

**RESOLUTION NO. 2022- 2886**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A CONTRACT FOR CONSTRUCTION WITH R MILLER BUILDERS CORPORATION FOR THE REMODELING OF TOWN HALL FIRST FLOOR OFFICES AND AUTHORIZING EXPENDITURE OF FUNDS; FINDING THAT THE WORK IS EXEMPT FROM COMPETITIVE BIDDING PURSUANT TO 3-13(7)F OF THE TOWN CODE AS A PUBLIC WORKS CONTRACT FOR A TOWN FACILITY IMPROVEMENT; AUTHORIZING AN ADDITIONAL EXPENDITURE OF \$25,000 FOR TOWN-PURCHASED FIXTURES AND FURNITURE; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Surfside (the “Town”) is in need of certain construction renovation and improvement work (the “Work”) to the first floor offices of the Town Hall (the “Project”); and

**WHEREAS**, pursuant to Section 3-13(7)f of the Town’s Code of Ordinances (the “Code”), public improvements, repairs, or replacements related to a Town facility are exempt from competitive bidding; and

**WHEREAS**, the Town solicited three (3) quotations for the Work and received the lowest and best qualified responsive proposal from R Miller Builders Corporation (the “Contractor); and

**WHEREAS**, the Contractor has provided a quote and proposal for the Work at a cost of \$298,471; and

**WHEREAS**, the Town Administration has requested authorization for an additional expenditure of \$25,000 for Town-purchased fixtures and furniture in connection with the Project; and

**WHEREAS**, the Town Commission desires to approve a contract for construction, in substantially the form attached hereto as Exhibit “A” (the “Contract”), with the Contractor in an amount not to exceed \$298,471; and

**WHEREAS**, the Town Commission further desires to authorize the expenditure of an additional \$25,000 for Town-purchased fixtures and furniture in connection with the Project; and

**WHEREAS**, the Town Commission finds that the Contract is in the best interest and welfare of the Town and its residents and wishes to approve the same in substantially the form attached hereto as Exhibit “A.”

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

**Section 1. Recitals.** Each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

**Section 2. Approval of the Contract; Exemption from Competitive Bidding.** The Contract with the Contractor is hereby approved in substantially the form attached hereto as Exhibit “A,” subject to the Town Manager and Town Attorney's final approval as to form, content, and legal sufficiency. The Town Commission finds that pursuant to Sections 3-13 (7)f of the Town’s Code, the Work is exempt from competitive bidding.

**Section 3. Authorization to Execute Contract.** The Town Manager is hereby authorized to execute the Contract, in substantially the form attached hereto as Exhibit “A,” subject to the final approval by the Town Manager and Town Attorney as to form, content, and legal sufficiency. The Town Manager is further authorized to expend budgeted funds in an amount not to exceed \$298,471 for the Contract and an additional \$25,000 for Town-purchased fixtures and furniture in connection with the Project.

**Section 4. Implementation.** The Town Manager and Town Officials are authorized to take any and all necessary action to implement the Project and the purposes of this Resolution.

**Section 5. Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 14<sup>th</sup> day of June, 2022.


Motion By: Vice Mayor Rose  
Second By: Commissioner Meischeid

**FINAL VOTE ON ADOPTION:**

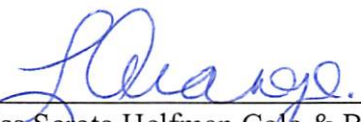
Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meischeid	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Absent</u>
Vice Mayor Jeffrey Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>

  
\_\_\_\_\_  
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

**EXHIBIT "A"**

**CONTRACT FOR CONSTRUCTION**

**CONTRACT FOR CONSTRUCTION**

**Town of Surfside - First Floor Offices Remodeling**

THIS CONTRACT FOR CONSTRUCTION (this "Contract") is made by and between the **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation, whose mailing address is 9293 Harding Avenue, Surfside, Florida 33154 (hereinafter referred to as "Town "), and **R MILLER BUILDERS CORPORATION**, a Florida Corporation, with its principal place of business at 6535 Nova Drive, Suite 103, Davie, FL 33137 (hereinafter referred to as "Contractor").

