



Town of Surfside

RFP 2026-03

TOWN HALL HVAC REPLACEMENT PROJECT

Addendum No. 1

Date Issued: April 13, 2026

To All Respondents:

This Addendum No. 1 forms a part of Request for Proposals (RFP) No. 2026-03 and modifies the original solicitation documents. All Respondents shall acknowledge receipt of this Addendum on RFP Form 1 – Proposal Form Package Acknowledgements.

1. Exhibit “B” - Sample Agreement

A Sample Agreement is hereby provided as part of this Addendum for reference purposes only. The Sample Agreement establishes the general terms and conditions that are expected to form the basis of the final Agreement between the Town and the selected Contractor. The final Agreement shall be subject to negotiation and approval by the Town and may include revisions based on the specific scope of work, pricing, and other terms agreed upon by the parties. Respondents shall review the Sample Agreement and include any comments or requested revisions as part of their Proposal, if applicable.

2. Form 6 – Proposer’s Qualifications Survey

The originally issued Form 6 included language applicable to landscaping and maintenance services, which is not relevant to this solicitation. Form 6 is hereby deleted in its entirety and replaced with a revised Form 6 specific to the Town Hall HVAC Replacement Project. The revised Form 6 is included herein and incorporated into the RFP. Respondents shall complete and submit the revised Form 6 with their Proposal, including documentation demonstrating the proposer’s experience with HVAC system replacement, design-build services, or similar mechanical construction services for agencies of comparable size, scope, and operational needs, and evidence of continuous operation providing such services for a minimum of 5 years.

3. Responses to Questions

The Town has compiled responses to questions received at the Mandatory Pre-Proposal Conference and all written questions submitted by the established deadline. The questions and responses are provided below and are hereby incorporated into the RFP. No additional questions will be accepted following the issuance of this Addendum. If a Respondent submitted a question prior to the deadline and does not see their question addressed below, the Respondent shall notify the Office of the Town Clerk in writing within 48 hours of the issuance of this Addendum. Failure to do so shall constitute a waiver of any claim related to the omission of such question or response.

QUESTIONS AND RESPONSES

Q1: Can you please provide the sign-in sheet for the walkthrough attendees?

A1: Refer to the Town's website for information related to the mandatory pre-proposal conference and attendance.

Q2: As-Builts are needed, how can we get a copy of the most recent As-Built Drawings for this facility?

A2: Refer to the RFP. The Town has provided available reference materials for informational purposes. Proposers shall rely on their own field investigation and evaluation of existing conditions.

Q3: BMS/Controls- Provide a copy of the BMS/Controls Drawings and who is the BMS Service Contractor For this Building?

A3: Refer to the RFP. Proposers shall evaluate existing systems and include controls as part of their design.

Q4: What is the Brand Name for the current BMS Controls? Would this be a complete replacement or an upgrade to the existing BMS?

A4: Proposers shall evaluate the existing system and propose an appropriate approach as part of their design.

Q5: Who is the existing VAV Manufacturer? Would this be a complete replacement of all VAVs or an upgrade to the existing VAV Boxes?

A5: Proposers shall evaluate existing conditions and propose replacement or reuse as part of their design.

Q6: Are the existing VAV Boxes provided with electric heat?

A6: Proposers shall verify existing conditions as part of their field investigation.

Q7: There are at least (7) existing Mini-Split AC Units through this building, are we to replace all (7) of them?

A7: Proposers shall evaluate and include such equipment as part of a complete system design.

Q8: There is a Bard Self Contained AC Unit serving the Locker Rooms on the First Floor, are we to replace this old Bard Unit?

A8: Proposers shall evaluate existing equipment and include replacement as appropriate.

Q9: There is no existing Fire Sprinklers Protection provided for either floor, are we to provide a brand-new Fire Sprinkler system for both floors?

A9: Refer to the RFP. The scope is limited to HVAC replacement. Any additional systems required by code shall be addressed as part of the design.

Q10: Are we to include the replacement of the Smoke Duct Detector? And Fire Alarm Recertification?

A10: Proposers shall include components required to comply with applicable codes.

Q11: The scope of work includes removal of the existing 80 ton air cooled chiller and associated piping. Are there "Demo" drawings that show everything that is to be removed? If not, do we need to generate them?

A11: Refer to the RFP. Proposers shall verify existing conditions and include all demolition

required to complete the Work.

Q12: Existing equipment is Trane. Are substitutes allowed?

A12: Proposers may propose systems and equipment as part of their design, subject to review and approval by the Town.

Q13: Is there a spec book for this job?

A13: Refer to the RFP. No additional specifications are provided.

Q14: Are there substitutions allowed to the BMS?

A14: Proposers shall propose systems and controls as part of their design.

Q15: The drawings that we have are "New Work" drawings. Are there existing duct detectors in the S/A & R/A ductwork?

A15: Proposers shall verify existing conditions as part of their field investigation.

Q16: Are there existing electronic heaters in the S/A ductwork?

A16: Proposers shall verify existing conditions as part of their field investigation.

Q17: The current system has chill water rooftop AHUs. The proposed system on the drawings calls for rooftop package units. If we install these RTUs, the electrical conduit, wire size, and breakers will need to be increased due to the presence of multiple compressors, fan (evap & cond), and electric heat. Please confirm if this is the intention and we should include an electrical upgrade in the design.

A17: Proposers shall evaluate electrical requirements and include any necessary upgrades as part of their design.

Q18: There are (2) existing mini split condensers on the NW end of the building. They are not addressed on the "New Work" drawings. Are they to remain?

A18: Proposers shall evaluate existing equipment and include such equipment as part of their design.

Q19: The "New Work" plans call for an associated ductwork to be replaced. Are there provisions to re-locate existing personnel so we can work in this building?

A19: The Contractor shall coordinate all work with the Town. Proposers shall include all necessary phasing and coordination as part of their Proposal.

Q20: What are the working hours of the building?

A20: Work hours will be coordinated with the Town.

Q21: Is there temporary cooling needed during this project? Who is responsible for temporary cooling? Mechanical Contractor? Customer?

A21: Proposers shall evaluate and include temporary cooling, if required, to maintain operations during construction.

Q22: During the walkthrough, it was noticed that several structural supports that are mounted to the roof need to be replaced. Is roofing/patching part of this scope? Does City Hall have a roofer they prefer, or who might carry the warranty on the existing roof?

A22: Proposers shall include all work necessary to complete the installation, including coordination of roofing and patching as required.

Q23: Can you please provide a pretest for Test and Balance? Due to the current conditions of the building we suspect the building may not be balanced and many new changes will need to be incorporated to balance the building. Please advise on how we should address this.

A23: Proposers shall include testing, adjusting, and balancing as part of the Project in accordance with industry standards.

Q24: There were not enough Return Air Ceiling Grilles above ceiling through this facility. Does the city want to add grilles?

A24: Proposers shall evaluate and include necessary improvements as part of a complete system design.

Q25: There is a numerous amount of office spaces that have not been provided with a return air ceiling grille, this is a Typical Item throughout.

A25: Proposers shall evaluate existing conditions and include necessary modifications to provide a complete and functional system.

Q26: Provide answer to RFI including cost and schedule considerations.

A26: Refer to the RFP. Proposers shall include all costs and schedule considerations as part of their Proposal.

Q27: Please provide the following: Master HVAC specifications (Division 23 and related sections), Owner's Project Requirements (OPR), if available, Basis of Design (BOD), if developed, Applicable design standards (ASHRAE, IECC, local codes, etc.). Indoor environmental criteria: Temperature ranges (occupied/unoccupied) Humidity control requirements, Ventilation requirements (ASHRAE 62.1 compliance), Equipment preferences or approved manufacturers list, Energy efficiency goals or sustainability requirements (LEED, etc.).

A27: Refer to the RFP. This Project is being delivered using a design-build approach. No master specifications, OPR, or BOD have been developed by the Town. Proposers shall be responsible for developing all design criteria and system design as part of their Proposal, including compliance with all applicable federal, state, and local codes, as well as industry standards, including but not limited to ASHRAE and applicable energy codes. Proposed systems shall be suitable for the intended application, provide appropriate indoor environmental conditions, and meet all ventilation, humidity control, and performance requirements as required by code. All equipment and materials shall be subject to review and approval by the Town.

Q28: Is temporary cooling required to maintain building operations during construction? If yes: Define required conditioned areas/phasing, Required temperature/humidity conditions, Acceptable temporary systems (e.g., portable DX units, temporary chillers, etc.), Available electrical capacity for temporary equipment, Responsibility for operation, maintenance, and fuel/power costs.

A28: Refer to the RFP. Proposers shall evaluate site conditions and include temporary systems, if required, as part of their design-build Proposal.

Q29: Please confirm if an existing Building Management System (BMS/EMS) is in place. If yes, provide: Manufacturer and platform (e.g., Johnson Controls, Siemens, Trane, etc.), Network architecture and integration capabilities, Points list and sequence of operations (if available), Requirements for integration vs. full replacement, IT/security requirements for system connectivity.

A29: Refer to the RFP. Proposers shall evaluate existing systems and include controls as part of their design-build Proposal.

Q30: Provide any available structural drawings and load capacity information for: Roof-mounted equipment, Equipment pads and support structures. Confirm whether structural upgrades are anticipated or required. Identify responsibility for structural engineering (Owner vs. Design-Build team) Clarify limitations for crane access, roof penetrations, and equipment placement.

