



REQUEST FOR PROPOSALS (RFP)
RFP No. 2017 - 02

FOOD AND BEVERAGE CONCESSION SERVICES
FOR SURFSIDE COMMUNITY CENTER/POOL

TOWN OF SURFSIDE MIAMI-DADE COUNTY,
FLORIDA

December 8, 2017

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RFP 2017-02

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PUBLIC NOTICE

Request for Proposals (RFP) No. 2017-02

Food and Beverage Concession Services at Surfside Community Center/Pool

NOTICE IS HEREBY GIVEN that the Town of Surfside is soliciting proposals for food and beverage concession services for the Surfside Community Center/Pool located at 9301 Collins Avenue, Surfside Florida. Interested firm/individuals (“Proposer (s)”) may pick-up a copy of the Request for Proposals (“RFP”) No. 2017-02 on the Town’s website at townofsurfside.fl.gov or Town of Surfside, Town Hall, 9293 Harding Avenue, Town Clerk’s Office, Second Floor, Surfside, Florida, 33154. The RFP contains detailed and specific information about the scope of services, submission requirements and selection procedures.

One (1) original, four (4) copies and an electronic copy in a USB drive of the completed and executed Proposals must be delivered to the following address no later than **January 12, 2018 at 2:00 p.m.**

**Town of Surfside Town Hall
9301 Collins Avenue, First Floor Meeting Room
Surfside, Florida, 33154**

The Town reserves the right to reject late submissions, in the sole discretion of the Town Manager or his designee.

The envelope containing the sealed Proposal must be clearly marked as follows:

“SEALED PROPOSAL”

RFP NO. 2017-02 FOOD AND BEVERAGE CONCESSION SERVICES FOR SURFSIDE COMMUNITY CENTER/POOL OPENING DATE AND TIME: January 12, 2018.

A **mandatory Pre-RFP Submission Conference** is scheduled for **December 21, 2017 at 10:00 a.m. at the Town of Surfside Community Center, 9301 Collins Avenue, First Floor, Surfside, Florida.** All Proposers planning to submit Proposals are required to attend this meeting. Proposers should allow sufficient time to ensure arrival prior to the indicated time, those arriving after the discussion has begun may not be considered to be in attendance. Proposals from those who have failed to attend will not be accepted.

The Town of Surfside intends to enter into an agreement with the successful Proposer to operate and manage food and beverage concession services for the Surfside Community Center/Pool, in the Town of Surfside, Florida.

The Town reserves the right to reject any or all proposals, with or without cause, to waive technical errors and informalities, and to accept the proposal which best serves the interest of and represents the best value to the Town.

Any questions regarding RFP No. 2017-02 are to be directed in writing to Sandra Novoa, Town Clerk, at the following address: 9293 Harding Ave., Second Floor, Surfside, Florida 33154. Alternatively, any questions may be sent via email to: snova@townofsurfsidefl.gov.

Any questions or clarifications concerning the proposal specifications must be received by Sandra Novoa, M.M.C. Town Clerk, no later than ten (10) calendar days prior to the proposal opening date. All questions shall be answered via an Addendum to this RFP and circulated to all registered Proposers. All persons attending the pre-submission conference may ask questions or seek clarification regarding this RFP.

Date Issued: December 8, 2017

Town of Surfside, Florida

REQUEST FOR PROPOSAL (RFP) NO. 2017- 02

Food and Beverage Concession Services at Surfside Community Center/Pool

1.1 INTRODUCTION

The Town of Surfside, Florida a municipality located in Miami-Dade County, Florida, requests qualified Proposers (“Proposers”) to submit proposals to operate and manage food and beverage concession services for the Surfside Community Center/Pool located at 9301 Collins Avenue, Surfside, Florida 33154. The premises or concession area are provided in existing “AS- Is” condition.

1.2 BACKGROUND

The Town of Surfside is located between the Atlantic Ocean and the Intracoastal Waterway on the east and west of 87th Terrace and 96th Street on the south and north. Our Town standards stress high quality visual corridors to the ocean, with access to the ocean as well as a focus on protecting the environment, providing landscaping and developing aesthetically attractive structures.

The Community Center/Pool is owned by the Town and operated by the Parks and Recreation Department for the use and enjoyment of Town residents and their guests. The Department sponsors special events, adult education classes, holiday celebrations, youth sports, youth programs and special events designed to provide entertainment, education, and recreation at the Community Center for all town residents and guests. The Community Center facility includes two (2) multipurpose rooms of 2,200 sq ft and 1,000 sq ft., a recreational pool with five (5) lap lanes and a water slide along with a separate water activity pool for children.

1.3 SCOPE OF SERVICES; MANAGEMENT AND OPERATIONAL RESPONSIBILITIES

The successful Proposer shall manage and operate the food and beverage concession and restaurant at the Surfside Community Center/Pool, including services for special events. The operating requirements are as follows. Monday - Sunday, the hours of operations are from 8:30 a.m. to 6:00 p.m. These operation hours may be expanded or decreased by the Town based on seasonal needs and the facility’s hours of operation. The number of special events is not known at this time; however, use of the facility for specials events will be an element of service. The successful Proposer will be required to perform the following tasks: Maintain the concession area and room in a clean and inviting manner; pick up food and trash from outside the concession facility, as needed; maintain and operate the food and beverage concession area in a professional manner to all patrons; provide high quality food and beverage concession services to the patrons of the Surfside Community Center/Pool.

The successful Proposer will be required to obtain a Business Tax License with the Town of Surfside. The successful Proposer will be required to pay a monthly concession fee of \$500.00 to the Town for use of the Community Center Concession area and for the right to perform the Services. The successful Proposer shall also be responsible for the payment of all applicable use and sales taxes, including resort taxes for food and beverage pursuant to Chapter 70, Article IV, of the Town of Surfside Code.

