

**RESOLUTION NO. 2002-33**

**A RESOLUTION OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT WITH BROWARD COUNTY FOR TRAFFICWAY BEAUTIFICATION FOR GRIFFIN ROAD FROM SW 160 AVENUE TO SW 186 AVENUE; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO EXECUTE SAID AGREEMENT; PROVIDING AN EFFECTIVE DATE THEREFOR.**

**WHEREAS**, the Town Council approved Resolution #2002-3 on October 11, 2001, which transferred all trafficways within the boundaries of the Town to the town excluding Griffin Road; and

**WHEREAS**, Griffin Road, from SW 160 Avenue to SW 186 Avenue, is a trafficway located within the boundaries of the Town and is classified as a County Road; and

**WHEREAS**, Broward County is responsible for the construction and maintenance of Griffin Road; and

**WHEREAS**, it is of mutual benefit to the residents of County and Town to beautify Griffin Road; and

**WHEREAS**, Broward County has expressed a desire to provide the installation of irrigation and landscaping on Griffin Road from SW 160 Avenue to SW 186 Avenue; and

**WHEREAS**, the Town has expressed its desire to undertake the maintenance of the beautification of Griffin Road following the appropriate completion of installation of the irrigation and landscaping.

**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.

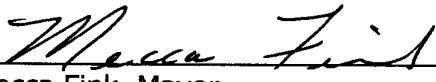
**Section 2: Authorization.** The Mayor, Town Administrator and Town Attorney are hereby authorized and directed to enter into and execute an Interlocal Agreement with Broward County for Trafficway Beautification along Griffin Road from S.W. 160 Avenue to S.W. 186 Avenue, substantially in the form as that Agreement attached hereto as Exhibit "A", with such changes as may be

deemed to be necessary and proper by the Town Administrator and Town Attorney to effectuate the intent of this Resolution.

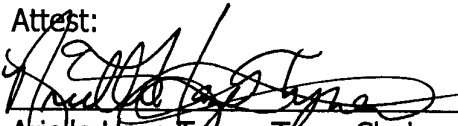
- a) County will provide the installation of irrigation and landscaping on Griffin Road from SW 160 Avenue to SW 186 Avenue.
- b) Town will undertake the maintenance of the beautification of Griffin Road following the appropriate completion of installation of irrigation and landscaping.

**Section 3:** That this Resolution shall become effective immediately upon its adoption.


**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 14<sup>th</sup> day of March 2002.

  
\_\_\_\_\_  
Mecca Fink, Mayor

Attest:

  
\_\_\_\_\_  
Arielle Haze Tyner, Town Clerk

Approved as to Form and Correctness:

  
\_\_\_\_\_  
Gary A. Poliakoff, J.D., Town Attorney

AGREEMENT

between

BROWARD COUNTY

and

TOWN OF SOUTHWEST RANCHES

for

TRAFFICWAY BEAUTIFICATION FOR  
GRIFFIN ROAD  
S.W. 160 AVENUE TO S.W. 186 AVENUE

PROJECT NO. 5067

WHEREAS, MUNICIPALITY, by Resolution of its governing body adopted on the 14<sup>th</sup> day of March, 2002, has approved joint beautification of the Trafficway with COUNTY, pursuant to the terms of this Agreement, and has authorized the appropriate officers of MUNICIPALITY to execute this Agreement; and

WHEREAS, COUNTY, by action of its Board of County Commissioners on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has approved the joint beautification of the Trafficway with MUNICIPALITY and has authorized the appropriate COUNTY officers to execute this Agreement; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payment hereinafter set forth, COUNTY and MUNICIPALITY agree as follows:

ARTICLE 1  
DEFINITIONS AND IDENTIFICATIONS

- 1.1 **Agreement:** "Agreement" shall mean this document, Articles 1 through 9, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **Board:** "Board" shall mean the Broward County Board of County Commissioners.
- 1.3 **Contract Administrator:** "Contract Administrator" shall mean the Broward County Administrator, the Director of Public Works, or the designee of such County Administrator or Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with MUNICIPALITY and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator, provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.4 **COUNTY:** "COUNTY" shall mean Broward County, through the Board, a political subdivision of the state of Florida.
- 1.5 **County Attorney:** "County Attorney" shall mean the chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 4.03 of the Broward County Charter.
- 1.6 **Landscape:** "Landscape" or "Landscaping" shall mean living plant materials such as grasses, ground cover, shrubs, vines, trees or palms and nonliving durable

materials commonly used in environmental design such as, but not limited to, rocks, pebbles, sand, walls or fences, aesthetic grading or mounding, decorative paving, and irrigation systems.