A30: Refer to the RFP. Proposers shall evaluate existing conditions and include any required structural considerations as part of their design-build Proposal.

Q31: Confirm whether this project is subject to: Prevailing wage (Davis-Bacon or local equivalent), Project Labor Agreements (PLA), Union labor requirements, Provide applicable wage determinations and classifications.

A31: Refer to the RFP. No special wage requirements are identified for this Project.

Q32: Please clarify the following requirements for the Design-Build team: Required level of design submission: Concept / Schematic Design, Design Development, Construction Documents, Required professional licensure (PE stamp requirements), BIM requirements: Level of Development (LOD), Coordination expectations (clash detection, federated models). Required deliverables: Load calculations, Equipment schedules, Control sequences, TAB (Testing, Adjusting, Balancing) reports, Permitting responsibilities (Design-Build vs. Owner), Commissioning requirements: Third-party commissioning agent? Functional performance testing scope.

A32: Refer to the RFP. Proposers shall provide a complete design-build solution, including all required design, permitting, and construction services.

Q33: Phasing requirements and allowable work hours (occupied building constraints), Existing system demolition scope and hazardous material considerations (asbestos, etc.), Electrical infrastructure capacity for new HVAC systems, Backup power requirements (if any), Noise and vibration limitations.

A33: Refer to the RFP. Proposers shall evaluate all site conditions and include all necessary considerations as part of their Proposal.

Q34: I hope this message finds you well. Unfortunately, we encountered a vehicle issue on our way to the pre-bid today and couldn't make it. We're very interested in the project and would like to know if there's any way we can still submit a bid. Thank you for your understanding.

A34: Attendance at the mandatory pre-proposal conference is required in accordance with the RFP. Failure to attend the mandatory pre-proposal conference may result in disqualification.

Q35: Are we to be replacing all 26 VAV boxes?

A35: Refer to the RFP. The Project is design-build. Proposers shall evaluate existing conditions and determine the extent of equipment replacement as part of their proposed design.

Q36: How about the stands that supports the Chiller and AHU 2 are they to be replaced or refurbished? And will they need to be coated?

A36: Proposers shall evaluate existing conditions and include replacement or refurbishment of equipment supports, including coatings, as required to provide a complete and functional system suitable for a coastal environment.

Q37: What coatings are you looking for on the chiller? We can offer sound blankets and corrosion resistance coatings. Any preference or both?

A37: Proposers shall provide coatings and protective measures appropriate for a coastal environment. Final selection shall be subject to review and approval by the Town.

Q38: New curbs or curb adapters for the new rooftop units?

A38: Proposers shall include new curbs or curb adapters as required for the proposed system.

Q39: The current AHUs have no heat, should we be including heat?

A39: Proposers shall include heating capabilities as part of the proposed system, as required to meet applicable codes and system performance requirements.

Q40: For test and balance, should that also include all air distribution devices, pre and post?

A40: Yes. Testing, adjusting, and balancing shall be included as part of the Project and performed in accordance with industry standards.

Q41: AHUs with VFD's or without? Submit option as part of your design for consideration.

A41: Proposers shall include appropriate system components, including VFDs, as part of their proposed design. Alternative approaches may be submitted for consideration.

Q42: I hope this message finds you well! I was hoping we could schedule a quick walkthrough sometime tomorrow for one of our subcontractors to walk this job. Our team attended the scheduled site visit but we would like for them to also get a clear perspective of the scope for this project.

A42: Additional site visits may be coordinated with the Town for informational purposes only. No additional questions will be accepted outside of the established RFI process. Proposers shall rely on the RFP documents, Addenda, and their own evaluation of the site in developing their Proposal.

Only written addenda issued by the Town shall be considered binding. No oral interpretations or representations shall be relied upon. All other terms and conditions of the RFP remain unchanged.

NAME: _____

TITLE: _____

DATE: _____

RFP EXHIBIT “B” - SAMPLE AGREEMENT AS TO FORM

CONTRACT FOR CONSTRUCTION

THIS CONTRACT FOR CONSTRUCTION (this “Contract”) is made this _____ day of _____, 2026 (the “Effective Date”) by and between the **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation, (the “Town”), and _____ a Florida for-profit corporation (the “Contractor”).

WHEREAS, the Town issued Request for Proposals No. 2026-___ (the “RFP”) for the _____ Project in Surfside, Florida (the “Project”), which RFP is incorporated herein by reference and made a part hereof; and

WHEREAS, in response to the RFP, the Contractor submitted a Proposal for the Project (the “Proposal”), which is incorporated herein by reference and includes the Price Submittal attached hereto as Exhibit “A”; and

WHEREAS, the Contractor was selected by the Town to perform the Work in accordance with the RFP and Proposal; and

WHEREAS, the Contractor represents that it possesses the experience, qualifications, and ability to perform the Work and has agreed to do so in accordance with the terms of this Contract.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Contractor and the Town agree as follows:

1. SCOPE OF WORK

1.1. Scope of Work. Contractor shall furnish all labor, materials, equipment, services, design (if applicable), permitting, supervision, and incidentals necessary to complete the Project in accordance with the Contract Documents (the “Work”). The Contractor shall be responsible for delivering a complete and functional Project in compliance with all applicable federal, state, and local laws, codes, and regulations, including the Florida Building Code. The Contractor shall verify all existing field conditions, dimensions, and site constraints and shall not rely solely on any information provided by the Town.

1.2. Design Responsibility (If Applicable). For projects delivered under a design-build approach, the Contractor shall be responsible for the design, engineering, permitting, and construction of the Project. The Contractor shall ensure that all design documents are prepared by appropriately licensed professionals and comply with all applicable codes and regulatory requirements.

1.3. Contract Documents. The Contract Documents shall include this Contract, the RFP and all addenda, the Contractor’s Proposal, any technical requirements or specifications included in

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the RFP, all applicable drawings/plans/permits, and all exhibits attached hereto, all of which are incorporated herein by reference.

- Exhibit “A” – Contractor’s Proposal and Price Submittal
- Exhibit “B” – RFP and Addenda
- Exhibit “C” – Grant Requirements (if applicable)

1.4. Project Pre-Construction Conference and Schedule. Contractor must comply with the following requirements:

1.4.1. A pre-construction conference shall be held between the Town and the Contractor within five (5) calendar days after execution of this Contract by both parties, and prior to commencement of any Work.

1.4.2. Contractor shall submit a proposed Project Schedule within five (5) calendar days from the date this Contract is executed by both parties for review and approval by the Town. The schedule shall identify all major activities and phases of the Project and shall establish the baseline schedule for the Project.

1.4.3. All updates of the Project Schedule must be tracked against the baseline schedule and shall be submitted, at a minimum, with each pay application. An updated schedule tracked against the baseline must also be submitted upon execution of each Change Order that impacts the Contract Time. Failure to submit such schedules may result in the rejection of any submitted payment application.

1.4.4. All Project Schedules must be prepared in Microsoft Project or other format approved by the Town. At the time of submission, Contractor shall provide both a hard copy and an electronic version. Electronic versions shall not be submitted in .pdf format.

1.5. Records and Documentation.

1.5.1. Record Documents and As-Built Drawings. Contractor shall maintain accurate and complete records of all Work performed and shall document any deviations from the Contract Documents. For design-build projects, Contractor shall provide record drawings or documentation sufficient to demonstrate the final installed conditions of all major systems, including mechanical, electrical, and structural components, as applicable. All record documentation shall be kept current throughout the Project and shall be submitted to the Town as a condition precedent to final payment. Contractor shall certify that all record documents are complete and accurate and reflect the Work as constructed.

1.5.2. Record Set. Contractor shall maintain, in a safe location, one complete and updated record set of the Contract Documents, including addenda, change orders, RFIs, and field directives, reflecting all modifications made during the performance of the Work. The record set shall be continuously updated and delivered to the Town upon Final Completion as a condition precedent to final payment.

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1.5.3. Construction Photographs. Prior to commencement of the Work, Contractor shall document existing site conditions through digital photographs and/or video and submit copies to the Town. Contractor shall also submit, with each application for payment, photographs that accurately reflect the progress of the Work. Photographs shall be provided in both digital format and, if requested by the Town, printed format. Digital photographs shall be in .jpeg format and clearly labeled with the Project name, date, and description of the Work depicted.

1.6. Staging Site.

1.6.1. Contractor shall be solely responsible for securing and maintaining any staging site(s) necessary for the performance of the Work, including all site security, fencing, and protection of materials and equipment. Contractor shall be responsible for any loss, damage, or theft of its equipment and materials. Any fencing or use of staging areas is subject to the prior written approval of the Town.

1.6.2. The Town may, at its sole discretion, make a staging site available for use by the Contractor. If such site is made available, the Town assumes no responsibility or liability for any equipment or materials stored on the site. Contractor shall be solely responsible for any loss, damage, or theft and shall restore the site to its pre-existing condition upon completion of its use.

1.6.3. Contractor may provide or utilize an office trailer for the duration of the Project, subject to prior written approval by the Town as to its use and location. Contractor shall obtain all required permits and approvals for such use.

