

RESOLUTION NO. - <sup>2016</sup>1981

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, SELECTING FOUR (4) ARCHITECTURAL FIRMS TO PERFORM ARCHITECTURAL SERVICES FOR THE TOWN, IN RESPONSE TO RFQ NO.11-01; AUTHORIZING THE TOWN MANAGER OR HIS/HER DESIGNEE TO ENTER INTO A CONTINUING CONSULTANT AGREEMENT THE FORM AND CONTENT OF WHICH SHALL SUBSTANTIALLY CONFORM TO THE AGREEMENT CONTAINED IN EXHIBIT "A" WITH SAID ARCHITECTURAL FIRMS PROVIDED SAID AGREEMENTS ARE APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE TOWN ATTORNEY; FURTHER AUTHORIZING THE TOWN MANAGER TO DO ALL THINGS NECESSARY TO EFFECTUATE THIS RESOLUTION; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Surfside, Florida issued Request for Qualifications No. 11-01 General Architectural Services for the provision of general architectural services to the Town; and

**WHEREAS**, the Town received seven (7) responses to said RFQ, which have been reviewed by staff; and

**WHEREAS**, staff recommends the following short list of Architectural firms to be called upon within the Manager's discretion:

1. Bermello Ajamil and Partners Inc.
2. Silva Architects, LLC
3. Sixto Architect Inc.
4. Wolfberg Alvarez & Partners

**WHEREAS**, the Town desires to use these firms for the provision of architectural services; and

**WHEREAS**, the Town wishes to enter into a continuing consulting agreement with the selected architectural firms for the purpose of providing on-call architectural services for various projects that may arise throughout the year; and

**WHEREAS**, each architectural firm shall submit work authorizations to the Town for any architectural services to be performed, prior to the delivery of such services.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:**

**Section 1. Firms Selected.** The Town Commission hereby selects the following architectural firms to provide architectural services for the Town:

1. Bermello Ajamil and Partners Inc.
2. Silva Architects, LLC
3. Sixto Architect Inc.
4. Wolfberg Alvarez & Partners

**Section 2. Authorization of Town Manager.** The Town Commission hereby authorizes the Town Manager or his/her designee to enter into a continuing consulting agreement with selected firms, in substantially the same form as the agreement attached as Exhibit "A" provided said agreements are approved as to form and legal sufficiency by the Town Attorney.

**Section 3. Further Authorization of Town Manager.** The Town Manager is hereby authorized to do all things necessary to effectuate this Resolution.

**Section 4. Effective Date.** This Resolution will become effective upon adoption.

**PASSED AND ADOPTED** this 9<sup>th</sup> day of November, 2010.

Motion by Commissioner Karukin, second by Commissioner Olchyk.

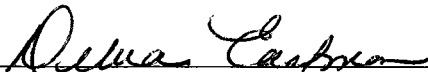
**FINAL VOTE ON ADOPTION**

Commissioner Michael Karukin  
 Commissioner Edward Kopelman  
 Commissioner Marta Olchyk  
 Vice Mayor Joseph Graubart  
 Mayor Daniel Dietch

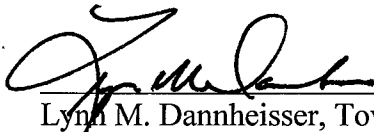
yes  
absent  
yes  
yes  
yes

  
 Daniel Dietch, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Deborah Eastman, MMC  
Town Clerk

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

  
\_\_\_\_\_  
Lynn M. Dannheisser, Town Attorney

**EXHIBIT "A"**  
**AGREEMENT**  
**BETWEEN THE TOWN OF SURFSIDE**  
**AND**

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This AGREEMENT, made and entered into by and between the Town of Surfside, a Florida municipality (hereinafter referred to as the "TOWN") and \_\_\_\_\_, (hereinafter referred to as the "CONSULTANT").

**1. SCOPE OF SERVICES**

Pursuant to this Agreement, if Engineering, the Engineering Scope of Services may include, but is not limited to, the following tasks: Survey; Geotechnical; Structural; Environmental; Traffic; Landscape Architecture; Construction Management; Construction Inspection; Construction Testing; Electrical; Hurricane Recovery and Debris Monitoring Services; General Design Work; Preparation of Complete Construction Contract Plans and Special Provisions for the Assigned Projects; Public Involvement; Post Design Services (shop drawing review and responses to Request for Information); and Bid Administration (selection and letting) or other work as may be necessary to accomplish the projects for which services are requested by the TOWN.

