

## RESOLUTION 2022 –058

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING THE FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN OF SOUTHWEST RANCHES AND SEPI ENGINEERING & CONSTRUCTION, INC. AGREEMENT; EXTENDING THE AGREEMENT FOR AN ADDITIONAL THREE (3) YEAR TERM; AUTHORIZING MAYOR, THE TOWN ADMINISTRATOR AND THE TOWN ATTORNEY TO EXECUTE THE NEW AGREEMENT WITH SEPI ENGINEERING & CONSTRUCTION, INC.; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on March 8, 2001, the Town Council authorized the issuance of a Request for Proposals (RFP) for Planning, Zoning and Land Use Services; and

**WHEREAS**, pursuant to the RFP received on March 30, 2001 (the RFP) the TOWN accepted competitive proposals for Planning, Zoning and Land Use Services (the Services); and

**WHEREAS**, on April 12, 2001, pursuant to Resolution No. 2001-045, the Town Council selected Michele Mellgren and Associates, Inc., which later changed its name to The Mellgren Planning Group Inc.; and

**WHEREAS**, on July 13, 2020, The Mellgren Planning Group Inc. sold its assets to SEPI Engineering & Construction, Inc., a North Carolina professional corporation; and

**WHEREAS**, on August 13, 2020, pursuant to Resolution 2020-049, the Town Council transferred the Town's planning, zoning, and land use services to SEPI Engineering & Construction, Inc. and entered into an Agreement which has been attached hereto and has been incorporated herein by reference as Exhibit "A"; and

**WHEREAS**, this Agreement is set to expire on August 13, 2023; and

**WHEREAS**, SEPI Engineering & Construction, Inc. assists the Town, on an hourly basis, to provide planning, zoning, and land use services, as necessary, and at the discretion of the Town; and

**WHEREAS**, SEPI Engineering & Construction, Inc., processes all land use and zoning public hearing items, as well as special projects for the Town; and

**WHEREAS**, the hourly rates have not changed since 2001; and

**WHEREAS**, the parties desire to enter into the First Amendment to the Agreement to extend the Agreement for an additional three (3) year term and to modify the hourly rates for work not being performed on behalf of the Town.

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

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

**Section 2:** The Town Council hereby approves the First Amendment to the Agreement with SEPI Engineering & Construction, Inc., as attached hereto and incorporated herein by reference as Exhibit "B", which amends the hourly rates for work not being performed on behalf of the Town and extends the Agreement for an additional three (3) year term.

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

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

**[Signatures on Following Page]**

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

Ranches, Florida, this 28<sup>th</sup> day of April 2022 on a motion by

V/m Jablonski and seconded by V/m Kuczenki.

Breitkreuz	<u>yes</u>
Jablonski	<u>yes</u>
Allbritton	<u>yes</u>
Hartmann	<u>yes</u>
Kuczenki	<u>yes</u>

Ayes	<u>5</u>
Nays	<u>0</u>
Absent	<u>0</u>
Abstaining	<u>0</u>

  
\_\_\_\_\_  
Steve Breitkreuz, Mayor

Attest:

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

Approved as to Form and Correctness:

  
\_\_\_\_\_  
Keith Poliakoff, Town Attorney  
1001.928.01

**Contract Between**

**Town of Southwest Ranches**

**and**

**SEPI Engineering & Construction, Inc.**

**For**

**Planning, Zoning, and Land Use  
Services**

**CONTRACT**

THIS CONTRACT is entered into by and between the TOWN OF SOUTHWEST RANCHES (TOWN), a municipal corporation of the State of Florida, and SEPI ENGINEERING & CONSTRUCTION, INC. (CONTRACTOR) a North Carolina corporation authorized to do business in the State of Florida, as follows:

WITNESSETH:

**WHEREAS**, on March 8, 2001, the Town Council authorized the issuance of a Request for Proposals (RFP) for Planning, Zoning and Land Use Services; and

**WHEREAS**, pursuant to the RFP received on March 30, 2001 (the RFP) the TOWN accepted competitive proposals for Planning, Zoning and Land Use Services (the Services); and

**WHEREAS**, on April 12, 2001, pursuant to Resolution No. 2001-045, the Town Council selected Michele Mellgren and Associates, Inc., which later changed its name to The Mellgren Planning Group Inc.; and

**WHEREAS**, on September 15, 2015, pursuant to Resolution 2014-053, the Town entered into a new agreement with the Mellgren Planning Group Inc.; and

