

RESOLUTION NO. 2023- 2965

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A MULTI-YEAR AGREEMENT FOR THE PURCHASE OF PUBLIC RECORDS REQUEST MANAGEMENT SOFTWARE AND SERVICES FROM JUSTFOIA, INC. TO FACILITATE THE TOWN'S REVIEW AND COMPLETION OF PUBLIC RECORDS; FINDING THAT THE PURCHASE IS EXEMPT FROM COMPETITIVE BIDDING PURSUANT TO SECTION 3-13(7)(j) OF THE TOWN CODE; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT FOR THE SOFTWARE AND SERVICES; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside ("Town") desires to facilitate the review and completion of public records requests by implementing a new agreement and platform upgrade for public records request management software and services provided by JustFOIA, Inc. (the "Services"); and

WHEREAS, JustFOIA, Inc. ("JustFOIA") has submitted a proposed multi-year agreement for the Services, attached hereto as Exhibit "A," in the amount of \$6,930.00 per year, subject to a 5.0% annual increase for each renewal term, together with a one-time cost of \$1,500.00 for the installation and upgrade package (the "Agreement"); and

WHEREAS, pursuant to Section 3-13(7)(j) of the Town Code of Ordinances (the "Code"), contracts for renewal of software and hardware licenses and maintenance agreements are exempt from competitive bidding; and

WHEREAS, the Town Commission desires to approve the purchase of the Services and authorize the Town Manager to enter into the Agreement with JustFOIA, attached hereto as Exhibit "A," for the Services; and

WHEREAS, the Town Commission finds that the Agreement for the Services and this Resolution are in the best interests and welfare of the Town.

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

Section 1. Recitals. The above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval to Purchase Services. The Town Commission hereby approves the purchase of the Services from JustFOIA, in the amount of \$6,930.00 per year subject to a 5.0% annual increase for each renewal term, together with a one-time cost of \$1,500.00 for the installation and upgrade package.

Section 3. Exemption from Competitive Bidding. The Town Commission finds that pursuant to 3-13(7)j. of the Town Code, the purchase of the Services is exempt from competitive bidding.

Section 4. Authorization to Execute Agreement. The Town Manager is hereby authorized to execute the Agreement with JustFOIA, attached hereto as Exhibit "A," subject to the approval as to form, content, and legal sufficiency by the Town Manager and Town Attorney.

Section 5. Implementation. That the Town Manager and Town Officials are hereby authorized to take any and all actions which are necessary to implement the Services, the Agreement, and the purposes of this Resolution.

Section 6. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 14th day of February, 2023.

Motion By: Mayor Danzinger
Second By: Commissioner Landsman

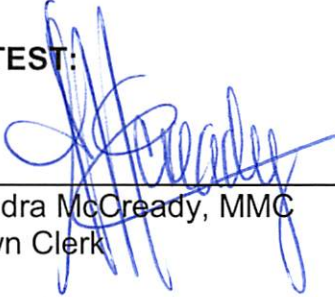
FINAL VOTE ON ADOPTION:

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meisheid	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Vice Mayor Jeffrey Rose	<u>No</u>
Mayor Shlomo Danzinger	<u>Yes</u>



Shlomo Danzinger, Mayor

ATTEST:



Sandra McCready, MMC
Town Clerk



**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



Weiss-Serota Helfman Cole & Bierman, P.L.
Town Attorney

This Order, designated as Order No. 26211 (this "Order") is entered into as of the date of the last signature (the "**Order Effective Date**"), by and between JustFOIA and Customer.