Pursuant to this Agreement, if Architectural, the Architectural Scope of Services may include, but not limited to, the following tasks: Design; Reports; Analysis; Graphic Conceptual Drawings; Color Selection and Coordination; Inspection; General Design Work; Preparation of Complete Construction Contract Plans and Special Provisions for the Assigned Projects; Public Involvement; Post Design Services (submittal review and responses to Request for Information); and Landscaping Layout and Design or other work as may be necessary to accomplish the Projects for which services are requested by TOWN.

This Agreement is made for the purpose of establishing the working relationship, terms and conditions between the parties on projects for which the CONSULTANT is requested by TOWN to perform professional services and the CONSULTANT agrees to perform those services for TOWN subject to the terms and conditions contained herein. Each specific project assignment or request for services will be initiated in writing by TOWN to CONSULTANT and will include a description of the project's concept.

Prior to the commencement of any work by the CONSULTANT, the TOWN and the CONSULTANT will agree upon a written scope of services prepared by the CONSULTANT which will include a detailed schedule of the services to be performed, appropriate project schedules, fee amount and payment method. In the performance of the services prescribed herein, it shall be the responsibility of the CONSULTANT to provide all salaries, wages, materials, equipment, sub-consultants and other purchased services, etc., necessary to complete said services. The Town Commission of TOWN shall review the scope of services as agreed upon by TOWN and CONSULTANT and, if approved, shall issue a written notification to the CONSULTANT of such approval ("Notice to Proceed"). Such Notice to Proceed shall constitute authorization for work by the CONSULTANT to begin.

**2. CHANGES IN THE WORK**

- A. The intent of the Agreement is for the CONSULTANT to provide such basic services, and to include all necessary items for the proper completion of such services for a functional project which, when constructed in accordance with the design, will be able to be used by the TOWN for its intended purpose. The CONSULTANT shall perform, as Basic Services, such incidental work, which may not be specifically referenced, as necessary to complete the Project.
- B. The TOWN and the CONSULTANT may make additions to the scope of work by mutual written agreement only. Any material change in the scope of service and any change in the fee due the CONSULTANT must be approved by the Town Commission. The TOWN may rescind work previously ordered by written instructions to the CONSULTANT. In the event of any such rescission by the TOWN, the CONSULTANT shall be entitled to receive the amount due it for such services rendered hereunder prior to the date of such rescission. The provisions of this Agreement, with appropriate changes in the CONSULTANT'S compensation and project schedule, shall apply to all modifications in work ordered.
- C. In emergency situations, as determined by TOWN, the TOWN reserves the right to issue verbal authorization to the CONSULTANT with the understanding that a cost and scope of services proposal shall be issued immediately thereafter for approval.

### **3. SUB-CONSULTANTS**

All services provided by the Sub-consultants shall be pursuant to appropriate agreements between the CONSULTANT and Sub-consultant which shall contain provisions that preserve and protect the rights of the TOWN and the CONSULTANT under this Agreement, and which impose no responsibilities or liabilities on the TOWN except as herein provided. Any approval of a Sub-consultant by the TOWN shall not in any way shift the responsibility for the quality and acceptability by the TOWN of the services performed by the Sub-consultant from the CONSULTANT to the TOWN. The CONSULTANT shall cause the names of Sub-consultants responsible for significant portions of the services to be inserted on the Plans and Specifications, subject to the approval of the TOWN. The CONSULTANT with the TOWN'S approval, may employ specialty consultants to assist the CONSULTANT performing specialized services.

### **4. AMENDMENTS**

This agreement shall not be amended, changed, modified, transferred or otherwise altered in any particular manner, at any time after the execution hereof, except by the Town Manager or by appropriate resolution of the Town Commission. The TOWN may, from time to time, make amendments or modifications to this Agreement to comply with current needs of the TOWN. All such amendments shall be presented in writing and executed by both parties. The failure or refusal by the CONSULTANT to execute a modification may result in the CONSULTANT'S removal from consideration for future work.

### **5. PERIOD OF SERVICE**

This Agreement is effective on \_\_\_\_\_, 2010 and shall continue for a period of one (1) years from the effective date, unless terminated earlier in accordance with Section 10 of this agreement. The Agreement may be extended in its original form for a one year

period by a written agreement executed by both parties. The agreement may be extended with amended salary schedule (Exhibit B) or other amendments for a one (1) year period upon approval of the town commission.

