

RESOLUTION NO. 2022- 2960

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING THE PURCHASE OF SUPPLEMENTATION SERVICES FROM CIVICPLUS, LLC FOR CODIFICATION OF TOWN ORDINANCES IN MUNICODE; FINDING THAT THE PURCHASE IS EXEMPT FROM COMPETITIVE BIDDING PURSUANT TO SECTIONS 3-13(2) AND (7)(j) OF THE TOWN CODE; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (“Town”) entered into an agreement with Municode, LLC, a subsidiary of CivicPlus, LLC (the “Service Provider”), for supplementation services related to the codification of Town Ordinances (the “Supplementation Services”); and

WHEREAS, historically Supplementation Services have been invoiced on a per page amended basis; and

WHEREAS, the Service Provider has changed its billing process and now offers a flat annual rate for Supplementation Services based on the Town’s historic average cost for the past five (5) years; and

WHEREAS, the Service Provider has submitted a Statement of Work (“SOW”) for the Supplementation Services in an amount of \$5,217.00 for the first year, subject to 5% annual increases for each renewal term thereafter, as attached hereto as Exhibit “A”; and

WHEREAS, pursuant to Section 3-13(2) of the Town’s Code, contracts for professional services, except those governed by the Consultant’s Competitive Negotiations Act, are exempt from competitive bidding; and

WHEREAS, pursuant to Section 3-13(7)j. of the Town’s Code, purchases arising

out of renewal of software and hardware licenses and maintenance agreements, are exempt from competitive bidding; and

WHEREAS, the Town Commission desires to approve the purchase of the Supplementation Services from the Service Provider and authorize the Town Manager to enter into an agreement with the Service Provider, in substantially the form attached hereto as Exhibit "B" (the "Agreement"), for the Supplementation Services based on the SOW; and

WHEREAS, the Town Commission finds that the Supplementation Services are in the best interests, welfare, and safety of the Town.

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

Section 1. Recitals. The above and foregoing recitals are true and correct and are hereby incorporated by reference.

Section 2. Approval and Authorization to Purchase Services. The Town Commission hereby approves the purchase of the Supplementation Services from the Service Provider in an amount not to exceed \$5,217 for the first year, subject to 5% annual increases for each renewal term thereafter. The Town Manager is authorized to execute the Agreement with the Service Provider, in substantially the form attached hereto as Exhibit "B," based on the SOW, subject to the approval as to form, content, and legal sufficiency by the Town Attorney and Town Manager.

Section 3. Exemption from Competitive Bidding. The Town Commission finds that pursuant to Sections 3-13(2) and 3-13(7)j. of the Town's Code, the purchase of the Supplementation Services is exempt from competitive bidding.

Section 4. Implementation. The Town Manager and Town Officials are authorized to take any and all necessary or further action to implement the purchase of the Services and the purposes of this Resolution.

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

PASSED AND ADOPTED this 13th day of December, 2022.

Motion By: Commissioner Landsman
Second By: Commissioner Velasquez

FINAL VOTE ON ADOPTION:

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meisheid	<u>Yes</u>
Commissioner Nelly Vazquez	<u>Yes</u>
Vice Mayor Jeffrey Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>



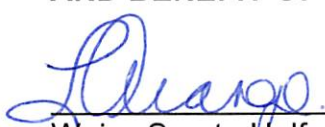
Shlomo Danzinger, Mayor

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

municode

POWERED BY CIVICPLUS

9/6/2022

Sandra McCreedy
Town Clerk
smccready@townofsurfsidefl.gov

Sandra McCreedy:

Thank you for your continued loyalty and business throughout the years! We are excited to offer an annual rate for supplementation services. We have included a discount of 20% for year one if you elect to adopt this new billing model within the calendar year of 2022!

The purpose of this amendment is to modify our current agreement to include pricing for an annual rate for the supplementation services in which you are currently enrolled. This annual rate will simplify your budget process, empower you to update your code regularly, provide reassurance that there are no hidden fees and allow for a simplified way to explain the entire supplementation process to staff. If you elect the annual supplementation rate, we have also included additional discounted offerings for Municode Meetings or CivicClerk.

