara Tobin  
\_\_\_\_\_

CONTRA

By: [Signature]  
Louis D. Haussmann, Ex. VP (title)  
20th day of August 2019

TOWN OF SOUTHWEST RANCHES

By: [Signature]  
Doug McKay, Mayor  
12<sup>th</sup> day of September 2019  
By: [Signature]  
Andrew D. Berns, Town Administrator  
12<sup>th</sup> day of September 2019

ATTEST:

[Signature]  
Russell Muñiz, Assistant Town Administrator/Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]  
Keith M. Poliakoff, Town Attorney



**EXHIBIT "A"**  
**AGREEMENT**  
**BETWEEN THE**  
**TOWN OF SOUTHWEST RANCHES**  
**AND**  
**CRAVEN, THOMPSON & ASSOCIATES, INC.**  
**FOR**  
**A CONTINUING CONTRACT FOR PROFESSIONAL SURVEYING SERVICES**  
**RLI No. 19-004**

AGREEMENT FOR  
CONTINUING CONTRACT FOR  
PROFESSIONAL SURVEYING SERVICES

This Continuing Contract for Professional Surveying Services ("CONTINUING CONTRACT") is made and entered into this 12<sup>th</sup> day of September 2019, by and between the Town of Southwest Ranches, Florida, hereinafter referred to as "TOWN", and Craven, Thompson & Associates, Inc a Florida Corporation licensed as an Authorized Professional Surveying Company with the State of Florida under License LB271, hereinafter referred to as "SURVEYOR".

WITNESSETH:

RECITALS:

WHEREAS, the TOWN has provided notice of the desired professional services and pursuant to RLI No. 19-004, and adhered to the selection process pursuant to and in accordance with the Consultants' Competitive Negotiation Act, Florida Statute, 287.055 and the TOWN's Procurement Code; and,

WHEREAS, the TOWN desires to engage the SURVEYOR to perform certain professional surveying services in accordance with this CONTINUING CONTRACT, as permitted by the Consultants' Competitive Negotiation Act; and,

WHEREAS, the SURVEYOR desires to provide such professional surveying services in accordance with this CONTINUING CONTRACT; and,

WHEREAS, the TOWN represents that it has the authority to engage the SURVEYOR for the services set forth in RLI 19-004, this CONTINUING CONTRACT, and as approved by the TOWN's Resolution No. 2019-058.

NOW, THEREFORE, in consideration of the premises and the mutual benefits which will accrue to the parties hereto in carrying out the terms of this CONTINUING CONTRACT, it is mutually understood and agreed as follows:

The above Recitals are true and correct and are incorporated herein and made a part of this CONTINUING CONTRACT.

**ARTICLE 1 - DESCRIPTION OF PROFESSIONAL SERVICES**

1.1 Standard of Care. All services rendered by SURVEYOR and its consultants pursuant

to this Continuing Contract will be performed in accordance with the standard of professional skill and care required for surveyors and other professionals retained to assist with, from commencement to finish of surveying services of the projects contemplated by this Continuing Contract; provided, however, that no work shall be performed unless and until a written work authorization is executed and the TOWN has issued a Notice to Proceed as to any of the projects. SURVEYOR will perform all services consistent with the interests of the TOWN and in accordance with the requirements of the State of Florida. SURVEYOR agrees to timely perform its services so as not to delay the projects under this CONTRACT, time being of the essence, and as set forth in the Notice to Proceed. The projects ("Project" or "Projects") which may be assigned to SURVEYOR, and subject of a Notice to Proceed, are those listed in RLI No. 19-004, which RLI is incorporated herein by reference.

1.1.1 Points of Contact.

The TOWN's Designated Point of Contact (or "Representative") shall be:

Rod Ley, Town Engineer Tel:  
954-434-0008

**Email: [rley@southwestranches.org](mailto:rley@southwestranches.org)**

The SURVEYOR's Designated Point of Contact shall be:

Surveyor's Name

Attn: Richard D. Pryce, PSM, Vice President, Surveying & GIS

Tel: (954) 739-6400, Ext. 327

Email: [rpryce@craventhompson.com](mailto:rpryce@craventhompson.com)

1.1.2 Licensing and Other Obligations of Surveyor. The SURVEYOR will provide appropriate documentation to the TOWN to demonstrate that it and all of its consultants are properly licensed to perform all services relative to this Continuing Contract.