## 6. PAYMENT FOR SERVICE

Payment for services will be subject to the specific terms of each assignment as authorized by a Notice to Proceed, and will be made by the TOWN in accordance with the PROMPT PAYMENT ACT. In the event that all or a portion of an invoice submitted to the TOWN for payment to the CONSULTANT is disputed, or additional backup documentation is required, the TOWN shall notify the CONSULTANT in writing within fifteen (15) calendar days of receipt of the invoice of such objection, modification, or additional documentation request. The CONSULTANT shall provide TOWN with additional backup documentation within five (5) working days of the date of the TOWN's notice. The TOWN, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice. The TOWN's performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the Town Commission.

## 7. BILLING PROCEDURE

In order to expedite payment to the CONSULTANT, invoices shall be submitted to the TOWN each month detailing separately the charges for each assignment as authorized by a Notice to Proceed. In order for both parties herein to close their books and records, the CONSULTANT will clearly state "FINAL INVOICE" on the CONSULTANT's final/last billing to the TOWN. Since this account thereupon will be closed, any additional charges, if not properly included on this final invoice, are waived by the CONSULTANT.

Invoices shall include the following information:

Hourly Rate Basis - If payment is made on the hourly rate basis, the hourly rates will be billed in accordance with the rate schedule provided in Exhibit B. The hourly rate schedule will be subject to review and amendment based on mutual agreement by both parties upon each one-year anniversary thereafter.

1. Time period
2. Current Amount Due
3. Schedule of Reimbursable Expenses
4. Schedule of Labor Charges
5. Billed to Date Amounts

No supporting documents will be provided unless specifically requested by the TOWN.

### Lump Sum

1. Time Period
2. Percentage Completion to Date
3. Prior Billings
4. Current Amount Due
5. Billed to Date Amounts

No supporting documents will be provided unless specifically requested by the TOWN.

## **8. MISCELLANEOUS**

Nothing contained in this Agreement shall prevent the TOWN from retaining or employing another firm to provide the service that may be provided by the CONSULTANT under this Agreement for a project or projects. Nothing contained herein guarantees the CONSULTANT any certain amount of work or compensation.

## **9. AUDIT**

The CONSULTANT shall make available to the TOWN of its representative all required financial records associated with the Agreement for a period of three (3) years. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the TOWN of any fees or expenses based upon such entries. Refusal of the CONSULTANT to comply with this provision shall be grounds for immediate termination for cause by the TOWN of this Agreement or any Project Agreement.

## **10. OWNERSHIP OF DOCUMENTS**

The parties agree generally that all documentation and work product produced pursuant to this Agreement shall become the exclusive property of the TOWN and shall be provided to the TOWN upon request. Specifically:

1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, and all other data prepared for the TOWN or furnished by CONSULTANT pursuant to this or any Project Agreement shall become the property of the TOWN, whether the Project for which they are made is completed or not, and shall be delivered by CONSULTANT to TOWN within ten (10) calendar days after receipt of written notice requesting delivery of said documents. The CONSULTANT shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the CONSULTANT use, or permit to be used, any of the documents without the TOWN'S prior written authorization. Any reuse of such documents by the CONSULTANT without the written verification or adaptation by the TOWN for the specific purpose intended will be at the CONSULTANT'S sole risk.

2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, or other data, entered into by the CONSULTANT for a Specific Project shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the TOWN.

3 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida.

## **11. CONFIDENTIALITY**

The CONSULTANT shall not, either during the term of this Agreement or any time for a period of ten (10) years subsequent to that date upon which the CONSULTANT shall leave the employment of the TOWN for any reason whatsoever, disclose to any person or entity, other than in the discharge of the duties of the CONSULTANT under this Agreement, any information which the TOWN designates in writing as "confidential." As a violation by the CONSULTANT of the provisions of this section could cause irreparable injury to the TOWN and there is no adequate remedy at law for such violation, the TOWN shall have the right, in addition to any other remedies available to it at law or in equity, to enjoin the CONSULTANT from violating such provisions.

## **12. GOVERNING LAW**

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

## **13. DISPUTE RESOLUTION**

It is the intention of the parties that whenever possible, if a dispute or controversy arises hereunder then such dispute or controversy shall be settled by arbitration in accordance with the procedure, rules and regulations of the American Arbitration Association. The decision rendered by the Arbitrator shall be final and binding upon the parties and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. Arbitration shall be held in Miami-Dade County, Florida.

