

RESOLUTION NO. 2023- 2966

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AGREEMENT WITH VERGE INC. FOR FOURTH OF JULY DRONE LIGHT SHOW SERVICES; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND ENTER INTO THE AGREEMENT FOR THE SERVICES; FINDING THAT THE SERVICES ARE EXEMPT FROM COMPETITIVE BIDDING PURSUANT TO SECTION 3-13(7)(C) AND 3-13(17)(D) OF THE TOWN CODE; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on July 4, 2023, the Town of Surfside (“Town”) will host a Fourth of July event at the Town Community Center (the “Fourth of July Event”); and

WHEREAS, the Town desires to enhance the Fourth of July Event with a drone light show; and

WHEREAS, the Town sought out quotes for drone light show services (the “Services”) and received three (3) quotes, including one from Verge Inc. (“Verge Aero”), attached hereto as Exhibit “A,” in the amount of \$50,000; and

WHEREAS, due to Verge Aero’s experience, credibility and pricing, Town staff recommends that the Town Commission approve and authorize the Town Manager to negotiate and enter into an agreement with Verge Aero for the Services, in substantially the form attached hereto as Exhibit “B” (the “Agreement”); and

WHEREAS, pursuant to Section 3-13(7)(c) and (d) of the Town Code of Ordinances (the “Code”), artistic and entertainment services benefitting the citizens of Surfside and the general public at any Town sanctioned activity are exempt from the competitive procurement requirements of Chapter 3 of the Town Code; and

WHEREAS, the Town Commission desires to approve and authorize the Town Manager to negotiate and enter into the Agreement, in substantially the form attached hereto as Exhibit "A," with Verge Aero in an amount not to exceed \$50,000 for the Services, and

WHEREAS, pursuant to Section 3-13(7)(c) and (d) of the Town Code, the Town Commission finds that the Services are exempt from the competitive procurement requirements of Chapter 3 of the Town Code as artistic and entertainment services; and

WHEREAS, the Town Commission finds that this Resolution is in the best interest and welfare of the Town and its residents.

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

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

Section 1. Approval and Authorization. The Town Commission hereby approves the Agreement, in substantially the form attached hereto as Exhibit "B," with Verge Aero in an amount not to exceed \$50,000 for the Services. The Town Manager is hereby authorized to negotiate and enter into the Agreement with Verge Aero, in substantially the form attached hereto as Exhibit "B," subject to the approval as to form, content, and legal sufficiency by the Town Manager and Town Attorney.

Section 2. Exemption from Competitive Bidding. The Town Commission finds that, pursuant to Section 3-13(7)(c) and (d) of the Town's Code, the Services are exempt from the competitive procurement requirements as artistic and entertainment

services benefitting the citizens of the Town and the general public at the Fourth of July Event.

Section 3. Implementation. The Town Manager and/or designee are authorized to take any and all action necessary to implement the purposes of this Resolution and the Agreement.

Section 2. Effective Date. This Resolution shall take effect immediately upon its adoption.

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

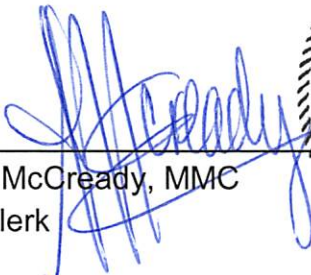
Motion By: Vice Mayor Rose

Second By: Commissioner Velasquez

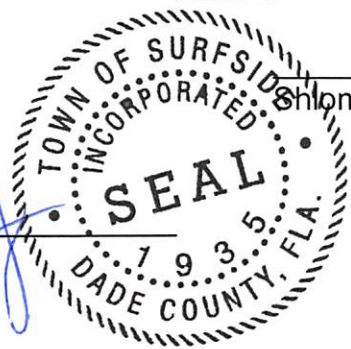
FINAL VOTE ON ADOPTION:

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

Attest:



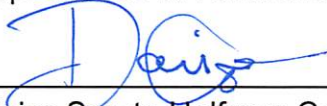
 Sandra McCready, MMC
 Town Clerk





 Shlomo Danzinger, Mayor

Approved as to Form and Legal Sufficiency:



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



Quotation

Customer: Town of Surfside 4th of July 2023

Quote Number: 2166

Date: 20/01/2023

Quote Expires: 25/01/2023

Show Date: Jul 4, 2023, 10:00 PM

Location: Town of Surfside Community Center
9301 Collins Ave
Surfside, FL 33154

Drone Show Description

Verge Aero will provide a 125 drone , 8-10 min custom light show for the Town of Surfside.