1.1.2.1 A consultant is a person or entity who the SURVEYOR has retained and who the SURVEYOR will pay to perform any of the services described in this Continuing Contract. Reasonable funds for such payment have been included as part of SURVEYOR's compensation under this Continuing Contract.

1.1.2.2 The SURVEYOR shall be responsible to the TOWN for the acts and omissions of its employees, consultants, sub-consultants and their respective employees, or persons performing any of the services under this Continuing Contract.

1.1.2.3 The SURVEYOR shall have the sole obligation and responsibility to select, control and supervise all of its consultants. The SURVEYOR may not contract with anyone with whom the TOWN has a reasonable objection. Contracts between the

SURVEYOR and the consultants shall require each consultant to be bound to the SURVEYOR for all obligations and responsibilities which the SURVEYOR, by this Continuing Contract assumes toward the TOWN. This provision also applies to substitute consultants hired during the course of this Continuing Contract to replace existing consultants in accordance with this Continuing Contract. The SURVEYOR shall retain responsibility for coordination of any consultants engaged by the SURVEYOR to provide services under this Continuing Contract and will likewise coordinate its services with those consultants retained by the TOWN. The TOWN agrees that all communications of the TOWN with the SURVEYOR's consultants will be made through the SURVEYOR's Representative, unless such consultants have also been retained by the TOWN.

1.1.2.4 The SURVEYOR and its consultants will perform, without expense to the TOWN, such services as may be required to correct or remedy any negligent act, error or omission of the SURVEYOR or its consultants.

1.1.2.5 The SURVEYOR shall be responsible to the TOWN for the acts and omissions of its employees, consultants, sub-consultants and their respective employees or persons performing any of the services under this Agreement.

1.1.2.6 The SURVEYOR shall have the sole obligation and responsibility to select, control, payment and supervision of all of its consultants.

1.1.3 Conflicts of Interest. The SURVEYOR shall not engage in any activity, or accept any employment, receive any monetary compensation, interest or contribution that could create the appearance of impropriety or compromise the SURVEYOR's professional judgment with respect to this Continuing Contract.

## **ARTICLE 2 - TOWN-PROVIDED ITEMS**

2.1 The TOWN's list of project requirements shall be provided to the SURVEYOR and shall be utilized by the SURVEYOR to prepare the Project Program.

2.2 The TOWN shall provide SURVEYOR with accurate and complete information. No information derived from the TOWN shall relieve the SURVEYOR from any risk or from fulfilling all terms of the Contract. The SURVEYOR shall be responsible for any additional investigations required to fulfill all the terms of the Contract.

2.3 Service Work Authorization and Notice to Proceed. For all services covered under this Continuing Contract, SURVEYOR shall be required to obtain an approved written Work Authorization and a written "Notice to Proceed" by the Town Administrator or his authorized representative, in advance of providing any such services to the Town. The written Work Authorization shall specify in detail the nature of the services requested, the lump sum or not to exceed cost to the TOWN for same (with actual cost to be fully

substantiated by SURVEYOR upon completion), and the time frame for completion. All services performed by SURVEYOR without a written authorization from the TOWN shall be performed at SURVEYOR's sole cost and expense.

### **ARTICLE 3- FEES**

3.1 Subject to the TOWN's issuance of a "Notice to Proceed" and individual written work orders, the TOWN shall pay the SURVEYOR the total compensation for the Project(s), in accordance with the total fee indicated in a Project fee schedule executed by both the TOWN and Surveyor, and which will be developed based upon the approved Rate and Fee Schedule. SURVEYOR's total compensation includes all fees, costs and expenses that may be incurred by the SURVEYOR to complete the design and construction administration of the Project, including, but not limited to, all professional services provided by or through the SURVEYOR, drawings, calculations and other documents, travel expenses and all other costs or expenses, for or related to the Project, as well as the time for performance. A Notice to Proceed shall not be issued by the TOWN until a Project fee schedule has been fully executed. Additionally, SURVEYOR shall not perform any services without individual written work orders which may be required to be provided by the Town Administrator, and in accordance with this Continuing Contract. Hourly rates for SURVEYOR's consultants shall also be in accordance with the Rate and Fee Schedule.