## **14. ATTORNEY'S FEES**

In the event of any litigation arising from or related to the services provided under this Agreement, the prevailing party will be entitled to recovery of all reasonable litigation costs and attorneys' fees and other related expenses including those incurred in any appeal. If neither party prevails on the whole, each party shall be responsible for a portion of the costs of arbitration and their respective attorneys' fees as be determined by the court on confirmation.

## **15. TERMINATION OF CONTRACT**

It is agreed and acknowledged by each of the parties hereto that the execution of this Agreement shall not be construed as a commitment or obligation by the TOWN to contract any services from the CONSULTANT or to continue the employment of the CONSULTANT hereunder.



- A. **TERMINATION – Without Cause** – This Agreement may be terminated by TOWN for any reason or no reason upon thirty (30) calendar days' written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be entitled to receive compensation for any work completed pursuant to this Agreement to the satisfaction of TOWN up through the date of termination. Under no circumstances shall TOWN make payment for services that have not been performed.
- B. **TERMINATION – With Cause** – This Agreement may be terminated by either party upon five (5) calendar days' written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event CONTRACTOR abandons this Agreement or causes it to be terminated by TOWN, CONTRACTOR shall indemnify TOWN against loss pertaining to this termination, including, but not limited to, reasonable costs incurred in transition to a replacement CONTRACTOR.
- C. **TERMINATION - Insolvency/Transfer of Ownership** - This Agreement may be terminated by the TOWN upon five (5) calendar days' written notice if there is a change of more than 50% of the ownership of the CONTRACTOR. CONTRACTOR shall notify Town Manager at least ten (10) business days before any such change in ownership of CONTRACTOR. The TOWN also reserves the right to terminate the remaining services to be performed in the event the CONSULTANT is placed either in voluntary or involuntary bankruptcy or makes any assignment for the benefit of creditors.

Upon termination, CONTRACTOR shall turn over to TOWN all finished or unfinished work product, documents, data, studies, surveys, sketches, plans and reports in its possession. It shall also reasonably assist the TOWN and any replacement CONTRACTORS in the transition.

## 16. DEFAULT

An event of default shall mean a breach and failure to substantially perform as set forth in Paragraph 15 B. above of this Agreement by CONSULTANT as determined by the sole discretion of the TOWN. Without limiting the generality of the foregoing and in addition to those instances referred to as a breach, an event of default shall include but not be limited to the following:

- CONSULTANT has not performed services on a timely basis;
- CONSULTANT has refused or failed to supply enough properly-skilled personnel;
- CONSULTANT has failed to make prompt payment to subcontractors or suppliers for any services;
- CONSULTANT has failed to fulfill representations made in this Agreement; or
- CONSULTANT has refused or failed to provide the Services as defined in this Agreement.

In the event of default, CONSULTANT shall be liable for all damages to the TOWN and others resulting from the default, including but not limited to:

- Lost funding
- The difference between the cost associated with procuring services and the amount actually expended by TOWN, including procurement and administrative costs, and

- Consequential damages.

TOWN may take advantage of each and every remedy specifically existing at law or in equity.

## **17. DELAY IN PERFORMANCE**

If the CONSULTANT is delayed in performing any obligation under this Agreement due to a force majeure or inevitable accident or occurrence, the CONSULTANT shall request a time extension from the TOWN within five (5) working days of said force majeure or inevitable accident or occurrence. Any time extension shall be subject to mutual agreement and shall not be cause for any claim by the CONSULTANT for extra compensation unless additional services are required. Force majeure shall mean an act of God, epidemic, fire, explosion, hurricane, flood, or similar occurrence, civil disturbance or similar occurrence, which has had, or reasonable be expected to have a material adverse effect on the rights and obligations under this Agreement, and which, by the exercise of due diligence, such parties shall not have been able to avoid. Such acts or events DO NOT INCLUDE inclement weather (except as noted above) or the acts or omissions of Sub-consultants/sub-contracts, etc.

## **18. NON-DISCRIMINATION**

The CONSULTANT agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11248 as amended by Executive Order 11375 and 12086.

The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The CONSULTANT will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the TOWN setting forth the provisions of this non-discrimination clause.

The CONSULTANT agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 708), which prohibits discrimination against the handicapped in any Federally assisted program.

