

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF SURFSIDE
AND
CONTRACTOR**

THIS AGREEMENT (this “Agreement”) is made effective as of the _____ day of _____, 2022 (the “Effective Date”), by and between the **TOWN OF SURFSIDE**, a Florida municipal corporation, (hereinafter the “Town”), and **[INSERT CONTRACTOR]**, a Florida corporation (hereinafter the “Contractor”).

WHEREAS, on _____, 2022, the Town issued Request for Qualifications No. 202x-xx (the “RFQ”) for engineering and related professional services for the CDBG-MIT Townwide Drainage Improvement and Flood Hazard Mitigation Plan Services (the “Services,” as further defined below), which RFQ is incorporated herein by reference; and

WHEREAS, in response to the RFQ, the Contractor submitted a proposal for the Services, which is attached hereto as Exhibit “D” and incorporated herein by this reference; and

WHEREAS, on _____, 2022, an Evaluation Committee appointed by the Town Manager short listed firms and ranked Contractor as the most qualified firm for the Services; and; and

WHEREAS, on _____, 2022, the Town Commission adopted Resolution No. 2022-xx selecting Contractor to provide the Services and authorizing the Town Manager to negotiate and execute an agreement with Contractor; and

WHEREAS, the Contractor will perform engineering and related professional services for the CDBG-MIT Townwide Drainage Improvement and Flood Hazard Mitigation Plan Services as further described in the Scope of Services attached hereto as Exhibit “A”(the “Services”), and may provide additional optional services upon the written request and approval of the Town, as further described in the Scope of Optional Services attached hereto as Exhibit “B” (the “Optional Services”); and

WHEREAS, the Contractor and the Town, through mutual negotiation, have agreed upon compensation for the Services and Optional Services as set forth in further detail in the rate schedule attached hereto as Exhibit “C” (the “Rate Schedule”); and

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

1. Scope of Services.

- 1.1.** The Contractor shall provide the Services and provide the deliverables set forth in the Scope of Services attached hereto as Exhibit “A” and in accordance with the Contractor’s Proposal, attached hereto as Exhibit “D” for the CDBG-MIT Townwide Drainage Improvement and Flood Hazard Mitigation Plan (the “Project”). Upon written request and

approval by the Town, the Contractor shall provide the Optional Services for the Town in accordance with the Optional Scope of Services attached hereto as Exhibit "B" and the Contractor's Proposal, attached hereto as Exhibit "D."

- 1.2. Prior to the commencement of additional work on the Project or Optional Services, the Contractor will provide the Town with a fixed lump sum cost for the Optional Services set forth in the Scope of Optional Services calculated using the rates set forth on the Rate Schedule attached hereto as Exhibit "C."
- 1.3. If the Town approves the fixed lump sum cost for the Optional Services, the Town will provide the Contractor with a Notice to Proceed to perform the Optional Services set forth in the Scope of Optional Services attached hereto as Exhibit "B." Contractor acknowledges that it shall not undertake to perform any Optional Services until it has received from the Town the Notice to Proceed on such Optional Services.
- 1.4. Contractor shall furnish all reports, documents, and information obtained pursuant to this Agreement, and recommendations during the term of this Agreement (hereinafter "Deliverables") to the Town.
- 1.5. The Contractor shall abide by the terms and requirements of the RFQ, as though fully set forth herein.

2. Term/Commencement Date.

- 2.1. This Agreement shall become effective upon the Effective Date and shall remain in effect for three (3) years thereafter, unless earlier terminated in accordance with Paragraph 8, or terminate upon final completion and acceptance of the Services and Optional Services, if any. Additionally, the Town Manager may extend or renew this Agreement for up to two (2) additional one (1) year periods on the same terms as set forth herein upon written notice to the Contractor.
- 2.2. Contractor agrees that time is of the essence and Contractor shall complete the Services within the timeframes set forth in the Scope of Work and the Notice to Proceed for the Project in the manner provided in this Agreement, unless extended by the Town Manager.