The successful Proposer will be responsible for hiring the necessary personnel to conduct the daily operation of the concession and will comply with all federal, state, and local laws related to employment, including minimum wage, social security, nondiscrimination, Americans with Disabilities Act (“ADA”), unemployment compensation, and workers’ compensation. Local, State and federal regulations regarding food preparation, handling, service and sales shall also be followed by the Proposer and all employees, without exception. Any deficiencies or health code violations as noted by health inspectors will be grounds for immediate termination of the concession contract. If required by the Town, employees shall wear a uniform and/or identification badge. The successful Proposer and all personnel employed by them shall be required, at their sole cost and expense, to pass a criminal background check prior to award of the contract, and every renewal term. The criminal background check shall consist of a Florida Department of Law Enforcement (“FDLE”) Florida Crime Information Center/National Crime Information Center (“FCIC/NCIC”) criminal records check. Any employee not meeting this requirement will not be permitted to work at any Town facility.

The successful Proposer is expected to serve quality food and drinks to meet the needs of the residents and patrons, and all menus or food options shall be previously approved by the Town in writing. Menu items should be offered at competitive prices. Alcoholic beverages are not permitted on the premises with the exception of special events approved by the Town of Surfside. Each proposer will be required to include a sample menu of products to be offered with a proposed price list corresponding to each product. No glass containers, metal flasks, spoons or knives will be permitted.

The successful Proposer shall comply with all federal, state and local rules and regulations, and shall obtain all required licenses and permits, regarding food handling, operation of a concession business, and any other laws applicable to the operation of a food and beverage concession and/or restaurant. Special attention must be paid to the regulations outlined by the State of Florida, Department of Professional and Business Regulation, Division of Hotels and Restaurants.

1.4 SUBMITTAL REQUIREMENTS

Proposals shall be as thorough and detailed as possible so that the Town may properly evaluate the capabilities of respective firms to provide the required services. All submittals by Proposers shall contain no more than fifteen (15) pages specifically addressing the following issues. Items number 9 and 10 below will not be considered a part of the fifteen (15) pages.

Any Proposer wishing to provide the services described in **Sections 1.3** above must submit one (1) original and four (4) additional complete proposals, including at a minimum, the following documentation:

1. Name, and address of company/firm, including, but not limited to, a business overview, financial state of the business, annual revenue for past two years, and names and addresses of all persons having financial and managerial interests in the firm.
2. Provide a narrative description of current and previous experience for the past five (5) years in successfully operating and managing similar concession and/or restaurant or catering type services and a corresponding list of client references with contact names and telephone numbers. The proposal must identify the primary individuals responsible for operating and supervising the services and their role.
3. Detail the approach and food and beverage services and products to be provided. Include a proposed menu and proposed price structure; layout of concession booth, including location and pictures of the booth; list of equipment that will be used at the concession and any other pertinent information that the proposer deems as necessary to depict their ability to perform the services required. Proposer may propose alternative services to be provided or method of providing food and beverage services at the facility (food truck, concession stands, restaurant service, etc).
4. Proof of authorization to transact business in Florida from the Florida Secretary of State, from the prime as well as any supporting firm(s), together with a copy of all applicable licenses and permits required for the Services. Proposer must be fully licensed with all required State and/or local licenses and permits to provide the Services.
6. The name, title, qualifications, experience, and all contact information of the proposed lead contact and any other key personnel.
7. The successful Proposer will be responsible for hiring the necessary personnel to conduct the daily operation of the concession and food and beverage service will comply with all federal, state, and local laws related to employment, including minimum wage, social security, nondiscrimination, Americans with Disabilities Act (“ADA”), unemployment compensation, and workers’ compensation.
8. Additional information should be included to support the business and food/beverage experience of the proposer such as copies of State of Florida licenses issued for food and Proposer operations from the Dept. of Hotels and Restaurants or other food handling certificates, recognition letters from other agencies in providing services similar to this RFP, etc.
9. Sworn statement pursuant to Section 287.133(3)(A), Florida Statutes, regarding

Public Entity Crime, a copy of which is attached hereto.

10. Non-collusive and Public Entity Crime Affidavits, copies of which are attached hereto as Attachments “A” and “B”.

1.5 SUBMISSION DATE AND MANDATORY PRE-RFP SUBMISSION CONFERENCE

Proposals must be received by the Town Clerk’s Office **no later than 2:00 p.m. on January 12, 2018**, at the Town of Surfside, Town Hall Attn: Town Clerk, 9301 Collins Avenue, First Floor Meeting Room, Surfside, FL 33154. One (1) original and four (4) copies, and an electronic copy in a USB drive, of the completed and executed Proposals of the completed and executed proposal must be delivered by this deadline in a sealed envelope or box. Proposals will be opened publicly and read aloud at this time.

The envelope or box containing the sealed Proposal **must be clearly marked as follows:**

“SEALED PROPOSAL”

RFP NO. 2017-02 FOOD AND BEVERAGE CONCESSION SERVICES FOR SURFSIDE COMMUNITY CENTER/POOL.

OPENING DATE AND TIME: January 12, 2018 AT 2:00 P.M.

A **mandatory Pre-RFP Submission Conference** is scheduled for **December 21, 2017 at 10:00 a.m., at the Town of Surfside Community Center, 9301 Collins Avenue, First Floor Meeting Room, Surfside, Florida.** All Proposers planning to submit a Proposal are required to attend this meeting. All persons attending the pre-submission conference will receive the answers to all questions asked or submitted.

1.6 ADDITIONAL INFORMATION OR CLARIFICATION: ADDENDA

Requests for additional information or clarifications must be made in writing and received by Sandra Novoa, Town Clerk, as specified in the Public Notice Section of this RFP, in accordance with the deadline for receipt of questions also specified in the Public Notice Section of this RFP. The request for additional information and clarification must contain the RFP number and title, Proposer’s name, name of Proposer’s contact person, address, phone number, and facsimile number.

Emails requesting additional information or clarifications for this RFP must be received by Sandra Novoa, M.M.C., Town Clerk, at the following email: snovoa@townofsurfsidefl.gov. The request shall include, at a minimum, the Proposer’s name, name of Proposer’s contact person, address, email, number of pages transmitted, phone number, and RFP number and title.