3.2 Payment on account of services rendered, shall be made monthly, based on the percentage of completion of the Project, upon presentation of the SURVEYOR's invoice for same, along with a partial waiver and release from SURVEYOR indicating a release of all claims, including, but not limited to, equitable liens, through the last elate of services rendered and included in the invoice. Should any portion of the invoice be in dispute, other portions, if any, that are not in dispute or not deemed, by the TOWN, to be funds likely necessary to be put towards the issue in dispute, shall be paid per the terms of this Continuing Contract. Any billing concerns shall be submitted in writing by the TOWN to the SURVEYOR describing the disputed portion of the invoice in detail for discussion and resolution.

3.3 Payment on account of undisputed amounts of the Surveyor's Total Compensation shall be made within thirty (30) days of invoice elate or as otherwise provided by Section 218.73, Florida Statute.

3.4 Payments due to SURVEYOR which remain unpaid for thirty (30) days after the due date provided herein, shall bear interest at the statutory rate provided by Section 218.74, Florida Statute.

3.5 Payment for the SURVEYOR's services will be made in accordance with the local government Prompt Payment Act, Section 218.73, Florida Statute.



3.6 Purchasing Card (PCARD) Acceptance: The method of payment (check/credit card) is at the Town's sole option. The Town may choose to compensate vendors for goods and/or services via a Town Purchasing Card (PCARD). No other costs or services shall be billed to the Town, and without limiting the generality of the foregoing, vendor shall not impose any service charge or fee, penalty, or other exaction of any kind against payments rendered by the PCARD. Payments made by PCARD shall be accepted on a "same as cash" basis.

#### **ARTICLE 4 - CHANGE ORDERS**

4.1 Definition of Change. Change in the services to be performed by the SURVEYOR, or the SURVEYOR's consultants, may only be accomplished after execution of this Continuing Contract, without invalidating the Continuing Contract, by mutual agreement and execution of a written Change Order. SURVEYOR assumes all risks and responsibilities for performing all services on behalf of the TOWN for the amount determined in accordance with Article 3. The TOWN shall not be liable for any cost increases that may arise during the performance of services. Any adjustments to the services must be by written Change Order issued in accordance with the terms and conditions of this Continuing Contract. To the extent that SURVEYOR proceeds to perform additional services in excess of those services described in an executed Notice to Proceed that has been signed by the Town Administrator without an executed written Change Order issued in accordance with this Continuing Contract, such services shall be at SURVEYOR's own risk at no charge to TOWN.

#### **ARTICLE 5 - OWNERSHIP OF DOCUMENTS**

5.1 Drawings, specifications and other documents, including those in electronic form, prepared by the SURVEYOR and the SURVEYOR's consultants are Instruments of Service. The SURVEYOR and the SURVEYOR's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. The TOWN shall have the right to use the Instruments of Service. The TOWN's right of use in accordance with this Paragraph specifically authorizes the TOWN to utilize the Instruments of Service to complete the Project as well as to perform alterations, repair and additions to the Project. This right of use applies even if this Agreement is terminated. In that event, the TOWN will be entitled to continue to utilize the Instruments of Service and shall have the unrestricted right to use, reproduce and to make derivative works of the Instruments of Service to complete the Project as long as the TOWN has paid SURVEYOR for all fees associated only with the preparation of the Instruments of Service in accordance with this Continuing Contract. Should this Continuing Contract be terminated, SURVEYOR and its consultants will continue to own the copyright to these Instruments of Service in accordance with this Continuing Contract. However, the TOWN will, through an irrevocable, perpetual, royalty-free license, have the exclusive right to use the

Instruments of Service, without restriction or limitation, to construct the buildings and improvements relative to this Project as well as repair, maintain or construct future additions to the Project. Upon the TOWN's request, the SURVEYOR and its consultants will furnish to the TOWN, copies, including reproducible copies, electronic data and computer files of the Drawings and Specifications and other Instruments of Service.

5.2 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the TOWN's or SURVEYOR's rights.

5.3 SURVEYOR represents and warrants to TOWN that it is the owner of all Instruments of Service prepared by itself and has the sole authority to grant TOWN use provisions of these Instruments of Service in accordance with this Agreement. With respect to Instruments of Service for the Project owned by SURVEYOR's consultants, SURVEYOR, in its agreement with such consultants to provide services for this Project, shall cause such consultants to grant to the TOWN the same use provisions as are included herein.

## **ARTICLE 6 - TERM OF CONTRACT**

6. The continuing contract for professional surveying services shall have an initial three (3) years term, with three (3), two (2) year extensions. An extension shall be by mutual agreement by both parties. A contract extension may be approved by the Town Administrator.