3. Compensation and Payment.

- 3.1. The Contractor shall be compensated for the Services in an amount not to exceed \$XXXX, in accordance with the Rate Schedule attached hereto as Exhibit "C." Compensation for Optional Services requested by the Town in writing shall be in accordance with the rates for the Optional Services set forth in Rate Schedule attached hereto as Exhibit "C"
- 3.2. During the Project, Contractor shall deliver an invoice to Town no more often than once per month detailing Services completed and the amount due to Contractor under the Scope of Services for the Project. Fees shall be paid in arrears each month, pursuant to Contractor's invoice, which shall be based upon the percentage of work completed for the Project. The Town shall pay the Contractor in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Town Manager.

4. Subcontractors.

- 4.1. The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Services and/or any Project.
- 4.2. Contractor may only utilize the services of a particular subcontractor with the prior written approval of the Town Manager, which approval shall be granted or withheld in the Town Manager's sole and absolute discretion.

5. Town's Responsibilities.

- 5.1. Town shall make available any maps, plans, existing studies, reports, staff and representatives, and other data pertinent to the Services and in possession of the Town, and provide criteria requested by Contractor to assist Contractor in performing the Services.
- 5.2. Upon Contractor's request, Town shall reasonably cooperate in arranging access to public information that may be required for Contractor to perform the Services.

6. Contractor's Responsibilities; Representations and Warranties.

- 6.1. The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Services for each Project as is ordinarily provided by a contractor under similar circumstances in similar localities ("Standard of Care"). If at any time during the term of this Agreement or within two (2) years from the completion of this Agreement, it is determined that the Contractor's Deliverables or Services are incorrect, not properly rendered, defective, or fail to conform to Town requests, the Contractor shall at Contractor's sole expense, immediately correct its Deliverables or Services.
- 6.2. The Contractor hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for Town as an independent contractor of the Town. Contractor further warrants and represents that it has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional manner consistent with the Standard of Care.
- 6.3. The Contractor represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Contractor have been duly authorized, and this Agreement is binding on Contractor and enforceable against Contractor in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

7. Conflict of Interest.

- 7.1. To avoid any conflict of interest or any appearance thereof, Contractor shall not, for the term of this Agreement, provide any consulting services to any private sector entities

(developers, corporations, real estate investors, etc.), with any adversarial issues against the Town.

8. Termination.

- 8.1.** The Town Manager, without cause, may terminate this Agreement upon five (5) calendar days written notice to the Contractor, or immediately with cause.
- 8.2.** Upon receipt of the Town's written notice of termination, Contractor shall immediately stop work on the project unless directed otherwise by the Town Manager.
- 8.3.** In the event of termination by the Town, the Contractor shall be paid for all work accepted by the Town Manager up to the date of termination, provided that the Contractor has first complied with the provisions of Paragraph 8.4.
- 8.4.** The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services and the project to the Town, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. Insurance.

- 9.1.** Contractor shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts specified below as satisfactory to Town, including the Town as an Additional Insured on the policies required below except Professional Liability and Worker's Compensation/Employer's Liability, underwritten by a firm rated A-X or better by A.M. Best at the time of execution of this Agreement, and qualified to do business in the State of Florida. The insurance coverage affording additional insured status shall be primary insurance with respect to the Town, its officials, employees, and agents. Any insurance maintained by the Town shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance which affords additional insured status. The insurance coverages shall include the amounts set forth in this section and may be increased by the Town as it deems necessary or prudent, with the prior written approval of Contractor.
 - 9.1.1.** Commercial General Liability coverage with limits of liability of \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.
 - 9.1.2.** Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide

Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.

9.1.3. Business Automobile Liability of \$1,000,000 per occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

9.1.4. Professional Liability Insurance in an amount of Two Million Dollars (\$2,000,000.00) per claim and in the aggregate.

9.2. Certificate of Insurance. Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation/Employer's Liability Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Town and prior to commencing Services. Each certificate shall evidence that no less than (30) thirty-day advance written notice (10-days' in the event of cancellation due to non-payment of premium) will be provided to Town prior to cancellation of said policies of insurance. The Contractor shall be responsible for assuring that the insurance required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Town reserves the right to inspect and return a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished prior to the date of their policy expiration. Acceptance of the Certificate(s) is subject to approval of the Town.