With over 70 years of experience, Municode is the oldest and most trusted codifier in the nation. We currently provide codification services to over 4,200 municipalities throughout the United States and host nearly 4,000 municipal codes online via our code hosting platform, MunicodeNEXT.

We are extremely excited to have recently joined forces with CivicPlus, the nation's premier provider of integrated government technology solutions! CivicPlus shares our vision of strengthening democracy by connecting municipalities with their citizens in new, powerful, and meaningful ways.

Please let us know if you have any questions – we would love to discuss the many advantages this new billing model provides to our customers!

Susan Webb – Customer Success Manager - Legal
Email: swebb@civicplus.com

Sincerely,



Steffanie W. Rasmussen
Director of Legal/Services - CivicPlus
Phone: 800-262-2633 ext. 1148
srasmussen@civicplus.com

**CONTRACT ADDENDUM TO SUPPLEMENT BILLING
Supplement Service***

Historically supplementation has been invoiced on a per page amended basis. This billing model often causes difficulties establishing an annual budget and approving costs for each scheduled supplement. Transitioning to an annual supplement billing model can provide the following benefits:

1. Easier Budgeting Process: With an annual fee, you will be able to easily budget for your supplementation cost. No more guessing or estimating how many ordinances your council or commission will pass.
2. Removal of supplement estimates: Under this model we can remove the estimate process per supplement allowing for our editorial staff to start the process sooner vs. waiting on approval for a supplement.
3. Increased Transparency: With this new model, you will not need to worry about how many ordinances you send to us for supplementation. With a few exceptions, such as full chapter replacements and/or the addition of new zoning codes, your annual fee is fixed, allowing you to send in as many ordinances as you would like. Over the years, we have found that many of our customers don't send all their ordinances so that they can save on the cost of supplementation. Our new approach will ensure that your code is always up to date for you and your residents.
4. Create billing efficiencies: Less invoices to process annually. No more counting pages or trying to reconcile your bill with your supplements.
5. Simplify: Training new team members and explaining supplementation to staff will be simplified.]
6. First Year Discount: To ease the transition to an annual fee, we would like to work with you to reduce the cost of your first year of supplementation by 20%.
7. Discounts on Additional CivicPlus Products: If you can work with us in 2022 to make the shift, our team will also be empowered to offer you a 50% discount on the first-year hosting and support cost on any new subscriptions to our Meeting and Agenda Management software solutions, Municode Meetings and CivicClerk.

*All recurring services under this contract will be subject to a 5% annual increase each renewal term. Sales tax will be applied where applicable.

Annual Fees: the annual billing month will be established upon final approval.

Supplementation annual fee: USD 5,216.60

To provide full transparency, we have provided a historical breakdown of the costs associated with your supplementation that will be built into your annual fee. The recommended annual supplement fee is based on this historical breakdown of billing. We will maintain your current supplement schedule.

Line Item – Code of Ordinances	2017	2018	2019	2020	2021
Supplement charges (\$22.99 per page)	\$3586	\$7173	\$4644	\$6253	\$1931
Images, Graphics, Tabular Matter (\$10 each)	\$30	\$120	\$160	\$130	\$20
Administrative Support Fee	\$250	\$250	\$250	\$250	\$250
Freight	\$11	\$53	\$25	\$47	\$0
Folio/PDF/WORD	\$100	\$150	\$100	\$200	\$100
Color printing	\$0	\$0	\$0	\$0	\$0
Totals	\$3977	\$7746	\$5179	\$6880	\$2301
Historical Average	USD 5,216.60				

Annual Supplement Fee: USD 5,217.00 annually

- First 12 months of service will receive a 20% discount if approved in 2022
- We will maintain your current supplement schedule.
- Upgrades to your Full Service Plus supplement schedule will be pro-rated, then added to the annual fee.

The City is currently enrolled in a Quarterly supplement schedule and thus falls under our Full Service annual billing model. If desired the supplement schedule can be increased to the Schedule Plus model.

Contact your account manager to receive a price quote for more frequent supplementation schedules.

Annual rate above includes:

- Annual fee includes the supplementation of legislation permanent and general in nature. Omitted legislation is not included in annual fee.
- Acknowledgement of material
- Editorial work
- Proofreading
- Updating the index
- Updating online code upon completion of each supplement
- Printing* 10 copies per "print" schedule enrolled in
- Freight for supplements
- Images, Graphics & tabular matter.

