

RESOLUTION NO. 15 - 2330

A RESOLUTION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING THE AGREEMENT WITH SML, INC. ATTACHED HERETO AS ATTACHMENT "A" FOR A COMPREHENSIVE RECORDS MANAGEMENT PLAN AND IMPLEMENTATION SERVICES; PROVIDING FOR IMPLEMENTATION AND AUTHORIZATION OF PAYMENT OF \$44,000.00 FROM ACCOUNT NO. 001-2400-519-3410; PROVIDING FOR APPROVAL AND AUTHORIZATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Fiscal Year 2015/2016 budget appropriated forty-four thousand dollars (\$44,000.00) for a comprehensive records management plan and implementation; and

WHEREAS, Section 3-13(6) of the Surfside Town Code provides that services from a sole source may be exempted from the bidding requirements of the Town upon the filing of a written request by a department head to the Town Manager outlining the conditions and circumstances involved, after conducting a good faith review of available sources; and

WHEREAS, the Town Commission affirms the expenditure of forty-four thousand dollars (\$44,000.00) from the Fiscal Year 2015/2016 budget, Account No. 001-2400-519-3410, for a comprehensive records management plan and implementation and authorizes the Town Manager and/or his designee to execute the attached Agreement (See Attachment "A"); and

WHEREAS, the Town Commission has determined that it is in the best interests of the Town to enter into the Agreement attached hereto as Attachment "A" with SML, Inc. for a comprehensive records management plan and implementation.

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

Section 1. Recitals Adopted. That each of the above stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval and Authorization of Fund Expenditure. The Agreement, attached hereto as Attachment "A" between the Town and SML, Inc. is hereby approved. The Town Manager and/or his designee is authorized to expend \$44,000.00 for a comprehensive records management plan and implementation services from Account No. 001-2400-519-3410 - Town Clerk Department - to implement the terms and conditions of the Agreement.

Section 3. Implementation and Authorization. The Town Manager and/or his designee is hereby authorized to take all action necessary to implement this Resolution and the Agreement in accordance with the terms, conditions and purposes of this Resolution and the Agreement.

Section 4. Effective Date. That this Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 13th day of October 2015.

Motion by Vice Mayor Tourgeman.

Second by Commissioner Karukin.

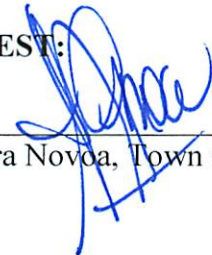
FINAL VOTE ON ADOPTION

Commissioner Barry Cohen
Commissioner Michael Karukin
Commissioner Marta Olchyk
Vice Mayor Eli Tourgeman
Mayor Daniel Dietch

yes
yes
NO
yes
yes




Daniel Dietch, Mayor

ATTEST:


Sandra Novoa, Town Clerk

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



Linda Miller, Town Attorney

PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into this _____ day of October, 2015, by and between the Town of Surfside, Florida ("TOWN") and Steve M. Lewis, Inc., (d/b/a SML, Inc.) ("CONSULTANT") and

RECITALS:

A. TOWN is in need of a comprehensive Records Management Plan together with a Disposition List and requires certain technical support services to include a written plan, written procedures, implementation specifications, staff training and materials.

B. CONSULTANT possesses all necessary qualifications and expertise to perform the Services.

C. TOWN wishes to engage the services of the CONSULTANT and CONSULTANT wishes to perform the services for the TOWN in the amount of forty-four thousand dollars (\$44,000) under the terms and conditions set forth herein, and as detailed in Consultant's Scope of Services dated September 29, 2015 and attached herein as Schedule One.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, CONSULTANT and TOWN agree as follows:

TERMS:

1. **RECITALS:** The recitals are true and correct and are hereby incorporated into and made a part of the Agreement.
2. **TERM:** The term of this Agreement shall commence on the date hereof and for a period not to exceed one year.

TERMINATION OF CONTRACT

- A. **TERMINATION WITHOUT CAUSE** – This AGREEMENT may be terminated by TOWN for any reason or no reason upon ten (10) calendar days written notice to CONSULTANT. In the event of such termination, CONSULTANT 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 CONSULTANT abandons this AGREEMENT or causes it to be terminated by TOWN, CONSULTANT shall indemnify TOWN against loss pertaining to this termination, including, but not limited to, reasonable costs incurred in transition to a replacement CONSULTANT.
- 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 CONSULTANT. CONSULTANT shall notify Town Manager at least ten (10) business days before any such change in ownership of CONSULTANT. 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.
- D. Upon termination, CONSULTANT 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 CONSULTANT in the transition.