The Town will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Proposal deadline. All persons attending the mandatory pre-submission conference will receive the Town’s response. Proposers

should not rely on any representations, statements or explanations other than those made in this RFP or in any written addendum to this RFP. Where there appears to be conflict between the RFP and any addenda issued, the last addendum issued shall prevail.

1.7 SELECTION, AWARD OF CONTRACT AND PROTEST PROCEDURES

1.7.1 The Award of the Contract will be to the entity the Town believes possesses adequate qualifications in the best interest of the Town and most advantageous to the Town taking into account the evaluation criteria set forth below and whose Proposal complies with the requirements of the RFP. In no case will the Award be made until all necessary investigations have been made into the responsibility of the Proposer(s) and the Town Manager is satisfied that the Proposer is qualified to perform the Services and has the necessary experience, ability, organization, capital and equipment to carry out the Services in accordance with the specifications of this RFP.

1.7.2 Proposals submitted will be evaluated by a three (3) member Selection Committee ("Selection Committee") consisting of members appointed by the Town Manager, who will review submissions and provide a recommendation to the Town Commission.

1.7.3 Qualification Evaluation

The Selection Committee shall examine the documentation submitted in the Proposal to determine the responsiveness of each Proposer. Failure to provide the required information may disqualify any such Proposal as non-responsive and such Proposal will not be considered. The Selection Committee will disqualify any Proposers that make false statements. The evaluation of Proposals and the determination of conformity and acceptability shall be the sole responsibility of the Selection Committee. Such determination shall be based on information furnished by the Proposer, as well as other information reasonably available to the Town. The Selection Committee may make such investigations as it deems necessary to determine the ability of the Proposer to perform the services and the Proposer furnish the Town with all such information and date for this purpose as the Town may request before and during the Proposal period. The Selection Committee reserves the right to make additional inquiries, interview some or all Proposers, make site visits, interview references, obtain credit reports, or any other action it deems necessary to fairly evaluate all Proposers. The Selection Committee may at its sole discretion reject a Proposer or qualify a Proposer.

1.7.4 Evaluation.

The Selection Committee will evaluate and rank each Proposal in each of the categories listed below and rank the proposers as a group. Proposals will be evaluated and ranked based on, among additional factors, the following:

- A. The Proposer's qualifications, including financial ability and strength, to perform the services described in the RFP.
- B. The Proposer's experience providing the food and beverage concession services and/or restaurant and catering services, including the provision of such services to any local government entities, park facilities or similar operations.
- C. Qualifications and experience of Proposer's key employees.
- D. The type, quality and quantity of service, menu and food to be provided by the Proposer in the performance of the services described in the Agreement, including menu options.

Depending on the number of Proposals submitted, the Selection Committee may short-list the Proposers, down to three (3), and then interview and rank those top three (3) Proposers.

The Proposal ranked one (1) will be recommended by the Selection Committee to the Town Commission for award of the Agreement.

The Town Commission will consider the selection of a Proposer based upon the recommendation of the Selection Committee.

- 1.7.5** If the Town accepts a Proposal, the Town will provide a written notice of Award to the successful Proposer, who meets the requirements and criteria of this RFP, and the Town may negotiate and enter into a contract during the agreement process.
- 1.7.6** If the successful Bidder to whom a Contract is awarded forfeits the Award by failing to execute the Contract, the Town may, at the Town's sole option, award the Contract to the next lowest Responsive and Responsible Bidder or reject all Bids or re-advertise for the Services.
- 1.7.7** The award of to a successful Proposer is exclusive as to regular operations and hours of the concession services, provided however, it is understood that for certain special events such award is not exclusive and the Town reserves the right to hire or engage other providers or caterers within the Town's discretion, on a case by case basis, to perform such special events or catering services.
- 1.7.8** The Town will select the most qualified Proposer whose proposal best serves the interests of and represents the best value to the Town. The Town will act, at its sole discretion, in what it considers to be in the best interest of the Town. The Town will evaluate the comparable experience, capability, project management, workload, financial strength, and other factors the Town deems pertinent and will select the Proposer that it deems to be most qualified, in the best interest to the Town and most advantageous in accordance with the criteria and requirements set forth in this RFP.

1.7.9 If the Town and selected Proposer are unable to negotiate a mutually acceptable contract, the Town may terminate the contract negotiations and begin negotiations with other qualified firms. This process may continue until a contract has been executed or all Proposals have been rejected. No Proposer shall have any rights in the subject project or against the Town arising from such negotiations.

1.8 CONTRACT EXECUTION

A contract will be negotiated and executed between the selected Proposer and the Town, substantially in accordance with the terms and form of Concession Agreement attached hereto as Exhibit "E." The successful operation of this contract requires that the selected Proposer act in good faith in all matters relating to carrying out the services and the interpretation of the contract documents.

1.9 INSTRUCTIONS

Careful attention must be given to all requested items contained in this RFP. Proposers are required to submit Proposals in accordance with the requirements of this RFP.

PLEASE READ THE ENTIRE SOLICITATION BEFORE SUBMITTING A PROPOSAL.

Proposers shall make the necessary entry in all blanks provided for the responses.

The entire set of documents, together with all attachments hereto, constitutes the RFP. Each Proposer must return these documents with all information necessary for the Town to properly analyze the response in total and in the same order in which it was issued. Proposer's notes, exceptions, and comments may be rendered on an attachment, provided the same format of this RFP text is followed. All responses to this RFP shall be returned in a sealed envelope or package with the RFP number and opening date clearly noted on the outside of the envelope.

Proposers must provide a response to each requirement of the RFP. Responses should be prepared in a concise manner with an emphasis on completeness and clarity.

1.10 CHANGES/ALTERATIONS

Proposers may change or withdraw a response at any time **prior to** the submission deadline; however, no oral modifications will be allowed. Written modifications shall not be allowed following the submission deadline.

1.11 DISCREPANCIES, ERRORS, AND OMISSIONS

Any discrepancies, errors, or ambiguities in the RFP or addenda (if any) should be reported in writing to Sandra Novoa, M.M.C., Town Clerk. Should it be necessary, a written

addendum will be incorporated to the RFP. The Town will NOT be responsible for any oral instructions, clarifications, or other communications.