Cost

Drones	\$ 50,000.00
Creative Services	Included
Production (labor, travel, freight, ect)	Included
Total	\$50,000.00

Customer initials: _____



VERGE AERO

AGREEMENT

This Agreement ("Agreement") is for the supply of a Drone Show described on the Quotation page of this document. This Agreement is between the customer identified on the Quotation page ("Customer") and Verge Inc. ("Verge"), a Delaware, USA, corporation. Both parties acknowledge that this Agreement consists of the terms written on all pages of this document.

VERGE RESPONSIBILITIES

Verge agrees to:

- Design and safely operate a Drone Show on the Show Date at the location specified in Exhibit B ("Location").
- Create content for the Drone Show, subject to the capabilities of the equipment.
- Secure all authorizations required by the FAA for flights in the USA.

CUSTOMER RESPONSIBILITIES

Customer agrees to provide the items specified in Appendix A ("Responsible Items") and understands that the Responsible Items are essential for show operation. Failure to deliver any one may result in show cancellation.

TERMS OF PAYMENT

A 50% deposit is due upon accepting this quotation. The balance becomes due 30 days prior to the Show Date. In the event that the initial show date is less than 30 days in advance, payment in full is required at the time of acceptance. Payment should be sent directly to the following bank account:

Silicon Valley Bank
3003 Tasman Drive, Santa Clara, CA 95054
ABA routing number: 121140399
Account number: 3303661039
SWIFT: SVBKUS6S

Verge Inc
1705 Robert S Light Blvd, Unit 101, Buda, Texas 78610

INSURANCE

Verge holds a \$5,000,000 aviation liability insurance policy issued by Global Aerospace, Inc.

FEES AND TAXES

Price quoted excludes taxes. Customer is responsible for paying all government fees, taxes, withholding taxes, duties, VAT, etc that arise from the Drone Show, importation and use of the equipment at the show location, or any other aspect of the Drone Show.

SHOW SAFETY, WEATHER, GPS, AND COMMUNICATION

The Pilot in Command (PIC) is the ultimate authority regarding flight safety. Verge will only operate a show under safe conditions. Shows cannot be operated in precipitation or winds in excess of 23 miles per hour. Occasionally, drone sensors detect abnormalities and for safety reasons the flight controller may instruct affected drones to land or not takeoff. It is possible that all drones may not participate in a show. Verge supplies spare drones in order to maximize the number of drones available for flight.

A stable electromagnetic environment is critical to successful Drone Show operation. Show operations require a strong and clear GPS signal, a clear radio communication frequency (902-928MHz in North America), and no magnetic field anomalies. Without them, the Drone Show will be cancelled.

Customer initials: _____

Verge Inc.
3401 Grays Ferry Ave

www.verge.aero
Philadelphia, Pennsylvania

+1.267.606.4470
19146



VERGE AERO

CANCELLATION

Any cancellation of Verge’s services is subject to a cancellation charge. All cancellations shall be in writing and shall not be effective until received by Verge. A charge equal to 25% of the estimated total invoice will be in effect if cancellation is made more than 30 days prior to the Show Date. Cancellations made within 30 days of Show Date are not eligible for a refund of any kind, except for weather and pandemic cancellations. No refunds are made for cancellations due to PIC safety concerns, electromagnetic interference, or failure of Customer to deliver Responsible Items, under any circumstances.

PANDEMIC CANCELLATION

Should government imposed pandemic restrictions result in cancellation of the Drone Show, Verge will work with Customer to reschedule the Drone Show to a mutually acceptable date. There will be no extra charge except for any additional direct expenses (travel, freight, etc) incurred by Verge due to the change in Show Date.

WEATHER CANCELLATION

Should adverse weather conditions result in cancellation of the Drone Show, Customer has the option to either 1) receive a 50% refund (excluding freight, travel, professional services incurred) or 2) reschedule the Drone Show to a mutually acceptable date. For rescheduling occurring prior to either equipment or personnel departing for the Drone Show, Customer pays for any additional direct expenses (travel, etc) incurred by Verge. Otherwise, Customer pays for additional direct expenses and a 20% rescheduling fee at least 30 days prior to the new Show Date. Rescheduled shows must occur within one year of original Show Date.