**W I T N E S S E T H**

**WHEREAS**, the Town is in need of certain construction improvements or remodeling of the first floor of its Town Hall offices, which includes the Building Department, located at 9293 Harding Avenue Surfside, Florida 33154 (the "Project");

**WHEREAS**, the Town's consulting engineers, Alfredo M. Carbonell, P.E. Inc. ("Engineer"), prepared plans and the scope of work for the Project, consisting of sheets A.000 to A.500 and LS.101, dated August 17, 2021, and Electrical / Data Floor Plan, attached hereto as Exhibit "A" (the "Plans");

**WHEREAS**, the Project consists of a public improvement project consisting of remodeling of the Town Facility first floor office, including all labor, supervision, materials, and equipment (the "Work")

**WHEREAS**, although the Work is exempt from procurement pursuant to Section 3-13(f) of the Town Code as a public improvement related to a Town facility, the Town obtained three (3) quotations or proposal for the Work from contractors;

**WHEREAS**, the Contractor submitted the lowest and best qualified responsive proposal for the Work;

**WHEREAS**, Contractor has represented to the Town that it possesses the necessary qualifications, experience and abilities to perform the Work, and has agreed to provide the Work on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for and in consideration of the premises and the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

**ARTICLE 1**

**SCOPE OF WORK**

- 1.1 Contractor must furnish all of the supervision, labor, materials, equipment, tools, services and incidentals necessary to perform all operations required for the Work, as specified in the Plans for the Project.

## ARTICLE 2

### CONTRACT TIME

- 2.1 Contractor shall be instructed to commence the Work by written instructions in the form of a Notice to Proceed providing a commencement date and issued by the Town Manager or his designee. The Notice to Proceed will not be issued until Contractor's submission to Town of all requirements and documents pursuant to this Contract, and after execution of this Contract.
- 2.2 Time is of the essence throughout this Contract. The Contractor shall prosecute the Work with faithfulness and diligence and the Work shall be substantially completed within Ninety (90) calendar days from the date specified in the Notice to Proceed ("Substantial Completion"). Substantial Completion shall be defined for this purpose as the date on which Town receives beneficial use of the Project. The Work shall be fully completed in accordance with the Contract Documents within One Hundred Twenty (120) calendar days from the date specified in the Notice to Proceed ("Final Completion"). The Final Completion Date is defined as the date agreed to by the Town when all Work has been completed in accordance with the Contract Documents.
- 2.3 If Contractor fails to complete the Contract within the specified period of time, Contractor shall pay to Town the sum of One Hundred Dollars (\$100.00) for each calendar day after the time specified in Section 2.2 for Final Completion and readiness for final payment. These amounts are not penalties but are liquidated damages payable by Contractor to Town for the failure to provide full beneficial occupancy and use of the Project as required. Liquidated damages are hereby fixed and agreed upon between the parties who hereby acknowledge the difficulty of determining the amount of damages that will be sustained by Town as a consequence of Contractor's delay and failure of Contractor to complete the Contract on time. The above-stated liquidated damages shall apply separately to each phase of the Project for which a time for completion is given.
- 2.4 Town is authorized to deduct the liquidated damages from monies due to Contractor for the Work under this Contract. In case the liquidated damage amount due to Town by Contractor exceeds monies due Contractor from Town, Contractor shall be liable and shall immediately upon demand by Town pay to Town the amount of said excess.

## ARTICLE 3

### CONTRACT PRICE

- 3.1 Town shall pay to Contractor for the performance of the Work the fixed total lump sum of \$ 298,471 (not to exceed \$298,741.00) in accordance with the

Contractor's Proposal attached hereto as Exhibit "B". This sum ("Contract Price") shall be full compensation for all services, labor, materials, equipment and costs, including overhead and profit, associated with completion of all the Work in full conformity with the Contract Documents and adjusted only by written change orders signed by both parties and approved as required by local law. The Contract Price shall include all applicable sales taxes as required by law.