1.12 DISQUALIFICATION

The Town reserves the right to disqualify responses before or after the submission deadline, upon evidence of collusion with intent to defraud or other illegal practices on the part of the Proposer. The Town also reserves the right to waive any immaterial defect or informality in any responses to this RFP, or to cancel or postpone this RFP process AT ANY TIME DURING THE SUBMITTAL PROCESS; to reject any or all responses in whole or in part; or to reissue an RFP for the services described herein.

1.13 SUBMISSION RECEIPT/WITHDRAWAL

1.13.1 Sealed responses will be accepted in accordance with the instructions detailed on the cover of this RFP. The Proposer shall file all documents necessary to support its response and shall include them with its Proposal. Each Proposer shall be responsible for the actual delivery of responses no later than the submission deadline to the exact address indicated in this RFP. The Town reserves the right to accept or reject late submitted proposals, in the sole discretion of the Town Manager or his designee.

1.13.2 A Proposer may withdraw his proposal at any date and time prior to the time the proposals are scheduled to be opened but may not be resubmitted. Proposals may not be modified after submittal. After proposal opening, no proposal may be cancelled or modified.

1.14 CAPITAL EXPENDITURES

The selected Proposer understands that any capital expenditures that the selected Proposer makes, in order to perform the services required in this RFP is a business risk and may not be recoverable by the proposer. The Town, however, is not and shall not pay or reimburse any capital expenditures or any other expenses, incurred by any Proposer. Any and all Capital Expenditures or alterations to the concession area or space must be approved in advance and in writing by the Town prior to purchases being made.

1.15 HOLD HARMLESS AND INDEMNIFICATION

All Proposers shall hold the Town, its officials and employees harmless and covenant not to sue the Town, its officials and employees in reference to the town's decision to reject, award, or not award a RFP, as applicable. Additionally, the selected Proposer shall indemnify, defend and save harmless the Town, its officers, agents and employees, from or on account of any injuries or damages, received or sustained by any person or persons during or on account of the Proposer's performance of its services under this RFP, or by or in consequence of any negligence (excluding the sole negligence of the Town), in connection

with the same; or by use of any improper materials or by or on account of any act or omission of the said selected Proposer or his Sub-Proposer, agents, servants or employees. The selected Proposer shall indemnify, defend and hold harmless the Town and their agents or employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of the work described in the RFP, provided that any such claim damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than work itself) including the loss of use resulting wherefrom and (b) is caused in whole or in part by any negligent act or omission of the selected Proposer, Sub-Proposer, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder.

1.16 RESERVATION OF RIGHTS

The Town reserves the right to: accept any or all responses; the right, in its sole discretion, to accept the Proposer who will best serve the interests of and represent the best value to the Town; Reject any and all qualifications and to seek new qualifications when such a procedure is reasonable in the best interest of the Town; Investigate the financial capability, integrity, experience, and quality of performance of each Proposer, including officers, principals, senior management, and supervisors, as well as staff identified in the response to RFP; Investigate the Proposer's qualifications or any of its agents, as it deems appropriate; Conduct personal interviews of any or all Proposers prior to selection (the Town shall not be liable for any costs incurred by the Proposer(s) in connection with such interviews); waive any of the conditions or criteria set forth in this RFP; Town reserves the right to decide whether to select a firm based on submission received in response to this RFP or whether to hold interviews with the firms the Town deems best qualified for the project. The Town is under no obligation to return the Proposals.

The Town will not be liable for any cost incurred in the preparation of the response to this RFP. The Proposals shall be *prima facie* evidence that the Proposer has full knowledge of the scope, nature, quantity and quality of work to be performed; the detailed requirements of the specifications; and the conditions under which the work is to be performed.

The Proposers shall furnish the Town with such additional information as the Town may reasonably require.

The Town must be satisfied that the Proposer demonstrates the ability to meet the requirements of the attached Contract.

1.17 INSURANCE REQUIREMENTS

The Selected proposer shall secure and maintain throughout the duration of the Contract, insurance of the type and in the minimum amount specified below and shall demonstrate its ability to do so:

Comprehensive General Liability ("CGL") insurance, with minimum limits of One

Million Dollars (\$1,000,000) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability, and Two Million Dollars (\$2,000,000) aggregate.

Worker's Compensation, as required by law, together with no less than \$1,000,000 for Employer's Liability.

Business Automobile Liability which shall include coverage for all owned, non-owned and hired vehicles for minimum limits of not less than One Million Dollars (\$1,000,000) per occurrence, One Million Dollars (\$1,000,000) per accident for bodily injury and Five Hundred Thousand Dollars (\$500,000) per accident for property damage.

1.18 LAWS AND REGULATIONS

All applicable laws and regulations of the Federal Government, State of Florida, and local ordinances of Miami-Dade County and the Charter and Code of the Town of Surfside shall apply to the services and any Contract awarded as a result of this RFP. Specific reference is made to Town Ordinance 09-1543 which allows a five (5%) per cent local preference in scoring to holders of current Town local business receipts for business which are physically located with the Town of Surfside limits and three (3%) per cent to local businesses located within a ten (1) mile radius of the Town's corporate limits. The selected Proposer also comply with all requirements of Chapter 70, Article IV, of the Town Code, Resort Taxes.

1.19 ATTACHMENTS

The Exhibits to this RFP are as follows:

- Attachment "A" Public Entity Crime Affidavit
- Attachment "B" Non-Collusive Affidavit
- Attachment "C" Anti-Kickback Affidavit
- Attachment "D" Drug Free Workplace Affidavit
- Attachment "E" Concession Agreement

Attachment “A”
SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a)
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted
to _____
by _____
for _____

whose business address is

and (if applicable) its Federal Employer Identification Number (FEIN)

(If the entity had no FEIN, include the Social Security Number of the individual signing this sworn statement:

2. I understand that a “public entity crime” as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that “convicted” or “conviction” as defined in Paragraph 287.133(1)(b), Florida Statutes means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an “affiliate” as defined in Paragraph 287.133(1)(a), Florida Statutes,

means:

- a. A predecessor or successor of a person convicted of a public entity crime; or
- b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market

value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of any entity.
6. Based on information and belief, the statement which I have marked below is true in a relation to the entity submitting this sworn statement. (Please indicate which one (1) of the following three (3) statements is applicable.)