3. **QUALIFICATION:** CONSULTANT represents and warrants to the TOWN he possesses all qualifications and expertise required for the performance of the Services as outlined in the attached “Schedule One Scope of Services” and all personnel assigned to perform the Services are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each.

4. **COMPENSATION:** The amount of compensation payable by the TOWN to the CONSULTANT shall be as detailed in Consultant’s Scope of Services dated September 29, 2015 and attached herein as Schedule One.

5. **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS:** CONSULTANT understands this Agreement is subject to certain laws and regulations, including laws pertaining to public records, conflict of interest, record keeping, etc. The TOWN and CONSULTANT agree to comply with and observe all applicable federal, state and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

6. **NON DISCRIMINATION:** CONSULTANT represents and warrants to the TOWN Consultant does not and will not engage in discriminatory practices and there shall be no discrimination in connection with CONSULTANT’S performance under this

Agreement on account of race, color, sex, religion, age, handicap, marital status or national origin.

7. **ASSIGNMENT:** This Agreement shall not be assigned by CONSULTANT, in whole or in part, without the prior written consent of the TOWN, which may be withheld or conditioned, at the TOWN'S sole discretion.

8. **CONSULTANT'S INSURANCE:** The CONSULTANT will maintain throughout this AGREEMENT the following insurance:

A. Worker's Compensation – Statutory – in compliance with the Compensation law of the State of Florida. In addition, the CONSULTANT shall obtain Employers' Liability Insurance with limits of not less than:

- Five Hundred Thousand (\$500,000.00) Dollars Bodily Injury by Accident
- Five Hundred Thousand (\$500,000.00) Dollars Bodily Injury by Disease, Policy Limits
- Five Hundred Thousand (\$500,000.00) Dollars Bodily Injury by Disease, each employee

B. Commercial General Liability including but not limited to bodily injury, property damage, contractual liability, products and completed operations (without limitation) and no more restrictive than ISO form CG 20 37 (07 04) shall be in an amount acceptable to the Town of Surfside but not less than One Million (\$1,000,000.00) Dollars Combined Single Limit per occurrence and Two Million (\$2,000,000.00) Dollars aggregate. The coverage must include:

- Commercial Form
- Premises/Operations
- Products/Completed Operations
- Independent Consultants (if any part of the Work is to be subcontracted)
- Broad Form Property Damage
- Personal Injury

C. Business Automobile Liability Insurance with a minimum limit of liability of One Million (\$1,000,000.00) Dollars each occurrence covering all worked performed under this contract. This insurance shall include for bodily injury and property damage the following coverage:

- Owned automobiles
- Hired automobiles
- Non-owned automobiles
- Location of operation shall be "All Locations"

D. Professional Liability/Errors & Omissions Insurance with minimum limits not less than One Million (\$1,000,000.00) Dollars for professional services

rendered in accordance with this contract. The CONSULTANT shall maintain such insurance for at least two (2) years from the termination of this contract and during this two (2) year period the CONSULTANT shall use his best efforts to ensure there is no change of the retroactive date on this insurance coverage. If there is a change that reduces or restricts the coverage carried during the contract, the CONSULTANT shall notify Town Risk Management within thirty (30) days of the change.

E. Certificates of Insurance shall be filed and maintained throughout the life of any resulting Agreement with the Town of Surfside evidencing the minimum limits of the insurance cited above prior to commencement of work. All insurance certificates shall be received by Town Clerk before CONSULTANT will be allowed to commence or continue work (all insurance carriers must have their corresponding AM Best carrier ID listed on the COI). All policies shall provide that they may not be terminated or modified without the insurer providing the Town of Surfside at least thirty (30) days of advance notice. Additionally, the CONSULTANT shall immediately notify the TOWN of any cancellation of such insurance. The Town of Surfside reserves the right to review, at any time, coverage, form, and amount of insurance.

9. INDEMNIFICATION: to protect, defend, indemnify, save and hold harmless The Town of Surfside, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss of destruction of any property which may occur or in any way grow out of any act or omission of the CONSULTANT, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the TOWN as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of The Town of Surfside, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. Nothing in this indemnification is intended to act as a waiver of the TOWN'S sovereign immunity rights, including those provided under section 768.28, Florida Statutes. This indemnification shall survive the expiration or termination of this Agreement.

10. LIMITATION OF LIABILITY: CONSULTANT's services shall be governed by the negligence standard for professional services, measured as of the time those services are performed. This Provision takes precedence over any conflicting Provision of this Agreement or any document incorporated into it or referenced by it. This limitation of liability will apply whether CONSULTANT'S liability arises under breach of contract or warranty; tort; including negligence; strict liability; statutory liability; or any other cause of action, and shall include CONSULTANT's officers, affiliated corporations, employees, and subcontractors.