## **ARTICLE 7 - TERMINATION**

7.1 Termination by Town for Convenience. This Continuing Contract may be terminated by the Town for convenience upon at least thirty days' written notice to the SURVEYOR. Under such conditions, SURVEYOR will only be entitled to receive compensation for services rendered that are specifically within the services for which the Town Administrator has, in writing, authorized SURVEYOR to proceed and only up through the date that is no later than thirty days after the date written notice for such termination for convenience is issued by the TOWN to SURVEYOR. SURVEYOR will be able to recover for its work performed; actual cost and expenses; and fair and reasonable sums for overhead and profit for work performed. Upon receipt of a notice of termination for convenience by the TOWN, the SURVEYOR will initiate all reasonable steps to mitigate further expenses from accruing. No other compensation and/or damages will be due SURVEYOR from the TOWN pursuant to this Paragraph.

7.2 Default by SURVEYOR. In addition to defaults resulting from the SURVEYOR's failure to strictly comply with any term, condition, or agreement set forth herein, the SURVEYOR shall be in default under this Continuing Contract if:

- A. The SURVEYOR ceases to carry the insurance required hereunder or the insurance is cancelled.
- B. A default should occur in the performance of any consultant or contractor employed by the SURVEYOR and not corrected by SURVEYOR or another replacement consultant or contractor employed by SURVEYOR within ten (10) days after notice from the TOWN.
- C. The SURVEYOR fails to maintain all permit-related documents and make such documents available to the TOWN upon reasonable request.
- D. The SURVEYOR fails to timely (30 days) pay any consultant or contractor employed by the SURVEYOR.  
Notwithstanding the foregoing, SURVEYOR shall have the right to contest disputed invoices in good faith, without being in default of this Continuing Contract, but will bond off or cause to be satisfied of record any liens that may be recorded erroneously in connection therewith within ten (10) days of the date of recording of such lien.
- E. The SURVEYOR fails to correct any error or material inconsistency in its or its consultants Drawings and Specifications or other Instruments of Service within ten (10) days after such error or material inconsistency is reported to the SURVEYOR.
- F. The SURVEYOR fails to perform its obligations under this Continuing Contract in a timely and expeditious manner within ten (10) days after notice from the TOWN.

7.3 TOWN'S Compensation for Default by SURVEYOR. In the event of termination due to the fault of the SURVEYOR under this Continuing Contract, the TOWN shall be compensated for all reasonable costs and expenses including reasonable attorneys' fees and costs incurred in connection with replacing the SURVEYOR hereunder, in reviewing, analyzing, or enforcing the TOWN's rights hereunder or in connection with a replacement surveyor and the completion of the SURVEYOR's services hereunder. This is not intended to limit the TOWN's rights or ability to recover damages in the event of a breach by the SURVEYOR under this Continuing Contract. Additionally, the TOWN shall have the right to use the SURVEYOR's Drawings, Specifications and other Instruments of Service in the event of a default by the SURVEYOR, regardless of the payment status for such Instruments of Service.

## ARTICLE 8 - MISCELLANEOUS PROVISIONS

8.1 Governing Law, Jurisdiction, Venue and Attorney's Fees. In the event of any action, litigation, or proceedings of any type regarding or relating to performance of this Continuing Contract, the prevailing party shall be entitled to recover its reasonable costs, expert's fees and attorney's fees at all hearing, trial, bankruptcy, and appellate levels. All disputes pursuant to this Continuing Contract shall be first subject to mediation in Broward County with a mutually agreeable Florida Supreme Court Certified Mediator who is knowledgeable in the rendering of professional surveying services for construction projects similar to the projects under this Continuing Contract. Failing resolution by mediation, any litigation shall be filed in a court of competent jurisdiction and the sole and exclusive venue shall be in Broward County, Florida. This Continuing Contract shall be governed by the laws of the State of Florida. Mediation shall be conducted within sixty (60) days of either Party's written request. The parties shall share, 50/50, the cost of the mediator.

### 8.2 Waiver of Right to Jury Trial

**BY ENTERING INTO THIS CONTINUING CONTRACT, SURVEYOR 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 CONTINUING CONTRACT.**

8.3 Insurance Coverages and Minimum Amounts. SURVEYOR shall secure and maintain, at its own expense, and keep in effect during the full period of the Continuing Contract and at least one (1) year beyond its completion a policy or policies of insurance, which must include the following coverages and minimum limits of liability:

8.3.1 Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.