- A. No amendment or modification to this Order will be valid unless set forth in writing and formally approved by authorized representatives of both parties.
- B. No change order, notice, direction, authorization, notification, or request will be binding upon Customer or JustFOIA, nor will such change be the basis for any claim for additional compensation by JustFOIA, until Customer and JustFOIA have agreed in writing to such change, or to execute a new order, as appropriate.
- C. Unless provided to the contrary in this Order, to the extent there are any conflicts or inconsistencies between this Order and a Customer purchase order, the provisions of this Order shall govern and control. Use of pre-printed forms, including, but not limited to email, purchase orders, shrink-wrap or click-wrap agreements, acknowledgements, or invoices, is for convenience only and all pre-printed terms and conditions stated thereon, except as specifically set forth in this Order, are void and of no effect.
- D. This Order may be executed in several counterparts, each of which will be deemed an original, and all of which taken together will constitute one single agreement between the parties with the same effect as if all the signatures were upon the same instrument. The counterparts may be executed and delivered by facsimile or other electronic signature (including portable document format) by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.
- E. This Order, and any claim dispute or controversy hereunder (a "Dispute"), will be governed by and construed in accordance with the laws of the state of Florida. Venue for any proceedings arising out of this Order shall be proper exclusively in Miami-Dade County, Florida. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. In any Dispute, each party will bear its own attorneys' fees and costs and expressly waives any statutory right to attorneys' fees.
- F. This Order is subject to the Assumptions, Terms & Conditions set forth below.
- G. This, and the preceding Sections of this Order shall survive after termination or expiration of the same.

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IN WITNESS WHEREOF, the parties hereto have caused this Order to be executed by their respective duly authorized representatives, evidenced by their signatures below, as of the Order Effective Date.

JustFOIA, Inc. ("JustFOIA")

TOWN OF SURFSIDE ("Customer")

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

9293 HARDING AVENUE
SURFSIDE, FL 33154

PRICING



3717 Apalachee Parkway, Suite 201
 Tallahassee, FL 32311
 850.701.0725
 850.564.7496 fax

Bill/Ship to: Sandra McCready
Smccready@Townofsurfsidefl.Gov
cc AP Contact: n/a

Customer Name: Town of Surfside
Customer Address: 9293 Harding Avenue, Surfside, FL 33154
Quote Number: 26211
Quote Type: Platform Upgrade

Quote Date: January 20, 2023
Subscription Period Start Date:
 March 06, 2023
Subscription Period End Date:
 March 05, 2024

<i>Product Description:</i>	<i>Qty.</i>	<i>Unit Cost</i>	<i>Total</i>
<input checked="" type="checkbox"/> JustFOIA Pro Tier 1: Up to 10,000 Population	1	\$4,950.00	\$4,950.00
<input checked="" type="checkbox"/> Payment Portal for JustFOIA Pro	1	\$742.50	\$742.50
<input checked="" type="checkbox"/> Any & All Document Management for JustFOIA Pro	1	\$1,237.50	\$1,237.50

SUBTOTAL - RECURRING ANNUAL SERVICES	\$6,930.00
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<i>Service Description:</i>	<i>Qty.</i>	<i>Unit Cost</i>	<i>Total</i>
JustFOIA SERVICE PACKAGES			
<input checked="" type="checkbox"/> Any & All Document Management Installation for JustFOIA Pro	1	\$750.00	\$750.00
<input checked="" type="checkbox"/> JustFOIA Legacy to JustFOIA Pro Upgrade Package	1	\$750.00	\$750.00

SUBTOTAL - ONE-TIME SERVICES	\$1,500.00
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EXISTING JustFOIA ANNUAL SUBSCRIPTION

<input checked="" type="checkbox"/> JustFOIA Subscription City Tier 1: Up to 10,000	-1
<input checked="" type="checkbox"/> Payment Portal Subscription	-1
<input checked="" type="checkbox"/> Redaction	-1
<input checked="" type="checkbox"/> Training Center for JustFOIA	-1
<input checked="" type="checkbox"/> JustFOIA Subscription Credit Proration	1

SUBTOTAL - EXISTING JustFOIA ANNUAL SUBSCRIPTION CREDIT	(\$2,002.19)
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YEAR 1 ORDER COST	\$6,427.81
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This is NOT an invoice. Please use this confirmation to initiate your purchasing process.

RECURRING SERVICES

Customer has elected to license the JustFOIA software provided as a service (the "**Solution**").

The Recurring Services portion of this Order and/or applicable Addendum will systematically renew unless written notice of termination has been provided. An annual increase of 5% will be applied to the immediately preceding annual rates (excluding any initial or one-time discounts) unless Customer has terminated the Order and/or Addendum earlier, as set forth below, or provided sixty (60) days written notice prior to the scheduled renewal date of the Recurring Services.