- 3.2 Town shall make an initial deposit to Contractor in the amount of 30% of the Contract Price simultaneously with the execution of this Contract. Thereafter, Contractor shall make application for payment of 40% of the balance of the Contract Price upon Substantial Completion and 30% of the remaining balance upon Final Completion. Any undisputed portion shall be paid as specified above. Progress payments shall be made in an amount equal to the percentage of Work completed, but, in each case, less the aggregate of payments previously made and less such amounts as Town shall determine or Town may withhold taking into account the aggregate of payments made and the percentage of Project completion in accordance with the Contract Documents. The Contractor agrees that ten percent (10%) of the amount due for each progress payment or Pay Application (the "Retainage") shall be retained by Town until Final Completion and acceptance of the Work by Town. In the event there is a dispute between Contractor and Town concerning a Pay Application, dispute resolution procedures shall be conducted by Town commencing within 45 days of receipt of the disputed Payment Application. The Town shall reach a conclusion within 15 days thereafter and promptly notify Contractor of the outcome, including payment, if applicable.
- 3.3 Each Pay Application shall include an affidavit or partial release or waiver of lien by Contractor indicating that partial payments received from the Town for the Work have been applied by Contractor to discharge in full all of Contractor's obligations, including payments to subcontractors and material suppliers.
- 3.4 The payment of any Application for Payment by the Town, including the final request for payment, does not constitute approval or acceptance by the Town of any item of the Work reflected in such Application for Payment, nor shall it be construed as a waiver of any of the Town's rights hereunder or at law or in equity.
- 3.5 Upon Final Completion of the Work by Contractor in accordance with the Contract Documents and acceptance by the Town, and upon receipt of consent by any surety, Town shall pay the remainder of the Contract Price and Retainage. Final payment is contingent upon receipt by Town from Contractor of at least one complete set of as-built plans, reflecting an accurate depiction of Contractor's Work.
- 3.6 This Contract is subject to the condition precedents that: (i) Town funds are available and budgeted for the Contract Price; (ii) the Town secures and obtains any necessary grants or loans for the accomplishment of the Work pursuant to any borrowing legislation adopted by the Town Commission relative to the Project; and (iii) Town Commission enacts legislation which awards and authorizes the execution of this Contract, if such is required.

## ARTICLE 4

### CONTRACT DOCUMENTS

- 4.1 The Contract Documents, which comprise the entire agreement between the Town and the Contractor concerning the Work, consist of this Contract for Construction (including any change orders and amendments thereto), the Plans approved by Town and prepared by Engineer (the "Plans"), the Contractor's Proposal attached hereto as Exhibit "B", the Bonds (defined herein), Insurance Certificates, the Notice of Award, and the Notice to Proceed, all of which are deemed incorporated into and made a part of this Contract by this reference and govern this Project. In the event of any conflict among the foregoing, the documents shall govern in the order listed herein. Contractor is reminded and hereby recognizes that all Work under this Contract must comply with all applicable federal, state and local law. Any mandatory clauses which are required by applicable law shall be deemed to be incorporated herein.
- 4.2 This Contract incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of these Contract Documents that are not contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- 4.3 The Contract Documents shall remain the property of the Town. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; however, in no circumstances shall the Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Town's prior written authorization.

## ARTICLE 5

### INDEMNIFICATION

- 5.1 Contractor shall defend, indemnify, and hold harmless the Town, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, including legal fees and costs and through appeal, arising out of or, related to, or in any way connected with Contractor's performance or non-performance of this Contract or with Contractor's obligations or the Work related to the Contract, including by reason of any damage to property, or bodily injury or death incurred or sustained by any party. Contractor shall defend, indemnify, and hold the Town harmless from all losses, injuries or damages and wages or overtime compensation due its employees in rendering services pursuant to this Contract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act or any employment related litigation or worker's compensation claims under federal or state law. The provisions of this section shall survive termination of this Contract.