8.3.2 Worker's Compensation and Employer's Liability Insurance for all employees of the SURVEYOR engaged in services under the Contract in accordance with the laws of the State of Florida. SURVEYOR hereby agrees to be responsible for the employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

8.3.3 (Comprehensive) Commercial General Liability Insurance with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence. Coverage shall specifically include the following minimum limits not less than those required for Bodily Injury Liability and

Property Damage at \$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability annual aggregate:

1. Premises and Operations;
2. Independent Contractors;
3. Products and Completed Operations;
4. Broad Form Property Damage;
5. Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract;
6. Personal Injury Coverage with employment and contractual exclusions removed and deleted, and;
7. Explosion, collapse, underground coverage (X-C-U)

8.3.4 Comprehensive Automobile Liability Insurance, for all owned, non-owned and hired automobiles and other vehicles used by SURVEYOR in the performance of services pursuant to this Contract with the following minimum limits of liability: \$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence.

8.3.5 Aggregate Limits. Commercial General Liability shall be \$2,000,000.

**\*All insurance policies shall name and endorse the following as "Additional Named Insureds":**

TOWN OF SOUTHWEST RANCHES  
Attn: Andrew D. Berns, Town Administrator.  
13400 Griffin Road.  
Southwest Ranches, FL 33330

**\*The additional named insured endorsement shall be reflected on the Certificate of Insurance.**

All insurance shall be issued by companies rated "A-" or better per A.M. Best's Key Rating Guide, latest edition and authorized to issue insurance in the State of Florida. It shall be the responsibility of the vendor and insurer to notify the Town Administrator of cancellation, lapse, or material modification of any insurance policies insuring the vendor, which relate to the activities of such vendor and the Town.

**All notifications shall be in writing, and shall be submitted to the Town Administrator within thirty (30) days prior to cancellation of such policies. This requirement shall be reflected on the Certificate of Insurance.**

Bidders are required to submit a list of claims presently outstanding and claims within the past ten (10) years against their liability coverage. This information must be listed on the form provided and signed by the agent of the insurance carrier. If no outstanding claims exist, a statement of this fact must be signed by the agent of the insurance carrier.

Failure to fully and satisfactorily comply with the Town's insurance and bonding requirements set forth herein will authorize the Town Administrator to implement a rescission or cancellation of the Bid award within thirty (30) days of awarding. The Bidder hereby holds the Town harmless and agrees to indemnify Town and covenants not to file a Bid protest or sue the Town by virtue of such cancellation or rescission.

84 Indemnification. To the fullest extent permitted by Florida Statute, Section 725.08, SURVEYOR shall indemnify, hold harmless the TOWN, its officers, agents and employees, harmless from any and all claims, damages, losses, liabilities and expenses, direct, indirect or consequential arising out of or alleged to have arisen out of or in consequence of the negligence, recklessness or intentional wrongful conduct of the SURVEYOR or its subcontractors, agents, officers, employees or independent contractors pursuant to the Continuing Contract, specifically including but not limited to those caused by or arising out of negligent act, omission, or default of the SURVEYOR and/or its subcontractors, agents, or employees in the performance of the operations or services under the Continuing Contract.

#### 8.4.1 Errors and Omissions:

The SURVEYOR to the extent of its failure to perform in accordance with the standard of care set forth in this Agreement, is responsible for the professional quality, technical accuracy, completeness, performance and coordination of all Work required under this Agreement (including the Work performed by sub-consultants and Subcontractors), within the specified time period and specified cost. The SURVEYOR shall perform the Work utilizing the skill, knowledge and judgment ordinarily possessed and used by a proficient SURVEYOR with respect to the disciplines required for the performance of the Work in the State of Florida. The SURVEYOR is responsible for, and represents that the Work conforms to TOWN'S requirements as set forth in this Agreement. The SURVEYOR shall be and remain liable to the TOWN for all damages to the TOWN caused by the SURVEYOR'S negligent acts, recklessness, intentionally wrongful conduct or errors or omissions in the performance of the Work. In addition to all other rights and remedies, which the TOWN may have, the SURVEYOR shall, at its expense, re-perform the services to correct any deficiencies, which result from the SURVEYOR'S failure to perform in accordance with the above standards. The TOWN shall notify the SURVEYOR in writing of any deficiencies and shall approve the method and timing of the corrections. Neither the TOWN'S inspection, review, approval or acceptance of, nor payment for, any of the Work required under this Agreement shall be construed to relieve the SURVEYOR or any sub-consultant or subcontractor of its obligations and responsibilities under this Agreement, nor constitute a waiver of any of the TOWN'S rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The SURVEYOR and its sub-consultants and Subcontractors shall be and remain liable to the TOWN in accordance with applicable