1.6.4. No parking shall be permitted at any Town-provided staging site without prior written approval of the Town.

1.7. Purchase and Delivery, Storage and Installation. All materials shall be furnished, delivered, and installed as part of the Work. Contractor shall be solely responsible for the purchase, delivery, off-loading, storage, and installation of all equipment and materials. Contractor shall be responsible for replacing any damaged or defective materials and for filing any claims with suppliers. All transportation and handling of materials shall comply with all applicable federal, state, county, and local laws, rules, and regulations. Materials shall not be stored on-site without prior written approval of the Town.

1.8. Approval of Subcontractors. For any scope of work that the Contractor will utilize a subcontractor, the Contractor may only retain or utilize the services of the particular subcontractor with the prior written approval of the Town Manager, which approval may be granted or withheld in the Town Manager’s sole and absolute discretion. The Contractor shall provide at least fourteen (14) days’ notice to the Town, or its designated representative, of its intent to retain or utilize a subcontractor.

1.9. Project Signage. Contractor shall furnish and install project signage at the Project site, if required by the Town, in accordance with the Town’s requirements.

2. CONTRACT TIME

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2.1. Contractor shall be instructed to commence the Work by written instructions in the form of a Notice to Proceed providing a commencement date and issued by the Town Manager or designee. The Notice to Proceed will not be issued until Contractor’s submission to the Town of all required documents and after execution of this Contract.

2.2. Time is of the essence throughout this Contract. The Contractor shall prosecute the Work with faithfulness and diligence and the Work shall be substantially completed within ____ calendar days from the date specified in the Notice to Proceed (“Contract Time”), or as otherwise established in the Contract Documents. Substantial Completion shall be defined for this purpose as the date on which the Town receives beneficial use of the Project. The Work shall be fully completed in accordance with the Contract Documents within ____ calendar days from the date specified in the Notice to Proceed (“Final Completion Time”), or as otherwise established in the Contract Documents. Final Completion shall be defined as the date determined by the Town when all Work, including punch list items, has been completed in accordance with the Contract Documents and Contractor has delivered to the Town all documentation required herein.

2.3. Upon failure of Contractor to substantially complete the Work as defined in this Contract within the Contract Time, Contractor shall pay to the Town the sum of One Thousand Dollars (\$1,000.00) for each calendar day after the expiration of the Contract Time that the Contractor fails to achieve Substantial Completion, up until the date that the Contractor achieves Substantial Completion. Upon failure of Contractor to fully complete the Work and achieve Final Completion within the Final Completion Time, Contractor shall pay to the Town the sum of Five Hundred Dollars (\$500.00) for each calendar day after expiration of the Final Completion Time that the Contractor fails to achieve Final Completion, up until the date that the Contractor achieves Final Completion. These amounts are not penalties but are liquidated damages payable by Contractor to the Town for the failure to provide full beneficial occupancy and use of the Project as required. Liquidated damages are hereby fixed and agreed upon between the parties, who acknowledge the difficulty of determining the amount of damages that will be sustained by the Town as a consequence of Contractor’s delay and failure to complete the Work on time.

2.4. Town is authorized to deduct the liquidated damages from monies due to Contractor for the Work under this Contract. In the event the liquidated damages due to the Town exceed monies due to Contractor, Contractor shall be liable and shall immediately, upon demand by the Town, pay the amount of such excess.

3. CONTRACT PRICE AND PAYMENT PROCEDURES

3.1. Price. The Town shall pay the Contractor a total amount not to exceed \$_____ for the performance of the Work (the “Contract Price”). The Contract Price is based on the pricing set forth in Exhibit “A” and shall constitute full compensation for all labor, materials, equipment, services, overhead, profit, and incidentals necessary to complete the Work in accordance with the Contract Documents. Payment shall be made based on the pricing submitted in the Contractor’s Proposal and the Work performed, as verified and approved by

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the Town. Notwithstanding the foregoing, in no event shall the total amount paid to the Contractor exceed the Contract Price unless authorized by a written Change Order executed by the Town. The Contractor acknowledges that the estimated quantities are approximate and that it is responsible for completing the Work for the Contract Price. Any increase in quantities shall not entitle the Contractor to additional compensation unless approved through a Change Order.

3.2. Schedule of Values. If required by the Town, the Contractor must submit two copies of a Schedule of Values within ten (10) calendar days from the date this Contract is executed by both parties. The Schedule of Values shall indicate a complete breakdown of labor and material of all categories of Work on the Project, as applicable. Contractor’s overhead and profit must be listed as separate line items. Each line item must be identified with the number and title of the major specification section or major components of the items, if applicable. The Town may require further breakdown after review of the Contractor’s submittal and reserves the right to require such information from the Contractor as may be necessary to determine the accuracy of the Schedule of Values. The combined total value for mobilization under the Schedule of Values shall not exceed five percent (5%) of the value of the Contract. The accepted Schedule of Values must be incorporated into the Contractor’s payment application form, if applicable. The Contractor guarantees that each individual line item contained in the Schedule of Values submitted as part of a competitive solicitation shall not be increased without written approval by the Town Manager.

3.3. Payment Application Procedures. Town shall make progress payments, deducting the amount from the Contract Price above on the basis of Contractor’s Applications for Payment on or before twenty (20) days after receipt of the Pay Application. Rejection of a Pay Application by the Town shall be within twenty (20) days after receipt of the Pay Application. Any rejection shall specify the applicable deficiency and necessary corrective action. Any undisputed portion shall be paid as specified above. All such payments will be made in accordance with the Schedule of Values established in the Contract Documents or, in the event there is no Schedule of Values, as otherwise provided in the Contract Documents. In the event the Contract Documents do not provide a Schedule of Values or other payment schedule, Applications for Payment shall be submitted monthly by Contractor on or before the 10th of each month for the prior month to the Town or its designated representative. Progress payments shall be made in an amount equal to the percentage of Work completed as determined by the Town or its designated representative, but, in each case, less the aggregate of payments previously made and less such amounts as the Town shall determine or may withhold, taking into account the aggregate of payments made and the percentage of Project completion in accordance with the Contract Documents and Schedule of Values, if any. The Contractor agrees that five percent (5%) of the amount due for each progress payment or Pay Application (the “Retainage”) shall be retained by the Town until final completion and acceptance of the Work by the Town. In the event there is a dispute between Contractor and the Town concerning a Pay Application, dispute resolution procedures shall be conducted by the Town commencing within forty-five (45) days of receipt of the disputed Payment

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Application. The Town shall reach a conclusion within fifteen (15) days thereafter and promptly notify Contractor of the outcome, including payment, if applicable.

3.4. Progress Payment Applications. Each progress payment application submitted to the Town must include:

3.4.1. A sworn and certified progress payment affidavit indicating that all laborers, material suppliers, and subcontractors dealing with the Contractor were paid in full as it relates to all Work performed up to the time of the request for payment;

3.4.2. Partial conditional releases or waivers of lien by the Contractor, material suppliers, subcontractors, and any lienors serving a Notice to the Town and evidence of proof of payment of any indebtedness incurred with respect to the Work of the Contractor as may be required by the Town;

3.4.3. Evidence that all Work was fully performed as required by the Contract Documents up to the time of the request for payment and that the Work was inspected and accepted by the Town and any other governmental authorities required to inspect the Work; and

3.4.4. An updated Project schedule, including a two-week look-ahead schedule, as approved in writing by the Town Manager.

3.4.5. All Buy-Out Savings, including supporting documentation relating to the calculation of the Buy-Out Savings.

3.5. Final Payment. Upon Final Completion of the Work by Contractor in accordance with the Contract Documents and acceptance by the Town, and upon receipt of consent by any surety, Town shall pay the remainder of the Contract Price (including Retainage) as recommended by the Town or its designated representative and Building Official. Final payment is contingent upon receipt by Town from Contractor of:

3.5.1. An affidavit that payrolls, bills for materials, equipment, and other indebtedness were paid in full as it relates to all Work performed under this Contract;

3.5.2. A certificate evidencing that insurance required by the Contract Documents shall remain in effect after final payment is made;

3.5.3. A written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents;

3.5.4. Documentation of any special warranties, including, but not limited to, any manufactures’ warranties or specific subcontractor warranties;

3.5.5. Evidence that all Punch List items have been fully completed to the satisfaction of the Town;

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3.5.6. All previously undelivered manufacturer and subcontractor guarantees, warranties, and manuals and documents required by the Contract Documents;

3.5.7. Final releases of lien, waivers of claim, satisfactions of liens or claims, and such other affidavits as may be reasonably required by the Town to assure a lien-free and claim-free completion of the Work;

3.5.8. Evidence that the Contractor has fully cleaned and restored the site, including removal of all rubbish and debris;

3.5.9. At least one complete set of record documentation or as-built drawings, reflecting an accurate depiction of Contractor’s Work;

3.5.10. Such other documents necessary to show that the Contractor has complied with all other requirements of the Contract Documents; and

3.5.11. Cost Savings, including supporting documentation used to calculate the Cost Savings.

3.6. Payment Withholding. The Town may withhold any payment, including a final payment, for application to such extent as may be necessary, as determined by the Town or its designated representative, to protect the Town from loss for which the Contractor is responsible in the event that:

3.6.1. The Contractor performs defective Work and such Work has not been corrected, provided that the amount withheld shall be limited to the amount sufficient to cover such defective Work;

3.6.2. A third-party files a claim or lien in connection with the Work or this Contract;

3.6.3. The Contractor fails to make payments properly to subcontractors or suppliers for labor, materials, or equipment which has been paid by the Town, provided that the amount withheld shall be limited to the amount sufficient to cover such payments to subcontractors or suppliers for labor, materials, or equipment;

3.6.4. The Town has reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

3.6.5. The Contractor, its employees, subcontractors, or agents have damaged the Town;

3.6.6. The Town has reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover liquidated damages for the anticipated delay;

3.6.7. The Contractor has failed to progress the Work satisfactorily and/or according to the Contract Schedule;

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3.6.8. The Contractor has failed to carry out the Work in accordance with the Contract Documents;

3.6.9. The Contractor has failed to provide requisite releases of lien for each payment application in accordance with the Contract Documents; and/or

3.6.10. Any other failure to perform a material obligation contained in the Contract Documents.

3.7. No Waiver of Town Rights. The payment of any Application for Payment by the Town, including the final request for payment, does not constitute approval or acceptance by the Town of any item of the Work reflected in such Application for Payment, nor shall it be construed as a waiver of any of the Town ’s rights hereunder or at law or in equity.