- 5.2 The Town reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of Contractor under the indemnification.
- 5.3 Nothing contained herein is intended nor shall it be construed to waive the Town's rights and immunities under the common law or 768.28, Florida Statutes, as amended from time to time.
- 5.4 Nothing contained herein is intended

## ARTICLE 6

### INSURANCE AND BONDS

- 6.1 **Insurance.** Contractor shall secure and maintain throughout the duration of this Contract insurance of such types and in such amounts not less than those specified below as satisfactory to the Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by Bests Rating and qualified to do business in the State of Florida. Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured, no later than ten (10) days after award of this Contract and prior to the execution of this Contract by Town and prior to commencing any Work. Each certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation, termination, or material alteration of said policies or insurance. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers naming the Town as additional insured. Any insurance maintained by the Town shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 6.1.
  - 6.1.1 Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit (except for Products/Completed Operations) shall be in the amount of \$2,000,000.
  - 6.1.2 Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Work pursuant to this Contract who is not covered by Worker's Compensation insurance.

- 6.1.3 Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include Owned, Hired, and Non-Owned Vehicles.
- 6.1.4 Builder's Risk property insurance upon the entire Work to the full replacement cost value thereof. This insurance shall include the interest of Town and Contractor and shall provide All-Risk coverage against loss by physical damage including, but not limited to, Fire, Extended Coverage, Theft, Vandalism and Malicious Mischief.
- 6.1.5 Contractor acknowledges that it shall bear the full risk of loss for any portion of the Work damaged, destroyed, lost or stolen until Final Completion has been achieved for the Project, and all such Work shall be fully restored by the Contractor, at its sole cost and expense, in accordance with the Contract Documents.
- 6.1.6 **Certificate of Insurance.** On or before the Effective Date of this Contract, the Contractor shall provide the Town with Certificates of Insurance for all required policies. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Contract, including any extensions or renewals that may be granted by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Contract and shall state that such insurance is as required by this Contract. The Town reserves the right to inspect and return a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the Work, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town.
- 6.1.7 **Additional Insured.** The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from Work performed by or on behalf of the Contractor in performance of this Contract. The Contractor's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

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

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

6.2 **Bonds.** Within fifteen (15) days after the Notice of Award, but in any event prior to commencing Work, the Contractor shall execute and furnish to the Town a Performance Bond and a Payment Bond, each written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety shall hold a current certificate of authority from the Secretary of Treasury of the United States as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular No, 570. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular and the excess risks must be protected by coinsurance, reinsurance, or other methods, in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR, Section 223,10, Section 223.11). Further, the surety company shall provide the Town with evidence satisfactory to the Town, that such excess risk has been protected in an acceptable manner. The surety company shall have at least the following minimum qualifications in accordance with the latest edition of A.M. Best's insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858: Financial Stability -A Financial size -VIII.

6.2.1 Two (2) separate Bonds are required and both must be approved by the Town. The penal sum stated in each Bond shall be the amount equal to the total amount payable under the terms of this Contract. The Performance Bond shall be conditioned upon the Contractor performing this Contract in the time and manner prescribed in this Contract. The Payment Bond shall be conditioned upon the Contractor promptly make payments to all persons who supply the Contractor with labor, materials and supplies used directly or indirectly by the Contractor in the prosecution of the Work provided for in this Contract and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such Bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save harmless the Town to the extent of any and all payments in connection with the carrying out of this Contract which the Town maybe required to make under the law.

6.2.2 Such Bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract Documents with the final sum of said Bonds reduced after final payment to an amount equal to twenty-five percent (25%) of the Contract Price, or an additional Bond shall be conditioned upon the Contractor correct any defective or faulty Work or material which appear within one (1) year after Final Completion of the Contract, upon notification by the Town.