law for all damages to TOWN caused by any failure of the SURVEYOR or its sub-consultants and Subcontractors to comply with the terms and conditions of this Agreement or by the SURVEYOR'S or Sub-consultants' or Subcontractors' misconduct, recklessness, unlawful acts, negligent acts, errors or omissions in the performance of this Agreement. With respect to the performance of Work by sub-consultants and Subcontractors, the SURVEYOR shall, in approving and accepting such Work, ensure the professional quality, completeness, and coordination of sub-consultant's and subcontractor's Work.

85 Patent and Copyright Indemnification. SURVEYOR agrees to indemnify, defend, save and hold harmless the TOWN, its officers, agents and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other such work in connection with the performance of the Continuing Contract.

86 Successors and Assigns. This Continuing Contract is binding upon the parties hereto, their successors and assigns and replaces, provided, however, neither party shall assign or transfer any interest in this Continuing Contract without the written consent of the other party.

87 No Damage for Delays by TOWN. SURVEYOR's sole remedy for any (i) delay in the commencement, prosecution, or completion of its services, (ii) hindrance or obstruction in performance of its services, (iii) loss of productivity, or (iv) other similar claims (collectively referred to in this subparagraph as "delays"), whether or not such delays are foreseeable, shall be non-compensable. The TOWN shall act reasonably in granting extensions of time to the SURVEYOR. All extensions to the time for performance shall be authorized only by written Change Order executed by the TOWN and SURVEYOR. In no event shall the SURVEYOR be entitled to any other compensation or recovery of any damages under or pursuant to this subparagraph in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration.

88 Audit and Inspection Rights and Retention of Records by SURVEYOR. The TOWN shall have the right to audit the books, records and accounts of SURVEYOR that are related to this Continuing Contract. SURVEYOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Continuing Contract. SURVEYOR 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 Continuing Contract for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statute), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of

three (3) years after termination or expiration of this Continuing Contract, unless SURVEYOR is notified in writing by Town of the need to extend the retention period. Such retention of such records and documents shall be at SURVEYOR's sole expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by TOWN to be applicable to SURVEYOR's records, SURVEYOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by SURVEYOR. 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, SURVEYOR shall respond to the reasonable inquiries of success or surveyors, if any, and allow successor surveyors to receive working papers relating to matters of continuing significance. In addition, SURVEYOR shall provide a complete copy of *all* working papers including electronic files to the TOWN, prior to final payment by the TOWN under this Continuing Contract.

89 Performance During Disputes. Notwithstanding anything contained in this Continuing Contract to the contrary, in the event of any dispute noticed in writing between the TOWN and the SURVEYOR, the SURVEYOR and, if applicable, its consultants will continue to provide services on the Projects under this Continuing Contract pursuant to the terms of this Continuing Contract so long as the SURVEYOR receives payment for the matter(s) not in dispute.

810 TOWN's Review of Documents. Review and approval of documents or submittals by the TOWN shall be for general design compliance and approval of such submittals shall not relieve the SURVEYOR of any responsibility or liability hereunder.

811 Entire Agreement. This Continuing Contract is deemed effective only upon execution by both parties. Additionally, this written Continuing Contract represents the entire and integrated agreement between the TOWN and the SURVEYOR and supersedes all prior negotiations or agreements, either written or oral. This Continuing Contract may be amended only if agreed to by both parties, in writing. Pursuant to Florida Statute, Section 287.055, this Continuing Contract shall have no time limitation, however, it may be terminated in accordance with Sections 6 and 7 hereof.

812 Invalid Provisions. Any term or provision of this Continuing Contract found to be invalid under any applicable Statute or rule of Law shall be deemed omitted, and the remainder of this Continuing Contract shall remain in full force and effect.

813 Non-Discrimination. SURVEYOR shall not discriminate against any client, employee or applicant for employment because of race, gender, age, color, religion, sex, national origin, physical or mental disability, marital status or medical status.