____ (1) Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or any affiliate of the entity has been charged with and convicted of a public entity crime within the past 36 months.

____ (2) The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or any affiliate of the entity has been charged with and convicted of a public entity crime within the past 36 months.

____ (3) The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or agents who are active in management of the entity, or any affiliate of the entity has been charged with and convicted of a public entity crime within the past 36 months. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted Proposer list. (Attached is a copy of the final order.)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THE PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED AND FOR THE PERIOD OF THE CONTRACT ENTERED INTO , WHICHEVER PERIOD IS LONGER. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR THE CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

Attachment "B"
NON-COLLUSION AFFIDAVIT

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The undersigned being first duly sworn as provided by law, deposes, and says:

1.1. This Affidavit is made with the knowledge and intent that it is to be filed with the Town of Surfside and that it will be relied upon by said Town, in any consideration which may give to and any action it may take with respect to this proposal.

1.2. The undersigned is authorized to make this Affidavit on behalf of, _____ (*Name of Corporation, Partnership, Individual, etc.*), a corporation duly organized and existing under the laws of the State of _____ of which he is _____ (*Sole Owner, Partner, President, etc.*)

1.3. Neither the undersigned nor any person, firm, or corporation named in above Paragraph 1.2, nor anyone else to the knowledge of the undersigned, have themselves solicited or employed anyone else to solicit favorable action for this proposal by the Town, also that no head of any department or employee therein, or any officer of the Town of Surfside, Florida is directly interested therein.

1.4. This proposal is genuine and not collusive or a sham; the person, firm or corporation named above in Paragraph 1.2 has not colluded, conspired, connived or agreed directly or indirectly with any Proposer or person, firm or corporation, to put in a sham proposal, or that such person, firm or corporation, shall refrain from Proposing, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the prices of said proposal or proposals of any other Proposer; and all statements contained in the proposal or proposals described above are true; and further; neither the undersigned, nor the person, firm or corporation named above in Paragraph 1.2, has directly or indirectly submitted said proposal or the contents thereof, or divulged information or data relative thereto, to any association or to any member or agent thereof.

AFFIANT'S NAME

AFFIANT'S TITLE

Name of Proposer

The foregoing Affidavit was acknowledged before me this _____ day of _____, 2018, by _____, as _____ of _____, a Florida corporation, on behalf of said corporation. He/She personally appeared before me and is personally known to me.

NOTARIAL SEAL

Notary: _____
Print Name: _____
Notary Public, State of Florida
My Commission Expires: _____

**Attachment “D”
DRUG-FREE WORKPLACE**

The undersigned Proposer (firm) in accordance with Chapter 287.087, Florida Statutes, hereby certifies that _____(Name of Company) does:

1. Publish a statement notifying employees that the unlawful manufacturing, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the work place, the business’s policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the contractual services that are under consideration a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employee that, as a condition of working on the contractual services that are under consideration, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893, Florida Statutes or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee’s community, by any employee who is so convicted.

Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Signature (Blue ink only)

Print Name

Title

Date

Attachment “E”

**AGREEMENT FOR FOOD AND BEVERAGE
CONCESSION SERVICES FOR SURFSIDE
COMMUNITY CENTER/POOL**

THIS AGREEMENT made and entered into this _____ day of _____, 2018 by and between the Town of Surfside, Florida, a Florida municipal corporation (hereinafter referred as to “Town” and _____ (hereinafter referred to as the “Contractor”).

WHEREAS, the Town wishes to employ Contractor to operate and manage food and beverage concession services for the Surfside Community Center/Pool Facility pursuant to the specifications outlined in RFP No. 2017-__ (“RFP”), which is incorporated herein and made a part hereof; and

WHEREAS, the Contractor was selected by the Town as the most qualified Proposer and most advantageous in the best interests of the Town in response to the RFP; and

WHEREAS, the Contractor is qualified, willing and able to provide the desired services on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein named, the parties hereto agree as set forth below:

1. **RECITALS.** The Recitals set forth above are hereby incorporated into this Agreement and made a part of hereof for reference.

2. **SERVICES TO BE PERFORMED.** Contractor shall perform the required services in compliance with the terms and conditions specified in the RFP. Contractor agrees to furnish all labor and materials in a good and workmanlike and professional manner. The Services shall be performed by Contractor to the full satisfaction of the Town. Contractor agrees to immediately inform the Town via telephone and in writing of any problems that could cause damage to property and persons or to the concession area located at the Surfside Community Center/Pool located at 9301 Collins Avenue, Surfside, Florida 33154.

3. **PAYMENTS TO THE TOWN.** In consideration for the terms of this Agreement, the Contractor shall pay the Town a monthly concession fee of \$500.00, as required by the RFP, plus any applicable sales or use taxes imposed by any governmental entity, including resort taxes for food and beverage due the Town pursuant to Chapter 70, Article IV, of the Town of Surfside Code. Payment to the Town shall be sent to the Town no later than the tenth (10th) day of each month. Payments received from the tenth (10th) of each month to the twenty fifth (25th) of each month shall be considered delinquent and shall be assessed a ten percent

(10%) penalty. Payments received after the twenty fifth (25th) of each month shall be assessed an additional ten percent (10%) penalty. Failure by the Contractor to tender payment to the Town within thirty (30) days of any payment due date shall be sufficient cause for the Town to terminate this Agreement. Contractor shall comply with all requirements of Chapter 70, Article IV, of the Town Code, in connection with the collection, filing of returns, remittance and payment of all resort taxes due the Town for food and beverage sales.