- 1.7 **MUNICIPALITY:** "MUNICIPALITY" shall mean the TOWN OF SOUTHWEST RANCHES, a municipal corporation of the state of Florida.

ARTICLE 2  
SCOPE OF SERVICES

- 2.1 COUNTY and MUNICIPALITY shall participate in the beautification of the Trafficway in the manner set forth in this Agreement.

- 2.2 COUNTY shall:

2.2.1 Prepare or cause to be prepared plans and specifications for the beautification of the Trafficway(s). Such plans and specifications shall be reviewed and approved by the Contract Administrator and the Town Administrator or designee of MUNICIPALITY; provided however, that MUNICIPALITY may not unreasonably withhold its approval.

2.2.2 In accordance with the approved design plans and specifications, pay for all landscape and irrigation system costs for the Trafficway(s) by installing, or causing to be installed, along the Trafficway(s) vegetation, which may include, but is not limited to, plants, trees, shrubberies and turf, and installing irrigation systems compatible with the installed vegetation.

2.2.3 Provide COUNTY staff or contractor to manage the completion of design, specifications, installation and inspection per plans and specifications.

2.2.4 Provide and pay for a minimum of six (6) months watering and vegetation warranty period for vegetation and irrigation system installed. To include the provision of electrical service and proper fertilization of vegetation.

2.2.5 To the extent permitted by Law, County in awarding contracts for the installation of landscape materials shall give preference to a vendor who agrees to purchase plants and materials from nurseries located within the Town.

- 2.3 MUNICIPALITY shall maintain all landscaping and irrigation within the Trafficway as follows:

- 2.3.1 In the event that utilities are to be utilized in the beautification and/or irrigation of the Trafficway, MUNICIPALITY shall take all necessary steps to properly establish the utility account(s) with the MUNICIPALITY's electrical energy and/or water supplier for the Trafficway beautification and shall agree to pay all electrical energy and water charges after the minimum six (6) month watering and vegetation warranty period provided by COUNTY and shall continue to pay all such charges relating to the beautification of the Trafficway as such charges arise.
- 2.3.2 MUNICIPALITY after the minimum six (6) month watering and vegetation warranty period provided by COUNTY shall properly fertilize all vegetation; keep all vegetation as free from disease and harmful insects as practicable; properly mulch the vegetation beds, keeping them free from weeds; periodically mow the grass in order to maintain a neat and proper appearance; prune all plants so as to remove all dead or diseased parts of plants and all parts of plants which present a visual hazard or physical obstacle to the use of the Trafficway; remove and replace all vegetation which is dead or diseased or which otherwise falls below the initial level of beautification of the Trafficway and keep litter removed from the Trafficway. Any replacement of vegetation as required herein, shall be accomplished by the use of plants of the same grade as specified in the original approved plans and specifications and shall be of the same size as approved in the original approved plans and specifications, at a minimum.
- 2.3.3 MUNICIPALITY after the minimum six (6) month watering and vegetation warranty period provided by COUNTY shall maintain the entire irrigation system and its parts in working order according to the original approved plans and specifications. As part of such maintenance responsibility, MUNICIPALITY shall keep in good repair, and replace, defective or worn out irrigation system parts and equipment which system parts and equipment shall include, but not be limited to, pumps, pipes, and sprinkler heads. MUNICIPALITY's responsibility to keep the system in good repair shall include all necessary maintenance, repair and replacement of any type or nature, including, but not limited to, maintenance, repair and replacement due to normal wear and tear, acts of God, vandalism and accidents.
- 2.4 COUNTY and MUNICIPALITY agree and understand that the Trafficway shall remain classified as a County road.

ARTICLE 3  
COSTS

3.1 MUNICIPALITY shall be responsible for all costs associated with the services required by Article 2, Section 2.3 herein above during the term of this Agreement.