## ARTICLE 7

### CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

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

**7.1 Contractor Represents the following:**

**7.1.1 Contractor has examined and carefully studied the Contract Documents and the Plans.**

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

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

**7.1.4 Contractor has made, or caused to be made, examinations, investigations, tests and/or studies as necessary to determine surface and subsurface conditions at or on the Project site. Contractor acknowledges that the Town does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to underground or ground facilities at, contiguous or near the site or for existing improvements at or near the site. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and underground facilities and improvements) at, contiguous or near to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.**

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

**7.1.6 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Project site, reports and drawings**

identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

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

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

7.2 Contractor warrants the following:

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

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

7.2.3 **Licensing and Permits:** Contractor warrants that it shall have, prior to commencement of Work under this Contract and at all times during said Work, all required licenses and permits whether federal, state, County or Town. Contractor acknowledges that it is the obligation of Contractor to obtain all licenses and permits required for this Project, including Town building permits. Contractor shall be reimbursed for any building permits paid to and required by the Town.

## ARTICLE 8

### DEFAULT AND TERMINATION

- 8.1 If Contractor fails to timely begin the Work, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work within the Contract Time as specified in Article 2, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule or if the Contractor shall fail to perform any material term set forth in the Contract Documents or if Contractor shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, Town may, upon seven (7) days written Notice of Termination, terminate the services of Contractor, exclude Contractor from the Project site, provide for alternate prosecution of the Work, appropriate or use any or all materials and equipment on the Project site as may be suitable and acceptable, and may finish the Work by whatever methods it may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Project is completed. All damages, costs and charges incurred by Town, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to Contractor. In case the damages and expenses so incurred by Town shall exceed monies due Contractor from Town, Contractor shall be liable and shall pay to Town the amount of said excess promptly upon demand therefore by Town. In the event it is adjudicated that Town was not entitled to terminate the Contract as described hereunder for default, the Contract shall automatically be deemed terminated by Town for convenience as described below.
- 8.2 This Contract may be terminated by the Town for convenience upon seven (7) calendar days' written notice to the Contractor. In the event of such a termination, the Contractor shall incur no further obligations in connection with the Work and shall, to the extent possible, terminate any outstanding subcontractor obligations. The Contractor shall be compensated for all services performed to the satisfaction of the Town. In such event, the Contractor shall promptly submit to the Town its Application for Payment for final payment which shall comply with the provisions of the Contract Documents.

## ARTICLE 9

### MISCELLANEOUS

9.1 **No Assignment.**

Neither party shall assign the Contract or any sub-contract in whole or in part without the written consent of the other, nor shall Contractor assign any monies due or to become due to it hereunder, without the previous written consent of the Town Manager.

9.2 **Contractor's Responsibility for Damages and Accidents.**

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

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

9.3 **Defective Work. Warranty and Guarantee.**

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

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

9.3.3 The Contractor shall unconditionally warrant and guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date of Substantial Completion. If, within one (1) year after the date of substantial completion, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor, after receipt of written notice from Town, shall promptly correct such defective or nonconforming Work within the time specified by Town without cost to Town. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents including but not limited to any claim regarding latent defects. Contractor shall provide and assign to Town all material and equipment warranties upon completion of the Work hereunder.

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

9.4 **Legal Restrictions and Hours of Work.**

Contractor shall conform to and obey all applicable laws, regulations, or ordinances with regard to labor employed, hours of Work and Contractor's general operations. Contractor shall conduct its operations so as not to interfere with, close or block any aisle, thoroughfare or emergency exit without the written consent of the Town. Work is anticipated to be performed in accordance with the requirements and limitations of applicable law including, without limitation, the Town Code of Ordinances, except as otherwise

authorized by the Town Manager. Since this is strictly interior remodel work with no external impact on neighboring properties, work beyond regular hours and weekends will be considered and encouraged in order to accelerate the completion of the Project. Any Work performed outside of the hours of 8:00AM to 6:00PM Monday through Friday shall require the prior written approval of the Town Manager.