SURVEYOR shall take affirmative action to ensure that applicants, subcontractors, independent contractors, and employees are treated without discrimination in regard to their race, gender, color, religion, sex, national origin, disability, or medical status. SURVEYOR shall comply with all applicable sections of the Americans with Disabilities Act. SURVEYOR agrees that compliance with this Article constitutes a material condition to this Continuing Contract, and that it is binding upon the SURVEYOR, its successors, transferees, and assignees for the period during which any services are provided. SURVEYOR further assures that all consultants and subcontractors and independent contractors are not in violation of the terms of this Section of the Continuing Contract.

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

8.15 NO Third Party Beneficiaries. This Continuing Contract 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 Continuing Contract shall be deemed or construed to create or confer any benefit, right or cause of action for any third party or entity.

8.16 Funding. The obligation of TOWN for payment to SURVEYOR for services is limited by Florida law 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.

8.17 Manner of Performance. SURVEYOR agrees to perform its services in a professional manner and in accordance with all applicable Local, State, County, and Federal laws, rules, ordinances, regulations and codes. SURVEYOR agrees that the services provided shall be provided by employees that are educated, trained, experienced, certified, and licensed in all areas encompassed within their designated duties. SURVEYOR agrees to furnish to TOWN any and all documentation, certification, authorization, license, permit, or registration currently required by applicable laws, rules, and regulations. SURVEYOR 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 Continuing Contract. Failure of SURVEYOR to comply with this paragraph shall constitute a material breach of this Continuing Contract.

8.18 Public Records. The TOWN is subject to Chapter 119, Florida Statutes, the "Public Records Law." No claim of confidentiality or proprietary information in all or any

portion of a response will be honored unless a specific exemption from the Public Law exists and is cited in the response. An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed. Firm 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.

SURVEYOR agrees to maintain public records in SURVEYOR's possession or control in connections with SURVEYOR's performance under this agreement and to provide the public with access to public records in accordance with the record maintenance, production and codes requirement set forth in Chapter 119, Florida Statutes, or as otherwise required by law. SURVEYOR shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law. SURVEYOR's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this agreement by TOWN.

819 Public Entity Crimes. In accordance with the Public Entity Crimes Act, Section 287.133, Florida Statute, a person or affiliate who has been placed on the convicted vendor list maintained by the State of Florida Department of General Services following a conviction for a public entity crime may not submit a proposal on a contract with TOWN, may not be awarded or perform services as a surveyor, contractor, supplier, or subcontractor, under a contract with TOWN, and may not conduct business with TOWN for a period of **thirty six (36) months** from the date of being placed on the convicted vendor list. Violation of this section by SURVEYOR shall result in TOWN's immediate termination of this Continuing Contract.

820 Changes and Modification of Continuing Contract. TOWN and SURVEYOR may request changes that would increase, decrease or otherwise modify the scope of services to be provided under this Continuing Contract. Such changes only become part of this Continuing Contract and increase, decrease or otherwise modify the services under this Continuing Contract if evidenced by a written Change Order executed by TOWN and SURVEYOR, with the same formality and of equal dignity associated with the original execution of the Continuing Contract.

821 No Waiver of Rights. Neither the TOWN's review, approval or payment for any of the services required under this Continuing Contract shall be construed to operate as a waiver of any of TOWN's rights under this Continuing Contract or of any causes of action arising out SURVEYOR's performance of the services under this Continuing Contract, and SURVEYOR shall be and remain liable to the TOWN for all damages to the TOWN caused by the SURVEYOR's negligent or improper performance of any of the services furnished under this Continuing Contract, irrespective of the TOWN's review, approval or payment for any of the services under this Continuing Contract. The rights and remedies of the TOWN provided for under this Continuing Contract are in addition to all other rights and remedies provided to TOWN by law.

822 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.

823 Time is of the Essence. Time is of the essence for all of SURVEYOR's obligations under this Continuing Contract.

824 Days. The terms "days" as referenced in this Continuing Contract shall mean consecutive calendar days, unless specifically stated to be "work days."

825 Equal Opportunity Employment.

A. SURVEYOR will take affirmative action to ensure that employees are treated equally during employment, without regard to their race, religion, gender, color or, national origin. Such action must include, but not be limited to the following: employment upgrading; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SURVEYOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause included in section 8.18 of this Continuing Contract.