3.2 COUNTY shall be responsible for all costs associated with the services required by Article 2, Section 2.2 herein above.

#### ARTICLE 4 TERM AND TERMINATION

4.1 The term of this Agreement shall begin on the date it is fully executed by both parties and shall terminate as provided for by Sections 4.2 through 4.6 herein below.

4.2 This Agreement may be terminated for cause by COUNTY, through action of the Board, or by MUNICIPALITY, upon a thirty (30) day written notice given by the terminating party to the other party setting forth the breach. If MUNICIPALITY, or COUNTY, corrects the breach within thirty (30) days after written notice of same, to the satisfaction of the terminating party, the Agreement shall remain in full force and effect. If such breach is not corrected and improved within thirty (30) days of receipt of notice of breach, the terminating party may terminate the Agreement. Specifically in the case of MUNICIPALITY's requirement to maintain the beautified Trafficway, COUNTY, at the option of the Contract Administrator, may cause such breach to be corrected and improved and bill MUNICIPALITY for the costs of such correction and improvement or terminate this Agreement. If COUNTY opts to correct and improve the breach and bill MUNICIPALITY for same, MUNICIPALITY shall then remit to COUNTY the amount so billed within thirty (30) days of MUNICIPALITY's receipt thereof.

4.3 Termination of this Agreement for cause shall include, but not be limited to: failure of the parties to suitably perform the services required by Article 2 herein, failure of the MUNICIPALITY to maintain the beautified Trafficway pursuant to the terms of this Agreement, and failure of the parties to continuously perform the services required by the terms and conditions of this Agreement in a manner calculated to meet or accomplish the objectives set forth herein, notwithstanding whether any such breach was previously waived or cured.

4.4 This Agreement may be terminated for convenience by either party upon a thirty (30) day written notice given by the terminating party to the other party. This Agreement may also be terminated by COUNTY's Contract Administrator upon such notice as Contract Administrator deems appropriate in the event that the Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.

4.5 In the event this Agreement is terminated for convenience, upon being notified of election to terminate, the parties shall refrain from performing further services or

incurring additional expenses under the terms of this Agreement. MUNICIPALITY acknowledges and agrees that Ten Dollars (\$10.00), the adequacy of which is hereby acknowledged by MUNICIPALITY, is given as specific consideration to MUNICIPALITY for COUNTY's right to terminate this Agreement for convenience.

- 4.6 Notice of termination shall be provided in accordance with the Article 6, "NOTICES," herein except that notice of termination by Contract Administrator which Contract Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with Article 6, "NOTICES," herein.

ARTICLE 5  
CHANGES IN SCOPE OF SERVICES

Any change to the Scope of Services must be accomplished by a written amendment, executed by the parties in accordance with Section 9.11 below.

ARTICLE 6  
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 by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR BROWARD COUNTY:

Henry P. Cook, Director  
Engineering Division  
1 North University Drive  
Building B, Room 300  
Plantation, Florida 33024

FOR MUNICIPALITY:

John Canada, Town Administrator  
6589 S. W. 160 Avenue (Dykes Road)  
Southwest Ranches, Florida 33331



ARTICLE 7  
INDEMNIFICATION

- 7.1 MUNICIPALITY is a state agency or political subdivision as defined in Chapter 768.28, Florida Statutes, and agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the state of Florida to be sued by third parties in any matter arising out of this Agreement or any other contract.
- 7.2 In the event that MUNICIPALITY contracts with a third party to provide the services set forth herein, addressed herein above, any contract with such third party shall include the following provisions:
- 7.2.1 Indemnification: MUNICIPALITY's contractor shall at all times hereafter indemnify, hold harmless and, at County Attorney's option, defend or pay for an attorney selected by County Attorney to defend COUNTY, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by negligent act or omission of MUNICIPALITY's contractor, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and County Attorney, any sums due MUNICIPALITY's contractor under this Agreement may be retained by MUNICIPALITY and/or COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by MUNICIPALITY and/ or COUNTY.
- 7.2.2 In order to insure the indemnification obligation MUNICIPALITY's contractor shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth in Article 8, Section 8.2, in accordance with the terms and conditions required by this Article.