4. **TERM.** This Agreement shall be for an initial term of three (3) years commencing on _____ and ending on _____ unless sooner terminated pursuant to paragraph 12 of this Agreement. Services shall commence upon execution by both parties of this Agreement (the “Commencement Date”). Any change in fee, terms or conditions shall be accomplished by written amendment to this Agreement and approval by the Town. The Town shall have the right, in its sole discretion, to renew the Term of the Agreement for three (3) successive one (1) year terms (each a “Renewal Term”) by providing written notice to Contractor of such renewal at least sixty (60) days in advance of the expiration of the then applicable term.

5. **NO SUBLEASE.** Contractor understands it is granted permission to use the premises for the operation of a concession stand under the terms of this Agreement. It shall have no right to sublease, assign or otherwise convey any interest of any sort granted by this Agreement to any person or persons whatsoever without prior written consent and approval by the Town. This Agreement shall not be construed to grant Contractor any right or property interest in the premises except to the extent of the obligations under this Agreement.

6. **RECORDS AND ACCOUNTS.** Contractor shall keep true and accurate books and records showing all of its business transactions in separate records of account for the concession operation, in a manner acceptable to the Town. The Town shall have the right, through its representatives, and at all reasonable times, to inspect such books and records, including State of Florida sales tax records. The Town may require Contractor, at his expense, to have his records and accounts audited by an auditor acceptable to the Town and shall present said audit to the Town Manager or his designee within thirty (30) days after the completion of the audit. If Contractor fails to provide the required audit, the Town shall contract to have an audit performed at the Contractor’s expense.

7. **CONDITION OF PREMISES.** The taking of possession of the subject premises by Contractor shall be in “As Is” Condition and shall, in itself, constitute acknowledgment that the premises are in good and tenantable condition. Contractor agrees to accept said premises as constructed but may proposed minor modifications or alterations to ensure efficient operations, subject to the prior written approval of the Town. Contractor shall not construct or modify said premises without the prior written approval by the Town Manager or his designee. Any plans for such construction, if applicable, shall be submitted to the Town for approval. Such construction or modification shall be without cost to the Town and be performed in accordance with all permitting and building requirements.

8. **SIGNS.** All signs, names, placards or signs shall be approved by the Town Manager or his designee prior to installation. All signs must meet all requirements and

specifications as set forth by the Town.

9. DAMAGE TO/DESTRUCTION OF PREMISES: Should the subject premises or the building and other improvements in which the subject premises are situated be totally or partially damaged or destroyed, the Town shall promptly repair the same, except that the Town shall have the option to terminate this Agreement if (a) the subject premises or the building improvements in which the premises are situated cannot reasonably be expected to be restored under existing law to substantially the same condition as existed prior to such damage or destruction within ninety (90) days from the date that the insurance proceeds become available to the Town; or (b) if the costs of such restoration would exceed one-half (1/2) of the full insured value of the building and other improvements in which the subject premises are situated; or (c) if the damage or destruction results from a casualty not customarily insured against by a policy of standard fire and extended coverage insurance having vandalism and malicious mischief endorsements. Any notice of termination given here shall be given to Contractor within fifteen (15) days after Town determines the period of time required for and the estimated cost of such repair or restoration.

10. OBLIGATIONS OF CONTRACTOR

10.01 MINIMUM AMOUNT OF SERVICE BY CONTRACTOR:

- A. Contractor agrees to devote the hours necessary to perform the services set forth in this Agreement in an efficient and effective manner. Contractor may represent, perform services for and be employed by additional individuals or entities, at Contractor's sole discretion, as long as the performance of these extra-contractual services does not interfere with or presents a conflict with Town's business.
- B. Contractor understands that for certain special events only and within the Town Manager's discretion, the Town may, award a Contract to other caterers on a case by case basis.

10.02 HOURS OF OPERATION: Contractor agrees to perform the services as set forth in this Agreement within the hours of operation established by the Town Manager or his designee.

10.03 PERMITS: Contractor is required to provide Town, prior to commencement of operation of the concessions, a copy of all licenses, permits and/or certificates necessary to operate its business in the Town.

10.04 TAXES: Contractor agrees to pay all lawful taxes, assessments or charges which may be levied by any government entity.

10.05 EQUIPMENT: Contractor, at their own expense, shall completely equip the concession and keep all existing equipment in good repair and in safe

operating condition to the satisfaction of the Town throughout the term of the Agreement. Daily inspections of the contractor's equipment must be maintained and available for review upon request of the Town Manager or his designee. Request to use the Surfside Community Center and Pool Facility after hours must be made in writing to the Town Manager or his designee.

10.06 QUALITY OF SERVICE/CONTROLLED RATES AND CHARGES:

The Town has the right to inspect and schedule the menu, prices and rates of goods sold, entrance fees, and equipment upon the subject premises. The Town reserves the right to prohibit the sale of any item which it deems objectionable or beyond the scope of merchandise deemed necessary for proper service to the public. Contractor shall post rates and prices of all items in such places as designated by the Town. The Contractor is prohibited from selling alcohol on the premises.

10.07 TOOLS AND INSTRUMENTALITIES: Contractor shall provide all tools, equipment and instrumentalities to perform the services under this Agreement.

10.08 INDEPENDENT CONTRACTOR RELATIONSHIP. The Contractor, including its employees, is an independent Contractor and shall be treated as such for all purposes. Nothing contained in this Agreement or any action of the parties shall be construed to constitute or to render the Contractor an employee, partner, agent, shareholder, officer or in any other capacity other than as an independent Contractor other than those obligations which have been or shall have been undertaken by the Town. Contractor shall be responsible for any and all of its own expenses in performing its duties as contemplated under this Agreement. The Town shall not be responsible for any expense incurred by the Contractor. The Town shall have no duty to withhold any federal income taxes or pay Social Security services and that such obligations shall be that of the Contractor other than those set forth in this agreement. Contractor shall furnish its own transportation, office and other supplies as it determines necessary in carrying out its duties under this agreement.