## **19. CONFLICT OF INTEREST/CODE OF ETHICS**

To avoid any conflicts of interest, or any appearance thereof, CONSULTANT, for the term of this Agreement, agrees that it will not represent any private sector entities (developers, corporations, real estate investors, etc.) in Surfside, Florida, without first

notifying the TOWN of the services to be performed. If after such notification the TOWN reasonable determines that material conflict exists, CONSULTANT will not perform such conflicting work. The conditions and requirements of this paragraph will also apply to any subcontractors utilized by the CONSULTANT in completion of the work tasks under this Agreement. CONSULTANT shall comply with all applicable Conflict of Interest provisions of State of Florida Statutes, Miami-Dade County Code, and Surfside Code. The code of ethics of the involved profession shall also be incorporated in this Agreement by this reference.

## 20. INSURANCE

The CONSULTANT shall, at its sole cost and expense, maintain Professional Liability and Errors and Omissions Insurance with coverage in such amounts as listed in Exhibit A.

The CONSULTANT has and will maintain insurance, including workmen's compensation, comprehensive general liability, and comprehensive automobile liability and property damage insurance.

The attached Exhibit A identifies the coverage and limits of insurance applicable to this Agreement, and fully incorporated herein by reference. Insurance required of the CONSULTANT shall be primary to, and not contribute with, any insurance or self-insurance maintained by the TOWN. Such insurance shall not diminish CONSULTANT's indemnification and obligations hereunder. The insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida with a minimum A.M. Best's Insurance Guide rating of A-Excellent. **Before any work under this Agreement is performed, and at any time upon request, CONSULTANT shall furnish to the TOWN certificates of insurance evidencing the minimum required coverage and shall be appropriately endorsed for contractual liability, with the TOWN named as additional insured except for Professional Liability and Worker's Compensation.** All policies shall contain a waiver of subrogation endorsement. All policies and certificates shall be in forms and issued by insurance companies acceptable to the TOWN. All certificates of insurance shall provide that the policies may not be cancelled or altered without thirty (30) days prior notice to the TOWN. CONSULTANT shall also require and ensure that each of its sub-Consultants providing services hereunder (if any) procures and maintains, until the completion of the services, insurance of the types and to the limitations specified herein. ANY EXCEPTIONS TO THE INSURANCE REQUIREMENTS IN THIS SECTION MUST BE APPROVED IN WRITING BY THE TOWN.

## 21. ASSIGNMENTS

This Agreement shall be binding upon and shall inure to the benefit of the TOWN and to any and all of its successors and assigns, whether by merger, consolidation, transfer of substantially all assets or any similar transaction. Notwithstanding the foregoing, this Agreement is personal to the CONSULTANT and it may not, either directly or indirectly, assign its rights or delegate its obligations to TOWN hereunder without first obtaining the TOWN'S consent in writing. Any such attempted assignment of delegation shall be deemed of no legal force and effect whatsoever.

**22. INDEPENDENT CONTRACTOR**

The CONSULTANT is providing the services to be performed hereunder as an independent contractor and nothing in this Agreement shall be construed to constitute any other relationship between the TOWN and the CONSULTANT. The CONSULTANT shall at all times maintain exclusive direction and control over the CONSULTANT'S employees, methods, equipment and facilities used by the CONSULTANT in the performance of its work. The CONSULTANT is responsible for all applicable employment and income taxes related to the performance of its services, and the CONSULTANT agrees to hold harmless the TOWN from any claims for payment of said obligations.

**23. NOTICES**

Any notices required hereunder shall be in writing and shall be deemed duly given on the date of mailing if deposited in the United States Postal Service, certified mail, return receipt requested, in a properly sealed and postage prepaid envelope, addressed as follows:

**If to the TOWN at:**

**If to the CONSULTANT at:**

**Roger M. Carlton, Town Manager  
Town of Surfside  
9293 Harding Avenue  
Surfside, Florida 33154**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_,  
\_\_\_\_\_

**Florida**

**And**

**Lynn Dannheisser, Town Attorney  
Town of Surfside  
9293 Harding Avenue  
Surfside, Florida 33154**

\_\_\_\_\_

**24. NON-EXCLUSIVITY**

Notwithstanding any provision of the Non-Exclusive Agreement, the TOWN is not precluded from retaining or utilizing any other Architect, Engineer, Design Professional, or other Consultant to perform any incidental Basic Services, Additional Services, or other Professional Services within the contract limits defined in the Agreement. The

CONSULTANT shall have no claim against the TOWN as a result of the TOWN electing to retain or utilize such other Architect, Engineer, Design Professional or other Consultant to perform such incidental services.