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

9.4. Waiver of Subrogation. The Contractor's insurance policies shall include a blanket waiver of subrogation endorsement in favor of the Town.

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

9.6. The provisions of this section shall survive termination of this Agreement.

10. **Nondiscrimination.** During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination.

11. **Attorneys Fees and Waiver of Jury Trial.**

11.1. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

11.2. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

12. **Indemnification.**

12.1. Contractor shall indemnify and hold harmless the Town, and its officers and employees, from liabilities, 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 Contractor and other persons employed or utilized by the Contractor in the performance of this Agreement.

12.2. Contractor shall reimburse the Town for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Contractor's performance or non-performance of this Agreement.

12.3. Nothing herein is intended to serve as a waiver of sovereign immunity by the Town 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 Town is subject to section 768.28, Florida Statutes, as may be amended from time to time.

12.4. The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.** Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

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

15. Entire Agreement/Modification/Amendment.

- 15.1. This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.
- 15.2. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

16. Ownership and Access to Records and Audits.

- 16.1. Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the Town which are conceived, developed or made by Contractor during the term of this Agreement (“Work Product”) belong to the Town. Contractor shall promptly disclose such Work Product to the Town and perform all actions reasonably requested by the Town (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).
- 16.2. Contractor agrees to keep and maintain public records in Contractor’s possession or control in connection with Contractor’s performance under this Agreement. The Town Manager or her 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 the Contractor involving transactions related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.
- 16.3. Upon request from the Town’s custodian of public records, Contractor shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 16.4. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- 16.5. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town’s information technology systems. Once the public records have been delivered upon completion or termination of this

Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

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

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

16.8. **Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**

Custodian of Records: Sandra McCready, MMC

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

Telephone number: 305-861-4863

Email: smccready@townofsurfsidefl.gov

17. **Nonassignability.** This Agreement shall not be assignable by Contractor unless such assignment is first approved by the Town Manager. The Town is relying upon the apparent qualifications and expertise of the Contractor, and such firm's familiarity with the Town's area, circumstances and desires.

18. **Severability.** If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. **Independent Contractor.** The Contractor and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Town with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. **Compliance with Laws.** The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.

- 21. Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.
- 22. Survival of Provisions.** Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.
- 23. Prohibition of Contingency Fees.** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.
- 24. Public Entity Crimes Affidavit.** Contractor shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
- 25. 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.
- 26. Conflicts.** In the event of a conflict between the terms of this Agreement and any exhibits or attachments hereto, the terms of this Agreement shall control.
- 27. Boycotts.** The Contractor represents that it 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.
- 28. E-Verify.** In accordance with Executive Order Number 11-116 from the Office of the Governor of the State of Florida, the Contractor is required to certify the U.S. Department of Homeland Security's E-Verify system will be used to verify the employment eligibility of all new employees hired by the Contractor during the Agreement term, and shall expressly require any Subcontractors performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of new employees hired by the Subcontractor during the Agreement term; and shall provide documentation of such verification to the Town upon request.
- 29. Federally Required Clauses – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards Under 2 CFR Part 200.**
- 29.1. Equal Employment Opportunity.** During the performance of this Agreement, the Contractor agrees as follows:
- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure

that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- 2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- 4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or

by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- 8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

29.2. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. In accordance with 2 C.F.R. § 200.321, Contractor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps for the Contractor to take regarding subcontractors must include:

29.2.1.1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

29.2.1.2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

29.2.1.3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

29.2.1.4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

29.2.1.5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

29.3. Compliance with the Davis-Bacon Act. During the performance of this Agreement, the Contractor agrees as follows:

a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, contractors are required to pay wages not less than once a week.

29.4. Compliance with the Copeland "Anti-Kickback" Act. During the performance of this Agreement, the Contractor agrees as follows:

a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as HUD may by appropriate instructions require, and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

29.5. Compliance with the Contract Work Hours and Safety Standards Act. During the performance of this Agreement, the Contractor agrees as follows:

29.5.1. Overtime requirements. The Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall not require nor permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

29.5.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

29.5.3. Withholding for unpaid wages and liquidated damages. The Town shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the *Contract Work Hours and Safety Standards Act*, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

29.5.4. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

29.6. Clean Air Act and Federal Water Pollution Control Act. As required by Federal program legislation, the Contractor agrees to comply with the following federal requirements:

29.6.1. Clean Air Act.

29.6.1.1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. (2)

29.6.1.2. The Contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

29.6.1.3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by HUD.