**WHEREAS**, on July 13, 2017, pursuant to Resolution 2017-050, the Town approved the first modification to the agreement and extended the term for three (3) years; and

**WHEREAS**, the Agreement is set to expire on September 30, 2020; and

**WHEREAS**, on July 13, 2020, The Mellgren Planning Group Inc. sold substantially all its assets to SEPI Engineering & Construction, Inc., a North Carolina professional corporation; and

**WHEREAS**, SEPI Engineering & Construction has retained all current The Mellgren Planning Group Employees and will continue operations and client service levels consistent with the pre-transaction terms; and

**WHEREAS**, CONTRACTOR will assist the Town, on an hourly basis, to provide planning, zoning, and land use services, as necessary, and at the discretion of the TOWN; and

**WHEREAS**, some of the functions the CONTRACTOR will provide include processing all land use and zoning public hearing items, as well as special projects for the TOWN; and

**NOW THEREFORE**, be it agreed by and between the parties as follows:

## ARTICLE I

### INTRODUCTION AND SCOPE OF SERVICES

1.1 The above referenced Whereas clauses are true and correct and made a part hereof.

1.2 **Contract.** The parties agree that the Scope of Services as defined in the RFP is a description of CONTRACTOR's obligations and responsibilities and is deemed to include all labor, materials, equipment, and tasks which are such an inseparable part, of the work described that exclusion would render performance by CONTRACTOR impractical, illogical, or unconscionable. The TOWN Administrator shall appoint a Contract Administrator to act on behalf of the TOWN with respect to this Contract.

1.3 Except as specifically modified herein, CONTRACTOR shall be bound by the terms and conditions and prices as set forth herein.

1.4 This is a non-exclusive contract. The TOWN may, in its sole and absolute discretion, utilize other parties to provide any of the services listed in the RFP, or any aspect of the Services if the TOWN deems it to be in the best interest of the TOWN.

1.5 CONTRACTOR acknowledges and agrees that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Contract. Such changes are in the sole discretion of the Town Council.

## ARTICLE 2

### TERM AND TIME OF PERFORMANCE

2.1 The instant Contract term shall commence August 14, 2020, and shall expire on September 30, 2023. This Contract is renewable upon the consent of both parties.

2.2 Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities, required by this Contract.

## ARTICLE 3

### COMPENSATION

3.1 TOWN agrees to pay CONTRACTOR, in the manner specified herein, the amounts set forth in Exhibit "A", for work actually performed and completed pursuant to this Contract, which amount shall be accepted by CONTRACTOR as full compensation for all such work. It is acknowledged and agreed by CONTRACTOR that this amount is the maximum payable and constitutes a limitation upon TOWN's obligation to compensate CONTRACTOR for its services related to this Contract. This amount, however, does not constitute a limitation, of any sort, upon CONTRACTOR's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. No amount shall be paid to CONTRACTOR to reimburse its expenses.

3.2 All payments for services rendered by CONTRACTOR on behalf of the TOWN shall be made payable to the TOWN. Within thirty (30) days from the TOWN's receipt of the cleared funds relating to same, CONTRACTOR may submit an invoice, in a form and format approved by the Town's Financial Administrator, to be paid for such services. CONTRACTOR shall be paid within fifteen (15) business days from the TOWN's receipt of an approved invoice and upon verification that such services have been rendered. TOWN shall not be held liable to CONTRACTOR for funds that have not cleared or for services rendered prior to payment being made. CONTRACTOR may submit invoices for compensation no more often than on a monthly basis.

3.3 After reviewing the base application, CONTRACTOR shall collect any additional amounts CONTRACTOR, upon input from the TOWN, deems

necessary and proper to fully cover the estimated costs of performing the services requested. In no event shall a permit be issued or shall CONTRACTOR signoff on an application, until CONTRACTOR has recovered the TOWN's costs incurred for processing the application. The TOWN shall withhold from CONTRACTOR's compensation any amounts not recovered for services rendered. This cost recovery provision does not apply to matters being handled for the benefit or request of the TOWN. TOWN maintains the right to charge an additional administrative fee for all public hearing items. Such fee shall also be collected by CONTRACTOR and shall be in addition the fees charged by CONTRACTOR.