## **25. PERMITS AND APPROVALS**

The CONSULTANT shall assist the TOWN in applying for all applicable permits and approvals required by law and/or regulatory authorities for projects for which the CONSULTANTS services are engaged. This assistance includes completing and submitting designs, drawings, dialogue and forms relating to the work included in the scope of services and as necessary for the issuance of the permit or approval.

## **26. RECORD DOCUMENTS**

The CONSULTANT shall prepare and deliver to the TOWN one electronic set and one reproducible drawing set of Record Documents conforming to the marked-up prints, drawings and other data furnished to the CONSULTANT by the contractor upon completion of the work. This set of Record Documents will show the reported location of the project and significant changes made during the construction process.

## **27. SEVERABILITY AND SURVIVAL**

If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all remaining provisions shall continue in full force and effect.

## **28. SHOP DRAWING REVIEW**

The CONSULTANT shall review and approve contractor submittals, such as shop drawings, product data, samples and other data, as required by the CONSULTANT, but only for the limited purpose of checking for conformance with the design concept and the information expressed in the contract documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the contractor. The CONSULTANT'S review shall be conducted with reasonable promptness while allowing sufficient time in the CONSULTANT'S judgment to permit adequate review. Review of a specific item shall not indicate that the CONSULTANT has reviewed the entire assembly of which the item is a component. The CONSULTANT shall not be responsible for any deviations from the contract documents not brought to the attention of the CONSULTANT in writing by the contractor. The CONSULTANT shall not be required to review partial submissions or those for which submissions of correlated items have not been received. Provided, however, the CONSULTANT will perform the duties assigned to it in any contract entered into by the TOWN with a contractor, but only to the extent such duties are expressly contained in this Agreement or amendment thereto. The CONSULTANT shall have no authority to vary the requirements of any construction contract or approve any extra

work, change order or request for extra compensation without the written approval of the TOWN.

## **29. WARRANTIES AND GUARANTEES**

The CONSULTANT is responsible for the professional quality, technical accuracy, completeness, performance and coordination of all work required under the Agreement including the work performed by its agents, partners, principals, officers, employees, instrumentalities and Sub-consultants, within the specified time period and specified cost. The CONSULTANT shall perform the work utilizing the skill, knowledge, and judgment ordinarily possessed and used by a proficient consulting Architect/Engineer with respect to the disciplines required for the performance of the work in the State of Florida. The CONSULTANT is responsible for, and represents that the work conforms to the TOWN'S requirements as set forth in the Agreement. The CONSULTANT shall be and remain liable to the TOWN for all damages to the TOWN caused by CONSULTANTS negligent acts or errors or omissions in the performance of the work. In addition to all other rights and remedies, which the TOWN may have, the CONSULTANT shall, at its expense, re-perform the services to correct any deficiencies, which result from the CONSULTANT'S failure to perform in accordance with the above standards. The CONSULTANT shall also be liable for the replacement or repair of any defective materials and equipment and re-performance of any non-conforming construction services resulting from such deficient CONSULTANT services for a period from the commencement of this Agreement until twelve (12) months following final acceptance of the Work and for the period of design liability required by applicable law. The TOWN shall notify the CONSULTANT in writing of any deficiencies and shall approve the method and timing of the corrections. Neither the TOWN'S inspection, review, approval or acceptance of, nor payment for, any of the work required under the Agreement shall be construed to relieve the CONSULTANT or any Sub-consultant of its obligations and responsibilities under the Agreement, nor constitute a waiver of any of the TOWN'S rights under the Agreement or of any cause of action arising out of performance of the Agreement. The CONSULTANT and its Sub-consultants shall be and remain liable to the TOWN in accordance with applicable law for all damages to TOWN caused by any failure of the CONSULTANT or its Sub-consultants to comply with the terms and conditions of the Agreement or by the CONSULTANT's or Sub-consultants' misconduct, unlawful acts, negligent acts, errors, or omissions in the performance of the Agreement. With respect to the performance of work by Sub-consultants, the CONSULTANT shall, in approving and accepting such work, ensure the professional quality, completeness, and coordination of Sub-consultant's work. The CONSULTANT agrees to transfer to the TOWN any manufacturer's warranties or guarantees for component parts of any project completed for TOWN.