10.09 INDEMNIFICATION. Contractor agrees to indemnify, defend and hold harmless, the Town, its officers, agents, and employees from, and against any and all claims, actions, liabilities, losses and expenses including, but not limited to, attorney's fees for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or may be alleged to have risen from the negligent acts, errors, omissions or other wrongful conduct of the Contractor, agents or other personnel entity acting under Contractor's control in connection with the Contractor's performance of services under this Agreement and to that extent the Contractor shall pay such claims and losses and shall pay all such costs and judgments which

may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and attorneys' fees expended by the Town in defense of such claims and losses including appeals. That the aforesaid hold-harmless agreement by Contractor shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of Contractor or any agent or employee of Contractor regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

10.10 INSURANCE. Contractor shall, at its sole cost and expense, during the period of any work being performed under this Agreement, procure and maintain the following minimum insurance coverage to protect the Town and Contractor against all loss, claims, damage and liabilities caused by Contractor, its agents, sub-Contractors or employees, as indicated below:

Comprehensive General Liability ("CGL") insurance, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability, and Two Million Dollars (\$2,000,000) aggregate.

Worker's Compensation, as required by law, but with no less than \$1,000,000 for Employer's Liability.

Business Automobile Liability which shall include coverage for all owned, non-owned and hired vehicles for minimum limits of not less than One Million Dollars (\$1,000,000) per occurrence, One Million Dollars (\$1,000,000) per accident for bodily injury and Five Hundred Thousand Dollars (\$500,000) per accident for property damage.

Restaurant/Food Operations Liability insurance covering any damages caused by an error, omission or any negligent acts of Contractor, its sub-contractors, agents, officers, or employees under this Agreement with minimum limits of not less than One Million Dollars (\$1,000,000) per occurrence.

Insurance required of the Contractor shall be primary to, and not contribute with, any insurance or self-insurance maintained by the Town.

Such insurance shall not diminish Contractor's indemnification and obligations hereunder. The insurance policy(ies) shall be issued by companies authorized to do business under the laws of the State of Florida and acceptable to the Town with a minimum A.M. Best rating of A-Excellent. **Before any services under this Agreement is performed, and at any time upon request, Contractor shall furnish to the Town certificates of insurance evidencing the minimum required**

coverage and shall be appropriately endorsed for contractual liability, with the Town named as additional insured. All policies shall contain a waiver of subrogation endorsement. All policies and certificates shall be in forms and issued by insurance companies acceptable to the **Town's Clerk**. All insurance policies and certificates of insurance shall provide that the policies may not be canceled or altered without thirty (30) days prior written notice to the Town. The Town reserves the right from time to time to change the insurance coverage and limits of liability required to be maintained by Contractor hereunder.

Contractor shall also require and ensure that each of its subcontractors providing services hereunder (if any) procures and maintains, until the completion of the services, insurance of the types and to the limits specified herein.

ANY EXCEPTIONS TO THE INSURANCE REQUIREMENTS IN THIS SECTION MUST BE APPROVED IN WRITING BY THE TOWN.

10.11 CONTRACTOR'S MAINTENANCE: Except as otherwise provided in this Agreement, Contractor, at its own cost and expense agrees:

a. To maintain throughout the agreement term in good sanitary order, condition, and repair, all portions of the leased premises, including, without limitation, any personal property of the Contractor situated in or upon the subject premises.

b. To notify the Town promptly of any damage to the subject premises resulting from or attributed to the acts or omissions of the Contractor, its invitees or its authorized representatives, and thereafter promptly to repair all such damage. Any damage resulting from the negligent acts or omissions of the Contractor or its employees shall be repaired at Contractor's sole cost and expense.

11. OBLIGATIONS OF TOWN

11.01 UTILITIES: The Town shall pay the reasonable costs for the actual utilities, including water, gas, heat, light and power supplied to the subject premises. The suspension or interruption in utility service to the premises for reasons beyond the ability or control of the Town shall not constitute a default by Town or entitle Contractor to any reduction or abatement of the monthly payment due to the Town.

12. TERMINATION.

a. Termination for Default. If, through any cause within the reasonable control the Contractor shall fail to fulfill in a timely manner or otherwise violate any of the covenants, agreements or stipulations material to this agreement, the Town shall have the right to terminate the services then remaining to be performed. Prior to the exercise of its option to terminate for cause, the Town shall notify the Contractor of its violation of the particular terms of the Agreement and

grant Contractor ten (10) days to cure such default. If the default remains uncured after ten (10) days the Town may terminate this agreement.

- i. In the event of termination, all finished and unfinished documents, data and other work product prepared by Contractor (and sub-Contractor[s]) shall be delivered to the Town and the Contractor shall compensate the Town in accordance with Section 3 of this Agreement.
- ii. Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the Town for damages sustained by it by virtue of a breach of the agreement by Contractor.
- iii. After receipt of a Termination Notice and except as otherwise directed by the Town, the Contractor shall:
 1. Stop work on the date and to the extent specified;
 2. Terminate and settle all orders and subcontracts relating to the performance of the terminated work;
 3. Transfer all work in process, completed work and other materials related to the terminated work to the Town; and
 4. Continue and complete all parts of that work that have not been terminated.
- b. Termination for Convenience of Town. The Town may, for its convenience and without cause terminate the services then remaining to be performed provided that the Contractor is given thirty (30) days' notice. In such an event, the provisions of subparagraph (a)i.-iii. above shall be applicable.
- c. Termination for Insolvency. The Town also reserves the right to terminate the remaining services to be performed in the event the Contractor is placed either in voluntary or involuntary bankruptcy or makes any assignment for the benefit of creditors.

13. OWNERSHIP OF DOCUMENTS AND EQUIPMENT. All documents prepared by the Contractor pursuant to this Agreement and related services to this agreement are intended and represented for the ownership of the Town only. Any other use by Contractor or other parties shall be approved in writing by the Town. Contractor shall deliver to the Town for approval and acceptance, and before being eligible for final payment or any amounts due, all documents and materials prepared by, and for, the Town under this Agreement.

All oral and written information not in the public domain or not previously known, and all information and data obtained, developed or supplied by the Town, or at its expense, will be kept confidential by the Contractor and will not be disclosed to any other party, directly or indirectly, without the Town's prior written consent, unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed or purchased under this Agreement for, or at the Town's expense, shall be and remain the Town's property and may be reproduced and reused at the discretion of the Town.