3.4 By the Fifteenth (15<sup>th</sup>) day of each month, CONTRACTOR shall provide the TOWN Administrator with a report delineating the previous month's activity. In addition to a hard copy, said monthly information shall be provided to the TOWN through an electronic medium, in a form an format acceptable to the TOWN Administrator, via a system that may be accessible by the internet. If the TOWN Administrator determines that CONTRACTOR's system is not compatible, or that another system should be utilized, the desired system shall be implemented and utilized by CONTRACTOR at no additional cost to CONTRACTOR. In addition to the monthly reports, CONTRACTOR shall provide, when requested, through an electronic medium that may be accessible from the internet on a system that may be provided by the TOWN, clear and concise information, which shall include the status of all matters including questions and complaints.

3.5 Notwithstanding any provision of this Contract to the contrary. TOWN may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Contract. The amount withheld shall not be subject to payment of interest by TOWN.

3.6 All work performed for the TOWN shall be pursuant to a valid purchase order containing a statement of work, a not to exceed estimate of fees and costs, and a timeframe for the completion of same. The purchase order shall be approved in writing by the TOWN prior to the commencement of such work. Any work performed without a valid purchase order shall be performed at CONTRACTOR's sole cost and expense, and TOWN shall not be held liable to compensate CONTRACTOR for work performed that does not strictly adhere to the requirements contained herein.



## ARTICLE 4

### INDEMNIFICATION

CONTRACTOR shall at all times hereafter, indemnify, hold harmless and, at the TOWN Attorney's option, defend or pay for an attorney selected by the TOWN Attorney to defend TOWN, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, at all tribunal levels, caused, or alleged to be caused by intentional or negligent act of, or omission of, CONTRACTOR, its employees, agent, servants, or officers, or accruing, resulting from, or related to the subject matter of this Contract including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against TOWN by reason of any such claim, cause of action or demand, CONTRACTOR shall, upon written notice from TOWN, resist and defend such lawsuit or proceeding by counsel satisfactory to TOWN or, at TOWN's option, pay for an attorney selected by the TOWN Attorney to defend TOWN. The provisions and obligations of this section shall survive the expiration or earlier termination of this Contract. To the extent considered necessary by the Contract Administrator and the TOWN Attorney, any sums due CONTRACTOR under this Contract may be retained by TOWN until all of TOWN's claims for indemnification pursuant to this Contract have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by TOWN. Nothing herein shall be deemed a waiver or limitation on TOWN'S sovereign immunity or any limitations on TOWN liability in any state statute or as otherwise provided by law.

## ARTICLE 5

### INSURANCE

5.1 Workers' Compensation Insurance CONTRACTOR to provide for all employees workers compensation insurance in compliance with the Workers' Compensation Law of the State of Florida and all applicable federal laws. In addition, CONTRACTOR shall require that all associates performing work or services for TOWN furnish evidence that they maintain workers' compensation insurance.

5.2 Comprehensive Professional Liability and Property Damage Insurance Broad Form CONTRACTOR to provide comprehensive professional

liability and property damage insurance with a minimum limit of One Million Dollars (\$1,000,000) per occurrence.

5.3 Automobile Liability Insurance CONTRACTOR to provide automobile liability insurance including principal and employees, with limits of at least \$100,000/\$300,000 for each occurrence.

5.4 CONTRACTOR shall provide to TOWN a Certificate of Insurance or a copy of all insurance policies required herein. TOWN reserves the right to require a certified copy of such policies upon request. All certificates and endorsements required herein shall state that TOWN shall be given thirty (30) days-notice prior to expiration or cancellation of the policy.

## ARTICLE. 6

### TERMINATION OR SUSPENSION

6.1 This Contract may be terminated for convenience by the TOWN. Termination for convenience by the TOWN shall be effective on the termination date stated in the written notice provided by TOWN, which termination date shall be not less than thirty (30) days after the date of such written notice. This Contract may also be terminated by the TOWN Administrator upon such notice as the TOWN Administrator deems appropriate under the circumstances in the event the TOWN Administrator determines that termination is necessary to protect the public health or safety. The parties agree that if TOWN erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

6.2 This Contract may be terminated for cause for reasons including, but not limited to CONTRACTOR's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoice; failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Contract

6.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Contract except that notice of termination by the TOWN Administrator, which the TOWN Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in Writing in accordance with the "NOTICES" section of this Contract.

6.4 In the event this Contract is terminated for convenience, CONTRACTOR shall be paid for any services properly performed under the Contract through the

termination date specified in the written notice of termination. CONTRACTOR acknowledges and agrees that it has received good, valuable and sufficient consideration from TOWN, the receipt and adequacy of which are hereby acknowledged by CONTRACTOR, for TOWN's right to terminate this Contract for convenience.