LIMITATION OF WARRANTY AND LIABILITY

Verge shall not be liable for any loss or damage of any kind whatsoever due to delay or failure of performance caused directly or indirectly by an act of God, strike, lockouts and labor disputes of any kind or description, fire, failure of transportation, inability to obtain the services of others, the failure of others to deliver services or facilities, the failure of machinery or equipment, any matter beyond Verge’s control, malfeasance or nonfeasance by Verge’s employees, agents or contractors, and all other causes whatsoever. Further, Verge shall not be responsible for any direct or indirect damage or loss and any consequential losses of any type or description of the Customer. THE PROVISIONS HEREIN ARE ACCEPTED IN LIEU OF ALL OTHER LIABILITY, WARRANTY OR GUARANTY, EXPRESS OR IMPLIED, IN LAW OR IN FACT. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE EXPRESS WRITTEN PROVISIONS HEREOF.

CHOICE OF LAW

This agreement shall be governed by, and construed in accordance with, the laws of the State of Pennsylvania. In the event of litigation, the place of venue shall be in the City of Philadelphia in the State of Pennsylvania.

ENTIRE AGREEMENT

This Agreement contains the entire understanding and agreements between the parties hereto respecting the within subject matter, and there are no representations, agreements, arrangements, or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement

Accepted by Customer:

On behalf of Verge Inc.:

Signature

Company

Signature

Name

Date

Verge Inc.

Title



VERGE AERO

Appendix A

Customer Responsibilities

- A secure, dedicated Take Off and Landing Zone (TOLZ) for the drones. All spectators and non-flight crew personnel must always remain a minimum of 100 feet away from any drone.
- A secure Flight Operations Area (FOA) which includes the area in which Drone Show occurs along with a surrounding Safety Zone. SZ dimensions are determined by the altitude at which the drones fly; the exact location and dimensions of the FOA and SZ are to be agreed in advance by Verge and Customer. Only flight crew personnel are allowed in the FOA and SZ during flight. Customer is responsible for establishing and maintaining a secure perimeter for the FOA and SZ.
- A site plan showing location of spectators and FOA options no later than 30 days prior to Show Date.
- Final approval of show site layout and show time one week prior to the Drone Show.
- Final approval of show content no later than 48 hours prior to the Drone Show.
- Full access to show site at least six hours prior to show time.
- Local accommodation for Verge staff members. 3 room, 2 nights
- Authorization for use of any logos or images used in the Drone Show.
- Power at the TOLZ for operating radio and control equipment during flights.
- A secure storage area for the drones when not in use.
- A secure, temperature-controlled room with power for charging batteries and 24 hour access for Verge personnel.
- Labor to assist with battery charging, unpacking, preparing, and packing drones. 1 person per 50 drones
- If the TOLZ is on a grass surface, ensure that the grass is cut to a level so that the blades are no more than two inches off the ground.

Customer initials: _____



VERGE AERO

Appendix B

Location

Subject to final TOLZ from Verge Show Operations



Customer initials: _____

Verge Inc.
3401 Grays Ferry Ave

www.verge.aero
Philadelphia, Pennsylvania

+1.267.606.4470
19146

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF SURFSIDE
AND
VERGE INC.**

THIS AGREEMENT (this "Agreement") is made effective as of the _____ day of _____, 2023 (the "Effective Date"), by and between the **TOWN OF SURFSIDE**, a Florida municipal corporation, (hereinafter the "Town"), and **VERGE INC.**, a Delaware profit corporation (hereinafter, the "Contractor").

WHEREAS, the Town desires services related to the design and execution of a drone light show for Town's Fourth of July event on July 4, 2023 (the "Services"); and

WHEREAS, the Contractor will perform services on behalf of the Town, all as further set forth in the Proposal dated January 20, 2023, 2021, attached hereto as Exhibit "A" (the "Services"); and

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

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

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

1. Scope of Services.

1.1. Contractor shall provide the Services set forth in the Proposal attached hereto as Exhibit "A" and incorporated herein by reference (the "Services").

1.2. Contractor shall furnish all reports, documents, and information obtained pursuant to this Agreement, and recommendations during the term of this Agreement (hereinafter "Deliverables") to the Town.

2. Term/Commencement Date.

2.1. The term of this Agreement shall be from the Effective Date through one (1) year thereafter, unless earlier terminated in accordance with Paragraph 8.

2.2. Contractor agrees that time is of the essence and Contractor shall complete the Services within the term of this Agreement, unless extended by the Town Manager.