SALES TAX

Sales tax will be invoiced where the Customer is not exempt and/or has not communicated its tax status to JustFOIA. Sales tax is not included in the fee quote above.

TERM

Either party may terminate this Order upon any of the following:

- (a) Thirty (30) days after a party's receipt of written notice from the other party that this Order and/or applicable addendum shall be terminated; or
- (b) Thirty (30) days after one party notifies the other in writing that they are in breach or default of this Order, unless the breaching party cures such breach or default within such thirty (30) day period; or
- (c) Fifteen (15) days after the filing of a petition in bankruptcy by or against either party, any insolvency of a party, any appointment of a receiver for such party, or any assignment for the benefit of such party's creditors (a "**Bankruptcy Event**"), unless such party cures such Bankruptcy Event within the fifteen (15) day period; or
- (d) If Customer has not paid in full the renewal invoice within 45 days after scheduled renewal date of the Recurring Services, the Order (and/or applicable addendum) will systematically terminate, but may be reinstated if/when the Customer pays the renewal invoice in full (including any applicable reinstatement fees); or
- (e) If Customer is a city, county, or other government entity the following applies: If Customer's governing body fails to appropriate sufficient funds to make payments due and to become due during Customer's next fiscal period, Customer may, subject to the terms herein, terminate the Order as of the last day of the fiscal period for which appropriations were received (each an "**Event of Non-appropriation**"). Customer agrees to deliver notice of an Event of Non-appropriation to JustFOIA at least 30 days prior to the end of Customer's then-current fiscal period, or if an Event of Non-appropriation has not occurred by that date, promptly upon the occurrence of any such Event of Non-appropriation. If this Order is terminated following an Event of Non-appropriation, Customer agrees to compensate JustFOIA for services rendered prior to such Event of Non-appropriation.

PRICING & BILLING TERMS

BILLING

JustFOIA will invoice Customer as follows:

Product/Service Description	Timing of Billing
Recurring Services	<ul style="list-style-type: none">▪ Platform Change: Within 30 days of receipt of Order.▪ Annual Renewal: 75 days in advance of expiration date.
One-Time Services	Upon delivery completion and Customer acceptance.

JustFOIA shall not send any invoices, nor claim payment, for any fees or expenses incurred by JustFOIA until both parties authorize this Order.

PAYMENT

Customer agrees to pay all undisputed invoices and undisputed portions of a disputed invoice in full within thirty (30) days from the date of each invoice or in compliance with the Florida Prompt Payment Act. Once payment has been received, no refunds for Recurring Services are available.

SERVICE PACKAGES

GENERAL ASSUMPTIONS

The following assumptions serve as the basis for the Service Package(s) reflected below. Any service or activity not described below is not included in the scope of services to be provided. Variations to the following may impact the Service Package's cost and/or schedule justifying a change order.

- JustFOIA's completion of a Deliverable to Customer shall constitute that JustFOIA has conducted its own review and believes it meets Customer's requirements. Customer shall then have the right to conduct its own review of the Deliverable as Customer deems necessary. If Customer, in its reasonable discretion, determines that any submitted Deliverable does not meet the agreed upon expectations, Customer shall have five (5) business days after JustFOIA's submission to give written notice to JustFOIA specifying the deficiencies in reasonable detail. JustFOIA shall use reasonable efforts to promptly resolve any such deficiencies. Upon resolution of any such deficiencies, JustFOIA shall resubmit the Deliverable for review as set forth above. Notwithstanding the foregoing, if Customer fails to reject any Deliverable within five (5) business days, such Deliverable shall be deemed accepted.
- If either party identifies a business issue during the project, JustFOIA and Customer must jointly establish a plan to resolve the issues with potential impact analysis of timeline and budget within five (5) business days of identification. Any necessary business decision resulting from the identified business issues must be made by Customer within five (5) business days from request.
- Customer will maintain primary contacts and project staff for the duration of the project, as a change in staff may result in a change order for time spent by JustFOIA on retraining, reeducating, or changes in direction.
- Customer will ensure that all Customer's personnel who may be necessary or appropriate for the successful performance of the services will, on reasonable notice: (i) be available to assist JustFOIA personnel by answering business, technical and operational questions and providing requested documents, guidelines, and procedures in a timely manner; (ii) participate in the services as reasonably necessary for performance under this Order; and (iii) be available to assist JustFOIA with any other activities or tasks required to complete the services in accordance with this Order.
- Note that all services contracted for, must be done as part of the initial implementation. For the avoidance of doubt, if there are services or portions thereof that the Customer does not elect to implement as part of the initial implementation, such services are forfeited.
- All services, unless otherwise noted, will be performed remotely.