3.8. Payment to Sub-Contractors; Certification of Payment to Subcontractors. The term “subcontractor,” as used herein, includes persons or firms furnishing labor, materials or equipment incorporated into or to be incorporated into the Work or Project. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts as a condition precedent to payment to Contractor by the Town. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the subcontractor’s work is satisfactorily complete and accepted by the Town.

3.9. Cost Savings and Value Engineering.

3.9.1. Cost Savings. In the event the Contractor rebids or renegotiates with any subcontractor to reduce subcontractor costs for the performance of the Work, then the difference between (i) the sum of the subcontractor costs used to establish the Contract Price, as set forth in the Schedule of Values, and (ii) the sum of the revised subcontractor costs, including any early payment or similar discounts (the “Cost Savings”), shall revert to the Town. The Contract Price shall be adjusted in accordance with any Cost Savings through a Change and the Schedule of Values shall also be revised to reflect the new Contract Price.

3.9.2. Value Engineering. Contractor shall participate in Value Engineering the Contract Documents with the Town or its designated representative with the goal of finding acceptable means for reducing the cost of the Work. Upon acceptance by the Town of recommendation for Value Engineering, the Contract Documents shall be modified to reflect such changes. All savings in connection with Value Engineering of the Work shall revert to Town.

4. CONTRACT DOCUMENTS

4.1. The Contract Documents, which comprise the entire Contract between the Town and the Contractor concerning the Work, consist of this Contract for Construction (including any change orders and amendments thereto), the RFP and all addenda, any technical specifications or requirements included in the RFP, any bidding or procurement documents for the Project, the Contractor’s Proposal for the Project (including the Price Submittal), the Bonds (defined herein), Insurance Certificates, the Notice of Award, and the Notice to Proceed, all of which are deemed

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incorporated into and made a part of this Contract by this reference and govern this Project. Any mandatory clauses which are required by applicable law shall be deemed to be incorporated herein.

4.2. This Contract incorporates and includes all prior negotiations, correspondence, conversations, contracts, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, contracts, or understandings concerning the subject matter of these Contract Documents that are not contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or contracts, whether oral or written.

4.3. The Contract Documents shall remain the property of the Town. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; however, in no circumstances shall the Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Town’s prior written authorization.

4.4. This document, excluding all exhibits and attachments, is referred to as the “Base Contract.” In the event of a conflict between the Contract Documents, the order of precedence shall be as follows:

4.4.1. First Priority: Change Orders, with the most recent Change Order taking precedence;

4.4.2. Second Priority (if applicable): Exhibit “C” – Grant Agreement No. _____, including any amendments, and any applicable federal or state grant requirements;

4.4.3. Third Priority: This Base Contract;

4.4.4. Fourth Priority: Exhibit “B” - The RFP and all addenda;

4.4.5. Fifth Priority: Any technical specifications, requirements, or permits applicable to the Project;

4.4.6. Sixth Priority: Exhibit “A”, Contractor’s Proposal, including the Price Submittal Form

5. INDEMNIFICATION

Contractor shall defend, indemnify, and hold harmless the Town, its officers, agents, attorneys, and employees, from and against any and all demands, claims, losses, suits, liabilities, expenses, causes of action, actions, judgment or damages, including legal fees and costs and through all appeals, demands and claims for personal injury, bodily injury, sickness, diseases or death or damage or destruction of tangible property or loss of use resulting therefrom, arising out of or, related to, or in any way connected with Contractor’s negligence, recklessness, or intentional misconduct in the Contractor’s performance or non-performance of any provision of this Contract, Contractor’s obligations, or the Work related to the Contract, including by reason of any damage to property, or bodily injury or death incurred or sustained by any party, any errors, omissions, misconduct or negligent acts of Contractor, its respective officials, agents, employees or subcontractors in the Contractor’s performance of Services pursuant to this Contract, including but not limited to liabilities arising from contracts between the Contractor

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and any third parties made pursuant to this Contract. Contractor shall reimburse the Town for all its expenses including reasonable attorneys’ fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from her/its performance or non-performance of this Contract. Additionally, the Contractor shall defend, indemnify, and hold the Town harmless from all losses, injuries or damages and wages or overtime compensation due its employees in rendering services pursuant to this Contract, including payment of reasonable attorneys’ fees and costs in the defense of any claim made under the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act or any other employment related litigation or worker’s compensation claims under federal, state, or local law. The provisions of this section shall survive termination of this Contract.

6. INSURANCE AND BONDS

6.1. Insurance.

6.1.1. Contractor shall secure and maintain throughout the duration of this Contract insurance of such types and in such amounts not less than those specified below as satisfactory to the Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by Bests Rating and qualified to do business in the State of Florida. Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured, no later than ten (10) days after award of this Contract and prior to the execution of this Contract by Town and prior to commencing any Work. Each certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation, termination, or material alteration of said policies or insurance. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers naming the Town as additional insured. Any insurance maintained by the Town shall be in excess of the Contractor’s insurance and shall not contribute to the Contractor’s insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 6.1 and may be increased by the Town as it deems necessary or prudent. In the event any request for the performance of services presents exposures to the Town not covered by the requirements set forth below, the Town reserves the right to add insurance requirements that will cover such an exposure.

6.1.1.1. Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit (except for Products/Completed Operations) shall be in the amount of \$2,000,000.

6.1.1.2. Workers Compensation and Employer’s Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer’s Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be

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allowed to provide Services pursuant to this Contract who is not covered by Worker’s Compensation insurance. In order for this requirement to be waived, Contractor must provide proof of exemption from such laws. Information regarding eligibility for an exemption from the State of Florida Workers’ Compensation Law is available at:

<https://www.myfloridacfo.com/Division/wc/PublicationsFormsManualsReports/Brochures/Key-Coverage-and-Eligibility.pdf>.

Exemptions may be applied for online through the Florida Department of Financial Services, Division of Workers’ Compensation at:

<https://www.myfloridacfo.com/Division/wc/Employer/Exemptions/default.htm>.

6.1.1.3. Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include Owned, Hired, and Non-Owned Vehicles.

6.1.1.4. Builder’s Risk property insurance upon the entire Work to the full replacement cost value thereof. This insurance shall include the interest of Town and Contractor and shall provide All-Risk coverage against loss by physical damage including, but not limited to, Fire, Extended Coverage, Theft, Vandalism and Malicious Mischief.

6.1.1.5. Contractor acknowledges that it shall bear the full risk of loss for any portion of the Work damaged, destroyed, lost or stolen until Final Completion has been achieved for the Project, and all such Work shall be fully restored by the Contractor, at its sole cost and expense, in accordance with the Contract Documents.

6.1.2. Certificate of Insurance. On or before the Effective Date of this Contract, and prior to commencing Work, the Contractor shall provide the Town with Certificates of Insurance for all required policies. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Contract, including any extensions or renewals that may be granted by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Contract and shall state that such insurance is as required by this Contract. The Town reserves the right to inspect and return a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the Work, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days’ written notice shall be provided to the Town prior to cancellation, termination, or material alteration of said policies or insurance. Acceptance of the Certificate(s) is subject to approval of the Town.

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6.1.2.1. Additional Insured. Except with respect to Worker's Compensation Insurance, the Town is to be specifically included as an Additional Insured for the liability of the Town resulting from Work performed by or on behalf of the Contractor in performance of this Contract. The Contractor's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

6.1.2.2. Deductibles. All deductibles or self-insured retentions must be declared to and be reasonably approved by the Town. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

6.1.2.3. Cancellation; Replacement Required. Contractor will file replacement certificates 30 days prior to expiration or termination of the required insurance occurring prior to the acceptance of the work by the Town. If a required policy is canceled without Contractor's prior knowledge, Contractor will notify the Town immediately upon becoming aware that a required insurance coverage has been canceled for any reason, and promptly replace the canceled policy. The Town expressly reserves the right to replace the canceled policy at Contractor's expense if Contractor fails to do so.

6.1.2.4. Termination of Insurance. Contractor may not cancel the insurance required by this Contract until the work is completed, accepted by the Town and Contractor has received written notification from the Town Manager that Contractor may cancel the insurance required by this Contract and the date upon which the insurance may be canceled.

6.1.2.5. Liabilities Unaffected. Contractor's liabilities under this Contract will survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Similarly, Contractor's liabilities under this Contract will not be limited to the extent of the existence of any exclusions or limitations in insurance coverages, or by Contractor's failure to obtain insurance coverage.