29.6.2. Federal Water Pollution Control Act

29.6.2.1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

29.6.2.2. The Contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to The State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

29.6.2.3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by HUD.

29.7. Suspension and Debarment. During the performance of this Agreement, the Contractor agrees as follows:

29.7.1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required, and will, verify that neither Contractor, its principals (defined at 2 C.F.R. § 180.995), nor its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

29.7.2. The Contractor will comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.

29.7.3. Contractor's certification is a material representation of fact relied upon by the Town. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to The State of Florida, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

29.7.4. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period this Agreement. The

Contractor further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

29.8. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). During the performance of this Agreement, the Contractor agrees as follows:

29.8.1. The Contractor certifies to the Town that it has not and will not use Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. *The required Certification is attached to this Addendum to the Agreement.*

29.8.2. Contractor will also ensure that each tier of subcontractor(s) shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures will be forwarded from tier-to-tier up to the OWNER.

29.9. Compliance with Federal Law, Regulations, and Executive Orders. The Contractor acknowledges that HUD financial assistance will be used to fund the contract only. The Contractor will comply with all applicable federal law, regulations, executive orders, HUD policies, procedures, and directives.

29.10. No Obligation by Federal Government. Contractor acknowledges that the Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

29.11. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor actions pertaining to this Agreement.

29.12. Access to Records.

29.12.1. The Contractor agrees to provide the State of Florida, the Town, the HUD Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

29.12.2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

29.12.3. The Contractor agrees to provide the HUD Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract."

29.13. No Obligation by Federal Government. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from this Agreement.

29.14. Program Fraud and False or Fraudulent Statements or Related Acts. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

29.15. Section 3 Clause. All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

29.16. Change or Modification. To be eligible for HUD assistance under a CDBG-MIT grant or cooperative agreement, the cost of a change, modification, change order, or constructive change must be allowable, allocable, within the scope of the grant or cooperative agreement, and reasonable for the completion of the project scope. Accordingly, the Contractor shall comply with the following:

29.16.1. Without invalidating the Agreement, Town reserves and shall have the right, from time to time to make such increases, decreases or other changes in the character or quantity of the work as may be considered necessary or desirable to fully and properly complete the project in a satisfactory manner in accordance with the scope of the HUD CDBG-MIT grant or cooperative agreement. Any extra or additional work within the scope of this Agreement must be accomplished by means of appropriate Field Orders or Change Orders.

29.16.2. The Town shall have the right to approve and issue Field Orders setting forth written interpretations of the intent of the project documents and ordering minor changes in work execution, providing the Field Order involves no change in the Agreement Price or the Agreement Time.

29.16.3. Changes in the quantity or character of the Work or Services within the scope of the Project which are not properly the subject of Field Orders, including all changes resulting in changes in the Agreement Price, or the Agreement Time, shall be authorized only by Change Orders approved in advance and issued in accordance with the provisions of Town's Procurement Code, as amended from time to time.

**[Remainder of page left intentionally blank.
Certifications and signature page follow.]**

44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

The undersigned, _____ certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Offeror, Custom Tree Care, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Authorized Officer: _____

Name: _____

Title: _____

Date: _____

E-VERIFY AFFIDAVIT

In accordance with Executive Order 11-116, and Section 448.095 of the Florida Statutes, the Town requires all contractors doing business with the Town to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Town will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

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

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

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

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name: _____

Print Name: _____

Witness #2 Print Name: _____

Title: _____

Entity Name: _____

ACKNOWLEDGMENT

State of Florida
County of _____

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

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

Personally known to me; or

Produced identification (Type of Identification: _____)

Did take an oath; or

Did not take an oath

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

TOWN OF SURFSIDE

CONTRACTOR

By: _____
Andrew Hyatt
Town Manager

By: _____

Name: _____

Title: _____

Attest:

Entity: CONTRACTOR, a Florida Corporation

By: _____
Sandra McCready, MMC
Town Clerk

Approved as to form and legal sufficiency:

By: _____
Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

Addresses for Notice:

Town of Surfside
Attn: Town Manager
9293 Harding Avenue
Surfside, FL 33154
305-861-4863 (telephone)
305-993-5097 (facsimile)
ahyatt@townofsurfsidefl.gov (email)

Addresses for Notice:

CONTRACTOR _____

_____ (telephone)
_____ (facsimile)
_____ (email)

With a copy to:

Weiss Serota Helfman Cole & Bierman, P.L.
Attn: Lillian Arango, Esq.
Town of Surfside Attorney
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, FL 33134
larango@wsh-law.com (email)

With a copy to:

_____ (telephone)
_____ (facsimile)
_____ (email)

**EXHIBIT “A”
SCOPE OF SERVICES**

Scope of Services

The Contractor must provide the following services and tasks:

- a. Conduct mapping and data collection to include, reviewing all previously completed Town of Surfside drainage studies and reports provided for work completed between 2013 and 2020. Town historical studies and reports will be provided to the Contractor by the Town.
- b. Evaluate and assess the existing drainage system and flood hazard conditions within the Town of Surfside, create a stormwater model.
- c. Prepare a townwide drainage improvement and flood hazard mitigation plan to resolve and mitigate flooding issues throughout the town.
 - i. Each option should include an Engineer’s estimate for the construction of the improvements, including a breakdown of the direct and indirect costs.
 - ii. As part of this process, the Contractor should assume multiple staff meetings as well as Commission Meeting updates including the receipt of feedback and adjustments as directed as well as presentations to both Staff and Commission which may require follow up meetings and presentations at both Staff and Commission Meetings.
 - iii. The Town Commission may accept, modify in any way or reject the proposed solution. If the Town rejects or modifies the proposal in any way, then the Contractor will take that direction and return to Commission with a revised proposed solution in line with Commission and Staff feedback. This process may continue until the project is accepted or canceled.
- d. Compile Project Documentation required for HUD CDBG-MIT reimbursement.
- e. Document change(s) in scope or additional work per HUD CDBG-MIT compliance for reimbursement.

**EXHIBIT “B”
SCOPE OF OPTIONAL SERVICES**

Scope of Optional Services

Upon written request by the Town, the Contractor may be requested to provide any or all of the following additional services:

- a. Collection, review, and confirmation of all as-builts required to complete the scope of work in its entirety;
- b. Creation of all plans, specifications and other design documents, ensuring that all are in accordance with all local, county, state and federal laws, regulations and rules;
 - i. All plans, specifications and other design documents must be submitted to the Town for review and feedback at 30%/60%/90% and final bid documents;
- c. Preparation, coordination, management and all work associated with permitting;
- d. Completion of all survey work required to complete the entirety of the scope of services;
- e. Any and all geotechnical engineering as required by any design or permitting requirements, including, but not limited to any information required to design and set structures, pipe, drainage wells or any other required appurtenances; Preparation and management of a Request for Proposals (RFP) for the construction for the selected option/solution;
- f. Post-design services as needed;
- g. Assistance with any grant application that may be applicable to the project;
- h. Project, bidding, permitting and construction management services, including project closeout; and
- i. Construction engineering and inspection (CEI) services.

The Town reserves the right to approve all services related to all optional services.

All Services shall be performed and completed in compliance with the Florida Building Code, the Town of Surfside Charter and Code, Miami-Dade County Codes, and all other applicable codes and standards governing the Services and the work. The applicable edition of each code shall be that edition which is adopted and in effect at the time of filing of the last permit application governed by each code or standard. In addition, all federal grant requirements, including the RFQ incorporated Attachment “F” HUD CDBG-MIT SUPPLEMENTAL POLICIES AND PROCEDURES, must be complied with.

EXHIBIT "C"
RATE SCHEDULE

The Rate Schedule for Services performed pursuant to this Agreement are as follows:

EXHIBIT "D"
CONTRACTOR'S PROPOSAL

[INSERT THE CONTRACTOR'S PROPOSAL]