B. SURVEYOR shall comply with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor Regulations (41 CFR Part 60).

C. SURVEYOR shall comply with Copeland Anti-Kickback Act (18 USC 874), as supplemented in Department of Labor Regulations (29 CFR Part 3).

D. SURVEYOR shall comply with the Contract Work Hours and Safety Standards Act (40 US 327-330), as supplemented by Department of Labor Regulations (29 CFR Part 5).

826 Notice. Notices shall be given by Certified Mail (RRR), recognized overnight delivery service with tracking receipt, or hand delivery or courier with signed receipt. Notices shall be given to the following addresses:

**AS TO TOWN:**

Andrew D. Berns

Town Administrator

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

**With a copy to the Town Attorney:**

Keith M. Poliakoff  
Saul Ewing Arnstein & Lehr, LLP  
200 East Las Olas Blvd.  
Suite 1000  
Fort Lauderdale, FL 33301  
Philadelphia, PA 19102

**AS TO SURVEYOR:**

Craven Thompson & Associates, Inc.  
Attn: Richard D Pryce, PSM  
3563 NW 53rd Street  
Fort Lauderdale, FL 33309

827 Independent Contractor. SURVEYOR is an independent contractor of TOWN under this Continuing Contract. In providing services, neither SURVEYOR 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 services rendered under this Continuing Contract shall be exclusively and solely those of SURVEYOR. This Continuing Contract shall not constitute or make the TOWN and SURVEYOR a partnership or joint venture.

828 Conflicts. Neither SURVEYOR nor its employees shall have or hold any continuing or frequently, recurring employment or contractual relationship that is substantially antagonistic or incompatible with Surveyor's loyal and conscientious exercise of judgment related to its performance under this Continuing Contract.

A. SURVEYOR agrees that none of its officers or employees shall, during the term of this Continuing Contract, 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, SURVEYOR 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 SURVEYOR or any other persons from representing themselves in any action or in any administrative or legal proceeding.

B. In the event SURVEYOR is permitted to utilize consultants or subcontractors to

perform any services required by this Continuing Contract, SURVEYOR agrees to prohibit such consultants or subcontractors, by written contract, from having any conflicts within the meaning of this Section.

829 Contingency Fee. SURVEYOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for SURVEYOR, to solicit or secure this Continuing Contract 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 SURVEYOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Continuing Contract. For a breach or violation of this provision, TOWN shall have the right to terminate this Continuing Contract without liability and, at its discretion, to deduct from the Continuing Contract price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

830 Materiality and Waiver of Breach. TOWN and SURVEYOR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Continuing Contract and, therefore, is a material term hereof. TOWN's failure to enforce any provision of this Continuing Contract shall not be deemed a waiver of such provision or modification of this Continuing Contract. A waiver of any breach of a provision of this Continuing Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Continuing Contract.

831 Joint Preparation. The TOWN and SURVEYOR 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 Continuing Contract 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 than the other.

832 Drug-Free Workplace. SURVEYOR shall maintain a drug-free workplace.

833 Headings. Headings are for convenience of reference only and shall not be considered in any interpretation of this Continuing Contract.

834 Binding Authority. Each person 'Signing this Continuing Contract on behalf of either party individually warrants that he or she has full legal power to execute this Continuing Contract 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 Continuing Contract.

835 Truth-in-Negotiation Certificate. Signature of this Continuing Contract by SURVEYOR 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 Continuing Contract are accurate, complete, and current at the time of contracting.

**[SIGNATURE ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: CRAVEN THOMPSON, and the TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the 12<sup>th</sup> day of September 2019.

**WITNESSES:**

Lanny Taylor  
Patricia A. Sicht

**CONTRACTOR:**

By: Richard D. Pryce  
Richard D. Pryce, V.P. (title)  
19th day of August 2019

**TOWN OF SOUTHWEST RANCHES**

By: Doug McKay  
Doug McKay, Mayor  
12<sup>th</sup> day of September 2019

By: Andrew D. Berns  
Andrew D. Berns, Town Administrator  
12<sup>th</sup> day of September 2019

**ATTEST:**

Russell Muñiz  
Russell Muñiz, Assistant Town Administrator/Town Clerk

**APPROVED AS TO FORM AND CORRECTNESS:**

Keith M. Poliakoff  
Keith M. Poliakoff, Town Attorney