6.1.2.6. Contractor will not be relieved from responsibility to provide required insurance by any failure of the Town to demand such coverage, or by Town's approval of a policy submitted by Contractor that does not meet the requirements of this Contract.

6.1.3. The provisions of this section shall survive termination of this Contract.

6.2. Bonds. If required by the Town, prior to performing any portion of the Work the Contractor shall deliver to Town the Bonds required to be provided by Contractor hereunder (the bonds

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referenced in this Section are collectively referred to herein as the “Bonds”). Pursuant to and in accordance with Section 255.05, Florida Statutes, the Contractor shall obtain and thereafter at all times during the performance of the Work maintain a separate performance bond and labor and material payment bond for the Work, each in an amount equal to one hundred percent (100%) of the Contract Price and each in the form provided in the Contract Documents or in other form satisfactory to and approved in writing by Town and executed by a surety of recognized standing with a rating of B plus or better for bonds up to Two Million Dollars. The surety providing such Bonds must be licensed, authorized and admitted to do business in the State of Florida and must be listed in the Federal Register (Dept. of Treasury, Circular 570). The cost of the premiums for such Bonds is included in the Contract Price. If notice of any change affecting the Scope of the Work, the Contract Price, Contract Time or any of the provisions of the Contract Documents is required by the provisions of any bond to be given to a surety, the giving of any such notice shall be Contractor’s sole responsibility, and the amount of each applicable bond shall be adjusted accordingly. If the surety is declared bankrupt or becomes insolvent or its right to do business in Florida is terminated or it ceases to meet applicable law or regulations, the Contractor shall, within five (5) days of any such event, substitute another bond (or Bonds as applicable) and surety, all of which must be satisfactory to Town.

7. CONTRACTOR’S REPRESENTATIONS AND WARRANTIES

7.1. In order to induce the Town to enter into this Contract, the Contractor makes the following representations and warranties:

7.1.1. Contractor represents the following:

7.1.1.1. Contractor has examined and carefully studied the Contract Documents and the other data identified in the bidding/procurement documents, including, without limitation, Contract Documents and any technical data or specifications.

7.1.1.2. Contractor has visited the Project site and become familiar with and is satisfied as to the general and local conditions and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.1.1.3. Contractor is familiar with and is satisfied as to all federal, state and local laws, regulations and permits that may affect cost, progress, performance and furnishing of the Work. Contractor agrees that it will at all times comply with all requirements of the foregoing laws, regulations and permits.

7.1.1.4. Contractor has made, or caused to be made, examinations, investigations, tests and/or studies as necessary to determine surface and subsurface conditions at or on the site. Contractor acknowledges that the Town does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to underground or ground facilities at, contiguous or near the site or for existing improvements at or near the site. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and underground facilities and

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improvements) at, contiguous or near to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

7.1.1.5. Contractor is aware of the general nature of Work to be performed by the Town and others at the site that relates to the Work as indicated in the Contract Documents.

7.1.1.6. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.1.1.7. Contractor has given Town written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Town is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

7.1.1.8. The Contractor agrees and represents that it possesses the requisite qualifications and skills to perform the Work and that the Work shall be executed in a good and workmanlike manner, free from defects, and that all materials shall be new and approved by or acceptable to Town, except as otherwise expressly provided for in the Contract Documents. The Contractor shall cause all materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction, furnishing and equipping of the Project.

7.2. No recovery for changed market conditions.

7.2.1. In entering into the Contract, Contractor represents and warrants that it has accounted for any and all inflation-related events, recession, labor or material shortages, supply chain disruptions, delivery lead time, or price increases that may be caused by local and or national conditions, whether known or unknown at the time of entering into the Contract (the “Market Conditions”). Contractor further specifically represents and warrants that it has considered all impacts and potential impacts, including any current and future supply chain disruptions and labor shortages, associated with the following events: (1) worldwide pandemics including, but not limited to, COVID-19 and Monkey Pox (the “Pandemics”), (2) the current military conflict involving Russia and the Ukraine (the “Ukraine Military Conflict”), and (3) the current military conflict in the Middle East, involving, but not limited to, the United States, Israel and Iran (the “Middle East Conflict”). Contractor also represents and warrants that in determining time requirements for procurement, installation, and construction completion, Contractor has taken into

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account the impacts of Market Conditions, the Pandemics, the Ukraine Military Conflict, and the Middle East Conflict, and has included all of those factors in the Construction Schedule and Contract Sum.

7.2.2. Contractor shall not seek any price increases or time extensions relating to or arising from the impacts of any Market Conditions, the Pandemics, the Ukraine Military Conflict or the Middle East Conflict.

7.2.3. The Town shall not make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Contractor to comply with the requirements of this Paragraph.

7.3. Contractor warrants the following:

7.3.1. Anti-Discrimination. Contractor agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Contract because of race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and agrees to abide by all federal and state laws regarding non-discrimination.

7.3.2. Anti-Kickback/No Contingent Fees. Contractor warrants that no person has been employed or retained to solicit or secure this Contract upon an Contract or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the Town has any interest, financially or otherwise, in the Project. For breach or violation of this warranty, the Town shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

7.3.3. Licenses. Contractor represents that it is a properly qualified and licensed contractor in good standing within the jurisdiction within which the Project is located. Contractor warrants that it shall have, prior to commencement of Work under this Contract and at all times during said Work, all required licenses from the federal, state, Miami-Dade County, Town, or other governmental or regulatory entity. Contractor acknowledges that it is the obligation of Contractor to obtain all licenses required for this Project, including Town building permits. Prior to commencement of the Work, the Contractor shall provide the Town with copies of all required licenses.

7.3.4. Permits. Contractor warrants that it shall have, prior to commencement of Work under this Contract and at all times during said Work, all required permits from the federal, state, Miami-Dade County, Town, or other governmental or regulatory entity with jurisdiction over the site that are necessary to perform the Work. Contractor acknowledges that it is the obligation of Contractor to obtain all permits required for this Project, including Town building permits. Prior to commencement of the Work, the Contractor shall provide the Town with copies of all required permits. Town building

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permit fees may be waived for this Project. If permits are required by any other governing body or agency, the Contractor shall be obligated to pay the fees.

7.4. Defective Work; Warranty and Guarantee.

7.4.1. Town shall have the authority to reject or disapprove Work which the Town finds to be defective. If required by the Town, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

7.4.2. Should Contractor fail or refuse to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by the Town or its designee, Town shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary at Contractor's expense. Any expense incurred by Town in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor. In the event of failure of Contractor to make all necessary repairs promptly and fully, Town may declare Contractor in default.

7.4.3. The Contractor shall unconditionally warrant and guarantee all labor, materials and equipment furnished and Work performed for a period of three (3) years from the date of Substantial Completion. If, within three (3) years after the date of substantial completion, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor, after receipt of written notice from Town, shall promptly correct such defective or nonconforming Work within the time specified by Town without cost to Town. Should the manufacturer of any materials and equipment furnished provide for a longer warranty, then the Contractor shall transfer such warranty to the Town prior to Final Completion. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents including but not limited to any claim regarding latent defects. Contractor shall provide and assign to Town all material and equipment warranties upon completion of the Work hereunder.

7.4.4. Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered.

8. DEFAULT, TERMINATION, AND SUSPENSION; REMEDIES

8.1. Termination for Cause. If Contractor fails to timely begin the Work, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to ensure the prompt completion of the Work within the Contract Time or Final Completion Time as specified in Section 2, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule or if the Contractor shall fail to perform any material term set forth in the Contract Documents or if Contractor shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, Town may, upon seven (7) days

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after sending Contractor a written Notice of Termination, terminate the services of Contractor, exclude Contractor from the Project site, provide for alternate prosecution of the Work, appropriate or use any or all materials and equipment on the Project site as may be suitable and acceptable, and may finish the Work by whatever methods it may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Project is completed. All damages, costs and charges incurred by Town, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to Contractor. In case the damages and expenses so incurred by Town shall exceed monies due Contractor from Town, Contractor shall be liable and shall pay to Town the amount of said excess promptly upon demand therefore by Town. In the event it is adjudicated that Town was not entitled to terminate the Contract as described hereunder for default, the Contract shall automatically be deemed terminated by Town for convenience as described below.

8.2. Termination for Convenience. This Contract may be terminated by the Town for convenience upon seven (7) calendar days’ written notice to the Contractor. In the event of such a termination, the Contractor shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subcontractor obligations. The Contractor shall be compensated for all services performed to the satisfaction of the Town. In such event, the Contractor shall promptly submit to the Town its Application for Payment for final payment which shall comply with the provisions of the Contract Documents.

8.3. Suspension of Contract. This Contract may be suspended for convenience by the Town upon seven (7) calendar days’ written notice to the Contractor or immediately if suspended in connection with a local or state declaration of emergency. Suspension of the Work will entitle the Contractor to additional Contract Time as a non-compensable, excusable delay.

8.4. Termination Due to Lack of Funding. This Contract is subject to the conditions precedent that: (i) Town funds are available, appropriated, and budgeted for the Work, the Project, and/or Contract Price; (ii) the Town secures and obtains any necessary proceeds, grants, and/or loans for the accomplishment of the Work and/or the Project pursuant to any borrowing legislation adopted by the Town Commission relative to the Project; and (iii) Town Commission enacts legislation which awards and authorizes the execution of this Contract if such is required.