6.5 In the event this Contract is terminated for any reason, any amounts due CONTRACTOR shall be withheld by TOWN until all documents are provided to TOWN.

6.6 Should at any time during the term of this Contract, the CONTRACTOR is in violation of any of the terms and conditions of this Contract, the TOWN shall have the right to suspend the CONTRACTOR until the violation is resolved to the satisfaction of the TOWN. If the violation is not promptly resolved or is of such serious nature that the TOWN determines that suspension is not adequate, the TOWN reserves the right to terminate for cause.

6.7 In the event a CONTRACTOR is terminated, the TOWN may assign the Contract to another CONTRACTOR, or seek a new CONTRACTOR, until the Contract is re-let, or until the end of the Contract term then in effect, at its sole option, and shall reserve all legal remedies for damages and other relief.

## ARTICLE 7

### EEO AND ADA COMPLIANCE.

7.1 CONTRACTOR shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, political affiliation or disability in the performance of this Contract, the solicitation for or purchase of goods or services relating to this Contract, or in subcontracting work in the performance of this Contract. CONTRACTOR shall include the foregoing or similar language in its contracts with any subcontractors or sub-consultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 CAA, Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the TOWN deems appropriate.

7.2 CONTRACTOR shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Contract, CONTRACTOR shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by TOWN, including Titles I and II of

the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CONTRACTOR shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

## ARTICLE 8

### MISCELLANEOUS

#### 8.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Contract are and shall remain the property of TOWN; and, if a copyright is claimed, CONTRACTOR grants to TOWN a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Contract, any reports, photographs, surveys, and other data and documents prepared by CONTRACTOR, whether finished or unfinished, shall become the property of TOWN and shall be delivered by CONTRACTOR to the Contract Administrator within seven (7) days of termination of this Contract by either party. Any compensation due to CONTRACTOR shall be withheld until all documents are received as provided herein.

#### 8.2 AUDIT RIGHT AND RETENTION OF RECORDS

TOWN shall have the right to audit the books, records, and accounts of CONTRACTOR and its subcontractors that are related to this Contract. CONTRACTOR and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Contract. All books, records, and accounts of CONTRACTOR and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CONTRACTOR or its subcontractor, as applicable, shall make same available at no cost to TOWN in written form.

CONTRACTOR and its subcontractors 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 Contract for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, *as* may be amended from time to time, if applicable,

or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by TOWN to be applicable to CONTRACTOR's and its subcontractors' records, CONTRACTOR and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR or its subcontractors. 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. CONTRACTOR shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 8.2.

8.3 BACKGROUND CHECKS: The Town reserves the right to require background checks of any personnel assigned by CONTRACTOR to perform services under this Contract.

8.4 COMPLAINTS AND DISPUTES:

All complaints concerning misconduct on the part of the CONTRACTOR or disputes between TOWN staff and the CONTRACTOR are referred to the TOWN Administrator or his/her designee, who shall conduct investigations and inquiries, including discussions with the CONTRACTOR and involved staff. The determinations of the TOWN Administrator or his/her designee shall be binding upon the parties, and failure of the CONTRACTOR to follow any such determination could be considered a material breach and subject the CONTRACTOR to termination for cause. The CONTRACTOR agrees that any complaints received by the TOWN concerning misconduct on the part of the CONTRACTOR, such as excessive charges, poor business practices etc. will be referred to the Office of the TOWN Administrator for appropriate action. The CONTRACTOR agrees to make any complaints concerning the TOWN available to the Office of the TOWN Administrator for action as required.

8.5 PUBLIC ENTITY CRIME ACT

CONTRACTOR represents that the execution of this Contract will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to TOWN, may not submit a bid on a contract with TOWN for the construction or repair of a public building or public work, may not submit bids on leases of real property to TOWN,

may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with TOWN, and may not transact any business with TOWN in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed entire convicted vendor list. Violation of this section shall result in termination of this Contract and recovery of all monies paid by TOWN pursuant to this Contract and may result in debarment from TOWN's competitive procurement activities.

In addition to the foregoing, CONTRACTOR further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONTRACTOR has been placed on the convicted vendor list.