LEGACY TO PRO UPGRADE PACKAGE

CUSTOMER TASKS & DELIVERABLES

- Complete JustFOIA Training Center training course(s)
- Attend remote JustFOIA Pro System Training
- Determine if existing form(s) should be upgraded
- Determine platform switchover date

JustFOIA TASKS & DELIVERABLES

- Configure system with In-App Redaction (if necessary)
- Set up customer with Training Center accounts (if necessary)
- Configure system with Advanced Reporting
- Configure system with Dynamic Forms
- Upgrade customer forms (if necessary)
- Set new Data Storage Limit
- Enroll customer in necessary Training Center courses
- Conduct remote JustFOIA Pro System Training (1 hour); recording made available in Training Center

ANY & ALL DOCUMENT MANAGEMENT

CUSTOMER TASKS & DELIVERABLES

- Complete JustFOIA Training Center trainings
- Attend remote walkthrough training

JustFOIA TASKS & DELIVERABLES

- Configure and implement Any & All Document Management module

ASSUMPTIONS, TERMS & CONDITIONS

THESE ASSUMPTIONS, TERMS AND CONDITIONS APPLY TO ALL ORDERS PLACED FOR THE SOLUTION.

THESE PROVISIONS SHALL SURVIVE AFTER TERMINATION OR EXPIRATION OF ANY AND ALL PORTIONS OF THE ORDER.

WARRANTIES & DISCLAIMERS

JUSTFOIA DOES NOT PROMISE THAT THE SOLUTION WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER PRIVACY, CUSTOMER DATA, CONFIDENTIAL INFORMATION, AND PROPERTY.

JustFOIA Warranties. JustFOIA warrants that (i) the Solution shall perform materially in accordance with any specifications or descriptions set forth herein, (ii) subject to exceptions related to non-JustFOIA software, the functionality of the Solution will not be materially decreased during the term of this Order, (iii) JustFOIA will use industry standard measures to not transmit malicious code and the like ("Malicious Code") to Customer, provided that if Customer or a user uploads a file containing Malicious Code into the Solution Customer shall be liable for the same; and (iv) to JustFOIA's knowledge, Customer's use of the Solution in strict compliance with the Order shall not infringe or violate the intellectual property rights of any third-party. JustFOIA also represents that it uses E-Verify to verify the work authorization of all newly hired employees.

The warranties herein are void to the extent of any Customer failure to perform in accordance with the Order and any licensing terms. JustFOIA shall not be responsible for any decrease in functionality or other issues that are the result of (i) the Solution not being used in accordance with the Order, (ii) the Solution being modified or altered by or on behalf of Customer without JustFOIA's written permission, or (iii) Internet or network connections, third-party software, streaming services, computers, equipment and/or devices not supplied by JustFOIA.

Customer Warranties. Customer warrants that JustFOIA's use of Customer data and/or any other item provided by Customer, in accordance with the Order will not infringe or violate the intellectual property or other rights of any third-party.

Customer warrants that it shall have all rights and licenses of third-parties necessary or appropriate for JustFOIA to access or use such third-party products and agrees to produce evidence of such rights and licenses upon the reasonable request of JustFOIA.

LICENSED SOFTWARE AND SERVICES

During the term of the Order and any applicable addenda, JustFOIA grants to Customer and Customer accepts a non-transferable, revocable, non-exclusive and limited license to use the Solution as defined herein subject to the terms, obligations and restrictions set forth in the Order. All rights to the Solution not granted to Customer are reserved by JustFOIA.