Annual rate above excludes:

- Additional copies, reprints, binders and tab orders
- Legal work, creation of fee schedules, gender neutral review/implementation, external linking
- Codifying complete replacement of complex subject matter such as, but not limited to, Zoning (or equivalent). This work is subject to a one-time editorial conversion fee and an increase in the annual supplement rate and online hosting fee(s). Quote provided upon receipt of material.
- Codifying a newly adopted full Chapter/Title/Appendix. This may be subject to a one-time additional editorial fee and an increase in the annual supplement rate and online hosting fee(s). Material to be reviewed upon receipt.
- Codifying a newly adopted term change legislation. This may be subject to a one-time additional editorial fee. Material to be reviewed upon receipt.
- The addition of Manuals, Policies, Procedures, Comprehensive Plans, Land Use, Unified Codes, Zoning (or equivalent). Quotation upon request.
- Online Code hosting and online features.

Invoices for Supplements will be submitted annually.

Additional services added throughout the term will be pro-rated added to the annual fee.

The annual billing month will be established upon signing of the Statement of Work.

*Color printing and an increase in the desired number of supplement hard copies will result in an increase in the annual fee.



CivicPlus

302 South 4th St. Suite 500
Manhattan, KS 66502
US

Quote #: Q-28652-1
Date: 8/25/2022 12:15 PM
Expires On: 11/23/2022
Product: Codification -
Supplements

Client:
Surfside FL - Code and Supp

Bill To:
Surfside FL - Code and Supp

SALESPERSON	Phone	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Susan Webb	x	swebb@civicplus.com		Net 45

Annual Supplements - Statement of Work

QTY	DESCRIPTION	PRODUCT TYPE
1.00	Full-Service Supplementation Subscription	Renewable
1.00	Year 1 Annual Fee Discount	Renewable
1.00	Print Supplementation will begin with the ordinances received from the municipality on a quarterly basis.	Renewable
1.00	Additional Printed Copies and Freight- 10 Copies	Renewable
1.00	Code in Folio	Renewable
Annual Recurring Supplement Services		5,217.00

1. This Statement of Work ("SOW") is between the Surfside Florida ("Client") and Municode, LLC, a wholly owned subsidiary of CivicPlus, LLC (collectively, the "Service Provider"), and shall be subject to the terms and conditions of the CivicPlus Master Services Agreement located at <https://www.civicplus.com/master-services-agreement> ("MSA"). By signing this SOW, Client expressly agrees to the terms and conditions of the MSA throughout the Term of this SOW.

2. At any time during the Term of this Agreement, Municode may assign its rights and obligations under this Agreement to CivicPlus, upon giving written notice to the Client. In the event of such assignment by Municode, CivicPlus shall be the sole performing party under this Agreement to the same extent as Municode prior to making such assignment.

3. This SOW shall remain in effect for an initial term ("Initial Term") starting at signing and running through the following Renewal Date (as defined below). In the event that neither party gives 60 days' notice to terminate prior to the end of the Initial Term, or any subsequent Renewal Term, this SOW will automatically renew for additional 1-year renewal terms ("Renewal Term"). The Initial Term and all Renewal Terms are collectively referred to as the "Term".

4. If Client elects, by selecting the "Start at Signing" option below, the Initial Term's Annual Recurring Supplement Services will be invoiced upon the signing of this SOW and may be prorated to align with Client's Renewal Date. If Client

elects, by selecting the "Start at Renewal Date" option below, the Initial Term's Annual Recurring Supplement Services will be invoiced upon the Renewal Date and Client shall continue to be billed at their current per page rate and use terms set for the in the original supplements agreement between Client and Municode. The full Annual Recurring Supplement Services shall be invoiced each Renewal Date and shall be subject to a 5% annual increase each Renewal Term, starting on the second anniversary of the Renewal Date. Client will pay all invoices within 45 days of the date of such invoice. Additional services added throughout the Term will be pro-rated then added to the Annual Recurring Services fee.