8.5. No Damages for Delay. No claim for damages or any claim, other than for an extension of time shall be made or asserted against Town by reason of any delays. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Town for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable or whether or not caused by Town. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay.

8.6. Waiver of Consequential Damages. Contractor assumes all risks for the following items, none of which shall be the subject of any Change Order or Claim and none of which shall be

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compensated for except as they may have been included in the Contractor’s Contract Price as provided in the Contract Documents: Loss of any anticipated profits, loss of bonding capacity or capability losses, loss of business opportunities, loss of productivity on this or any other project, loss of interest income on funds not paid, inefficiencies, costs to prepare a bid, cost to prepare a quote for a change in the Work, costs to prepare, negotiate or prosecute Claims, and loss of projects not bid upon, or any other indirect and consequential costs not listed herein. No compensation shall be made for loss of anticipated profits from any deleted Work.

8.7. Litigation of Claims. Mediation shall not be required before either party may proceed to litigation.

8.8. Rights and Remedies. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder and in accordance with this Contract shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

9. CHANGES IN THE WORK

9.1. Change Orders.

9.1.1. Without invalidating the Contract Documents, and without notice to any Surety, the Town reserves the right to make increases, decreases or other changes in the character or quantity of the Work under the Contract Documents as may be considered necessary or desirable to complete the Work in a manner satisfactory to the Town. The Town reserves the right to order changes, which may result in additions to or reductions from the amount, type or value of the Work shown in the Contract, and which are within the general scope of the Contract Documents, and all such changes will be authorized only by a change order (“CO”) approved in advance, and issued in accordance with provisions of the Contract Documents.

9.1.2. For Contractor initiated change orders, the Contractor is required to provide the Town or its designated representative with a detailed Request for Change Order (“RCO”) in a form approved by the Town, which must include the requested revisions to the Contract, including, but not limited to, adjustments in the Contract Price and/or Contract Time. The Contractor must provide sufficient supporting documentation to demonstrate the reasonableness of the RCO. The Town may require Contractor to provide additional data including, but not limited to, a cost breakdown of material costs, labor costs, labor rates by trade, work classifications, and overhead rates to support the RCO. If applicable, the RCO must include any schedule revisions accompanied by an explanation of the cost impact of the proposed change. Failure to include schedule revisions in an RCO will be deemed as the Contractor’s acknowledgement that the changes included in an RCO will not affect the project schedule.

9.1.3. Any modifications to the Contract Work, Contract Time, or Contract Price, must be effectuated through a written CO executed by both parties and, if required by the Town Code of Ordinances, approved by the Town Commission.

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9.1.4. In the event a satisfactory adjustment cannot be reached, and a CO has not been issued, given that time is of the essence, the Town reserves the right, at its sole option, to direct the Contractor to proceed on a time and materials basis or make such arrangements as may be deemed necessary to complete the proposed additional Work at the unit prices provided in the Contract Documents. Where the Town directs the Contractor to proceed on a time and materials basis, the Town shall impose a maximum not-to-exceed amount and the Contractor must maintain detailed records of all labor and material costs including but not limited to payroll records and material receipts. Contractor must demonstrate its costs with sufficient evidence to be entitled to compensation from the Town.

9.2. Continuing the Work. Contractor must continue to perform all Work under the Contract Documents during all disputes or disContracts with Town, including disputes or disContracts concerning an RCO. Contractor shall not delay any Work pending resolution of any disputes or disContracts.

10. MISCELLANEOUS

10.1. No Assignment. Neither party shall assign the Contract or any sub-contract in whole or in part without the written consent of the other, nor shall Contractor assign any monies due or to become due to it hereunder, without the previous written consent of the Town Manager. In entering into this Contract, the Town is relying upon the apparent qualifications and expertise of the Contractor and its familiarity with the Town’s area, circumstances and desires.

10.2. Successors and Assigns. This Contract shall be binding upon the Parties and their respective successors, heirs and assigns.

10.3. Contractor’s Responsibility for Damages and Accidents.

10.3.1. Contractor shall accept full responsibility for the Work against all loss or damage of any nature sustained until final acceptance by Town and shall promptly repair any damage done from any cause.

10.3.2. Contractor shall be responsible for all materials, equipment and supplies pertaining to the Project. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by Town, Contractor shall replace same without cost to Town.

10.4. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Contract shall be proper exclusively in Miami-Dade County, Florida.

10.5. Waiver of Jury Trial. TOWN AND CONTRACTOR KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN STATE AND OR FEDERAL COURT PROCEEDINGS IN RESPECT TO ANY ACTION, PROCEEDING, LAWSUIT OR COUNTERCLAIM BASED UPON THE CONTRACT FOR CONSTRUCTION, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE CONSTRUCTION OF THE WORK, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS OR ACTIONS OR INACTIONS OF ANY PARTY.

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10.6. Prevailing Party; Attorneys’ Fees. In the event of any controversy, claim, dispute or litigation between the parties arising from or relating to this Contract (including, but not limited to, the enforcement of any indemnity provisions), the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs, expenses, paralegals’ fees, experts’ fees and attorneys’ fees including, but not limited to, court costs and other expenses through all trial and appellate levels. In addition, the prevailing party shall be entitled to recover from the non-prevailing party all litigation costs associated with discovery, processing, management, hosting, and production of electronically stored information (ESI).

10.7. Compliance with Laws. The Contractor shall comply with all applicable federal, state, county, and local laws, ordinances, rules, regulations, and lawful orders of public authorities that are now or may become applicable to the Work, including the requirements set forth in Exhibit “C” – Grant Agreement No. _____, as may be amended. The Contractor shall obtain all required permits from all jurisdictional agencies at its own expense.

10.8. Examination and Retention of Contractor’s Records.

10.8.1. The Town or any of its duly authorized representatives shall, for five (5) years after final payment under this Contract, have access to and the right to examine any of the Contractor’s books, ledgers, documents, papers, or other records involving transactions related to this Contract for the purpose of making audit, examination, excerpts, and transcriptions. In addition, the Contractor agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes.

10.8.2. The Contractor agrees to include in any subcontractor contracts for this Project corresponding provisions for the benefit of Town providing for retention and audit of records.

10.8.3. The right to access and examination of records stated herein and in any subcontracts shall survive termination or expiration of this Contract and continue until disposition of any mediation, claims, litigation or appeals related to this Project.

10.8.4. The Town may cancel and terminate this Contract immediately for refusal by the Contractor to allow access by the Town Manager or designees to any Records pertaining to work performed under this Contract that are subject to the provisions of Chapter 119, Florida Statutes.

10.9. Authorized Representative.

10.9.1. Before commencing the Work, Contractor shall designate a skilled and competent authorized supervisor and representative (“Authorized Representative”) acceptable to Town to represent and act for Contractor and shall inform Town, in writing, of the name and address of such representative together with a clear definition of the scope of his authority to represent and act for Contractor. Contractor shall keep Town informed of any subsequent changes in the foregoing. Such representative shall be present or duly represented at the Project site at all times when Work is actually in progress. All notices, determinations, instructions and other communications given to the authorized representatives of Contractor shall be binding upon the Contractor.

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10.9.2. The Authorized Representative, project managers, superintendents and supervisors for the Project are all subject to prior and continuous approval of the Town. If, at any time during the term of this Contract, any of the personnel either functionally or nominally performing any of the positions named above, are, for any reasonable cause whatsoever, unacceptable to the Town, Contractor shall replace the unacceptable personnel with personnel acceptable to the Town.

10.10. Taxes. Contractor shall pay all taxes, levies, duties and assessments of every nature which may be applicable to any Work under this Contract. The Contract Price and any agreed variations thereof shall include all taxes imposed by law at the time of this Contract. Contractor shall make any and all payroll deductions required by law. Contractor herein indemnifies and holds the Town harmless from any liability on account of any and all such taxes, levies, duties and assessments.

10.11. Utilities. Contractor shall, at its expense, arrange for, develop and maintain all utilities at the Project to perform the Work and meet the requirements of this Contract. Such utilities shall be furnished by Contractor at no additional cost to Town. Prior to final acceptance of the Work, Contractor shall, at its expense, satisfactorily remove and dispose of all temporary utilities developed to meet the requirements of this Contract.

10.12. Safety. Contractor shall be fully and solely responsible for safety and conducting all operations under this Contract at all times in such a manner as to avoid the risk of bodily harm to persons and damage to property and in full compliance with Occupational Safety and Health Act requirements and all other similar applicable safety laws or codes. Contractor shall continually and diligently inspect all Work, materials and equipment to discover any conditions which might involve such risks and shall be solely responsible for discovery and correction of any such conditions. Contractor shall have sole responsibility for implementing its safety program. Town shall not be responsible for supervising the implementation of Contractor's safety program, and shall not have responsibility for the safety of Contractor's or its subcontractor's employees. Contractor shall maintain all portions of the Project site and Work in a neat, clean and sanitary condition at all times. Contractor shall assure that subcontractors performing Work comply with the foregoing safety requirements.