#### 8.6 INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor under this Contract. Services provided by CONTRACTOR pursuant to this Contract shall be subject to the supervision of CONTRACTOR. In providing such services, neither CONTRACTOR nor its agents shall act as officers, employees, or agents of TOWN. No partnership, joint venture, or other joint relationship is created hereby. TOWN does not extend to CONTRACTOR or CONTRACTOR's agents any authority of any kind to bind TOWN in any respect whatsoever. CONTRACTOR IS BEING HIRED FOR ITS TRAINING, EDUCATION, AND EXPERIENCE AND WILL NOT BE TRAINED BY THE TOWN. THE CONTRACTOR SHALL PROVIDE ITS SERVICES BASED ON ITS TRAINING AND EXPERIENCE AND SHALL DETERMINE THE APPROPRIATE AND PROFESSIONAL MANNER IN WHICH TO PROVIDE THE SERVICES PROVIDED FOR HEREIN.

In providing the services, CONTRACTOR shall determine the employees and subcontractors necessary to provide the services and shall be responsible for their supervision. CONTRACTOR shall be entitled to no TOWN employment benefits of any kind whatsoever.

#### 8.7 THIRD PARTY BENEFICIARIES

Neither CONTRACTOR nor TOWN intends to directly or substantially benefit third party by this Contract. Therefore, the parties agree that there are no third-party beneficiaries to this Contract and that no third party shall be entitled to assert a right or claim against either of them based upon this Contract.

#### 8.8 NOTICES.

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

FOR TOWN:

Town of Southwest Ranches  
Attn: Andrew Berns, Town Administrator  
13400 Griffin Road  
Southwest Ranches, Florida 33330

Keith Poliakoff, Esq.  
Suite 1000  
200 East Las Olas Blvd.  
Fort Lauderdale, FL 33301

FOR CONTRACTOR:

SEPI Engineering & Construction, Inc.  
Nicholas L. Ellis  
3350 NW 53rd Street, Suite 101  
Fort Lauderdale, Florida 33309

8.9 ASSIGNMENT AND PERFORMANCE

Neither this Contract nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. TOWN may terminate this Contract, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by CONTRACTOR of this Contract or any right or interest herein without TOWN'S written consent.

CONTRACTOR represents that each person who will render services pursuant to this Contract is duly qualified to perform such services by all appropriate, governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

CONTRACTOR shall perform its duties, obligations, and services under this Contract in a skillful and respectable manner. The quality of CONTRACTOR'S performance and all interim and final product(s) provided to or on behalf of TOWN shall be comparable to the best local and national standards.

#### 8.10 CONFLICTS

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

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

In the event CONTRACTOR is permitted pursuant to this Contract to utilize subcontractors to perform any services required by this Contract, CONTRACTOR agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as CONTRACTOR.

#### 8.11 MATERIALITY AND WAIVER OF BREACH

TOWN and CONTRACTOR agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Contract and that each is, therefore, a material term hereof.

TOWN's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this 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 Contract.



#### 8.12 COMPLIANCE WITH LAWS

CONTRACTOR shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Contract.

#### 8.13 SEVERANCE

In the event a portion of this Contract is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless TOWN or CONTRACTOR elects to terminate this Contract. An election to terminate this Contract based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

#### 8.14 JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Contract and acknowledge that the preparation of this Contract has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely *as* a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Contract shall be interpreted as to its fair meaning and not strictly for or against any party.

#### 8.15 JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Contract shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Contract, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Contract shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS CONTRACT, CONTRACTOR AND TOWN HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS CONTRACT.**

#### 8.16 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Contract and executed by the TOWN and CONTRACTOR or others delegated authority to or otherwise authorized to execute same on their behalf.

#### 8.17 PRIOR CONTRACTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, Contracts, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, Contract, or understanding concerning the subject matter of this Contract that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or Contract, whether oral or written.

#### 8.18 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties.

#### 8.19 REPRESENTATION OF AUTHORITY

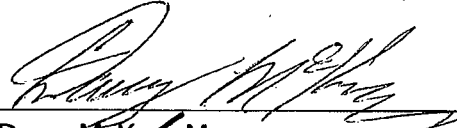
Each individual executing this Contract on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Contract, duly authorized by all necessary and appropriate action to execute this Contract on behalf of such party and does so with full legal authority.

#### 8.20 MULTIPLE ORIGINALS

Multiple copies of this Contract may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

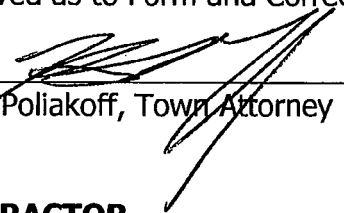
**IN WITNESS WHEREOF** the parties have caused these presents to be executed.

**TOWN OF SOUTHWEST RANCHES**

By:   
Doug McKay, Mayor

ATTEST:   
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:

  
Keith Poliakoff, Town Attorney

**CONTRACTOR**

SEPI ENGINEERING & CONSTRUCTION, INC.