5. If Client signs this SOW in 2022, Client will receive a 20% discount on the first twelve months of service.

6. Annual Recurring Supplement Services does NOT include:

- Additional copies, reprints, binders and tab orders;
- Documents that contain tables, graphics, unique formatting requirements, or any other form-based code requirements;
- Legal work, creation of fee schedules, gender neutral review/implementation, external linking;
- Codifying complete replacement of complex subject matter such as, but not limited to, Zoning (or equivalent). This work is subject to a one-time editorial conversion fee and an increase in the annual supplement rate and online hosting fee(s). Quote provided upon receipt of material;
- Codifying a newly adopted full Chapter/Title/Appendix. This may be subject to a one-time additional editorial fee and an increase in the annual supplement rate and online hosting fee(s). Material to be reviewed upon receipt;
- Codifying a newly adopted term change legislation. This may be subject to a one-time additional editorial fee. Material to be reviewed upon receipt;
- The addition of Manuals, Policies, Procedures, Comprehensive Plans, Land Use, Unified Codes, Zoning (or equivalent). Quotation upon request; and
- Online Code hosting and online features.

7. Client acknowledges that Service Provider may continually develop, alter, deliver, and provide to the Client ongoing innovation to the services, in the form of new features, functionality, and efficiencies. Accordingly, Service Provider reserves the right to modify the services from time to time. Any modifications or improvements to the services listed on the SOW will be provided to the Client at no additional charge. In the event that Service Provider creates new products or enhancements to the Services ("New Services"), and Client desires these New Services, then Client will have to pay Service Provider the appropriate fee for the access to and use of the New Services.

8. Client agrees to provide all necessary and correct documentation, materials and communication in a timely manner as agreed upon by the Parties following execution of this SOW and acknowledges Service Provider shall not begin work under this SOW until all necessary documentation, materials and communication is received.

9. Client acknowledges Service Provider reserves the right to ship and close out any project if no feedback to the proofs is received within 45 days.

10. Client acknowledges Service Provider does not permanently retain prior versions of the Client's legal code or any other work product.

11. Additional services, including but not limited to additional labor required because of delays, errors or omissions on the part of Client, may be purchased upon mutual written agreement between the Parties.

12. Client acknowledges that Service Provider may provide legal analysis through codification, recodification or legal review services. Unless indicated otherwise, information sent via Internet email or through our websites cannot be guaranteed to be confidential. Client further acknowledges that any legal analysis provided by Service Provider is provided to Client's legal counsel for their use and direction. However, Client agrees the services provided for herein do not review legal codes for legal sufficiency, draw legal conclusions, provide legal advice, opinions or recommendations about Client's legal rights, remedies, defenses, options, selection of forms, or strategies, or apply the law to the facts of any particular situation or establish an attorney-client relationship. Service Provider is not a law firm and may not perform services performed by an attorney, and the services contemplated herein do not constitute a substitute for the advice or services of an attorney.

13. The Parties agree that Section 15 of the MSA shall not apply to public interpretation of legal code or work product. Service Provider shall not be responsible for the legal sufficiency or copyright infringement of any material initially or subsequently published.

14. In the event Client wishes to increase its Supplement Updates frequency, Client agrees to pay an annual increase in an amount to be agreed upon between the parties, such amount to be prorated from the time of purchase to align with Client's Renewal Date. Client shall provide CivicPlus with written notice, email is sufficient, of its intent to acquire such services. Rush Supplement requests will be assessed an additional one-time fee.

15. The Annual Recurring Supplement Services fee quoted in this SOW is exclusive of Client's existing annual fees, which may include, without limitation, Online Hosting Annual Fees, OrdBank, OrdLink, MuniDocs, SLR Linking, or other annual fee ("Existing Annual Fees"). Client understands and agrees the Existing Annual Fees will be invoiced by CivicPlus in their current renewal month previously established with Municode unless specifically added to this SOW in a line item above.

CLIENT TO FILL OUT THE FOLLOWING SECTION. PLEASE DO NOT LEAVE BLANK:

Clients selected billing and renewal month: _____ (the "Renewal Date"). If this section is left empty, Client's Renewal Date shall be the date of signing this SOW.

You must select ONE of the following options. If this section is left blank or both options are selected, the Annual Recurring Supplement Services will Start at Signing.