10.13. Cleaning Up. Contractor shall, at all times, at its expense, keep its Work areas in a neat, clean and safe condition. Upon completion of any portion of the Work, Contractor shall promptly remove all of its equipment, construction materials, temporary structures and surplus materials not to be used at or near the same location during later stages of Work. Upon completion of the Work and before final payment is made, Contractor shall, at its expense, satisfactorily dispose of all rubbish, unused materials and other equipment and materials belonging to it or used in the performance of the Work and Contractor shall leave the Project in a neat, clean and safe condition. In the event of Contractor's failure to comply with the foregoing, the same may be accomplished by Town at Contractor's expense.

10.14. Liens. Contractor shall not permit any mechanic's, laborer's or materialmen's lien to be filed against the Project site or any part thereof by reason of any Work, labor, services or materials supplied or claimed to have been supplied to the Project. In the event such a lien is found or claimed against the Project, Contractor shall within ten (10) days after notice of the lien

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discharge the lien or liens and cause a satisfaction of such lien to be recorded in the public records of Miami-Dade County, Florida, or cause such lien to be transferred to a bond, or post a bond sufficient to cause the Clerk of the Circuit Court of Miami-Dade County, Florida, to discharge such lien pursuant to Chapter 713.24, F.S. In the event Contractor fails to so discharge or bond the lien or liens within such period as required above, Town shall thereafter have the right, but not the obligation, to discharge or bond the lien or liens. Additionally, Town shall thereafter have the right, but not the obligation, to retain out of any payment then due or to become due Contractor, one hundred fifty percent (150%) of the amount of the lien and to pay Town 's reasonable attorneys' fees and costs incurred in connection therewith.

10.15. State Required Affidavits. By entering into this Contract, the Contractor agrees to review and comply with the following state affidavit requirements:

10.15.1. E-Verify Affidavit. In accordance with Section 448.095, Florida Statutes, the Town requires all contractors doing business with the Town to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Town will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Contract, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.

10.15.2. Noncoercive Conduct Affidavit. Pursuant to Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes. By entering into this Contract, the Contractor acknowledges that it has read Section 787.06, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

10.15.3. Prohibition on Contracting with Entities of Foreign Concern - Affidavit. Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern. By entering into this Contract, the Contractor acknowledges that it has read

RFP EXHIBIT “B” - SAMPLE AGREEMENT AS TO FORM

Section 287.138, Florida Statutes, and complies with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

10.15.4. Compliance with Public Entity Crimes Statute. The contractor shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

10.15.5. Scrutinized Companies Certification. Contractor certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, Florida Statutes, the Town may immediately terminate this Contract at its sole option if the Contractor is found to have submitted a false certification; or if the Contractor is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Contract. If this Contract is for more than one million dollars, the Contractor certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the Town may immediately terminate this Contract at its sole option if the Contractor is found to have submitted a false certification; or if the Contractor is placed on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, Scrutinized Companies with Activities in Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Contract.

10.16. Independent Contractor. The Contractor is an independent contractor under the Contract. This Contract does not create any partnership nor joint venture. Services provided by the Contractor shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the Town. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures, applicable to services rendered under the Contract shall be those of the Contractor.

10.17. Notices/Authorized Representatives. Any notices required by this Contract shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Contract or such other address as the party may have designated by proper notice. Either Party may change the person or address to which notices and other communications are to be sent by giving written notice of the change in the manner specified in this paragraph.

10.18. Ownership and Access to Records and Audits.

10.18.1. Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and

RFP EXHIBIT “B” - SAMPLE AGREEMENT AS TO FORM

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 Contract (“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 Contract) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

10.18.2. Contractor agrees to keep and maintain public records in Contractor’s possession or control in connection with Contractor’s performance under this Contract. The Town Manager or her designee shall, during the term of this Contract and for a period of five (5) years from the date of termination of this Contract, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Contract. 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 Contract, and following completion of the Contract until the records are transferred to the Town.

10.18.3. Upon request from the Town’s 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.

10.18.4. 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 Contract are and shall remain the property of the Town.

10.18.5. Upon completion of this Contract or in the event of termination by either party, any and all public records relating to the Contract in the possession, custody or control of the Contractor shall be delivered by the Contractor to the Town Manager, 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 Contract, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

10.18.6. Any compensation due to Contractor shall be withheld until all records are received as provided herein.

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

10.18.8. Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.

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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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: Sandra McCready, MMC

**Mailing address: 9293 Harding Avenue
Surfside, FL 33154**

Telephone number: 305-861-4863

Email: smccready@townofsurfsidefl.gov

10.19. Boycotts. The Contractor is not currently engaged in, and will not engage in, a boycott, as defined in Section 3-1.1 of the Town of Surfside Code of Ordinances.

10.20. Conflict of Interest. To avoid any conflict of interest or any appearance thereof, Contractor shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any current, or foreseeable, adversarial issues in the Town.

10.21. Binding Agreement. The Contractor represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Contractor have been duly authorized, and this Agreement is binding on Contractor and enforceable against Contractor in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

10.22. Days. Unless otherwise specified, any reference to days in this Agreement shall mean calendar days.

10.23. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

10.24. Severability. The Parties to this Agreement expressly agree that it is not their intention to violate any public policy, statutory or common law rules, regulations, or decisions of any governmental or regulatory body. If any provision of this Agreement is judicially or administratively interpreted or construed as being in violation of any such policy, rule, regulation, or decision, the provision, sections, sentence, word, clause, or combination thereof causing such violation will be inoperative (and in lieu thereof there will be inserted such provision, section, sentence, word, clause, or combination thereof as may be valid and consistent with the intent of the Parties under this Agreement) and the remainder of this Agreement, as amended, will remain binding upon the Parties, unless the

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inoperative provision would cause enforcement of the remainder of this Agreement to be inequitable under the circumstances.

10.25. Headings. The sections headings used in this Agreement are for reference and convenience only and shall not enter into the interpretation hereof.

10.26. Survival of Terms. Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement which (a) the Parties have expressly agreed shall survive any such termination, or (b) remain to be performed and by their nature would be intended to be applicable following any such termination or expiration. Any liabilities which have accrued prior to termination pursuant to the insurance and/or indemnification obligations set forth herein shall survive the termination of this Agreement.

10.27. Waiver; Cumulative Remedies. No delay or omission by either Party hereto, in the exercise of any right or remedy hereunder, shall impair such right or remedy or be construed to be a waiver thereof. Any waiver of any such right or remedy by any Party must be in writing and signed by the Party against which such waiver is sought. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or any other covenant herein contained. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

10.28. Force Majeure. Non-performance of the Parties shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, hurricane, flood, terrorism, governmental acts or orders or restrictions, or other similar reason where failure to (“Force Majeure”), provided that the non-conforming Party gives prompt notice of such conditions to the other Party and makes all reasonable efforts to perform.

10.29. Sovereign Immunity. Nothing in this Agreement shall be deemed or treated as a waiver by the Town of any immunity to which it is entitled by law, including but not limited to the Town’s sovereign immunity as set forth in Section 768.28, Florida Statutes, as may be amended from time to time.

11. SPECIAL CONDITIONS

The following provisions in this Section 11 supersede any other provisions contained in this Contract only to the extent of any conflict with same. These provisions are particular to a given transaction and are transaction specific:

11.1. Unsatisfactory Personnel.

11.1.1. Contractor must at all times enforce strict discipline and good order among its employees and subcontractors at the Project(s) site(s) and must not employ on any Work any unfit person or anyone not skilled in the Work to which they are assigned.

RFP EXHIBIT “B” - SAMPLE AGREEMENT AS TO FORM

11.1.2. The Town may make written request to the Contractor for the prompt removal and replacement of any personnel employed or retained by the Contractor, or any or Subcontractor engaged by the Contractor to provide and perform services or Work pursuant to the requirements of the Contract Documents. The Contractor must respond to the Town within five (5) calendar days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. The Town will make the final determination as to the removal of unsatisfactory personnel from the Work. The Contractor agrees that the removal of any of such individual(s) does not require the termination or demotion of said individual(s).

11.2. Hours of Work. Contractor shall conform to and obey all applicable laws, regulations, or ordinances with regard to labor employed, hours of Work and Contractor's general operations. Contractor shall conduct its operations so as not to interfere with or close any thoroughfare, without the written consent of the Town or governing jurisdiction. Work is anticipated to be performed Monday through Friday in accordance with the requirements and limitations of applicable law including, without limitation, the Town Code of Ordinances. The Contractor shall not perform Work beyond the time and days provided above without the prior written approval of the Town.

11.3. Maintenance of Traffic. Whenever required by the scope of Work, by federal, state, or local law, or requested by the Town to protect the public health, safety, and welfare, a Maintenance of Traffic (“MOT”) must be performed in accordance with the applicable FDOT Index Numbers (600 Series) and as further stated herein. The manual on Uniform Traffic Control Devices for Streets and Highways (U.S. Department of Transportation, FHWA), must be followed in the design, application, installation, maintenance and removal of all traffic control devices, warning devices and barriers necessary to protect the public and workmen from hazards with the Project limits. Pedestrian and vehicular traffic must be maintained and protected at all times. Prior to commencement of the Work, Contractor must provide the Town with a proposed MOT plan for review. The Town may require revisions to the proposed MOT plan. The MOT plan must be updated by the Contractor every two weeks. Failure to provide an MOT plan may result in the issuance of a stop work order. The Contractor will not be entitled to additional Contract Time for delays resulting from its failure to provide the required MOT plan.