CUSTOMER RESPONSIBILITIES

Files and other content that JustFOIA may provide to Customer may be protected by intellectual property rights of others. Customer will not copy, upload, download, or share files unless Customer has the right to do so. Customer, not JustFOIA, will be fully responsible and liable for what is copied, shared, uploaded, downloaded or otherwise used while using the Solution. Customer will not upload malware or any other malicious software to the Solution. Customer is also responsible for the timely and accurate fulfillment of records requests, and ensuring that no classified, confidential, or illegal information is provided to or through the Solution.

ACCEPTABLE USE POLICY

Customer agrees that it will not misuse or attempt to misuse the Solution, and that the Solution will only be used in a manner consistent with the Order. Customer may only upload public and non-confidential data to the Solution. Customer acknowledges and agrees that all use of the Solution hosted on the Azure Government Cloud is subject to the Microsoft terms and conditions surrounding the same. JustFOIA's obligations and liability and Customer's rights are limited by the same. Further, JustFOIA neither accepts liability for, nor warrants the functionality, utility, availability, reliability or accuracy of, third-party software or third-party services.

INFORMATION & PRIVACY

By using the Solution, Customer will be providing JustFOIA with information. Customer retains full ownership to its information, and JustFOIA does not assert ownership. These Assumptions, Terms & Conditions do not grant JustFOIA any rights to Customer's information or intellectual property except for the limited rights that are needed to run the Solution, as explained below.

JustFOIA may need Customer's permission to handle its information as directed and required for the functioning of the Solution. An example is hosting files or sharing them. Customer hereby grants a license to JustFOIA to use and process such information solely to the extent necessary to fulfill JustFOIA's obligations. This license also extends to trusted third parties JustFOIA works with to do the same.

Customer is solely responsible for its conduct, the content of its files, and its communications with others while using the Solution. For example, it is Customer's responsibility to ensure that it has the rights or permission needed to comply with these Assumptions, Terms & Conditions.

INFORMATION SHARING AND DISCLOSURE

JustFOIA may use certain trusted third-party companies and individuals to help JustFOIA provide, analyze, and improve the Solution (including but not limited to data storage, maintenance services, database management, web analytics, payment processing, and improvement of the Solution's features). These third parties may have access to Customer's information only for purposes of performing these tasks on JustFOIA's behalf and under obligations similar to those in JustFOIA's privacy policy.

The parties acknowledge that in the course of the relationship between Customer and JustFOIA, each may receive Confidential Information (as defined below) of the other party. Any and all Confidential Information in any form or media obtained by a Recipient (defined below) shall be held in confidence and shall not be copied, reproduced, or disclosed to third parties for any purpose whatsoever except as necessary in connection with the performance of the applicable party's obligations. Each Recipient further acknowledges that it shall not use such Confidential Information for any purposes other than in connection with the activities contemplated by the Order. All JustFOIA personnel assigned by JustFOIA to Customer will sign appropriate forms of confidentiality agreements on or prior to their start date.

"Confidential Information" means any and all confidential information of a party disclosed to the other party, including, but not limited to, research, development, proprietary software, technical information, techniques, know-how, trade secrets, processes, customers, employees, consultants, pricing information and financial and business information, plans and systems. Confidential Information shall not include information which: (i) was known to the party receiving the information (the **"Recipient"**) prior to the time of disclosure by the other party (the **"Disclosing Party"**); (ii) at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of the Order, these Assumptions, Terms & Conditions or other wrongful act by the Recipient; (iii) was lawfully received by Recipient from a third-party without any obligation of confidentiality; or (iv) is required to be disclosed by law or order of a court of competent jurisdiction or regulatory authority.

The obligations set forth in this Section shall survive termination of the Order for a period of three (3) years thereafter.

INTELLECTUAL PROPERTY

The Solution and any services surrounding the same herein are not considered "Works made for Hire" or otherwise a grant of any right, title or interest. Except the license grant herein, all rights to the Solution and all services surrounding the same are and remain with JustFOIA. Customer shall retain, a non-exclusive, royalty-free, world-wide, perpetual license to use the outputs generated by

Solution and stored external to Solution by Customer during the Subscription Period.