7.2.3 The policies referred to in Section 7.2.2 herein above shall be without any deductible amount and shall be issued by approved companies authorized to do business in the state of Florida, and having agents upon whom service of process may be made in Broward County, Florida.

ARTICLE 8  
INSURANCE

- 8.1 The parties hereto acknowledge that MUNICIPALITY is a self-insured governmental entity subject to the limitations of Section 768.28, Florida Statutes. The MUNICIPALITY shall institute and maintain a fiscally sound and prudent risk management program with regard to its obligations under this Agreement in accordance with the provisions of Section 768.28, Florida Statutes.
- 8.2 In the event that MUNICIPALITY contracts with a third party to provide the services set forth herein, any contract with such third party shall include the following provisions:
- 8.2.1 Insurance: MUNICIPALITY's contractor shall at all times during the term of this Agreement keep and maintain in full force and effect, at contractor's sole cost and expense, insurance of the types and amounts as set forth on Exhibit "A," a copy of which is attached hereto and incorporated herein by reference as if set forth in full, and shall name COUNTY and Broward County Board of County Commissioners as an additional insured.
- 8.2.2 MUNICIPALITY's contractor shall furnish to the Contract Administrator Certificates of Insurance or Endorsements evidencing the insurance coverages specified by this Article prior to the beginning performance of work under this Agreement.
- 8.2.3 Coverage is not to cease and is to remain in full force and effect (subject to cancellation notice) until all performance required of MUNICIPALITY'S contractor is completed. All policies must be endorsed to provide COUNTY with at least thirty (30) days' notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.

ARTICLE 9  
MISCELLANEOUS

- 9.1 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records, and accounts of MUNICIPALITY that are related to this Project. MUNICIPALITY shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

MUNICIPALITY shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period 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 COUNTY to be applicable to MUNICIPALITY's records, MUNICIPALITY shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by MUNICIPALITY. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

9.2 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

MUNICIPALITY shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. MUNICIPALITY shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, MUNICIPALITY shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

MUNICIPALITY's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16½), national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

MUNICIPALITY shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in performing any services pursuant to this Agreement.

9.3 THIRD PARTY BENEFICIARIES

Neither MUNICIPALITY nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

9.4 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party.

MUNICIPALITY represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to COUNTY's satisfaction for the agreed compensation.

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

9.5 MATERIALITY AND WAIVER OF BREACH

COUNTY and MUNICIPALITY agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

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

9.6 COMPLIANCE WITH LAWS

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

9.7 SEVERANCE

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

9.8 JOINT PREPARATION

The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to 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.

9.9 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 of this Agreement shall prevail and be given effect.

9.10 APPLICABLE LAW AND VENUE

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Venue for litigation concerning this Agreement shall be in Broward County, Florida.

9.11 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 Agreement and executed by the Board and MUNICIPALITY.

9.12 PRIOR AGREEMENTS

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 9.11 above.

9.13 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached exhibits are incorporated into and made a part of this Agreement.

9.14 MULTIPLE ORIGINALS

This Agreement may be fully executed in four (4) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chair or Vice Chair, authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and TOWN OF SOUTHWEST RANCHES, signing by and through its \_\_\_\_\_, duly authorized to execute same.

ATTEST:

BROWARD COUNTY, through its  
BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
County Administrator and Ex-Officio  
Clerk of the Board of County  
Commissioners of Broward County,  
Florida

By \_\_\_\_\_  
Chair

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Approved as to form by  
Office of County Attorney  
Broward County, Florida  
EDWARD A. DION, County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968

By \_\_\_\_\_  
Pamela M. Kane  
Assistant County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND TOWN OF SOUTHWEST RANCHES FOR TRAFFICWAY BEAUTIFICATION FOR GRIFFIN ROAD S.W. 160 AVENUE TO S.W. 186 AVENUE PROJECT NO. 5067

TOWN

TOWN OF SOUTHWEST RANCHES

\_\_\_\_\_  
Mecca Fink, Mayor

\_\_\_\_\_  
John Canada, Town Administrator

Attest:

\_\_\_\_\_  
Arielle Haze Tyner, Town Clerk

Approved as to Form and Correctness:

\_\_\_\_\_  
Gary A. Poliakoff, J.D., Town Attorney

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