3. Compensation and Payment.

3.1. Compensation for Services provided by Contractor shall be in accordance with the Proposal attached hereto as Exhibit "A," in an amount not to exceed \$50,000.

3.2. All Services performed shall be invoiced to the Town. Upon receipt of an acceptable and approved invoice, payment(s) shall be made within thirty (30) days for that portion (or those portions) of the service satisfactorily rendered (and referenced in the particular invoice). The Town shall pay the Contractor in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Town Manager.

4. Subcontractors.

4.1. The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Services.

4.2. Contractor may only utilize the services of a particular subcontractor with the prior written approval of the Town Manager, which approval may be granted or withheld in the Town Manager's sole and absolute discretion.

5. Town's Responsibilities.

5.1. Town shall make available any maps, plans, existing studies, reports, staff and representatives, and other data pertinent to the Services and in possession of the Town, and provide criteria requested by Contractor to assist Contractor in performing the Services.

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

6. Contractor's Responsibilities; Representations and Warranties.

6.1. The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily provided by a Contractor under similar circumstances. If at any time during the term of this Agreement or within two (2) years from the completion of this Agreement, it is determined that the Contractor's Deliverables or Services are incorrect, not properly rendered, defective, or fail to conform to Town requests, the Contractor shall at Contractor's sole expense, immediately correct its Deliverables or Services.

6.2. The Contractor hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for Town as an independent contractor of the Town. Contractor further warrants and represents that it has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first class manner.

6.3. The Contractor represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Contractor have been duly authorized, and this Agreement is binding on Contractor and enforceable against Contractor in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

7. Conflict of Interest.

7.1. To avoid any conflict of interest or any appearance thereof, Contractor shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any current, or foreseeable, adversarial issues in the Town.

8. Termination.

8.1. The Town Manager, without cause, may terminate this Agreement upon five (5) calendar days written notice to the Contractor, or immediately with cause.

8.2. In the event of termination by the Town, the Contractor shall be paid for all work accepted by the Town Manager up to the date of termination, provided that the Contractor has first complied with the provisions of Paragraph 8.4.

8.3. The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services to the Town, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. Insurance.

9.1. Contractor shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts 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 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 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 Contractor. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

9.1.2. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.

9.1.3. Business Automobile Liability 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. Professional 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 ten (10) days after award of this Agreement and prior to the execution of this Agreement by Town and prior to commencing Services. Each certificate shall 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 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 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 Contractor in performance of this Agreement. 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.

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

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

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

11. Attorneys Fees and Waiver of Jury Trial.

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

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

12. Indemnification.

12.1. Contractor shall indemnify and hold harmless the Town, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Contractor's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the Town for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Contractor's performance or non-performance of this Agreement.

12.2. 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.

15.2. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

16. Ownership and Access to Records and Audits.

16.1. Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the Town which are conceived, developed or made by Contractor during the term of this Agreement ("Work Product") belong to the Town. Contractor shall promptly disclose such Work Product to the Town and perform all actions reasonably requested by the Town (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

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

16.3. Upon request from the Town's custodian of public records, Contractor shall provide the Town with a copy of the requested records or allow the records to be

inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

- 16.4.** Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- 16.5.** Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 16.6.** Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- 16.7.** Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.
- 16.8.** Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**

Custodian of Records: Sandra McCreedy, MMC

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

Telephone number: 305-861-4863

Email: smccreedy@townofsurfsidefl.gov

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

18. Severability. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected

thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

- 19. Independent Contractor.** The Contractor and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Town with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.
- 20. Compliance with Laws.** The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense. As of the Effective Date of this Agreement, Contractor shall register "Verge, Inc." to do business in Florida by registering with the Florida Department of State, Division of Corporations.
- 21. Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.
- 22. Survival of Provisions.** Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.
- 23. Prohibition of Contingency Fees.** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.
- 24. Public Entity Crimes Affidavit.** Contractor shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
- 25. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
- 26. Conflicts.** In the event of a conflict between the terms of this Agreement and any exhibits or attachments hereto, the terms of this Agreement shall control.

27. Boycotts. The Contractor 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

CONTRACTOR

By: _____
Hector Gomez
Town Manager

By: _____

Name: _____

Title: _____

Attest:

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
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, FL 33134
larango@wsh-law.com (email)

With a copy to:

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

EXHIBIT "A"
SCOPE OF SERVICES

The Scope of Services are those contained in the Proposal dated January 20, 2023, attached hereto and incorporated herein by reference.