Except for the license grants hereunder, as between Customer and JustFOIA, Customer retains all rights to Customer data and information.

ACCOUNT SECURITY

Customer is responsible for safeguarding the passwords that are used to access the Solution and agrees not to disclose passwords to any third-party. Customer is responsible for any activity using its account, whether or not it authorized that activity. Customer will immediately notify JustFOIA of any unauthorized use of Customer's account. Customer acknowledges that if it wishes to protect its transmission of data or files to the Solution, it is Customer's responsibility to use a secure network to communicate with the Solution.

DATA RETENTION & ACCESS

JustFOIA will retain Customer's information for as long as its account is active or as needed to provide the Solution. If Customer wishes to cancel its account or request that JustFOIA no longer use Customer's information to provide the Solution, Customer may request that JustFOIA delete its account. JustFOIA may retain and use Customer's information as necessary to comply with legal obligations, resolve disputes, and enforce mutual agreements. Consistent with these requirements, JustFOIA will try to delete Customer's information quickly upon request. Please note, however, that there might be latency in deleting information from JustFOIA servers and backed-up versions might exist after deletion. In addition, JustFOIA does not delete Customer information from its server's files that Customer has in common with other users. Customer understands and agrees that once the Customer instance of the Solution is decommissioned, JustFOIA may not be able to provide Customer a copy of the data included therein. Customer agrees that it will back up all Customer information that it requires. JustFOIA may decommission any environment after 45 days of Customer not maintaining an active subscription to the applicable environment, including without limitation, as a result of non-renewal and/or non-payment.

NON-JUSTFOIA APPLICATIONS AND PROVIDERS

The Solution may contain links to third-party websites or resources. JustFOIA does not endorse and is not responsible or liable for third-party website, including, without limitation, availability, accuracy, the related content, products, or services. Customer is solely responsible for its use of any such websites or resources.

Acquisition of Non-JustFOIA Products and Services. JustFOIA or third parties may from time to time make available to Customer third-party products or services, including but not limited to non-JustFOIA applications and implementation, customization and other consulting services. Such products and services shall be clearly designated as provided by a third-party in the applicable Order. Any acquisition by Customer of such non-JustFOIA products or services, and any exchange of data between Customer and any non-JustFOIA provider, is solely between Customer and the applicable non-JustFOIA provider. JustFOIA does not warrant or support products or services not provided by JustFOIA, whether or not they are designated by JustFOIA as "Certified" (as that term is defined below) or otherwise, except as specified in the Order and/or applicable addenda. No purchase of non-JustFOIA products or services is required to use the Solution except a supported computing device, operating system, web browser and Internet connection, all of which Customer is solely responsible for providing in accordance with the specifications that may be provided by JustFOIA from time to time. For purposes of the Order, "Certified" shall describe applications and other products developed and sold by third parties that JustFOIA has verified interoperate with the Solution.

Non-JustFOIA Applications and Customer information. If Customer installs or enables non-JustFOIA applications for use with the Solution, Customer acknowledges that JustFOIA may allow providers of those non-JustFOIA applications to access Customer information as required for the interoperation of such non-JustFOIA applications with the Solution. JustFOIA shall not be responsible for any disclosure, modification or deletion of Customer information resulting from any such access by non-JustFOIA application and/or providers. The Solution shall allow Customer to restrict such access by restricting users from installing or enabling such non-JustFOIA

applications for use with the Solution. JustFOIA is not responsible for, and Customer agrees to hold JustFOIA harmless from and indemnify JustFOIA against any third-party claims or liability owed to third parties resulting from any unauthorized use or disclosure or any damage or loss of Customer information as a result of use of non-JustFOIA applications or access to Customer information by non-JustFOIA application and/or providers.

Integration with Non-JustFOIA Services. The Solution may contain features designed to interoperate with non-JustFOIA applications (e.g., Laserfiche, Adobe, Authorize .net, or PayPal applications). To use such features, Customer may be required to obtain access to such non-JustFOIA applications from their providers. If the provider of any such non-JustFOIA application ceases to make the non-JustFOIA application available for interoperation with the corresponding Solution features on reasonable terms, JustFOIA may cease providing such features without entitling Customer to any refund, credit, or other compensation, unless the provider of such non-JustFOIA application provides for a refund of such fees.