**9.5 Examination and Retention of Contractor's Records.**

- 9.5.1 The Town or any of its duly authorized representatives shall, until three (3) years after final payment under this Contract, have access to and the right to examine any of the Contractor's books, ledgers, documents, papers, or other records involving transactions related to this Contract for the purpose of making audit, examination, excerpts, and transcriptions. In addition, the Contractor agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes.
- 9.5.2 The Contractor agrees to include in any subcontractor contracts for this Work corresponding provisions for the benefit of Town providing for retention and audit of records.
- 9.5.3 The right to access and examination of records stated herein and in any subcontracts shall survive termination or expiration of this Contract and continue until disposition of any mediation, claims, litigation or appeals related to the Work.
- 9.5.4 The Town may cancel and terminate this Contract immediately for refusal by the Contractor to allow access by the Town Manager or his designees to any Records pertaining to work performed under this Contract that are subject to the provisions of Chapter 119, Florida Statutes.

**9.6 No Damages for Delay.**

No claim for damages or any claim, other than for an extension of time shall be made or asserted against Town by reason of any delays. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Town for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable or whether or not caused by Town. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay. Notwithstanding the above, Contractor may be granted an extension of time and suspension of liquidated damages for any delay beyond the control of the Contractor. Should any delay, disruption, interference or hindrance be intentionally caused by the Town, for a continuous period or cumulative period of thirty (30) days, the Contractor may terminate the Contract upon seven (7) days written notice to the Town.

**9.7 Authorized Representative.**



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

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

9.8 **Taxes.**

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

9.9 **Utilities.**

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

9.10 **Safety.**

Contractor shall be fully and solely responsible for safety and conducting all operations under this Contract at all times in such a manner as to avoid the risk of bodily harm to persons and damage to property. Contractor shall continually and diligently inspect all Work, materials and equipment to discover any conditions which might involve such risks and shall be solely responsible for discovery and correction of any such conditions. Contractor shall have sole responsibility for implementing its safety program. Town shall not be responsible for supervising the implementation of Contractor's safety program, and shall not have responsibility for the safety of Contractor's or its subcontractor's

employees. Contractor shall maintain all portions of the Project site and Work in a neat, clean and sanitary condition at all times. Contractor shall assure that subcontractors performing Work comply with the foregoing safety requirements.

9.11 **Cleaning Up.**

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

9.12 **Rights and Remedies.**

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

9.13 **Public Entity Crimes Affidavit.**

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

9.14 **Capitalized Terms.**

Capitalized terms shall have their plain meaning as indicated herein.

9.15 **Independent Contractor.**

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

9.16 **Payment to Sub-Contractors.**

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

9.17 **Liens.**

Contractor shall not permit any mechanic’s, laborer’s or materialmen’s lien to be filed against the Project site or any part thereof by reason of any Work, labor, services or materials supplied or claimed to have been supplied to the Project. In the event such a lien is found or claimed against the Project site, Contractor shall within ten (10) days after notice of the lien discharge the lien or liens and cause a satisfaction of such lien to be recorded in the public records of Miami-Dade County, Florida, or cause such lien to be transferred to a bond, or post a bond sufficient to cause the Clerk of the Circuit Court of Miami-Dade County, Florida, to discharge such lien pursuant to Chapter 713.24, F.S. In the event Contractor fails to so discharge or bond the lien or liens within such period as required above, Town shall thereafter have the right, but not the obligation, to discharge or bond the lien or liens. Additionally, Town shall thereafter have the right, but not the obligation, to retain out of any payment then due or to become due Contractor, one hundred fifty percent (150%) of the amount of the lien and to pay Town ’s reasonable attorneys' fees and costs incurred in connection therewith.

9.18 **Governing Law**

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

9.19 **Waiver of Jury Trial.**

Town and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract for Construction, arising out of, under, or in connection with the Construction of the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.