11.4. Royalties and Patents. All fees, royalties, and claims for any invention, or pretended inventions, or patent of any article, material, arrangement, appliance, or method that may be used upon or in any manner be connected with the Work or appurtenances, are hereby included in the prices stipulated in the Contract for said Work.

11.5. Substitutions. Substitution of any specified material or equipment requires the prior written acceptance of the Town or its designated representative. It is the sole responsibility of the Contractor to provide sufficient information and documentation to the Town or its designated representative to allow for a thorough review and determination on the acceptability of the substitution. Approval of a substitution does not waive or mitigate the Contractor’s responsibility to meet the requirements of the Contract Documents. The Town may require an adjustment in price based on any proposed substitution.

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11.6. Severe Weather Preparedness. During such periods of time as are designated by the United States Weather Bureau or Miami-Dade County as being a severe weather event, including a hurricane watch or warning, the Contractor, at no cost to the Town, must take all precautions necessary to secure any Work in response to all threatened storm events, regardless of whether the Contractor has been given notice of same, in accordance with the Miami-Dade County Code. Compliance with any specific severe weather event or alert precautions will not constitute additional work. Suspension of the Work caused by a threatened or actual storm event, regardless of whether the Town has directed such suspension, will entitle the Contractor to additional Contract Time as non-compensable, excusable delay.

11.7. American Rescue Plan Act Contract Conditions. The Contractor acknowledges that the Work may be fully or partially funded utilizing Coronavirus State and Local Fiscal Recovery Funds allocated to the Town pursuant to the American Rescue Plan Act (“ARPA”). Towards that end, the Contractor shall be required to comply with all laws, rules, regulations, policies, and guidelines (including any subsequent amendments to such laws, regulations, policies, and guidelines) required by ARPA, as further detailed in the ARPA Contract Conditions.

If the Work will be funded utilizing ARPA funds, the Town shall select this box: .

11.8. Grant Funding. The Contractor acknowledges that the Work may be fully or partially funded utilizing funds from the grants listed below (each a “Grant”). Accordingly, the Contractor warrants and represents that it has reviewed the terms and conditions for each Grant and will perform the Work in accordance with the terms and conditions of the Grant.

Grant Title	Grant Contract Exhibit
_____	_____
_____	_____
_____	_____
_____	_____

If the Work will be funded utilizing Grant funds, the Town shall select this box: .

For purposes of this Section, the applicable Grant requirements are set forth in Exhibit “C” – Grant Agreement No. _____, including any amendments, and the Contractor agrees to comply with all applicable provisions thereof as they relate to the performance of the Work. Failure to comply with applicable Grant requirements shall constitute a material breach of this Contract.

RFP EXHIBIT "B" - SAMPLE AGREEMENT AS TO FORM

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year as first stated above.

TOWN OF SURFSIDE

CONTRACTOR

By: _____
Mario A. Diaz
Acting Town Manager

By: _____

Name: _____

Attest:

Title: _____

Entity:

By: _____
Sandra McCready, MMC
Town Clerk

Approved as to form and legal sufficiency:

By: _____
Thais Hernandez, Esq.
Town Attorney

Addresses for Notice:

Addresses for Notice:

Mario A. Diaz
Town of Surfside
Attn: Acting Town Manager
9293 Harding Avenue
Surfside, FL 33154
305-861-4863 (telephone)
305-993-5097 (facsimile)
mdiaz@townofsurfsidefl.gov (email)
townmanager@townofsurfsidefl.gov (email)

_____ (telephone)
_____ (email)

With a copy to:

With a copy to:

Thais Hernandez, Esq.
Town of Surfside Attorney
9293 Harding Avenue
Surfside, FL 33154
thernandez@townofsurfsidefl.gov (email)

_____ (telephone)
_____ (email)

RFP EXHIBIT “B” - SAMPLE AGREEMENT AS TO FORM

E-VERIFY AFFIDAVIT

In accordance with Section 448.095, Florida Statutes, the Town requires all contractors doing business with the Town to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Town will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity’s participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name: _____

Print Name: _____

Title: _____

Witness #2 Print Name: _____

Entity Name: _____

ACKNOWLEDGMENT

State of Florida

County of _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 20____, by _____ (name of person) as _____ (type of authority) for _____ (name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as Commissioned)

Personally known to me; or

Produced identification (Type of Identification: _____)

Did take an oath; or

Did not take an oath

RFP EXHIBIT “B” - SAMPLE AGREEMENT AS TO FORM

**AFFIDAVIT ATTESTING TO
NONCOERCIVE CONDUCT FOR LABOR OR SERVICES**

Effective July 1, 2024, Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes.

By signing below, **I hereby affirm under penalty of perjury that:**

1. I have read Section 787.06, Florida Statutes, and understand that this affidavit is provided in compliance with the requirement that, upon execution, renewal, or extension of a contract between a nongovernmental entity and a governmental entity, the nongovernmental entity must attest to the absence of coercion in labor or services.
2. I am an officer or representative of _____, a nongovernmental entity.
3. _____ does not use coercion for labor or services as defined in the relevant section of the law.

In the presence of: **Under penalties of perjury, I declare that I have read the foregoing and the facts stated in it are true:**

Witness #1 Print Name: _____

Print Name: _____

Title: _____

Witness #2 Print Name: _____

Entity Name: _____

OATH OR AFFIRMATION

State of Florida

County of _____

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this ___ day of _____, 20___, by _____ (name of person) as _____ (type of authority) for _____ (name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as Commissioned)

Personally known to me; or

Produced identification (Type of Identification: _____)

Did take an oath; or

Did not take an oath

RFP EXHIBIT “B” - SAMPLE AGREEMENT AS TO FORM

AFFIDAVIT REGARDING PROHIBITION ON CONTRACTING WITH ENTITIES OF FOREIGN COUNTRIES OF CONCERN

Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual’s personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

This affidavit must be completed by an officer or representative of an entity submitting a bid, proposal, or reply to, or entering into, renewing, or extending, a contract with a governmental entity which would grant the entity access to an individual’s personal identifying information.

1. _____ (“entity”) does not meet any of the criteria in paragraphs (2)(a)-(c) of Section 287.138, F.S.

In the presence of: **Under penalties of perjury, I declare that I have read the foregoing and the facts stated in it are true:**

Witness #1 Print Name: _____

Print Name: _____

Title: _____

Witness #2 Print Name: _____

Entity Name: _____

OATH OR AFFIRMATION

State of Florida

County of _____

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this ___ day of _____, 20___, by _____ (name of person) as _____ (type of authority) for _____ (name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as Commissioned)

Personally known to me; or

Produced identification (Type of Identification: _____)

Did take an oath; or

Did not take an oath

RFP EXHIBIT “B” - SAMPLE AGREEMENT AS TO FORM

Exhibit “A” – Contractor’s Proposal and Price Submittal

RFP EXHIBIT “B” - SAMPLE AGREEMENT AS TO FORM

Exhibit “B” – RFP and Addenda

RFP EXHIBIT “B” - SAMPLE AGREEMENT AS TO FORM

Exhibit “C” – Grant Requirements (if applicable)

FORM 6
PROPOSER'S QUALIFICATIONS SURVEY

NOTE: This statement of Proposer's Qualification must be completely filled out, properly executed and returned as part of your Proposal.

Provide documentation evidencing the experience of the Proposer and demonstrating that the Proposer has successfully provided HVAC system replacement, design-build services, or similar mechanical construction services for agencies of comparable size, scope, and operational needs as the Town. The Proposer firm shall be currently engaged on a full-time basis in HVAC installation, replacement, or related mechanical services and shall have been in existence and continuous operation providing such services for a minimum of five (5) years.

1. List the true, exact and proper names of the company, partnership, corporation, and trade or fictitious name under which you do business and principals by names and titles:

Name of Firm: _____

Address: _____

Principals: _____ Titles: _____

2. a. Are you licensed, as may be required, in the designated area(s) of Miami-Dade County, Florida?

YES _____ NO _____

- b. List Principals Licensed:

Name(s): _____ Title: _____

Remarks: _____

3. How long has your Firm been in business and so licensed? _____

4. If Proposer is an individual, corporation, company or a partnership, answer the following:

a. Date of Organization _____

b. Name, address and ownership units of all directors, officers, members, principals or partners:

Form 6 – Proposer’s Qualifications Survey (continued)

-
-
- c. State whether general or limited partnership: _____
 - d. State whether a corporation or company _____. Date and State of incorporation_____.

If Proposer is other than an individual, corporation, company or partnership, describe the organization and give the name and address of principals.

-
-
- 5. If Proposer is operating under a fictitious name, submit evidence of compliance with the Florida Fictitious Name Statute.

- 6. How many years has your firm been in business under its present business name?

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- a. Under what other former names has your firm operated?

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- b. Is the firm or its principals now or in the past five (5) years been involved as a defendant in litigation concerning the performance of your Firm’s services or operations? If so list:

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- 7. a. List the pertinent experience of the key individuals of your Firm (continue on insert sheet, if necessary).

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- b. State the name of the individual(s) who will have personal supervision and key roles for the Services:

Form 6 – Proposer’s Qualifications Survey (continued)

8. List name and title of persons in your Firm who are authorized to enter into an Agreement with the Town of Surfside, Florida for the proposed Services should your Firm be the successful Proposer.

Name _____

Title _____

9. Describe your Firm's experience in providing services to other municipalities or governmental agencies similar to the services to be provided herein.

Attach additional sheets if necessary.