INDEMNIFICATION & LIMITATION OF LIABILITY

(a) General Indemnification.

JustFOIA ("**Indemnifying Party**") shall indemnify, defend and hold the Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) in connection with third-party claims, demands, suits, or proceedings ("**Claims**") to the extent caused by the Indemnifying Party and related to:

- Bodily injury or personal property damage arising out of the Indemnifying Party's performance within the scope of its responsibilities under the Order;
- A breach of the Indemnifying Party's obligations with respect to confidentiality;
- A breach by the Indemnifying Party of applicable laws; or
- The grossly negligent acts, or willful misconduct of the Indemnifying Party.

(b) Intellectual Property Indemnification.

JustFOIA shall defend, indemnify, and hold Customer harmless against Claims made or brought against Customer by a third-party alleging that the use of the Solution, as provided to Customer under the applicable Order hereto and used in accordance with the Order and relevant documentation, infringes any third-party's intellectual property rights. Notwithstanding the foregoing, JustFOIA shall not be required to indemnify Customer to the extent the alleged infringement: (x) is based on information or requirements furnished by Customer, (y) is the result of a modification made by a party other than JustFOIA, or (z) arises from use of the Solution in combination with any other product or service not provided or approved in writing by JustFOIA. If Customer is enjoined from using the Solution, or JustFOIA reasonably believes that Customer will be so enjoined, JustFOIA shall have the right, at its sole option, to obtain for Customer the right to continue use of the Solution or to replace or modify the same so that it is no longer infringing. If neither of the foregoing options is reasonably available to JustFOIA, then the Order and/or applicable addendum may be terminated at either party's option, and JustFOIA's sole liability shall be subject to the limitation of liability provided in this Section.

(c) Limitation of Liability.

(i) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST REVENUES, PROFITS, SAVINGS OR BUSINESS) OR LOSS OF RECORDS OR DATA, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED TO SUCH PARTY IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN BY SUCH PARTY, AND WHETHER IN AN ACTION BASED ON CONTRACT, WARRANTY, STRICT LIABILITY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS, LOSSES OR OTHER LIABILITY ARISING OUT OF, OR CONNECTED WITH THE ORDER, THE SERVICES, DELIVERABLES AND/OR SOLUTION PROVIDED, OR CUSTOMER'S USE OF ANY SUCH SERVICES, DELIVERABLES, AND/OR SOLUTION, SHALL IN NO CASE EXCEED THE AGGREGATE AMOUNTS PAID TO JUSTFOIA BY CUSTOMER UNDER THE APPLICABLE ORDER OR ADDENDUM, GIVING RISE TO SUCH CLAIM DURING THE LAST SIX (6) MONTHS.

(ii) INDEMNITOR IS NOT REQUIRED TO SPEND MORE THAN \$100,000 PURSUANT TO THIS SECTION, INCLUDING WITHOUT LIMITATION ON ATTORNEYS' FEES, COURT COSTS, SETTLEMENTS, JUDGEMENTS, AND REIMBURSEMENT OF COSTS.

The parties acknowledge that the limitation of warranties and liabilities as set out in this Order are an essential basis of this Order between the parties and that the prices agreed to be paid by Customer for Solution reflect these limitations.

Nothing herein is intended to serve as a waiver of sovereign immunity by the Customer nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Customer is subject to section 768.28, Florida Statutes, as may be amended from time to time. The provisions of this section shall survive termination of this Agreement.

INSURANCE

During the term of this Order, JustFOIA shall carry, at its sole expense, insurance coverage to include at a minimum the following:

- Workers Compensation: State statutory limits and \$1,000,000 employers' liability
- Comprehensive General Liability: \$2,000,000 per occurrence and \$4,000,000 in the aggregate
- Professional Liability and Errors & Omissions: \$1,000,000 per occurrence and \$3,000,000 in the aggregate
- Cyber and Technical Errors and Omissions: \$3,000,000 in the aggregate

JustFOIA, at Customer's request, will name Customer as an additional insured under the Comprehensive General Liability policy. JustFOIA represents that Customer is automatically included as an additional insured under the Errors and Omissions and Cyber and Technical Errors and Omissions policies for vicarious liability but no modified certificate of insurance will be provided.