By:   
SEPI Engineering & Construction, Inc.

EXHIBIT "A"

Hourly Fees For Service

Principal/Associate Principal:	\$ 150/hour
Planner:	\$ 100/hour
Administrative/Clerical:	\$ 45/hour

\* All work performed directly for the TOWN shall remain at \$125/hour for Principal/Associate Principal (Michele Mellgren/Jeff Katims, \$85/hour for Planning Assistant \$60/hour for other Planners, and \$40/hour for Administrative/Clerical intake

JMK 3/25/21

EXHIBIT "A"

Hourly Fees For Service

Principal/Associate Principal:	\$ 150/hour
Planner:	\$ 100/hour
Administrative/Clerical:	\$ 45/hour

**VOID**

**EXHIBIT "B"**

**FIRST MODIFICATION TO THE AGREEMENT BETWEEN  
SEPI ENGINEERING & CONSTRUCTION INC.  
AND  
THE TOWN OF SOUTHWEST RANCHES  
FOR  
PLANNING, ZONING AND LAND USE SERVICES**

THIS FIRST MODIFICATION is made and entered into this 28<sup>th</sup> day of April, 2022 by and between THE TOWN OF SOUTHWEST RANCHES, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter referred to as "TOWN") and SEPI ENGINEERING & CONSTRUCTION, INC. (hereinafter referred to as "CONTRACTOR").

**WITNESSETH:**

**WHEREAS**, on March 8, 2001, the Town Council authorized the issuance of a Request for Proposals (RFP) for Planning, Zoning and Land Use Services; and

**WHEREAS**, pursuant to the RFP received on March 30, 2001 (the RFP) the TOWN accepted competitive proposals for Planning, Zoning and Land Use Services (the Services); and

**WHEREAS**, on April 12, 2001, pursuant to Resolution No. 2001-045, the Town Council selected Michele Mellgren and Associates, Inc., which later changed its name to The Mellgren Planning Group Inc.; and

**WHEREAS**, on September 15, 2015, pursuant to Resolution 2014-053, the Town entered into a new agreement with the Mellgren Planning Group Inc.; and

**WHEREAS**, on July 13, 2017, pursuant to Resolution 2017-050, the Town approved the first modification to the agreement and extended the term for three (3) years; and

**WHEREAS**, on July 13, 2020, The Mellgren Planning Group Inc. sold substantially all its assets to SEPI Engineering & Construction, Inc., a North Carolina professional corporation; and

**WHEREAS**, pursuant to Resolution 2020-049, the Town transferred the Town's planning, zoning, and land use services to SEPI Engineering & Construction, Inc. as a result of the acquisition; and

**WHEREAS**, this agreement is set to expire on September 30, 2023; and

**WHEREAS**, CONTRACTOR will assist the Town, on an hourly basis, to provide planning, zoning, and land use services, as necessary, and at the discretion of the TOWN; and **WHEREAS**, some of the functions the CONTRACTOR will provide include processing all land use and zoning public hearing items, as well as special projects for the TOWN; and

**NOW THEREFORE**, in consideration of the sum hereinafter set forth and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, it is agreed as follows:

1. The above recitals are true and correct and incorporated herein.
2. Section 2.1 shall be amended to read as follows:  
The instant Contract shall commence August 14, 2020, and shall expire on September 30, ~~2023~~ 2026. This Contract is renewable upon consent of both parties.
3. Exhibit "A" of the Contract, entitled "Hourly Fees for Service" shall be amended as follows:

Hourly Fees for Service

~~Principal/ Associate Principal Senior Planning Manager: \$150~~ \$175 /hour  
~~Planner: \$100~~ \$125/hour  
~~Administrative/Clerical: \$45~~ \$ 55 /hour

\* All work performed directly for the TOWN shall be ~~\$125~~ \$150/hour for ~~Principal/ Associate Principal Senior Planning Manager (Michele Mellgren / Jeff Katims), \$85~~ \$100/hour for ~~Planning Assistant \$60/hour for other Planners, and \$40~~ \$45/hour for Administrative/Clerical intake.

4. All other Sections shall remain in full force and effect.

**[Signatures on Following Page]**

FIRST MODIFICATION TO THE AGREEMENT BETWEEN SEPI ENGINEERING & CONSTRUCTION INC. AND THE TOWN OF SOUTHWEST RANCHES.

WITNESSES:

CONTRACTOR:

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