The Town and Contractor shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law). All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including, but not limited to, any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

14. ASSIGNMENTS, TRANSFERS, SUBCONTRACTING. The Contractor shall not subcontract, assign or transfer any services under this Agreement without the prior written consent of the Town. Should the Contractor subcontract any services under this Agreement, it shall be done with continued liability for the Contractor. The Contractor shall remain responsible for services, responsibilities and liabilities of any person or entity acting under Contractor.

15. AUTHORITY TO PRACTICE; COMPLIANCE WITH LAWS. Contractor hereby represents and warrants that it has and will continue to maintain all licenses, permits and approvals required to conduct its business and perform the services that it will at all times conduct its business activities in a reputable manner. Proof of such licenses, permits and approvals shall be submitted to the Town prior to commencement of work under this Agreement. The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement. Contractor shall comply with all requirements of Chapter 70, Article IV, requiring collection, and filing of returns and remittance of resort taxes due the Town for food and beverage sales. Contractor's failure to comply with such resort tax requirements, may subject Contractor to penalties imposed by Chapter 70-117 of the Town Code and default under this terms of this Agreement.

16. COORDINATION OF SERVICES. The Town's representative/liaison during the performance of this Agreement shall be Tim Milian, Director of Parks and Recreation Department, whose phone number is (305) 305.866.3635. Contractor shall not respond to requests for services under this Agreement unless the request is received directly from, **Tim Milian, or the Town Manager or his designated personnel.**

17. TIME FOR PERFORMANCE: Except as otherwise expressly provided for in this Agreement, should the performance of any required by this agreement to be performed by either party be prevented or delayed by reason by any act of God, strike, lockout, labor trouble, inability to secure materials, or any other cause except financial inability not the

fault of the party required to perform the act, the time for performance of the act will be extended for a period of time equivalent to the period of delay will be excused; provided, however, that nothing contained in this section shall exclude the prompt payment by either party as required by this agreement or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

18. PREVAILING PARTY ATTORNEYS' FEES AND COSTS; WAIVER OF JURY TRIAL

- a. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- b. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

19. NOTICES. All notices and communications hereunder shall be in writing and shall be deemed given when sent postage prepaid by registered or certified mail, return receipt requested and, if intended for Town to **Town Manager**, with a copy to **Town Attorney**, Town of Surfside, Florida, 33154, and, if intended for Contractor, shall be addressed to:

20. GOVERNING LAW. The validity of this Agreement and the interpretation and performance of all of its terms shall be construed and enforced in accordance with the laws of the State of Florida, without regard to principles of conflict of laws thereof. The location or venue of any action or proceeding commenced under or pursuant to this Agreement shall be in Miami- Dade County, in the State of Florida.

21. AUDIT. The Contractor shall make available to the Town or its representative all required financial records associated with the Agreement for a period of three (3) years.

22. NON-DISCRIMINATION. The Contractor agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1984 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11248 as amended by Executive Orders 11375 and 12086. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/family status, or status with regard to public assistance. The Contractor will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees

and applicants for employment, notices to be provided by the Town setting forth the provisions of this non-discrimination clause. The Contractor agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 708), which prohibits discrimination against the handicapped in any Federally assisted program.

23. ENTIRE AGREEMENT. This Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof, and it shall supersede all previous and contemporaneous oral and written negotiations, commitments, agreements and understanding relating hereto. This Agreement may be executed in multiple identical counterparts, each of which shall be deemed an original for all purposes. The terms and conditions of this Agreement shall prevail over any contrary or inconsistent terms in any other documents, including any attachments hereto.

24. AMENDMENT. Any modification of this Agreement shall be effective only if in writing and signed by the parties to this Agreement. No waiver of any provision of this Agreement shall be valid or enforceable unless such waiver is in writing and signed by the party granting such waiver.

25. MISCELLANEOUS.

a. Contractor and its employees shall promptly observe and comply with applicable provisions of all published federal, state and local laws, rules and regulations which govern or apply to the services rendered by Contractor hereunder, or to the wages paid by Contractor to its employees.

b. Contractor shall obtain and keep in force during the term of this Agreement all necessary licenses, registrations, certificates, permits and other authorizations, as well as insurance coverage, as required by law in order for Contractor to render the Service required hereunder.

c. Except as expressly provided for in this Agreement, Contractor is not authorized to act as the Town's Agent hereunder and shall have no authority, expressed or implied, to act for or bind the Town hereunder, either in Contractor's relations with sub-Contractors, or in any other manner whatsoever.

26. OWNERSHIP AND ACCESS TO RECORDS; PUBLIC RECORDS.

Contractor acknowledges that all inventions, innovations, improvements, developments, methods, studies, designs, analyses, plans, drawings, reports and all similar or related information (whether patentable or not) which relate to Services to the Town which are conceived, developed or made by Contractor during the term of this Agreement ("Work Product") belong to the Town. Contractor shall promptly disclose such Work Product to the Town and perform all actions reasonably requested by the Town (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Contractor providing the Services to the Town under this Agreement shall be the property of the Town.

Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.

Upon request from the Town custodian of public records, Contractor shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.

Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager and/or his designee, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. Any compensation due to Contractor shall be withheld until all records are received as provided herein.

Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

Section 119.0701(2)(a), Florida Statutes

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

**Custodian of Records: SANDRA NOVOA
TOWN CLERK**

Mailing address:

**9293 Harding Avenue
Surfside, Florida 33154**

Telephone number:

(305) 861-4863 x226

Email:

snova@townofsurfsidefl.gov

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate on the day and year first written above.

WITNESSES:

Signature

Print Name

—
WITNESSES:

Signature

CONTRACTOR:

By: _____

Name: _____

Title: _____

Date Executed: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate on the day and year written below their signatures.

**TOWN OF SURFSIDE, FLORIDA, a
Florida municipal corporation**

BY: _____

Date Executed: _____

ATTEST:

Sandra Novoa, MMC
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**

Town Attorney