9.20 **Public Records.**

The Contractor shall comply with the applicable provisions of Chapter 119, Florida Statutes. The Town shall have the right to immediately terminate this Contract for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor shall retain all records associated with this Contract for a period of five (5) years from the date of Final Payment or termination of this Contract.

The Town or any of its duly authorized representatives shall, until three (3) years after final payment under this Contract, have access to and the right to examine any of the Contractor's books, ledgers, documents, papers, or other records involving transactions related to this Contract for the purpose of making audit, examination, excerpts, and transcriptions. In addition, the Contractor agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. The Contractor agrees to include in any subcontractor contracts for this Project corresponding provisions for the benefit of Town providing for retention and audit of records.

The right to access and examination of records stated herein and in any subcontracts shall survive termination or expiration of this Contract and continue until disposition of any mediation, claims, litigation or appeals related to this Project. The Town may cancel and terminate this Contract immediately for refusal by the Contractor to allow access by the Town Manager or his designees to provide any records pertaining to Work performed under this Contract that are subject to the provisions of Chapter 119, Florida Statutes.

9.21 **Notices/Authorized Representatives.**

Any notices required by this Contract shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Town: Andrew Hyatt, Town Manager  
293 Harding Avenue  
Surfside, Florida

With a copy to: Lillian M. Arango, Esq.  
Town Attorney  
Weiss Serota Helfman  
Cole & Bierman, P.L.  
2800 Ponce de Leon Blvd., Suite 1200  
Coral Gables, Florida 33134

For The Contractor: Russel Miller, President  
R Miller Builders Corporation  
6535 Nova Drive  
Suite 103  
Davie, FL 33317

9.22 **Prevailing Party; Attorneys' Fees.**

In the event of any controversy, claim, dispute or litigation between the parties arising from or relating to this Contract (including, but not limited to, the enforcement of any indemnity provisions), the prevailing party shall be entitled to recover reasonable costs, expenses and attorneys' fees including, but not limited to, court costs and other expenses through all appellate levels.

## **ARTICLE 10**

### **SPECIAL CONDITIONS**

- 10.1 During performance of the Work, Contractor shall build and maintain a solid temporary floor to ceiling construction barrier in the main lobby, which secures the work area and prevents entry by the public into the work area. Contractor shall keep the lobby area clean and clear of any obstacles, tools, equipment and trip hazards. The Contractor shall also construct other barriers at the perimeters of the work area so as to prevent dust and excessive noise migrating from the work area into nearby offices and occupied spaces. Contractor shall take all necessary measures so as not to impede entry, exit or use of nearby offices and occupied spaces..

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Contract on the respective dates under each signature: TOWN OF SURFSIDE, FLORIDA, signing by and through its Town Manager authorized to execute same, and R MILLER BUILDERS CORPORATION, a Florida Corporation, signing by and through \_\_\_\_\_ its \_\_\_\_\_, duly authorized to execute same.

**ATTEST:**

**TOWN:**

TOWN OF SURFSIDE, FLORIDA, a Florida municipal corporation

\_\_\_\_\_  
SANDRA N. MCREADY, MPA, MMC  
TOWN CLERK

By: \_\_\_\_\_  
Andrew Hyatt, Town Manager

Date Executed: \_\_\_\_\_

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
TOWN ATTORNEY  
WEISS SEROTA HELFMAN  
COLE & BIERMAN, P.L.

CONTRACTOR MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE CORPORATION FORMAT, AS APPLICABLE.

**CONTRACTOR:**

R MILLER BUILDERS CORPORATION

ATTEST:

\_\_\_\_\_  
(Secretary)

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

Name: \_\_\_\_\_

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

Date Executed: \_\_\_\_\_, 2022

**EXHIBIT "A"**

**(Attach Plans)**



**EXHIBIT "B"**

**(Attach Contractor's Proposal)**