GOVERNMENT PROVISIONS

The provisions below are applicable only if Customer is a city, state, or other governmental entity and then only to the extent required by laws rules and regulations applicable to such entity.

(a) Compliance with Laws.

To the extent applicable to the parties each party shall comply with and give all notices required by all applicable federal, state, and local laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on use of the Solution and the performance of the Order.

(b) Equal Opportunity.

To the extent applicable to the parties each shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), and the posting requirements of 29 CFR Part 471, appendix A to subpart A, if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin.

(c) Excluded Parties List.

To the extent required by law, JustFOIA agrees to immediately report to Customer if a JustFOIA employee or contractor is listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federally funded health care programs.

(d) Boycotts.

JustFOIA 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.

(e) E-Verify.

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

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.

(f) Public Records.

JustFOIA agrees to keep and maintain public records in JustFOIA's possession or control in connection with JustFOIA's performance under this Agreement. The Town Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of JustFOIA involving transactions related to this Agreement. JustFOIA additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. JustFOIA shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Customer.

Upon request from the Customer's custodian of public records, JustFOIA shall provide the Customer 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.

Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. IF JUSTFOIA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO JUSTFOIA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-861-4863, 9293 Harding Avenue, Surfside, FL 33154, OR BY EMAIL: smccready@townofsurfsidefl.gov.

MISCELLANEOUS

(a) Force Majeure.

If either of the parties hereto are delayed or prevented from fulfilling any of its obligations under the Order by force majeure, said parties shall not be liable under the Order for said delay or failure. "Force Majeure" means any cause beyond the reasonable control of a party including, but not limited to, an act of God, an act or omission of civil or military authorities of a state or nation, epidemic, pandemic, fire, strike, flood, riot, war, delay of transportation, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.

(b) Audit Rights.

With reasonable notice and at a convenient location, Customer will have the right to audit JustFOIA's records to verify that JustFOIA's invoicing to Customer is correct.

In addition, should any of Customer's regulators legally require access to audit JustFOIA records, JustFOIA will, to the extent legally required by such regulators, provide access for the same. All results of such audits shall be JustFOIA Confidential Information.

Customer shall bear all costs associated with audits.

(c) Assignment.

Neither party may assign or otherwise transfer any of its rights, duties or obligations under the Order without the prior written consent of the other party. Either party, however, without any requirement for prior consent by the other, may assign the Order and its rights hereunder to any entity who succeeds (by purchase, merger, operation of law or otherwise) to all or substantially all of the capital stock, assets or business of such party, if the succeeding party or entity agrees in writing to assume and be bound by all of the obligations of such party under the Order. The Order shall be binding upon and accrue to the benefit of the parties hereto and their respective successors and permitted assignees.

(d) Publicity.

JustFOIA may use the name of Customer, the existence of this Order and the nature of the associated services provided herein for marketing purposes, except that such use shall not include any Customer Confidential Information.

(e) Provisions Severable.

If any provision in the Order is held by a court of competent jurisdiction to be invalid, void, or unenforceable, then such provision shall be severed from the Order and the remaining provisions will continue in full force.

(f) Relationship of Parties.

JustFOIA's relationship to the Customer is solely that of an independent contractor and nothing herein expressed or implied is intended, or shall be construed, to confer upon or give to any person or entity, other than the parties, any right or remedy under or by reason of this Order.

(g) Payment

Once payment has been received, no refunds for Recurring Services (Annual Subscriptions) are available.

(h) Notices.

All notices, demands and other communications required or permitted hereunder or in connection herewith shall be in writing and shall be deemed to have been duly given if delivered (including by receipt verified electronic transmission) or five (5) business days after mailed in the Continental United States by first class mail, postage prepaid, to a Party at the following address, or to such other address as such Party may hereafter specify by notice:

JustFOIA, Inc.
3717 Apalachee Parkway, Suite 201
Tallahassee, FL 32311
Attn: Legal Department
Email:
legal@justfoia.com