	Start at Signing – As set forth in Section 4 above, by selecting this option, Client agrees to start the Annual Recurring Supplement Services upon signing this SOW, such fee to be prorated to align with Clients selected Renewal Date. For the sake of clarity, Client will no longer be billed the per page rate upon signing.
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	Start at Renewal Date - As set forth in Section 4 above, by selecting this option, Client agrees to continue paying the per page rate previously agreed upon in the original supplements agreement with Municode until the first Renewal Date, as selected by Client above. Upon the first Renewal Date, Client will be invoiced the total Annual Recurring Supplement Services.
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Acceptance

By signing below, the parties are agreeing to be bound by the covenants and obligations specified in this SOW and the MSA terms and conditions found at: <https://www.civicplus.com/master-services-agreement>.

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their duly authorized representatives as of the dates below.

Client

CivicPlus

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

Contact Information

*all documents must be returned: Master Service Agreement, Statement of Work, and Contact Information Sheet.

Organization		URL
Street Address		
Address 2		
City	State	Postal Code
CivicPlus provides telephone support for all trained clients from 7am –7pm Central Time, Monday-Friday (excluding holidays). Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for ensuring CivicPlus has current updates.		
Emergency Contact & Mobile Phone		
Emergency Contact & Mobile Phone		
Emergency Contact & Mobile Phone		
Billing Contact		E-Mail
Phone	Ext.	Fax
Billing Address		
Address 2		
City	State	Postal Code
Tax ID #	Sales Tax Exempt #	
Billing Terms	Account Rep	
Info Required on Invoice (PO or Job #)		
Are you utilizing any external funding for your project (ex. FEMA, CARES):		
		Y [] or N []
Please list all external sources: _____		
Contract Contact		Email
Phone	Ext.	Fax
Project Contact		Email
Phone	Ext.	Fax

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF SURFSIDE
AND
CIVIC PLUS, LLC**

THIS AGREEMENT (this “Agreement”) is made effective as of the _____ day of December, 2022 (the “Effective Date”), by and between the **TOWN OF SURFSIDE**, a Florida municipal corporation, (hereinafter the “Town”), and **CIVIC PLUS, LLC**, a Kansas limited liability company, (hereinafter, the “Consultant”).

WHEREAS, the Town desires certain professional information technology consulting services; and

WHEREAS, the Consultant will perform services on behalf of the Town, all as further set forth in Statement of Work (the “SOW”), attached hereto as Exhibit “A” (the “Services”); and

WHEREAS, the Consultant and Town, through mutual negotiation, have agreed upon a fee for the Services; and

WHEREAS, the Town desires to engage the Consultant to perform the Services and provide the deliverables as specified below.

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

1. Scope of Services.

1.1. Consultant shall provide the Services set forth in the Statement of Work (“SOW”) attached hereto as Exhibit “A” and incorporated herein by reference (the “Services”).

1.2. Consultant 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.

2. Term/Commencement Date.

2.1. The term of this Agreement shall be for a period of three (3) years from the Effective Date, unless earlier terminated in accordance with Paragraph 8. The term shall automatically for one year periods, unless terminated by either party with sixty (60) days advance written notice.

2.2. Consultant agrees that time is of the essence and Consultant shall complete the Services within the term of this Agreement, unless extended by the Town Manager. Notwithstanding the forgoing, Consultant will not be liable or responsible for any delay in the time or completion of the Services due to the action or inaction of Town.

3. Compensation and Payment.

- 3.1. Compensation for Services provided by Consultant shall be in accordance with the SOW attached hereto as Exhibit "A."
- 3.2. Consultant shall deliver an invoice to in accordance with the SOW. The Town shall pay the Consultant in accordance with the Florida Prompt Payment Act.
- 3.3. Contractor's invoices must contain the following information for prompt payment:
 - 3.3.1. Name and address of the Consultant;
 - 3.3.2. Purchase Order number;
 - 3.3.3. Contract number;
 - 3.3.4. Date of invoice;
 - 3.3.5. Invoice number (Invoice numbers cannot be repeated. Repeated invoice numbers will be rejected);
 - 3.3.6. Name and type of Services;
 - 3.3.7. Timeframe covered by the invoice; and
 - 3.3.8. Total value of invoice.
 - 3.3.9. Failure to include the above information may result in the delay of payment or rejection of the invoice. All invoices must be submitted electronically to smccready@townofsurfsidefl.gov.