## **30. PERFORMANCE OF WORK**

The Consultant shall use its best efforts, skill and judgment in providing its services under this agreement and to perform its services in the best and most expeditious and economical manner. CONSULTANT shall comply with all laws, ordinances and governmental rules, regulations and orders now or at any time during the term of this Agreement which as a matter of law are applicable to or which affect the procedures of the CONSULTANT.

If at any time during the term of any Project Agreement or the construction of the Project for which the CONSULTANT has provided engineering services under a prior Project Agreement, it is

determined that the CONSULTANT's documents are incorrect, defective or fail to conform to the Scope of Services, upon written notification from the TOWN, the CONSULTANT shall immediately proceed to correct the work, re-perform services which fail to satisfy the foregoing standard of care as determined by the TOWN, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursement to the TOWN for any other services and expenses made necessary thereby, save and except any costs and expenses which the TOWN would have otherwise paid absent the CONSULTANT's error or omission. The TOWN's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise. Any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONSULTANT shall be accurate, coordinated and adequate for construction and shall be in conformity and comply with all applicable law, codes and regulations.

CONSULTANT's obligations under this Paragraph shall survive termination of this or any Project Agreement.

### **31. TIME IS OF THE ESSENCE**

Time is of the essence for all of the CONSULTANT's obligations pursuant to this Agreement.

### **32. HOLD HARMLESS**

To the fullest extent permitted by law, the CONSULTANT shall indemnify and hold harmless the TOWN and its elected officials, officers and employees, from any and all liabilities, any and all claims, including claims for equitable or injunctive relief, damages, losses and costs, including but not limited to reasonable attorneys fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT, its employees, agents, officers, subconsultants and other persons employed or utilized by the CONSULTANT in the performance of this agreement. It is the specific intent of the parties hereto that the foregoing indemnification provision comply with Section 725.08, Florida Statutes. It is further the specific intent and agreement of the parties that all the contract documents of any project for which the Consultant provided services be hereby amended to include the foregoing indemnification. The CONSULTANT expressly agrees that it will not claim, and waives any claim, that this article violates Section 725.08 Florida Statutes, or is unenforceable pursuant to Section 725.08, Florida Statutes.

This indemnification obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section. This indemnification provision shall include claims made by an employee of the CONSULTANT against the TOWN and the CONSULTANT waives any entitlement to immunity under Section 440.11, Florida Statutes, only as to such indemnification claims by the TOWN against the CONSULTANT. This indemnification provision shall survive the termination of this agreement however terminated.

### **33. ENTIRE AGREEMENT**

This Agreement, along with Exhibits A and B, supersedes any and all prior negotiations and oral agreements heretofore made relating to the subject matter hereof and except for written agreements if any, executed and delivered simultaneously with or subsequent to the date of this Agreement, constitutes the entire agreement of the parties relating to the subject matter hereof. This Agreement may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Agreement shall be effective unless in writing and executed by the party to be charged therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Agreement.

#### 34. SEVERABILITY

If any provision of this Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

#### 35. 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.

IN WITNESS WHEREOF, the parties hereto executed this Agreement on this, the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

CONSULTANT

Firm: \_\_\_\_\_.

By: \_\_\_\_\_

\_\_\_\_\_, P.E.

Title

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

TOWN

THE TOWN OF SURFSIDE



By: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST**

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

EXHIBIT A

CONSULTANTS INSURANCE REQUIREMENTS

Workers Compensation - Statutory Limit

Employer Liability - \$1,000,000/Accident-Bodily Injury  
\$ 500,000/Policy Limit - Disease  
\$1,000,000/Employee - Disease

Auto Liability - \$ 500,000/Property Damage CSL  
\$ 500,000/Bodily Injury CSL

General Liability - \$1,000,000 per occurrence

Professional Liability - \$1,000,000 Aggregate

EXHIBIT B

DESCRIPTION OF COMPENSATION FOR ENGINEERING SERVICES

I. This Exhibit is attached to and made a part of the Agreement made on \_\_\_\_\_, 2010 between the **Town of Surfside (the TOWN)** and \_\_\_\_\_, **Inc. (the CONSULTANT)** providing for planning, surveying, engineering design, construction administration and site observation. Compensation for services requested and authorized by the TOWN will be based on the hourly rate schedule provided below:

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