11. MISCELLANEOUS: This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements, written or

oral, between the parties to this Agreement. This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties and their respective legal representatives, successors and assigns. CONSULTANT may not assign its rights or obligations hereunder without the prior written consent to TOWN. No waiver by the parties of any default or breach of any term, condition, or covenant of this Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained herein. This Agreement shall be deemed to have been mutually drafted by the parties. Therefore, neither this Agreement nor any section hereof or amendment hereto shall be construed against any party due to the fact that the Agreement or any section hereof or amendment hereto may have been primarily drafted by said party. If any provision of this Agreement, or the applications of such provision to any person or circumstance, shall be held invalid the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. Should any litigation be commenced between the parties thereto, the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to its costs and a reasonable sum for attorney's fees in such litigation and any appeal thereof or in bankruptcy proceedings. Venue in any litigation shall lie exclusively in Miami-Dade County, Florida. THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties, intending to be legally bound, hereby have executed this Agreement as of the date set forth.

The undersigned executed this AGREEMENT on the ____ day of _____, 2015.

Remainder of this page intentionally left blank

TOWN OF SURFSIDE
A Florida Municipal Corporation

By: _____

Guillermo Olmedillo
Town Manager
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
Miami-Dade: (305) 861-4863

By: _____

Steve M. Lewis, President and CEO/Consultant
SML, Inc.
Post Office Box 484
Vero Beach, Florida 32961

Attest:

Sandra Novoa, MMC, Town Clerk

**Approved As To Form And
Legal Sufficiency:**

Linda Miller, Town Attorney

(Schedule One)

SCOPE OF SERVICES

For

The Town of Surfside, Florida

September 29, 2015

By

 **SML, INC.**
Information Analysis, Design, Planning and Training
Post Office Box 484
Vero Beach, Florida 32961
Cell: 813.205.2850
stevemlewis@msn.com
www.smlinfo.net

For the Records Management Plan:

1. A comprehensive, systematic, legally sufficient Records Management Plan of roughly 500 pages in length which includes indexed published material supporting recommendations. One hard copy and one digital copy.
2. A detailed implementation narrative.
3. An executive summary.
4. Bid specifications for implementation as indicated.
5. A dispositioning procedure for all Public Records in accordance with Rule Chapter 1B-24, F.A.C.
6. A filing system matrix together with an automated file code tracking system and/or boxed record index, word searchable, written to Microsoft Access using an alpha numeric mnemonic arrangement of 3 letters and 3 numbers linked to a 60 character name field.
7. An automated, word searchable index matrix for high density, boxed records.
8. A user friendly definition of Public Records, Public Documents, Precursors, working papers, drafts and intermediate files in accordance with Florida Statutes, Supreme Court Opinions, Attorney General Opinions, Administrative Codes and our working experience for hardcopy and digital media data sets.

9. Detail scheduling and dispositioning and imaging options to include destruction, microfilm and digital imaging in accordance with Rule 1B-26, F.A.C.
10. Organization structure recommendations related to record operations.
11. A review of current records management procedures and comment and/or draft recommended record procedures and policies.
12. Analyze off site storage requirements for either in house or commercial solutions.
13. Identification of vital records and recommend protection and disaster recovery strategies.
14. An email policy and craft an automated, legally sufficient solution.
15. A Disposition List for all Town Public Records in accordance with Rule Chapter 1B-24, F.A.C. based on a record series title inventory.
16. A training manual to be used by personnel with record responsibilities.
17. Relevant data and narrative explanations.
18. Recommendations for all aspects of records management.
19. A list of references and published sources used during preparation.
20. A one day (six hour) training outline.
21. A management presentation after delivery of the Plan narrative and after sufficient time for management to review findings.
22. If desired, consultant will conduct the six hour training on a site provided by the Town at a mutually agreeable time.

TOTAL PROJECT FEE FOR ITEMS 1 THROUGH 22: \$24,000.00
including all travel and related expenses.

For the Implementation Services:

23. Consultant and/or Consultant's fully qualified staff, on site in the Town of Surfside implementing Town approved recommendations of the Records Management Plan. These implementation services do not include off-site storage fees for any media, imaging fees, file supplies for file conversion, record destruction, containers or the purchase of software. These services are limited to labor and expertise.

TOTAL PROJECT FEE FOR ITEM 23: \$20,000.00

\$2,000.00 per eight hour day including all travel and related expenses for 10 days.