4. Subconsultants.

- 4.1. The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the Services.

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 Consultant to assist Consultant in performing the Services.
- 5.2. Upon Consultant's request, Town shall reasonably cooperate in arranging access to public information that may be required for Consultant to perform the Services.

6. Consultant's Responsibilities; Representations and Warranties.

- 6.1. The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily provided by a consultant under similar circumstances.

6.2. The Consultant 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. Consultant 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 and first class manner.

6.3. The Consultant 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 Consultant have been duly authorized, and this Agreement is binding on Consultant and enforceable against Consultant 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, Consultant 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 current, or foreseeable, adversarial issues in the Town in connection with the provision of the Services.

8. **Termination.**

8.1. The Town Manager, without cause, may terminate this Agreement upon sixty (60) calendar days written notice to the Consultant, or immediately with cause.

8.2. Upon receipt of the Town's written notice of termination, Consultant 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 Consultant shall be paid for all work accepted by the Town Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.

8.4. The Consultant 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 thirty (30) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Insurance.**

9.1. Consultant shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. 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 Consultant's insurance and shall not contribute to the Consultant's insurance. The insurance coverages shall include at a minimum the

amounts set forth in this section and may be increased by the Town as it deems necessary or prudent.

9.1.1. 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 Consultant. 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 with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Consultant 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 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 Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

9.1.4. Cyber Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.

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 Insurance), no later than thirty (30) days after award of this Agreement and prior to the execution of this Agreement by Town and prior to commencing Services. 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 Consultant shall be responsible for assuring that the insurance certificates 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 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.

9.3. **Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Town is to be specifically included as an Additional Insured for the liability of the Town resulting from Services performed by or on behalf of the Consultant in performance of this Agreement. The Consultant'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 Consultant's insurance. The Consultant'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.

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

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

10. **Nondiscrimination.** During the term of this Agreement, Consultant 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 all appellate levels.

12. **Indemnification.**

12.1. Consultant shall indemnify and hold harmless the Village, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Consultant's negligent performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the Village 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 Consultant's performance or non-performance of this Agreement.

12.2. 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.

12.3. 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. However, to the extent of any conflict or inconsistency between the provisions of the body of this Agreement, the CivicPlus Master Services Agreement (“MSA”), and the SOW, the order or priority shall be (1) the MSA; (2) the SOW; and (3) this Agreement.

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. Consultant acknowledges that all Client Content as defined in Section 7 of the CivicPlus Master Services Agreement between the Parties (“Work Product”) belong to the Town. Consultant 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. Consultant agrees to keep and maintain public records in Consultant’s possession or control in connection with Consultant’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 Consultant involving transactions related to this Agreement. Consultant additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Consultant 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, Consultant 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 Consultant shall be delivered by the Consultant to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Consultant 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 Consultant 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 Consultant shall be withheld until all records are received as provided herein.
- 16.7. Consultant'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 CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'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 Consultant unless such assignment is first approved by the Town Manager. The Town is relying upon the apparent qualifications and expertise of the Consultant, 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 Consultant 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 Consultant 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 Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, 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 Consultant, 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.** Consultant 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 Consultant 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 Affidavit.** In accordance with Section 448.095, 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 its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section

448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.

**[Remainder of page intentionally left blank.
Signature page and E-Verify Affidavit follows.]**

E-VERIFY AFFIDAVIT

In accordance with Section 448.095, 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

CIVIC PLUS, LLC

By: _____
Andrew Hyatt
Town Manager

By: _____

Name: _____

Attest:

Title: _____

Entity:

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:
Andrew Hyatt
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:

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

With a copy to:
Weiss Serota Helfman Cole & Bierman, P.L.
Attn: Lillian Arango, Esq.
Town of Surfside Attorney
2800 Ponce de Leon Boulevard, 12th Floor
Coral Gables, FL 33134
larango@wsh-law.com (email)

With a copy to:

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

EXHIBIT "A"
SCOPE OF SERVICES

The Scope of Services are those contained in the Statement of Work dated, attached hereto and incorporated herein by reference.